

# Framework for Commonwealth Principles on Promoting Good Governance and Combating Corruption

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prepared by the Commonwealth Expert Group on  
Good Governance and the Elimination of Corruption.



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## Preamble

Good governance is not a luxury but a basic requirement for development. Corruption, which undermines development, is generally an outcome and a symptom of poor governance. It has reached global proportions and needs to be attacked directly and explicitly.

Corruption is always a two-way transaction with a supply and a demand side. It occurs in poor, emerging and developed nations, regardless of the level of social and economic development and in countries with varying forms of government ranging from dictatorships to established democracies.

Corruption, which is multi-dimensional, generally occurs at the nexus between the public and private sectors, with actors in the private sector interacting with holders of offices of trust in the public sector. Some aspects of corruption, such as fraud and the misappropriation of assets or funds, can occur entirely within the private or public sectors. However, with increasing privatisation of public utilities and services, the distinction between the public and private sectors is becoming less relevant in some areas.

Corruption is generally defined as the abuse office for private gain. As the scope of corruption has widened, this definition has been enlarged to cover the abuse of all offices of trust for private gain<sup>1</sup>. there are many types and levels of corruption including “grand corruption”, which involves huge sums paid by major businesses to high-level politicians and/or government officials; widespread systemic corruption which may take the form of substantial bribes to public officials to obtain, for example, licences/permits or to by-pass regulations; and petty corruption which involves modest but recurring payments to avoid delays, jump queues or to obtain goods in controlled markets. All forms of corruption entail high economic and social costs: transaction costs are increased;

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<sup>1</sup> The term “holders of offices of trust”, that is used hereafter in this document, covers the following: politicians (elected and appointed), public/civil servants, judges, officers of the armed forces, officials of bodies providing services (including privatised services) for or on behalf of the government and executive officers of private corporations.

public revenues are reduced; resource allocation is distorted; investment and economic growth is retarded; and the rule of law is weakened.

The Commonwealth should firmly commit itself to the policy of “zero tolerance” of all types of corruption. This policy must permeate national political cultures, governance, legal systems and administration. Where corruption is ingrained and pervasive, especially at the highest political levels, its eradication may require a sustained effort over a protracted period of time. However, the policy of “zero tolerance” should be adopted from the outset, demonstrating a serious commitment to pursue the fight against corruption. The Commonwealth should remain firm in its determination that the high standards and goals enunciated in the 1991 Harare Declaration are upheld and enhanced. Creating an environment which is corruption-free will require vigorous actions at the national and international levels, and within the Commonwealth itself. These actions should encompass the prevention of corruption, the enforcement of laws against it and the mobilisation of public support for anti-corruption strategies.

## National Actions

All Commonwealth countries which have not done so should develop their own national strategies to promote good governance and eliminate corruption. These strategies will require strong political will at the highest levels of government if they are to succeed. Furthermore, they cannot be externally imposed: they must be internally driven and domestically owned, based on the specific concerns and circumstances in each country. National strategies need to be comprehensive in engendering transparency and accountability in all sectors, and in covering all the active and passive actors involved in corruption. To be effective, they should be implemented in a timely manner and include principles from the five inter-related platforms described below.

### **Ethics and integrity in the public and private sectors**

#### ***High-level corruption***

Corruption at the highest level poses perhaps the greatest threat to the stability and wellbeing of societies. Its elimination must therefore be given the highest priority in the implementation of effective anti-corruption strategies. Failure to root out high-level political corruption undermines anti-corruption measures at other levels. It perpetuates double standards inimical to the development of an anti-corruption culture.

## ***Funding of political parties***

The funding of political parties has the potential to become a major source of corruption as well as a vehicle for hiding corruption. Clear links can be drawn between inappropriate or inadequate controls on such funding and the prevalence of corruption. Among those countries which have sought to address the issue of transparency in political funding and the maintenance of the integrity of the political system, there is divergence and the different approaches adopted are largely the result of prevailing political and societal norms. Several factors are relevant in tackling the problems associated with money and politics. They include:

- ◆ whether or not there are established political parties;
- ◆ the capacity of the state to finance political parties and/or election campaigns, and levels of expenditure on political campaigns;
- ◆ limits on financial contributions and the integrity of their sources;
- ◆ the role of national and international companies in providing funds to political parties;
- ◆ the national interest in ensuring that foreign interests do not influence domestic political priorities and decisions.

Although rules on funding for political parties will vary depending upon national circumstances, in general, it is important that these rules should serve to:

- ◆ prevent conflicts of interest and the exercise of improper influence;
- ◆ preserve the integrity of democratic political structures and processes;
- ◆ proscribe the use of funds acquired through illegal and corrupt practices to finance political parties;
- ◆ enshrine the concept of transparency in the funding of political parties by requiring the declaration of donations exceeding a specified limit.

## **Economic and fiscal policies**

Opportunities for seeking economic rents are a major cause of corruption. These opportunities are greater when there is a lack of transparency and undue administrative discretion. Policy reforms that can help to maximise transparency and certainty and minimise administrative discretion will reduce rent-seeking as well as eliminate incentives which generate corrupt practices. They will help to improve foreign

investors' perceptions of the investment environment in many countries. Such policy reforms include:

- ◆ liberalising trade regimes through the progressive removal of inefficient quantitative restrictions and import/export licences, as well as high tariffs that shield industries from competition and create artificial monopolies;
- ◆ reducing foreign exchange controls and increasing transparency in foreign exchange allocation processes;
- ◆ eliminating price controls and poorly targeted subsidies which, by lowering the price of goods below their market values, create artificial scarcities and parallel markets;
- ◆ simplifying regulations in order to reduce the scope for bureaucratic discretion (e.g. in customs administration);
- ◆ increasing transparency in the allocation of land-use permits and in the zoning of land;
- ◆ reducing excessive levels of taxation where they create incentives for tax evasion and fraud and eliminating the use of discretionary authority in tax administration and enforcement which encourages corrupt practices;
- ◆ ensuring that fiscal and tax rules do not permit bribes or other illicit payments to be treated as deductible expenses for tax purposes.

## **Management of services provided in the public interest**

Improving the management, efficiency and delivery of public services should be an essential element of any national strategy to enhance governance and reduce corruption. When services are provided in an efficient manner, fewer opportunities for corruption arise as citizens are no longer required to compete, often by way of paying bribes, for scarce and inefficient services. In view of the increasing trend towards contracting out and/or privatising services previously provided by the State, measures to improve management and efficiency should encompass all those who have responsibilities for providing goods and services in the public interest.

The main areas to be covered are described below.

### ***The public service and providers of public services***

A merit-based, professional and non-partisan civil service which is appropriately sized and well-motivated is of critical importance. Over-

sized public administration systems, with bloated and poorly paid bureaucracies, engender corruption. Down-sizing alone is not enough, but should be complemented with merit-based recruitment and promotion, career growth policies and incentives to retain the better performers within the civil service. Civil servants need to be adequately paid if they are to maintain the probity, professionalism and integrity that should be required of the public service. They should also be free from political interference.

The rule of law should apply to all those involved in the administration and provision of services in the public interest, as it does to the whole of civil society. Those holding offices of trust need to be bound by well publicised Codes of Conduct with appropriate sanctions for breaches that are enforced consistently and vigorously. These Codes should, *inter alia*, cover: standards of integrity, potential conflicts of interest, acceptance of gifts, misuse of information for personal gain, and disclosure of assets and financial interests. Ethical standards should be promoted – through education and training where necessary – which instil pride in the virtues of integrity, professionalism, efficiency, transparency and impartiality in the public service.

### ***Financial management***

Sound financial management systems are essential tools of good governance, which enable governments to set macroeconomic targets, to allocate resources and to implement programmes and projects efficiently. Processes for budget preparation, execution and monitoring need to be open and transparent. Clear procedures and criteria should be used for developing public investment programmes and projects, including those by public enterprises, and for allocating recurrent expenditure budgets. There should be rigorous accounting, financial reporting and auditing systems covering all public programmes and investments. Public accounts should be subject to scrutiny by appropriate bodies such as parliamentary committees and Auditors-General. Timely compliance with auditing requirements is important to ensure the legitimacy of public expenditures. Where audits indicate deficiencies or are themselves unsatisfactory, prompt remedial action should be taken. Auditors-General, or other supreme auditing authorities, should be sufficiently independent to allow open criticism of government finances. Countries should be encouraged to adopt codes of fiscal transparency based on the model provided by the “The Code of Good Practices on Fiscal Transparency – Declaration of Principles”, adopted by the IMF’s Interim Committee in April 1998.

It is also important for countries to have effective regulations for their

financial sectors (including private financial institutions and parastatals), that reduce opportunities for corrupt practices. The key aspects of a sound financial system include transparency of the financial system; competent management; effective risk control systems; adequate capital requirements; prudential regulation; supervisory authorities with sufficient autonomy, authority and capacity; and effective supervision of cross-border banking, which is also important in combating money laundering.

### ***Public procurement***

Transparency in government procurement practices is not an established norm in many countries. Corruption is widespread, both in the award of contracts and during their implementation. Governments should be encouraged to review their procurement practices and to develop comprehensive guidelines of their own, with transparent processes to cover contracts for goods, civil works and services, and criteria for using all types of procedures ranging from prudent shopping to national and international competitive bidding. In order to increase efficiency, probity and economy in public procurement, governments should adopt standard bidding documents, establish processes for public bid opening, set objective criteria for bid evaluation, and institute a system for the review of awards. The collection and dissemination of data on public procurement prices of goods and services of similar specifications, which are procured by different agencies regularly in large quantities, can have substantial and prompt effects in reducing corruption. An accountable and reviewable process for the black-listing of contractors guilty of resorting to corrupt practices can be a particularly effective anti-corruption weapon.

## **The judiciary and the legal system**

Countries need effective institutional arrangements to resolve disputes between citizens, corporations and governments; to clarify ambiguities in laws and regulations; and to enforce compliance. The rule of law in a country is of vital importance for economic, social and political development. Inherent in the concept of the rule of law are the notions of impartiality, fairness and equality. Strengthening the rule of law will, *inter alia*, require the following actions.

### ***The judiciary***

#### **Entrenching an independent judiciary**

An independent and competent judiciary, which is impartial, efficient

and reliable, is of paramount importance. This requires objective criteria for the selection and removal of judges, adequate remuneration, security of tenure, and independence from the executive and legislative branches of government.

However, judicial independence does not imply a lack of accountability. Judges should act properly in accordance with their office and should be subject to the ordinary criminal laws of the land. There should be procedures to discipline or dismiss them if they act improperly or otherwise fail in the performance of their duties to society. These procedures should be transparent and administered by institutions which are themselves independent and impartial.

### ***Strengthening the legal system***

#### **Compliance**

Vigorous application and enforcement of existing laws and prosecution of offenders is essential if the rule of law is to be respected. Although most countries have at their disposal a wide range of laws which can be used to combat corruption, these laws are often under-utilised and, at times, even ignored. Governments should seek to make effective use of existing criminal and civil laws to obtain the appropriate remedy in each case.

Investigative, policing and prosecutorial services which remain weak in many countries, need to be enhanced to ensure compliance with the law. Independent anti-corruption agencies such as ombudsman offices, inspectors-general, and anti-corruption commissions can be effective if they are genuinely free from being influenced by the executive branch of government and where there is a strong judiciary in place.

#### **Enforcing criminal law**

As the nature and prevalence of corruption has grown, laws against corruption may need to be strengthened to provide a meaningful deterrent, and complemented in several ways:

- (a) Both active and passive corruption should be made criminal offences, comprehensively covering the holders of all offices of trust.
- (b) Criminal law should provide for the seizure and forfeiture of the proceeds of corruption.
- (c) There should be legal provisions to protect witnesses and whistleblowers in cases involving corruption.
- (d) Statutes which permit investigators and prosecutors to base criminal proceedings on the discovery of significant increases in the

assets of the holder of an office of trust, which cannot be reasonably attributed to lawful sources of income, can be of great assistance.

- (e) The laundering of the proceeds of corruption must be criminalised and laws which provide for the granting of assistance (either extradition or mutual assistance in criminal matters) to other countries investigating or prosecuting money laundering offences must be available to ensure effective international co-operation to combat money laundering.

### **Civil, administrative and regulatory laws**

- (a) The civil law is the source of many remedies which can be used to combat corruption. For example, the use of damages awards and the facility to void contracts may be appropriate in many cases.
- (b) Administrative action, such as the use of disciplinary procedures, can contribute to the battle against corruption and ease overburdened court systems by dispensing appropriate sanctions. Relatively minor offences can be dealt with effectively through disciplinary bodies such as public service commissions.
- (c) Regulations requiring declarations of assets and financial interests by holders of offices of trust, which might give rise to potential conflicts of interest, can enhance the integrity of service providers and reduce the opportunities for corruption.
- (d) Non-criminal laws such as those providing for disqualification of directors guilty of improper conduct in the management of corporations, and the regulation of financial institutions to prevent money laundering, can be useful.

### **Civil society**

Civil society should be seen as an independent and creative partner in the development of effective coalitions to improve governance and combat corruption. Beyond periodic electoral processes, governments that can regularly consult, collaborate with, and listen to, their citizens are better able to develop national ownership of policies and the political will required to pursue anti-corruption programmes. Important factors that enable civil society to play an effective role are:

- ◆ **Freedom of association:** Citizens should enjoy the right to establish organisations around particular interests (e.g. professional and business associations, labour unions) to pursue general or specific social, economic or political objectives. Such associations can often act as critical watchdogs of the integrity of service providers.

At the local level, grassroots community organisations, co-operatives and local non-governmental organisations (NGOs) can help the poor and marginalised to get their voices heard in the corridors of power.

- ◆ **Freedom of the press and media:** Transparency in any society requires information to be available freely in the public domain. A free and competent press is essential in this process, and is critical to the success of anti-corruption strategies. Freedom of the press and media calls for access to information; the absence of government controls or censorship (except where national security issues are involved); the liberty to express views; and sufficient financial independence to resist control of editorial policy and news coverage. Civil society should promote genuine competition in the media market-place to ensure diversity of ownership, so that alternative outlets can provide a broad range of views on public policy issues. In situations where the media itself may be corrupt or susceptible to corruption, adherence to high standards of integrity in journalism should be promoted, along with the development of professional well-informed media, through self-regulation and training.
- ◆ **Information technology:** Advances in information technology help to increase civil society's access to new sources of information and channels of communication, including foreign publications and broadcasts.
- ◆ **Research and analysis:** The development by civil society of independent public policy research institutes and think-tanks can provide increased domestic capacity to analyse deficiencies in the system of governance. Such bodies can help to study the particular types of corruption in a country, and identify country-specific remedial options.

## International Actions

With the increasing globalisation of corruption, several international fora and agencies including the UN General Assembly, the OECD, the IMF, the World Bank, the OAS, the European Union, the Council of Europe and the International Chamber of Commerce, have mounted initiatives to improve governance and combat corruption. These include conventions to limit corruption in transnational business and stronger anti-corruption programmes by international financial institutions and aid agencies. These efforts are important and have the poten-

tial to lead to significant results. There are, however, gaps in their coverage, and continuing weaknesses in policies and practices, which need to be addressed. In addition, there are some special areas that require further international action.

### **International initiatives against corruption**

At present, there are three international legally binding conventions against corruption: (i) The 1996 Inter-American Convention Against Corruption, a regional OAS initiative, that covers active and passive corruption as well as illicit enrichment; (ii) The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which focuses on active bribery of foreign public officials; (iii) The 1999 Council of Europe's Criminal Law Convention on Corruption, which covers active and passive bribery of domestic and foreign public and private sector officials, as well as judges and members of public assemblies.

Except for the OAS Convention, these initiatives have been promoted by the major developed countries and do not correspond fully to the needs of developing countries. The battle against cross-border corruption should be joined by all nations, both developed and developing, from all parts of the world. This calls for the mobilisation of international support for a global compact against corruption, negotiated under the auspices of the United Nations with universal participation, which builds on the positive elements of existing conventions and other regional and international initiatives.

### **Programmes of international financial institutions and aid agencies**

The IMF, the World Bank, the regional development banks and bilateral aid agencies have for many years been aiding countries in improving governance through policy advice, technical assistance, institutional reform and capacity building. As corruption has become increasingly a part of the debate on aid effectiveness, aid agencies have taken on stronger anti-corruption programmes. The World Bank has adopted new anti-fraud/corruption procurement guidelines, and improved disbursement and financial auditing procedures. The IMF is taking a more pro-active stance and has adopted guidelines for promoting good governance ("A Guidance Note on The Role of the IMF in Governance Issues" was approved by the IMF's Executive Board in July 1998). Both the Bretton Woods institutions are beginning to take corruption explicitly into account in defining their country

assistance programmes. Several bilateral donors are designing programmes to assist nations in their anti-corruption efforts. Areas in development assistance that need added scrutiny and further action include greater transparency and accountability, conditionality, procurement and bilateral aid practices.

### ***Transparency and accountability***

International financial institutions need to be more transparent in their operations, objectives and decision-making processes. There has been greater openness in the past few years and the recent discussions on a new international financial architecture may lead to further progress. To increase national ownership and public participation in reform programmes, key documents such as Policy Framework Papers, Letters of Development Policy and Letters of Intent should be more systematically released by borrowing countries and widely disseminated via the Bretton Woods institutions, unless there are valid reasons for non-disclosure.

There should be a more open acknowledgement by donors and international financial institutions of their share in the responsibility for the outcomes of the country programmes they help design and for the policy advice they give. When these outcomes are not satisfactory because of flaws in programme design and policy advice, these deficiencies should be rectified and additional financial assistance should be provided.

The staff of lending agencies should be subjected to greater scrutiny and internal accountability.

### ***Conditionality***

Domestic ownership and political will to implement measures to improve governance and reduce corruption are paramount. Measures imposed externally as conditions of financial assistance are rarely effective. However, the availability of external funding (both project and non-project related) has the potential to encourage corrupt practices. Hence, the levels of corruption in recipient countries should be taken into account in determining the quantum and direction of external funding/assistance. Where it is necessary for international financial institutions to take up issues related to governance and corruption in their policy dialogue with countries and in the development of country assistance strategies, this should be done in a manner that is consistent with their mandates. Reforms agreed with the IMF and the World Bank to improve governance and reduce corruption should take account of a country's capacity to implement them within realistic time-frames.

“Floating Tranches”, which have been adopted recently in several World Bank structural adjustment loans, should be used more widely to enable governments to sequence reform measures in the light of local circumstances without holding up entire programmes.

To promote local ownership of reforms, foreign donors should agree with governments on the objectives to be achieved, identify alternative paths for meeting these ends, but leave the route to be selected to the government concerned.

The IMF should be even-handed by raising issues related to transparency, governance and corruption in developed countries when exercising its surveillance function, as it does in developing countries when it is financing programmes.

### ***Procurement***

All international financial institutions, multilateral development banks and multilateral agencies providing development assistance should be encouraged to strengthen their procurement guidelines along the lines of the anti-fraud/corruption provisions of the World Bank’s 1996 guidelines on procurement. These provide strong sanctions against borrowing countries and firms that engage in corrupt practices, including rejection of contract awards or cancellation of loan funds, and making corporations judged to have engaged in fraudulent or corrupt practices ineligible for future Bank-financed projects (i.e. blacklisting). They also require bidders to disclose commissions made to agents.

### ***Practices of agencies providing bilateral development assistance***

Bilateral development assistance agencies should be encouraged to adopt the anti-fraud/corruption provisions of the World Bank’s 1996 procurement guidelines and to utilise similar standard bidding documents.

Since the tying of aid to procurement from a donor country reduces the scope for competitive bidding and increases the incentives for corrupt practices, tied aid should be reduced.

Supplier credits should be carefully monitored as they often involve projects with little equity by the promoters, which increases the scope for corrupt payments.

As part of the negotiations on the OECD Convention, a separate resolution was adopted in 1996 calling on member countries which allow the tax deductibility of bribes to foreign public officials to re-examine their tax laws, with a view to denying this deductibility. All donor countries that have not already done so should amend their tax laws accordingly.

## **Special areas requiring further action**

### ***Monitoring of corruption***

The monitoring of corruption and the ranking of countries based on perceptions of levels of corruption prevailing in them by some NGOs (e.g. Transparency International), has raised awareness of the problem of corruption globally. However, it is important to improve the methodological basis for such quantitative assessments. Moreover, bearing in mind the 'supply/demand' dimension of corruption in international business transactions, it would be useful to rank multinational corporations and their subsidiaries in terms of their track records on corruption, thus providing exposure of those known to be engaging in corrupt practices.

### ***The arms trade***

It is difficult to determine how the arms trade is financed, e.g. through military aid, debt creation, compensatory trade offsets or cash transactions. The secrecy that surrounds the international arms trade often encourages corruption in these transactions. There should be much more transparency in the trade. This could be achieved through:

- ◆ wider and more detailed reporting of arms trade transactions in the UN arms register;
- ◆ a new international code of conduct for the arms trade, requiring the disclosure of far greater information than is currently provided by all the parties involved;
- ◆ the inclusion of specific clauses in arms sales contracts that reduce the role of middlemen and ban illegal commissions.

### ***Money laundering***

The endorsement by Commonwealth Heads of Government of the 40 Recommendations of the Financial Action Task Force of the OECD, which are designed to combat money laundering through the use of the criminal law and effective regulation of the financial sector, should be replicated globally to ensure that money laundering is tackled on the broadest possible front. As money laundering becomes a global phenomenon, the formation of multi-disciplinary regional groups, such as the Caribbean Financial Action Task Force and the Eastern and Southern African Money Laundering Group, should be encouraged in order to strengthen anti-money laundering measures. The following points should also be considered:

- ◆ Additional international efforts are required to pursue illicit funds to numerous offshore financial centres, located in developed and

developing countries, which make corruption less risky since the proceeds can be hidden overseas.

- ◆ Stronger mechanisms are required to enable the expeditious repatriation of the proceeds of corruption.
- ◆ The extent to which countries with large parallel economies are vulnerable to money laundering should be the subject of studies in order to determine appropriate counter-measures.
- ◆ Global efforts to assess the effectiveness of anti-money laundering strategies should be enhanced.

## Commonwealth Actions

In addition to actions taken at national levels, the Commonwealth can also act collectively to improve governance and combat corruption in several ways.

- (i) The Commonwealth's commitment to promote good governance and fight corruption should be credible, tangible and visible. As a first step, Heads of Government should consider adopting a Declaration that commits the Commonwealth to specific principles, standards and goals. In order to ensure that the momentum of such a high-level political initiative is maintained, the Declaration could provide for the establishment of a mechanism/process to facilitate its implementation as well as periodic reviews of progress (say, biennially, coinciding with CHOGMs).
- (ii) At the same time, the Commonwealth should also support the development of a truly global compact against corruption that would fill gaps in existing instruments and be universal in its scope, thus creating a level playing field for all countries. For this purpose, in consultation with other interested parties, it could work for the initiation, under the auspices of the United Nations General Assembly, of time-bound negotiations for a universal, legally binding inter-governmental convention against corruption. Such a convention would require all signatories to abide with minimum standards and rules (in the case of non-state actors these would apply through legislative and other measures adopted by governments) to foster good governance and fight corruption. These standards and rules should be general enough to accommodate diversity in political, economic, socio-cultural and legal systems, but without compromising the basic policy objective of

zero-tolerance for all types of corruption. Pending the adoption of a global convention, countries should be encouraged to become parties to existing anti-corruption conventions that are appropriate to their needs and circumstances.

- (iii) The Commonwealth should ensure that maximum use is made by member countries of its existing and proposed Schemes of Co-operation in the Administration of Justice, and that these Schemes are kept under active review in order to meet the needs of countries seeking to combat corrupt practices.
- (iv) The Commonwealth should work with other international agencies to develop effective standards to ensure that all offshore financial centres in all parts of the world are not used to launder the proceeds of corrupt practices.
- (v) Given the economic, social, and political benefits to be gained through Commonwealth co-operation, the Commonwealth Secretariat should be given additional resources to enable it to:
  - ◆ assist member countries, when requested, with policy advice and technical support to design their own anti-corruption strategies;
  - ◆ compile and disseminate information on emerging good practice in combating corruption and improving governance in key areas, such as the funding of political parties, economic reforms and judicial reforms.