

Integrity in Public Life

STRENGTHENING INTEGRITY IN COMMONWEALTH COUNTRIES

A paper prepared for the Commonwealth Secretariat by Transparency International (TI)

Background

1 The question of the maintenance of public integrity has assumed a central place in the concerns of many countries and international organisations. The concern of the latter stems in large part from recognition that the "grand corruption" which distorts development in developing countries has international dimensions. Not only does much of this have its origins in the North (principally in Western Europe) but also that the proceeds are remitted (or more usually kept) abroad by the corrupt beneficiaries.

2 It is appropriate for the matter to appear on the Agenda of Law Ministers, not just because Ministers are in their own countries largely responsible for the "deterrent" aspects of containing corruption through detection, investigation and prosecution, but because collectively this forum has long been a world leader in raising the scope and effectiveness of international mutual legal assistance in criminal, as in other, matters.

What is "corruption"?

3 Any discussion of corruption inevitably begins with the question of definition. In a general sense the word attaches to any act or omission by anyone (be he or she a public official or a private individual) that deviates from acceptable norms governing the performance of official duties with the intention of creating gain for personal or group advantage. It can thus apply to the private sector no less than to the public. Indeed, a number of Commonwealth anti-corruption agencies specifically have the private sector within their jurisdiction (e.g. the ICAC in Hong Kong).

4 However, in official circles it is more customary to adopt a narrower definition - that corruption is the *misuse of public power for private profit*. This is to accept two truisms: first, that the state has a direct duty to control its own employees, which it places in positions of trust vis-a-vis the

public. And second, that the state has more scope in its own administration for doing so in generating working practices which limit the areas for corruption than it does in the management of the affairs of others.

Causes of corruption

5 The origins of corruption are many and varied, and there are as many theories as there are speakers on the topic. Clearly, some resort to corrupt behaviour by reason of poverty. For example, schoolteachers who are not paid for months, as has occurred in some places, are left with a stark choice: stop teaching and do something else to generate an income to sustain their families, or insist on "bribes" from the parents (in reality 'unofficial' school fees in an environment in which education is supposed to be free or at nominal cost). It is difficult to categorise this conduct as amoral, but to generalise and attribute corruption to poverty per se is to come close to inferring that all poor are corrupt - an assertion which would affront the vast majority of the poor and which most would attack.

6 Some (usually the business people from the North) claim that corruption is part of the culture of the countries where they do business. Of course, there are cultural differences, and conduct which is acceptable in one society will shock another. It is for each society to determine what is - and what is not - acceptable conduct. However, this is to overlook the fact that in every Commonwealth society laws have been made criminalising such conduct. In the context of Africa, the distinguished Nigerian leader, Olusegun Obasanjo, once said in an oft-quoted speech: "I shudder at how an integral aspect of our culture could be taken as the basis for rationalising otherwise despicable behaviour. In the African concept of appreciation and hospitality, the gift is usually a token. It is not demanded. The value is usually in the spirit rather than in the material worth. It is usually done in the open, and never in secret. Where it is excessive, it becomes an embarrassment and it is returned. If anything, corruption has perverted and destroyed this aspect of our culture."¹

¹ Opening address to the Africa Leadership Forum seminar on Corruption, Democracy and Human Rights in East Africa, Entebbe, Uganda, 1994.

7 In the Far East, too, the complaint is that traditional practices have been subverted. "Once, the exchanging of gifts was a laudable social custom emphasising the importance of personal relations in social life. Now, *bongtoo* and *chongji* have distorted the practice into institutionalised bribery in the name of goodwill tokens."²

8 Of course there are significant differences in perceptions and practices between various cultures. What is accepted as reasonable and appropriate will differ very widely. These, however, may relate more to how business is conducted (through the giving of presents and of hospitality) rather than with blatant attempts to "buy" favourable decisions. There is a clear distinction between "reciprocity" and reciprocities classified as bribes: between legitimate culture conduct and attempts to pervert decision-making.³

Impact of corruption

9 Nobel Peace Prize laureate Dr Oscar Arias Sanchez has observed that achieving sustainable development requires the presence of a number of features:

- First, it demands prudent, rational and far-sighted decision-making;
- Second, it requires the best use being made of available resources; and
- Third, it needs a principled leadership which enjoys the understanding and support of the people.

10 Corruption strikes at all three elements:

- First, decisions are taken which are irrational, short-sighted and motivated by greed, not by

² Gerald E. Caiden and Jung H. Kim in "A New Anti-Corruption Strategy for Korea", *Asian Journal of Political Science*, Vol. 1 No. 1 (June 1993).

³ See John T. Noonan, *Bribes* (University of California Press, Berkeley, Los Angeles; 1984). Judge Noonan's classic study of bribes records that reciprocities classified as bribes were censured, among others, in the ancient kingdoms of Egypt, Mesopotamia and Palestine, as well as, and even more harshly, in Cicero's Rome.

need;

- Second, resources are squandered as projects are approved not on the basis of their suitability, but on the quick returns which they may yield to the decision-makers; and
- Third, a corrupt administration loses the confidence of its people, who are then gripped by cynicism and distrust of leadership.

11 Corruption, then, is a challenge to everyone, everywhere, and to the integrity, efficiency and effectiveness of many facets of life, both private and public. None of us is untouched by corruption, whether we live in the North, the South, the East or the West. Each of us pays a price, and comparatively few are beneficiaries. We all have a stake in the integrity not only of our own society but those of our neighbours, and in the wider world.

International initiatives

12 There have been a number of international initiatives in recent times. For example, in Southern and East Africa, an informal Ministerial Group Against Corruption was formed in Pretoria at the end of 1994, chaired by Minister Dullah Omar of South Africa with the aim of promoting regional harmonisation and assistance. The Organization of American States, too, have developed a comprehensive hemispheric anti-corruption strategy, envisaging much broader forms of mutual legal assistance, including the denial of the "political offences" defence to requests for extradition where a case for corruption has been made out. At the OECD, work is proceeding on developing recommendations addressed not only to member countries but to the wider international community for the ending of the tax deductibility of bribes where this exists (and it is commonplace in Europe) and the criminalising of cross-border corruption of public officials. Within the private sector, the International Chamber of Commerce is seeking to revive and strengthen its code of conduct against bribery in international business transactions (a code which hitherto has not worked as it has no monitoring mechanisms). At the UN, the General Assembly has sought to revive the ECOSOC initiative from the 1970's designed to achieve an international convention against corruption (a move which has some doubting that this is really the way to go, given the urgency of the problem and the length of time it takes for multi-lateral conventions to come into force). There is thus much activity taking place and it would be altogether appropriate, particularly in view of the commitments of member

governments to the principles of just and honest government contained in the Harare Declaration, for the Commonwealth through its Law Ministers to examine the scope for increased action.

13 A particular concern has been the practice of most industrialised countries to permit the deduction for tax purposes of bribes paid abroad (euphemistically classified as "commissions") as being 'necessary business expenditures'. Similarly, most refuse to categorise the bribing of foreign officials as criminal, unless it takes place on the soil of the country in question. While this has been defended by some of these countries as being essential if their competitors are not to be given a competitive advantage (in bribery), and as underpinned by concerns for domestic unemployment, others see the practice as actively undermining developmental efforts abroad by those same countries. It is perhaps unrealistic to expect any major trading country unilaterally to discontinue these practices and so concede advantages to their rivals, however it may not be expecting too much to ask that these countries make determined efforts to move collectively to end tax deductibility in such circumstances and to criminalise such behaviour. It is noteworthy that Britain has been supporting efforts in the OECD designed to redress the position. The OECD recommendation will call for implementation by all major trading countries, and not just by its members.

Action at the national level

14 The first area for action for a concerned government would be at the national level. There is much that governments can do, and much that some have been doing, to minimise the opportunities for corruption to take place.

15 An obvious starting place is with the "demystification of government", by publishing e.g. tax collectors' handbooks, etc. (an open government approach which has been introduced, among others, by the British government). Another is to reverse the usual onus when it comes to government secrecy: to oblige a civil servant or Minister to make out a case for withholding a document instead of having the onus rest with the citizen (an approach being pursued, among others, by Belize and New Zealand through Freedom of Information legislation).

16 However, solutions are difficult to design because, unlike many other types of crime, there are benefits flowing to those on both sides of the equation. Both the payer of a bribe and its receiver

have an interest in secrecy, and the victims do not know what has happened. Nevertheless, experience shows that corruption can be curbed by limiting the situations in which it can occur and by reducing the benefits to both recipients and bribe payers (i.e. by rendering both more vulnerable to detection and sanction).

17 The aims of an effective anti-corruption policy are simple: To reduce inclination, corruption should be seen by the community at large and understood by it to be a "high risk, low return" activity, opportunities for corruption to occur are minimised. Where corruption is endemic in a society, lasting development is unlikely to follow and democratisation is likely to be undermined (insofar as it is an instrument for accountability) unless and until public awareness is raised to actively oppose nepotism and the taking of bribes large or small, and vigorously to play its part in support of government efforts to end these practices. To achieve this there must be an effective public awareness campaign, perhaps taking a lesson from efforts to counter the threat of AIDS.

18 In pursuit of these aims no one single strategy is likely to be effective. Rather an holistic approach is required: one with a clearly-thought out internal logic. This involves -

- a clear commitment on the part of political leaders to the combating of corruption, no matter by whom;
- adopting comprehensive anti-corruption legislation implemented by a strong and an independent agency of manifest integrity;
- identifying the areas of government activity most prone to corruption and a review of relevant procedures (in particular, procedures which limit the scope for forms of nepotism and which strive to ensure that "only the best shall serve the state");
- ensuring as soon as possible that salaries of civil servants and political leaders adequately reflect the responsibilities of their posts and as are as comparable as conditions allow with corresponding levels in the private sector (this both to reduce the "need" for corruption and also to ensure that the best are available to serve the state);
- ensuring that legal procedures and remedies are such as to provide an effective deterrence (e.g. by rendering contracts induced by corruption both void and unenforceable, export

guarantee organisations would be compelled, for reasons of self-interest, to monitor much more closely the nature of the international transactions they are underwriting; by rendering void all licences and permits obtained through corruption, a powerful incentive is created for the general public to protect itself through reporting corrupt demands);

- forming a creative partnership between government and the community through its civil society organisations (including the private sector, the professions and religious organisations).

19 Much of this, plainly, is outside the technical boundaries of the jurisdiction of many Law Ministers. However, for the deterrence factor to function, there must be a likelihood of detection, and there must also be the expectation of prompt, efficient and effective punishment. Law Ministers therefore have a keen interest in fostering prevention work in other areas of government. Likewise they have an interest in fostering greater public understanding and awareness of how their individual countries' integrity systems operate. In this regard, in some countries civil society groups are starting to assemble national integrity system handbooks, a process which Ministers may wish to encourage.

Relationship between government organisational complexity and corruption

20 The redesign of programmes to render them more efficient will almost invariably have the effect of rendering them less susceptible to corruption. The converse also applies: the more elaborate an integrity system is made to be, the more likely it is that the very complexity of the system will defeat the ends for which it is designed.

21 There is a general consensus that there is a direct connection between the complexity of the organisation of government and the levels of corruption within it. The more steps there are to be taken, the more approvals needed before a business can start or a building constructed and the greater the number of people involved, the greater the number of "gatekeepers" who are able to exact a toll from those who cannot wait, or who feel that necessary government approvals depends on providing sweeteners. One standard technique in reducing corruption is to simply radically to reduce the number of steps needed to gain government

approvals and payments for goods supplied.⁴

22 The greater the area of discretion, too, the greater the scope for corruption. One way of limiting this is to restrict these areas to the barest minimum. There will, of necessity, always be some need for flexibility if government business is to be conducted efficiently and not wholly hide-bound. But even there it is possible to contain potential abuse by laying down guidelines in writing - and then, and most importantly, publishing the guidelines to a department's customers. By making transparent the factors which should be taken into account, and those which should not, in arriving at a decision the degree of accountability for the officials is raised and the prospect of successful appeals to higher authorities is enhanced. Such transparency, coupled with swift and appropriate appeal mechanisms, has also been found to be effective.

23 Clarity of procedures and a public understanding of their rights to service and at a given price - or no cost at all - are also important, as again, corruption can thrive where government procedures are obscure and where unnecessary complexities serve only to baffle the public.

Redesign of programmes etc. to reduce incidence of corrupt incentives

24 Singapore is a country in which entrenched corruption has been brought under control. It also flies in the face of conventional wisdom, namely that corruption can only be brought under control where state intervention in the economy is minimised.

25 Given this high degree of involvement, the experience in Singapore is of considerable relevance to developing countries in which the state must continue to be a significant actor in the nation's development programmes.

26 A comprehensive approach was adopted in July 1973 (shortly after independence), with the issuing by the Ministry of Finance of a circular instructing them to review and improve the measures taken to

⁴ Not infrequently does the private sector protest that not only does it "have" to bribe to get a contract, but subsequently it must bribe again in order to obtain payment for the goods or services! Countries who have taken the "reduction of steps" approach include Uganda, Singapore and Mauritius.

prevent corruption among their officers by minimising the opportunities for corrupt practices.

27 Among other things, the permanent secretaries (heads of ministries) were asked "to make their officers aware of the PAP government's serious efforts to eradicate corruption and to advise them to report any cases of corruption." They were also requested to take appropriate anti-corruption measures in those departments particularly exposed to corruption. Such measures included:

- improving work methods and procedures to reduce delay;
- increasing the effectiveness of supervision to enable superior officers to check and control the work of their staff;
- including measures for the rotating of officers to ensure that no officer or group of officers remain too long at a single operational unit (but keeping under check the possibility of abuse by rotation being used to "punish" those who will not join in undesirable working practices);
- carrying out surprise checks on the work of their officers;
- making the necessary security arrangements to prevent unauthorised persons from having access to a department's premises;
- ensuring the effective accountability of the supervisors themselves; and
- reviewing the anti-corruption measures taken once in three to five years with the aim of introducing further improvements."⁵

Diversification of decision-making, i.e. subsidiarity, privatisation as routes to combat corruption

28 Privatisation (the removal of state-run enterprises to the private sector) can result in a diminution of opportunities for corrupt practices, simply because private sector accounting methods and the need to operate to a profitable "bottom line" are strong incentives to management to implement

⁵ Jon S. T. Quah, "Singapore's Experience in Curbing Corruption" in *Political Corruption: A Handbook*, ed. Arnold J. Heidenheimer et al. (New Brunswick; Transaction Publishers; 1989) at page 845.

internal anti-corruption strategies. Some exponents go so far as to argue that privatisation is a form of cure for corruption, although others would see this as taking a sledge-hammer to crack a nut: there should be sound social, economic and political reasons in favour of privatisation quite apart from corruption before that path is pursued. Indeed, it is difficult to find any privatisation the prime objective of which has been to counter corruption.

29 There can, of course, be the danger of creating a monopoly situation in the private sector through privatisation (e.g. of water and other essential public utilities) whereby corruption at the petty level may be eliminated but other abusive practices implemented. Discussion among anti-corruption campaigners in developing countries tends to a definition of corruption (the abuse of public power for private profit) as extending to an abuse of economic power over the public.

30 Such commercial behaviour is not only unethical: it can constitute an abuse of market position, and as such can be illegal. It is, however, an area of activity that is outside the remit of this blueprint.

The elimination of unnecessary or ineffectual programmes

31 If a programme is unnecessary or ineffectual, then simply on grounds of economic lack of utility it will need rethinking. A classic example of this occurred recently in Switzerland, where a corrupt "restaurant inspector" was profiteering: on analysis, it transpired that there was no reason why his particular job should even exist, and it was abolished. He was jailed.⁶

⁶ Formal charges have been laid against eight people, including a prominent magazine publisher. The affair centres on Raphael Huber, the canton of Zurich's former restaurant and bar inspector, alleged to have taken some US\$1.84 million in bribes from permit applicants in the ten years to 1991. The story has shocked a country where the honesty of public officials has always been taken for granted. No one had suspected that cantonal regulations giving inspectors immense discretionary powers could be so abused. Among other things, applicants had to show that there was a "need" for the establishment. According to the prosecutor, Huber established a "reign of fear", taking payments in the form of loans or encouraging applicants to buy, at

32 In any review of government expenditure, programmes should be looked at to determine not only if they are necessary (they often will be), but invariably whether they are constructed in a cost-effective manner. Frequently this will mean paying some attention to corruption:

- how easy is it to rip off the particular system under review?
- is there any evidence that this is happening?
- can the procedures be simplified and areas of discretion removed without at the same time rendering the programme unnecessarily inflexible and unworkable?

33 It is apparent that measures to counter corruption can have a wider and beneficial impact on the integrity of government and institutions as a whole, on streamlining bureaucracies and rendering them more cost-effective and efficient, etc.

A possible way forward for the Commonwealth

At the Commonwealth level

34(a) Law Ministers might invite other

excessive prices, pictures painted by his deceased father. Though earning only a modest salary, Huber managed to maintain two flats in Zurich and to build up a 90-hectare estate in Chianti, Italy, complete with vineyard and artificial lake. The case is expected to come to trial early next year. Meanwhile the cantonal government has introduced new regulations under which applicants no longer have to prove a "need" for their establishments. Financial Times, 8 July 1994. Since then Zurich prosecutors are quoted in Sonntags Zeitung, promising further cases and last week five Swiss government internal auditors are placed under investigation on suspicion of taking money for favours to government suppliers, and Zurich motor vehicle bureau officers were arrested for taking bribes to issue incomplete registration papers to falsify documents for used car exports to Africa. In mid-July, the head of a corruption ring in Fribourg who had bribed the canton's finance director and police chief was sentenced to 27 months' jail. Financial Times, 1 August 1994 quoted in TI Newsletter, September 1994.

Commonwealth fora (and particularly Finance Ministers) to place the question of tax deductibility for bribes on their own agenda with a view to examining how they might add the Commonwealth's collective weight to the OECD initiative to end tax deductibility for bribes in international business transactions and to criminalise such conduct. For their part, Law Ministers might declare their own support for the continuing efforts at the OECD and invite the Secretariat to study the legal implications of any move to criminalise such conduct.

(b) Law Ministers might invite the Secretariat to examine ways in which international public procurement can be conducted more transparently and more accountably, with a view to rendering the procedures more cost effective and less susceptible to manipulation induced by corrupt incentives. This could involve the preparation of a study which might then be considered by a small expert working party convened by the Secretary-General and then forwarded to Law Ministers for consideration as well as to other interested parties.

(c) Pan Commonwealth codes of conduct for public officials could be developed (there has been an effort at the UN to do this but it has slowed down: the Commonwealth is uniquely placed to produce a meaningful code expeditiously).

(d) Commonwealth Schemes for mutual legal assistance in criminal matters and extradition might be reviewed to determine their adequacy to meet the particular challenge of absconding public officials with large sums of publicly-owned money (e.g. the investigation of bank accounts in Commonwealth financial centres; and creating an exception to the "political offences" defence where extradition requests involve public corruption).

(e) A deepening of exchanges of experience in techniques adopted in individual countries to improve and simplify systems, and to minimise opportunities for corruption to occur (including analysis of success stories to facilitate these being replicated).

(f) The holding of specialist workshops in particularly challenging areas to deepen insights in practical ways into measures which have been found to be effective, or which have not lived up to expectations (e.g. in customs, revenue collection, and perhaps public awareness-raising) so intensifying the value of exchanges of information.

Measures at the national level

35 These might include -

(a) considering, as appropriate in each country's circumstances, establishing a national integrity system oversight committee to ensure an holistic approach to the raising of levels of integrity (perhaps along the lines introduced in Uganda in 1994 which is chaired by the Inspector-General of Government, the principal law enforcer of anti-corruption laws but which includes all stakeholders, including the government-run radio service, the Ministry for the Civil Service and representatives of civil society).

(b) reviewing the law and regulations regarding public procurement, and post procurement monitoring procedures (perhaps in conjunction with such other interested parties as the Auditor-General and the parliament's Public Accounts Committee) to ensure that these adequately protect the public interest

(c) reviewing the adequacy of public access to official information, as well as the appropriateness of the protection afforded to complainants (particularly where these are within the public service and wish to complain against the corrupt conduct of superiors without risking retribution).

(d) involving civil society more closely in participating in oversight committees and in feeding its own insights into reform procedures.

(e) developing, or encouraging civil society to develop, a national integrity sourcebook to render accessible to the public the various documentation that comprises the country's national integrity system.