

THE REVIEWS THE RELATIONSHIP BETWEEN THE RULE OF LAW, GOOD GOVERNANCE AND SUSTAINABLE DEVELOPMENT

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Abstract

This paper reviews the relationship between the rule of law, good governance and sustainable development as those terms are used by the relevant development organizations; describes the efforts made by various organizations to promote the rule of law and good governance; and addresses the need to strengthen compliance and enforcement for sustainable development. A recent movement which has revitalized our national economy and financial markets is certainly the implementation of general policies of Article 44 of the constitutional law. Every one consents to the necessity of implementing such policies ensuring the process of privatization of state enterprises and providing a legal ground for this movement. The main objective of communicating these policies is to convert the current national economy to a dynamic, developmental, and competitive economy that will be possible via reducing the government outsourcing as well as expanding the activities of private sector. Much of research conducted in developed countries show that privatization laws cause to change the role of the state, create new financial facilities, expand public welfare and increase financial and operational performance in divested companies which leads to an optimal allocation of interests, financial and economic stability, enhancement of the rates of national growth and efficiency and effectiveness. However, given the legal, financial and economic conditions of the country, in order to implement this principle, the ground for privatization should be created in the country through accelerating the formulation and adoption of proper infrastructures.

Keywords - Article 44 of the Constitutional Law, Privatization, Rule of Law, Good Governance.

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Introduction

It is widely recognized that good governance with Privatization is essential to sustainable development. Well functioning legal institutions and governments bound by the rule of law are, in turn, vital to good governance. Weak legal and judicial systems where laws are not enforced and noncompliance and corruption are the norm undermine respect for the rule of law, engender environmental degradation and undermine progress towards sustainable development. Practitioners in the development field have increasingly turned their attention to reforms to improve legal and judicial institutions and promote the rule of law and good governance. For example, various United Nations agencies such as the United Nations Environment Program (UNEP) and the United Nations Development Program (UNDP), as well as the World Bank and other regional development banks, are directing increasing resources to reform legal and judicial institutions. Today, however, most of these efforts have concentrated on developing new laws and creating new institutions, rather than building capacity for ensuring compliance with existing rules. Yet without compliance, laws and regulations are meaningless or worse, they undermine respect for the rule of law and cannot promote sustainable development. As a result, many developing countries and countries with economies in transition still suffer from weak legal and judicial systems, lack of investment and have poor development prospects, sustainable or otherwise. Thus, donor driven reform efforts need to ensure that their rule of law efforts include sufficient training and capacity building to establish the institutional foundation for compliance and enforcement, through both instrumental and normative efforts.

The first section of this paper reviews the relationship between the rule of law, good governance and sustainable development, after Privatization and they are as those terms are used by the relevant development organizations. It then briefly describes the efforts made by various organizations to promote the rule of law and good governance. Finally, the paper addresses the need to strengthen compliance and enforcement for sustainable development.

In today's world, business environment has an increasing complexity and turbulence and changes constantly and companies are considered as the economic pillar of the society in

creating wealth and jobs and attracting capital¹. In order to create value in the market and gain a sustainable competitive advantage and survive and advance in that market, innovation process and regulatory mechanisms in the organization should be improved to prevent stagnation and destruction². Recently, implementing the general policies of article 44 of the constitution (privatization) has revitalized our national economic scenes and financial markets. In fact, communicating the policies of article 44 of the constitution represents the attitude of the system toward the national economic activities and declaring this attitude is very important for economic actors and indicates a new horizon for the national economic activities that requires an appropriate strategy. But, the main objective of communicating these policies is to convert the national current economy to a dynamic, developmental and competitive economy that will be possible via reducing government outsourcing as well as developing the activities of private sector³. Research in experienced countries such as England, Germany, etc. have shown that the privatization laws cause to change in the state role, create new financial facilities, expand the public welfare and increase the financial, operational performance in the divested companies, restructure and change in the corporate governance of the privatized companies⁴ and due to transparent financial markets and strong legal systems, this led companies to an optimal allocation of interests, financial and economic stability, enhancement of the rates of national growth and efficiency and effectiveness. The framework of the process of privatization is one of the most effective and essential strategies for achieving a dynamic and progressive economy and industry⁵.

¹ Solomon, J and, Solomon, A, corporate Governance and accountability, Wiley. (2007).

² Alvani, M. "General Management", NEI Pub., Tehran, Iran. (1985).

³ Kianpour, S., An overview on privatization in a few selected countries with reference to the general policies of Article 44, Business Reviews, No. 38, pp. 219, (2009).

⁴ Moshiri, S., Privatization and economic growth, a crosscountry study, Journal of Economic Research, No. 90, pp. 141158, (2010).

⁵ Prokopenko. J, Privatization Management, Translated by Akbari H., Davari D., Ariana Research Centre, First Edition. (2001).

1. Thought Study of Privatization in Iran

1.1 Government, Article 44 of the constitution in line with privatization⁶

The Expediency Council has provided new and liberal interpretations of Article 44 of the Constitution following years of ambiguity, debate and controversy concerning private sector activity (domestic and foreign) in Iran. This article in relevant part provides: “The economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative and private, and is to be based on systematic and sound planning. The state sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State. The cooperative sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria. The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the state and cooperative sectors. The [precise] scope of each of these sectors, as well as the regulations and conditions governing their operation, will be specified by law.” As evident from the comprehensive definition of the state sector, most major economic activities of Iran fall under a state monopoly. Nevertheless, in recent years a more liberal and pragmatic interpretation was applied in order to legitimize the government's efforts of privatization. The major example of such approach was reflected in the law of the Third Five Year Development Plan. Although the Guardian Council objected to privatization provisions in the Third Plan based on Article 44, the Expediency Council (the highest body who resolved disputes between the Guardian Council and parliament) let those provisions stand. Notwithstanding, the Guardian Council has consistently objected to any legislation which runs afoul of the principals articulated in Article 44. The most recent objections were made to the Fourth Five Year Plan ratified by the previous parliament provisions of privatization. Given the ongoing uncertainty regarding Article 44 and the disputes between the government, parliament and Guardian Council concerning its applicability, the Expediency Council has finally stepped in to

⁶ Atieh Associate (2004), Vol.4, No.2, "the document is available online at: <http://www.atiehassociates.com/law/newsletters/Newsletter200410.pdf>".

provide a binding interpretation of this article. After months of deliberation, The Expediency Council has commenced providing its interpretation (as the highest body in Iran) and policies on this subject. In sessions held last week of September and first week of October, the Expediency Council has ratified two major provisions concerning Article 44 which are as follows.

- (i) The government is obligated to disengage from those economic activities that private sector participation is permitted by the end of the Fourth Development Plan (i.e. 2010). In case necessary, such participation by the government will only be permitted by proposal of the cabinet and ratification by the parliament for a specified time.
- (ii) Investment, ownership and management in those fields provided in Article 44 shall be permissible, as provided below, by the public non government organs, private and cooperative sector:
 - a. Large industry, mother industry (including large oil and gas downstream industry) and large mines (excluding oil and gas);
 - b. International trade activities within the framework of the country's trade and foreign currency policies and so long as it does not create a monopoly;
 - c. Banking and Insurance;
 - d. Power generation including production for domestic and export consumption;
 - e. Dams and large irrigation networks;
 - f. All post and telecommunications with the exception of mother telecommunications networks, transfer of frequencies and exchange and distribution of basis mail services;
 - g. Roads and railways;
 - h. Aviation and shipping;Based on the foregoing, private sector participation is clearly authorized in most sectors that were once deemed under the exclusive control and monopoly of the government. Upstream oil and gas activity remain as the most significant exception to private participation whereby the government is to maintain a monopoly. This directive by the Expediency Council has for the first time provided a clear and transparent interpretation of Article 44 and thus disallowing any further objections by the Guardian Council concerning privatization efforts by the government and parliament.

Purview and the way of government intervention in the economy and its advantages and disadvantages are topics discussed by economists and economic theorists during the past few decades. The delimitation of government intervention is the most important

issue that has been considered by economic theorists since the formation of the thought of modern economy. The delimitation of government intervention in the field of economic activities depends on different attitudes and perspectives of economic system on the property, hence the issue of property is considered as the most important discussions of any economic system because by knowing the form of property and its purviews in any economic system, the system position about other economic issues can be realized⁷. In other words, proper understanding of the views of any school on property identifies the attitude of that school on other economic issues. In a general classification of the role the government plays in economic domain and the extent its intervention should be, three periods (approaches) can be separated.

1.2 Market Government Approach

This period initiated with the industrial developments in England from the eighteenth century and was along with the thoughts of classical economists. The basic feature of economic system in this era is limited government intervention in economic affairs. Functions were consistent with what Adam Smith had raised as the basic functions of government i.e. providing public security, defending country's territorial integrity and investing in sectors producing public goods. Despite sharp criticisms on such economic system, this period continued until the twentieth century⁸.

Government Market approach in the first half of the twentieth century, two events of the Great Revolution (1917) and the Great Economic Crisis in Europe and America (1929-1934) led the government to play a greater role in the economic domain. With the revolution in 1917 that the idea of socialist economy was operationally implemented for almost 70 years, the government began to completely take over the helm of affairs and left no opportunity for private sector; however, with great economic crisis namely Capitalism, the government acted as a complementary to private sector in investment area and finally, Keynesian ideas were crystallized in the framework of government. In fact, it can

⁷ Cooperation Office of Hawzah and University, Islamic Economy, Tehran, The Organization for Researching and Composing University Textbooks, (Samt), V. 1. (1992).

⁸ Moshiri, S., Privatization and economic growth, a crosscountry study, Journal of Economic Research, No. 90, pp. 141158, (2010).

be said that the effective function of the process of Market government led to larger dimensions of the government's decision-making in a diverse way. But it should be considered that Keynes raised the government only as a catalyst and did not raise a discussion on the process of the government market. Indeed, it can be said that after defeating the market during decades of 1930-1970, states became responsible for many economic activities with the aim of removing market failures, traditional and limited production and structural duality in traditional, modern and contrasting both economic and social affairs, creating economic infrastructure, optimal allocation of interests, providing basic goods and services, achieving political social targets and accelerating developments. Also, in developing countries, where there is no organized system called market to be able to allocate resources, governments had a special status in national economy; therefore, these countries drove towards Government market approach⁹.

1.3 Returning to Market Government Approach

In the later quarter of the twentieth century, a returning period to the ideas of the first period was created and an approach known as Neoliberals could remove government oriented ideas of socialist and Keynesian etc. In this period, in addition to the inability of wellbeing states to solve the stagnation inflation problem in developed capitalist countries, the inability of socialist systems in response to the consumption requests and demands of individuals provided a field to revive the liberalism approach in new intellectual formats. In these conditions, one of way to achieve economic development was privatization policy. Privatization is a process in which the government accesses the possibility of transferring its duties and facilities from the public sector to the private sector at any rate and if a government acts for such transfer in the case of diagnosis and appropriation, the concept of privatization expresses to make eligible and open doors of a public financial institution to market forces according to the inputs and outputs¹⁰.

⁹ Mahdavi Adeli, M. H., Studying the process of privatization and its impact on promoting entrepreneurship in Iran, *Journal of Knowledge and Development*, No. 18 .(2006).

¹⁰ Kianpour, S., An overview on privatization in a few selected countries with reference to the general policies of Article 44, *Business Reviews*, No. 38, pp. 219, (2009).

In Iran, Privatization was first raised in 1983 and followed with the First Development Plan in 1989 and finally, according to articles 44, 134, 138 of the constitution was first initiated from June 1991. In recent years, the movement that revitalized the national financial markets and economy has been the implementation of the general policies of Article 44 of the constitution. In Iran, Article 44 of the constitution considers the economic system of Islamic Republic of Iran based on three sectors of state, cooperative and private ones (according to the plan, the government wants to reach its ownership share to 20%, the private sector share to 55% and the cooperative sector share to 25% at the end of the fourth development plan). This Article of the constitution has authorized the government for all major industries, mother industries, foreign trade, major miners, banking, insurance, power generation, dams and great networks of irrigation, radio and television, post and telegraph, telephone, aviation, shipping, rail and etc., and in this way, it considers the property of these industries as public property. Article 44 of the constitution considers the cooperative sector as cooperative production and distribution companies and institutes formed in cities or villages according to the Islamic rules. In the Article, that part of agriculture, livestock, industry, trade and services that is the supplement of governmental and cooperative economic activities has subjected to private sector. According to this Article, as far as the property in these three sectors does not exist from the scope of Islamic law and other Articles of the constitution and causes the national economic development and growth, it will be protected by the constitution¹¹. Everyone consents on the necessity of implementing these policies ensuring that the process of privatization of state enterprises and providing a legal ground for this movement. The main objective of communicative these policies is to convert the current national economy to a dynamic, developmental, and competitive economy that will be possible via reducing the government outsourcing as well as expanding the activities of private sector. So, providing the operational strategies leading to achieve the objectives of these policies has an extraordinary importance. Communicating the policies of article 44 of the constitution actually represents the type of system attitude to the country's economic activities. Although declaring this attitude is very important for economic actors and indeed, it

¹¹ Jahangir, M., *The Constitution of the Islamic Republic of Iran, Adopted in 1979, Modifications and Amendments to Constitution Adopted in 1989*, Tehran, Doran publication. (1989)

indicates the emergence of the horizon of economic activities in future, providing the operational strategies leading to achieve the objectives of this policy has an extraordinary importance¹².

1.4 Privatization

Privatization has currently moved to the first front of economic and political thought and has been considered as an acceptable solution to increase production and achieve economic growth in less developed countries¹³. Privatization is the term widely spreaded in political arena from late 1970s and early 1980s with the emergence of conservative governments in Britain, America and France so that in our country, privatization is now considered as one of the major issues in the domain of economic and social policies. In the 80s, production in the private sector increased globally and in many developed countries, this increase reflected the growth and provision of services¹⁴.

Many less developed countries and states with less economic growth than countries with the economy of free market tended to privatization to relieve the burden of these services and wanted to experience it¹⁵. Because they consider privatization not only as a means for restructuring the economy and increasing competition in the global business arena but also as a necessary infrastructure for economic development¹⁶. To date, several prominent definitions have been slated for privatization. Basely mentions that privatization is a means to improve the performance of the economic activities through increasing the role of market forces provided that at least 50% of government stocks are divested to private sector. Key and Thampson defined privatization as several and various ways to change the relationship between government and private sector such as sailing the state owned assets, deregulating or removing the

¹² Mahdavi Adeli, M. H., Studying the process of privatization and its impact on promoting entrepreneurship in Iran, *Journal of Knowledge and Development*, No. 18 .(2006).

¹³ Berg, E. "The role of divestiture in economic growth in privatization and development" steve H. (1987).

¹⁴ Hanke, steve H. Privatization and development an introduction. San fransisco: institute for contemporary studies press. (1987).

¹⁵ Pherson. Mc, M. Peter, the promise of privatization: in Privatization and development, ed, steve. (1987)

¹⁶ Solomon, J and, Solomon, A, corporate Governance and accountability, Wiley. (2007). Mclean. Dainiel d., Gustafson, Thomas.F. Privatization and its effect on public golf employeas. Landiana University. (2002).

restrictive regulations and introducing competition in absolute governmental monopolies and free agent contracts with private sector for producing goods and services governed and funded by the government. For countries with centralized economy, Schwartz defined privatization far beyond transferring the property and modifying regulations and pointed out that privatization means creating a new economic system based on market; consequently, transformation in various aspects¹⁷.

Privatization is considered as a movement towards market economy through the following:

- Economic policymaking: strengthening an organizational framework for a market economy (property rights, legal instruments, financial institutions, etc.).
- Development of the private sector.
- Privatization of public financial institutions.¹⁸

Therefore, privatization can be considered as an attempt to highlight the role of market against government decisions as an economic agent, as one of vertices for policies of modification and transferring of assets or divesting services from the government to the private sector aiming at the creation of competitive conditions and achieving greater economic and social efficiency and as an excellence sign of Capitalism thought and confidence in the market efficiency compared to distrust to the performance of the public sector¹⁹.

1.5 Objectives of Privatization

According to the features, location and structure of national economy, all countries have followed different objectives of privatization which are determined according to the policies, economic plans and general strategies of each country. Therefore, the instruments used for privatization are determined based on the objectives and are certainly different with each other.

¹⁷ Schwartz. G. "Privatization: Possible Lesson from the Hungarian case" *World Development*, vol. 19. p. 173. (2005).

¹⁸ Behkish, M. M. *Iranian economy in the context of globalization*, Nai Publication, page 110, (2001).

¹⁹ Faizpour M.A, Danesh HA., Poshdozbashi H., *Privatization or Cooperation*, Scientific Research Quarterly Journal of Islamic Economy, 9th year, No. 33, (2009).

However, there are a series of general objectives of privatization that can be mentioned as common objectives among countries²⁰.

1.5.1 Primary Objectives of Privatization

The primary objectives of privatization include: reducing the domain of direct activities of the government in economy, increasing entrepreneurship and the efficiency level of economic enterprises, developing domestic capital markets, accessing to capital, technology and foreign financial resources, gaining revenue for the state in order to cover budget costs, dropping out the financial burden of bad companies and reducing the volume of the internal and external debt of the public sector²¹.

1.5.2 Secondary Objectives of Privatization

The secondary objectives of privatization include: increasing people's participation in economic affairs, decision making and appropriate distribution of incomes through extending stock among the public, growing the entrepreneurship and creativity for providing grounds for the promotion of national economic productive ability, desirable allocation of the country's resources based on the market performance, improving the commercial conditions and creating a balance between savings and investment²². But experts at privatization have addressed the issue from a specific aspect and divided its objectives. Henry Gibbon asserts that the objectives of privatization are:

- Increasing the efficiency by further competitiveness of goods and services in favor of consumers.
- Increasing and spreading ownership among the community.
- Achieving the highest value on goods or services sold by the government.

Chuck Davis considers the objectives of privatization as: reducing the size of government and shortening the public sector, providing financial revenues for the public sector, getting rid of financial pressures, improving economic efficiency, promoting the equality,

²⁰ Beesly, M. and Stephen little child. Privatization: "Principles, problems and prioriteies". Lloyds Bank Review, (1983).

²¹ Ibid.

²² Mahdavi Adeli, M. H., Studying the process of privatization and its impact on promoting entrepreneurship in Iran, Journal of Knowledge and Development, No. 18 .(2006).

justice and equity and reducing the influence of public organizations²³. In general, in most countries, the main objective of privatization is to increase the efficiency of enterprises and optimize the allocation of resources and all pundits of privatization agree that the main objective of privatization is to improve the economic circumstances.

1.6 Necessary Infrastructure for Successful Privatization

To achieve successful privatization, conditions and infrastructures are required that the major ones include: strengthening the legal system based on private ownership, determining the necessary regulatory frameworks and restructuring provisions, eliminating or weakening restrictions, reducing governmental investments, removing subsidies and governmental pricing. Competitive Environment and its Advantages in Economic Growth In recent decades, in the field of privatization and its role in the economic growth, the remarkable topic has been the issue of competitive environment, competitiveness and its advantages, the right to property, etc. Vickrey and Yaro (1988) emphasis on the importance of the existence of competitive environment and regulated market to improve the efficiency of private enterprises and also, some believe that for the economic growth, the issue of competition is more important than property right²⁴. Today, in the business, the main role of success of public and private organizations is determined through economic, political and cultural environment and their competitiveness ability. Competitiveness is a process in which every institution tries to act better than others and overtakes others. Achieving competitive capabilities in today's world is one of the main challenges of various countries at international level²⁵.

Competitive advantage is one of the components ensuring the organizational survival and it is not achieved random ally and unplanned. Organizations should move with thinking and designing scientific frameworks in this field. Competitive

²³ Davis, cprivatization: common themes, similar outcomes. Available at: edu. www umn, (2005).

²⁴ Fuchs, M. & Hanning, C. "Ethical Capability as a Competitive Advantaage" International business and economics programee. (2001).

²⁵ Abu Tapanjeh. A. M. Corporate Governance from the Islamic perspective: A Comparative An analysis with OECD Principles, Journal of Critical Perspectives on Accounting, (2008).

advantage was first developed by Porter (1985)²⁶. He believes that competitive advantage belongs to the company which values his customers. However, with regard to competitive advantage, numerous definitions have generally been provided that some are mentioned in this section. Ama (1999) stated that competitive advantage is the difference and asymmetry of factors and features that will allow the company to offer better services compared to their competitors and thus, to achieve a better value for customers and as a result, superior performance. Competitive advantage is a factor or a combination of factors that make an organization very successful compared to other organizations in a competitive environment and that competitors cannot easily imitate it. So, to achieve competitive advantage and economic growth and development, countries should consider their foreign positions and domestic capabilities²⁷. Washington Consensus forming the basis of policies of World Bank and IMF for a long time was based on three bases including constraints of the government's financial intervention in economy, privatization and market liberalization and the aim of implementing these three principles was to create a free business environment where private sector has a pivotal role in economic growth and development. In most countries, the main objective of privatization is generally to increase the efficiency of enterprises and optimize the allocation of resources and the consensus of all privatization pundits is that the privatization causes to improve the economic circumstances. In short term, privatization leads to increase the government's income resulted from selling governmental enterprises and as a result reducing budget deficit. Also, in long term, it leads to advance technology, increase efficiency and create and enhance a strong private sector. Therefore, it is expected that privatization as a fundamental economic reform causes more economic growth²⁸. The main objective of communicating Article 44 of the constitution is to convert the country's current economy to a dynamic, developed and competitive economy that will be

²⁶ KHodadad Hosseini, H., Safari Kharh, M., Gholamalizade. A. Studying the role of e commerce in supply chain management to gain competitive advantage for organizations, 5th International Conference on Information and Communications Technology Management. (2008).

²⁷ Faizpour M.A, Danesh HA., Poshdozbashi H., Privatization or Cooperation, Scientific Research Quarterly Journal of Islamic Economy, 9th year, No. 33, (2009).

²⁸ KHodadad Hosseini, H., Safari Kharh, M., Gholamalizade. A. Studying the role of e commerce in supply chain management to gain competitive advantage for organizations, 5th International Conference on Information and Communications Technology Management. (2008).

possible by reducing the government outsourcing and developing the activities of the private sector. In experienced countries such as England, Germany, etc. much of research conducted have shown that privatization laws and their implementation have led to optimal allocation of interest, financial stability and enhance national growth rates, efficiency and effectiveness of the privatization process which is a crucial element in the country to survive in the turbulent and changing world and achieve proper economic growth and development²⁹.

2. 1. Context of sustainable development

2.1 Definitions of “Rule of Law” and “Good Governance”

There is a political consensus that the rule of law and good governance are a necessary foundation for efforts to achieve sustainable development. But these broad concepts carry many meanings and there are many strategies for promoting them. This section provides some brief definitions to illustrate how the concepts are used in the international financial institutions and other donor and capacity building agencies. It then explores the relationship among the rule of law, good governance, and sustainable development.

2.1.1 Rule of law

Many institutions identify a fair, impartial, and accessible justice system and a representative government as key elements of the rule of law. In this paper, the term “rule of law” is used to mean independent, efficient, and accessible judicial and legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all of its people.

2.1.2 Good governance

Good governance is generally characterized by accessibility, accountability, predictability and transparency. This paper treats “good governance” as having openness, participation, accountability, and transparency as key elements.

²⁹ Arabi, M., Rezvani, H.R. “The relationship of strategic coordination between BusinessLevel Strategy and marketing strategy and organizational performance”, *Journal of Management Sciences in Iran*, the second year, No. 5, pp. 7197. (2007).

2.2 Relationship among the Rule of Law, Good Governance, and Sustainable Development

While many factors play an important role in development, good governance is now recognized as playing an essential role in the advancement of sustainable development. Good governance promotes accountability, transparency, efficiency and rule of law in public institutions at all levels. In addition, it allows for sound and efficient management of human, natural, economic, and financial resources for equitable and sustainable development. Moreover, under good governance, there are clear decision making procedures at the level of public authorities, civil society participation in decision making processes and the ability to enforce rights and obligations through legal mechanisms. These aspects of good governance do not in themselves ensure that society is not run well nor do they guarantee sustainable development. However, their absence severely limits that possibility and can, at worst, impede it. Without proper functioning institutions of governance based on the rule of law that promote social stability and legal certainty, there cannot be investment and assumption of risk that form the basis of market economy development, let alone sustainable development. Indeed, the strength of the rule of law is the best predictor of a country's economic success. Furthermore, deficiency in the rule of law encourages high rates of corruption, with further devastating consequences on the confidence of economic actors. This lack of investment, in turn, slows economic growth and consequently deprives the governments of resources to invest in education, social safety nets, and sound environmental management, all of which are critical for sustainable development. Introduction of good governance and rule of law, however, cannot be done overnight. The process is often a gradual one, involving changes to longstanding practices, entrenched interests, cultural habits, and social and even religious norms. A significant step was taken in this endeavor in 1998 when countries adopted the Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters ("The Aarhus Convention")³⁰. The Convention recognizes that sustainable development can only be achieved through the involvement of all stakeholders and seeks to promote greater transparency and

³⁰ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, June 25, 1998, available at <http://www.unece.org/env/pp/treatytext.htm>. The Convention came into force on October 31, 2001 and has been ratified thus far by 33 countries.

accountability among government bodies by guarantying three pillars for the public:

- The rights of citizen access to information;
- Citizen participation in decision making, and
- Citizen access to justice in environmental matters.

In other words, the Convention guarantees freedom of access to information on the environment, gives citizens a right to participate in environmental decision making, and provides for recourse to judicial and administrative remedies when these rights are denied by state authorities. Moreover, in 2000, 191 United Nations member States pledged to fulfill a set of key goals (the Millennium Development Goals) for poverty reduction and sustainable development by the year 2015. In the Millennium Declaration, the member States agreed to “spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development³¹.” In addition to these international agreements by heads of the States, donor agencies are making significant efforts to promote the rule of law and good governance throughout the world. The following section briefly describes these efforts.

2.3 Efforts to Promote the Rule of Law and Good Governance

Recognizing the importance of rule of law and good governance, many donor agencies are actively supporting legal and judicial reforms, including judicial training, development of new laws and legal institutions, and capacity building. For example, UNEP has convened several symposia for judges to facilitate judiciary communication, sharing of legal information, and harmonization of different approaches to the implementation of global and regional instruments³². One such symposium was the Global Judges Symposium on Sustainable Development and the Role of Law that UNEP organized with the International Network for Environmental Compliance and Enforcement (INECE) as a key partner in 2002. At the Symposium, the participants adopted the Johannesburg Principles on the Role of Law and Sustainable Development, in which they affirmed, among other things, “that an independent Judiciary and judicial process is vital for the

³¹ United Nations Millennium Declaration, Res. 55/2, Sept. 8, 2000, available at <http://www.un.org/millennium/declaration/ares552e.pdf>.

³² See UNEP, Judges Programme, available at http://www.unep.org/DPDL/Law/Programme_work/Judges_programme/index.asp.

implementation, development and enforcement of environmental law” and that “there is an urgent need to strengthen the capacity of judges, prosecutors, legislators and persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law³³.”

UNDP also has helped promote good governance by focusing on the following six areas³⁴:

- Parliamentary development,
- Assistance with electoral systems and processes,
- Improvement of access to justice and human rights,
- Promotion of access to information,
- Support for decentralization and local governance and
- Reform of public administration and civil service.

Financial institutions and other organizations have also made significant efforts to advance good governance and the rule of law. The World Bank, for example, has several legal and judicial development projects supporting law reform, court modernization, training of judges and court personnel, and legal education³⁵. In addition, institutions such as the Organization for Economic Cooperation and Development (OECD) have worked to improve and reinforce the legal, judicial, and law enforcement systems³⁶. For instance, on February 6-7, 2005, OECD and UNDP, along with the Arab League, the World Bank, the European Union, and a number of organizations working in the region, including those from the private sector and civil society, launched a major program to promote good governance for development in the Arab region³⁷, called the “Good Governance for Development in the

³³ The Johannesburg Principles on the Role of Law and Sustainable Development, adopted at the Global Judges Symposium held in Johannesburg, South Africa, on 18-20 August 2002, available at <http://www.rolac.unep.mx/deramb/publicaciones/GlobalJu.pdf>.

³⁴ UNDP, Promoting Democracy through Reform, available at <http://www.undp.org/governance/index.htm>. For other examples of UNDP’s efforts, see Ramaswamy Sudarshan, Rule of Law and Access to Justice: Perspectives from UNDP Experience, 7-9, available at <http://www.undp.org/oslocentre/access.htm>.

³⁵ The World Bank Group, Annual Report 2002, Themes: Promoting the Rule of Law, available at <http://www.worldbank.org/annualreport/2002/chap0406.htm>.

³⁶ Final Report of the Ad Hoc Working Group, *supra* note 1, at 6.

³⁷ Organisation for Economic Co-operation and Development, OECD to Join Arab States in Launching “Good Governance for Development” Programme, Feb. 2, 2005, available at http://www.oecd.org/document/36/0,2340,en_2649_201185_34368484_1_1_1_1,00.html.

Arab Countries”, the program is designed to address the following six themes:

- 1) Civil service and integrity;
- 2) The role of the judiciary and enforcement of judgments;
- 3) E-government, administrative simplification, and regulatory reform;
- 4) The role of civil society and media in reform of the public sector;
- 5) The governance of public finance; and
- 6) The public services delivery and private public partnership³⁸.

2.4 Importance of Compliance and Enforcement for Sustainable Development

Despite a growing body of environmental law both at the national and international levels, environmental quality has been declining in many countries. Furthermore, even after more than ten years and hundreds of millions of dollars in aid, many judicial and legal systems in the world are still functioning poorly. One reason for these trends is the inadequate investment in enforcement and compliance efforts.

The need to strengthen enforcement and compliance has been widely recognized. For example, the participants of the Rio Earth Summit in 1992 recognized this necessity in Chapter 8.21 of AGENDA 21, which established an international mandate to build compliance and enforcement capacity as an essential element of environmental management³⁹. Agenda 21 also, empowered UNEP and other organizations to more actively support compliance and enforcement activities, including capacity building. Moreover, UNEP Executive Director Toper has recently highlighted the importance of enforcement and compliance:

“We all have a duty to do whatever we can to restore respect for the rule of law, which is the foundation for a fair and sustainable society...Sustainable development cannot be achieved unless laws governing society, the economy, and our relationship with the Earth both international and domestic are put into practice and connect with our deepest values. Law must be enforced and complied with by all of society, and all of society must share this

³⁸ Declaration of the Initiative on Good Governance for Development in the Arab Countries, Feb. 6-7, 2005, available at <http://www.oecd.org/dataoecd/51/12/34425871.pdf>.

³⁹ Agenda 21, 8.21, available at <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter8.htm>).

obligation⁴⁰. Various institutions' efforts, including those mentioned above, are helping advance rule of law and good governance. However, it is insufficient to point out a legal obligation and to invest in institutional reforms if the culture of law abidingness has not replaced the culture of corruption. In other words, if the countries receiving the aid do not work to make the internal changes and do not actually implement the legal and judicial reforms, their legal and judicial systems will continue to struggle to improve, their economic development will continue to falter, and there will be no progress towards sustainable development. Therefore, the donor agencies need to focus more on those reforms aimed at the deeper goal of increasing governments' compliance with the laws. This requires tools that empower citizens to participate in governance, including access to justice, with opportunities to pressure the judicial and legal systems. It is increasingly recognized that the fundamental changes that are needed for rule of law and sustainable development require the support and commitment of the key people within the system, and this core group needs to be given enabling assistance to help build the essential internal political will these reforms require. Donor assistance is critical, but so is the will to reform, which must be fostered from within."

The international community is already beginning to move in this direction. For example, as noted, the Aarhus Convention guarantees the rights of access to information, public participation in decision-making and access to justice in environmental matters. These rights empower citizens to ensure that environmental laws are properly enforced and complied with. On the capacity building front, institutions such as UNEP, the Global Environmental Facility, and the United Nations Economic Council for Europe (UNECE) have produced guidelines to facilitate implementation and compliance with certain multilateral environmental agreements (MEAs)⁴¹. The UNEP Guidelines, for instance, highlight several compliance assistance strategies, including sharing experiences, evaluating the effectiveness of technology transfer, and drafting model legislation.

⁴⁰ MAKING LAW WORK: ENVIRONMENTAL COMPLIANCE AND SUSTAINABLE DEVELOPMENT, Preface (Zaelke, Durwood, Kaniaru, Donald & Kružíková, Eva eds., 2005).

⁴¹ See Mrema, Elizabeth and Bruch, Carl, UNEP Guidelines and Manual on Compliance with and Enforcement of Multi lateral Environmental Agreements (MEAs), 7th INECE Conference Proceedings (2005).

In addition, public agencies and researchers have begun collecting empirical data to analyze the effectiveness of different policies and strategies in inducing compliance with various environmental regulations. For instance Oran Young, Helmut Breitmeier, Michael Zürn and others have created the International Regimes Database to empirically analyze 23 MEAs⁴². However, the empirical literature on environmental enforcement is still fairly sparse, due to the difficulty of obtaining reliable empirical information about the compliance of particular regulated entities. There is a great need for better functioning, reliable, and comprehensive data gathering systems. NGOs and various international networks, including INECE, can play an important role in gathering and validating information for such systems.

With better coordination and increased support, all of these efforts – those addressing the rule of law and good governance issues, environmental compliance assistance, and empirical data collection and analysis – will help expedite progress towards sustainable development.

Conclusion

One of the tasks of privatization is to create efficient mechanisms in financial markets that the issue greatly helps to solve problems associated with poor efficiency and effectiveness of the public companies. Due to massive government intervention in economy, financial markets, poor management, contrast and different and personal interpretations of rules, poor internal controls, etc. the state owned enterprises in developing countries repeatedly show poor performance that clear examples can be observed in communist countries, etc. In the experienced countries, privatization not only transformed their structure of rules and regulations but also caused economic growth and prosperity in pioneer countries in privatization. A wide part of research in

⁴² BREITMEIER, HELMUT, R. YOUNG, ORAN & ZÜRN, MICHAEL, ANALYZING INTERNATIONAL ENVIRONMENTAL REGIMES: FROM CASE STUDY TO DATABASE, Chapter 6 (forthcoming 2005). The IRD contains information for more than 50 states and the European Union. Id. at Chapter 2, 33. The IRD includes 23 regimes: Antarctic, Baltic Sea, Barents Sea Fisheries, Biodiversity, CITES, Climate Change, Danube River Protection, Desertification, Great Lakes Management, Hazardous Waste, Inter-American Tropical Tuna Convention, Conservation of Atlantic Tunas, International Regulation of Whaling, London Convention, ECE Long-Range Transboundary Air Pollution, North Sea, Oil Pollution, Protection of the Rhine Against Pollution, Ramsar (Wetlands), Protection of the Black Sea, South Pacific Fisheries Forum Agency, Stratospheric Ozone, and Tropical Timber Trade. Id. at 19-21.

countries such as England, Germany, Turkey, etc. show that privatization show an increase in financial and operating performance in divested companies and privatization laws have led to change in the role of government, create new financial facilities and expand public welfare, increase financial and operational performance in divested companies and also restructure and economically change micro and macro levels and this issue has caused the countries in which the process of privatization has happened, by financial market transparency, a strong legal system, to lead to optimal allocation of interest, financial stability and enhance national growth rates, efficiency and effectiveness. But with respect to the legal, financial, and economic conditions of the country, by accelerating the formulation and adoption of principles, appropriate infrastructure to provide confidence in capital markets be provided so that by creating competitive environment of the market, private practice have more efficient performance than the public sector and so, there is a consensus that the rule of law and good governance are the foundation for achieving sustainable development goals. Various institutions have taken initiatives in promoting the rule of law and good governance throughout the world and have made considerable progress over the years. However, despite these efforts and the growing number of environmental laws and regulations, environmental quality and public health continue to deteriorate due in significant part to lack of implementation, enforcement, and compliance with existing laws. A strengthened focus on compliance and enforcement efforts could overcome these problems and would be a critical investment for advancing sustainable development, and the bottom line is that a successful privatization can be cause of sustainable development.

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