

**From Dinghies to Super-Tankers:
The African Public Service Charter's Craving for Impregnable Institutions**

by
M. Jide Balogun¹

On pliable structures and autonomous institutions

In much the same way as super-tankers are capable of withstanding assaults from without (if not always from sabotage from within), institutions underpinned by sound values, and operated by courageous individuals, are apt to stand firm when powerful forces seek to impose demands totally at variance with the collective understanding of their rights and responsibilities. They are far from the situation of a poor fisherman's dinghy, at the ocean's mercy and subject to human whims and caprices. An institution, after all, is not just any structure. It is not owned by any specific individual, and so is not liable to be abolished, confiscated, or undermined by the acts of one or a few. A body does not deserve to be recognized as an "institution" if it does not aggregate a few core and widely shared values (like national unity, freedom, equality, dignity, integrity, professionalism, excellence and perfection), permanent structural and legal arrangements (like ministries, departments and enabling laws), and behaviour patterns that have proved capable of achieving pre-determined objectives, adapting to inter-generational change, and outliving their human progenitors.

As argued elsewhere, the building blocks of an institution are:

- a) Core values and underlying purpose (s) (made up of informal rules, ethical codes, age-old traditions, practices, totems and taboos, notions of 'right' and 'wrong');
- b) Structure and processes (formally and consciously enacted rules, including hierarchical, financial, staff selection, technical/specialist, performance, procedural and service delivery rules; service eligibility criteria and queue discipline); and
- c) The consequences of the interactions between (a) and (b) for change and stability².

Examples abound of institutions that are too fragile to perform their designated functions and hence hardly deserve the title of institution. Such structures include electoral bodies that are notorious for organizing sham elections and declaring fake results; police forces whose members check out firearms from depots and promptly hire the weapons out to armed robbers, kidnappers, assassins, and religious zealots and ethnic cleansers or follow the instructions of the ruling party by opening fire on opposition rallies and clamping government critics in jail; or land allocation committees that lend active support to institutional corruption by issuing allocation letters to undeserving applicants.

¹ Former Senior Adviser, UN Department of Economic & Social Affairs, New York, e-mail: balogunjide@hotmail.com

² Balogun, M.J., 2009, *The Route to Power in Nigeria: a Dynamic Engagement Option for Current and Aspiring Leaders* (New York: Palgrave-Macmillan). See also, Balogun, M J, 2010, "Assessing Africa's capacity to cope with, and to address, the global economic and other crises", Background Paper prepared for the 7th Annual Forum of Commonwealth Heads of Public Service in Africa, Yaounde, Cameroon, 27-29 July 2010.

African Public Service Charter: quest for institutional credibility and integrity

It was the desire to create real institutions -- super-tankers and not dinghies -- that informed the decision of the Pan African Conference of Public Service Ministers to adopt the Charter for the Public Service in Africa at its 3rd meeting held in Windhoek, Namibia, from 5 to 6 February 2001. After lengthy discussions, the Ministers agreed on a text which, while reflecting the diversity of perspectives on the subject, acknowledged the need to transform public service institutions from personality-dependent instruments to autonomous agents of governance and development. At that meeting, the Ministers expected the public service to operate along professional lines—that is to discharge its responsibilities impartially and without fear or favour. This is the essence of Articles 4, 5, 6, and 7 of the 2001 Charter which respectively elaborate the principles of “equality of treatment”, “neutrality”, “legality”, and “continuity”.

Article 4, for instance, stipulates that all “public services shall recognize the equality of citizens before the law”, and shall ensure that persons “in comparable situation vis-a-vis the administration” are “treated equally without any distinctions whatsoever.” In other words, the public service—whether operating as a law enforcement bureau, a water supply undertaking, an electricity generation and distribution company, a garbage disposal and environmental sanitation agency, or a central bank—is forbidden to discriminate against its clients based on their ethnic or social origin, religious belief, or political affiliation. The citizens are equal before the law, and so must be treated as such by the public service in its daily operations.

Noting that efforts to be neutral and professional sometimes (if not often) carry major risks, Article 5 not only forbids the public service to “discriminate against its employees because of their personal traits” but also urges all succeeding administrations to respect the employee’s obligation to be “neutral in respect to the government of the day”.

AU Charter on Public Service Values and Principles

Building on the 2001 Charter for the Public Service in Africa’s accent on professionalism, the African Union is set to adopt a new Charter with treaty force—the African Charter on the Values and Principles of Public Service and the Administration. Where the 2001 Charter adopted by public service ministers meeting outside the auspices of the AU, had placed emphasis on professionalism as an institution strengthening strategy, the new Draft AU Charter sees a close link between, on the one hand, adherence to values and, on the other, the credibility of institutions. It starts in Article 2 with the objective of fostering “adherence to a body of fundamental principles and values ... in a bid to provide efficient, effective and innovative public services that are satisfactory to the community and users”. It then follows up with the underlying principles, among which are:

- a) Equality of all users before the public service;
- b) Prohibition of all forms of discrimination, notably in respect of ethnic or racial origin, gender, (physical) handicap, religious belief, political conviction, and membership of a trade union or of any other social group;
- c) Neutrality in the provision of public service;
- d) Continuity of public services in all circumstances; and
- e) Adaptability of public service to changing needs of the community and users.

The AU and the drive towards professionalism and institutional integrity: outstanding issues

It is settled opinion that the attainment of good governance and development goals hinges on the establishment of sound institutions, whether public or private.³ There is also a broad measure of consensus on the steps that need to be taken to revitalize public service institutions and ensure that they meet consistently high professional and integrity standards⁴. The unsettled question is the role that continental bodies like the African Union is expected to play vis-a-vis the States Parties.

One thing is clear: neither the 2001 Charter nor the new AU treaty is capable of enforcing public service professional standards or of determining the quality, timeliness and cost-effectiveness of services delivered to citizens in far-off places at the national level. For one thing, even when the Charter of Values and Principles has the AU seal, it will not be in the same category as the Statute of the International Criminal Tribunals for Yugoslavia (1993) and Rwanda (1994), or the Rome Statute of the International Criminal Court (1998) when it comes to imposing individual responsibility. Although the African Court of Justice and Human Rights, will, when it is established, have jurisdiction over all African treaties, it is hard to imagine that it could hand down a judgment on sloppy service delivery. Even the idea that a government is legally obliged to provide a service—regardless of the prevailing fiscal and macro-economic conditions—would not be accepted. No judicial body would substitute its judgment for that of a country’s administration. At best, the AU Charter on the Values and Principles of Public Service and Administration could only serve a persuasive purpose. It could not compel a State Party to institute measures which would enable it (the State Party) to provide quality service to its citizens.

Yet, on top of its “moral-suasion” role, the AU Charter on Public Service Values and Principles could serve as a force for the good if it includes an article committing the States Parties to the establishment (or the widening of the existing jurisdiction) of independent administrative tribunals at national level empowered to adjudicate disputes arising over the interpretation or application of the Charter’s key provisions. One provision that would require the intervention of judicial authorities is that relating to the rights and privileges of the average public employee.

Thus, for example, if a citizen believes that s/he has been wrongfully arrested by a police officer, he or she should have the right to bring a case against the latter at the administrative tribunal, and the latter should have access to the same tribunal to enable him/her to mount a diligent defence. Similarly, a parent believes that his or her child has been denied access to school on the discriminatory grounds that they belong to a particular social group ought to have access to the tribunal along with the school administration. Though these complainants might have other avenues of redress for human rights violations in the courts, an administrative tribunal would provide additional and likely more accessible protections. A

³ See Huntington, S., 1968, *Political Order in Changing Societies* (New Haven: Yale University Press); and Alberti, Adriana, and Balogun, M J, 2006, “Reforming Governance Institutions in Developing Countries: Prospects, Risks, and the Way Forward”, UNDESA Working Papers series.

⁴ Argyriades, Demetrios, 2003, “Institutional Reinforcement for Human Resources Development: How to Implement the Goals of the Millennium Summit,” in *Leadership and Social Transformation in the Public Sector: Moving from Challenges to Solutions* (New York: United Nations Department of Economic and Social Affairs).

police officer who opens fire on lawful assemblies has violated the victims' human rights, but s/he is also acting within a clear hierarchical administrative framework. The onus will be on him/her to prove that his/her act is in conformity with the hierarchical rules and other enactments.

On the other side of the equation is the straight-forward cop—one who would not be persuaded to accept a bribe and would not be stampeded into arresting opposition party leaders and their followers. Such an employee might have lost his/her job or been denied promotion not because s/he did any wrong, but because s/he would not carry out unlawful instructions and should be in a position to re-claim his/her job or file a claim for lost earnings. It is only when the public official has the assurance of legal (and judicial) protection that s/he would be sufficiently motivated to risk his/her job by adhering to his/her code of professional ethics.

The African Union would undoubtedly have a major role to play in providing the assistance needed by States Parties in establishing the tribunals. Specifically, it would be expected to engage consultants to advise the Member States on the preparation of the tribunals' statutes, their linkage with other watchdog arrangements (like human rights courts and tribunals), and the mechanisms for evaluating the tribunals' performance and jurisprudence over time. It is only when these administrative tribunals start functioning that the public service institutions would be strong enough to withstand external attack and internal dislocations.

The views expressed in this paper are those of the author and do not necessarily reflect those of AfriMAP or the Open Society Foundations.