

Report of the Commonwealth Expert Group on Good Governance and the Elimination of Corruption

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Introduction

The main focus of this Report is on corruption in economic management. It provides an overview of the nature of corruption, its different dimensions and appropriate responses to deal with the problems it poses. The Report sets out the actions that are necessary at the national and international level, respectively, to combat corruption. The role of the Commonwealth is also examined.

Corruption: Causes, Costs and Responses

Corruption is generally defined as the abuse of public 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, whether in the public or private sectors. Corruption manifests itself in various ways and it is useful to distinguish between personal corruption (motivated by personal gain) and political corruption (motivated by political gain). A further distinction can be made between individual corruption and organisational or institutional corruption. In the context of the State, corruption most often refers to criminal or otherwise unlawful conduct by government agencies, or by officials of these organisations acting in the course of their employment.

The significance of institutional corruption can be understood only if it is clearly distinguished from individual corruption. There are tendencies in all cases of corruption to individualise misconduct, and at the same time to institutionalise it. These two tendencies may appear to be opposites, but the latter tendency is also perpetrated by those accused of misconduct, either by excusing misconduct or by justifying it as an institutional privilege.

Corruption has become global in its scope, impact, and possible solutions. It is an increasing threat to the fabric of global society. As with drug trafficking, pollution, international terrorism and other serious crimes, the fight against corruption requires international co-operation.

While the problem of corruption is global, many actions to combat it have to be taken at the national level. There cannot be any effective action against corruption without a clear sense of national ownership of anti-corruption strategies. A new culture must evolve which is intolerant of corruption. Greater information, education, empowerment of people, and above all, strong political leadership committed to effective action are essential to create and sustain such a culture. Smaller and more efficient government, fewer discretionary powers in administration, greater reliance on diversity and private initiative, a free press and other media, well-paid civil servants appointed by merit, democratic processes in political parties and supremacy of the rule of law, are all important factors that serve to promote good governance and reduce corruption.

Forceful national action to combat corruption is possible in all countries. The policy should be “zero tolerance” for all types of corruption. This policy must permeate value systems, current policies and legislative frameworks. While it may be unrealistic to expect an immediate or total elimination of corruption, the policy of “zero tolerance” should be adopted from the outset, demonstrating a serious political commitment to pursue the fight against corruption. The implications of such a commitment are spelt out in this Report and imply, in the final analysis, the development of a general culture of intolerance for all types of corruption, including corruption at the highest levels. National efforts should be reinforced with appropriate support at the international level. Corruption originating within national boundaries and that resulting from international transactions should be fought with equal vigour.

Actions taken should focus not only on corrupt activities, but also address their underlying causes. Since these differ from country to country, national circumstances should be taken into account in combating corruption. It is also important to recognise that corruption is not necessarily associated with any particular type of political/social system, form of government, or level of economic development.

Although the political barriers to change may sometimes seem formidable, governments can often be expected to respond to public concerns and to reasoned argument. However, in extreme cases, where corruption is so pervasive and deeply entrenched, the adoption of a vigorous “zero tolerance” approach will be difficult. In such situations, the achievement of any progress may depend upon fundamental political change brought about by internal democratic forces.

Political commitment is not primarily a matter of the personal character of leaders. It is more an outcome of political culture and the effective-

ness of political institutions. In some cases, corruption has become the primary means of funding political parties, as well as the personal enrichment of political leaders. This is particularly pernicious when there is a failure to differentiate between the wealth of leaders and the funds of political parties. In such cases, major reforms will be needed including the reform of elections, controls over party spending and full disclosure of financial contributions to political parties. This would require political parties to maintain and publish proper accounts and to designate clearly the officials responsible for these accounts.

The costs of poor governance and corruption

Poor governance and corruption are major constraints to the pursuit of economic development:

- ◆ bribery increases the costs of government development programmes and spawns projects of little economic merit;
- ◆ corruption undermines revenue collection capacity, contributing to fiscal weaknesses and macro-economic difficulties;
- ◆ perceptions of high levels of corruption and rent-seeking act as a strong disincentive to genuine foreign investors, while attracting more dubious enterprises¹;
- ◆ diversion of resources from their intended purposes distorts the formulation of public policy;
- ◆ the use of bribes to gain access to public services undermines stated allocation priorities, benefiting the few at the expense of the many;
- ◆ bribery can subvert essential public regulatory systems;
- ◆ widespread corruption brings government into disrepute and encourages cynicism about politics and public policy.

One area of special concern is the impact of widespread petty corruption on the poor. The intention of public programmes to provide the poor with access to land, education, health and the legal system will be thwarted if bribery determines the allocation of these resources and services in practice. Petty corruption reinforces existing economic and social inequalities at the local level. Such corruption is politically costly because it undermines the credibility of government and public institutions.

¹ The term, “rent-seeking”, is used in the Report in the context of corruption and does not mean that all forms of rent-seeking are corrupt, e.g. competitive positioning by businesses in order to gain a temporary source of above-normal profits (or economic rents).

The costs of corruption are particularly high for those poor countries in great need of inflows of productive foreign capital. Widespread corruption provides a poor environment in which to attract foreign investment, discouraging those investors most likely to make a long-term contribution to development, and encouraging those who seek quick profits through dubious ventures. Corruption in aid programmes reduces their benefits to recipients and undermines public support in donor countries for their continued funding. Where programmes are funded through loans, the burden of external debt may be increased without a commensurate social return. There is a strong case for a co-operative international effort to improve the investment environment, thus increasing both the quantity and productivity of resource transfers.

The systemic causes of corruption

While corruption has many causes, it is strongly inter-related to poor governance. Failures in economic policy create rent opportunities, and weaknesses in public administration result in a decline in the probity of public servants and inadequate legislative oversight of government. All of these factors contribute to an environment favourable to the growth of corruption. In turn, corruption erodes the authority and effectiveness of public institutions. It becomes a prime cause of weaknesses in governance and sustains rent-seeking vested interests which act as a barrier to reform. Improvements in the effectiveness and transparency of economic policies and administrative reform can contribute powerfully to the fight against corruption as well as enhance governance. More generally, it is vital to achieve greater transparency and accountability in conducting all government business in order to instil public confidence in public institutions.

Inappropriate controls that encourage the exercise of undue political or administrative discretion create rent-seeking opportunities, as do inappropriate pricing policies which encourage the development of parallel markets. Excessive levels of taxation increase the incentive for tax fraud and the bribing of tax authorities. Poor fiscal management and inadequate government personnel policies (in areas such as recruitment, promotion and remuneration) result in declining efficiency in the public sector. Improvements in economic and fiscal management as well as in personnel management policies are therefore key components of a strategy to enhance government capacity.

However, even when inefficient economic controls are eliminated and excessive tax rates are reduced, governments will still engage in a large number of economic activities involving transactions with the private sector. These range from taxation, government procurement of goods

and services and delivery of public services, to transport, health and environmental regulations. Even if the reduction of rent-seeking opportunities reduces the scope for corruption, the normal range of government business leaves ample scope for the bribery of public servants. Furthermore, the transition to reform may itself pose difficult challenges to governments and create new incentives for corrupt behaviour. The process of privatisation, for example, creates opportunities for illicit gains, if the transfer of assets takes place in a non-transparent fashion. In designing and implementing economic policy reforms, it is also important to encourage transparency in business practices and establish level playing fields for domestic and foreign investors. Corruption in the private sector can cause as much harm to the health of the economy as corruption in the public sector. It must also be recognised that the distinction between the two sectors is becoming increasingly blurred.

The diversity of corruption

In some societies, corruption exists but is not pervasive enough to affect resource allocation decisions significantly. In other societies, corruption has greatly distorted government programmes and undermined the effectiveness of public interventions. Corruption can occur at all levels, from pay-offs at the top of the system, to “petty corruption” by way of bribes to local officials for the delivery of services and to evade regulations. In some cases, the gains from corruption may be siphoned off to foreign bank accounts, while in other cases proceeds are “recycled” in the local economy. However, despite its diversity, corruption always involves social and economic costs, erodes the credibility of public institutions and engenders public cynicism.

Corruption and political systems

While the inter-relationship between corruption and the broader governance agenda must be recognised, any facile conclusions regarding the relationship between corruption and any particular set of political institutions should be avoided. There are many examples of corrupt practices that feed upon multi-party political processes, just as there are authoritarian regimes which have relatively “clean” records of economic management.

The need for national anti-corruption measures

The fight against corruption should go hand in hand with more general efforts to improve economic governance. However, success in more general reform efforts should be seen as neither a necessary nor sufficient

condition for eliminating corruption, nor should the difficulties to be overcome in implementing broad-based reforms be used as an excuse for delay in tackling corruption. Furthermore, even in an otherwise well ordered system of governance, corruption can thrive in the absence of effective vigilance and enforcement. Sustained action is required at two levels to address the root causes of corruption and tackle all its manifestations:

- ◆ systemic reforms, which target the underlying weaknesses in policy, administration and politics, and create an environment conducive to the elimination of corruption;
- ◆ specific, focused national anti-corruption strategies.

In mounting a serious national anti-corruption programme, the first step of securing a strong commitment at the highest political level to fight corruption is often the most difficult hurdle. When corruption is widespread, particularly where it involves the political establishment, this may involve serious political risks, despite popular support for cleaner government. One solution may be an amnesty for corrupt acts committed in the past, combined with an explicit code of conduct, spelling out minimum standards of universal applicability, which will be enforced vigorously from the start of the new anti-corruption programme.

Popular mobilisation against corruption

The most potent force in the fight against corruption is the widespread resentment of corrupt practices and popular support for firm action. Anti-corruption programmes need to be designed to meet the expectations of citizens and with public participation. They are likely to be more effective when they are built on the foundation of popular empowerment, nationally owned and designed to meet national circumstances.

The private sector and civil society

The concept of good governance extends beyond government. Although an anti-corruption strategy usually focuses initially on preventing the use of public office for private gain, support could be enhanced if the dangers of unethical practices in the private sector and non-governmental institutions are more widely appreciated. Corrupt behaviour (e.g. by corporate purchasing agents, or in job recruitment) can be as destructive of the performance of businesses or of non-governmental organisations (NGOs) as it is of government. Private corporations, NGOs and all other sectors of civil society have a stake in combating a culture of corruption. Moreover, even where governments

are less than enthusiastic in tackling corruption, popular support and the agencies of civil society can still be mobilised in support of an anti-corruption agenda.

The need for an international response

There is a strong case on a number of grounds for international co-operation in fighting corruption:

- ◆ countries embarking on an anti-corruption strategy can learn from the experience of those that have already had some success in reducing corruption; furthermore, international co-operation can reinforce national efforts to combat corruption;
- ◆ in a globalised economy, transactions across borders are of increasing importance, but are often difficult to monitor by national authorities acting alone;
- ◆ international transactions may sometimes provide a conducive environment for corrupt practices, where actors are willing to engage in dubious practices abroad that would be unacceptable at home;
- ◆ international financial transactions provide opportunities for the laundering of financial gains from corrupt practices.

Given the global nature of corruption, there should be no double standards. Anti-corruption measures should apply equally to rich and poor countries. They should target those who are directly guilty of corrupt behaviour, as well as those who facilitate corruption (e.g. by providing money laundering opportunities). They should penalise both bribers and bribees (i.e. those who offer, as well as those who accept, bribes).

National Actions

Under the over-arching policy objective of “zero tolerance”, specific measures are required to **prevent** corruption, **enforce** laws against it and **mobilise public support**. These should be the sinews of coherent national strategies to achieve good governance and combat corruption. A general approach to the formulation of such strategies is set out below, but specific programmes reflecting national realities and circumstances will be required to translate such a general approach into practice. The Expert Group therefore proposes that each Commonwealth government should develop its own national good governance and anti-corruption strategy, which should identify clear objectives, effective

instruments, realistic timetables and credible implementation and monitoring mechanisms.

The Commonwealth should render technical assistance in the development of such strategies and promote exchange of experience in close collaboration with UN programmes, the Bretton Woods Institutions, the Organisation for Economic Co-operation and Development (OECD), Transparency International and other relevant agencies. In designing national strategies, care should be taken to respect different cultural, moral, political and social environments, provided these are not inconsistent with the objective of achieving “zero tolerance”. The initiative for strategy development and the choice of goals should lie with national authorities and not be externally imposed.

National strategies should encompass both the public and private sectors. Corruption in the private sector (e.g. in the operation of financial markets) can be as corrosive to economic performance as public sector corruption. Moreover, public sector corruption typically involves actors from the private sector. A national culture opposed to corruption requires high standards of behaviour from all sections of society, but especially from political leaders.

Effective national campaigns against corruption need support from the highest levels of government and implementation of the strategy requires high-level co-ordination. Hence, an important first step in developing national strategies is for the political leadership to recognise that corruption in both the public and private sectors has heavy economic and political costs and that, no matter how deeply embedded it is, it is possible to adopt effective measures against it, provided there is sufficient political will.

Key Reforms in Governance and the Fight Against Corruption

The main building blocks

While the content of national strategies will vary, depending on national circumstances, there are three main building blocks for effective strategies: prevention, enforcement and the engagement of civil society.

Prevention should address underlying causes of corruption, particularly those arising from failures of public policy and weaknesses in political and administrative institutions. Economic policy reform to reduce rent-seeking opportunities; civil service reform to improve the effectiveness and probity of the public service; reforms in tax policy and administra-

tion; tightening of controls over public expenditure; and reforms in the political system, are all important ingredients of a prevention strategy.

An important contribution to prevention can be made by strengthening transparency in economic management, through:

- ◆ full disclosure and examination of government finances, especially by parliamentary scrutiny;
- ◆ strengthening of parliamentary public accounts committees;
- ◆ the use of open competitive bidding for government contracts;
- ◆ publication of full information on the reports of government auditors and evaluations of development projects;
- ◆ media access to information on government finances;
- ◆ full disclosure of assets by government leaders and their families;
- ◆ setting international financial agreements before the legislature (including arms procurement) and establishing clear guidelines for fiscal discipline;
- ◆ establishment of mechanisms for public exposure where the above do not occur.

Prevention should concentrate not only on the behaviour of the holders of offices of trust, but also aim to affect the behaviour of those who offer bribes. A code of practice for private business should spell out what is a corrupt practice, and what is legitimate business promotion. Acceptable practices in relation to business sponsorship of public activities (e.g. sports and social events) and to the employment of public officials as consultants or in other capacities, while in office and after retirement, need to be spelt out. As with all regulation, prevention is more likely if lawful behaviour is widely accepted as the norm.

Enforcement involves firm action against corrupt behaviour at all levels. Since effective enforcement is dependent upon the competence and honesty of investigators, prosecutors and the judiciary, it is important to allocate sufficient resources to ensure the probity and effectiveness of these agents. The rule of law should apply to economic transactions, with equality and impartiality in the application of the law and in access to legal remedies. Any ambiguities in laws and regulations that create incentives for corrupt behaviour should be removed. Where the integrity of legal institutions has eroded, action to restore their credibility must come early in the implementation of a national anti-corruption strategy.

Mobilisation of popular support through the engagement of civil society and popular opinion is important in changing public mores, as well as in exerting pressure on governments (at both national and local levels) to take the necessary actions to prepare and implement anti-corruption programmes. Perhaps the greatest potential force for reforms to combat corruption stems from public resentment of corruption and the burdens it places on citizens. This can provide an important basis of political support for anti-corruption actions, and challenge vested interests. Popular pressures can ensure accountability for the management of public resources, including accountability through the appropriate legislative bodies to the general public and, where external resources are concerned, to the international community.

Popular opinion can be activated and focused through the educational impact of the media and through the activities of NGOs; in particular:

- ◆ the freedom of the press and of other media contributes to public awareness of corruption and its consequences;
- ◆ the commitment of governments to freedom of expression and association is therefore a critical factor in creating conditions which are conducive for improving governance and eliminating corruption;
- ◆ 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.

NGOs concerned with governance and corruption (e.g. Transparency International) should be encouraged in their efforts to create a presence and raise awareness at the national level. Governments should be encouraged to recognise and respect the positive contribution of national NGOs which campaign on corruption issues.

Action against corruption should not await the implementation of other complex reforms. Parallel actions to improve economic management, administration and the political process could greatly improve the prospects of success in combating corruption. Key reforms which would contribute to the fight against corruption include:

- ◆ **Economic reforms** which reduce rent-seeking opportunities. Reforms can reduce bureaucratic controls that allow undue scope for the exercise of administrative discretion, as well as simplify economic regulations. They can also remove policy-induced scarcities (which create parallel markets and incentives to bribe

to gain access to scarce goods and amenities). It goes without saying that these reforms in no way imply the abandonment of the regulatory role of the State in conducting the ordinary business of government.

- ◆ **Fiscal reforms**, which increase the efficiency of the public sector, thus permitting adequate funding of public services. Privatisation can have beneficial consequences but it should be principally driven by considerations of efficiency.
- ◆ **Reform of subsidised public lending programmes** which readily become a vehicle for corruption. This may be achieved through better targeting as well as transparency in the operation of the programmes, by changing and strengthening the criteria for entitlement and reducing reliance on political/administrative discretion in their operation. It is understood, of course, that public policy may dictate subsidised lending programmes in particular circumstances without prejudice to the pursuit of sound fiscal policies.
- ◆ **Reforms to improve the management, efficiency and delivery of public 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.
- ◆ **Civil service reform**, which restores the morale and integrity of the public service through merit-based recruitment and promotion, and reduces the size and tasks of public administration to levels consistent with available fiscal resources, thus making it easier to enhance emoluments and reward good performance.
- ◆ **Legal reform**, which commits sufficient resources to the judiciary, investigative and prosecution services, ensures the autonomy of the judiciary from political interference, and demands high standards of honesty and commitment in recompense.
- ◆ **Local government reforms**, for the purpose of empowering people to combat corruption; ownership of national action would not be complete without the empowerment of people and strengthening of civil society.
- ◆ **Monitoring of privatisation** to ensure that the transfer of public assets does not create opportunities for the illicit accumulation of wealth.
- ◆ **Opening up** the administrative and political systems to greater public scrutiny through parliamentary enquiries and freedom of

information provisions, with the aim of bringing public pressure to bear on political and economic decision-makers to maintain high standards in public service.

- ◆ **Reforms in the funding of political parties.** While rules on funding will vary depending upon national circumstances, in general, it is important that they should serve to prevent conflicts of interest and the exercise of improper influence, preserve the integrity of democratic political structures and processes, and enshrine the concept of transparency in the funding of political parties by requiring the declaration of donations exceeding a specified limit.
- ◆ **Capacity building** to enhance the capacity of core economic management institutions (e.g. ministries of finance, revenue collection agencies and auditor-generals' departments).

Some aspects of economic reform, while ultimately having the potential to reduce corruption, can create additional opportunities for misappropriation of public resources during the implementation phase. Thus, privatisation programmes, intended to reduce the scope for public sector rents, have themselves provided opportunities for corrupt public servants to transfer public assets illicitly. Fiscal stabilisation, aimed at reducing disequilibrium in the economy, has often resulted in reductions of the real income of civil servants, consequently increasing pressures on them to seek illicit incomes. The introduction of multi-party politics, intended to promote pluralism and place governments under tighter public scrutiny, also increases the need for politicians to seek funds.

National anti-corruption strategies should define a longer-term programme, with some decisive short-term time-bound actions to ensure that there is credibility and continuity in the process of change. There is a need to move on a number of fronts simultaneously, but at varying speeds, as some reforms are easier to implement than others. In cases where corruption has fed on poor economic policies and fiscal imbalances, progress will be easier when certain basic economic reforms have been put in place, as a prelude to administrative reforms and the launching of an anti-corruption campaign. In other cases, political reform may have to be the first step in order to increase the likelihood of the political leadership finding the political will to sustain a national strategy.

Although the speed with which a meaningful programme can be formulated and implemented will vary, all governments should be encouraged to commit themselves to the policy objective of "zero tolerance" and to institute the first steps to formulate comprehensive and realistic programmes.

Role of the judiciary and legal system

The legal system is central to the effective implementation of a national anti-corruption strategy. The rule of law implies that legally defined procedures govern public economic management, rather than political favouritism or personal connections. The independence and integrity of the judiciary is of vital importance. Most Commonwealth countries formally guarantee the independence of the judiciary from political control, but a key factor is the integrity of the members of the judiciary. Where the judiciary is corrupt, a crucial first step in a national strategy is reform which restores its integrity and efficiency. This may require restructuring, training and committing sufficient funds to compensate members of the judiciary adequately and to provide them with the means of operating effectively. Similarly, the quality and integrity of those public agencies responsible for investigating corruption and prosecuting offenders needs to be ensured. Public prosecution should be supplemented by broadening access to the courts, with individuals and community groups being given the right to take legal action in the public interest.

Critical components of a strategy of legal reform should include:

- ◆ **Entrenching an independent judiciary:** Commonwealth Law Ministers, at their 1996 meeting, recognised that the protections enjoyed by judges, including financial independence and security of tenure, were an important defence against improper interference. However, judicial independence does not imply a lack of accountability, as judges should act properly and in accordance with their office, and there should be procedures to discipline or dismiss them if they do not. Such procedures should be transparent and publicly administered by institutions which are themselves independent and impartial.
- ◆ **Court systems:** An efficient court system is an essential component of an effective governance and anti-corruption strategy. The courts of all countries are, however, overburdened. A court system which is able to dispense unbiased and corruption-free justice requires the implementation of proper case management systems to minimise delay and ensure equal access to justice. Access to justice ought not to be for sale. Hence, it is important to ensure that court lists are not influenced by payments made to court staff, who should be rigorous in their adherence to anti-corruption codes of conduct.
- ◆ **Detecting and dealing with corrupt conduct:** Many countries have enacted laws which permit the investigation of persons whose apparent assets exceed their known lawful sources of

income. This permits relevant authorities (often anti-corruption commissions) to require persons to explain the sources of their assets and where the assets cannot be attributed to lawful acquisition, the person can be charged with a corruption offence. In addition to laws which criminalise corrupt conduct, laws which permit the confiscation of the proceeds of corruption are an essential weapon in the fight against corruption. It is also important to have legal provisions to protect witnesses and whistle-blowers in cases involving corruption.

- ◆ **Corporate liability:** Increasingly, Commonwealth countries are introducing the concept of corporate criminal liability, where corporations are involved in particular forms of criminal conduct or are used to facilitate or disguise criminal conduct.
- ◆ **Non-criminal legal remedies in corruption cases:** Effective anti-corruption legal strategies cannot rely on the criminal law alone. Civil, administrative and regulatory laws all have a place in a comprehensive strategy:
 - Civil law can provide effective remedies, but the civil law must be accessible and provide adequate protection to citizens' interests. Also, to permit the bringing of a civil law action there must be an identifiable victim or plaintiff². The civil law can also be used, to supplement the criminal law, to facilitate recovery of assets from a public official who has benefited from the wrongful exercise of a public function (e.g. in cases where public officials purchase land in the knowledge of prospective re-zoning proposals which would increase the value of land).
 - In the sphere of regulatory law reform, laws relating to unfair competition and to the control of monopoly trading could be useful to fight corruption. Provisions which incorporate proper processes including the application of the rules of natural justice could permit: the exclusion of persons (natural and legal) from public tenders (blacklisting); withdrawal of licences to conduct business; prohibition of anti-competitive acts; and disqualification of company directors.

2 Citizens can suffer injury where they: (1) are unjustly excluded from public tendering procedures; (2) lose legitimate earnings; or (3) are forced to pay higher prices as a result of corruption. Among the victims of corruption are unsuccessful competitors and state agencies. Members of associations could also be victims and, hence, class actions may be available in certain cases such as consumer or environmental protection organisations. The damages which may be claimed in an action based on corruption could relate to pecuniary and non-pecuniary loss and may include punitive or exemplary damages in certain cases.

- The Commonwealth principles (adopted by Law Ministers) on Co-operation between Business Regulatory Agencies have the potential to assist in the resolution of cases involving corruption which are dealt with under the laws relating to business regulation (rather than under the criminal laws).
- In cases involving petty corrupt practices, an appropriate remedy (certainly in “first offence” cases) could lie with disciplinary bodies such as public service commissions, rather than action through the courts. The rights of employees could be protected by appropriate appeals procedures. Administrative tribunals with jurisdiction to review decisions made by public officials and to order rectification in appropriate cases could also offer redress in cases involving abuse of office. Their mere existence places moral and professional pressure on public officials to act transparently and in good faith.

International Actions

In many instances, especially where corruption transcends national boundaries, national anti-corruption measures need to be reinforced with support at an international level, including co-operative law-enforcement initiatives against corruption (e.g. in the area of money laundering). There is a need for greater consultation on the international aspects of corruption on a genuinely multilateral basis, involving developed and developing countries, and a careful assessment of the degree to which international anti-corruption conventions designed to meet the needs of developed economies, also correspond to the requirements of developing economies. Most developing countries, with the exceptions of those who are members of the Organisation of American States (OAS), are not parties to the existing conventions. All developing countries should be able to participate effectively in the international campaign against corruption. This is particularly important in view of the increasing proportion of procurement under multilateral assistance which is sourced in developing countries, and the growing volumes of South-South trade and investment.

A number of international agencies have launched initiatives to address corruption and governance issues. In 1996, the United Nations (UN) General Assembly adopted a resolution on corruption, together with a Code of Conduct for Public Officials, which was intended to guide member states in their efforts against corruption. The following year, the OECD Convention on Combating Bribery of Foreign Public

Officials in International Business Transactions (the OECD Convention) was signed. It has since entered into force in many of the countries that have signed it. Other important initiatives include the Inter-American Convention against Corruption³, the Council of Europe's Criminal Law Convention on Corruption⁴, and the programmes for combating corruption adopted by the Bretton Woods institutions as well as by the United Nations Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, and Interregional Crime and Justice Research Institute.

The World Bank has heightened its defences against corruption in its operations through new anti-fraud and corruption provisions in its procurement guidelines, improved disbursement provisions and strengthened financial auditing arrangements. The International Monetary Fund (IMF) is taking a more proactive approach to eliminate the opportunity for fraudulent activity and in 1997 adopted new guidelines for promoting good governance⁵. In addition, both the World Bank and the IMF are providing assistance to national authorities in designing measures to strengthen the financial integrity of government institutions. Initiatives have also been taken in the private sector. For example, in 1996, the International Chamber of Commerce adopted a report that proposed strict rules of conduct for corporate self-regulation. Since its establishment in 1997, the Commonwealth Business Council has, *inter alia*, been developing a Code for Good Corporate Governance.

One of the major goals of existing international instruments on corruption has been to ensure a "level playing field" for international corporations competing for business in developing countries (e.g. through the OECD Convention). There are gaps in the coverage of these initiatives and some continuing weaknesses in the practices of international and national financial institutions which fund aid and trade. Areas in which further effort is required include:

- ◆ **Funding of political parties** – the OECD Convention does not cover acts of bribery in relation to foreign political parties and it

3 Adopted by the Organisation of American States in March 1996.

4 The Council of Europe had earlier developed 20 guiding principles which were adopted by the Council of Ministers in November 1997; in addition to the Criminal Law Convention on Corruption, a monitoring agreement is in place. The Council has also examined the role of the civil law (as opposed to criminal or administrative law) in combating corruption, and drafted a model code of conduct for public officials.

5 "The Role of the IMF in Governance Issues: Guidance Note", was approved by the IMF Executive Board in July 1997.

is not clear to what extent it might cover bribery of political party officials⁶.

- ◆ **Laundering of the proceeds of corruption** – provisions relating to the laundering of the proceeds of corruption could be strengthened.
- ◆ **Offshore financial centres** – safeguards are needed to prevent them from being used to harbour the proceeds of corruption.
- ◆ **Balance in accountability** – aid and international lending agencies need to strengthen their procedures and rules in order to increase the internal scrutiny and accountability of their staff.
- ◆ **Shared responsibility for outcomes** – there should be a more open acknowledgement by donors and international financial institutions for their share in the responsibility for programmes which they help design and for the policy advice they provide.
- ◆ **Lack of balance in exposure** – at present, the main efforts (e.g. Transparency International's corruption index) to rank performance in relation to corruption seek to rank countries. There is no comparable effort to rank international corporations. In general, there is a need to direct the spotlight on the behaviour of these corporations⁷.

It should be noted that developments currently underway may fill some of these gaps. The OECD's work on money laundering is at an advanced stage. The IMF and the World Bank are moving towards greater openness in their negotiations with their members. Both institutions and other donors have strengthened their financial and technical assistance in support of national efforts to improve governance and combat corruption.

Further movement in the direction of publishing the details of key international financial negotiations and mission reports by the international financial institutions would be welcome, as part of a process of increasing transparency that generates greater public information about policy issues and programme formulation. Governments should take advantage of the new openness to make maximum public disclosure of the contents of international financial negotiations and agreements.

6 The OECD Working Group on Bribery in International Business Transactions has under consideration five areas in which there may be gaps in relation to the criminalisation of the bribery of foreign public officials: bribery of foreign political parties, payments in anticipation of a person becoming an official, the money laundering of bribes, the role of foreign subsidiaries in bribery and the role of offshore centres.

7 Transparency International is currently developing the methodology for an Active Bribery Index, which would evaluate countries on the basis of their companies' propensity to bribe.

To increase public participation and national ownership of reform programmes, key documents such as Policy Framework Papers, Letters of Intent, and Letters of Development Policy should be published by the borrowing countries and widely disseminated, unless there are valid reasons for non-disclosure.

The results of monitoring and of operational evaluation by aid agencies and national governments should get maximum public exposure. The wider public dissemination of national and international reports on corruption should be encouraged, to increase public knowledge of the extent of corrupt practices and possible avenues for reform.

In line with its 1997 guidelines, the IMF should be even-handed by raising governance and corruption issues in developed countries when exercising its surveillance function, as it does in developing countries when it is financing programmes. Measures to improve governance and reduce corruption should be domestically owned. When they are imposed externally as conditions of financial assistance they are rarely effective. However, since the availability of external funding (both project and non-project related) has the potential to encourage corrupt practices, 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 recently adopted in several World Bank structural adjustment loans, could be used more widely to achieve more effective timing and sequencing of reform measures without holding up entire programmes. To promote national ownership of reforms, donors should agree with governments on the objectives to be achieved, identify alternative paths to those ends, but leave the route to be selected to the government⁸.

The work of Transparency International in monitoring global corruption is to be welcomed. Working with national governments, Transparency International is promoting "integrity workshops" which will help raise consciousness about corruption issues. Its proposals to collect data on public procurement costs of selected generic items also

8 As recommended in the Report of the Independent Evaluation Group on the IMF's Enhanced Structural Adjustment Facility, January 1998.

warrant support. Transparency International's Corruption Perception Index should be improved by increasing its comprehensiveness, extending the data sources on which it is based, and providing some indication of trends over time. Monitoring should also be extended to include multinational corporations. Other credible international NGOs which are involved in monitoring corruption and campaigning against it also deserve international support.

It is difficult to determine how the international arms trade is financed, e.g. through military aid, debt creation, compensatory trade offsets, or cash transactions. The secrecy that surrounds the trade often encourages corruption in these transactions. Greater efforts are required to increase transparency and reduce corruption in this sphere.

Three actions would help to achieve this:

- ◆ a new code of conduct covering the international trade in arms, requiring the disclosure of far greater information than is currently provided by all the parties involved (the recipient government, the arms suppliers and their governments)⁹;
- ◆ wider and more detailed reporting of arms trade transactions in the UN arms register;
- ◆ the inclusion of specific clauses in arms sales contracts that reduce the role of middlemen and ban illegal commissions.

There is also a need to reform aid policies by reducing tied-aid, and by monitoring suppliers' credits. The tying of aid to procurement from the donor country not only increases costs but also reduces the scope for competitive bidding. This increases the incentive for corrupt practices on the part of the suppliers, both in relation to the recipient and the donor agency. Likewise, supplier credits can be used to fund projects with little equity involvement on the part of the promoter, thus generating quick returns which increases the scope for pay-offs. There is also a need for transparency to expose conflicts of interest among those involved in project formulation, appraisal and implementation (e.g. where firms involved in project formulation and appraisal are also contracted to undertake project implementation).

Stronger conditions attached to aid projects which ensure that procurement and disbursement related to the project are shielded from corrup-

9 This should take account of other initiatives which include the Code of Conduct on Arms Exports adopted by the European Union's Council in May 1998 (the Code is to be reviewed annually and may be progressively strengthened); and the draft International Code of Conduct for the arms trade which has been drafted by a group of former Nobel Peace Prize Laureates headed by Dr Arias, former President of Costa Rica.

tion, and blacklisting contractors who engage in corrupt practices, are desirable. All international financial institutions, multilateral development assistance agencies and bilateral donors who have not already done so should adopt anti-fraud and corruption provisions in their procurement guidelines similar to those adopted by the World Bank in 1996.

International support for basic harmonisation of national laws on corruption will facilitate international co-operation in the investigation and prosecution of these offences, particularly in the areas of extradition and mutual assistance in criminal matters. In this regard, the European Criminal Law Convention on Corruption is a good model.

A Role for the Commonwealth

Commonwealth governments should lend support to the international initiatives outlined in the previous section of this Report. In parallel with formal international conventions of the kind being promoted by the OECD, there is an equally important role for less formal co-operation between countries. Given its voluntary and informal nature, its democratic ethos and the common legal traditions shared by its diverse membership (which includes both developed and developing countries), the Commonwealth is particularly well adapted to provide channels of communication and mutual aid in tackling the delicate and controversial political issues which must be confronted in combating corruption.

The Commonwealth can reinforce efforts in some areas which are not susceptible to formal legal compacts or are not the primary concern of the other multilateral organisations which have taken initiatives in this area. In particular, the Commonwealth is in a good position to promote dialogue on the political aspects of reform, and to sponsor initiatives for the strengthening of legal institutions required for effective enforcement of anti-corruption measures. There is a rich and varied experience among Commonwealth countries in efforts to improve governance and combat corruption. This has included notable successes in uprooting deeply entrenched corrupt practices. Although the diversity among Commonwealth countries (e.g. in relation to income levels) may mean that some approaches will need to be carefully adapted to be transferable, the legal and political traditions shared by many Commonwealth countries suggest that there are many useful lessons to be learnt by sharing experiences.

The Expert Group considered the advantages and disadvantages of different instruments through which the Commonwealth's commitment

to promote good governance and combat corruption might be best expressed in tangible terms. One approach would be for the association to have its own legally binding instrument or convention on governance and corruption. Such an instrument would reflect the Commonwealth's specific concerns, values and aspirations and its effectiveness would be subject to Commonwealth control. Because of its legally binding nature, a convention would give 'teeth' to the Commonwealth's commitment and greatly strengthen the enforcement of anti-corruption measures at national levels. It would also help to improve foreign investors' perceptions of the investment environment in many Commonwealth countries.

On the other hand, many Commonwealth members might have strong reservations about the negotiation of a legally binding instrument, as this would be historically unprecedented and constitute a radical departure from the Commonwealth's tradition of articulating collective commitments of the association through morally, but not legally, binding declarations adopted by consensus. Furthermore, the process of negotiating, signing and ratifying a Commonwealth convention could prove to be a protracted as well as a costly enterprise. In addition, in some regions of the Commonwealth, a legal instrument confined exclusively to the Commonwealth might not be effective when the co-operation of neighbouring non-Commonwealth countries is needed to tackle trans-border problems of corruption.

An alternative approach, more consistent with Commonwealth practice, would be for Heads of Government to adopt a morally binding declaration of principles which would provide the foundation for concerted action by the association to promote good governance and combat corruption. Drawing on the analysis and discussion of issues in this Report, the Expert Group has proposed a possible framework for such principles. This could be supplemented by a Commonwealth scheme for the implementation of national and international measures to combat corruption.

Recognising the need for a broader, global campaign against corruption – in which it should play an active role – the Commonwealth could also agree to promote, in consultation with other interested parties, an initiative to launch, under the auspices of the United Nations, negotiations on a global, legally binding intergovernmental compact against corruption. Details of such a possible initiative are elaborated in Annex B.

Another option for consideration is whether Commonwealth governments might become parties to existing international, but not universal, conventions against corruption such as the OECD and OAS

Conventions and the Council of Europe's Criminal Law Convention on Corruption. This would appear to be a relatively simpler way of improving the enforcement of anti-corruption measures in Commonwealth countries. It is likely that Commonwealth countries which wish to join these Conventions would be able to do so, provided they are able to meet membership criteria and related obligations. However, the scope of some of these conventions (e.g. the OECD Convention) might be considered to be too narrow by some Commonwealth governments¹⁰.

The Group believes the Commonwealth's commitment to fight corruption and promote good governance should be credible, tangible and visible. It needs to be articulated at the highest level, which is by Heads of Government. Their meeting in South Africa towards the end of 1999 provides a unique opportunity for the Commonwealth to act sooner rather than later. Commonwealth governments should therefore consider carefully the most appropriate means of evidencing and advancing the Commonwealth's commitment to effective action to combat corruption. At their meeting in Trinidad and Tobago in May 1999, Commonwealth Law Ministers, in giving their full support to the adoption of a concerted programme of Commonwealth action to combat corruption, affirmed that they were unwilling to see any departure from the established Commonwealth practice of using declarations and schemes, rather than legally binding conventions. They felt that work being undertaken on governance and corruption issues in other international fora could be used judiciously to inform the development of a Commonwealth strategy. They also noted that Commonwealth initiatives could include the development of a Commonwealth scheme, accession to existing international conventions or the promotion of initiatives within the United Nations for a global convention against corruption.

There are a number of important practical ways a specific Commonwealth contribution can also be made to improve governance and combat corruption. The Group agreed on the following specific proposals for action:

- ◆ the Commonwealth Secretariat should assist member countries that request help in designing and implementing their own national strategies to promote good governance and eliminate corruption. Such assistance could take the form of technical assistance and training for capacity building in countries that face

10 A Note by the Commonwealth Secretariat on existing multilateral conventions on corruption and their membership criteria is at Annex C.

serious human resource and institutional constraints. The Secretariat should also compile and disseminate information on emerging good practice in combating corruption and improving governance, and gather information on a regular basis from members on their progress in implementing national strategies.

- ◆ the Commonwealth should finalise and adopt its draft Code of Conduct on Integrity in Public Office; and the Commonwealth Code for Good Corporate Governance should be finalised, taking account of the work on similar codes undertaken by the World Bank and the OECD, and disseminated widely.
- ◆ the Commonwealth and the international financial institutions should support the implementation of standards that have been agreed to ensure that offshore financial centres (many of which fall within jurisdictions of developed and developing Commonwealth countries) are not used to launder bribes.

The Commonwealth should also offer encouragement and support for the further development of the international initiatives described earlier. Areas where further developments should be encouraged include:

- ◆ further work by the OECD to tackle the issues of contributions to political parties and to strengthen measures against the laundering of bribes;
- ◆ the extension of the scope of the work of Transparency International to report on the behaviour of international business, along with improved reporting on perceptions of national corruption;
- ◆ further work by the IMF related to its Code of Good Practices on Fiscal Transparency¹¹; on developing, together with other institutions including the Bank for International Settlements and the World Bank, a Code of Good Practice on Transparency in Monetary and Financial Policies; and on the proposed Transparency Reports which would indicate country performance in these areas;
- ◆ support for the work of the Council of Europe on corruption;
- ◆ encouragement of other international agencies, including Transparency International, to focus attention on corruption associated with the international arms trade;

11 "The Code of Good Practices on Fiscal Transparency - Declaration of Principles" was adopted by the Interim Committee of the IMF's Board of Governors in April 1998.

- ◆ sponsoring more work on the specific needs of developing economies in relation to international agreements to combat corruption.

As resources at the disposal of the Commonwealth are limited, the Commonwealth Secretariat should seek to help member states in accessing other sources of funding to support national anti-corruption strategies and should identify actions which are additional and complementary to existing national and international initiatives.

The Expert Group believes that, if the Commonwealth is to make a serious contribution to the promotion of good governance and the fight against corruption, there will be a need to commit additional resources to enable the Secretariat to undertake the tasks outlined above. Given the potential economic, social and political gains, there is justification for the commitment of sufficient resources to support this venture.