

AFRICA ROAD FUNDS AND ROAD REPAIR/MAINTENANCE AGENCIES

Best Practices - Road Sector Legal Framework

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Review road legislation

- Find best practices
- Anglophone – Francophone compared
- Other factors

Rule of Law – Best Practices

- Legal/Corporate Best Practices
- Underlying theme:
- Corruption = grand theft
- Anti-corruption = anti-theft

Essential Elements

- Autonomy
- Accountability
- Transparency
- Right of Recourse

AUTONOMY requires

- Guaranteed; earmarked funding
- Independent management – long terms
 - Board chooses Chairman
 - Board chooses Management
 - Management chooses Staff
 - Board – regular meetings; management reports

ACCOUNTABILITY requires

- Direct chain; unitary command
- Enforcement mechanisms
- Management reports (is answerable) to Board
- Management selects Personnel
- Contracts in writing
- Independent audit

Accountability

PARLIAMENT

BOARD

ROAD FUNDS MANAGER

EMPLOYEES OF ROAD FUND

TRANSPARENCY requires

- Open access
- Public bidding
- Contracts - public, written
- Quality control
- Inspection; enforcement

Required Legislation Legal System
Requirements for Transparency and
Accountability

FOI

Whistleblower

civil society

Freedom of Press

.General principles to keep in mind

- Objective of Best practices –
 - maximizing money spent
 - Eliminate waste, thus get
 - Freedom from interference from above, thus ...
 - Minimal number of oversight ministries

Quality control always – how achieved

- ○ Operating as a commercial entity, but an ethical entity
- ○ means taking all steps possible to eliminate corrupt practices
- ○ not reduce, eliminate.

What are “corrupt practices”?

- Bribes
- Kickbacks
- Favors
- Any wrongful action that causes a dissipation of funds

Operation as a Business

- Open and competitive business climate
- Operation as a business = maximum independence from government control

Primary goal in business - mutual exchange;
money in exchange for work

- ○ Road Funds Agency provides the funds.
- ○ Road Repair/Maintenance Agency makes sure the work gets done correctly, on-time and on-budget

Secondary goal - prevent the diversion of funds

Every centime must be applied to the work; *not* towards getting the contract; *not* because of a position of power or patronage, and certainly not into the pockets of third parties, agents or others

Government at arm's length - another user – in management, in operations, in influence

Road funds and road agencies operated as businesses with a *minimum of interference* will function most efficiently and economically, thus giving more value to the country for the money spent.

“Commercial” or “business” approach in a legal and ethical environment constitutes best practices.

BEST PRACTICES AND RULE OF LAW

- Best practices require the right constitutional and legislative underpinnings
 - Corporate best practices; Corporate Social Responsibility (CSR)
 - Grand themes - international agencies, corporations, law firms, NGO's
 - Conceptual set of standards
 - Legal and non-legal standards of practices
 - Non-legal standards, codes of ethics, set up by corporations, associations, NGO's

What are “best practices” in a constitutional or legal context?

- See constitution and historical background
- How are the laws passed and defined and implemented?
- Best practices applicable in a country which honors the rule of law.

Rule of Law” – Meaning

- A country should be governed by the “Rule of law” NOT by the “law of the ruler”.
- The rule of law means any legal system, in any country must have written laws that are fair and apply to all persons uniformly.
- Nobody is above the rule of law – all must be treated equal before the law, *including* the ruler
- Ruler” includes the President, the ministers, the members of parliament, the rich, etc.

Rule of law applies across legal systems

- Anglophone

- Francophone

- Lusophone

Rule of law means written laws providing for rights, responsibilities and remedies

- All interpreted and applied the same way to all members of society
- Where necessary, neutral arbiter defines.
- Everyone has right to an impartial hearing
 - Independent system of justice.
 - Determine if rights fairly protected
 - Determine if law fairly and consistently applied.

Road Sector – applied to rule of law and best practices

- Problems with the road sector may be systemic
- Does not mean that best practices should not be implemented into the legislation and applied to the institutions.
- To the extent best practices can be defined and understood, applying them will facilitate maximization of benefits to the country's road system.

- Simultaneous application of best practices systemically is essential, and I will be happy to discuss this with anyone who is interested
- Ultimate objective of best practices?
- Maximize benefits to society -- how?
- Economic effects that provide the maximum positive impact to the citizens, to the consumers, etc.

- Efficiency and the delivery of quality goods and services.
- Systems that work for efficiency also work against corruption

Government regulation autonomy

- Generally, business and a business approach flourish best where there is a minimum of government regulation.
- Not advocating business operating with no government supervision – certain areas require oversight and guidance; regulation appropriate.
- However, critical that businesses have less, rather than more, supervision.

- Legal standards will be examined in detail
- Non-legal: “moral” standards, where there is not yet applicable legislation

- Major industrialized society corporations: global operations
- NGO's – global operations - For many non-government institutions (NGOs) and CSOs, corporate responsibility signifies conduct that rises above the minimum required by law but still constitutes a corporate duty to act rather than a more optional norm.

- Private sector prefers the flexibility of self designed voluntary standards.
- On-going debate on how much governments should intervene in this field
- Environmental and labor standards enforced.

- UN Global Compact; OECD standards; private and civil society standards.
- World Bank, other institutions

Best Practices in a Legal Context

- Structuring society's legal standards and rules
- Constitutional and legislative bases generally
- Constitutional bases
- Statutory bases

- Provisions for independent administrative review
 - generally regulatory
- Right of independent judicial review; recourse
- Application and implementation; regulations; governmental organs' operations
- Administrative review
- Right of independent judicial review
- Ethical conduct, *sine qua non*

Anglophone or Francophone-- Which is the best model?

- Basic answer - it depends; basic approach
- Before discussion of roads, view context of the laws in general

- Francophone approach - all power derives from the State, which then carves out certain rights for its citizens. The laws are then drafted in a general way, based upon the philosophical principles of that being granted to its citizens.
- Anglophone - all power derives from the people, as individuals, who then grant limited powers to the State.

- In Francophone countries, everything is prohibited, except that which is specifically granted
- In Anglophone countries, everything is permitted, except that which is specifically prohibited

- This difference in approach manifests itself in the language of the laws themselves. It is also seen in the types of contracts, or agreements, that are entered into between parties. The detailed Anglophone agreement, contrasted with the more general Francophone agreement.
- The end result is the same.

- Although type of legal tradition provides some insight, it is not enough. All factors must be considered:
- Cultural issues; need to change the paradigm
- Historical influences (colonialism, socialism, capitalism, religion)
- Economics, languages
- Geographical considerations
- Recent history: current events and political realities