

Building a capable public administration

In the early years of independence the people of East Timor will rely heavily on the competence and capacity of government services. Any weakness or failure of these services will be a serious obstacle to progress in human development.

Human development is a national endeavour—one that relies on the combined efforts of government institutions, the private sector and all the elements of civil society. But since the private sector is limited and the many nascent community groups and NGOs in civil society are struggling to adjust to the complex new circumstances of independence, in practice much of the responsibility in the early years will fall on the government and the public sector.

Can the institutions of government meet this challenge? Much will depend on decisions taken over the next couple of years—which will set the tone and quality for future public administration. No matter how good the official policy on the many strands of human development, these efforts will be thwarted if the public institutions are incapable of implementing them.

There are many crucial issues to address: the structure and character of institutions; the capacity and motivation of civil servants; the strength and independence of the judiciary, and the best ways to eradicate corruption. Unless these are tackled quickly East Timor's human development will be compromised.

The colonial legacy

Though in many respects East Timor is building a new administration from the ground up, it will also inherit, directly or indirectly, some of the structures and ethos of its colonial past—both Portuguese and Indonesian (see Annex).

The Portuguese had an indirect approach to governance. The Governor in Dili acted through district administrators who then coordinated sub-district administrators. But

they did not exert direct control over the villages which they left largely in the hands of the *liurais* or the *chefes de suco*. The Indonesian government, on the other hand, was determined to exert much stronger discipline throughout the country. The New Order government wanted to exert centralized control across Indonesia, including East Timor. But it also wanted to 'pacify' East Timor in particular where it faced stubborn resistance to its rule.

Indonesia introduced a series of interlocking systems of control. First, there was the governor who, with government bureaucrats, administered each a layer of government via the district administrator, the *bupati*, the sub-district administrator, the *camat*, and then the village chief. In addition, however, there were local army commanders, who apart from their military duties also held strategic positions in government and were appointed as members of parliament at both provincial and district levels.

Yet another channel of control was through the police force. The governor coordinated important decisions with the military and police commanders through a special forum for the provincial, district, and sub-district political leadership. Meanwhile the central government also controlled the legal system and the press which it kept weak and powerless.

This autocratic structure may have helped deliver services—and East Timor was heavily subsidized by the central government—but from the perspective of human development it created a civil service with serious flaws. The risk for an independent East Timor is that although it may have

achieved political independence it may yet inherit some of the institutional failures and ethos of the previous administration. These flaws included:

- *Overstaffing*—In an effort to ‘buy’ the passivity of the East Timorese, and make the province more dependent, the central government employed large numbers of staff, many from Indonesia. East Timor had more civil servants per head of population than any other province.
- *A culture of dependence*—Almost all initiatives came from the centre and from the top down. Few civil servants had the incentive or confidence to do anything other than ‘wait for orders’ from above.
- *Complex administration*—There were too many layers of bureaucracy for such a small territory and they involved much duplication of functions.
- *Pervasive corruption*—Many officials were poorly paid and were tempted to supplement their income by taking other jobs and various bribes (box 2.1).
- *Lack of public participation*—Indonesia’s system of administration was essentially paternalistic. It discouraged popular participation and marginalized traditional forms of decision making.

The transition to independence

The events of September 1999 were devastating, not just for the population, but also for the system of administration. Some of the losses were physical. The army-backed militias destroyed, completely or partially, three-quarters of the administrative buildings and other forms of infrastructure. They also removed or burned essential government archives.

Just as debilitating was the loss of personnel. Although around 75% of the civil service had been East Timorese these were weighted towards the lower grades. In the highest grades the majority of staff were Indonesian. During the crisis that followed the referendum some 8,000 civil servants fled to Indonesia—including most of the key people. As a result, East Timor was left with virtually no senior managers, or people capable of operating basic facilities, and found itself with no judges and only one senior policeman.

To help fill these gaps, to maintain the peace and to rebuild the structure of governance the UN Security Council in October 1999 established the United Nations Transitional Administration in East Timor. This was to be one of the United Nations’ most ambitious operations—a mix of peacekeeping, national rehabilitation and nation-building (box 2.2).

One of the first tasks was to lay the foundations for a new government administration. Initially UNTAET filled almost all the positions in public administration with UN international staff. Then in July 2000 UNTAET established the East Timor Transitional Administration (ETTA) to form the nucleus of a new government. This had a cabinet with five East Timorese and four international staff. UNTAET and ETTA set about recruiting civil servants. They also established a National Planning and Development Agency (NPDA).

In August 2001, elections were held for an 88-member Constituent Assembly, which had the task of producing a new Constitution. Following these elections, UNTAET established a new governing structure. This consisted of ten ministries and 4 secretariats, all headed by East Timorese. The 26-member ETTA Cabinet, which consisted of ministers, vice-ministers, and secretaries, was selected through consultations between the UNTAET Administrator, who remained the head of government, and the newly elected Constituent Assembly, and its membership reflected the Assembly’s political make-up.

Box 2.1

Corruption and nepotism in ‘Tim-Tim’

Indonesia’s exploitation of East Timor, known in Indonesian as ‘Timor-Timur’ (Tim-Tim), transferred many of the benefits to Jakarta, and particularly into the hands of the Soehartos and those in the military structure loyal to Soeharto. Corruption was rampant among civil servants dealing with construction projects—and even more pervasive among those dealing with projects for poverty alleviation.

The government tendered projects worth 20 million rupiah (in 1995, equivalent to \$9,000) or below to local small-scale businesses whose owners, around 80% Timorese, were either civil servants or linked to them by family ties. Meanwhile, it entrusted projects worth between 20 and 300

million rupiah to the medium-scale businesses more than half of whose owners were Indonesian. All projects worth 300 million rupiah and above, however, went automatically to large-scale construction companies all of whose owners were Indonesians with strong links to the central government clique.

The companies were ‘obliged’ to pay a certain amount of money to the civil servants in charge of planning and monitoring of projects.

As a result of these arrangements only around 50% to 60% of the funds allocated for construction projects went to the projects themselves. The remainder finished up in the pockets of those working at different administrative strata as well as in Jakarta.

In March 2002 the Assembly approved the new Constitution. This established a unitary democratic state, based on the rule of law and the principle of separation of powers. Representative organs would be elected through direct and universal suffrage. The Constitution establishes the roles of the president who is also commander-in-chief of the Armed Forces, of the prime minister who will head a council of ministers, and of the parliament. This prepared the way for presidential elections in April and full independence on May 20, 2002.

System of government

East Timor has chosen a semi-presidential system of government—with a balance of power between the president and the par-

liament. Although the president has the ultimate power to dismiss the parliament, in practice most of the executive power will lie in the hands of the prime minister, who will take decisions collectively with the council of ministers. Inevitably these will mean compromises between the priorities of different ministries and departments, all of whom will be competing for limited resources.

Any parliamentary system also demands a great deal of commitment from members of parliament (MPs) who play a crucial part in nurturing a healthy democracy. On the one hand they have to support and provide legitimacy to their party and the government. On the other hand they have to serve the interests of their constituents. The government also has to leave adequate space for opposition voices, particularly if the governing party, even when elected through a system of proportional representation, gains a large majority.

During the first months of independence MPs will have a very heavy workload, coping with the large volume of new legislation. They will rapidly need to become familiar with such tasks as analysing budgets and legislation, and understanding how government departments work. Just as important they will need to discover the best ways of keeping lines of communication open with the rest of civil society, not just with their constituents but also with NGOs, other public institutions and with the private sector.

Unless the members of parliament can achieve this kind of competence quickly there is a danger that the government will be tempted to take short cuts and by-pass the parliament. In order to pass legislation quickly, it could, for example, simply pass very broad framework legislation that delegates the interpretation and refinement of policy to ministers and public servants. This was largely the approach taken by the Indonesian government and should be avoided.

The public service

But no matter how decisive the government or effective the legislators their policies and decisions will be compromised if they cannot be put into effect by an efficient system of public administration. This demands not just that the institutions of government are

Box 2.2

Achievements of the UN Transitional Administration (UNTAET)

In the face of immense difficulties UNTAET has achieved a great deal. There have certainly been many shortcomings, especially in relation to district administration, and the justice system. But these need to be considered against the realities of the UN's role in such situations. Missions have to be assembled quickly, risking mistakes in personnel. And it is very difficult suddenly to achieve a unified approach among a disparate group of officials for a short-term assignment. A further problem is selecting which decisions to take immediately and which to postpone for the incoming administration. UNTAET's activities included:

- The establishment of peace and security.
- The establishment of a functioning civil service
- The addressing of humanitarian needs by UNHCR, IOM, WFP and UNICEF, which were all instrumental, together with UNTAET, in ensuring that needs were met quickly after the violence of 1999. Over 190,000 refugees, one-quarter of the population, have since returned.
- The establishment of the East Timor Transitional Administration (ETTA) in July 2000 with a Cabinet of five East Timorese and four UNTAET representatives.
- The holding of free, fair and peaceful elections on August 30, 2001 which resulted in an 88-member Constituent Assembly that wrote East Timor's first Constitution.
- The reconstruction of 32 major public buildings by the East Timor Transitional Administration.
- The creation of the Second Transitional Government and the appointment of a Timorese Council of Ministers to run the day-to-day activities of government.
- The organization of successful presidential elections on April 14, 2002.
- The creation of the East Timor Defence Force. Some 600 soldiers underwent basic training. And the establishment of the East Timor Police Service, with more than 1,300 East Timorese Police Officers deployed in all 13 districts.
- The establishment of a basic judicial and legal system, including an East Timorese prosecutor general's office and a defender service.
- The basic rehabilitation of schools throughout the country. More than 700 primary schools, 100 lower secondary schools, 40 pre-schools and 10 technical colleges are now teaching approximately 240,000 children and older students.
- The initialization of an agreement with Australia on oil and gas reserves—the Timor Sea Arrangement. This has the potential to provide East Timor with billions of dollars in revenue.
- The establishment of basic public services in a wide range of areas, including health, education and infrastructure. Electricity has been re-established and drinking water is being provided in urban areas.

well designed but also that they are staffed by officials who have the competence, the aptitude and the will to serve the people of East Timor .

UNTAET and ETTA (the East Timor Transitional Administration) have already been working on the construction of a strong civil service—the East Timorese Public Administration (ETPA). By April 2002, they had recruited almost 11,000 civil servants against some 15,000 approved posts, including posts in the East Timor Police Service and the East Timor Defence Force. However they made most of these appointments at the lower levels; at the higher levels they filled fewer than 50% of management positions, largely because of the lack of suitable candidates. The largest public service employers are the education and health sectors, representing almost two-thirds of approved civil service staffing.

An important part of this process was to ensure strong representation for women. The target was to achieve 30% female staffing. By the end of July 2001 the proportion actually fell slightly short of this, at 25% overall. The better ministries in this regard were Foreign Affairs (39%), Health (32%) and Education (29%).

The development of the public service in East Timor will face a number of crucial issues—including staffing levels, salaries, training, language skill, and the continuing need for international support.

Staffing levels

The provisional administration was determined to confine recruitment and staffing to a level that any future administration could afford. But the new government is likely to face steady pressure to increase the number of civil servants, especially at the lower levels. Some of this pressure will come from families whose better educated members lack alternative sources of employment—a problem that will be exacerbated as the United Nations winds down its operations.

But there will also be pressure from other citizens, particularly those in the rural areas who find themselves lacking effective services—for agricultural extension workers, for example. All ministries will be stretched to meet their responsibilities with existing levels of staff and will be tempted to hire more.

These problems could be eased if economic growth were to create more employment outside the public sector. But it will also be important to ensure that existing civil servants work efficiently, cutting down on absenteeism, establishing better systems of coordination between government departments, development agencies and NGOs—and ensuring that services are delivered in a cost-efficient manner.

Salaries and promotion

UNTAET and ETTA assembled the new civil service on a fairly ad hoc basis in order to ensure continuity of services. As a result, many of the underlying issues remained undecided. This includes the career structure and whether this is to be based on a closed system where people choose the civil service as a lifetime career or a more open system in which people move back and forth between public and private sectors. The most likely outcome is a pragmatic combination of the two.

In either case, however, the government will need to pay adequate salaries. At present the annual salary of a level-four civil servant is around \$1,900. This is five or six times the per capita GDP and is reasonable for a country whose budget depends almost entirely on donor support. Whether it is sustainable in the long term is open to doubt.

The immediate priority, however, must be to attract as many as possible of East Timor's best trained people into government service. Data from the pre-independence period indicate that some 1,233 East Timor citizens had been trained or granted a diploma—a Masters, a BA or a high school diploma. However, the government will face stiff competition for such people from NGOs, the UN Agencies and international development projects.

NGOs do already have guidelines for the wages and conditions of staff they employ in East Timor. But they tend to respect these more at the lower level. For professional and managerial staff, they appear to pay higher rates than indicated in the guidelines—diverting many people who could otherwise be working for the government.

Work ethic and competence

The pay and working conditions during the Indonesian administration did not encour-

The government will face pressure to increase the number of civil servants

The Indonesian system undermined people's self-esteem

age a strong work ethic. Staff worked short hours and were not given much responsibility. The new civil service will need to achieve and enforce at least 37.5 to 40 hours of realistic work per week. A better salary should enable people to value their jobs more and ensure that they devote their full energies to it. But they can also be helped through coaching and mentoring.

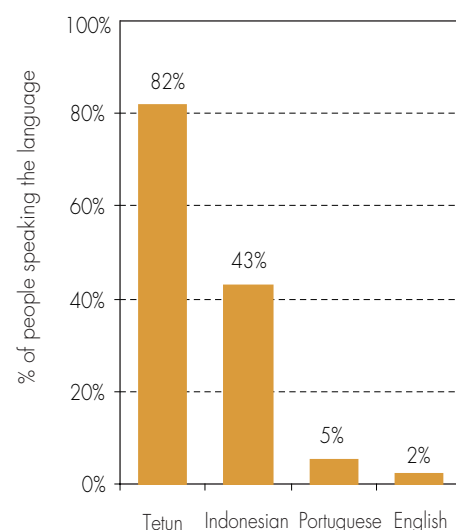
Related to the issue of competence is the ability to act promptly and decisively. The hierarchical system inculcated during the Indonesian period tended to undermine people's self-esteem and their capacity to take initiatives. Rather than work on the basis of general guidelines they typically needed very specific instructions to undertake a given task. This is another issue to be addressed through capacity development.

Social status is important in East Timor and also has to be taken into account in the civil service. Different groups have their own ranking orders—both within and between each other. These include the diaspora returnees, the freedom fighters, the previous civil service employees, and the Church. Local people too have their own systems of social status and ranking. A person with a lower social status may have greater capacity and skills than someone of a higher status but they would be uncomfortable supervising them.

Language

The East Timorese between them speak about 30 languages or dialects. The most

Figure 2.1
Official and working languages



Source: Household survey (2001)

common spoken 'native' languages are Mambae and Macassae but the national lingua franca is the Dili variant of Tetun (Tetun 'praça') which incorporates many words taken from Portuguese along with a few from Indonesian. The 2001 Household Survey concluded that 82% of the population spoke Tetun, while 43% could speak Indonesian. Only a small proportion, mainly older people and the exiled community, spoke Portuguese, while an even smaller proportion spoke English (figure 2.1).

The East Timor Constitution declares that the official languages should be Tetun and Portuguese while in the meantime additional working languages within the civil service should be Indonesian and English—side-by-side with the official languages 'as long as is deemed necessary'.

The two official languages have complementary strengths and drawbacks. Tetun has the advantage of being very widely spoken. But until very recently, when the Catholic Church started writing it out for liturgical purposes, it was primarily an oral language. Even now it has little of the technical and managerial vocabulary needed for official documents. Portuguese has all the strengths of centuries of elaboration and use as a written language, but very few East Timorese speak it—typically the older generation educated prior to the Indonesian occupation, and those who were exiled to Portugal.

The 'working languages' also have different characteristics. After 25 years of occupation and enforced tuition through the education system, Indonesian is the most widely understood written language—which makes it practical but unpopular. English is the language least understood nationally, but has the advantage of being a lingua franca in the UN community and throughout the ASEAN region.

This four-language environment presents a huge, and very expensive, challenge for the new government. The first is to develop adequate speaking and writing skills in Portuguese. All senior civil servants will need to be able to work in Portuguese, while in the interim some returning from overseas will also need to learn some Indonesian and Tetun.

The former National Planning and Development Agency, now the Planning Commission, estimates that around 2,000 core

civil servants will need training in Portuguese, 400 in Tetun, and up to 150 in Indonesian.. Beyond this, the government will need a smaller group of English speakers, particularly for those dealing with ASEAN and other countries, as well as with the international oil industry. Many public employees will also need language training.

The second, and even more expensive, issue is translation. The only option here is to use professional services, which could be prohibitively expensive. One urgent task will be to translate the UNTAET documentation, most of which is in English and will need to be translated to Portuguese and to Tetun, and perhaps also to Indonesian.

Finally, the Constitution also states that ‘Tetun and the other national languages should be valued and developed by the State’. This could involve creating an institute of research and development to formalize Tetun’s grammar, syntax, structure, spelling and alphabet.

The process of capacity building

Language training and many other issues imply a large-scale process of capacity building. This will be a long and complex task but the immediate priority for the civil service must be to deliver services to the people. So for the first two or three years the emphasis must be on ensuring that civil servants have the basic management capabilities to run the essential institutions of government. Unless the government is seen to be delivering services efficiently it will lose legitimacy in the eyes of the people. Acquiring some of the more complex skills will have to wait for later.

International staff

Though the main priority is to find and nurture Timorese talent, for the next few years East Timor is going to need international support in critical areas where there are insufficient qualified East Timorese. These will include jobs that demand sound and efficient management of funds. East Timor cannot afford to lose money through wastage or other mismanagement. These and other positions could initially be filled by international advisors working closely with local personnel—coaching and mentoring so as to transfer knowledge and skills. In March 2002, ETTA identified approximately 300 positions as necessary for

the performance of basic government functions. Of these, it categorized 100 as ‘stability positions’ and anticipated that these could be funded through UN ‘assessed contributions’. For the remaining 200 ‘development posts’, the government would seek funding from the donor community.

Local government

A fundamental principle of the Constitution of East Timor is decentralization. East Timor already has a history of local government that reflects both Portuguese and Indonesian occupations. The colonial government’s primary motive was to collect tax. For this purpose they divided the country into districts, sub-districts and sucos (villages). It had little interest in exerting power at the local level and left the traditional power structure as it was. The Indonesians largely accepted the same administrative divisions but they also exerted greater control at the local level. In practice however, the traditional structures largely survived, though these were also influenced by the resistance struggle and local relationships were, and remain, quite complex.

UNTAET too maintained the previous regional demarcation—with 13 districts and 65 sub-districts—though changed many of the functions of local personnel. In addition in early 2000, in order to increase community participation in planning and decision-making, UNTAET established the Community Empowerment Project which included elected Village Development Councils.

One strong argument in favour of decentralization is that it results in more efficient service delivery and decision-making, since the work is being done by people who understand local circumstances and priorities. But just as important is the function of fostering democracy and of bringing people together to shape national development. This maximizes the impact of rural development efforts, whether of government agencies, donors, NGOs, or community-based organizations. Decentralization can take one of three forms:

- *Deconcentration*—This is the weakest form and involves the central government transferring responsibility for the execution of central policy to administrators at the local level.

The Constitution establishes the principle of decentralization

- *Delegation*—This involves transferring some decision-making and administrative functions to semi-autonomous local organizations.
- *Devolution*—This is the strongest form and involves transferring some authority for decision-making, finance, and management to locally elected governments who can also raise revenue.

For the first few years at least, given its shortage of resources and skilled personnel, East Timor is unlikely to proceed much further than deconcentration, with core departments—education, health, agriculture, housing and water and sanitation—establishing regional offices to provide basic services to local communities.

A suggestion for the most appropriate regions was produced in 2001 by the Local Government Think Tank. This proposed three regional groupings: one on the eastern side of the country; one in the southern area, and one in the western area. However, two parts of the country would have special status: Dili would be treated as a single Capital City Municipality and the enclave of Oecussi would have a special status.

A study conducted by UNDP for a post-UNTAET mission endorsed this proposal and also suggested one adviser for each region. A part of this decentralization would be an element of financial redistribu-

tion. Under this system each would have its own Director General who would assume responsibility for the region as a whole. He or she could also work with a regional special coordinating body to bring together representatives of all the groups that have local responsibilities—the local members of the national parliament, elected leaders of local authorities, senior regional public servants, and leaders of women’s organizations, NGOs and community groups. All this activity would need to be supported by legislation to ensure accountability, transparency and democratic participation.

Preventing corruption

The legacy of the Indonesian years, and the likelihood of wage disparities between the public and private sectors, raises the perennial issue of corruption. Corruption will also be a problem if the government fails to work equitably and accountably. To a large extent preventing corruption is a matter of building strong administrative structures that have simple procedures and clear lines of responsibility and accountability. The more complex the system, the greater the chance that it will be manipulated by bureaucrats for their own purposes and as a source of illicit income. These sound structures should also be matched with an ethical code to guide managers and leaders (box 2.3).

Nevertheless the political system will also need readily available mechanisms for dismissing both politicians and civil servants who condone or participate in rent-seeking and other forms of corrupt practice. The experience of other countries suggests that the best approach is to establish an independent anti-corruption agency.

The Constitution provides for two watchdog institutions: an Ombudsman’s office and a High Administrative, Tax and Audit Court. These watchdog institutions will only function properly if they have leadership of the highest integrity and if they are given sufficient powers to acquire documentation and question witnesses. Most of all, they need strong support from political leaders who are determined to root out corruption and who are prepared to back these organizations in politically sensitive cases.

The judiciary

One of the basic requirements for rooting out corruption, as well as for delivering jus-

Box 2.3

Principles of public life

The international non-governmental organization, Transparency International, has put forward seven principles of public life:

1. *Selflessness*—holders of public office should take decisions solely in terms of the public interest. They should not do so to gain financial or other benefits for themselves, their family or their friends.
2. *Integrity*—holders of public office should not place themselves under any financial obligation to outside individuals or organizations that might influence them in the performance of official duties.
3. *Objectivity*—in carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
4. *Accountability*—holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
5. *Openness*—holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands this.
6. *Honesty*—holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
7. *Leadership*—holders of public office should promote and support these principles by leadership and example.

tice and laying the foundations for a market economy, is an effective judicial system.

The Indonesian government suborned the legal system to its own ends and corrupted both courts and the judiciary in East Timor—effectively turning the legal system into a servile extension of the executive. As a result many East Timorese had little faith in legal institutions. Then in 1999 the courts were destroyed along with much of the legal infrastructure and archives.

During the transition period, UNTAET decided to use relevant Indonesian laws where these were not in violation of international norms. One of the most immediate problems was a shortage of legal personnel, and in particular of lawyers. There are still few experienced and trained East Timorese judges, public defenders and prosecutors. The Court of Appeal has had no quorum since October 2001, following the departure of two international judges.

The courts also have to operate with scant resources and the investigators are hampered by the difficulty in obtaining records, as well as translations between English, Portuguese and local languages. At present, under a mentoring system, the newly appointed judiciary is being supported by international judges and lawyers, thus receiving training and capacity building on-the-job. But for the longer term, developing the judiciary in East Timor will require attention to three key areas:

- *Clear legal procedures*—Currently the country has an overlapping system of common law and civil law that puts excessive em-

phasis on procedures. East Timor will need to simplify its legal procedures for both civil and criminal law to ensure fairness and accessibility as well as to underpin commercial contracts and business transactions.

- *An independent and skilled judiciary*—The Constitution has provided for the creation of a judicial council to supervise judges and help continue their judicial education. This could be supplemented by participation in international exchanges and conferences.

- *Increased resources*—The greatest immediate constraint on judicial development is the shortage of resources, including legal material, legal records, and research tools and qualified staff. Some efforts have been made to address this, including the introduction of East Timorese professionals into the legal system. However, most of these are recent graduates and they will require extensive ongoing training. An organization for lawyers, in the form of a bar association, could help certify lawyers, establish admission criteria, regulate professional conduct and offer continuing education.

East Timor's new government faces a daunting task of building a new system of governance that has both the form and the spirit of democracy. This involves new attitudes not just from the political elites, and the public service, but also from all the people of East Timor who are now citizens of a self-governing nation. Their culture and actions will shape their country's future. Many people will do this through the different organizations of civil society, which are the subject of the next chapter.

East Timor needs a system of governance with both the form and spirit of democracy