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NOTES

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The term “country” as used in the text of this publication also refers, as appropriate, to territories or areas.

The term “dollar” normally refers to the United States dollar (\$).

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FOREWORD

This study is one response among many by the United Nations Agencies to a greater awareness of the need for ethics, accountability and transparency in the public service today, given their indispensable role in the development and governance of a nation.

Although the current concern with ethics and corruption is found around the globe, some regions are particularly interested in mitigating the damaging effects of unethical and corrupt practices. Africa currently faces enormous challenges in its efforts to achieve sustainable human development. The public service, as an institution, has a critical role to play in the development of a nation. But in many countries in the region, the public service has been downsized as a requirement of structural adjustment programmes and has had to operate under shrinking resources. On the one hand, many countries have made improvements to their public service as a consequence. On the other, there have been unintended consequences, such as an erosion of professionalism and ethics. The purpose of the project has been to assist African governments in introducing or upgrading policies and programmes to improve the management of ethics and conduct in their public services. In general, the study covers information available for 1998 with some questions also covering information going back to 1988.

This second volume of the final report contains reports at the country level, presenting more personal analysis and impressionistic views of the national consultants. Thus, the reader is requested to bear in mind that the following chapters do not represent any official position of the national governments or the United Nations. However, the initial drafts of the chapters were circulated to the relevant government ministries for comments by the UNDP Country Offices of the participating countries. This second volume is supplementary to the first volume of the project report, which compares the state of public service ethics policies and programmes in ten countries: Cameroon, Gabon, Ghana, Kenya, Madagascar, Namibia, Nigeria, Senegal, South Africa and Uganda. The first volume also presents other information gleaned from relevant documents. The study itself is based on the fieldwork carried out by the project consultants. Besides the two-volume report, the study has produced a supporting database in MS-ACCESS that contains the actual answers to the study questionnaire and texts of supporting documents and a web site (<http://www.unpan.org/ethics>) that presents key study findings and links to other related web sites.

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The Division would like to thank the Project Steering Group which was chaired by Daniel Antonio (Organisation for African Unity) with Aileen Marshall (Global Coalition for Africa) as Vice-Chair and made up of Finlay Sama Doh (African Association of Public Administration and Management), Aboubakry Ba (African Institute for Democracy), Rwekaza Mukandala (African Association of Political Science), Jide Balogun (Economic Commission for Africa), El Houssine Aziz (Rabat Declaration Ministerial Steering Group) and Howard Whitton (Transparency International). Under the guidance of this Group, the project has been implemented by Elia Yi Armstrong (Project Coordinator), Stefan Lock (Associate Expert), Mohamed Sall Sao (Interregional Adviser) and John-Mary Kauzya (Interregional Adviser). Kyo Naka (Governance Adviser) and Agostinho Zacarias (Senior Governance Policy Adviser) have been the focal points for the project in the UNDP Regional Bureau for Africa.

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Based on the contributions of the aforementioned people, the final report has been prepared by Elia Yi Armstrong and Stefan Lock. Stefan Lock also developed the project database. Stephen Ronaghan designed the web site. These project outputs have been designed to stimulate policy dialogue and action at regional and country levels to assist governments and other stakeholders in Africa to improve the management of the conduct of their public servants. The information presented in the project outputs was collected by independent national consultants who were not employed by or otherwise affiliated with their national governments. Although all efforts were made to consult the national governments, not all the information provided by the project necessarily reflects their views; nor does the project claim to cover exhaustively all information available from the national governments. Despite these limitations, it is hoped that the project outputs will serve as useful tools in disseminating information about the current state of public service ethics in the study countries.

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EXECUTIVE SUMMARY

There is a greater awareness of the need for ethics, accountability and transparency in public life today. This realisation has been supported by the emergence of a consensus that good governance and sound public administration underpin sustainable development. The impact of unethical and criminal practices in the public sector is unsupportable in the development of nations, resulting in a loss of confidence in public institutions and an erosion of the rule of law itself.

Although the current concern with ethics and corruption is found around the globe, some regions are particularly interested in mitigating the damaging effects of unethical and corrupt practices on the development of countries. Africa currently faces enormous challenges in its efforts to achieve sustainable human development. The region is home to many of the world's poorest countries and is associated with endemic diseases such as malaria and HIV/AIDS. Twenty per cent of Africans live in countries experiencing severe conflict.¹

Despite certain pockets of gains, the overall prospects for development for the region look dim. With declining export shares of primary commodities, a lack of viable manufacturing and service industries, capital flight and "brain drain", Africa is slipping from its place in the global economy. Among the many calls for urgent action, improving governance and resolving conflict are seen to be the preeminent pre-conditions to sustainable development.

Though other actors need to be involved, these identified actions are all areas in which governments and their public services have a critical role to play. But in many countries in the region, the public service has been downsized as a requirement of structural adjustment programmes and has had to operate under shrinking resources. On the one hand, many countries have made improvements to their public service as a

¹ World Bank *et al.*, *Can Africa Claim the 21st Century?*, Washington, DC, p. 1.

result. On the other, there have been unintended consequences such as an erosion of professionalism and ethics.

As one response, the United Nations Department of Economic and Social Affairs, Division for Public Economics and Public Administration (UN/DESA/DPEPA) launched a comparative study on *Public Service Ethics in Africa* in April 1999. This Support for Policy and Programme Development (SPPD) project was funded by the United Nations Development Programme, Regional Bureau for Africa (UNDP/RBA). The study surveyed ten countries—Cameroon, Gabon, Ghana, Kenya, Madagascar, Namibia, Nigeria, Senegal, South Africa and Uganda—with a view to getting a regional picture of the state of public service ethics policies and programmes. The overall aim of the project was to assist African governments in introducing or upgrading policies and programmes to improve the management of ethics and conduct in their public services.

The study covers the public service at the national or central level which, for working purposes, is defined as core government departments and agencies. Further, professional ethics has been defined, for the purposes of the study, as a system of shared values and norms that delineate how public servants should exercise judgement and discretion in carrying out their official duties. Based on these parameters, UN/DESA/DPEPA compiled comparative information on current legislation, policies, programmes, and—to the extent possible—actual practices that regulate the conduct of public servants. In addition, the study also collected background information on the structure of the public services, the recent history of public service ethics or anti-corruption initiatives in the countries, and the role of the private sector and civil society in overseeing ethics in the public service.

UN/DESA/DPEPA developed a detailed questionnaire that was used by national consultants

with pertinent expertise to carry out expert interviews and document analysis. A Project Steering Group was set up to guide the research process through ensuring the validity and reliability of the data gathered and to increase the participation of regional and national stakeholders. Based on the work of the national consultants and other supplementary information, UN/DESA/DPEPA has prepared the following outputs: a final report in two volumes, the first presenting a comparative analysis and key findings with annexed documents and the second with ten country reports which focus on the national consultants' views of the individual country situations, a web-based presentation of the study's key findings and a MS-ACCESS 97 database application which covers data from the survey and supporting information.

This second volume of the final report, which is supplementary to the first, contains country chapters reflecting the personal analysis and impressions of the national consultants. For ease of comparison, the chapters are organized under the same themes as the survey questionnaire: the context and structure of the public service; guiding, managing, and controlling conduct in the public service; and the role of non-governmental actors. In addition, the consultants were asked to make some recommendations on improving national anti-corruption strategies and the conduct of public servants.

The chapters show that there is a diversity of conditions in the participating countries under which the conduct of public servants is managed. According to the national consultants, the conditions range from "weak institutional capabilities, ill-defined rules...and inadequate, incoherent and obsolete laws and regulations" (Madagascar) and "an elaborate mechanisms for managing and controlling the conduct of the public servants(:) despite (which), however, the management and control of the conduct of public servants continue to be problematic" (Kenya) to "whilst many of these (anti-corruption) institutions have been fairly effective in fighting corruption and unethical behaviour, the lack of sufficient resources to fulfil their mandate has been identified as a major problem" (South Africa).

The chapters iterate the findings of Volume I of the final report by revealing the importance of the specificity of the political, economic, social, cultural and administrative history and backgrounds of the countries in defining the ethics and managing the conduct of their public services.

Despite the differing backgrounds of the countries, the national consultants offered similar types of recommendations for improving ethics in the public service. Their recommendations were analyzed and categorized for ease of reference. Roughly, the recommendations can be grouped as the following:

Public service environment:

- Uphold merit or professionalism;
- Ensure fair representation of all social groups;
- Enforce civil service regulations;
- Improve remuneration;
- Better equipment and resources;
- Improve transparency or record keeping; and
- Open up and make transparent public tenders.

Guidance and management of conduct in the public service:

- Strengthen ethics or anti-corruption legislation;
- Implement codes of conduct;
- Training on administrative procedures and ethical norms;
- Verify or make public disclosures of conflicts of interest;
- Demonstrate political support from a high level;
- Coordinate existing institutions; and
- Conduct more research.

Control of conduct in the public service:

- Improve complaints procedures;

- Encourage and protect whistle-blowing;
- Give more resources and independence to investigating agencies;
- Strengthen oversight role of parliament;
- Improve law enforcement;
- Prosecute corrupt acts or train prosecutors; and
- Give judicial independence.

Non-governmental actors:

- Adopt charters and service standards for citizens;
- Organize a national ethics/anti-corruption strategy or coalition;
- Promote civic education or non-governmental organization (NGO) participation;
- Encourage traditional leaders to promote ethics;
- Support freedom of the press or offer training on investigative journalism; and
- Promote ethics in the private sector.

Among these categories of recommendations, the most frequently advocated are the following (see attached Annex for a distribution of countries):

- Promote civic education or NGO participation; and
- Implement codes of conduct.

These are followed by the recommendations listed below:

- Adopt charters and service standards for citizens;
- Strengthen ethics or anti-corruption legislation; and
- Uphold merit or professionalism.

The above-mentioned recommendations at the country level in conjunction with the findings at the regional level may assist countries to clarify policies. In short, an examination of the countries' ethics infrastructures reveals that although many ethics provisions exist at the policy level, they are inadequately or not implemented on a daily basis.

To assist countries to better implement their existing or to introduce new ethics policies and practices, the results of the study will be widely disseminated.

In addition, dissemination at the regional level will be undertaken to promote "benchmarks" or common standards to promote ethics and combat corruption in the public service. In this fashion, the countries can mutually benefit from the experiences of one another and explore partnerships and cooperation. Thus, the countries will be better able to achieve a professional and ethical public service, one which can play a key role in the better governance of their nations and ultimately, in the sustainable development of their region.

CHAPTER 1: CAMEROON

Background on the national public service

There is no consistent measure of public sector performance in Cameroon. Nevertheless, a number of surrogates indicate a decline in performance. First, an examination of relevant social and economic indicators shows that fiscal resources have not been well managed. For instance, Cameroon's total debt as a percentage of export rose from 13.5 per cent in 1980 to almost 70 per cent in 1992. There are estimates that Cameroon's total debt represented 73.2 per cent of the country's GNP in 1993. Similarly, government expenditures continue to outstrip public revenues. The average fiscal deficit rose to 9.8 per cent in the period between 1988 and 1993. Domestic resource mobilization through savings and tax collection is low. A lot of expenditures are still used for defense.

A review of public service performance in Cameroon reveals a decline in service delivery. The Cameroonian civil service is thought to be inefficient, demoralized and unresponsive, characterized by low productivity and complicated administrative procedures. There seems to be an increased absenteeism, indifference and negative behavior.

The performance by the Cameroonian civil service has fallen relative to its labour costs, total expenditure levels or GNP. High levels of overstaffing for junior and unskilled cadres and large vacancy rates at senior or professional levels exist because of brain drain. All these measures point in the same direction of public sector decline over time. Perhaps the most symptomatic cause of decline is the decrease in capacity to measure performance, to self-regulate or self-correct. The capacity for policy analysis and management has also declined in Cameroon.

The years of autocratic rule in Cameroon, immediately following the colonial bureaucratic state, produced a public service that was highly cen-

tralized but weak. Its capacity for achieving the goals for which it was established—to provide goods and services such as administration, law and order, infrastructure, and mobilization of resources—was inadequate.

Until the reforms of 1980 and 1990, the Cameroonian government was centralized: constitutionally, in terms of the relationship between the state and civil society structures; institutionally, in terms of the dominance of the executive over institutions of governance; administratively, in terms of the concentration of resources (personnel, finances and discretionary authority) in the center as opposed to the field offices. The state dominated the economy and established many parastatals. This, combined with the high level of financial centralization in central government departments at the expense of local government authorities, led to a situation in which Cameroon could be described as patrimonial (Ndue 1999).

A centralized and patrimonial system posed three sets of problems for the development of appropriate institutional capacity. First, it led to static policies for the economy and the civil service, which are detrimental to the development and sustainability of institutional and human capacities. Whereas the state dominates ownership and management of activities, it leaves its most essential facilitative and regulatory responsibilities poorly attended to. Economic policies tend to discriminate against producers in favour of consumers. Secondly, the political leaders did not pursue policies which enabled them to attract or retain skilled administrators. The result is a vicious circle in which officers with low levels of skills produce economic and public policies which tend to generate a further downturn of the economy. Thirdly, the patrimonial state tends to intimidate rather than submit to its own citizens.

The efforts aimed at reforming the Cameroonian public service have further enervated the delivery of services in the last three decades. The pre-

1980 reforms had the following major emphases:

- The localization or Africanization of public services personnel, especially at the top level;
- The restructuring of the public service to ensure political control;
- The reclassification of various cadres; and
- The administrative concentration and the transformation of semi-autonomous local authorities into local administrations as an extension of the state bureaucracy (but this process was frustrated by the existence of the one-party system).

The reforms, attempting to adopt modern management techniques, emphasized development planning structures and the use of public enterprises but resulted in the wholesale or partial politicization of the public service (Beyene and Otobo, 1995).

On the other hand, post-1980 reforms were the institutional complements to the structural adjustment programmes (SAPS) that were encouraged by international financial institutions. These were seen as the solution for taming the financial crisis confronting Cameroon. These reforms focused on the civil service (a reduction of wage bills and the reform of pay and employment incentives), the economy and financial management. The reforms were premised on the assumption that substantial net savings could result from a reduction in civil service size. It was thought that these savings from the cuts would bring improvements in civil service salaries and conditions. These expectations have, unfortunately, not been borne out in practice. The Cameroonian civil service continues to swell in number, and the wage bill continues to rise.

In sum, whereas the earlier reforms (pre-1980) enhanced a monolithic state through one-party rule and made the executive branch unaccountable to the public, the post-1980 reforms were primarily of an economic nature. The reduction of public sector employment was secured (for a while) but this did not lead to sufficient savings to enable the tackling of the more difficult

objective of improving public sector incentives. Combined with other elements of structural adjustment reform, the result has been the aggravation of salary erosion and the loss of skills needed for policy management.

Moreover, the post-1980 reforms also underestimated the critical importance of public sector institutions in providing an enabling environment for private sector growth. All of these results were further compounded by the tendency of reform initiators to rely heavily on foreign technical assistance, without seriously tackling the critical problem of the retention of skilled resources within the Cameroonian public service. Fortunately, in the emerging consensus, increasing attention is being given to the importance of governance or political norms in economic and political reforms. But the structural and operational impacts of these efforts have remained minimal, leaving the monolithic administrative systems intact below the thin veneer of political pluralism. Yet, what is required is the transformation of the administrative system from a monolithic structure to polycentricity (Olowu, 1995).

Background on public service ethics and anti-corruption initiatives

Various explanations of corruption have been proffered. First, historical factors or outside interests are invoked. For example, it is suggested that traditional values predispose the country towards corruption. Another view is that the requirements of modernity and cultural transmission have resulted in unsettled value conflicts. Therefore, corruption was more or less introduced in Cameroon by colonialism. Yet another view is illustrated through a tendency by a clerk to extract a bribe for a file to be moved through a routine process. Western business concerns, as a covert mechanism for the transmission of behaviour patterns, played a significant role in the corruption found in the Cameroon.

Second, corruption is seen as being due to a lack of commitment on the part of the leadership to the public interest. The problem in Cameroon is a function of the international economic system, especially the mechanisms and structures through which Cameroon is linked to the devel-

oped market economies. The Cameroonian bourgeoisie, technocrats, administrators, importers and exporters all have a vested private interest in maintaining their country's state of dependency.

The third explanation is widespread poverty among Cameroonians. Factors on the ground show that currency devaluation, inflation, retrenchment of workers, unemployment, and factory closures cause hardship and lead to corruption.

The fourth explanation is the non-existence of social services. There is no national system of social security, health insurance or unemployment benefits.

Finally, political interference encourages corruption. Political appointments to boards, corporations or parastatals are often made without taking merit and other requisite important competencies for public office into consideration.

In Cameroon, corruption has always manifested itself in the awarding of contracts. This brings together two groups: a supplier/contractor of goods and services and the public or para-public institution—represented by a person or a commission, a vote holder, the accountant and the paymaster. For instance, the person who wins the contract has to secretly pay a previously agreed upon amount of money as a kickback to the one who does the signing, who is generally the vote holder. Corruption here is carried out in a number of stages: during the placing of the purchase order, the awarding of the contract, the signing of the contract, the implementation, technical reception and delivery of supplies, and during the payment of bills, when up to 30 per cent may be deducted from the contractor's bill by the government treasurer as a bribe.

Second, as in other countries, there is corruption in the customs service. According to studies carried out by Gerddes (1999), many of the customs officers carry out corrupt acts through lien on abusive seizure of goods, the use of false documents and special waivers.

Third, graft can be found in the army and in the forces of law and order. In the forces of law and order, a person may be appointed into a position of responsibility either because he belongs to a

certain ethnic group, because he has paid money or because he supports the regime. This also applies to many civil service appointments.

Fourth, some people feel that corruption has taken root and is flourishing in the judiciary. Every day one finds clients in the corridors of the legal departments. In order not to lose a case against an adversary or in order to be granted damages in cases which one would normally have lost, one must offer bribes in cash or kind to the employees of the legal departments. Sometimes, the magistrates may deliberately seek a business owner to inform him or her that he or she has a suit against him or her or against one of his or her relatives. In return for this discreet information, the magistrate receives gifts, both in the form of money and fuel coupons. Sometimes the plaintiff pays money to have his or her adversary thrown in prison. To be granted bail or released, a prisoner has to give a bribe of a predetermined amount to the prosecutor or judge.

Strangely, it has been noticed that a member of the judiciary is often obliged to bribe a colleague before he or she can be rendered a service that is ordinarily free of charge. It can be said that the evil has eaten so deeply into the fabric of this society that it does not spare the corrupt persons themselves. Generally, the president of the court himself handles files with considerable financial stakes. If the file is assigned to another magistrate, he feels obliged to express his gratitude to the head of court by giving him a bribe. Magistrates of the legal department, who serve as the prosecution, trade their favors and come down heavily on judicial police officers and bailiffs. They abusively quash the implicated cases after being corrupted by litigants.

Finally, political corruption that constitutes the sale of voting cards and rigging by administrative authorities can be found. Candidates distribute food and drinks in exchange for votes. Some voters demand to be paid cash before voting. The mandate of the representatives of political parties in polling stations is constantly sold for money to an official of a rival party. Bribes are paid to members of the electoral commission.

In the face of this situation, the government started an anti-corruption campaign (Gerddes 99) and carried out a survey, according to which many Cameroonians (43.56 per cent) felt this was a good initiative. Some 36.95 per cent said the difference is not great because the police and medical staff have remained as corrupt as ever. For them, the situation has worsened. The reasons for this, according to those surveyed, are two-fold. First of all, the government spent all of its time talking and not taking any action against those guilty of the practice. Secondly, those who seem to be most guilty of corruption are highly placed persons in the regime.

It should be pointed out that the government had no intention of digging into the past: "We are not going to divert attention by going into files which are ten, twenty or thirty years old," warned the Minister of Public Service in an interview on April 9, 1999. Because no visible measures have been taken since the campaign started, the public is convinced that the government has no intention of ending corruption. As a result, corruption has intensified. The sectoral survey on the practice of corruption in key areas of economic and social life in Cameroon, conducted from January to April 1999 as well as the conclusions of the 23-24 March workshop by Gerddes confirm this view.

This section can be concluded by saying that the lack of morals, the immunity enjoyed by the corrupted and the corrupters and the degradation of living conditions of workers are the real causes of corruption (Gerddes, 1999). Gerddes does not question the effectiveness of punitive action against corruption and does not underrate the social impact of measures taken to improve the living conditions of the public in general and of the public and private sector workers in particular. But the analysis of the data gathered on the field shows that there is a need to look beyond the causes given in this report. Before the reduction of salaries, corruption existed, though not on a large scale. Today, some magistrates, customs officers, the military and other public and law and order officials whose remuneration was maintained or even increased, in spite of the ravages of the structural adjustment plans, are among the most corrupt in the Cameroonian society.

The Cameroon *Penal Code* provides sanctions against corruption, especially Chapter III, Sections 134, 134(a), 135 and 136. But court judgments are hardly meted out. What usually occurs is that people are sacked from their jobs, detained and in some instances released. A case in point is the recent financial scandal involving the former Minister of Posts and Telecommunications and some of his collaborators, who have been sacked, detained and are still awaiting trial. The former Minister of National Education and Public Works was sacked for embezzlement of public funds, but no formal charges have been brought against him yet.

Guidance for public servants

All instruments governing the management of state employees are essentially regulatory, apart from the Labour Code, which has only an indirect effect on this category of workers. Civil servants have repeatedly, and so far unsuccessfully, drawn the attention of the authorities to this problem. However, the Constitution has, since independence, considered the rules and regulations governing employees as belonging to the legal rather than the regulatory domain. One of the consequences of this situation is the non-respect for the intangibility of acquired rights in certain domains.

The instruments regulating the management of state employees are numerous, in many respects obsolete and sometimes incomplete. This situation, therefore, poses problems. It affects the adaptation, updating, enrichment and notably the introduction of codes of ethics and of deontology in all sectors, as well as the necessary provisions relating to complaints and claims.

The conditions of access to the public service remain heterogeneous. Although recruitment by competitive examination is the rule, on the basis of the equal opportunity for all to access government jobs, other possibilities exist. In particular, this is the case with the recruitment of contract employees, without any competition, advertisement and—in certain cases—sufficient objectivity. However, the latter are called upon to occupy the same positions and to carry out the same duties as their civil servant colleagues of corresponding grades. They are also subjected to

the same conditions of service and age for entrance into the public service as well as for departure on retirement. They may even, thereafter, be integrated as civil servants, through selection. But they receive lower salaries than civil servants at corresponding grades and duties. They are, moreover, governed by a different retirement scheme. This situation is obviously frustrating to them and brings about distortions or even shortcomings in the selection process.

Since 1993 (when the salaries were first cut by 20 per cent in January and again by 50 per cent of the remainder in November), civilian civil servants of corresponding grades and indices earn a different salary from that of the men and women in uniform (army, police, gendarmerie, penitentiary administration, who have suffered only one reduction, 20 per cent in November 1993). This situation, combined with the effects of the 50 per cent devaluation of the CFA Franc in January 1994, led to an important demobilization, summarized in a simplistic but famous slogan: “*petit salaire, petit travail, grande débrouillardise,*” which can be translated as “small salary, little output and struggle to make ends meet by all means.” This slogan was introduced in addition to another very deep-rooted one: “A goat browses where it is tethered.” In other words, the civil servant draws profit from his or her function.²

The public service is itself a hybrid; it is a combination of a career system and a fixed-term appointment system, with the former dominating over the latter, in spite of the law.

Furthermore, the special rules and regulations present numerous disparities, reflected by differences that are not always justifiable, as concerns the conditions of service and remuneration (index points and different recruitment categories, different advancement conditions, etc.).

Instruments of management emphasizing performance are either non-existent or poorly used (for the few that exist). One of the consequences is the poor management of careers (notably the

² In many Cameroonian languages, the traditional homily is formulated as follows: “A goat browses where it is tethered, but it is there too that the snake bites and kills it.” But this second part has since been omitted from the saying.

transfer, promotion and punishment of employees), an inadequate evaluation system, the absence of follow-up of terms of office where they exist, the absence of quantifiable objectives, etc.

For example, a special type of *de facto* fixed-term position has been in existence for a long time. This position is not covered by laws enumerating the various fixed-term positions that a civil servant may occupy. The “transferred to other duties” fixed-term position is in fact not specified, because it is not (nor ever was) assigned a job description. Some employees have remained for more than ten years in such a position. Although they continue to advance in their grade and to earn their salaries—which is a serious wastage—we can imagine the psychological insecurity that haunts the persons concerned. We can also imagine the feelings that this “lucrative unemployment” can provoke in other colleagues occupying regular positions, and who can at any moment also find themselves in the same situation.

In spite of a laudable effort of deregulation and simplification inspired by the “New Public Management” trend, many procedures are still shaggy, complex, long, tedious—and not always codified. Service users are thus obliged to personally follow most of their files, with all the implications and consequences.

The quality of service is far from satisfactory. All investigations carried out so far, at the national level, notably in 1978-79, 1985, 1988, 1998-99 have clearly indicated that the citizen/user is very far from being satisfied with the performance of government services. Even though the working conditions are sometimes deplorable, the performance of the Cameroonian administration can be improved considerably.

All these problems and many others have been discussed and reflected upon at length. Relevant solutions have also been proposed during the preparatory meetings for the drawing up of the National Programme on Governance.

Furthermore, the Government adopted a first anti-corruption plan and named an *ad hoc* follow-up committee chaired by the Prime Minister. Sectoral programmes were drawn up for

more vulnerable ministries. Each minister concerned received terms of reference for his or her programme and had to set up a sectoral plan of action, comprising preventive and punitive measures. Unfortunately, no evaluation is available for the public at the time of writing this document, although the committee has held many sessions.

On 4 January 2000, the Government set up a National Observatory on Corruption. The membership of that Observatory was increased on 24 May 2000, to include more representatives of the civil society and the private sector. A chairman was appointed on 20 May 2000, while the appointment of all the other members was endorsed by the Prime Minister. The Observatory set to work immediately, and its members are to start a nationwide tour. Yet the institutional framework for the deployment of its activities is still awaited.

One of this present report's authors participated, in various capacities, at several seminars, organized within the framework of the campaign for the sensitization and drawing up of appropriate measures. Such measures have resulted in very slight improvements in certain sectors. However, serious as well as petty corruption remains conspicuous night and day.

The International Monetary Fund and the World Bank have taken steps to assist the state in focussing on anti-corruption measures in specific domains, such as hydrocarbons, forests, customs and other financial services, public contracts, etc. Other funding bodies are interested in other sectors, notably justice.

During the preparation of the National Programme on Governance and at several national seminars, the government placed special emphasis on the necessity to improve state performance and to involve the civil society in the management of state property. Integrity, transparency, accountability and the respect of human rights are given top priority in all programmes under preparation.³

The Governance Programme is much more complete than the Government Anti-Corruption

Plan, which contains mainly general principles. It is hoped that the implementation of this programme—which contains a more elaborate anti-corruption plan of action—will contribute to improving the performance of the administration in months and years to come.

Management of conduct in the public service

Professional ethics are one of the concerns of public authorities, at least in speeches. There are several sources of professional ethics, though incomplete in many respects (NB: the absence of codes of ethics and of deontology in several domains). The major problem remains a lack of political will to respect them scrupulously, beginning with the setting up of organs or structures created by laws. The following are some examples, among many others:

- The High Authority of the Public Service, conceived to play the same role as the “Public Service Commissions” in the Anglo-Saxon countries, has been waiting for more than ten years for its officials to be appointed.
- The Higher Council of the Public Service, created a long time ago and re-instituted by the General Rules and Regulations in 1994, is not yet operational.
- The Standing Disciplinary Board of the Public Service is not yet functional, for the lack of a law determining its conditions of application.
- In general, none of the laws of application provided for by the General Rules and Regulations have been signed since 1994.
- Since January 1996, the constitutional provisions, rendering obligatory the declaration of assets by certain categories of public servants before their assumption of duties and at the end of their duties, have never been implemented. The law of application has still to be enacted.
- The National Observatory on Corruption, exists only on paper, as no official has been appointed to the institution so far.

³ See the Document on the National Programme on Governance.

It is also worth noting that many advisory bodies, which play an important role at the levels of conception, follow-up and control, have remained dormant for many years. If we are pleased with the resumption of activities by the Interdepartmental Council, extended to the private sector in 1997 after more than 12 years of hibernation, the case of the Economic and Social Council remains a concern. This constitutional body has not been convened since 1983, the year of its last meeting. The term of the office of council members designated by the President of the Republic in 1980 having expired in 1985, no other law has been enacted to appoint new Economic and Social Councillors. Only the Bureau exists and functions as best as it can.

Another fundamental problem concerns the absence of harmony between laws on the one hand and practices on the other hand. Thus, some structures or important agencies are not appropriately used in accordance with their missions. In particular, this is the case of the inspectorates general that have existed in all ministries since 1988 and where we observe unsatisfactory results. In 1999, the Prime Minister organized a seminar so that they could be revitalized and also used rationally. The implementation of the recommendations of these important meetings is still being awaited. There is, nevertheless, a reason to be optimistic. The draft budget of 1 July 2000 to 30 June 2001 provides for supplementary means, in favour of the inspectorates general.

The shortcomings of government services, notably the system of appointments and the intrusion of extra-professional considerations into the management of careers (considerations linked to ethnicity or political affiliation, among others) considerably weaken the exercise of the hierarchical power, especially in the disciplinary domain. These shortcomings go unnoticed in the prevailing context, which is characterized by relative impunity at all levels. This situation compels some punished individuals to consider themselves as merely victims of injustice or to denounce sanctions as “scapegoating”.

The jurisdictional control is dependent, *de facto* but not *de jure*, on the attitude of the executive power. As the latter does not systematically

punish the violation of the integrity or essential standards of the public service, cases that can constitute jurisprudence are rare. Such cases (for which judgement became final) over the last five years could not be observed. This is in a country considered the most corrupt in 1999 in a world sample, on the basis of which Transparency International calculated its corruption perception index (99 countries).

The sanctions applicable by the professional orders have so far been rare. However, the National Bar Association has just taken some resounding sanctions against its former President of the Bar, and one can expect other professions to follow this good example.

As non-contentious appeals are very limited (only automatic right of appeal and hierarchical appeal are provided for), the public does not have any effective means of intervention. Even the implication of citizens and civil society in the management of state property is still dependent on the goodwill of the state, as the mechanisms of involvement, intervention or claims remain embryonic.

The Government is already aware of the following facts:

- Very few norms and procedures relating to output and performance are drawn up or are recorded in manuals. In general, there are very few manuals of rules and procedures. Besides, many employees are ignorant of what is expected of them, particularly in terms of output and performance. Training in training schools is inadequate and procedures are not always mastered. Many employees are not even trained in these schools.
- Although there are some appropriate legal instruments, the system of managing sanctions—relating to the general discipline of the public service, corruption, embezzlement of public funds, etc.—remains inadequate.

There are on-going projects to harmonize the general as well as special rules and regulations of the public service. These activities are to institute a new policy and methods of human resource management, based on the revision of laws, policy of recruitment, training, career

management, sanctions, promotions, remuneration, evaluation of individual and organizational performance, etc. As concerns the anti-corruption campaign, it does not yet have a body of effective and integrated measures and rules.

Control of conduct in the public service

The financial control of expenditure has been put into place since 1962, thanks to a public accounting reform. (Cameroon gained independence on 1 January 1960.) The problem in this domain is that of respecting the laws.

With the beginning of the oil exploitation (1978), a decision was taken to create a below-the-line account in which revenue from the sale of oil was to be deposited. The objective was both noble and laudable. The amount of the national budget would not become artificially inflated, with the risk of increasing running expenditure; the below-the-line account would be reserved exclusively for investment.

Internal control was organized, all the same. However, the Parliament could not know the amount of money paid into this account, nor follow up on its movements or control its management. Moreover, abuses of this account were later observed. Thus, the state General Manager of the National Hydrocarbons Corporation (SNH) declared to the press that he alone managed the entire oil revenue of Cameroon, under the sole control of the President of the Republic. Since the year 2000, the oil revenue has been taken over by the general budget of the state and transparency introduced.

Apart from this case, other examples where there was no financial control are not readily apparent. The problem at this level, as regards ex-ante controls, is therefore managerial, and not institutional. As for ex-post controls, two different categories of disciplinary measures are in place.

One of them is financial and is the responsibility of the Budgetary and Financial Council. This institution was set up in 1974 in order to examine cases of embezzlement, mismanagement of funds belonging to the state, local councils, regions, parastatal corporations, etc.

To study a case, the Council chairperson appoints a secretary and a rapporteur. The latter has full powers to investigate. Once she or he is satisfied with the merits of the case(s), she or he summons the accused officer to appear before lawyers, after she or he has received the file of the case with all its contents to prepare her or his defence.

The Council can inflict penalties ranging from a special fine to a ban on exercising official responsibilities involving the handling of public funds or holding of votes for up to ten years. If the embezzlement is established, the culprit has to reimburse all the money (or the equivalent in money in case of movable or immovable goods). The Council can also decide to forward the case to the competent court of law and/or the Public Service Disciplinary Board (which constitutes the second category of ex-post control bodies).

The public service statutes have set up the civil service Permanent Disciplinary Board, before which a civil servant may be tried. Separate boards exist for the magistracy, the military, the police, the penitentiary administration and contractual officers (having signed a contract with the government or having been recruited by a decision as state agents). However, no disciplinary board may ignore the principles by which the Public Service Permanent Disciplinary Board abides.

An officer may be tried for an offence or a serious mistake in his or her service. He or she may also be tried before the board for blameworthy comportment, having no link with his or her service. Sanctions range from written warnings to dismissal without pension. Intermediate sanctions include demotion, exclusion from service without pay for up to six months and dismissal without losing one's pension.

The Achilles tendon of the Cameroonian public administration, as it has been observed insistently during various deliberations or seminars

organized by the Government,⁴ is the lack of a system of complaints and claims that is efficient, sure and accountable.

Indeed, the present designated organization (the Departments of Mails and Petitions of the Presidency of the Republic in the Prime Minister's Office) exercises more a right of petition. There is a great need for mediation institutions. It is worth recalling here that the efficiency of a central or national mediation institution depends on its political and social authority within the administrative and political set-up. It is also linked to its influence in the society and its ability to bring about, in a timely manner, other forms of controls, remedies, solutions and/or sanctions. As for its credibility, it mostly depends on its independence and influence.

These conditions are rather difficult to fulfil when all of the members of such an institution are appointed by the Government, generally among officials close to the ruling class. This can be exemplified by the output of two national institutions which, in their respective fields and to a certain extent, can be compared to a national mediation agency. They are the National Council on Media and the National Committee of Human Rights and Liberties. Although they have been doing quite a good job, their output is far from being optimal, and their impact still needs to be increased.

That is why the institution of a national mediator, a protector of citizens, a public defender, an inspector general or whatever name it is called can only be of limited effectiveness in the present environment. Therefore, a national mediator's office should be complemented by a system of "communal mediation".

Communal mediation could be a system in which the citizens/users themselves, at lower levels (basic communities, local councils, subdivisions and divisions) select their own me-

diators for their communities. The size of the communal mediation bodies could vary from one in a basic community to five members at the divisional level, for instance. In the latter case, the government could appoint one of them.

All the members should be selected without any political consideration, but only on the basis of their personal merits: expertise, experience, influence in the area, professionalism, integrity and other moral and professional competencies. The institutions should be set up by law or by decree and the list of mediators endorsed by a regulatory act (from the President of the Republic or the Prime Minister).

Recognized as such by all the branches of government (legislative, executive, judiciary), they should be empowered to receive complaints from citizens/users against any government local agency or service, any regional or council service or any contractor supplying services to the community paid from tax payers' money (government contracts constitute a field where corruption is very rampant in Cameroon. As a consequence, supplies are rarely adequate, and public works do not last long.)

Their role could include the following:

- Eliminate the ordinary citizens'/users' impotence when they are before the administration or a contractor, giving them avenues for complaints and a recourse to redress any unjust situation;
- Explain to the complainants whether their claims are genuine or not;
- Consult experts in the field concerned;
- If the claims are genuine, take them to the competent arms of government on behalf of the complainants (be they individuals, groups, communities or corporate bodies) and make sure that their rights are preserved and respected;
- Act on their own initiative when norms or standards are not respected by government agencies or contractors;
- Invoke the intervention of the hierarchy of the agencies and services concerned, the competent arms of government charged with

⁴ The most recent are as follows:

- The seminar of Secretaries-General of Ministries (beginning 2000),
- Preparatory deliberations for the National Programme on Governance (1998-2000),
- Evaluation of the Cameroonian public administration by the services of the Ministry of Public Service and Administrative Reform.

investigations or controls, or a national mediation body when necessary; and

- Have the right to take matters to court if no satisfactory action is taken.

The national mediator should not have direct authority on community mediation bodies, nor consider them as part of his or her structure, although they should cooperate very closely. But these bodies should receive, as a part of their budgets, any national mediation fund (if such a fund be set up), on top of other funds made available to them either by the local councils, the regions, NGOs, business people, contributions from foreign countries or international bodies—for example, within poverty alleviation schemes. In fact, corruption, bad service quality and administrative bottlenecks or procedures have been identified among the main causes of poverty in Cameroon.

The advantages of the community mediation formula are many and varied. We can mention:

- Their proximity, accessibility, availability, expertise, influence and independence;
- The members, being notables from the community and having been selected from outside the administration without any partisan consideration, would be more accountable to their communities and not career-minded; and
- The officers in any administrative service will always be on the watch and thus strive to deliver quality services.

These are the reasons why the formula is highly recommended by the authors of this report.

Non-governmental actors

The law governing non-governmental organizations (NGOs) in Cameroon came into force on 19 December 1990. This law was highly criticized by some opposition parties in parliament. The 1990 law was no more than a sketch legislation amending and complementing Article 5 (4) of law No. 90/53 on freedom of association. Consequently, the law of 20 July 1999 was put in place. Among other things, it provides for the organization and functioning of the NGOs. It also states their rights and obligations, necessary

to fulfill their missions of general interest. The NGOs can receive gifts, aid and tax exemptions. Yet, the decree of implementation is still awaited.

The liberalization philosophy in Cameroon of the audio-visual media is epitomized by the voting into law the bill on social communication in 1990. The text of application has just been signed and published. It is important to note, however, that the existence of such a document is the basis on which these private radio stations, television and satellite televisions will operate. The text of application classifies radio stations into rural, urban, institutional, lay private, etc., and prescribes taxes for each of these groups to pay.

In civil society, churches have been vocal and taken concrete measures to redress corruption in Cameroon. The Catholic church, for example, has addressed a number of Episcopal letters to the government and to the society as a whole:

- 1977 Episcopal letter of the Bishops of Buea and Bamenda on *Bribery and corruption in Cameroon*;
- 1988 Episcopal letter of the Bishops of Cameroon on *The Involvement of the lay in the life of the Nation*;
- 1990 Episcopal letter of the Bishops of Cameroon concerning *The economic crisis in Cameroon*; and
- 1991 Episcopal letter of the Bishops of Cameroon on the need for *Peace and Dialogue in Cameroon*.

The Presbyterian church meeting of the Synod Committee, held in Kumba, 12-13 April 2000, addressed a statement to the government and the people of Cameroon. In this letter, the Synod Committee stated that “the gap between the poor and the rich will increase and this will create greater social friction unless something is done now to check it.” The church concluded that our “society is reeking with corruption that has dwarfed us before the eyes of the world.”

Recommendations

Many proposals are already contained in the answers to the questionnaires of the Public Service

Ethics in Africa study. The following may still be added.

Better management of human resources:

- Deconcentration of human resources management;
- Improved recruitment, training, evaluation, promotion and remuneration policies;
- Adoption of manuals of procedures;
- Use of modern technologies;
- Effective functioning of the various institutions charged with management and control;
- Actual independence of the judiciary and respect for court decisions;
- Bringing up to date the 1968 law on civil servants' unions; and
- Enforcing actual bilingualism in the public sector.

Better management of conduct in the public service:

- Adoption and promulgation of codes of ethics or deontology;
- Rendering functional the various institutions created to check corruption, fraud and abuse;
- Congruence between law and practice;
- Organizing a national forum on ethics and corruption in the Cameroonian society;
- Adoption of specific legislation on corruption, as was the case with banditry and highway robbery in 1972, and establishing an effective anti-corruption coalition; and
- Applying sanctions as provided by the law and taken up by competent bodies.

Reaffirming public service ethical norms:

- A merit-based system of recruitment and compensation, which reflects market scarcities;
- The removal of all laws and practices which undermine the idea of a professional, neutral, objective and impartial civil service;

- Ensuring the fair representation of all social groups (gender, race, ethnic, etc.) without sacrificing the merit principle in personnel recruitment and retention practices; and
- The development of training policy that ensures that every public officer is regularly exposed to new developments and required attitudes to ensure the realization of public service missions. Training programmes should also inculcate in all public officials the political and administrative culture of principled government and opposition, restrained partisanship and adherence to the rule of law.

Direct accountability of public service to the public; the notion of customer-driven services can be enhanced through the following measures:

- The adoption of citizens' charters which spell out the service levels that citizens can expect from specific civil service agencies and specified indicators of performance;
- The devolution of more responsibilities to local governments and self-accountable agencies;
- The creation or strengthening of public complaints commissions and anti-corruption agencies that are independent and have broad powers to ensure compliance of executive departments;
- The creation of mediation institutions at national, provincial, divisional, sub-divisional and local council levels; and
- Greater involvement of the public in measuring the effectiveness of public sector organizations and building this into the system of compensation (including annual national awards) for units or divisions of the public service.

Strategies for realizing the reforms:

- Adoption of the already drafted *National Programme on Good Governance and Fight against Corruption* and implementation of the strategic action plans contained therein;

- Putting in place an institutional framework to manage the reforms and organizing periodic reviews to refine the strategies;
- Strong partnership among the major stakeholders on public sector governance reforms;
- The civil society, mainly the Chamber of Commerce, professional associations of public servants and other professional groups, NGOs, etc. should be closely involved and should participate fully in the management of public affairs; and
- The provision of moral, technical and financial support from external stakeholders, such as donors.

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CHAPTER 2: GABON

Background on the national public service

Gabon was a French colony from 1849 until it became independent on 17 August 1960. At independence, the then authorities inherited an administrative framework that would be adjusted over time in accordance with the needs of the day. As far as the public service is concerned, Gabon, therefore, has a body of regulations and laws from the colonial period and other more recent laws that would be used to shape the administrative structure of the country.

In the area of local government, since 1975, two acts promulgated within six months of each other introduced new nomenclature, with the terms *province* and *department* being replaced with *prefecture* and *sub-prefecture*. The acts institutionalized two layers of government and also provided for a third layer, the district. However, the latter was not established everywhere. Nor was the local administrative area, which exists only in the urban context. The canton, on the other hand, was established everywhere and may be considered a basic component of local government, although it does not have the constituent elements of a local government entity. Therefore, a canton is at most a grassroots entity.

Act No. 14/96 of 15 April 1996 on local government reform in the Gabonese Republic was intended to reflect the democratization of local government institutions and policy decisions with respect to decentralization. Article 1 of the Act lists six layers of local government, from the province to the village, and two layers of decentralized government—the departments and local administrative areas.

The main issue worth noting is that the public service in Gabon is defined and governed by the Public Service Regulations—Act No. 18/93, and Service Regulations for Public Service Officials—Act No. 08/91 of 26 September 1991.

Background on public service ethics and anti-corruption initiatives

There is a considerable lack of discipline in the Gabonese public service, which is perceived to be riddled with relatively serious corruption. The condemnation of this evil, which undermines the smooth functioning of the public service, indicates that there is an ongoing problem with respect to public service ethics in Gabon, especially the failure to apply administrative rules and regulations on ethics.

The national conference of April 1990 restored democracy to Gabon and promoted a measure of press freedom, which permitted the opposition, in particular, to express its views on the malfunctioning of the public service as well as on public service ethics in Gabon. The various types of misconduct or reprehensible practices by public servants in the performance of their duties include:

- Embezzlement of public funds and fraudulent dealing with corporate assets;
- Forgery and the use of forged administrative documents;
- Non-observance of the professional oath;
- Absenteeism and lateness to work;
- Drunkenness at work;
- Rudeness and a lack of courtesy towards the service users; and
- A noticeable slowness in processing documents.

Such misconduct has been denounced by the public and even by the highest State authorities.

The instructions given by the President of the Republic in his “framework” letter of February 1999 addressed to the current Prime Minister regarding the fight against corruption is proof of this. The Head of State told the Prime Minister and Head of Government that:

As far as State finances are concerned, ...strict budgetary discipline must be the order of the day, the effectiveness and reliability of revenue collection must be enhanced while there must be effective oversight over the whole process of State expenditures—from planning to actual spending.

This quest for greater discipline, efficiency and transparency in the management of public finance should translate into a wide-ranging reform of the entire system of oversight (financial control, state control, the Tax Inspectorate, the Auditor-General's Office and the like) as well as the drafting, as a matter of urgency, of anti-corruption legislation.

Another example is found at the end of the year ceremony during which the constituent bodies and the political and religious communities presented their greetings and wishes to the Head of State for the year 2000. The main theme was rules of conduct, ethics and transparency, which are closely intertwined with daily life in Gabon.

As the 6-8 January 2000 issue of a newspaper noted:

We want the country to change, but can we change it by leaving the reigns of government in the hands of the very same people who are insensitive to the social ravages of rampant poverty and have, instead, fashioned corruption into an art form of governance?

As the President of the Economic and Social Council noted at the above-mentioned ceremony, such practices have dashed the hopes of the people and fuelled fears of a gloomy future for the country in the twenty-first century. He called on the President of the Republic to intervene.

Amid such grave concerns for the country's future, the President of the Economic and Social Council urged the President of the Republic to intervene:

to ensure that the impoverished population does not pay for the political elite's suicidal and shoddy governance, which

has led to capital flight, increasing poverty and widespread insecurity.

It should be noted that an opinion poll unfortunately reflected this concern.

Despite these appeals, the Government has not yet taken any steps to combat corruption and its related ills that pervade the public service and society at large. Thus far, the Government has not commissioned any official survey which has enabled us to assess, to a certain extent, the adverse impact of the misconduct of public servants. Nor is there any widescale operation to deal with such misconduct and ensure the application of the regulations in force. All of the initiatives are still in draft form.

Guidance for public servants

Generally, public service regulations require public servants to observe fundamental values such as neutrality, efficiency and equity, and to observe codes of good conduct and other specific guidelines.

In the view of the experts consulted in Gabon, values and standards should not only be made compulsory within the public services, ministries and other services, but should also be the bedrock of every profession. Since 1960, any national policy or bills have been based on such values and standards, which were instituted by the Constitution in 1961 and represent, in that regard, a "citizen's charter".

The public service charter, codified in the Public Service Regulations since 1993, endorses and reaffirms these values and standards.

The importance of such values and standards to public service ethics in Gabon is regularly underscored through constant reminders by the authorities, including through the end of the year addresses of the Head of State or through the general policy statement of the Head of Government.

Such official statements constantly stress the duty to instill the values and standards of the civil service in future officials. The institutions responsible for providing such training to the public service elite include the Gabonese School of Administration, which was established in

1963 and became the National School of Administration in 1970.

The basic prohibitions listed include combating the misappropriation of public funds; corruption; theft; falsification of accounts; fraud; extortion; blackmail; abuse of confidence; misappropriation of corporate funds; insubordination and gross negligence; insults and physical violence; and writing bad cheques.

There are additional standards and/or professional codes of conduct for specific bodies of the public service, namely, the security and defense services. Moreover, all public employees are required to ensure the application of the values and standards.

The Civil Service Ministry is responsible for the enforcement and monitoring of public service values. The following public servants at the central and decentralized levels are charged with that task: heads of services, directors, directors-general, permanent secretaries, governors, prefects, sub-prefects, heads of cantons, village chiefs and neighborhood leaders.

As far as legal restrictions are concerned, the Criminal Code lists a number of violations for public officials. Under the Organization Act No. 10/95 of 25 June 1995, the State provides for restrictions or prohibitions on public service managers. There is no formal training for public servants on ethics, with the exception of seminars during which reference may be made to cases of corruption.

Management of conduct in the public service

The authorities have not yet reacted vigorously to the abuses reported, including by the press. No national plan designed to restore integrity to the public service has been implemented. It should be noted, however, that an anti-corruption bill is being drafted upon the proposal of the Office of the Deputy Prime Minister, which is responsible for the Ministry of Justice. This initiative concerns the criminalization and increase of prison terms and fines for the offences covered by articles 144 and 146 of the Criminal Code (active and passive corruption); article 143 (embezzlement); article 145 (influence ped-

dling); articles 148 and 170 (related offences inherent in financial or business crime).

One of the Government's initiatives worth highlighting is the proposal on administrative reform, currently under preparation. Although the scope of this proposal is very broad, it is sure to have an impact on restoring discipline, State authority and the efficiency of public services, among other outcomes. In a nutshell, this proposed reform is sure to have a considerable impact on restoring good conduct in the public service.

In the same vein, it should be noted that on 7 October 1999, the Government published a report on the findings of the Interministerial Consultative Committee on Administrative Reform. Since December 1999, it has started work on a document intended to come up with proposals for enhancing the management of the careers of public servants.

Ethics and anti-corruption measures are crafted on the basis of the analysis of the risk factor inherent in any development policy. The goal is to make such measures priorities within a coherent and structured framework, conduct systematic analyses of failures, criminal behaviour and disciplinary cases, and propose a national strategy on integrity.

Control of conduct in the public service

Control of conduct in the public service is based on performance, which is measured through a system of marking and evaluation in the field. Moreover, regular evaluations are carried out at seminars or training courses organized for public servants.

Generally, the importance of public service ethics is emphasized during induction training or pre-recruitment interviews. The promotion of officials also affords an opportunity to reward the most deserving for their exemplary ethical behaviour. In that regard, the general rule is that recruitment and promotion are, at least in theory, based on merit.

Unfortunately, it should be noted that, in Gabon, the recruitment procedures provided for by the regulations are rarely used. Thus, only three internal and one external competitive examinations were organized in 1998, while none were

organized by the State in 1999. In fact, most of the recruitment was done on the basis of diplomas.

As far as transparency is concerned, regulations are respected in some cases. Such is the case, for example:

- With respect to the publication of rules and guidelines and, where applicable, vacancies in the public service for the public at large; and
- With respect to the selection of integrity either as a criterion for the evaluation of public servants (see Act 18/93 of 13 September 1993, articles 13 to 17, which define the obligations of impartiality, neutrality, integrity, disinterestedness, loyalty and discretion) or for their selection (see the provisions of article 46 of Act 8/91 of 26 September 1991 concerning the disciplinary regime for trainees).

In Gabon, managers in positions that are particularly vulnerable to corruption receive special attention. That category encompasses:

- Revenue collecting agencies of the State, such as the Customs, Lands, Treasury and Income Tax Departments;
- Government services that either deal with public procurement, such as the Ministries of Finance, Planning and Public Works, or with recruitment procedures and issuance of authorizations, such as the Ministries of Trade, the Public Service and Housing.

They are given special incentives in the general form of “common funds” or “performance bonuses”.

However, disciplinary measures are provided for in case public service regulations are violated. Such measures are gradual, ranging from a warning to a reprimand recorded in the personal file, to suspension, demotion (in-grade and seniority) and dismissal with or without pension (see article 129 of the Service Regulations for Public Service Officials).

In case of a violation or warning, there are legal provisions with prescribed procedures. Moreover, there is legal protection for public

employees who expose wrongdoing. A guarantee of anonymity also affords protection in proven cases of corruption. Reporting procedures are quite well known to members of the general public who can, should a violation be discovered or should they be victims of reprehensible treatment, report the case to the judicial or police authorities.

Moreover, service notes, circulars, administrative orders or decisions may be used to inform the public of procedures for filing complaints. The Office of the Ombudsman is another means of redress.

The conduct of officials in the area of public finance is monitored through the procedures put in place. It should be noted, in this regard, that the following general procedure is applied in respect of any operation in the area of financial management:

- Control by the immediate superior;
- Authorization of a payment by an official of the ministry;
- Payment by the Treasury;
- Control by the Ministry of Finance (Budget Division and Financial Control Division); and
- Audit by the National Audit Office.

Concerning the failure to respect procedures, an audit was conducted in 1999 of the management of the former minister and the management of the departments of the Ministry of Finance concerned since 1996. Unfortunately, such internal audits are not conducted regularly. Other similar internal audits are sometimes conducted, but their findings are not published. At the national level, the National Audit Office regularly establishes a report on the management of public and semi-public services, including the financial agencies, banks, all areas of national interest and budgetary control. Invariably, these reports are addressed to the President of the Republic and, to a certain extent, the Prime Minister and Parliament.

Such audits should play a dissuasive role, but their findings are often filed away without any follow-up action being taken.

The institutional arrangement established to deal with cases of misconduct and corruption, basically comprises the National Audit Office, financial control by the Ministry of Finance and the courts. But judicial police units and the Parliamentary Commission of Inquiry are also avenues that may be used to bring dishonest officials to light. When a case of corruption is brought to the attention of the Government, it may either inform the institutions concerned or resort to the legal and administrative mechanisms provided for that purpose.

In general, it is recommended that, in order to effectively combat corruption, a sustainable policy should be established that takes into account the realities of the country and includes:

- Very high moral standards for the elite;
- Well-targeted training programmes for the professions exposed to potential situations of corruption;
- Good remuneration for public servants; and
- Development of para-judicial inspection and control methods.

Such a policy must eschew political considerations, because political intervention constitutes an obstacle to effectiveness and objectivity and breeds impunity. The other major obstacles to further reduction in corruption in Gabon are:

- The lack of anti-corruption mechanisms;
- The lack of institutional reforms;
- The lack of any reforms of the legal and justice systems; and
- The lack of sanctions.

Non-governmental actors

The consultation of experts on non-governmental actors showed that enterprises operating in Gabon have an implicit code of good conduct. Such code is implicit, because it is not systematically formalized; however, it includes the usual values and standards of moral integrity.

However, there are no official “black lists” or registries of corrupt enterprises.

Professional associations play an important role by advocating a code of good professional conduct or by reprimanding their members. On the other hand, there are no professional associations or any other types of associations involved in efforts to combat corruption or organized crime in Gabon.

With respect to transparency, Gabon is among the countries that have unimpeded access to information on legislation, since bills and regulations are published in the official gazette of the Republic.

Press freedom is guaranteed by the Constitution (art. 94-102), the Code on Communications, the Organic Act on the National Communication Council and, in particular, Act No. 84/59 of 5 January 1960 on freedom of the press and freedom of opinion. That partly explains the role played by the press in denouncing cases of corruption or publishing confirmed cases of embezzlement.

Information on these laws and regulations and on Government activities and projects is published through such State mass media channels as the radio, television, press and official gazettes and even via the Government’s Internet sites. For example, information on the privatization of parastatal enterprises in Gabon can be accessed at the Privatization Committee’s web site.

No civil society organizations, be they religious institutions or community associations, are formally involved in monitoring the scourge of corruption. Action by such organizations is very often merely limited to verbal condemnation.

Recommendations

This present United Nations/UNDP survey on public service ethics in Gabon and the need to promote ethics and transparency in the country seems to meet the expectations of the people. They believe that, far from being counter-productive or mistimed, such topics should help create the best possible conditions for a coherent framework indispensable for a culture of democracy and good governance. Such a culture would encompass the long-term objectives for a society at peace with itself in terms of the

management of its economic, cultural, social and political affairs.

However, following missions to Libreville, experts of the Bretton Woods institutions expressed the view that, on the eve of the third millennium, outdated methods and technical procedures are still being used to run the Gabonese public service. Gabonese public servants still grapple on a daily basis with problems such as poorly kept files, lack of synchronization between the documents of the payroll department and those of the Public Service Ministry, tedious procedures, very elementary computerization of services and approximate or arbitrary career management.

Moreover, those members of civil society who were consulted think, for example, that the environment has an impact on basic freedoms. In Gabon, the people do not have enough basic freedoms. They feel that State and business leaders do not allow them to participate in governance. There is therefore an increasingly sharp clash between the people's interests and those of the ruling classes. Moreover, some non-governmental organizations note that, given the current situation, the complex administrative procedures constitute serious curbs on people's entrepreneurial freedom and therefore hamper the prospects for the people and the disadvantaged sectors of society to achieve greater financial autonomy. Indeed, Act 35/62 on associations, which was enacted in 1962, has still not been amended, despite the changed socio-economic context. Obviously, the laws are either outdated or not suited to the current needs of the population.

The general conclusion that non-governmental organizations and other civil society actors draw from the foregoing is that the Gabonese State hobbles civil society and stifles the spirit of initiative, thus forcing civil society to struggle to get by. Yet the energy of civil society, combined with the imperatives of the rule of law, could help to create optimal conditions for sustainable socio-economic development.

Transparency, ethics and codes of conduct, which are codified by legislation in Gabon (Ordinance No. 6/PR of 2 January 1962 concerning the prevention and punishment of em-

bezzlement and misappropriation of public funds) seem to be taboo topics. If daily practice is any yardstick, this state of affairs reflects an unacknowledged reality: the usurpation of the State and public property in Africa.

It should be noted that since 1990, Gabon has been making considerable strides in the political arena. Thus, a multiparty system has been established in the country following the national conference held in that same year, and the main institutions that are crucial to the establishment of a State governed by the rule of law are being gradually put into place. That is happening despite the apathy of certain political actors who are opposed, out of self-interest, to such a process.

Similarly, in view of the laxness of certain public servants, it is important for the authorities to take urgent measures to promote the development of a culture of ethics and transparency in the public service.

Therefore, in terms of the problems addressed in this present study, it is recommended that:

- The State should organize training sessions for public servants on ethics, similar to the training sessions on the nature of elections organized by the political parties;
- The State should introduce civics into the curricula of primary and secondary schools, and the different modern and traditional communications media should be entrusted with the teaching of popular civics;
- The State should redefine the social status of public servants;
- The State should reintroduce notions of merit and excellence into the functioning of the public service and greater discipline into the management of public finances and ensure that legislation against public servants found guilty of professional misconduct is strictly applied in order to combat the problems of laxness and impunity;
- Concerning administrative matters, the initiative for launching investigative procedures with a view to bringing charges should be left up to the parent ministry. Where an act of negligence comes under the jurisdiction

of civil or criminal courts, action should be at the discretion of the judicial authorities. The aim is to enable the executive, with a view to transparency and efficiency, to restore autonomy to the judiciary, in other words, to the civil courts. The purpose therefore is to adjust its control over the other regulatory bodies, according to the different priority areas identified, in order to achieve more effective results. The independence of the judiciary from the executive helps to bolster the fight against corruption and to establish a more democratic society, which has not always been the usual practice (F.P Nze-Nguema: *l'Etat au Gabon de 1929 a 1990. Le partage institutionnel du pouvoir*. Paris, l'Harmattan 1998);

- The State should agree to give up a part of its royal prerogatives in order to allow the traditional chiefs to play their catalytic role of promoting culture and ethics among

constituents. It should stop seeing traditional chiefs as competing poles of power and agree, with a view to multidimensional participation, to include them in the development of society;

- The State should agree to the establishment, in place of the current system of excessive centralization of power characterized by a lack of communication with traditional chiefs, of another completely different system that permits a wider debate among the various actors of society;
- The State should agree to redefine the purposes of Government initiatives as part of general negotiations with citizens and traditional chiefs;
- The State should prepare, together with traditional authorities, a citizen's guide as part of its governance practices and procedures.

CHAPTER 3: GHANA

Introduction

The incidence of corruption and related ethical infractions has been observed worldwide and persistently over time. The practice is, however, believed to be more pervasive in societies and polities undergoing “rapid social and economic modernization” (Huntington, 1968). In such new states of Asia and Africa with a recent colonial heritage, most of the institutions at the national level, legislatures, administrative machineries, state enterprises and corporations, and universities can be described as exogenous. They have been introduced in those societies to provide guidance for the post-colonial elites. A blend of the traditional and the post-colonial institutions has tended to breed administrative systems characterized by the Weberian concept of patrimonialism, which is a departure from the efficient legal-rational concept of bureaucracy.

Leaders in a patrimonial system exercise power based on their personal power and prestige. People are subjects with no rights and privileges other than those bestowed by the ruler. Authority is personalized, and political stability and political survival is secured through allocating favours and material benefits to followers. In most developing countries in Africa, patrimonialism has evolved over the last few decades. Military adventurism, as well as traditional and modern political systems, has blended into neo-patrimonialism by the application of the patrimonial formula to the modern state governance, leading generally to:

- A loss of public accountability;
- The personalization of relations of authority;
- The recruitment and promotions based on ascriptive grounds; and
- Development of an “imperial presidency”.

Thus, in a neo-patrimonial state, it is possible that when public roles are not consciously tied in to “a moral community”, they are likely to be utilized as vehicles for private plunder rather than public service (Price, 1975, p.35). This may

explain the wide incidence of corruption in countries which developed systems of neo-patrimonialism after independence. The extent to which Ghana fits this description is relevant to this study.

Background on the national public service

Ghana attained independent status within the British Commonwealth in 1957. In 1960, the nation was declared a republic with a parliamentary form of government but headed by an American-style president. The executive, legislative and judiciary institutions were all bequeathed to the country from over one century of colonial rule. Thus the problems of managing the newly acquired independent status were compounded by attempts to adapt a post-colonial administrative system and institutions.

Much of the political, social and economic problems that bedevilled the new state had to do with the mastery, or lack of it, of the new administrative systems and institutions exogenously acquired. Fashioning viable public administrative machinery from the mix of the ideal bureaucratic, legal-rational authority structure, charismatic leadership and traditional authority systems tested the capabilities of the young nation.

The development of Ghana’s public administrative system can be traced, like those of other African countries, by a review of the central challenges that have characterized the past four decades after independence. The public service, or the public administration system, is deemed to have responded to the challenges of each decade and effectively defined the issues for the following decade (Beyene and Otobo, 1994), including the conditions affecting ethical behaviour.

The 1960s have been described as the “Decade of Euphoria”, of “Great Expectations” or the “Golden Age” of Africa, following the acquisition of national independence. An elaborate development plan, the Seven-Year Development Plan 1963/1964-1970, was launched in a stra-

tegic bid to achieve rapid development and middle income country status. The high expectations turned into a dream when it was realized, belatedly, that the colonial administrative structures were unsuited for the task of nation building. The private sector was also found to be inadequately equipped for development management. As a result, the government resorted to state ownership to provide the instruments for socio-economic development. This policy led to the expansion of the public sector to include the civil service, public enterprises and local government. In the process, the pre-occupation with elaborate development planning, institution building and a military coup d'état in 1966 pushed the dream of rapid development beyond the reach of the first decade.

The second decade of the 1970s became the "Decade of Strain, Stress and Declining Capacity." Economic performance sagged, there were military interventions in national administration, and the deficiencies of the public bureaucracy became more painfully obvious. Public enterprises, created in the 1960s, expanded and made significant contributions to the GDP as well as to modern sector employment. The national military government ignored local government. It clung to the centralization of decision-making and power, sowing the seeds of neo-patrimonialism, lack of accountability and worsening socio-economic conditions.

The 1980s inevitably started as the "Decade of Economic Crisis." Ghana and other African countries had failed to take advantage of the 1970s as the United Nations Decade of Development. Consequently, the adoption of World Bank/IMF prescriptions, the Economic Recovery Programme (ERP) and Structural Adjustment (SAP) policies became unavoidable. The government, throughout the 1980s, was the military, neo-patrimonial regime of the Provisional National Defence Council (PNDC). The major reforms focused on the improvement of the capacity of the civil service and other public enterprises to achieve development objectives.

In Ghana, the Public Administration Restructuring and Decentralization Implementation Committee (PARDIC), 1984-86, was mandated to propose new structures and nomenclature for the

reforming public services. The Civil Service Reform Programme (1987-93) was launched to reduce the size of the civil service, introduce new ministerial structures and nomenclature and streamline operations at the Office of the Head of Civil Service to enhance its management of the civil service. Public enterprise reforms acknowledged the failure of state-owned enterprises as instruments to achieve economic development. Reforms, therefore, focused on divestiture or privatization of state-owned enterprises and performance improvement.

The 1990s were the "Decade of the Challenge of Triple Transitions." The transitions were from:

- A state-dominated economic order (state enterprises, central economic planning) to a market-based, globalized economic system;
- One-party or military rule to multi-party democracy; and
- Conflict and strife to political reconciliation and economic rehabilitation.

In order to meet the demands of those transitions, public service reforms continued from the 1980s. The National Institutional Renewal Programme (NIRP) was instituted in 1995 as an umbrella programme embracing the reforms in all public service organizations. These included the Civil Service Performance Improvement Programme, State Enterprise Reforms, Public Sector Reinvention and Modernization Strategy for Ghana, Legal Sector Reforms, among other things. The country moved from the metamorphosed military regime of the Provisional National Defence Council (PNDC) of the 1980s to two democratically elected governments of the same leadership in 1992 and 1996. A new Constitution was adopted in 1992 which, among other things, prescribed the extent of the public services in Ghana and a Code of Conduct (Chapter 24) for public servants.

The reforms and the democratic governance experiences of the 1990s continued into the 2000s with observable traces of neo-patrimonialism. The concept of the public services in Ghana has evolved over the years into a much wider one than in countries like Lesotho, where the public service is perceived to be the same as the civil service. In Ghana, the Constitution (1992, Chap-

ter 14) defines the public services to include the civil service, thirteen other services—namely the judicial, audit, education, prisons, parliamentary, health, statistical, national fire, customs and excise, internal revenue, police, immigration and legal, and the public corporations other than those set up as commercial ventures—and any others established by the Constitution or Parliament (Constitution, 1992).

Since independence, the country and the public services have been the subject of numerous development plans, economic reforms, administrative and institutional reforms and frequent changes in government—alternating between military and civilian regimes. As a result, the nation fits the description of one undergoing “rapid social and economic modernization”. Such societies, according to Huntington, tend to experience more ethical problems and corruption than others.

Background on public service ethics and anti-corruption initiatives

There is considerable evidence to support the view that no single issue in Ghanaian political life has generated as much attention and rhetorical debate as the issue of corruption in government (Price, 1975, p. 140). Between October 1999 and March 2000 there were no less than 20 newspaper articles on the subject (see Appendix). As far back as 1966, the point regarding the endemic nature of corruption was made, namely:

Corruption pervades life in Ghana. It is to be found in high and low places; it is practised by public and judicial officers, professional men, labourers and even children....Corruption exists in spite of all the laws that have been passed to deal with it (Oduro, 1966).

The general impression one gets after reading the two reports [of Commissions of Inquiry] on bribery and corruption is the appalling and disheartening high level of the corruptibility of all sections of Ghanaian society. Intellectuals, politicians, farmers, messengers, civil servants, businessmen, women, men, etc.

are all easily susceptible to corruption (Peasah, 1967).

The chairman of the Presidential Commission of Enquiry on Bribery and Corruption in the 1970s, commenting on the findings 25 years later, confirms that the facts are as relevant today as they were then; namely:

- The practice of bribery and corruption exists in Ghana.
- The practice is widespread throughout many government departments, public corporations, etc.
- It involves persons holding both high and low positions in the public service.
- It involves a large number of people in the public and private sectors.
- There is no sign that the practice is decreasing (Anin, 1999).

The promise to fight or rid the country of corruption has been the justification for virtually every successful or attempted military intervention in Ghanaian political life since the 1960s. The further promise to introduce probity, integrity, transparency and accountability into national life was made by leaders of the four military coups d'état in Ghana on 25 February 1966, 13 January 1972, 4 June 1979 and 31 December 1981.

On 22 November 1999, the leader of the last two military coups of 1979 and 1981, now President of Ghana, wrote to the President of the World Bank Group, Mr. Wolfensohn, requesting:

a diagnostic survey on corruption, the results of which would enable the government to design effective policies and strategies to fight corruption....The Government of Ghana would also like to assure the Bank that results of the survey would be used to develop an all embracing national, integrated anti-corruption strategy (The Crusading Guide No. 173, 6 January 2000, p.4).

This admission of the intractability of corruption by the leader of two coups, after twenty years in power, sums up the seriousness of the problem. It also indicates the ineffectiveness of previous

national efforts to deal with the problem. The crusade against corruption, referred to by the President of Ghana's letter of November 1999 to the President of the World Bank, to date, appears manifested more in exhortations—to the press; during Presidential Sessional Addresses to Parliament in 1998, 1999 and 2000; and during the visit of Queen Elizabeth II of Britain 1999—than in concrete action.

The main annoyance principle in the fight against corruption is its enormous cost. Loss of development funds, retardation of economic growth, flight of capital and the inflation of administrative costs are major economic costs. An example is where the Serious Fraud Office investigated 37 cases of fraud in 1999 worth about ₵9.5 billion, out of which only ₵2.2 billion was recovered (President's Sessional Address, 2000, p. 20). Other social costs of corruption include:

- Loss of legitimacy and respect for legally constituted authority by undermining the integrity of the social, legal foundations of that authority;
- Debasement of the moral fibre of society by nibbling away at the core values that bind society together; corruption is thus dysfunctional to the maintenance of a just social order;
- A heavy damper on motivation, stifling initiative and creativity, demoralizing the honest person;
- Violation of the individual's right to economic and social well-being;
- Nourishment of mediocrity and the undermining of the merit system of rewards, appointments and entitlements;
- Denial of access to facilities and services to those duly qualified for or in need of such services;
- Appointment of "square pegs in round holes"; and
- Market inefficiencies by the creation of bottlenecks in the bureaucracy in order to further the ends of exploitation (Attafuah, 1999).

The costs of corruption are also often listed in broad terms to include the fact that it:

- Accelerates crime;
- Limits investment;
- Stalls growth;
- Bleeds the national budget; and
- Undermines the nation's faith in freedom and democracy (Sapati, 1999).

It is against the background of the perceived high costs of corruption to the state and the individual that so much has been said about the phenomenon.

Initiatives taken to reduce the incidence of corruption may be grouped into two. Those that were put in place before the Fourth Republic, i.e., up to 1992, and those between 1992 and 2000. As indicated above, the major initiatives against corruption in the period before 1992 took the form of four military coups d'état. The democratically elected administration, on each incidence of a military coup, was unconstitutionally removed from power by the military, citing economic mismanagement and corruption as the main reasons. Assets were confiscated, ostensibly to the state, accounts frozen, ministers were jailed and—in one extreme case—three leaders of previous military coups were executed for, among other causes, fostering corruption. The promise made by coup leaders was to stamp out the cancer and to introduce improved management, probity, integrity and accountability into the national administration.

The period was also characterized by numerous commissions of enquiry, special tribunals, criminal prosecution and media exposure. Examples of such Commissions were Jiagge 1969, Anin 1975, Taylor 1976, Azu Crabbe 1982. The prosecution of unethical behaviour was facilitated by the application of the *Criminal Code 1960*, Act 29 and other instruments. The general assessment is that the measures advanced by the leaders were largely ineffective "because they were narrowly construed and lacked a sound appreciation of the socio-legal, political and economic bases of corrupt conduct" (Attafuah, 1999).

Guidance for public servants

Experiences from the pre-1992 period influenced the wording of the 1992 Constitution and the numerous initiatives contained in it to combat corruption, including Chapter 18 on the Commission on Human Rights and Administrative Justice and Chapter 24, which is devoted to the *Code of Conduct for Public Officers*. The code prescribes the guidelines for ethical behaviour for all public servants, including the avoidance of conflicts of interest. Section 286(5) identifies the main target group to provide leadership in ethical behaviour, ranging from the President of the Republic down to the Heads of ministry or government department, chairmen, managing directors and general managers of public corporations or enterprises in which the state has a controlling interest. Parliament was empowered to prescribe any other public officers who should “submit to the Auditor General a written declaration of all property or assets owned by, or liabilities owed by him whether directly or indirectly.” The frequency of the declaration to be effected was:

- Before taking office;
- At the end of every four years; and
- At the end of his or her term of office.

All the central management agencies (CMAs), which provide leadership in the executive arm of government, are also expected to provide ethical guidance for all the other public service agencies. The CMAs are made up of the Public Services Commission, Ministry of Finance, National Development Planning Commission, National Council on Women and Development, Ghana National Commission on Children, Office of the Head of Civil Service, Ministry of Local Government and Rural Development, and State Enterprises Commission which has responsibility for both state-owned enterprises and subvented agencies (which depend in part or in whole on government subsidies).

The central management agencies were expected to prepare Codes of Conduct which derive from the same value bases as the Constitution and which provide guidance for other agencies and public servants as a whole. The supervisory and control mechanisms for proper ethical conduct

were reposed in the Auditor General and the Commissioner for Human Rights and Administrative Justice, the former to collate for record keeping all completed Assets Declaration Forms, the latter to investigate and prosecute cases of corruption. The Serious Fraud Office (SFO) was created outside the Constitution to fight serious offences, worth ₵50 million or more.

The assessment of the guidance function of the central management agencies in the public services of Ghana is that it is yet to be fully operational and to be improved upon. To date, eight years after the adoption of the 1992 Constitution, the values and standards advanced therein have neither been fully propagated, nor has civic education on them been adequately carried out. Systematic training in ethical behaviour has not been well entrenched in induction or ongoing training programmes.

The Office of the Head of Civil Service only recently published (1 November 1999) the *Code of Conduct for the Ghana Civil Service*. The Public Services Commission has not yet published the first draft of the Code of Conduct for the public services, and individual ministries, agencies and organizations in the public services have their codes of conduct at various stages of preparation and implementation. A limited awareness of proper codes of conduct seems, however, in evidence throughout the public services and private sector. Inadequate guidance for ethical behaviour also suggests that inadequate measures exist to prevent corruption.

Management of conduct in the public service

It is the responsibility of management both to institute preventive measures and to provide oversight mechanisms to combat and manage the incidence of corruption on the job. That responsibility belongs to the leadership or every single ministry, department, agency or organization within the public services of Ghana. In reality, the absence of clear policy statements or developed strategies to combat corruption makes the management of the concept more difficult. Human resource management practices—like recruitment based on merit, fair remuneration

packages, motivation of staff and appropriate disciplinary measures—could favourably impact on unethical behaviour. Similarly, financial management controls, regular external audits and disclosure of assets by officials at specified intervals may diminish the incidence of corrupt and fraudulent behaviour.

Such measures need to be well based in the context of clear policies and strategies, coordinated for the entire society, to be more effective. It is the absence of such nationally coordinated direction, management and enforcement of corruption prevention measures that have made the work of the designated anti-corruption agencies like the Serious Fraud Office, the Commission for Human Rights and Administrative Justice, the Police Service and the Attorney General’s office so difficult and ineffective.

The absence of a fair and living wage policy in the country has also been blamed for the lack of success in anti-corruption initiatives. A workforce with below living wage incomes is less likely to successfully resist the lures and temptations of corruption.

Control of conduct in the public service

The control of unethical behaviour is as much the responsibility of government and management in the various public service organizations, as it is the special responsibility of legal enforcement agencies like the Police, the Attorney General’s Office, the Serious Fraud Office, or the Commission for Human Rights and Administrative Justice. Discussions by the consultant with the Director of Public Prosecutions of the Attorney General’s Department, the Acting Executive Director of the Serious Fraud Office, and the Commissioner for Human Rights and Administrative Justice revealed that for the past twenty or so years, no major cases of corruption have been prosecuted. This is in spite of all the promises to eradicate corruption by the Government, the ever-present newspaper articles and revelations and the general public’s outcry against the crime.

There are a number of reasons for the ineffectiveness of corruption control mechanisms currently in place, including the following:

- Weaknesses in the legal enforcement framework;
- Ineffective accountability mechanisms—lack of follow-up upon disclosure of assets and liabilities by the top management of the public organizations;
- No legal protection and publicly declared support for “whistle-blowers”;
- Lack of cooperation from bribe-givers to give evidence; and
- Over several years of inaction on the prosecution of offenders, there appears to be an officially calculated plan not to prosecute or take administrative action against highly placed government officials suspected of corruption.

One weakness in the legal enforcement framework is that the enforcement agencies—the Police and Serious Fraud Office, except the Commission for Human Rights and Administrative Justice—are required to refer cases of corruption to the Attorney-General’s Office, which determines the next steps in the prosecution process. Firstly, the Attorney-General’s Department is over-burdened due to lack of staff. Secondly, it is noted that the Attorney-General is a political appointee in Ghana. He was also the treasurer of the ruling Party NDC. As such, there is the danger that his intervention in the legal process could be compromised and lead to a situation of “case die”, in local parlance. That means a particular case may simply not be pursued if it has possible implications for colleague members of the ruling government.

The question which persists, for lack of consistency, is why, under a regime which assumed power with the promise to rid the nation of corruption and to champion the ideals of probity, integrity, transparency and accountability, no cases of corruption have been pursued and prosecuted over the past twenty years. Reported cases of corruption exist in the reports of the Serious Fraud Office and the Commission for Human Rights and Administrative Justice. There are research reports on corruption such as from the Center for Democracy and Development and the numerous private watchdog press revelations

by *The Ghanaian Chronicle*, the *Guide*, and many others. The legal enforcement framework seems, simply put, incapable or unwilling to act for reasons not yet clear. Even CHRAJ, which has independent powers of prosecution, has so far not done so.

The *Code of Conduct for Public Officers*, enshrined in the Constitution (1992), requires the written disclosure of assets and liabilities of top public officials. Nobody seems to have the responsibility to ensure that such declarations are completed and recorded for all the officials specified in the section 286(5) of the Constitution. The Auditor General, whose office is the repository of those declaration forms admits he is not empowered to verify the truth or otherwise of claims made in them. Thus if no Presidential Commission of Enquiry or Court demands such a declaration in evidence, the contents of the completed Assets Declaration Forms may never see the light of day, ever. Accountability is meaningful only if it is verifiable, especially while the incumbent remains at post or soon thereafter.

There is no legislation in Ghana which protects “whistle-blowers” or people who expose corruption and are marginalized or victimized for that action. One of the provisions on the subject, in the *Code of Conduct for the Ghana Civil Service* (Section 47), reads:

A Civil Servant will be expected to expose any act or misconduct, the commission of which he knows or ought to have known to be a misconduct (Code of Conduct, 1999, p.20).

Obviously, without any law protecting whistle-blowers, as is currently being debated in the South Africa parliament (*Chronicle*, March 10, 2000) whistle-blowers in Ghana are not likely to volunteer such information willingly. Whistle-blowers’ protection legislation should, therefore, be initiated as part of the anti-corruption infrastructure in the country.

Like whistle-blowers, another group of nationals who seemed not to be very forthcoming with evidence of the wrongdoing of others are the bribe-givers or those who are believed to corrupt public officers. Normally, their testimony would

provide conclusive proof of corruption. But *The Criminal Code 1960* (Act 29) as amended by S.145/Act 261 of 1961 reads:

Whoever corrupts any person in respect of any duties as a public officer or juror shall be *guilty of a second degree felony* (emphasis added).

As a result of this code, many cases of corruption go unreported or remain inconclusive for lack of collaborative evidence that a bribe was indeed offered and taken by the corrupt official.

Non-governmental actors

The non-governmental actors are the private sector organizations, civil society organizations and donors as well as the private independent press. In a study of public service ethics, these actors play complementary but less prominent roles. The private sector is organized mainly around the Chamber of Commerce and the Ghana Employers Association (GEA). As employers, the GEA membership has more impact on prevention, management and control of corruption than the Chamber of Commerce. Codes of Ethics/Conduct were known to exist among most of the 512 members and the GEA is in the process of coordinating and harmonizing the operation of the Codes. Like the public sector, the lack of adequate ethics infrastructure at the national level makes it difficult for it to play any meaningful role in the prevention and control of corruption.

Similarly, civil society organizations have not achieved much success by way of civic education on national values and standards and anti-corruption measures, because the National Council on Civic Education (NCCE) has not been active and non-partisan enough to make the desired impact. Of the civil society organizations, the most active has been the Center for Democracy and Development (CDD), which has conducted some relevant surveys on perceptions on corruption. The Institute of Economic Affairs has also sponsored some relevant anti-corruption research in the “Governance” publication in recent times. Both the CDD and the IEA have been successful with funding from donor sources, including DANIDA and the United States Information Service.

Donors should make a significant impact on the development of good governance and preventing corruption because of their insistence on objective conditionalities before providing aid. Ghana has been heavily dependent on aid, with external debt making up 88.6 per cent of GNP (UNDP, 1997). To obtain such massive aid, Ghana has had to meet as many of the stringent donor conditions as possible in recent years.

The independent press has been the most vociferous in investigating and whistle-blowing to unearth corrupt practices currently. In a recent study, ranking the order of nine indicators of good governance practices in Ghana, it emerged that the “strong independent press as watchdog” rated the highest as the “very well observed” indicator at 23.9 per cent. This was followed by “government based on democratic constitution” at 20.4 per cent, and “multi-party political system and elections” at 19.6 per cent (Wereko, 1996, p.37).

In the Appendix are listed some of the recent press reports, alerting the nation on corruption. The press has been more successful in highlighting the costs and incidence of corruption than any other actor.

Recommendations

The high incidence of corruption in the country suggests a breakdown in or a flawed awareness by public servants of the basic rule of professional ethics, “*primum nihil nocere*” “not knowingly to do harm” (Drucker, 1977, p. 328). The high cost of corruption, both economic and social, is well known. Yet there has been very slow progress in the fight against the crime. It is a fact that there is an inadequate ethics infrastructure in place to prevent, manage and enforce controls against corruption. It is also a fact that prevailing socio-political conditions of neo-patrimonialism, family cultural values and obligations, low income levels, and the absence of well-entrenched national values and standards all make the fight against corruption more difficult.

But the alternative cannot be to allow the evils of unethical behaviour to go unrestrained. In that direction, many courses of action could be advanced to combat corruption in agreement with many other writers on the subject including

Sandbrook and Oelbaum 1999, CDD 1998, Anin 1999, Attafuah 1999, Sapati 1999, numerous press reports in 1999 alone, and religious bodies 1999. This is so, if indeed, the presidential call for a crusade against corruption can be judged to be a credible one.

The following are some recommendations advanced:

- The Government of Ghana must go back to the basics and jettison the harmful institutions of neo-patrimonial rule (especially clientelism, rent-seeking and corruption). The practice has been surreptitiously embraced contrary to the ideals of the last two military coups staged to stamp out the problem. The present chronic state of corruption may only respond to a return to the basic ethical values and standards.
- The amended *Criminal Code 1960 (Act 29)* of S.145/Act 261 of 1961 is counterproductive in reality. Nothing is achieved by silencing both the giver and the receiver of bribes. The *Code* should be amended to enable the bribe-giver to give evidence under legal protection, without the “second degree felony” judgement. In the final analysis it is the active rent-seeking or demand for bribe for services rendered by public officials that needs to be discouraged. Most bribe-givers are literally forced to pay, under silent protest, and may gladly report cases, if conditions are right.
- There is need to pass a “whistle-blowers” protection legislation, to protect and encourage whistle-blowers to honour their national obligation of exposing corruption. The fear of victimization and marginalization of those who report corrupt officials is real in our society. Such legislation should be an indispensable part of any anti-corruption drive package.
- Codes of conduct for public servants should not just be cosmetically produced by central management agencies, e.g., PSC, OHCS, SEC, MLGRD. Most importantly, they should be publicized, values and standards internalised, their implementation systemati-

cally monitored and infractions consistently remedied through appropriate sanctions.

- The Auditor-General should have powers to verify claims made in assets declaration forms before they are stored. Subsequently, every four years and on retirement the Attorney-General, aided by a small committee, should promptly establish the worth of the official and determine any information gap to be filled before closing the declaration form. From such findings, committees of enquiry could be routinely tasked to establish the liability and proceed to prosecute cases of illegally acquired wealth.
- The Serious Fraud Office (SFO) should be given independent powers of prosecution of cases of corruption, conclusively established through their investigations and not depend on the bottleneck at the Attorney-General's Department for endorsement. Like New Zealand, Ghana should have an independent SFO.
- The Commission for Human Rights and Administrative Justice (CHRAJ) should increase the percentage share of cases of corruption investigated by it from the present low level. It should do so by undertaking more proactive rather than the current reactive stance of spending over 90 per cent of its efforts on employment, property and family-related cases.
- CHRAJ should be adequately resourced to carry out its mandate of prosecuting cases of corruption. The present situation of inadequate remuneration of its staff and funding of its activities seems calculated to muzzle the Commission.
- The Attorney General's Department needs to be adequately staffed to cope with the nu-

merous cases, including corruption, referred to it for prosecution.

- The Attorney General's Department needs to shed the image of partisanship or suspected unwillingness to prosecute cases of corruption brought against members of the government. The Attorney General, as a strong member and treasurer of the ruling party, seems linked to that image.
- The Police Service, as a law enforcement and security agency, seems to have problems of credibility in effective corruption prevention, as it has a public image of petty rent-seeking. In that regard, the remuneration package for the officers needs to be improved to enable them to perform as effective corruption prevention agents.
- Wage levels in the country are still too low to rebuild the morale and strengthen the resistance of public employees to the temptations of expecting side payments to perform normal duties.
- In the final analysis, the intractable nature of corruption in the country suggests a major need to rebuild and strengthen the weak ethics infrastructure that has characterized the nation's existence in the past few decades. In that direction, the recent call by CHRAJ, SFO and others for a permanent coalition of anti-corruption agencies to fight corruption with a united front is strongly recommended.

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APPENDIX

Corruption in Ghana – Some Recent Press Reports – Headlines

1. “P(NDC) Officials Took Bribe,” *The Guide*, No. 178, March 7-13, 2000. Front page.
2. “Crusade on Corruption Not Over,” President in *Daily Graphic*, No. 147848 of Thursday, 2 March 2000.
3. “Corruption Recurred: National Scandal,” *The Ghanaian Chronicle*, Vol. 8, No. 72, Wednesday, 1 March 2000.
4. “Charge Peprah (Minister of Finance) for Fraud,” *The Statesman*, Vol. 9, No. 30, Week ending 5 March 2000.
5. “Corruption in Unexpected Places,” *The Ghanaian Times*, Saturday, 22 January 2000.
6. “The Crusade Against Corruption. President Rawlings Writes to World Bank President,” *The Crusading Guide*, No. 173, 6 -12 January 2000, p.4.
7. “Roads CHRAJ and Transparency,” *The Ghanaian Chronicle*, Friday, 24 December 1999 - Tuesday, January 4, 2000.
8. “The Causes of Corruption—An Economic Analysis,” *The Ghanaian Times*, Saturday, 18 December 1999.
9. “Robbing Memuna to Pay Peprah (Minister of Finance),” *The Ghanaian Chronicle*, Friday, 18 December - Sunday, 20 December 1999.
10. “S.F.O. to formulate Anti-Corruption Policy,” *The Ghanaian Times*, Saturday, 18 December 1999.
11. Diagnostic Survey on Corruption, *The Statesman*, Vol. 9, No. 22, 26 December 1999.
12. “Government Takes Measures to Check Corruption,” *Daily Graphic*, Saturday, 18 December 1999.
13. “Corruption and Economic Development: ACDD Viewpoint,” *The Ghanaian Chronicle*. Wednesday, 15 December - Thursday, 16 December 1999.
14. “Combating Corruption in Africa,” *Daily Graphic*, Monday, 13 December 1999.
15. “Corruption vs. Development,” *The Ghanaian Times*, Saturday, 20 November 1999.
16. ”The Corruption Blues. Cut Them Out,” *Daily Graphic*, Monday, 1 November 1999.
17. “Ghana Rated 35th Most Corrupt Nation,” *The Ghanaian Chronicle*, Wednesday, 27 October - Thursday, 28 October 1999.
18. “Ghana Gets Transparency International Chapter,” *The Ghanaian Chronicle*, Monday, 6 December - Tuesday, 7 December 1999.

19. "SSNIT under S.F.O. Probe," *The Ghanaian Chronicle*, Monday, 6 December - Tuesday, 7 December 1999.
20. "Corruption Canker of a Nation," *Daily Graphic*. Saturday, 17 May 1997.
21. "Development in a Corrupt Environment," *Daily Graphic*, Monday, 25 August 1997.

CHAPTER 4: KENYA

Introduction

One of the major factors currently undermining the efficient and effective delivery of public services and development in Sub-Saharan Africa is poor public service ethics. Generally, public service ethics refers to a certain set of standards, values and conduct which public servants are expected to maintain in order to perform or dispense their duties efficiently and effectively. Thus, the set of standards, values and conduct which could be said to constitute poor public service ethics include: unprofessional behaviour, immoral acts, corruption, intentional lapse of judgement and acts of omission and commission. Ideally, in order to achieve its goals, every organization normally spells out a set of standards, values and codes of conduct to which it expects its employees to adhere in order to perform their duties efficiently. Public service organizations in Africa are no exception.

In the case of Kenya, the current public service was largely inherited from the colonial administration. In developing the public service, the colonial administration spelled out a certain set of standards to which public servants were expected to adhere in the course of their duties. The main source of this set of standards was a document known as the *Code of Regulations (COR)*. Besides the COR, other pieces of legislation were also enacted. Since independence in 1963, the same COR has been revised and additional pieces of legislation have been enacted. Some of these laws cover both the public servants and the general Kenyan public, while others provide the ethical guidelines which members of various professional organizations are expected to adhere to in the course of their professional work.

Nevertheless, despite the existence of the above-mentioned administrative and legal instruments which spell out the set of standards, values and conduct that public servants are expected to maintain, the quality of public service ethics in Kenya remains generally low. For example, in the last two years, Kenya has been ranked by Transparency International as among the top ten

most corrupt countries in the world. This poor public service ethics record obviously undermines efficient public service delivery and development in the country.

Background on the national public service

Generally, in Kenya, the institution referred to as the public service comprises of the following categories of employees: civil servants, parastatal employees, teachers, the police, the military and local authorities' employees. However, as interpreted in this study, the national or central level public service refers strictly to civil servants. Although this category of public servants also falls under the office of the Permanent Secretary, Secretary to the Cabinet and Head of Public Service, they are recruited by the Public Service Commission and managed on a day-to-day basis by the Directorate of Personnel Management (DPM). Currently, this category of employees is found scattered in the fifteen government line ministries and the Office of the Attorney-General (see *Presidential Circular No. 2/99* of September 1999).

As mentioned earlier, the origin of the Kenyan civil service is traceable to the colonial period, more specifically to the early 1900s, when the colonial administration decided to create fifteen functional departments under the colonial secretary. Naturally, it began as a relatively lean organization, but over the years, it expanded to become the single largest employer in the country. At its peak in 1991, the size of the civil service stood at 271,325 employees.

The rapid growth of the Kenyan civil service, especially after independence, has been attributed to five factors. The first factor was the guaranteed civil service jobs for graduates of the country's tertiary education institutions (universities, teacher training colleges, paramedical and agricultural colleges and polytechnics). The second was the absorption of the ex-local authorities' health personnel from 1970 to 1972, when the central government assumed the institutions' responsibilities in the provision of

health services. The third was the absorption of ex-East African Community employees from 1977 to 1979, when the community collapsed. The fourth was the absorption of public works' paid personnel who originally served in government roads construction sites. The fifth and final factor has been the slow pace of job creation by the formal private sector.

Nevertheless, although the rapid expansion of the civil service enabled the government to absorb a significant number of young qualified Kenyans who were being released into the labour market annually, it also had some negative consequences to the institution. In the first place, the rapid expansion of the civil service resulted in a situation whereby civil servants began to lack materials and equipment which they essentially required in order to perform their duties. This is because the funds which the government could use to purchase the materials and equipment went into meeting the salaries of the ever-expanding civil service.

Secondly, the rapid expansion of the civil service resulted in the deterioration of the terms and conditions of service for civil servants. This is because, due to the huge amount of funds required to meet its annual salaries, the government finds it impossible to review the salaries of civil servants to cater for the actual cost of living. Besides, the government increasingly finds it difficult to meet adequately some of the benefits which constituted the terms and conditions of service for civil servants, such as housing, health, uniforms and allowances.

Thirdly, the rapid expansion led to idleness in the civil service as more and more employees got absorbed but with little or no work at all to perform.

Overall, the rapid expansion of the civil service turned out to be a bad public investment. While delivery of public services by the government continued to deteriorate, partly due to a lack of adequate financial resources, government expenditure on salaries to civil servants, a significant number of whom had little work to do, continued to increase.

Given this scenario, in 1993, the government decided to reform the civil service under a

programme known as the Civil Service Reform Programme (CSRP). The key objectives of the CSRP were as follows:

- To reduce the size of the civil service through retrenchment;
- To rationalize the organizational structures and functions of government ministries;
- To transfer some of the current government functions to the private sector;
- To improve the terms and conditions of service for civil servants;
- To increase government expenditure on its operations, materials and equipment; and
- To improve the ethical standards of civil servants.

One of the key ways through which the government hopes to improve the ethical standards of civil servants is to improve their terms and conditions of service. The other way is to formulate a national code of conduct and ensure that it is effectively enforced. Although the implementation of the CSRP has been going on for the last seven years, it cannot be said that it has achieved much. Nevertheless, its notable achievement, so far, is that it has resulted in the reduction of the size of the civil service from its peak size of 271,325 in 1991 to 162,313 currently.

Background on public service ethics and anti-corruption initiatives

As mentioned earlier, soon after the establishment of the civil service, the colonial administration began to formulate a set of standards and rules of conduct which were expected to guide the behaviour and performance of civil servants. Some of the first such documents to be written included the *Code of Regulations* for civil servants, the *Civil Service Commission Ordinance of 1954* later to be revised to become *Public Service Commission Act*, Cap. 185, the *Penal Code*, Cap. 63 and the *Prevention of Corruption Act*, Cap. 65. Soon after independence, additional legal instruments and watchdog institutions were also created. These included *Financial Regulations*, the *Exchequer*

and Audit Act, Cap. 412, the *Presidential and Parliamentary Elections Act*, the office of the Controller and Auditor-General, the Public Accounts Committee and the Public Investments Committee, both of Parliament and the Office of the Inspector of State Corporations.

Most of these legal instruments, together with the watchdog institutions, were provided for in the country's Constitution. When the number of various professionals in the country began to grow, different legal instruments guiding their professional conduct were also developed. Today, there is no recognized professional body in the country without a legal instrument to guide the ethical and professional conduct of its members.

Thus, taking into account the code of regulations for civil servants, professional associations and the general public and the watchdog institutions, it can be said that Kenya has officially developed a relatively elaborate legal and institutional framework for the promotion of public service ethics and anti-corruption initiative in the sub-region. The only obvious omission in this endeavour is the lack of a national code of conduct or ethics document for public servants. But even in this case, a draft document has been developed and submitted to the Cabinet for approval before it can be implemented.

But as mentioned above, despite the existence of the above-mentioned instruments, Kenya remains one of the most corrupt countries in the world, at least according to the Transparency International survey. The failure of these legal instruments and watchdog institutions to stem corruption is dealt with later in this report.

Nevertheless, since the early 1990s, due primarily to pressure from the donor community, the opening up of the internal political space, decline in foreign private investment and the desire by the government to improve its international image, attempts to fight corruption in the country have been invigorated. To begin with, in 1994 the government decided to amend the *Prevention of Corruption Act*, Cap. 65, which was first enacted in 1956. The amendment of the act resulted in the establishment of anti-corruption squads within the police force. However, this move appears not to have had any

serious impact on the fight against corruption. As a result, in 1997, the government again decided to amend the same act, this time to provide for the establishment of the Kenya Anti-Corruption Authority (KACA).

The KACA began its operations in earnest in December 1999. It is headed by a former judge of the High Court of Kenya and is staffed by well-qualified personnel with professional backgrounds in criminal investigations and prosecutions. Its main function is to fight corruption in the country through investigation and prosecution of corrupt cases among public servants, education and preventive services. Since it began its operations, it has arrested and charged in courts of law eight public officers with offences on corruption.

Besides KACA, the key parliamentary watchdog institutions, namely the Public Accounts and Public Investments Committees, have also become more vocal in their fight against corruption in high places in the country. The two committees have managed, in the recent past, to summon some of the most powerful and influential people in the country's political and business sectors to appear before them to answer charges on the misuse of public funds and corruption. The Public Investment Committee went even further to name public officials who should be blacklisted and not appointed into public offices in the country again forever.

During the last session of the current Parliament, a committee of parliamentarians was established to investigate the nature, scope and level of corruption in the country and submit recommendations on how the vice can be fought effectively. In its preliminary report, the committee indicated that it intended to name all public officials who have been involved in corrupt activities in the country. It has since done this. In addition, the committee intends to amend the *Prevention of Corruption Act* further in order to give the KACA more powers in its fight against corruption. Given all these efforts, it appears that this time round, the government, Parliament and other interest groups in the country are committed to the fight against corruption in Kenya.

Guidance for public servants

As mentioned above, although there is a code of regulations for civil servants and several other legal instruments which spell out a number of sanctions against public officials with wrongdoing in the course of their official duties, these regulations and legal instruments are not effectively disseminated to the public officials. Moreover, the instruments dealing with the set of standards expected of public officials appear not to be comprehensive enough. At the same time, channels for lodging complaints and obligations on the part of ordinary citizens to report wrongdoing about public officials appear not to be provided for adequately.

To begin with, although the current *Code of Regulations* for civil servants and the *Public Service Commission Act* spell out certain values and standards expected of a public servant, these documents do not go far enough. The documents were first prepared during the colonial period. The circumstances which influenced their preparation were obviously quite different from the present circumstances. But since their preparation, no thorough revisions have been made to those documents to reflect the changed socio-economic and political environments.

Moreover, the documents are incomplete when it comes to issues of standards. For example, currently no civil servant is required by law to disclose his wealth or its sources or the possibility of conflicts of interest when they are hired. This is true of any public servant, including political leaders. Thus, several public servants are themselves directors of private companies and at the same time are involved in making decisions which could require the services of these companies. As mentioned above, the government appears to have recognized this weakness and as a result has come up with a new draft of a national code of conduct or ethics for public servants.

The other weakness in the guidance of public servants on public ethics is in the dissemination of the regulations and other legal instruments. Although the *Code of Regulations* and the *Public Service Commission Act* specifically target public servants, rarely do the contents of these documents get disseminated to public

servants. In most cases, the circulation of these documents tends to be restricted to those who manage public servants at the Directorate of Personnel Management and Public Service Commission. Due to this fact, some of the public officers only come to learn about some of the requirements or provisions of these documents when they have been accused of having flouted certain sections of these documents by their supervisors. As such, current guidance of public servants on public ethics is obviously flawed.

In the case of ordinary citizens, although the *Penal Code*, Cap. 63 places obligations on every citizen to report to the police wrongdoing on the part of public officials, the spirit in which this obligation is expressed is not positive. True, obligation by its very nature is a duty, but if the person required to exercise the obligation considers his failure to exercise the obligation a crime, he is unlikely to cooperate. Moreover, when the person who is expected to exercise obligation does so by reporting wrongdoing and in the process finds himself between the law and the suspect, he is unlikely to be encouraged to exercise the same obligation next time round.

This is the situation in Kenya today. Most people who would wish to report wrongdoing on the part of public officials feel discouraged to do so. This is because when one takes the trouble to report wrongdoing to the police, he/she ends up being treated as if he/she is the wrongdoer, due to an unpleasant interrogation. In short, currently, there seems not to be an efficient infrastructure that would encourage and protect the general public who report wrongdoing on the part of public servants.

Management of conduct in the public service

The management of conduct in the public service in Kenya falls under several organizations. They include the Head of the Public Service, who is also the Permanent Secretary in the Office of the President and the Secretary to the Cabinet, the Directorate of Personnel Management (DPM), located in the Office of the President, and the Public Service Commission of Kenya (PSC). All these bodies work very

closely to ensure that the conduct of public servants is in line with the required standards.

The PSC is mandated to recruit civil servants and to discipline those who violate the code of regulations governing the conduct of civil servants. The discipline may involve warning, suspension or even outright dismissal in case of gross misconduct. The process of recruitment, however, is normally initiated by the individual ministries, who inform the Directorate of Personnel Management (DPM) that they require additional staff.

Each ministry has a personnel division that also controls the conduct of employees in the ministry on a day-to-day basis. The personnel divisions are the agencies of the DPM in each line ministry. The Directorate of Personnel Management may also initiate the process by asking ministries to indicate their staff requirements. This information is then analysed by DPM, which then informs the PSC accordingly and requests the PSC to begin the recruitment process.

Similarly the disciplinary process may begin from the individual ministry, which informs the PSC, which then makes the final decision on what action to be taken on the errant officer. The Head of the Public Service, on the other hand, is the overall officer who coordinates and supervises the performance of the entire public service, including the central civil service.

As mentioned earlier, although Kenya's civil service has a long history going back to the colonial period, including a code of regulations and other legal instruments that should guide the conduct of its members, the current management of conduct in the public service is simply wanting. A number of factors are responsible for this anomaly.

The first factor is the poor dissemination of codes of regulations to public servants. Although the code of regulations for civil servants and other relevant legal instruments have been in the books since independence, the contents of the documents are not effectively disseminated to public servants. Ideally, on joining the civil service, a new recruit should either be supplied with these documents or made aware of their

contents during induction. This hardly happens. Unless one is directly employed under the DPM or PSC, the majority of civil servants often first learn about the contents of these documents when they are faced with a disciplinary action. By then, it is too late for these documents to serve their useful purpose. During our interview with the Director of DPM, he admitted that this is a weak point. According to him, the main cause of poor dissemination of the contents of these documents to civil servants is inadequate funds.

The second factor is the declining professionalism in the civil service. Kenya's civil service was originally designed along the Westminster model; it was intended to be a permanent civil service that is non-partisan and could therefore serve any political party that formed a government at any given time. The highest-ranking officer in each ministry was supposed to be a Permanent Secretary. The holder of the office of the Permanent Secretary was supposed to be literally permanent in that position. This means that once an officer reached this position, he/she could not simply be shoved off at will.

Moreover, to arrive at the position of a Permanent Secretary, the officer had to be a career civil servant who had climbed the ranks through hard work, relevant qualifications, discipline, leadership, ability and experience. One was not expected to be appointed into this position through political patronage. In other words, efficiency, fairness, relevant qualifications, seniority and honesty are the official values which were expected to guide appointments and promotions in the civil service.

Whereas the above-enumerated values are still the officially recognized ones, in practice, appointments and promotions in the civil service in Kenya have for a long time depended on nepotism, tribalism and political patronage. The office worst affected by these negative values is the office of Permanent Secretary. For a long time, most of the officials recruited into this office have not been career civil servants who climbed the ranks in the same ministry or were within the civil service. A number of them have been imposed into the office, sometimes even from outside the civil service. For example,

recently, the President appointed a number of Permanent Secretaries, including the Head of the Public Service. None of these new appointees can be said to be career civil servants, as most of them were recruited from outside the civil service.

Such appointments have contributed to the erosion of professionalism in the civil service. Civil servants who mark time in their positions, hoping to reach the position of Permanent Secretary, get demoralized when they see non-career civil servants imposed on them from outside the civil service. Thus, they begin to have little respect for the official public service values and standards such as fairness, efficiency, competence and experience.

Besides the office of the Permanent Secretary, this problem has become rampant in the entire public service; more and more public servants continue to get appointed into wrong positions largely on the basis of tribalism and political patronage. While it may be argued that recruits from outside the mainstream civil service may bring in new perspectives to the organization, the fact that their entry into the civil service can demoralize other civil servants should not be overlooked.

In any case, once the practice of recruiting from outside the service is allowed, the possibility of the practice being abused is also real. It will not be easy to guard against such appointments being based more on political considerations as opposed to merit. This is especially so because appointments from outside the civil service are made single-handedly by the President.

In addition, the practice of recruiting from outside the civil service should only be done after the present officially sanctioned methods of recruitment have been officially changed. Since these rules have not been officially changed, it is not in order to violate the existing rules. This creates confusion in the minds of civil servants and the public. Indeed, one can argue that such appointments are illegal as they go against the existing rules.

The third factor that undermines the management of conduct in the public service is the ineffective enforcement of the codes of regu-

lations and other legal instruments guiding the conduct of public servants. As mentioned earlier, although Kenya has an elaborate infrastructure for managing the conduct of public servants, which includes a code of regulations, various legal instruments and watchdog institutions, neither the regulations and legal instruments nor the recommendations of the watchdog institutions are effectively enforced.

For example, since independence in 1963, the Office of the Controller and Auditor-General has catalogued fraud and misuse of public funds by various government ministries year after year; yet these reports have hardly resulted in the arrest and successful prosecution of any public official in the country. For most of the period Kenya has been independent, these reports have simply been stored and not acted upon. Some of the public officials adversely mentioned in these reports are even promoted to higher positions or simply transferred to other public service organizations. It is only in the period after the introduction of multi-party politics in 1992 that we now hear of the reports being debated. With this kind of record, it is doubtful that the existing code of regulations and other legal instruments can achieve their intended goals.

The fourth and perhaps the most important factor that undermines the management of conduct in the public service in Kenya is the lack of political will. As mentioned, since the country's independence, several scandals about the abuses of public office have been reported on several government officials. Most of these scandals touch on the direct appointees of the country's Chief Executive. Yet despite the reports, the President has rarely relieved such public officials of their duties. Moreover, the President has not demonstrated he is ready to see action taken on the Controller and Auditor-General's reports or the recommendations of other watchdog institutions such as the PAC and PIC. Without any action taken on these reports and recommendations, public officials have no reason to respect the code of regulations or other legal instruments that set standards and values on how they are supposed to conduct themselves in the course of their official duties.

Control of conduct in the public service

In addition to the above organizations, the conduct of public servants in Kenya is also controlled by the Treasury, the Controller and Auditor-General, the Inspector of State Corporations, the national Parliament through its Public Accounts Committee (PAC) and the Parliamentary Public Investment Committee (PIC). Each ministry also has an internal audit section. These bodies are mainly concerned with the control of the financial resources in the public service. The Controller and Auditor-General, for example, audits all public service expenditure in order to establish whether or not each ministry and accounting officer in the ministries spent money in accordance with the laid down rules or that the financial resources were not mismanaged or misappropriated. He or she presents a report to Parliament, which then debates the report and recommends appropriate action against those who may have violated the relevant financial rules.

The parliamentary watchdog committees, namely PAC and PIC, are mandated to summon any people reported by the Controller and Auditor-General to have misused government money or other resources by virtue of their positions. They also carry out their own independent investigations to determine the behaviour of public servants, especially with regard to the use of government money.

The Treasury, on the other hand, issues financial regulations to be followed by each ministry and posts accountants to each ministry to manage the finances of each ministry as allocated to the ministries by Parliament during the annual national budget. The internal audits in each ministry are responsible for ensuring that no payments are made unless the relevant regulations and procedures have been followed. Thus, while the Controller and Auditor-General investigates the use of government funds after it has been spent by the ministries, the role of the internal auditors is to prevent illegal or wrong payments. It will be noted that recently, in 1998 to be exact, the government established the Kenya Anti-Corruption Authority (KACA) to fight corruption in the public service and the country as a whole.

Besides these organizations, the country has also put in place very elaborate rules and procedures such as those governing tenders for the purchase of supplies and equipment for the public sector. There are also rules for the awarding of government contracts aimed at ensuring that there is fairness and transparency in the award of government tenders and contracts.

As is quite evident from the above, Kenya has an elaborate mechanism for managing and controlling the conduct of the public servants. Despite this, however, the management and control of the conduct of public servants continue to be problematic. While during most of the colonial period the control and management of public servants were reported to be satisfactory, (this is the view one gets from talking to retired public servants who served in both the colonial and post-colonial service), the situation began to get out of hand a few years after independence.

There are several explanations for this. First is that the public service, and in particular the civil service, grew by leaps and bounds after independence. Within a short time, the civil service was so big that its management became a major problem. Second, as the numbers increased, opportunities for promotion to higher positions in the service dwindled. This meant that civil servants saw no future in the service. As a consequence, they lost morale and motivation to serve. This had a negative impact on their conduct and behaviour. The other factor that may have made the management and control of the conduct of public servants problematic was the low salaries and other benefits paid to public servants.

It is true that in Kenya, civil servants in particular and public servants in general are paid very low salaries. Over the years, this has forced many civil servants to look for other ways of supplementing their meagre incomes in order to make ends meet. Many, as a result, spent less and less time doing official work. This situation was legalized in 1971, when a government-appointed commission, under the chairmanship of a former governor of the Central Bank, allowed civil servants to engage in private business. The impact of it was that virtually every civil servant began to engage in private business,

while spending as little time as possible doing official work.

There is an urgent need to correct the many ills facing the public service in Kenya. The first thing to do is to restore professionalism in the service so that people begin to be proud of being public servants. They should also be highly motivated through attractive salaries. This should be pegged on the cost of living index and, in any case, be made comparable to those in the private sector. The country also needs to fight corruption in the public service. This can be done through increases in salaries but also through political will. The political leadership must be prepared to have those found guilty of corruption punished rather than the current tendency of protecting some of them. The rule of law must, in other words, be applied or let to operate.

The fight against corruption may also be greatly enhanced if public servants, including political leaders, were required to disclose their incomes, including the source of their income. This should be done before assuming office, during office and on leaving office. Also, this should be done as part of establishing a national integrity system. The government should also consider establishing a public complaints office to which citizens wronged by public servants can report and demand appropriate action. We are, in this regard, talking about the office of the ombudsman, as it is known in the Scandinavian countries. Uganda recently established such an office known as the office of the Inspector-General of Government.

The ongoing efforts to reduce the size of the civil service in particular and the public sector in general may go a long way in making the civil service easy to manage. These, however, must be accompanied by attractive salaries and other types of incentives. A clear code of ethics also appears to be a must for good conduct in the public service to be maintained.

An equally major management problem in the public service in Kenya is the lack of effective supervision. This is due to several factors. To start with is the fact that, due to the large size of the public sector, supervisors have normally had too many subordinate staff working under them.

This large span of control made effective supervision difficult. It is hoped that the current efforts to reduce the size of the staff in the public sector will facilitate more effective supervision by reducing the span of control for each supervisor. The other reason for poor supervision may be the low morale of even the supervisory staff. Finally, the conduct of public servants in Kenya may also be controlled and managed through vetting of certain categories of officers. This would ensure that only people with the right attitude towards public service are recruited into the service. This is especially necessary in offices such as those in charge of revenue collection.

Non-governmental actors

Non-governmental organizations (NGOs) did not play an active role in the activities of government before the advent of multi-party politics in the 1990s. Most NGOs confined their activities to development work and welfare issues, especially the provision of social services such as education and health care. One of the reasons for this was simply that under one-party rule, the government did not allow non-state actors to question what the government did. Indeed, the relation between the state and the NGOs and other non-state actors was characterized by suspicion and mistrust. It was only with the opening up of the political space in the 1990s that NGOs and other civil society organizations began to question the activities of government and to point out the failures and weaknesses of government—including the conduct of public officials. Since then, many NGOs operate as effective watchdog institutions for the general public, especially over the conduct of public officials.

But whereas NGOs are currently among the severest critics of public service performance in the country, their general image and individual operations could undermine the promotion of public service ethics in the civil service. In Kenya, it is widely acknowledged that a significant number of NGOs, both international and local, are guilty of a number of misdeeds. First, they are accused of receiving huge amounts of funds annually for development purposes for which they rarely account effectively. Second,

they are blamed for conducting their operations in a non-transparent manner. Third, some of their officials are blamed for colluding with public officials and private business people in shoddy deals. Recently, in a rare acknowledgement of this fact, the Chairman of the Kenya NGOs Council admitted that his organization was reviewing complaints that have been levelled against a number of its members.

There are at least three ways in which the unethical operations and conduct of the NGOs can undermine the promotion of ethics in the civil service in Kenya. First, if it is confirmed that the Kenyan civil society or the entire society is corrupt, then it will be unrealistic to expect high standards from civil servants who are themselves part and parcel of the same society. Second, if it is true that some of the NGO officials collude with public officials in shoddy deals, then NGOs would have become promoters of corruption in the country rather than its fighters. Third, if it becomes obvious that NGOs are equally corrupt, then the organizations will no longer have any justification whatsoever to criticize poor ethics in the public service. Given this scenario, it follows that effective fight against corruption in Kenya and the promotion of ethics cannot simply be confined to the public service. It must be extended to cover the civil society and private sector of the country.

Recommendations

As has been said, Kenya's civil service was designed along the lines of the British civil service by its former colonizer. The design was based on a professional and permanent civil service, guided by the values and standards of efficiency, fairness, hard work, honesty and good conduct. In order to guide civil servants on this set of standards and values, the colonial administration made sure that a code of regulations and other legal instruments for public servants were formulated soon after the establishment of the institution. And to ensure that the general public service ethics in the country were effectively managed, a number of watchdog institutions were also established through the provisions of the country's Constitution.

Yet despite this relatively elaborate legal and institutional framework for the promotion and management of public service ethics, the standards of the country have continued to decline. Thus, as we have said, the continued decline of the standards of public service ethics in the country is due primarily to ineffective management and not to the lack of the necessary legal and institutional framework. Meanwhile, the NGOs and non-state actors have not helped the situation. The weaknesses of the NGOs and other non-state actors arise from accusations that are equally levelled against them for being similarly unethical.

Given the situation, in order to improve public service ethics in Kenya, it will be necessary to manage it effectively. This will require the effective enforcement of the code of regulations for civil servants, other legal instruments and the various watchdog institutions' recommendations. The rules and regulations governing the conduct of civil servants should be enforced by the Directorate of Personnel Management (DPM). The DPM must also ensure that the *Code of Regulations* and all other relevant rules and regulations governing the conduct of civil servants are accessible to all civil servants. In enforcing the rules and regulations, the DPM should be supported by the Public Service Commission, especially on matters of discipline.

The Directorate of Personnel Management should also ensure that the ongoing civil service reform, which falls under its mandate, is done in a systematic, rational and effective manner. Efforts must be made to motivate public servants. These reforms are important for the efficiency of the public servants and must therefore not be done in a haphazard manner.

It is recommended that the Parliament also play a more effective role in ensuring that the reports of the Controller and Auditor-General are debated in Parliament and appropriate and timely action is taken by the relevant government institutions on their recommendations. This has not been the case previously. One of the biggest problems that has eroded public service ethics in Kenya is corruption. The fight against this vice by the Kenya Anti-Corruption Authority must be intensified and supported by the public, the

courts of law and the recently established Parliamentary Committee on Corruption.

The NGO Council, which is the body that oversees the work of all NGOs, should also instil in its members the need to observe discipline, internal democracy, accountability and transparency. NGOs that do not observe these important values should be deregistered and disciplined in an appropriate way.

One option for ensuring that all of these recommendations aimed at improving ethics in the

public service and, consequently, the overall performance of the public sector are carried out is to place them under the supervision of the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service. Finally, to ensure that these actions are taken regularly, there must be political will—especially from the highest office in the land.

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CHAPTER 5: MADAGASCAR

Introduction

A profound economic and financial crisis in Madagascar over the past 20 years has led to:

- A sharp deterioration in the economic and social situation of public servants; and
- Budget imbalances that have seriously impaired the State's ability to properly guarantee essential functions such as security, law and order and justice to citizens.

This situation sparked an awareness of the extent and seriousness of the breakdown of the country's administrative and judicial systems. Two years ago, several studies were carried out as part of the reform of the public service. Some of these studies dealt specifically with standards of conduct, actual conduct and management of the conduct of public servants. An analysis shows that such breakdown is attributable to more general causes such as:

- Weak institutional capabilities;
- Ill-defined rules;
- Lack of frames of reference and criteria for individuals and society;
- A steady decline in oversight and regulation mechanisms;
- The mismatch between structures and goals; and
- Inadequate, incoherent and obsolete laws and regulations.

However, as part of the reform of the public service, concrete measures have recently been envisaged to address the situation. For it to be successful, the reform must encompass all levels and sectors.

Background on the national public service

Since independence, no major case of serious embezzlement or abuse of public office in the Malagasy public service has been reported or prosecuted. Yet there are sufficient clues point-

ing to the existence of serious corruption. The most significant of these clues can be summed up as follows:

- The huge volume of questionable loans granted by all the nationalized commercial banks to prominent persons and the failure to carry out any prosecution in that connection;
- The collapse of nearly all state enterprises;
- A flourishing trade in the distribution of smuggled goods by the informal economic sector; and
- Insufficient tax revenues that do not enable the State to fulfil its basic functions and pay its public servants decent wages; this clearly reveals the extent of fraud and tax evasion.

On the one hand, such serious corruption is attributed to the political sphere, where debates on policies, strategies and programmes take a back seat to a scramble for control over the resources of the public services. Moreover, this situation is caused by:

- Proliferation of profit-making political entities; and
- Lack of legislation and lack of transparency with respect to political party resources and to spending on elections.

On the other hand, petty corruption exists as a survival mechanism. The average monthly salary in the public service is equivalent to about 100 US dollars. Obviously, the erosion in the purchasing power of public servants reflects the steady decline in national economic performance. Nevertheless, objectively speaking, salaries in the public service are too low when compared to the cost of living, increases in the prices of essential commodities and the social constraints facing the households of public servants. Under such circumstances, public servants must either take advantage of their position in the State machinery to make money or take up a second job.

Since there are no regulations on the performance of a second job, the private activities performed by a public servant may well be in the economic sector under the control of his or her office, which opens the door to serious corruption, especially since the notion of insider-dealing does not exist under Malagasy law.

Petty corruption, or the means whereby public officials try to ensure their survival and that of their families, is often tolerated by their immediate supervisors, while users put up with it. Corruption and embezzlement of public resources are thus tending to spread and is considered a perennial feature of administrative culture and practice.

Users do not always have a clear idea about what acts of corruption are. Thus, payments made for corruption as such are confused with other payments or gestures, such as tokens of gratitude for services rendered, regular payments of fees required by law, contribution to the means required to provide services requested by users and payment of intermediaries.

The lack of information on the part of the public is closely related both to the reality of corruption and how it is perceived by the public. Citizens who are unaware of their rights are thus more likely to be exploited by corrupt public servants. They do not know what payments are illegal, nor do they know how to fend off unjustified demands for payments. Given their already negative perception of the public service and the system of justice, ignorant citizens tend to attribute the procedures and decisions that they do not understand to corruption. Thus, normal payment requests may be perceived as demands for bribes; accused persons on pre-trial release or convicted persons on parole are believed to have bribed the judges. Delays in processing land ownership documents due to mandatory publications and legal waiting periods could be perceived as tacit demands for bribes.

It is difficult to provide proof of an act of bribery. Corruption deals, which take place without any witnesses, leave no paper trails. Even where there is suspicion and presumption, the corrupters and corrupted protect each other by hiding behind the "law of silence."

Furthermore, some of the rules applied in the public service pave the way for abuses. A case in point is a service note of 28 December 1965, which recommended that inspectors and auditors tolerate cash deficits where the intent to steal has not been established.

A general legal solution would be to request the person suspected to provide justification for the licit origin of his or her wealth. It should be noted, however, that introducing the notion of illegal enrichment into Malagasy positive law would be at variance with the principle of "presumption of innocence."

Background on public service ethics and anti-corruption initiatives

Surveys of managers, public servants and users throughout the country concluded that public servants, users and even four fifths of the heads of service did not know much about ethics. This may be because public service ethics is still a recent concept in Madagascar.

The first ever legal text on ethics in the Malagasy public service is Decree No. 55-1591 of 28 November 1955, establishing the medical code of ethics. There are other much more recent regulations dating from 1996 and 1997.

The Constitution lays down only two values which could be applied to the public service: the provision prohibiting public servants from using their positions for personal enrichment and the provision on the political neutrality of the public service. There are no provisions that are applicable to the administrative machinery as a whole. The existing provisions are vertical and concern only certain specific bodies.

Some of the regulatory texts which might appear at first glance to contain ethical standards turn out in fact to provide guidance for a specific situation. This is particularly the case of the 9 August 1996 circular and the subsequent administrative instructions designed to depoliticize the public service and not base recruitment of public service managers on membership of a given political party. These texts reflected concerns limited in time to specific circumstances and once those specific circumstances became history, so did the substance of the texts. The

authorities' hesitation as to what rank to assign ethics in the legal hierarchy of norms should be noted. Indeed, ethical standards are to be found in a wide range of texts: decrees, administrative notes, circulars, communications at cabinet meetings or simple letters.

In view of all the foregoing reasons, public servants lack guidelines not only for their own conduct but also for evaluating the behaviour of their subordinates. Very recently, the Public Service Minister submitted to a Cabinet meeting a preliminary bill concerning a code of ethics, a code of conduct and a regime for public servants. The bill brought together in a single text all the provisions contained in all the previous legislation. The problems encountered during the consideration of this preliminary bill drew the attention of several public service managers to the problem of where to place ethics in the legal hierarchy of norms.

In view of the fact that many of the provisions of the preliminary bill are in contradiction with other laws in force, the principles of public law and especially the principle of the legal hierarchy of norms, it would be doubtless preferable that ethical values and standards applicable to the public service as a whole should be promulgated in a form other than that of an act, as for example, in a "formal declaration" or "charter" to which the legislative and regulatory texts may subsequently refer in prescribing acceptable standards of conduct.

This option allows for the necessary degree of flexibility in any methodology of controlling society, since ethics, in appealing to the conscience, very largely depends on social and cultural factors, that is to say, the set of values which shape the collective memory of society, undergird its standards, ground its culture, guide its actions and focus the concerns of social actors.

It is therefore not enough to draft laws and regulations. It is particularly crucial to ensure that society at large endorses the new norms. To that end, efforts must be made to:

- Internalize the values and ensure the absorption of the new standards;

- Foster the emergence of an awareness of the public interest, even if family, ethnic or regional interests still continue to have a key role in social intercourse; and
- Make society aware that illicit personal enrichment is not the only reprehensible behaviour, but that family or ethnic favouritism as well as political patronage, too, are all equally reprehensible.

Another advantage of the "formal declaration" or "charter" formula is that it makes it possible to take into account the time it takes people to react.

In order to ensure that the legal system does not become an environment that is too likely to breed corruption, citizens must be informed about their fundamental rights, the basic contents of laws and about how the main mechanisms of the legal system function.

The first duty of public servants is to inform the public. Notices should be posted in public service premises describing the functions of the service concerned, the types of documentation required, the nature and amount of statutory fees payable. Information desks should be opened in public service departments, tax offices and the courts. Information brochures and leaflets should be prepared and disseminated. Given the susceptibility of public servants to corruption, it would not be very advisable to leave the responsibility of informing the public to those public service administrations directly concerned. Therefore, the action called for in this regard includes:

- Making information brochures and leaflets available at the local government and grass-roots community levels;
- Establishing an independent agency whose only responsibility will be to inform citizens about the functions, restrictions and procedures of public service agencies;
- Incorporating in the curricula of schools education on fundamental rights, the functions of public agencies and the contents of laws and key legal procedures; and
- Promoting and supporting the activities of associations that educate citizens.

The programmes of national radio broadcasts designed to inform citizens about their rights and obligations must cover the contents of laws and the key legal procedures. Although the law is always full of technicalities and subtleties and it can be simplified only up to a certain extent, the language used in such radio broadcasts must be simplified.

Procedures to be followed in the event of demands for illegal payments, arrest or detention, land disputes, etc. must be developed and communicated to citizens.

In addition, legislative measures to combat corruption should be developed to:

- Make the inability of a person to account in court for the licit source of his wealth a separate criminal offence (“reversal of the burden of proof”);
- Expand the notion of conflict of interests and make it also applicable to those entrusted with public authority other than public servants;
- Strengthen the notion and punishment of “taking up prohibited employment”: the idea here is to provide for a criminal penalty against public officials who, after leaving office, receive employment as payment for favours they granted in the performance of their official duties. Such a provision is particularly important in the present context of privatization of public enterprises; and
- Severely punish favouritism in the award of public contracts in order to respect the principles of freedom of access to public contracts and equal treatment of applicants; it is necessary to punish public officials who obtain an unfair advantage for a bidder.

An agency specifically responsible for combating corruption should be established and have the task of:

- Identifying in legislation, rules and administrative practices, factors that breed corruption;
- Proposing legislative and statutory measures against corruption; and

- Informing and making the public aware of the dangers of corruption and the need to combat it.

The agency thus created should prepare an annual report on its activities addressed to the Head of State, the Head of Government, the chairmen of the parliamentary assemblies and the Minister of Justice.

All of the foregoing measures were proposed by the Minister of Justice, and preliminary bills relating to them were considered last year at a Cabinet meeting. Thus far, however, no follow-up action has yet been taken in that regard.

Guidance for public servants

For the public service in the broad sense, the only existing standards are those stated in:

- The Constitution (integrity and political neutrality of the public service);
- A circular of the Prime Minister dated 13 September 1990 concerning public relations in the public service; and
- The regulations for public servants.

It should be noted, however, that no implementing decrees have yet been issued with respect to the regulations for public servants. The best-applied standards are those specifically drawn up for the professions organized as trade associations (accountants, physicians, lawyers, pharmacists, etc.).

The public service regulations comprise provisions scattered throughout a large number of texts. Therefore, such provisions can be amended by simple administrative instructions or service notes. The compilation, study and codification of provisions that constitute the regulations of the public service are among the most important tasks to be carried out as part of the reform of the public service.

Management of conduct in the public service

The management of conduct in the public service seems to be rather lax. In addition to what has already been noted elsewhere, it could be said that such laxness is attributable to two

reasons: the failure to punish incompetence and the increasing tolerance of unethical conduct. This can be further illustrated by the deterioration in the conduct of public servants as a result of their socio-economic situation. Due to the decline in public service pay in real terms over a long period, public servants feel frustrated. They are adjusting their conduct in accordance with this subjective assessment of their situation and putting a lot less effort into their work. Since this subjective view is shared by some of the managers, heads of services increasingly tolerate unethical conduct.

For instance, the performance of other jobs by public servants has led to unethical practices such as disregard of working hours and embezzlement of public resources. Although according to all the regulations, still in force, such behaviour is reprehensible, it is not always punished in reality because immediate superiors try to stress what is reasonable rather than what is legal.

Management of conduct in the public service does not seem to be one of the priority concerns of the public authorities. Nor is there pressure from public service users; the citizens also appear to have become accustomed to the vicissitudes of the existing system.

Control of conduct in the public service

It is difficult to implement the legal measures concerning the control and punishment of reprehensible conduct because:

- They contain contradictory provisions;
- There are no implementing decrees and orders for the laws in force; and
- The regulations concerning the disciplinary regime are disparate and sometimes inconsistent. Moreover, they are old and/or are no longer available.

In the case of disclosures, those made by candidates for elective political office are not verified, nor are their assets at the end of their mandates checked against the assets declared at the start of the same. Moreover, the assets disclosure requirement does not apply to top government positions and to positions that are particularly vulnerable to the temptations of corruption.

In addition, currently, no court has special jurisdiction for combating corruption. The Accounts Division of the Supreme Court is responsible for ensuring that all of the country's public accountants keep their accounts in accordance with regulations, but it has not been given the resources to carry out such a vast undertaking. The administrative and financial courts provided for since 1992 are yet to be put into place. Although the Disciplinary Court on Financial and Budgetary Matters has still not been convened, the legislation establishing it has already been used to dissolve the former Disciplinary Council on Financial Matters. The High Court of Justice provided for by the Constitution to prosecute crimes and offences committed by senior State officials has never been established.

In the public service itself, many public servants are unfamiliar with administrative law. Such lack of understanding of the law could account in part for the lack of action by immediate superiors in the face of the unethical conduct of their subordinates. Senior officials and the ministry inspectorate cannot always perform their oversight functions, due to a lack of resources. The external oversight that is supposed to be performed by the State Inspector General is constrained by the regulations and the shortage of resources in terms of equipment and staff.

Instances of ongoing disciplinary action being suspended have been reported at every level of the hierarchy. Apart from such suspensions, procedures are slow because of the technical incompetence of public servants in the various services and practical difficulties, including the dispatch of mail. Thus, developments over the past 20 years show a steady weakening of oversight in the Malagasy administration.

Non-governmental actors

Users of public services do not react to unethical behaviour and seem to have come to terms with corruption. In addition to the action that needs to be carried out in the public services, other equally important activities have to be undertaken within civil society as a whole, to the extent that non-governmental actors have a role to

play in sparking a reaction among the general public and a groundswell against corruption.

The trade associations are very concerned about maintaining respect for their professions and therefore exercise control over the conduct of their members. Any breaches of the statutes and rules of procedure of a particular association are punished by its disciplinary council. Members observe their profession's code of ethics because they are afraid of being banned from exercising their profession if they break the rules. Any anti-corruption programme should therefore not overlook the potential support of trade associations.

Until now, professional associations have only been lobbies looking out for the economic interests of their members. They are powerful and it would be a good idea to harness that power to combat corruption, stressing that acts of corruption are detrimental to their interests.

Although the press can make a major contribution to the fight against corruption, journalists have thus far, out of a sense of self-preservation or perhaps fear, not taken the risk of publishing about corruption-related scandals. Yet there are many journalists' associations which can be geared towards defending their members against any possible reprisals by the networks of friends of persons implicated in corruption.

A group of associations had recently demanded that civil society be given the right to denounce and lodge complaints against acts of corruption or attempted corruption. However, this proposal is up against a serious legal obstacle, since it was noted that it runs counter to a principle of law concerning the "interest to take action." However, even if associations cannot file complaints against acts that are not directly prejudicial to them, they can always channel their activities towards providing information to citizens and seeing to their civic education.

Recommendations

The most common acts of corruption in the Malagasy public service relate to the public ser-

vants' struggle for survival. Therefore, such "petty corruption" can be combated by increasing the current level of salaries, which is objectively too low. But such low salaries in the public service mirror the level of performance of the current system. That is why an increase in the salaries of public servants can be beneficial only if it is tied to performance and is implemented within the overall framework of public service reform.

Indeed, a turnaround in the situation can be achieved only with a public service that is revamped in accordance with the fundamental responsibilities of the State in the current context:

- A modernized public service in terms, *inter alia*, of equipment, administrative and working methods, organization and structures and qualifications of public servants;
- A professional public service that prohibits public servants from exercising any paid private employment; and
- A significant change in the management culture in terms of both human resources and public management in general.

It is only within such a revamped system that public servants can provide quality public service in terms of:

- New attitudes in line with standards of efficiency, competence and quality of service;
- Ethical standards of integrity and impartiality; and
- Level of professionalism and discipline.

However, civil service reform cannot be achieved without a clearly expressed political will on the part of the leaders with the endorsement of all national actors. It is precisely such political will that is required to combat serious corruption and promote professional conduct.

CHAPTER 6: NAMIBIA

Background on the national public service

The Public Service in Namibia was established at independence in 1990. It is to be impartial and professional in its effective and efficient service to the Government in policy formulation and evaluation and in the prompt execution of Government policy and directives so as to serve the people and promote their welfare and lawful interests.

The public service consists of persons who are employed permanently or temporarily on a full-time or part-time basis or under a special contract or under any contract of employment contemplated in section 34(1)(a) of the *Public Service Act 1995*.

The public sector is comprised of the central and local governments, together with the associated agencies of the State, including parastatals. The public sector plays a major role in the Namibian economy due to the services it provides—including education, health, infrastructure, defense and general administration.

There are two offices of higher authority (the Office of the President and the Office of the Prime Minister) and twenty ministries in the central government. The highest level of local government is represented by the regional councils, established in terms of the *Regional and Local Government Act* and implemented after the 1992 local and regional elections.

The Prime Minister, in terms of the Namibian Constitution, is directly responsible for the management of the public service. This stems from the fact that the Prime Minister is the coordinator of the work of the Cabinet and accountable for government business in Parliament. This includes the formulation and implementation of policies affecting the mobilization, development, utilization and motivation of the public service.

The resources devoted to public service are very substantial, both in terms of the proportion of GDP devoted to public expenditures and in

terms of the number of civil servants in proportion to the total population. Namibia's ratio of 1 civil servant per 24 Namibians makes Namibia's proportionately one of the largest public administrations in the developing world. Therefore, improving the public service must depend on making it more effective and efficient, rather than giving it an even larger share of national resources.

Background on public service ethics and anti-corruption initiatives

In August 1996, the Namibian Cabinet launched a national consultative process involving all key institutions of society to elicit opinion and develop proposals for a comprehensive legislative, administrative and public education framework for the promotion of ethical behaviour and the prevention and combating of corruption at all levels of national life.

The Namibian anti-corruption/ethics promotion process considered the international efforts in which initiatives in favour of good governance, greater accountability and transparency and cooperation in combating corruption are being undertaken by many nations, particularly in the developing world.

The Namibian process was enriched by the experiences and best practices of other countries, particularly in Africa, that are also engaged in efforts to promote ethical conduct and to combat corruption.

The Prime Minister launched the Ad Hoc Cabinet Committee on the Promotion of Ethics and the Combating of Corruption on 5 March 1997.

At the same time, a Technical Committee comprising representatives of government, the private sector and the non-governmental organizations was established to assist the Ad Hoc Cabinet Committee.

The Technical Committee was charged with the responsibility of researching and analyzing the issues covered by the Terms of Reference and guiding the consultation and public education process.

In the early stages of the work of the Technical Committee, a consensus emerged to the effect that the definition of corruption should not be limited to “the misuse of public office for private gain.” This definition does not place adequate emphasis on the role of the private sector in corrupting public officials and ignores the fact that corruption can exist within the private sector and within public entities outside of government, such as trade unions and community organizations. In this context, corrupt practices should be seen as those involving the misuse of entrusted power for personal gain or the benefit of a group to which one owes allegiance.

The key activities and achievements of the Technical Committee have included:

- The preparation of institutional profiles by each ministry, private sector or non-governmental institutions represented on the Technical Committee, containing information concerning the governing structures, ethical standards and problems with corruption in each institution;
- A seminar on 6 and 7 June 1997 at which several international experts presented and discussed the elements of a national integrity strategy and certain international best practices, and Namibian experts aired their preliminary views as to what should be Namibia’s strategy;
- The organization of the members of the Technical Committee and additional participants into six syndicate groups, charged with the responsibility to study various key areas of the terms of reference and to make detailed reports containing recommendations for the national strategy. The syndicate groups addressed the topics of criminality, procurement, issuance of licenses and permits, freedom of information, open meetings and whistle-blowing, codes of conduct and agencies/unit for the implementation of the national strategy. Almost 100 persons representing dozens of institutions were nominated to the syndicate groups;
- Study missions to Botswana, Tanzania and Uganda to learn firsthand about their exper-

iences in combating corruption and to visit their specialized anti-corruption agencies;

- A second seminar from 25 to 28 March 1998, at which the members of the Technical Committee, the Ad Hoc Committee and additional members of the syndicate groups, assisted by the critical input of international experts from Ghana, Tanzania, Uganda, Botswana, South Africa and the United States, considered the recommendations;
- The establishment of the Preparatory Committee for the National Conference on Integrity/Promotion of Ethics and Combating of Corruption, which was held from 7 to 9 October 1998 in Windhoek;
- A launch by NBC Radio, in cooperation with the Project Team, of a national media campaign against corruption, run from July until September 1998; and
- Ten regional workshops held throughout the country during the month of August to prepare for the National Conference.

The following recommendations were formulated at the National Consultative Conference in October 1998:

- That the international definition of corruption be widened to include the private sector and an improved understanding of corruption through public education;
- That a Namibian Chapter of Transparency International be established;
- That a new and comprehensive Anti-Corruption Statute with wide reach, inclusive of the Executive as well as parastatals, boards, trusts, welfare organizations etc. be enacted and that provision also be made for extra-territorial jurisdiction;
- That a mandatory uniform Code of Conduct be introduced. The code should work in support of specific professional codes of conduct in particular domains, including a Leadership Code, such as exists in Uganda. A register of assets should be put in place for both public and private disclosure;

- That the procurement policy be improved to enhance open competition and transparency.
- That public oversight over tender procedures should extend to the post-awarding stage as well.
- That an obligation should be placed on Government as well as on other public institutions that operate on taxpayers' money to disclose maximum information to citizens. A Freedom of Information Act should be passed and constitutionally safeguarded;
- That an effective mechanism be established for the protection of the identity of persons who blow the whistle on corrupt practices;
- That existing legislation which governs the granting of licenses, permits and concessions be strengthened and that a new law be enacted to ensure greater transparency in this process; and
- That an anti-corruption agency or unit be established.

As the final step in the consultative process, the recommendations of the Conference were placed before the Cabinet for consideration during March 1999. The Cabinet endorsed the recommendations and opted for the capacity of the Office of the Prosecutor-General, an existing agency of the Government whose primary constitutional mandate is to prosecute in the name of the Republic of Namibia in criminal proceedings. The Office would be strengthened by creating a special unit within it charged with the specific responsibility to prevent, investigate and prosecute all corruption cases. This decision by the Cabinet is a clear expression of the commitment and political will required to support the Government's anti-corruption initiative.

On 28 March 2000, the Cabinet rescinded this decision and instead decided that an independent anti-corruption unit be created. The head of such a unit is to be appointed by the President after consultation with Parliament. The Ministry of Justice is to render logistical support to the unit.

Opinions have been expressed that certain peculiar problems arising from the apartheid era also contribute to corruption and unethical practices in Namibia. On the one hand, old apartheid

loyalties and ways of doing business among certain white businesses perpetuate discriminatory, non-competitive practices and collusion, exacerbated by the fact that whites largely control the business community. Further, some of the effects of corrupt practices introduced by the division of the nation into ethnic-based administrations are still present.

On the other hand, there is a view held by some black Namibians that because they were deprived of opportunities to create wealth in the past, they now need to find ways to get rich quick. As a result, certain leaders—senior officials or others who are in positions to influence decisions or have access to inside information—are sometimes accused of having adopted attitudes that they should be entitled to receive lucrative economic rights without necessarily having to adhere to the procedures or to meet the substantive requirements involved in obtaining or holding such rights.

Such attitudes threaten to erode the principle of service to the nation that guided the founding mothers and fathers, replacing it with values that tolerate the misuse of official positions by public servants in order to conduct private business. However, these perceptions have been fully debated and addressed in the proposed Code of Conduct.

Guidance for public servants

The *Public Service Act, 1995* (Act 13 of 1995) and the regulations promulgated thereunder require that public servants do not engage in remunerative activities outside of the public service without the requisite permission. It includes as misconduct, subject to disciplinary procedures, the following:

- Performance of private work by public servants related directly or indirectly to his or her official functions or to those of his or her office or failure to declare that any member of his or her household undertakes such work;
- Use of position to promote or prejudice the interests of a political party;
- Use of position or use of property of the State to promote the interests of a private

business or private agency, except in the performance of official duties;

- Acceptance of a commission, fee or reward, pecuniary or otherwise, to which he or she is not entitled by virtue of his or her office, or failure to report the offer of the same;
- Misappropriation or misuse of property of the State; and
- Contravention of a prescribed code of conduct.

In addition, public servants are required to make a written declaration to their Permanent Secretaries, or in the case of a Permanent Secretary, to the Secretary to Cabinet, of certain private interests.

Significant shortcomings include the fact that the public service standards are not well published among public servants, the declaration requirement is often not adhered to, and there are no guidelines as to what types of outside interests are permissible or impermissible. However, these guidelines are not clearly specified in Namibia.

The Namibian Constitution provides a general framework concerning the standards of conduct of the President, Ministers and Members of the National Assembly and National Council and Members of Regional Councils, by setting qualifications to hold office and, in the case of the members of the Cabinet, establishing the following broad rules:

- Cabinet Ministers may not take up any other paid employment, engage in activities inconsistent with their positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests (Article 42(1)).
- No members of the Cabinet shall use their position as such or use information entrusted to them confidentially as such members of Cabinet, directly or indirectly to enrich themselves (Article 42(2)).

Like any other set of management tools, the effectiveness of the ethics infrastructure will depend on whether it is implemented, understood and applied consistently.

The public service does not yet have an approved code of conduct. However, a draft was completed. Before it can be implemented, it has to be presented to the Public Service Commission and then be approved by the Prime Minister. The Public Service Staff Rules relating to the Code of Conduct was issued with effect from 1 April 2000 with a request to the offices, ministries and agencies to ensure that all staff members are made aware of the contents of the staff rules.

The Code of Conduct provides guidance to staff members on the behaviour expected of them, both in their individual conduct and in their relationship with others. Compliance with the Code will help to enhance professionalism and maintain confidence in the Public Service.

If the provisions of the Code of Conduct are not met, the question of misconduct may arise, and staff members could be liable to disciplinary action under the *Public Service Act* (Section 25 of Act 13 of 1995).

The Code of Conduct is based on three main principles:

- Staff members should perform their duties with professionalism and integrity and serve the government of the day efficiently.
- Fairness and equity are to be observed in official dealings with colleagues and members of the public.
- Real or apparent conflicts of interest are to be avoided.

The Code includes, *inter alia*, the responsibilities of staff members to:

- Perform official duties with skill, care and diligence, using authority in a fair and unbiased way;
- Be familiar with and abide by statutory and other instructions covering their conduct and duties, for example, the *Public Service Act and Regulations, Treasury Instructions and Circulars* (Regulation 10(a));

- Promote a sound, efficient, effective, transparent and accountable administration; and
- Report to the appropriate authorities any incident of fraud, corruption, nepotism, maladministration or any other act which comes to their notice in the course of their official duties and which constitutes an offence or which is prejudicial to the public interest (Regulation 19).

Regulation 11 deals with conflicts of interest. If staff members find that they have some personal, financial or other interest that might influence the way in which they perform their official duties, they must discuss the matter with their supervisor and take whatever action is necessary to avoid a conflict of interests. They may not engage in any transaction that is in conflict with or infringes upon the execution of their official duties.

Regulation 17 deals with managing official information. Staff members are not permitted to use or disclose information other than for official purposes without the approval of the Permanent Secretary.

The use of official position is dealt with under Section 25(1)(l) of Act 13 of 1995 and Regulation 11(b)(ii). Staff members may not use their official position to seek or obtain a financial or other advantage for themselves, their families, their friends or any other person or organization. Staff members will excuse themselves from any official action or properly declare the decision-making process for any action that may result in improper personal gain.

Accepting gifts or benefits is covered by Section 25(1)(l) and Regulation 16. Staff members may not use their official position to obtain private gifts or benefits for themselves during the performance of their official duties, nor may they accept any gifts or benefits when offered, except with the approval of the Prime Minister, as these may be construed as bribes.

Working outside the public service is addressed in Section 25(1)(e) of Act 13 of 1995 and PSSR D.XVIII/I and III. Staff members may not, without the approval of the Permanent Secretary/Accounting Officer on the advice of the Public Service Commission, undertake remunerative or

unpaid work outside their official duties or use office equipment or other resources for such work.

Management of conduct in the public service

The *Public Service Act of 1995* provides for the establishment and management of the public service. Part II outlines the administration of human resources, including providing rules and guidelines for recruitment and promotion. Part III outlines disciplinary procedures for misconduct. Misconduct is defined to include contravening or failure to comply with the *Public Service Act*, willful disobedience to lawful orders, negligence, a conflict of interest through operating or having a household member operating an outside business relating to the performance of official duties without prior approval, the misuse of position, excessive use of alcohol or drugs without a prescription, unlawfully disclosing information gained as a result of position, accepting bribes or not reporting attempts at bribery, misuse of state property, committing a criminal offence during the course of official duties, undue absence, influence peddling and failure to comply with any provisions of a prescribed code of conduct.

If misconduct is established before a disciplinary committee, the public servant can be cautioned or reprimanded, fined not exceeding N\$2000, transferred to another post, demoted or have his salary reduced or be discharged from the public service.

Control of conduct in the public service

The office of the Auditor-General is established in terms of Article 127 of the Constitution and has the responsibility to audit the accounts of all ministries and agencies of central government, of local and regional authorities, of parastatals and statutory bodies. The Auditor-General and his or her staff are entitled to seek explanations from employees of the institutions undergoing an audit to assist in fulfilling their functions. The Auditor-General reports weaknesses in systems of financial accounting and control which were identified during the audit and recommends ways in which improvements can be made to

reduce risk of errors, misuse of monies and fraud.

In line with current private sector auditing standards, the Auditor-General does not have the duty of detecting fraud or corruption but nevertheless plays an important role in prevention through its reports and recommendations and also through the few performance audits which it has been able to conduct. It is the view of the current Auditor-General that the primary responsibility for detecting fraud and corrupt practices should lie with the internal audit sections of the audited institutions, but it is acknowledged that many of the aforesaid institutions lack the human resource capacity to fulfil this responsibility.

All fraud and corruption-related crimes are presently investigated by the Commercial Crime Investigation Unit of The Namibian Police (NAMPOL), which is divided into three sub-units, namely Commercial Fraud, Fraud Syndicate and General Fraud Investigation. The unit consists of fifteen members. It is based in Windhoek and dispatches experts to outlying regions where detectives usually investigate commercial crime. In addition to investigation of crimes of fraud and corruption, its responsibilities include crimes under numerous and varied statutes. It works closely with the banks and financial institutions. NAMPOL does not presently have members who are trained in accounting or other specialized skills relating to the investigation of white-collar crime. However, it has committed itself to the establishment of a Staff Development Programme under which prospective police officers will be granted opportunities, as of 2001, to undergo tertiary training, including accounting and commerce, in addition to regular police training.

Article 88 of the Constitution confers on the Prosecutor-General the sole power to prosecute in the name of the Republic of Namibia. He is assisted by a staff of eighteen State advocates at the High Court and Supreme Court and approximately sixty-one prosecutors assigned to Magistrates Courts throughout the country. However, the prosecutors lack specialized training and the Office suffers from the persistent drain of experienced prosecutors, due to inadequate

remuneration.

The Public Service Commission is an independent body nominated by the President and appointed by the National Assembly in terms of the Constitution. The Public Service Commission is composed of seven members with a secretariat of 26 posts. Its functions include advising the President and Government on the appointment of certain categories of public servants and constitutional office-bearers and exercising adequate control over disciplinary procedures to ensure the fair administration of personnel policies. The Public Service Commission Act (Act 2 of 1990) empowers the Commission to conduct inquiries, summon witnesses and require the production of documents.

Article 87 of the Constitution charges the Attorney-General with the functions and duties, among others, to exercise final responsibility for the Office of the Prosecutor-General, to act as the principal legal advisor to Government and to take all action necessary for the protection and upholding of the Constitution. The establishment of the Attorney-General consists of Legal Advice (8 posts), Government Attorney (11 posts) and Prosecutor-General (9 posts). Through this advice to the President, the Prime Minister, Cabinet and ministries or agencies on a daily basis, the Office of the Attorney-General plays an important preventative role by ensuring that government conducts business in a lawful, fair and non-arbitrary manner. Lawyers from the office are assigned to conduct investigations into any malpractice of the government ministries, to chair Commissions of Inquiry or to act as investigating officers in complex public disciplinary proceedings.

The Office of the Ombudsman is established in terms of Article 91 of the Constitution and is the only agency expressly given the responsibility in terms of the Constitution to investigate instances of corruption and the misappropriation of public funds. Article 91(f) provides that it shall be the duty of the Ombudsman to investigate allegations or suspected instances of corruption or misappropriation of public monies by officials and to take necessary steps, including sending reports to the Prosecutor-General or the Auditor-General.

This is only one of many functions ascribed to the Ombudsman by the Constitution and the Ombudsman Act (Act 7 of 1990). The Ombudsman does not have law enforcement powers and normally fulfils his or her functions through making confidential recommendation to government ministries or agencies and seeking compliance through persuasion and negotiation. The Ombudsman has the duty to report to Parliament on his or her activities. The Ombudsman's Office is not empowered to initiate its own investigations in the absence of a complaint having been lodged, and its jurisdiction to investigate corruption is limited to the public sector. The Office of the Ombudsman, like the other State agencies mentioned herein lacks adequate human and material resources to fulfil its broad functions.

Non-governmental actors

Making the government more client-oriented has been a central platform of public management reform in Namibia. This means that, at the same time as having to manage with fewer resources, public servants will also face pressures from increased public demands for more and better quality services. This pressure is exacerbated by governments' own attempts to publicly state standards and levels of service to be achieved (through, for example, the *Public Service Charter*).

The nameless, faceless public servant is becoming a relic of the past. Greater transparency in government operations, including through public access to official information, coupled with an increasingly zealous media and well-organized interest groups mean that public servants are more and more subject to direct scrutiny.

Private media play a role in exposing unethical behaviour. Examples of cases in point are: the National Housing Enterprise single quarters scandal in which senior officials from the organization and those from the Ministry of Regional Local Government and Housing were convicted and sentenced. Another involved the Minister of Fisheries' gifts for his wedding from fishing companies.

When the actions of public servants are more visible, so are their mistakes and misdemean-

ours. It could be argued that the apparent increase in wrongdoing is more a function of greater transparency and scrutiny than an actual increase in cases. What was before hidden in bureaucratic secrecy is now open to public and media scrutiny.

The current character of the Namibian chamber movement is largely reflective of narrow and parochial interests, deriving from the pre-independence legacy, which typified chambers as being essentially exclusive business clubs. To address this reality, it necessitated the embracing of a democratically derived mission, common values and strategic objectives, aimed at promoting the prosperity of all Namibians.

In September 1998, it transformed into the Namibia Chamber of Commerce and Industry. This transformation enables the chamber movement in Namibia to consolidate its position as a credible business organization, serving the interests of its broad-based constituency, through performing the functions of advocacy, representation and the provision of relevant services. In its new form, the chamber movement will play an even greater role in the tripartite paradigm of smart partnership as it relates to the achievement of national economic objectives.

Recommendations

Public servants operate in a changed and changing environment. They are subject to greater public scrutiny and increased demands from citizens. They have to assume greater responsibilities and adopt new ways of carrying out the business of government in an efficient and cost-effective manner. While public management reforms have realized important returns in terms of efficiency and effectiveness, some of the adjustments may have had unintended impacts on ethics and standards of conduct. This is not to suggest that changes have caused an increase in misconduct or unethical behaviour. But they may place public servants in situations involving conflicts of interests or objectives where there are few guidelines as to how they should act. Changing social norms and the increasingly international environment in which they work also influences their behaviour. The following are therefore recommended:

A national umbrella code should be adopted which would address specific codes of conduct of the organs of the state, parastatals as well as certain sections of the private sector, professional bodies, trade unions, NGOs and other community organizations. Where such codes already exist, they should be reviewed for adequacy and incorporated in the national code.

A national code and the specific codes should be enforceable, to the extent possible. The national code should have the binding force of law. Otherwise it would become just another nice piece of paper.

All public information is public property unless otherwise stipulated by law, and the public has the right to know what is going on in government. Therefore information should be made available except in specified circumstances, e.g., where state security is at stake.

One could argue that the freedom of speech as enshrined in the Constitution is the basis for giving protection to individuals for whistle-blowing. The community must be educated in what is required from them to be whistle-blowers and how to serve the country in this way. Their reward would be a corruption-free society. The following basic principles are recommended.

- A clear right to disclose information relating to maladministration, corruption and unethical behaviour and a right of protection for whistle-blowers.
- Companies must also have the right to complain about contractual or commercial matters such as tenders and licenses and to be protected from reprisals.
- The rights of private individuals must be safeguarded against malicious and unfounded allegations.
- Complaints or disclosures must be treated with confidentiality.
- Complaint mechanisms must involve an element of independence in the investigation of complaints in order to ensure objectivity.
- Complaints must be handled promptly.

- The complaint mechanism should be well publicized and accessible to any potential complainant.
- Professional codes of conduct should obligate professionals such as auditors, accountants, lawyers and doctors to reveal corrupt and improper practice.

All persons covered by the leadership code should be required to make a declaration of their interests, assets and liabilities. These declarations should be subject to public scrutiny. Any 'conflict of interest' provision should be enshrined in law and accompanied by criminal sanctions.

The entire tendering process needs to be open and transparent. All decisions should be taken in the public interest and should be open to public scrutiny. Deviations from standard procedures should be questioned, and reasons must be given for taking decisions when so required. This pre-empt or eliminates loopholes and other opportunities for corruption.

The inclusion of affirmative action is a necessary component in setting up tender procedures and measures, but it must not be at the expense of efficiency.

Existing tender law and procedures need to be reviewed in order to close all possible loopholes. In addition, tender procedures for central, regional and municipal authorities need to be harmonized.

National political office-bearers should be excluded from taking any decisions involving the procurement of goods and services and the authorization of exemptions.

Legislation and/or regulations must specify the circumstances under which exemptions may be granted, and reasons for not inviting tender should be made public.

Political office bearers should not be involved in the granting of licenses. Any person who is involved in the granting of licenses should not be involved when his/her next of kin is the applicant.

A mechanism should be established within government to inform the public on procedures

about the granting of concessions, quotas, licenses, work permits, mining rights and study grants.

A code of conduct and ethics should be drawn up for the private sector, which should include procurement regulations and guidelines. Some areas of private sector procurement require statutory regulations, such as the subcontracting of government tenders.

In order to gain the confidence of the public and to encourage whistle-blowing, any office or agency designated to receive whistle-blower complaints must have adequate personnel to investigate complaints promptly and to take prompt action in cases of victimization.

Codes of ethical conduct in all sectors should be reviewed and revised to include the aforesaid principles.

Public bodies and private companies should review their complaints procedures, in conjunction with trade unions or staff associations, to ensure fairness and adequacy to deal with complaints impartially and to protect employees who make complaints in good faith and those who have been the subject of complaints which prove groundless.

Some of the practices of traditional leaders that seem to be in accordance with their culture should be looked at, and the leaders should be educated to stop practices that may be corrupt.

The public at large, politicians and civil servants should also be identified as targets of public education campaigns. Elements can be incorporated in the curriculum of primary and secondary schools to promote ethical conduct. It is also recommended that the roles of the churches and the family in the promotion of ethical conduct need to be explored further. Namibian Society should, therefore, be encouraged to view corruption as an evil.

The media has an important role to play in educating the public and exposing corruption. Its role is critical for the success of a national integrity system. There is a need for better, more objective, investigative and analytical journalism. The need for responsible reporting has been emphasized. The media must perform its work in a professional and impartial manner. 'Witch hunts' and unsubstantiated accusations can unfairly harm individuals and undermine anti-corruption efforts. A code of ethical conduct covering media practitioners and a more effective regime of government/media liaison is, therefore, recommended.

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CHAPTER 7: NIGERIA

Introduction

It is ironic that cases of misconduct, bureaucratic corruption and moral decadence became the norm rather than the aberration under the military rule in Nigeria. The military, which ruled Nigeria for 29 out of the 40 years of the country's independence, often used corruption as the major reason for its incessant coups d'état, while evoking its martial discipline as a panacea for all ailments. However, it can be argued that corruption became institutionalized as state 'policy' under the military.

By the time of independence in 1960, the Nigerian public service was noted for its high ethical and technical standards, impartiality, anonymity and dedication. The civil service is one of the few good legacies left by the British colonizers. However, during the years after independence, especially with the incursion of the military into governance, corrupt practices and unethical behaviour became a serious phenomenon.

In 1987, the *Political Bureau*, a committee of notable intellectuals was set up by the then military president, General Ibrahim Babangida, to review social, economic and political issues in Nigeria. The *Bureau Report* gave a graphic picture of the problem of corruption and its debilitating pervasiveness in Nigeria's public sector. It stated that:

Corruption has become a household word in Nigerian Society from the highest level of political and business elite to the ordinary person in the village. Its multifarious manifestations include the inflation of government contracts in return for kickbacks, frauds and falsification of accounts in the public service. It also involves the taking of bribes and perversion of justice among the police, the judiciary and other organs for administration of justice. Crimes against the state in the business and industrial sectors of our economy are carried out in collusion with some companies. This takes the

form of over-invoicing of goods, foreign exchange swindling, hoarding and smuggling (Federal Government of Nigeria, MAMSER: *Report of the Political Bureau*, 1987, p. 215).

Since the time this report was written in 1987, the situation has become worse.

Several factors are responsible for the ethical crisis in the Nigerian public service. The first is the absence of a clear dichotomy between the primordial public and the civil society. While the primordial public—which refers to the traditional African society and its values—may not find certain behaviours unethical, the modern requirements of a rational public service may frown at such behaviours (Ekeh, 1975).

For example, although traditional African norms may not frown at the acceptance of a gift before services are rendered, this may be regarded as unethical in the modern public service. In traditional society, a refusal to show appreciation for services rendered may be regarded as ingratitude. Even in the modern public service, a small gift—the acceptable value of which is often specified in the regulations of many countries—after a service has been rendered may not be frowned upon—provided the gift was unsolicited.

Closely related to the above is the lack of social condemnation of corrupt practices and the fatalistic resignation of people in accepting such practices. The former military head of Nigeria, Mohammadu Buhari, once wrote that Nigerians display astonishing docility, evidenced by their little or no opposition to bad policies, authoritarian rule and official thievery on a horrendous scale. It strikes the imagination of many an analyst to see the high level of tolerance towards the free reign of injustice. In fact, there is a sort of social approval of corruption. A public officer is expected to use his position to improve his material condition, a failure of which is viewed—in certain societies—with disdain.

In the light of this, those who gain control of the state as policy-makers and political leaders often do not see their vantage positions as an oppor-

tunity to serve. Rather, they see them as avenues to accumulate wealth and implement policies that serve narrow parochial and ethnic rather than national interests. Hence there is the absence of probity, accountability and transparency in public life.

The oil boom of the 1970s created enormous resources for the government, but it simultaneously engendered corruption. The sheer size of the bureaucracy in Nigeria, in a situation of an absence of accountability, makes public servants operate without the required checks and controls. This was most evident during military rule.

The last but not the least important explanation is the poor remuneration of civil servants. The issue is exacerbated by the fact that in Nigeria, unfortunately, the incidence of poverty has not only remained very high but has been increasing rather than decreasing. The pressure on and the temptation of public servants to bend rules and get involved in unethical behaviour become very great.

Background on the national public service

In 1997, the Federal Office of Statistics recorded the population of the poor in Nigeria as 55.8 million, out of a total estimated population of 118 million. The lowest paid civil servant earns about 60,000 naira per year (equivalent of less than US\$60) while the highest paid civil servant takes home about 200,000 naira a year (equivalent of less than US\$2,000). Under these circumstances, it is not surprising that public servants subsume public interests under their own private interests, often for pecuniary gains.

The Nigerian civil service is a reflection of the country's social, political and cultural environment. The environmental factors combined in various ways to shape the growth, structure, functions and the changing phases of the Nigerian civil service.

The colonial civil services, between 1914 and 1946, were based on the colonizer's experimentation with the military civil service. The functionaries of colonial rule were the field officers, namely the Lieutenant Governor, the Residents and the District Officers. The major goals of the

civil service then were the maintenance of law and order and resource mobilization. The authoritarian nature of colonial rule precluded any deference to any clientele or public. The traditional rulers and chiefs, through the system of indirect rule, assisted the colonial public servants. Hence, there was a mixture of traditional values with rational western values in the administration of the country.

Between 1946 and 1966, constitutional developments led to the decentralization of the civil service and the emergence of both federal and regional (later state) civil services. With the advent of military rule in 1966, the era of extreme centralization began, which continued until recently. Great concentration of power of the national political authority invariably led to the over-centralization of the civil service, assuming greater functions.

The civil service in Nigeria has a history of reforms between 1954 and 1994. These reforms are as follows:

- Gorsuch Committee, 1954
- News Committee, 1958/59
- Mbanefo Commission, 1959
- Morgan Salaries and Wages Commission, 1963
- Wey Panel on Public Service Management and Salary Administration, 1968
- Elwood Grading Team, 1969
- Adebo Commission, 1971
- Udoji Public Service Review Commission, 1972-1974
- Dotun Philips Study Group on the Review of the Structure of the Civil Service, 1985
- Presidential Task Force on Civil Service Reforms, 1985
- Allison Ayida Committee, 1994

These reform commissions were set up to address the myriad problems of Nigeria's public service at different times in Nigeria's history. Important as the outcomes of the above-mentioned Commissions were, the *Public Ser-*

vice Review Commission (Udoji) Report of 1974 was a landmark in making bold and firm recommendations for the improvement of workers' salaries and the adoption and application of modern management techniques in the civil service. Some of the recommendations that were made by the Commission and accepted by the government include the following:

- A unified grading and salary structure (UGSS) for the entire public sector;
- Programme performance budgeting system (PPBS);
- Management by objectives (MBO);
- Continuous review of salaries and wages;
- A new open performance evaluation system based on quantifiable results; and
- Establishment of a permanent body charged with the provision of management services for the entire public service.

These recommendations were directed at achieving a results-oriented civil service, imbued with ethical values.

Background on public service ethics and anti-corruption initiatives

Three main methods have been used to sensitize the public, especially civil servants and political office holders, on the need to ensure probity, accountability, impartiality, hard work and transparency in the public service.

These methods serve particular purposes, which are prevention, management and deterrence or enforcement. There have been public enlightenment campaigns that lay out traditional core values of probity and selfless service in public life. In the past, there have been impressive declarations of intent in fighting corruption, which usually came to naught. The first of these was the launching of the *Ethical Revolution* by the first elected civilian President, Alhaji Shehu Shagari, in 1981. The regime was later overthrown by the military, which accused it of unbridled corruption.

The military junta under General Muhammadu Buhari (1984-85) introduced draconian laws to

enforce discipline. This regime introduced the *War Against Indiscipline* in 1986. This programme also introduced, among other things, the need for the "queue culture," especially in public places such as banks, post offices, bus stops, etc. Paradoxically, the regime promulgated a decree that protected public officers, particularly members of the junta, from false accusation, which placed them above their own draconian code.

Guidance for public servants

The basis of prevention includes the revised *Civil Service Rules* that replaced the *General Order (GO)*—bequeathed to the civil service by the British colonialists—and the *Civil Service Handbook*. Those covered by the *Rules* include all public officials, including the President of the Republic. The *Civil Service Rules* cover, among other issues: appointments to and separation from service, civil servants' discipline, salaries and increments, annual performance evaluation reports and certificate of service, petitions and appeals, leave and travel and reward for outstanding work. Chapter 4 of the *Civil Service Handbook* is on the Code of Ethics in Government Business. There is an emphasis on discipline, loyalty, honesty, courage, courtesy, cooperation, tact, industry, avoidance of delays, tidiness, helpfulness, efficiency, fairness, kindness and equity.

The *Handbook* states clearly that the civil service must be well disciplined, the rules and regulations should be adhered to and service must be paramount. Civil servants are also expected to be diligent in carrying out their duties and in their dealings with the public. Since they are paid salaries for the duties that they perform, they should not demand or receive money or anything in kind from anyone for the performance of their duties. They are expected also to eschew parochialism by ensuring that the interest of any ethnic group should not be pursued at the expense of what is best for Nigeria.

There are also the *Guidelines for Appointment, Promotion and Discipline*, issued by the Federal Civil Service Commission. However, as President Obasanjo wrote in the preface to the *Civil Service Rules*, the government must be ready to

enforce compliance. In his words, “*Civil Service Rules* by themselves will not lead to good governance if they are not backed by political will and the preparedness of government to impose total adherence to these rules to promote public good.” (*Guidelines*, 1999, p.1)

Management of conduct in the public service

There is also the Code of Conduct Bureau that is enshrined in the 1999 *Constitution*, under the fifth schedule. The mandate of the Code of Conduct Bureau covers the following:

- The President and Vice-President of the Federation;
- All members of the National Assembly (Senate and House of Representatives);
- Members of State Assemblies;
- State Governors and their deputies;
- The Chief Justice of Nigeria and all judicial officers, including alikis of shariah courts and customary and area court judges;
- All federal ministers;
- All state commissioners;
- All military officers of the rank of army captain and above;
- All police officers of the rank of deputy superintendent of police and above;
- All civil servants from the rank of director at the federal, state and local government levels;
- Ambassadors and high commissioners and other officers equivalent to directors in the home civil service;
- Chairmen, members, secretaries and heads of department of local government councils;
- Executive chairmen and members of boards of other government bodies and senior members of management of statutory corporations and companies in which the federal or state government has controlling interests;

- All staff of the rank of directors and above or equivalent positions in the federal civil service, of universities, colleges and institutions owned by the federal or state governments; and
- The chairmen and the members of the staff of the Code of Conduct Bureau and Code of Conduct Tribunal of the rank of a director.

The Code of Conduct Bureau has the following functions:

- Receiving written declaration of all properties, assets and liabilities of public officers and their spouses (family members are included through the new *Anti-Corruption Act 2000*), immediately after taking office, at the end of every four years and at the end of term of office;
- Retaining custody of such declarations and making them available for inspection by any citizen of Nigeria upon request;
- Examining the declarations to ensure compliance with requirements of the code;
- Receiving complaints about non-compliance or breach of the code; and
- If necessary, referring cases of non-compliance to the Code of Conduct Tribunal.

The fifth schedule of the 1999 Constitution states in detail the Code of Conduct for Public Officers. The code includes issues such as the avoidance of conflict-of-interest by preventing a public officer from putting himself or herself in a position where his or her personal interest conflicts with his or her official duties and responsibilities. A public officer must not engage in private business (except farming).

There is also the prohibition of operating foreign bank accounts by political office holders. A public officer is disallowed from asking for or accepting property or benefits of any kind for him or herself or any other person for anything done or not done by him or her in the discharge of his or her duties. In theory, such a provision prevents citizens from offering a public officer any form of inducement or bribe for the granting of any favour or the discharge of the public officer’s duties. It also discourages abuse of

power by public officers by preventing them from any arbitrary act, prejudicial to the rights of any other person, knowing that such an act is unlawful or contrary to government policy.

The Code of Conduct Tribunal was also established to treat cases of infringement or non-compliance brought to it by the Code of Conduct Bureau. Tables I and II below show the activities of the Bureau.

**Table 1: Code of Conduct Bureau
Statistics of Assets Declaration (1989-1998)**

	Years	Nominal Roll	ADFs issued	CADFs returned	ADFs not returned	Cases referred to Tribunal
	1989-92	55,984	55,984	51,200	4,784	4,784
	1993	40,433	40,433	37,528	2,905	2,905
	1994	34,159	34,159	11,016	22,878	-
	1995	72,287	72,287	52,365	19,922	1,312
	1996	35,487	35,487	22,742	12,745	658
	1997	40,860	40,860	21,639	19,216	283
	1998	70,124	70,124	42,678	27,270	945 (10,887 pending)
Total	1989-98	349,334	349,334	239,168	109,720	10,887

Key: ADFs: Assets Declaration Forms Issued.
CADFs: Completed Assets Declaration Forms

Source: Department of Assets Declaration, Code of Conduct Bureau, Abuja.

However, the statistics released by the Code of Conduct Bureau between 1990 and 1997 do not agree with the figures from the Code of Conduct

Tribunal—some state branches of the Bureau did not send in their cases, as Table 2 below shows.

**Table 2: Cases Received by the Code of Conduct Tribunal
from the Code of Conduct Bureau 1990-1999**

Year	Number of states that sent cases	Number of cases
1990	2 with FCT. Abuja	114
1991	9	132
1992-94	-	-
1995	7	815
1996	4	376
1997	4	283
1998	8	391
1999	10	3,076

Source: Code of Conduct Tribunal, Abuja.

Most of the cases referred to the Tribunal were struck out for lack of merit. Nonetheless, the Tribunal has the power to impose the following sanctions:

- Removal from office;
- Disqualification from holding any public office for a period of ten years; and
- Forfeiture to the state of property acquired by abuse or corruption in office.

The convicted have the right to appeal to the Federal Court of Appeal. There has been no known case of any officer that has been indicted publicly by the Tribunal.

The Public Complaints Commission, which is an Ombudsman-like institution, was one of the institutions established, following the recommendations made by the Udoji Public Service Review Panel. The Commission was set up in October 1971 and was empowered to investigate cases that relate to the following:

- Delay in:
 - Any department or ministry of the Federal or State Government Authorities to pay compensation for land acquired for public use;
 - Payment of retirement benefits (pensions and gratuities);
 - Payment of death gratuity to the family of a deceased person; and
 - Payment of worker's compensations.
- Wrongful termination of appointment;
- Wrongful dismissal;
- Wrongful computation of national provident fund contribution or underpayment of contributors' entitlement;
- Difficulty in getting insurance companies to pay claims;
- Failure to get refund from or amount overpaid to the tax authorities;
- Loss of postal money orders and parcels; and
- Withholding of superannuation benefits, etc.

Generally, the major function of the Public Complaints Commission is to provide impartial investigation on behalf of the citizens who feel they have suffered one form of injustice or another because of the actions of government ministries, agencies, local government councils, private organizations and their officials.

Between 1994 and 1998, the Public Complaints Commission received 9,628 complaints. Of this number, 3,835 were satisfactorily resolved, while 5,792 cases are pending. However, the Director of Investigation of the Commission complained of inadequate funds, staff and vehicles. He also revealed that the Public Complaints Commission lacks the power to prosecute. The Attorney General of the federation has the power to prosecute. A complainant who is not satisfied with the decision of the Commission may seek redress in court.

The latest attempt to end the culture of corruption and unethical behaviour in the public service in Nigeria is the promulgation of the *Corrupt Practices and Other Related Offences Bill* that was passed by the National Assembly in February 2000. It was the first "bill" that was presented to the Assembly by President Olusegun Obasanjo, who had promised during his inaugural speech on May 29, 1999 to fearlessly tackle the malaise of corruption in public life.

The bill, which is awaiting the ascent of the President to become law, establishes an independent Anti-Corruption Commission with branch offices in each of the states of the Federation and the Federal Capital Territory. Offences listed under the bill include:

- Accepting or giving gratification directly or through agents;
- Fraudulent acquisition of property;
- Fraudulent receipt of property;
- Bribery of public officers; and
- Fraud.

The Commission is empowered to investigate, conduct searches on premises or houses of suspects, seize property and arrest offenders. Penalties for convicted offenders range from six months imprisonment for withholding informa-

tion to ten years in jail for receiving gratification. The amended bill by the National Assembly stipulates that allegations of corrupt practices against the President, Vice President, State Governors and their deputies would be investigated even during their tenure of office. However, in order to adhere to article 308 of the *1999 Constitution*, which grants them immunity, they can only be prosecuted after they have left office. The bill is the most serious attempt made at enforcing ethical behaviour in the Nigerian public service since independence.

Sections 86-87 of the *1999 Constitution* deal with the appointment of the Auditor-General for the Federation and his tenure, while section 88 confers the power to expose corruption, inefficiency or waste of public funds to the National Assembly. Sections 126 and 128 respectively replicate the same for the states.

Control of conduct in the public service

In terms of enforcement or punishment, apart from the regular penal code and legal proceedings, governments use Ad-Hoc Commissions of Inquiry to probe corrupt practices. Notable amongst these was the Federal Assets Investigation Panel, set up to probe the assets of all former military governors in 1975. The outcome was that illegally acquired assets, worth 10,000,000 naira, were confiscated. In 1984, the Justice Mohammed Bello Tribunal was set up to probe political actors of the second Republic. As a result, many civilian governors and ministers were jailed for corruption. The military government of General Ibrahim Badamasi Babangida later released them. President Obasanjo has also set up tribunals to review contract awards and execution between 1976 and 1998.

Between 1957 and 1998, more than 500 public officers—including an ex-president, former governors (military and civilian), ministers and senior civil servants—had been indicted by Tribunals for corrupt practices, especially fraud. The Nigerian *Police Annual Reports* show evidence of the increasing rates of bribery and corruption in both the public and private sectors.

The new democratic era offers the country the opportunity to reduce corruption and ensure probity and high moral standard for public

officials. There are the traditional checks and balances between the executive, legislative and the judicial branches, which are guaranteed by the Constitution. There are also institutional devices to ensure probity. In the Senate, there are three committees that deal with or can investigate reported cases of corruption and unethical behaviour by public officers. These are the Committee on Public Accounts, Committee on Finance and Appropriation and the Committee on Ethics. In the House of Representatives, six committees are also expected to ensure probity in the public service. These are the Committees on Public Service Matters; Public Petitions; Ethics and Privileges; Appropriation; Finance; and Anti-Corruption, National Ethics and Values.

Non-governmental actors

Non-governmental actors, such as non-governmental organizations (NGOs) and professional bodies, have been involved in the crusade for ethical uprightness in the country. Transparency International (TI) has an active branch in Nigeria, and the President was a visible member of the body before his election. TI publishes an Annual Report that highlights cases of corruption in the public sphere. The officials of the organization attend workshops and seminars to sensitize the public on the need for probity in the public sector.

At the height of the unbridled corruption in the country, during the military era, some notable citizens of the country formed the Integrity Club in 1998. The Chairman of the Club is Mr. Christopher Kolade, a former Director General of the Nigerian Broadcasting Corporation and ex-Chairman of Cadbury (Nigeria PLC), a reputable multi-national firm. The objective of the Integrity Club is to empower people, systems and institutions against corruption.

The Integrity Club publishes a monthly newsletter, *Scrutiny*, in which it inserts national newspaper articles highlighting cases of corruption in public life—mentioning the names of public officials who have been involved in unethical behaviour, especially corruption. It also encourages members of the public to send letters to the leaders of government such as the President and

State Governors on cases of corruption, urging them to be open, accountable and transparent in the conduct of public affairs.

NGOs like the Friedrich Ebert Foundation organize seminars on corruption. The Lagos Chamber of Commerce also employed the services of a consultancy company to study the issue of transparency in business transactions.

Professional bodies in Nigeria also try to maintain probity amongst its membership. Notable bodies such as the Institute of Chartered Accountants of Nigeria (ICAN), the Nigerian Medical Association (NMA) and the Nigerian Bar Association (NBA) have codes of conduct for their members. For instance, the Institute of Chartered Accountants of Nigeria, which was established by an Act of Parliament No. 15, 1965 issued its *Members Code of Conduct*, drawn much from the guidelines of the International Federation of Accountants (IFAC). The booklet enumerates the ethical standards of the Institute that include integrity, objectivity and independence and describes how to avoid conflicts of interest. The power of the Institute to enforce ethical standard is by the ICAN Act, conferred on the Accountants Disciplinary Tribunal. Since most cases of unethical behaviour in the public service are linked to financial misdeeds, the code of ethics for accountants focuses on public probity.

Churches and mosques have not been seen to be critically involved in highlighting unethical behaviour in the public service. The same applies to traditional rulers.

Recommendations

The new democratic era in Nigeria offers a new hope for the quest for probity, accountability and transparency in the public service. However, certain issues have to be taken into account in order to realize this objective.

Efforts should be made to sustain democratic rule in Nigeria. By its essence, democratic governance ensures that political leaders are held accountable for their action. The principle of the separation of powers between the executive, legislative and judicial branches of government should be maintained and strength-

ened. This will ensure good governance, responsiveness and improve public service ethics generally. In addition:

- Public officers who are found guilty of corruption or any unethical behaviour should be prosecuted accordingly. The lack of prosecution of erring officers aggravates corruption.
- Contractors who fail to perform or execute government contracts according to the terms of agreement should be blacklisted.
- There should be the political will and institutional mechanisms to implement the *Anti-Corruption Act*, recently signed by the President. Every public officer should be given a copy of this act, and it should be translated into major Nigerian languages and given wide circulation and publicity.
- The National Orientation Agency (NOA) should hold public seminars and workshops to sensitize the citizens on their responsibilities in combating unethical behaviour among public servants.
- The public service and the organized private sector should hold periodic meetings to harmonize their respective views on the subject of ethics.
- All professional bodies in the country should be required to put in place a code of conduct that stipulates ethical standards for their members. There should also be institutional mechanisms for sanctions on erring members.
- Contract awards by governments (federal, state and local) should be by public tender in order to ensure transparency.
- There should be periodic upward reviews of civil servants' remuneration in order to ensure that they are guaranteed living wages.
- Pensions and gratuities of retired officers/public servants should be enhanced and reviewed periodically in order to minimize anxiety about retirement. Most public servants are tempted to engage in unethical behaviour while in service because of the fear of the unknown and possible poverty in

retirement and old age. Hence the temptation to “steal” for a rainy day.

- Freedom of the press should be nurtured and enhanced. The press should engage in constructive and investigative journalism in order to be able to uncover unethical behaviour in the public service.
- Regular declarations of assets by public servants should be enforced. Such declarations should be open to public scrutiny on demand.
- The Public Complaints Commission, Code of Conduct Bureau and Code of Conduct Tribunal should be strengthened financially in order to enhance their performance.

- Law enforcement agencies should be properly trained in the areas of uncovering and investigating corruption and unethical behaviour within the public service.
- There should be a hot-line to the responsible government and law enforcement agencies for use by members of the public who may have any information on unethical behaviour by any public officer.

In conclusion, the current international campaign against corruption and unethical behaviour has also raised public awareness in Nigeria, which has the unfortunate distinction of being regarded as one of the most corrupt countries in the world.

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CHAPTER 8: SENEGAL

Introduction

In Senegal, the organization and operation of the public service are heavily influenced by the State's colonial legacy. Indeed, the culture of the Senegalese public service can be seen as very much a part of how far the country has come since the exceptional period of the first decade of independence, when a single party virtually considered itself as the State.

The State, which claimed to be the sole pioneer of nation-building and based its historical legitimacy on the need to urgently develop and ensure the smooth functioning of all the mechanisms of an emerging nation, imposed its dominion on the citizens and was totally beholden to the interests of the party. That was how the Party-State, the Partisan-State and allegiance to the single party were established. Some would say that it was also the origin of the all-powerful civil service.

This unique time in history was characterized by the "go-it-alone" government paradigm. It was also the period of the welfare State, which claimed and monopolized all economic development, nation-building and educational advancement ventures. The omnipotence of such a State was reflected in its instruments of intervention, which served as its natural tools among which the public service held pride of place.

On the other hand, the republican mode of government enshrined in the Constitution stood in contrast to such centralizing trends. There was a distinct paradox between the republican commitment to emancipation, as expressed in the Constitution on the one hand, and the monopolizing tendency of the State, as evidenced by its political and administrative organization and its day-to-day operation, on the other hand.

Currently, as in many other countries in the world, the functioning of the Senegalese public service is characterized by a wide discrepancy between the substantive content and principles of the general orders and daily practice. While in terms of rules and principles, the Senegalese public service seems quite modern, its actual daily administrative practice bares an operating

code that is incompatible with the requirements of a modern State. The lack of republican ideals, principles and culture in the civil service, the influence of pressure groups, patronage, favouritism, corruption and racketeering, are so many ills in the system that the gloss of modernism can barely conceal.

Today, Senegal has a new government, following the presidential election of February-March 2000, which swept the opposition into power. Some of the above-mentioned ills, including the lack of a republican culture, patronage and corruption, were recurrent themes in the opposition's campaign. Since it is too early to take into account the impact of the change of government of 19 March 2000 in Senegal, the present report reflects the situation that prevailed prior to such a change of government.

The new Government has expressed the political will to combat corruption and institute transparency. In his message of 3 April 2000 to the nation, President Abdoulaye Wade clearly condemned "the more or less hidden practices of paying commissions, corruption and misappropriation of public funds." It should be noted, however, that the new authorities have not yet defined a strategy to give effect to the political will expressed. In this regard, experience has proven that much time is required to translate expressed political will into reality.

Background on the national public service

In the past, the organization and functioning of the Senegalese public service were characterized by two overarching and ubiquitous trends:

- A paralysis of internal regulatory and watchdog mechanisms, characterized by a considerable imbalance in the distribution of roles among the different components of the State; and
- The civil service as a sole actor, not subject to any overall outside supervision.

Both features were reflections of the “go-it-alone” style of government with a pervasive lack of transparency in its operation and total impunity, reinforced by a near total lack of an outside system of accountability.

However, the foregoing stands in sharp contrast to the clear desire for decentralization expressed by Senegalese lawmakers. Indeed, the body of laws on decentralization contains many provisions that advocate a broader and more varied distribution of responsibilities and power.

Yet, despite such measures on decentralization, the Senegalese public service is still suffering from the cumbersome inertia created by powerful centrifugal forces for a lack of genuine devolution of power from the central authorities to the local and community levels and also for a lack of delegation of authority at each level of the hierarchy considered. So pervasive has this become that recently, the public authorities had to do something by way of preparing a draft charter on decentralization, designed to reorganize the distribution of central level power within the public service.

It is through this dichotomy that one really sees the two contrasting and contradictory faces of the paradox in the Senegalese public service.

Background on public service ethics and anti-corruption initiatives

The above-mentioned bureaucracy, as well as the lack of access for ordinary citizens to basic services, clashes with the ethical rules of transparency, equity and justice that society is entitled to expect from the Senegalese public service. Many public officials, because of the impunity with which they can get away, have become so unconscionable and arrogant that, instead of being providers of services for their client-citizens, have become rent-seekers, lining their pockets with the proceeds of graft and other types of malpractice at the expense of the taxpayer. Today, public servants are routinely considered among the wealthiest people in the country, although everyone knows that they earn very low salaries and wages.

To correct such unethical behaviour and irregularities, anti-corruption measures were taken,

including in the form of the prevention and punishment of illicit enrichment instituted by Act No. 81.54 of 10 July 1981, which established the Court on Illicit Enrichment. To date, however, only two persons have been successfully prosecuted on the basis of this Act following its enactment. After three years of operation, no other proceedings have been carried out and the Act fell into abeyance due to the lack of political will on the part of the Government of the day. It is important to note, in this regard, that the Court on Illicit Enrichment no longer exists in reality since the mid-1980s, because the State stopped assigning to it the magistrates required for its functioning.

Following the formation of a new Government in the wake of the legislative elections of May 1998, the Prime Minister declared in a general policy statement before the National Assembly that he was determined to institute transparency and launch the fight against corruption.

The initial step taken by the Senegalese Government to give effect to this new approach was its signing, on 23 February 1999 in Washington DC, of the Declaration whereby eleven African States, at a gathering within the framework of the Meeting of the Global Coalition for Africa, pledged to combat corruption on the basis of twenty-five principles.

In April 1999, the Prime Minister of Senegal, who chaired the opening ceremony of a seminar of the Civil Forum on the theme of *transparency in governance*, reiterated his determination to combat corruption and declared his willingness to cooperate with civil society to that end.

The Head of State had recommended at the formal reopening ceremony of the courts on 3 November 1999 under the theme: *the prevention of corruption by statute and its punishment by the courts*, certain measures and ideas for reform, including:

- The institution of the declaration of assets by public servants;
- The establishment of greater transparency with respect to public works contracts and better publicity with respect to invitations to tender;

- “Oversight” of the discretionary power of the administration;
- The regulation of gifts to public servants;
- Strengthening of the authority of oversight bodies;
- The establishment of an anti-corruption agency; and
- The accession to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Accordingly, nine working groups were set up to study the topics raised in the President’s speech and, upon completion of their work, a national seminar on corruption was held on 12 January 2000 in Dakar. The new authorities have yet to announce what action they are going to take on the conclusions of the seminar.

Guidance for public servants

The Public Service Regulations, supplemented by special regulations for public servants working in specific agencies, constitute the overall framework defining the ethical standards governing public servants. Such standards constitute a set of values in terms of the particular obligations that public servants have in order to fulfil their mission of service to the public. That is why the above-mentioned Public Service Regulations and special regulations contain many relevant provisions designed to promote, among other things, equity, honesty, neutrality, impartiality, objectivity and competence. All these provisions have been made necessary by the duty of the public service and its officials to be devoted to the public interest.

Public servants are briefed about the ethical standards by which they are bound during their pre-recruitment induction training. Indeed, prior to their recruitment, public servants attend a training course during which they are introduced to the values and standards concerning their future functions. It is only after satisfactory tests following such training that the public servant is given a permanent contract.

The supervision of the trainee public servant is entrusted to another public servant in the same field who is selected on the basis of a solid track

record and many admirable qualities, including his competence, seniority and seriousness. The supervisor’s opinion carries considerable weight in the decision to give permanent status to the trainee.

Management of conduct in the public service

Each public service has a unit responsible for the management of public servants. This unit is also responsible for the general coordination and management strategies of all human resources, including promoting public service ethics. The head of the coordination unit is a director, who is assisted by two or three chiefs of division, one of whom is solely responsible for the management and monitoring of the careers of public servants: recruitment, assignment, disciplinary sanctions, etc. The chief of a division usually has the title of chief of personnel.

Some describe the management of the public service as being rife with patronage, which stems from the confusion long maintained between the State and the single party that ruled the country from independence and subsequently became the dominant party with the advent of the multi-party system. Thus, the system of appointments in the public service based on favouritism gives preference to public servants who are members of or close to the ruling party. In this context, the retention or promotion of public servants to positions of responsibility is often based more on their political “usefulness” than on their merit, professional competence and their strict observance of ethical rules for the public service.

The use of public resources by public servants to further the political goals of the ruling party has been tolerated and even encouraged. During election campaign periods, public servants, especially managers, are allowed to devote the time at work, for which they are paid, to the ruling party’s activities, to the detriment of the public service, which is virtually deserted during such periods.

As far as users of the public service are concerned, pride of place is given to patronage, which gives preference to friends and political supporters at the expense of the public’s interest

and in violation of the principle of the public service's duty to treat all citizens equally. Moreover, at the political level, conduct in the public service is a function of the use of the public service by the ruling party to achieve electoral ends. The recurrence of the foregoing led to the establishment of a national elections watchdog responsible for supervising the electoral process in order to prevent bias by the public service.

The change in political power on 19 March 2000 is likely to lead to changes in how conduct in the public service is managed, if the political will expressed is anything to go by. The measures taken thus far by the new authorities concerning appointments in the public and parastatal services are part of a trend indicative of a more objective approach that gives preference to competence over political considerations.

Control of conduct in the public service

The control of conduct in the public service falls under legal, parliamentary and administrative jurisdictions.

The legal jurisdiction is composed of the Council of State and the Audit Office. The Council of State, established by Organization Act No. 92-24 of 30 May 1992, has jurisdiction in cases of abuse of power by the Executive. In that connection, it has jurisdiction in appeals for the annulment of administrative measures. The Auditor-General's Office, established by Organization Act No. 99-70 of 17 February 1999, has jurisdiction over the accounts prepared by public accountants. In addition to this judicial function, the Auditor-General's Office also has permanent jurisdiction in verifying information and providing advice in order to help to achieve the following objectives:

- Safeguarding public assets and monitoring the probity of public finances;
- Enhancing management methods and techniques; and
- Streamlining administrative procedures.

The Audit Office, which is also responsible for auditing the accounts and monitoring the management of public sector enterprises, exercises its jurisdiction either under an annual pro-

gramme defined by it, or at the specific request of the Government or Parliament. It may be noted that as part of the exercise of its non-judicial function, the Audit Office has to establish an annual general public report. This major innovation could contribute considerably to transparency if the annual report of the Audit Office were widely disseminated.

Parliamentary jurisdiction is exercised by the National Assembly and the Senate, which are supposed to exercise oversight over the public service in a variety of ways, including through plenary questions, hearings and commissions of inquiry. However, such oversight is very ineffective because of several factors, including the lack of expertise of Assembly members and senators. Sometimes when the parliamentary majority system is abused, the system of parliamentary oversight is transformed into a system for rubber stamping decisions, without any real oversight over the action of the executive branch through the public service.

There are no parliamentary committees specifically responsible for public service ethics issues. However, the Constitution provides for the establishment of commissions of inquiry within the framework of the National Assembly or the Senate. The conditions governing the establishment and functioning of such commissions are very restrictive and are not conducive to the development of such a system of control.

It should be noted that in the current Parliament, especially in the National Assembly, the majority party has systematically used its numerical advantage to block the establishment of commissions of enquiry proposed by members of the parliamentary opposition.

The administrative jurisdiction is the most sophisticated of the three means of control of conduct of the public service. It is made up of bodies responsible for the self-regulation of the public service or, in other words, the monitoring by the service itself of its own activities, in the form of internal oversight over its own organization and functioning. In order for any public service to function smoothly, it needs an internal oversight mechanism to monitor the work of its officials and services, thus guaranteeing transparency on the basis of normative standards laid down by

the law and regulations. The Senegalese public service is no exception to this rule. It has established several instruments designed to exercise oversight over all aspects of its own functioning. A two-phase approach is taken with respect to the self-regulation of the Senegalese public service:

- Under the first phase, that of internal control, oversight is exercised within the ministry department or a particular public service; and
- Under the second phase, that of external control, cross-cutting oversight external to the ministry department with a wider horizontal jurisdiction is exercised.

Both the internal and external control mechanisms depend on a number of functional bodies for their operation.

The internal control phase begins with the internal inspection of every ministry department, conducted on behalf of the minister concerned. Such inspection is regulated by Decree No. 92.631 of 19 August 1982 that mandates internal inspections within each ministry. The purpose of internal inspections is to:

- Ensure the implementation of guidelines issued by the President and Prime Minister on the basis of reports of the State Inspector General's Office (IGE) and other oversight bodies;
- Assist the Minister concerned in exercising oversight over staff, equipment and appropriations of the ministry departments and public institutions under its supervision;
- Undertake such verification and control tasks as may be entrusted to it by the Minister;
- Follow up on the implementation of guidelines generated by the internal reports; and
- Review all the administrative, financial and accounting measures taken within the ministry and the bodies under its supervision.

Internal inspection may involve an inspector of administrative and financial affairs together with one or several technical inspectors.

In addition to internal inspection, the Inspectorate of Administrative and Financial Affairs (IAAF) exercises continuous oversight over the services of the ministry department and the institutions under the ministry's supervision. Its oversight includes the use of appropriations, the application of budget regulations and the organization and administrative functioning of services.

The task of the technical inspectorate is to verify that the performance of individual services is at the level expected of the public service. Its task is thus to verify technical capability. Technical inspectorates take various forms, reflecting the wide range of technical profiles of the ministries. Thus, in some ministry departments, the technical inspector is designated as such, like the IAAF, while in others, the inspector is given a more specific title.

Some examples are:

- Inspector-General of Public Finances (Ministry of Finance)
- Inspector of Foreign Service postings (Ministry of Foreign Affairs)
- Inspector-General of Education (Ministry of Education)
- Inspector of Regional and Local Administration (Ministry of the Interior)
- Inspector of Security Services (Ministry of the Interior)

Due to the size and broad range of activities of the Ministry of Economic Affairs, Finance and Planning (MEFP), its internal oversight system is slightly different from that of other ministry departments. Indeed, instead of IAAF, MEFP has an Inspectorate of Finance (IGP) established pursuant to Decree No. 80.892 of 29 July 1980, which exercises general oversight over all the departments of this Ministry and the institutions under its supervision. In addition to the IGF, the major financial departments of the Ministry each have an internal oversight unit for technical inspections. Thus, both the Income Tax and Lands Department and the Customs Department have inspection units, while the Treasury and Accountant-General's Departments have audit brigades "responsible for auditing, at the request

of the Treasurer-General, both the senior accountants and junior accountants of the Treasury” (see art.13 of Order No. 10.248 MEF of 14 September 1981).

The removal of the Plan component and its conversion into an autonomous ministry department under the new government organizational chart, has not altered the specific nature of the oversight bodies of the Ministry of Economic Affairs and Finance.

Regarding external oversight, the concern of ensuring independence from the ministry departments led to the establishment of a control mechanism outside the ministries but under a State-level body that is above the ministerial level.

The main specialized inspection bodies responsible for such external oversight are:

- The State Inspector-General;
- The Financial Control Office;
- The Audit and Public Enterprises Control Commission;
- The National Commission on Public Service Contracts.

These can be divided into two groups of specialized bodies:

- Specialized bodies acting exclusively on behalf of the President of the Republic;
- Other specialized bodies.

The State Inspector-General (IGE) and the Financial Control Office are oversight bodies that act exclusively on behalf of the President of the Republic. The State Inspector-General’s current mandate is derived from Decree No. 80.914 of 5 September 1980 and to Act No. 87-18 of 3 August 1987 on the legal status of IGE, which has broad jurisdiction over:

- All State public services, irrespective of their method of management and geographical location;
- Public establishments;
- Local communities and their public establishments;

- The administration of the armed forces;
- The administrative and financial management of the judicial services;
- National companies and companies in which the Government has a majority or minority holding;
- Corporate bodies governed by private law that receive Government subsidies; and
- The relationship between the institutions or officials monitored and third parties, particularly public or private banking institutions.

IGE, which is assigned a particular mission following an order signed by the President or by the Minister responsible for presidential affairs, is always kept abreast of the general outlines of Government policy in all sectors of national life. Any action taken on the reports and conclusions drawn up by IGE is at the discretion of the President of the Republic.

The function of the Financial Control Office, which was established by Order No. 59.49 of 31 March 1959, is to exercise continuous oversight over financial transactions performed by the State, national public enterprises, local communities and their public establishments, and any entity that receives financial assistance from the State. Thus, any measure with financial implications must first be vetted by the Financial Control Office. The Office thus scrutinizes operations that commit the State financially prior to their implementation.

In addition to the bodies that act exclusively on behalf of the President of the Republic, there are other specialized inspection bodies that act on behalf of other public authorities that may also be asked to carry out specific audits at the request of the Head of State.

The most typical example of this scenario is that of the Audit and Public Enterprises Control Commission (CVCCEP). Organization Act No. 90.07 of 26 June 1990 placed CVCCEP under the National Audit Office, while granting it operational autonomy. CVCCEP audits and supervises the management of the following categories of public sector enterprises:

- Industrial and commercial public corporations;
- Public establishments of a scientific and technological nature;
- Professional public establishments;
- Public health establishments;
- National companies; and
- Public companies with a majority State holding.

The National Commission on Public Service Contracts (CNCA) has a status as a specialized body that is often challenged, although it has a specialized oversight function. In any case, CNCA is the only body that specializes in vetting state contracts and amendments thereto, as well as the contracts of public establishments and local administrations (communes). It oversees contracts involving sums of CFA francs 20 million or more. CNCA was established by Decree No. 67.696 of 16 June 1967. Its composition, duties and functioning were laid down by decrees 82.691 of 7 September 1982 and 83.670 of 29 June 1983.

There are other bodies within the Senegalese public service with special jurisdictions. The jurisdiction of such bodies—the former Organization and Methods Bureau (now the Public Management Authority) and the Commission on Public Service Vehicles—is basically covered by the other major oversight bodies, namely, IGE and CVCCEP. These agencies have already been described above.

In summary, the self-monitoring mechanism of the Senegalese public service is characterized by a two-fold trend: a vertical trend internal to the departments; and a horizontal, transversal trend vis-à-vis the entire system. However, this structure is not entirely free from bureaucracy and obstacles that hamper sound management and transparency in governance.

Non-governmental actors

The public service has not promoted the involvement of non-governmental actors as yet. As far as transparency and the fight against corruption are concerned, the previous Government had not shown any genuine political will expressed

through a strategy involving non-governmental actors as intermediaries for sensitizing citizens to the need to observe rules.

Access to information is hampered by a cult of secrecy, which has become a veritable culture of the public service, which is not particularly concerned about cultivating transparency. But the demand for transparency has become a recurrent theme of the public debate, thanks to the development of democracy and the private media as well as the activities of civil society organizations. Indeed, civil society organizations have developed social advocacy with respect to transparency in the public service, which has been echoed by certain sectors of the political class and effectively relayed by the private media.

Private radio stations play a fundamental role in raising the awareness of the public as to what is at stake in the public service, because radio is a medium that is admirably suited to Senegal's oral culture and to the use of national languages. The development and professionalism of private radio stations thus promoted the involvement of the majority of citizens and consequently forced the public service to better take into account the aspirations of Senegalese citizens.

Given the changes occurring in society, characterized by the emergence of genuine public opinion and heightened public awareness, a change for the better in the public service seems inevitable. This is all the more so because of the pressure from heightened social demand, which cannot be regulated without the establishment of genuine transparency.

Finally, the demands for leaders to be held accountable is gradually having an effect on citizens, who are now convinced of their ability to influence the course of events through the ballot box.

Recommendations

Effectiveness of the republican nature of the public service

Notwithstanding the democratization process in the country, there is still a residue of Party-State culture in the public service. Steps must be taken to make the public service a genuinely representative institution.

Matching ethical values with the daily practices of the public service

It is vital to bridge the gap between ethical rules and principles and what happens on a daily basis in the public service, thus laying the foundation for the building of a modern state.

Rehabilitating the notion of public service

The public service, as currently constituted, no longer reflects the values it is supposed to represent as a body entirely devoted to serving the public interest. A programme targeting both public servants and users should be drawn up to revamp the image of the public service. Indeed, while public servants should be reminded of their duty to serve the public interest, it is equally important to inform users of their rights in terms of what to expect from the public service, for it is users' ignorance that fuels certain practices incompatible with the positive

core values upon which the public service is based.

Instituting transparency and fighting against corruption

This recommendation is so obvious that it is hardly worth mentioning. However, it cannot be overemphasized that expressing political will alone is not enough. Political will must not only be translated into concrete measures, but it must also be ensured that such measures are enforced at the different levels where they have to be implemented.

Involvement of civil society

In the development, implementation and monitoring of its policy to enhance the reliability of the public service, the State must involve civil society, the vehicle for expressing the expectations and aspirations of citizens.

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CHAPTER 9: SOUTH AFRICA

Introduction

In many countries, governments are grappling with the consequences of a shift from compliance-based public management to one with a results orientation; their concerns are that gains in terms of efficiency and effectiveness do not mean the loss of high ethical standards (OECD/PUMA 1995). There appears to be a trend towards a greater reliance on mechanisms that define and promote aspirational values to encourage good behaviour, and correspondingly less reliance on detailed rules and controls.

Corruption is as much about systems as it is about individuals (Klitgaard 1996), and organizational management has a significant role to play in controlling corruption. Corruption control is as complex as the phenomenon itself, and a range of integrated and coordinated mechanisms is necessary for effective action. While increased regulation and stricter law enforcement have been the traditional responses to misconduct and corruption in the public sector, countries are increasingly exploring the possibilities of administrative and preventative action as anti-corruption mechanisms (OECD/PUMA 1997). When the limitations of the enforcement of such laws become apparent, there is a call for improved ethics.

Values alone will have little impact. Codes of conduct, administrative law mechanisms, whistle-blower protection legislation, effective enforcement of criminal law, effective auditing and monitoring regimes, training and support of ethical standards must also be implemented in order to create the infrastructure upon which the ethical environment can prosper (Sherman 1998). Codes of conduct, a system of disclosure of financial interests and training are crucial mechanisms in an effective ethics programme but must be coupled with monitoring and enforcement measures as well (Potts 1998). Prevention and control through implementation and enforcement, is key. Analysis and the development of appropriate strategies to curb corruption and unethical behaviour have tended to isolate elements of the system without assessing

and making the links. This analysis and the concomitant recommendations are thus based on the concept as adapted from the Public Management Service (PUMA) of the Organization for Economic Cooperation and Development (OECD).

The 'Ethics and Anti-corruption Infrastructure' consists of three functions that are broken down into eight elements that are capable of acting together to create an operating environment conducive to ethical conduct. These functions and elements are:

Guidance for public servants:

- Political commitment;
- Code of conduct or statements of value; and
- Professional socialization.

Management of conduct in the public service:

- Public service conditions conducive to ethical behaviour; and
- Ethics coordinating body.

Control of conduct in the public service:

- Effective legal framework;
- Efficient accountability mechanisms; and
- Public involvement and scrutiny. (In this report, this element has been separated under the heading of non-governmental actors.)

The elements of the infrastructure are intended to be mutually supporting in order to meet the complexity of the task of corruption prevention. It is agreed that a coordinated programme of ethical standards setting, legal regulation and institutional reform (Sampford 1994) can only address the problems identified by the ethical crises.

There is no single approach or method that will work in all jurisdictions, let alone in all liberal democracies. Instead, each jurisdiction (and in some cases each agency) needs to employ a variety of methods, coordinated into an ethics

regime (Sampford 1996) attuned to the particular goals of the institutions, their culture, history and context. The particular institutional, cultural and social characteristics of a state and its public sector need to be borne in mind when implementing a programme of ethics (Mancuso 1998).

Background on the national public service

With the new Constitution (1996), South Africans have committed themselves to the realization of an accountable, ethical and democratic system of governance. Commitment and the related transformation takes place in the context within which the inherited system of governance was control-oriented and spawned structures, procedures and a general culture that sought to isolate government from public oversight and media scrutiny. Legislative and related measures to transform the inherited system of governance are underway. The transformation includes the integration of a variety of different governmental entities, the building of nine provincial administrations and the construction of a system of governance that is less regulated and more developmental.

Within the framework of the rapid transformation, integration of departments, increased privatization and public-private partnerships, it is difficult to construct a definitive background picture on the size of government and the total number of personnel involved. A variety of projects in government are directed at collecting current and historical information on the size of the public sector, and could, in future, provide a useful basis for historical and comparative analysis. In terms of available data, the total number of public personnel in 1998 was 1,100,784. This includes personnel in central government departments and nine provincial government entities. The process of stabilizing, reducing and accounting for personnel has been slow and in many respects reflects the scale of change and the challenge of building an effective ethics and anti-corruption infrastructure.

Within the public service, the Department of Public Service and Administration (DPSA) is leading the process of transformation through

the development of appropriate policies and by facilitating their implementation through strategic interventions and partnerships. The department is supported by the Public Service Commission (PSC), which is constitutionally responsible for monitoring and evaluating the transformation process, and the Parliamentary Committee on Public Service and Administration, which has an oversight function. Whilst the PSC plays a leading role in building an ethical public service, the responsibility for promoting ethics and fighting corruption rests with all three institutions, supported by a range of departments and constitutional bodies.

Historically, there are clear indications from the few reported incidents or cases of corruption (i.e., Department of Development Aid and the Muldergate Scandal) that the apartheid state thrived on corruption. However, the full extent of corruption and unethical practices will never be fully ascertained, given the absence of historical records and the secretive nature of the apartheid state. Reported incidents of corruption suggest that corruption and unethical practices are particularly rife in the inherited 'homeland' administrative structures. Current challenges to eradicate corruption and unethical practices cannot thus be isolated from this historical reality.

The current media and research interest on corruption and unethical behaviour in South Africa focuses primarily on the central and provincial government institutions. Local government has been relatively excluded from the focus, but remains a major arena of concern. Corruption at the local level impacts directly on the delivery of the most basic services. Given the range of autonomous local government structures and current radical redemarcation of local boundaries, this area requires a more dedicated analysis in order to identify gaps and problems, an analysis which is beyond the scope of this paper. The focus here is essentially on the public service and, to a lesser extent, the non-governmental and private sectors.

Given that a large number of local government entities are reportedly financially bankrupt, and the general increase in reported incidents of corruption at the local level, a dedicated project

on corruption and unethical behaviour in local government would be relevant and of immense benefit to policy makers.

Background on public service ethics and anti-corruption initiatives

No specific studies on public sector ethics have been carried out in South Africa. However, a number of opinion polls and surveys dealing with both the perception and experience of corruption by citizens have been undertaken in recent years:

- The national victimization survey undertaken in March 1998 found that, during 1997, 2 percent of the respondents of this representative national survey had experienced corruption by officials (defined as police officers or customs officials accepting payment for services rendered). Only once this survey is conducted again will one be able to measure trends.
- The Institute for Democracy in South Africa (IDASA) has conducted a number of opinion studies to measure attitudes towards public sector corruption. In 1995, IDASA's survey found that 46 percent of South Africans felt that "almost all" or "most" public officials were involved in corruption, a number that in 1998 had increased to 55 percent. Perceptions of corruption are fairly widespread across various levels and branches of the public sector with the exception of the Office of the President, which is significantly lower.
- A recent opinion survey conducted by the Human Sciences Research Council found that 80 percent of South Africans in December 1998 agreed that corruption exists within the civil service.

A comprehensive national survey to capture base-line data on the nature and extent of corruption within the public service in South Africa in general is proposed as a matter of urgency.

In terms of the number of corruption and related cases processed through the criminal justice system, police figures on commercial crime, which include corruption, are in the region of

62,000 cases a year and cost the country billions of rand. However, data on the overall caseload of the various anti-corruption agencies, such as the Heath Commission (Special Investigating Unit), Office of the Public Protector, Public Service Commission (PSC) and the National Director of Public Prosecutions (NDPP), are hard to come by.

A court management system currently being developed by NDPP, which will eventually capture information on all criminal cases, including corruption, is in its infancy. The Public Service Commission appears only to deal with complaints referred to it by departments. While this office should be able to give some idea of the nature and extent of corruption-related cases across the public service as a whole, there is currently no mechanism in place to elicit information from departments and no common system within departments to capture complaints and corruption-related cases. As such, no comprehensive database on misconduct in general in the public service and corruption in particular is available, although the PSC has an initiative underway to do just this.

A concrete policy recommendation would be to ensure that a database is developed to capture information on misconduct and corruption within departments and the public service as a whole.

Guidance for public servants

Political commitment

Whilst corruption is not a new phenomenon in South Africa, following dramatic media exposure of numerous corrupt officials and widespread malfeasance in key sectors, including the police, housing and education, the ANC-led government has taken a number of high-profile initiatives to address it. Besides being spurred on by local pressure, the government's stated commitment towards greater openness, transparency and accountability comes against the backdrop of an international impetus towards promoting good governance, which necessarily includes controlling corruption.

Both the Mandela and Mbeki presidency have highlighted the importance of tackling the

“moral crisis” manifested by high levels of violent crime, and widespread corruption amongst public servants acting to satisfy personal interests. A number of high profile anti-corruption conferences have taken place in the past eighteen months which are one indicator of the importance government attaches to confronting corruption in South Africa. The launch of a National Anti-Corruption Initiative in South Africa during 1999 was precipitated by a number of events. These included:

- The Moral Summit in October 1998, which brought together leaders from religious and other sectors to adopt a code of conduct and a pledge of “ubuntu” or “common humanity”;
- The Public Sector Anti-Corruption Conference in November 1998, held to develop a plan of action to control and prevent corruption in the public sector; and
- The National Anti-Corruption Summit held in April 1999 and attended by over 400 delegates from business, organized labour, NGOs/CBOs, donors, political parties, academic institutions, professional bodies, the media and the public sector. It was here that an initial “blueprint” for controlling and preventing corruption in South Africa was adopted in the form of a much publicized conference resolution.

The development of a national integrity strategy for South Africa is, however, in its early stages. Following the National Anti-Corruption Summit, held in April 1999, and the country’s second democratic elections in June 1999, the Cabinet, under President Mbeki, formally endorsed the resolutions of the Summit and identified the Public Service Commission as the “flag carrier” of the anti-corruption programme.

This immediately provided a mandate to the Commission to call the first preparatory meeting of relevant stakeholders to implement the most pressing Summit resolution, namely the establishment of a Cross-Sectoral Task Team to manage the national programme against corruption. This group has met a number of times and has, since, established a number of smaller task teams to take forward specific resolutions

agreed to at the summit, for example, legislative review of anti-corruption measures.

A year after the National Anti-Corruption Summit, a breakfast briefing was held for the media to inform them of progress made over the past year. The progression of whistle-blower legislation through Parliament in the form of the Protected Disclosures Bill was referred to. It is hoped that this legislation will be enacted by the end of the year. Also, the decision by the Cross-Sectoral Task Team to establish an independent non-statutory National Anti-Corruption Forum that will be a new formal National Coordinating Structure “with the authority to effectively lead, coordinate, monitor and manage the National Anti-Corruption Programme” was announced.

Code of conduct and professional socialization

The *Code of Conduct* for public servants is a part of the regulatory environment and can be considered a part of both a guiding and control framework for the conduct of public servants. The *Code of Conduct for Public Servants* is outlined in Chapter M of the *Public Service Regulations*. In terms of the regulations, public servants may be guilty of misconduct if there is a contravention of the *Code*. The *Code* covers five particular areas of concern.

- Relationship with the legislature and executive branch;
- Relationship with the public;
- Relationship among employees;
- Performance of duty; and
- Personal conduct and private interests.

Although the *Code of Conduct* was drafted to be as comprehensive as possible, it does not provide a detailed standard of conduct. To assist with the interpretation of the *Code* and to give practical effect to its provisions, the Public Service Commission has developed a *Manual of Guidelines* to supplement the *Code*. The *Code* provides that heads of departments may, after the matter has been consulted in the appropriate Chamber of the Public Service Bargaining Council, and without derogating from it, supplement the *Code of Conduct*. It is also the responsibility of the heads of departments to

ensure that their staff are acquainted with the measures in the *Code*, and that they accept and abide by them. In addition to the *Code*, corruption and unethical practices are dealt with in terms of a *Public Sector Coordinating Bargaining Council (PSBC) Agreed Disciplinary Code*, which contains the possible acts of misconduct and the range of possible sanctions.

With effect from 1 April 2000, through an amendment to the *Public Service Regulations 1999*, the highest-ranking public servants (Directors-General) have also adopted a code of ethics for which they can be held accountable to, in addition to their normal responsibilities.

Through the *Executive Members' Ethics Bill*, Parliament has also provided a code of ethics to govern the conduct of the members of the Cabinet, Deputy Ministers and members of Provincial Executive Councils. This new *Executive Code*, still in draft form, is an extension of the *National Parliamentary Code of Conduct in Regard to Financial Interests*. As with the *Parliamentary Code*, the public section of the disclosures made to the Secretary of Cabinet or Provincial Executive Council will be available for public scrutiny.

The current disciplinary codes, which include provisions on the conflicts of interest, are marked by an absence of a system for disclosing financial interest. This is in contrast to the requirements for disclosure on the part of political office-bearers and members of Parliament. The system for members of Parliament has, however, no verification system in place. In addition, there is currently no system for disclosure by political parties, although this is an arena of major concern. This is surprising, given the drive towards openness and transparency.

As officials are often in situations that lend themselves to corrupt and unethical behaviour, it would be good practice that they be required to disclose their interest on a regular and systematic basis.

An investigation into such a system and its implementation for certain classes of officials could provide an effective deterrent to corruption and unethical behaviour. Implementing such a system can be a costly and complex

exercise, and benefits can be derived from external experiences and support.

Even if guiding and controlling systems and structures are in place, the spirit, which pervades the conduct of public service might contradict the good intentions of the systems and structure. Given the myriad of regulations, systems and structures, the absence of an ethos of public service 'appears' to be a problem. In dealing with this, the *Code of Conduct* has been supplemented by training in the public service, and most public administration educational programmes include components on ethics. However, at this time, there is no overall strategy on building and promoting a culture of appropriate conduct and an ethos of public service.

Teachers and police associations, nursing and other medical associations, associations of planners and engineers, public finance management and general public management associations can play a key role in encouraging ethical practices. Many of the existing professional associations in South Africa have guiding codes, and some have clear sanctions against members who contravene the code. These associations often require members to sign an ethical code as a basis for membership.

However, the influence of these associations on appointments and registration as a basis for employment is limited in most areas. In addition, the culture of belonging to professional associations that are able to influence and guide practices has largely been confined to certain sections of the population. Collectively, these factors mitigate against the full contribution of these associations in promoting ethical behavior amongst public officials.

Encouraging membership and government recognition of these associations could assist in encouraging ethical behavior. At this time, there is no comprehensive register or database of the available codes in professional associations and unions. Access to codes of associations that officials belong to could provide government with a possible disciplinary channel and can be referred to in the process of developing a proactive, corruption-free and ethical culture within government. The existence of a database

or register of codes, and monitoring the codes adopted, allows government to influence the codes and interact with the organizations or associations in cases where there are contradictions between government codes and the codes of the organizations or associations.

Research and data capturing on the available codes of ethics can provide accessible information for a broad based strategy for building ethical conduct.

Management of conduct in the public service

Supportive public service conditions

The capacity and internal framework for managing corruption and unethical practice is crucial to a successful infrastructure. This includes the capacity, willingness and supportive conditions to act against corrupt and unethical practice and provide ethical leadership. The conditions of service of public servants are generally negotiated in the PSBC. The full participation of public servants, through union representatives in this process, assumably builds a level of commitment towards high standards of conduct. A level of dispute has, however, over the past year, marked these relationships. The dispute is particularly around salaries and, in some instances, on privatization and the reduction of the size of the public service.

Notwithstanding the disputes between government and some of the major public sector unions, the past years have been characterized by real increases in salaries for the lowest third of public sector employees. Middle echelon salaries have remained fairly static, whilst the top management salaries have declined in real terms. Salaries and conditions of service of public sector personnel tend to be comparable to the private sector and perhaps much better than that in other African countries. Whilst there is, as always, room for the improvement of service conditions, the corruption and unethical behaviour in the public sector seems to emanate more from job security, complacency and a desire for further self-enrichment, as reflected in the range of senior, well-paid, civil servants who have engaged in corrupt practices.

Whilst there are a range of measures and conditions to promote high standards of conduct and prevent corruption, officials often find that the procedures for acting against corruption and unethical practice are too complex and cumbersome such that, at times, it might be easier to turn a blind eye. Uncertainty in the legislative environment and a general lack of knowledge of legislation and regulations on disciplinary action, has often led to a failure to act. This has included a lack of understanding about the relationship between internal disciplinary procedures as outlined in the *Labour Relations Act*, in the Public Service and supportive *Public Service Regulations*, versus external criminal charges. When criminal charges of corruption against civil servants are dropped for a lack of evidence, departmental heads and supervisors are often satisfied that all legal responsibility have been resolved and will fail to pursue further internal inquiries. This results in the reduction of the effectiveness of internal anti-corruption efforts.

Again, an essential supportive intervention would be focused training, supported by clear and simple guiding manuals for officials acting against corruption and unethical practices.

Ethics coordinating bodies

A range of organizations and units are currently tasked with acting against corruption and unethical practice. These include institutions that are autonomous of the executive and that have been created as a result of constitutional provisions. In addition to the Auditor-General and the Public Protector, this infrastructure also includes Commissions of Inquiry, the Health Special Investigative Unit, the Human Rights Commission, and the Public Service Commission. An Investigating Directorate on Corruption has recently been established in terms of the *National Prosecuting Authority Act (1998)* under the National Director of Public Prosecutions to deal with offences relating to corruption. Also included in the infrastructure are some sector-based, semi-autonomous, internal anti-corruption agencies and units.

Whilst many of these institutions have been fairly effective in fighting corruption and unethical behaviour, the lack of sufficient re-

sources to fulfil their mandate has been identified as a major problem. Anti-corruption agencies such as the Heath Special Investigating Unit and the Office of the Public Protector are continually challenged to meet pressing needs with a budget that restricts the recruitment of additional staff and offices. Besides adequate resource allocation, existing agencies need to function optimally in a financially pressing climate and thereby avoid duplication of effort. A memorandum of understanding between the key anti-corruption agencies has also been compiled, although it has not yet been signed. This is a matter of urgency and relates to a further objective, namely to educate the public on the functioning of each office so that citizens can be empowered to speak out against abuse of public office and know that they will be heard.

Most importantly, the independence of anti-corruption agencies needs to be guaranteed to ensure that they may fulfil their mandate without fear of favour. Bodies such as the Office of the Auditor-General and the Public Protector are guaranteed independence under the Constitution. Other agencies such as the Heath Special Investigating Unit, however, are potentially inhibited from pursuing corrupt public officials because of the necessity of first obtaining a proclamation from the President's Office before being able to proceed with an investigation. Whilst such checks and balances are not improper to regulate the significant power of, for example, search and seizure, they can be potentially abused by those in power to ensure that cases are not pursued.

One of the key oversight agencies that will play a role in ensuring that adequate whistle-blowing policies and procedures exist within the public service is the Public Service Commission. This body has the role of monitoring and evaluating the public service and, through its Directorate on Ethics, has played an important role in promoting the code of conduct for the public service. Workshops have been held throughout the country on the code, and a manual has been compiled which uses a number of case studies to train public sector managers on the code. Implementation of the code has however, been slow, as a review undertaken by Price Waterhouse Coopers and by the Auditor-General on

the implementation of the Code has revealed. More recently the PSC has facilitated a number of provincial anti-corruption workshops. Ideally, the Public Service Commission needs to revert to its constitutional role of monitoring and oversight rather than driving anti-corruption policy on the part of the government in the absence of an alternative structure. With their current task of devising an appropriate vehicle to drive the national anti-corruption programme, their core business of providing oversight is potentially compromised.

The Public Service Commission could benefit from comparative expertise and possible technical assistance in terms of establishing anti-corruption coordinating mechanisms at the national government level.

Control of conduct in the public service

Effective legal framework

The legal and constitutional framework provides the backbone for a corruption-free, ethical system of governance. The extent of legislation will depend on the overall ethos that permeates the system of governance, and the formal sanctions required for dealing with unethical practices and corruption. In this respect, criminal codes which apply to all citizens, as well as civil service laws, conflict of interest statutes and regulations that apply to public servants are in place in South Africa. Chapter 10 of the Constitution provides the basic values and principles for public administration. These values and principles provide the foundation for developing ethical behaviour and a transparent governance system. The Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- A high standard of professional ethics must be promoted and maintained.
- Efficient, economic and effective use of resources must be promoted.
- Public administration must be development-oriented.
- Services must be provided impartially, fairly, equitably and without bias.

- People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- Public administration must be accountable.
- Transparency must be fostered by providing the public with timely, accessible and accurate information.
- Good human resources management and career-development practices, to maximize human potential, must be cultivated.
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

Corruption in all sectors of society is generally dealt with in terms of the *Corruption Act (94 of 1992)*. The act provides for the criminalization of corruption and specifically prohibits an offer or acceptance of benefits for the commission of acts in relation to certain powers or duties.

In addition, a number of measures directed at curbing corruption and unethical practices are contained in a range of legislative and regulatory measures. These include the *Labour Relations Act*, the *Employment Equity Act*, the *Public Service Act*, the *Financial Management Act*, the *Public Service Management Act* and in emerging provisions on the procurement of government goods and services. From a policy and management perspective, the provisions are widely dispersed and tend towards complexity. This often makes it difficult for officials to act against corruption and unethical behaviour.

A direct supportive activity for assisting government in this area would be to produce user-friendly guiding manuals for public servants confronted with corruption and unethical practices.

Whilst the difficulty in obtaining reliable data on the number of cases that have been brought under these statutes and regulations has been made clear, South Africa, arguably, has a comprehensive set of laws in place to both promote ethics and prevent corruption. The problem, however, seems to rest with enforcement. It is

widely believed that not a single conviction has occurred in terms of the *Corruption Act 94 of 1992*. Senior legal counsel note that the difficulty with the *Act* is that it requires proof of intent to commit corruption, which is almost impossible to prove. Rather, the charge of fraud is brought against those found guilty of corruption-related offences. There is talk of creating a statute similar to the *Prevention of Bribery Ordinance* in Hong Kong where the onus would rest on a public official to prove the legitimate origins of suspicious wealth.

Recent high-profile corruption cases with the public sector highlight some of the weaknesses in the legal framework. For example, recently, the Commissioner of Correctional Services, Kulekani Sithole, having abused public office and been found by a committee of Parliament to be unworthy of holding public office, resigned following the charge of misconduct. Misconduct under the *Public Service Regulations* is not a criminal offence and therefore the matter ended there.

There needs to be adequate mechanisms or sanctions that those guilty of misconduct are barred from holding public office.

The recently established National Directorate of Public Prosecutions should assist in promoting successful convictions of public sector corruption. A new directorate dealing with corruption has been established to ensure that this priority focus area is addressed in an effective way, relying on close interaction between investigators and prosecutors. Training of prosecutors around the enforcement of the existing criminal code on corruption is envisaged by this unit, whilst a comprehensive legislative review is also planned.

This is an area where the UN could possibly play a role and, indeed, in June 2000, facilitated an international expert roundtable with participants from Hong Kong, Botswana, Italy and the United States to assist the new directorate in establishing its mandate and functions, building on best practices internationally.

A current inadequacy in the armoury of anti-corruption legislation that South Africa is developing concerns the protection of bona fide

whistle-blowers. Encouraging whistle-blowers to speak out against public sector corruption through guaranteeing them legal protection is a key resolution taken at the National Anti-Corruption Summit. Section C.4.10 of the *Code of Conduct for Public Servants* notes that public servants “in the course of her or his official duties, shall report to the appropriate authorities fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest.”

This piece of legislation has yet to be passed by Parliament, although it originally formed part of the *Open Democracy Bill*, later passed as the *Promotion of Access to Information Act*. This latter act was passed in early February 2000 and is far-reaching in that it allows citizens access not only to state-held information but also to private sector information in order to protect or realize their rights.

Based largely on the UK’s *Public Interest Disclosure Act*, the weakness of the *Protected Disclosures Bill*, as it currently stands, is that it only covers those in an employer/employee relationship. This has obvious consequences for those outside this relationship who may blow the whistle on misconduct and corruption that they come across outside the workplace, for example those receiving a state pension. The Parliamentary Justice Committee has formally tasked the South African Law Commission to undertake a comprehensive and comparative investigation into the possible expansion of the current ambit of the proposed legislation to protect bona fide whistle-blowers who fall outside an employer-employee relationship.

Accountability mechanisms

Clear, consistent, effective, equitable systems of accountability and performance set the guidelines for checking on results as well as individual responsibility and accountability. These systems of accountability and responsibility, in South Africa, are in a state of transformation and change. This trend is in line with changing national legislation, which envisages an increase in devolution and decentralization. The shift is generally intended to increase devolution of

decision-making powers, and thus responsibility and accountability.

Departments often have many of their own management systems that are specific to the activities and functions that they fulfil. Given the changing regulatory environment, it is likely that these departmentally specific systems will increase over time. The basic thrust of the changing accountability systems in government is the decentralization of decision-making powers to departments, provinces and institutions. The model outlined in policy documents (White paper on the Transformation of the Public Service) is concerned with improving the management of resources, accompanied by increased decentralization and accountability for performance.

In pursuing the objective of decentralization for performance, specific policies are in the process of being discussed and/or accepted as laws or regulations governing the public service. The new *Public Service Management Act* and *Good Management Guide* will give effect to the provisions of the White Paper and provide guidance on the powers of executing authorities, including the power to delegate. In addition, the regulations will provide guidance on the responsibilities of heads of departments for the performance of the departments. This includes the responsibility for the creation of posts and the appointment of personnel.

Details on the human resources practices and employment practices that are directed at replacing the existing lengthy staff codes and regulations are outlined in the *White Paper on a New Employment Policy for Public Service* and in the draft *Public Service Regulations*. In essence, the policies set out in the White Paper and in supportive regulations are directed at shifting the responsibilities for human resources management within the public service. The responsibility will be with national and provincial line departments to determine, within defined parameters, their human resources management policies and practices to meet strategic and operational objectives and organizational needs. Within departments, the day to day responsibility for human resources will primarily be the responsibility of individual line managers.

The transformation agenda is taken further with the development of a Green Paper on Public Sector Procurement Reform in South Africa. One of the major objectives of the reforms envisaged in the Green Paper is the delegation of decision-making powers within national regulations and norms to accounting officers who will be responsible and accountable for procurement expenditure incurred within their lines of responsibility.

It is envisaged that the uniformity within the procurement system will be managed by directives issued by a National Procurements Compliance Office. This office will endeavour to monitor all public sector procurement and should assist any Accounting Officer in rectifying any deviations from the national directives, should such deviations occur. Whilst the objective of the Green Paper is to decentralize the procurement function, there is concern about the possibility of fraudulent behaviour in the procurement process. To this end, the Green Paper outlines the following preventative measures to be adopted with respect to corruption and unethical behaviour:

- The establishment of codes of conduct for suppliers/service providers/contractors and procurement officials.
- The publicizing of anti-corruption programmes by means of staff training and meetings.
- The institution of routine check points at the pre-award stage, or in the post-award stage, on the measurement of performance by contractors or on contract amendments.
- The performance of internal audits on specific items.
- The implementation of a “whistle-blower” system that allows and even encourages officials to report on each other regarding instances of fraud or misconduct.
- The encouragement of strict observance of procurement regulations, particularly those relating to the documentation of the processes.

- The provision in tender documents for the disqualification of tenderers who attempt to influence the award of tenders.
- The de-registration/de-barring of offending suppliers/service providers/contractors from participation in public sector procurement for a period of time.
- The provision of opportunities for suppliers/service providers/contractors to raise objections concerning the status/practices of their competitors.

The flexible model envisaged in the new regulatory framework and concomitant accountability systems and mechanisms are in keeping with international trends. However, international experience suggests that as a government deregulates and moves towards a more entrepreneurial model of governance, the level of corruption and unethical behaviour increases. That is, as governments have transformed their institutions to allow for greater autonomy, there have been increased incidents of corruption and unethical behaviour. This is partially a result of the relaxation of strict controls and detailed procedures and partially a result of the changing ethos in government.

Deregulation and related privatization practices may serve as a vehicle to minimize unethical behaviour and corruption by removing cumbersome public service rules, by increasing the authority of officials, by increasing the performance responsibility of officials and by introducing a level of competition to service delivery. However, as indicated, it may have the consequence of increasing corruption and unethical behaviour, as the public service transformation process often gives rise to an ethical disposition that is not conducive to ‘public service’.

The responses to these trends internationally have been mixed. However, in most experiences, the role of ethics has been elevated. In practice, this often involves the creation of specific codes for public servants and the creation of external monitoring institutions to oversee the implementation of the codes. As a direct response to this trend, each government department in South Africa has to create an internal audit unit. Whilst

departments are obliged to create one, research by the Forensic Accounting Division of the Auditor-General's Office has shown that there is no consistency yet across departments in terms of these units/committees. The focus of the unit would be on financial management, the brief could be broadened to include broader ethical issues. The full implication of the current decentralization of accountability systems on corruption and unethical practices has not been sufficiently thought through.

In this context, an intervention to review changes in light of possible gaps and risks in the new accountability systems will be particularly useful.

Non-governmental actors

When it comes to holding governments accountable, the role of civil society, in particular the media, is crucial. In terms of promoting public sector ethics, civil society may also have a role to play in training and curriculum development. With rather a spotted history of reporting on corruption perpetrated by the apartheid state, the media in South Africa now appears particularly vigilant in highlighting corruption scandals. The over-zealousness of certain newspapers, such as the *Mail & Guardian*, to report on abuses of power by new, mostly black public servants, has resulted in accusations of racism. Following such complaints, the Human Rights Commission initiated an investigation into racism in the media that has contributed to the national conversation on race that is underway in South Africa.

Coverage on corruption is often limited to sensational headlines rather than sustained reporting over a period of time of a particular incident or public official. This may have something to do with the relative absence of trained investigative journalists due to limited training resources.

This is an area where international assistance and the expertise of organizations, such as the Centre for Public Integrity in Washington, in the area of ethics and corruption reporting might be useful.

The strength of the South African anti-corruption initiative thus far is its cross-sectoral

approach where all sectors, public, private and voluntary have been brought into the new struggle. The organized NGO sector, under the umbrella of SANGOCO, has compiled a code of ethics for its members that is comprehensive in its provisions and a challenge to other sectors. Similarly, the Business Commission, established at the April 99 Summit, is in the process of producing SANCODE, a business ethics document that takes forward the provisions of the *King Report on Corporate Governance* and covers areas such as disclosure of assets, conflicts of interest, whistle-blowing, etc. Actual implementation and monitoring of such codes is an ongoing challenge.

Traditional leaders whose influence at the local-government level is significant have recently been recognized by the Cross-Sectoral Task Team as a constituency that needs to be more engaged in the National Anti-Corruption Programme.

The religious sector was largely responsible through the Religious Leaders Forum for organizing the Moral Summit of October 1998, and this sector is represented on the Cross-Sectoral Task Team through the Church Community Leadership Trust. This organization has recently established a programme called the National Engagement for Ethics Development (NEED), recognizing the role which the religious sector has to play in ethics development.

There has been ongoing involvement from the research community on the issue of corruption, and organizations such as the Institute for Security Studies (ISS), the Institute for Democracy in South Africa (IDASA), the Public Service Accountability Monitor (PSAM), the Centre for the Study of Violence and Reconciliation (CSVR) and Transparency International South Africa (TISA) meet on a regular basis to discuss both the quantitative and qualitative independent applied policy research they are engaged in around corruption.

Professional codes need to form part of a comprehensive socialization package and public education, information and awareness campaigns to create awareness of the negative impact of corruption on ordinary people's lives

is an important part of any anti-corruption initiative. This needs to be broader than just targeting the public service. It needs to embrace all areas where ethical choices need to be made.

This is an area where international expertise on developing education packages, such as those developed by the Independent Commission against Corruption in Hong Kong, would be extremely useful.

Recommendations

The basic review of corruption and ethics in South Africa reveals a number of significant challenges and potential areas of intervention and support. The following summary of key recommendations provide a frame for future dialogue and supportive planning:

- Research on ethics and anti-corruption controls in local government.
- A comprehensive national survey of corruption to capture base-line data on the nature and extent of corruption within the public service in South Africa.
- A comprehensive review of legislation and the training of prosecutors around the enforcement of the existing criminal code on corruption.
- Investigation and implementation of a regularized system of disclosure for certain classes of officials, including the disclosure of political party funding.
- A review of the impact of the current devolution of accountability and responsibility in the public service on ethics and corruption.
- An audit of the available codes of ethics at different levels of government, in different departments and amongst professional associations.
- Focused training supported by clear and simple guiding manuals for officials acting against corruption and unethical practices.
- Support for the establishment of an anti-corruption coordinating mechanism at the national government level.
- Training in investigating corruption and promoting ethics for journalists.
- Educational packages for public information campaigns on the negative impact of corruption.

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CHAPTER 10: UGANDA

Introduction

At independence, Uganda inherited a small, efficient civil service that was considered one of the top in sub-Saharan Africa. It was like a “blank slate”, considered to be almost free from corruption. With the emergence of political turmoil of the 1960s and 1970s, corruption was added to the three impediments to development, identified at independence: poverty, ignorance and disease. The sweeping political changes of the 1980s brought into power the National Resistance Movement, which has put in place a number of institutions to fight corruption. These include: the Inspectorate of Government, the Office of the Auditor-General, the Public Accounts Committee and the Directorate of Ethics and Integrity, among others.

It is the opinion of some that the same political reasons that had undermined the earlier regimes are impeding anti-corruption measures now. In this paper, weaknesses in the current anti-corruption crusade are identified and remedial measures are suggested. This paper also attempts to explore the main social and economic factors that precipitate and sustain irregular and dishonest practices in the public service of Uganda. Poverty and a lowering of ethical standards in the entire society can be seen as the two major causes of corruption.

Background on the national public service

Uganda gained independence in 1962 with Milton Obote as the Prime Minister and Mutesa (the Kabaka of Buganda) as the President. Since then, all post-independence governments can be regarded as having been preoccupied with political survival. Uganda entered independence with a written constitution of the Westminster model (*Uganda Order in Council 1962:S1, 2175*). The political situation was generally calm. But soon intrigue began between the then Kabaka of Buganda, who was also the President of Uganda, a Southerner without executive powers, and the Prime Minister, a Northerner

who had such powers (*Byarugaba 1978*). What ensued in 1966 was that the Prime Minister attacked the residence of the Kabaka, forcing him to go into exile in Britain, where he died. As a result, Buganda lost a Kabaka while Uganda lost its first President.⁵

After this date, the politics of the country changed. Attempts were made for a single-party rule. This development affected the recruitment pattern into the public service; merit became a secondary criterion and party membership became the major qualification. Through this “spoils” system, many unqualified people entered the service. Very soon, the number of people who entered exceeded the availability of openings.

The situation worsened when Obote widened the scope of the public service to include the parastatals and the nationalized companies. This move resulted in public officers being eligible for transfers from the civil service to formerly private organizations.

Idi Amin Dada overthrew Apollo Milton Obote in 1971. He suspended the Constitution and ruled by decree for nine years. During his regime, political organization was suspended and the public service was at his mercy. It was as if he could appoint one member in the morning and dismiss another in the evening. This period is generally remembered as a time of misery and loss of human life.

Idi Amin was removed in 1979 by a combination of the Tanzanian Peoples’ Defense Forces and the Ugandan freedom fighters. The interim government of Yusuf Lule lasted sixty days, and then Binaisa took over. He was later removed by Paulo Muwanga, who took over the 1980 elections by “declaring” the winner in each constituency. Later, he rigged the election process that reinstated Obote as the President of

⁵ At independence, Buganda, one of the kingdoms in Uganda, was granted federal status. Its king (the Kabaka) was the ceremonial President of the country, while the Prime Minister retained executive authority.

Uganda. It is due to this rigging of elections that Yoweri Museveni, the current President, and other Ugandans decided to wage a civil war against Obote. This war was fought until 1986 when the National Resistance Army took over the government.

When the National Resistance Movement (NRM) came to power, it found the country in a precarious condition. As in many African countries, a one-party system, military regimes and Presidents-for-life had been the order of the day. The sense of national had been replaced by extreme individualism and opportunism. Schools and hospitals were in a state of chaos. Education and literacy were no longer priorities, as they were no longer a means to a good living. Money was put into the hands of people (*Mafuta mingi*) who had hardly seen the inside of a classroom. Political institutions had been misused and, in some sense, abused and could not function normally.

Members of the opposition were under constant surveillance or even detained. Corruption was so rampant that even when one saw an individual act, one believed that it was already institutionalized.

To solve these problems, the NRM thought that a second independence had to come. All organs of the state had to be overhauled to establish a new democratic order. This gigantic exercise to reorganize the social structure was to be done through a Ten-Point Programme (NRM Secretariat 1986). Top among the Programme priorities was democratization.

Uganda's path to democratization was through a Movement System, which assumed that to move away from the autocracy of the past to democracy, institutions of participation had to be deliberately created by the state. There was a need to revive parliamentary democracy. In effect, this meant to have an elected parliament. The problem was how to elect such people in an institution-less country. Hence the idea of Resistance Councils—from the village level upwards through sub-county, county and district, up to the parliament level—was introduced. Originally, voting was done by lining up behind the candidate of one's choice. Today, the method has been improved to include a secret ballot.

Today, Uganda has an elected President under the *1995 Constitution*. He is assisted by a Vice President, a Prime Minister, three Deputy Prime Ministers and Ministers (cabinet and ministers of State). The Constitution prohibits party politics, for the time being.

The other issues in the Ten-Point Programme include:

- Security;
- Consolidation of national unity and elimination of all forms of sectarianism;
- Defending and consolidating national independence;
- Building an independent, integrated and self-sustaining national economy;
- Improvement of social services and rehabilitation of the war ravaged areas;
- Elimination of corruption and misuse of power;
- Redress of errors that have resulted in dislocation of some sections of the population and improvement for others;
- Cooperation with other African countries in defending human and democratic rights; and
- Following a strategy of a mixed economy.

The above policy guidelines produced distinct initiatives that include:

- Constitutional reform designed to democratize the national political system;
- Decentralization designed to increase the powers of democratic local authorities;
- A Public Service Reform Programme (PSRP) to redefine the role of government, rationalize and streamline government structures to eliminate redundant staff, restructure management systems, introduce a minimum living wage and create effective incentive structures for improved performance and service delivery;
- Liberalization and privatization designed to reduce state control over the economy within the macro-economic stabilization and adjustment framework. The aim behind this

was to maintain economic growth of at least 5 per cent, reduce inflation to 7.5 per cent, improve the economy's external credit-worthiness and enhance the economic and social prioritization of public expenditure (MFEP 1990).

All of the above are what are known as reforms to improve governance in Uganda. Good governance refers to the distribution and structuring of internal political and economic power. Here, economic relationships are deliberately made to benefit the majority of the people. Rules are made for everyone to benefit from the environment.

The state should also enjoy legitimacy and authority derived from a democratic mandate and built on the traditional liberal notion of a clear separation of legislative, executive and judicial powers. There should be plural politics with a freely elected representative legislature, subject to regular elections, with the capacity to influence and check executive power and protect human rights.

Good governance also means an efficient, open, accountable and audited public service, which has the bureaucratic competence to help design and implement appropriate policies and manage public services effectively and responsively. It also entails an independent judicial system to uphold the law and a political superstructure to resolve disputes through bargaining, compromise and negotiations.

All of the above can be seen as having been derailed in the case of Uganda. Many feel that in the case of a public officer, he or she no longer provides accurate, reliable and timely information; develops policy options for political leaders; gives professional advice; implements government policies wholeheartedly; and ensures that this is done effectively and responsibly. Discipline, integrity, dedication, loyalty, impartiality, professionalism and accountability that shape his or her ethical performance have declined. Hence, corruption is seen to be prevalent.

Background on public service ethics and anti-corruption initiatives

Perhaps a useful starting point would be to generally define "public service ethics" and "corruption" in Uganda. Although there is no precise definition of public service ethics, it can be looked at as the standards, values and demands to be honestly observed by a public servant. Corruption has been defined differently by various scholars. For example, McMullen (1961, pp 183-4) takes a public officer to be corrupt if she or he accepts money or money's worth for doing something that she or he is under duty to do or not to do, or to exercise a legitimate discretion for improper reasons. Hence, it can be concluded that corruption is "the abuse of power entrusted to public servants for personal gain or for the benefit of the group to which one owes allegiance." It entails diversion from accepted norms.

In Uganda, there are various forms of corruption. They include: bribery, illegal use of public assets for private gain, payment of salaries to non-existent workers (ghost workers), payment for goods and services not supplied, fraud and embezzlement, ten percent commissions, misappropriation of public assets, removing documents from case files or even carrying off the whole file and many more.

The causes of corruption vary from situation to situation, but the most prominent one is poverty. In addition to this, public officers disregard procedures, rules and regulations—knowing that when they breach public service ethics, nothing significant is likely to befall them. With this trend, a sense of immunity prevails, thus reducing the risks of engaging in corruption. This explains why people do not fear to commit corrupt acts.

Economic pressures—such as poverty and low wages, among others—lead many public officers to resort to corruption to supplement their income in order to survive. For example, the lowest full-time salary is 584,544 shillings per annum or 48,712 shillings per month. Taking account of the present rate of inflation, this can hardly be sufficient to support a family.

Political turbulence has also resulted in corruption. This is seen in the period between 1970 and 1986, when all institutions of accountability were destroyed. The office of the Auditor-General ceased to exist and the Public Accounts Committee was abolished. There was a tendency of those in power to enrich themselves as quickly as possible, knowing that they may not be in power the following day. Job insecurity and excess ambition to get rich quickly has also proven to be one of the contributing factors to corruption.

Guidance for public servants

A *Leadership Code of Conduct* and a number of new institutions were created to provide overall guidance and set standards in public service ethics and integrity.

Code of Conduct

Chapter 14 of the Constitution establishes the *Leadership Code of Conduct* of 1992, which requires specific officers to declare their incomes, assets and liabilities from time to time and how they acquired or incurred them. The *Code* prohibits conduct likely to compromise the honesty, impartiality and integrity of specified officers; conduct likely to lead to corruption in public affairs; or conduct which is detrimental to the public good, welfare or good governance.

The *Code* prescribes penalties that can be imposed for breaches, without prejudice to the application of criminal penalties that are also prescribed for the breach in question. It emphasizes honesty, probity, impartiality and integrity in public affairs as well as the protection of public funds and other public property. The *Code* is enforceable by the Inspectorate of Government, which is described below, under the *Control of Conduct in the Public Service* section.

Directorate of Ethics and Integrity

This is a new Directorate in the Office of the President. Among other things, it is responsible for the formulation of policies, strategies and frameworks and to establish ethical standards that apply to government and public officials and professional bodies to fight corruption. It is also expected to monitor the implementation of

recommendations made by anti-corruption agencies and streamline anti-corruption laws. It advises on interventions, conducts public awareness campaigns, lobbies for the introduction of courses on ethics and integrity in the school curricula and other training programmes. The present Minister has tried very hard to build solidarity, collaboration and networks with civil society, cultural institutions and religious leaders in her endeavours to fight the problem.

The Service Commissions

The Constitution has created Service Commissions, the mandates of which include, among other things, to research, analyze, develop and establish national standards for the services regarding ethics and conduct, disciplinary control and recruitment and appointment procedures. These Commissions include the Public Service Commission, the Education Service Commission, the Judicial Service Commission and the Health Service Commission. (Constitution Articles 146, 165, 167, 169). These Commissions have terms and conditions that guide the ethical behaviour of the staff they employ.

Management of conduct in the public service

The government, through the Ministry of Public Service, has designed policies aiming at streamlining the operations and procedures of the public service to aid service delivery. Some of the components of the policies have resulted in functional rationalization of the service, the restructuring and decentralization of ministries, the reform of the public sector remuneration policy and administration, the development and introduction of improved management systems, the strengthening of the capacity of the Ministry of Public Service to manage the reform programme, timely and relevant information on reform endeavours and the introduction of Results Oriented Management (ROM). The consequences of these activities are as follows.

Downsizing

One of the consequences of the restructuring exercise was the reduction in the number of ministries from 32 to 18 and three offices, namely: The Office of the President, the Vice

President and the Prime Minister. As a corollary, the number of people employed in the public service has been drastically reduced from the original figure of about 350,000 to 162, 935.

The *group employee* cadre that included those hired by line ministries was abolished. It has been grossly abused and misused to inflate the payroll. Payment of non-existent staff (ghost workers) due to a lack of proper monitoring has been reduced, though not eliminated. There is a standing instruction that whoever is found bringing "ghost workers" on the payroll should be interdicted immediately, investigated and if found guilty, prosecuted in courts.

A computerized payroll system has been put in place and a payroll monitoring unit created in the Ministry of Public Service.

Delinking

Another consequence has been the delinking of the *common cadre* staff to facilitate the formation of the integrated management teams in the line ministries where such staff were posted. This group included accounts staff, personnel, administrative, secretarial and clerical staff.

Before this policy was implemented, permanent secretaries in line ministries had no control over the pay, promotion, discipline, motivation and deployment of these key staff. They would be transferred from one ministry to another without consulting the permanent secretary, where they had been deployed. As a consequence of being always "on the move," these staff owed their loyalty first to their class and their coordinating parent ministry. This mobility meant that they never really became part of an internally based management team of the ministries where they worked (PSRRC, 1990). Their divided loyalties were detrimental to the formation of integrated management teams that are meant to provide the opportunity to transform the way the public service is managed, through the introduction of results-based performance culture and a strategic approach to planning. The integrated teams increase management accountability and allow a shift in resource allocation to achieve clear measurable objectives, outputs and service standards. By this policy, the common cadres were expected to gain a sense of belonging to a

specific ministry and therefore contribute better towards the fulfilment of that ministry's objectives.

Remuneration policy and administration

Five issues were tackled here. They include: transparency and equity, salary enhancement, monetization of benefits, divestiture of "personal use" vehicles and job evaluation and grading.

Regarding transparency and equity, there has been a realization that public service salaries have been very low with inequitable distribution of allowances and non-monetary benefits. This has had a negative impact on the performance of public servants, increased absenteeism and decreased commitment. The multitude of allowances had also created problems in terms of defining when they should be paid, methods of payment, administrative complexity and scope of abuse. The government decided to correct these irregularities and improve transparency through a number of measures. These were:

- The monetization of non-monetary benefits;
- The consolidation of all allowances in a single salary figure that constituted the total remuneration of the public servant;
- The rationalization of overall and within group remuneration differentials through the reform of the overall salary structure; and
- The phased introduction of adequate levels of remuneration in the public service.

Consequently, salaries were raised by a factor of 43 percent across the board in Fiscal Year 1991/2. In Fiscal Year 1993/4, the salary increase was over 85 percent, and the overall wage bill was increased by 37 per cent. The projections at the time were that by 1996, a minimum living wage of shillings 70,000 per person would be achieved.

Action was also taken to remove internal and external inconsistency in the salary structure, which has been characterized by excessive compression. This was particularly the case in the middle ranges of the professional and managerial cadres. There were great anomalies within and across ministries and services, especially

The above information reveals that although there has been an increase, it is extremely low, considering the cost of living in the country. If we take the salary of a primary school teacher, for instance, it is equivalent to shillings 70,000 a month. The average expenditure of a public servant (depending on where one is) is shillings 40,000 per week (*Byarugaba 1997*). Where the balance is obtained to complete the month is in question.

For a permanent secretary, the situation is a lot better. Considering his or her rank, he or she could spend up to shillings 300,000 a week. But he or she shops in the same market as the teacher. Evidently, there is a need to remedy the situation; otherwise corrupt acts for survival will be encouraged.

Capacity-building

Many efforts have been put in this direction. A chief technical adviser was appointed to oversee the reform programme. Local consultants have been recruited to work on the programme in collaboration with the Administrative Reform Secretariat and Management Services Department. The government has initiated action to build the capacity of its officers for effective and efficient service delivery. In addition, a *Code of Conduct* for public officers has been instituted to instil ethical behaviour.

Control of conduct in the public service

In addition to guidance and management, enforcement systems have to be in place to ensure that values and principles are respected and standards adhered to.

Financial system

Another reform, in the financial sector, was the introduction of departmental votes during the release of funds to ministries. In the past, the Ministry of Finance used to release funds in one block. It was then the responsibility of the Accounting Officer to constitute a Finance Committee to distribute the funds among the various activities of the ministry. As it commonly happened, the members of the committee allocated funds to non-priority areas where they could win easy access to the funds. Major activities were often ignored, to the detriment of

the objectives of ministries. Today, the Ministry of Finance, after departmental budgets are approved, releases funds directly. The transfer or re-allocation of funds from one item to another is only within the authority of the Secretary to the Treasury

This arrangement has helped departments to plan better for their activities and has given better control of the utilization of funds for the management of specific programmes (at least theoretically).

There is the Commitment Control System, a new measure to control against the accumulation of arrears by ministries and to streamline the process of paying for goods and services. Before any procurement of goods and services is undertaken, the requisitioning department must commit funds for that activity from the funds released during that period. Once the funds have been committed, the payment for the goods and services is guaranteed, and the re-allocation of such funds is not permitted. This is supposed to improve the payment process and to restore the confidence of suppliers of goods and services, who are often required to wait for long periods before payment is effected.

Personnel and establishment control

There was a need to improve the management of records, the rehabilitation of registries and refurbishing them (painting, burglar proofing and installation of open shelves). With Overseas Development Assistance, personnel have been trained to manage records in filing, installing, retrieval and storage facilities and to manage and maintain such valuables in good condition. This has improved records management in the public service, thus enhancing accountability and transparency.

The Inspectorate of Government

In 1986 when the National Resistance Movement came to power, it established this office to investigate cases of corruption and abuse of office. With the promulgation of the new Constitution, the office obtained more powers and clout. It was established to promote and foster strict adherence to the rule of law and the principles of natural justice in administration. Further, it is to foster the elimination of corrup-

tion, abuse of authority and of public office; and to promote fair, efficient and good governance in public offices. In addition, subject to the provisions of the Constitution, it is entrusted with the responsibility to supervise the enforcement of the *Leadership Code of Conduct*; to investigate any act, omission, advice, decision or recommendation by a public officer or any other authority in the exercise of administrative functions; and to stimulate public awareness about the values of constitutionalism, in general, and the activities of its office, in particular, through any media or other means it considers appropriate.

The office was given powers to investigate on its own whether or not a person had suffered any deliberate administrative injustice. Its jurisdiction covers officers or leaders, wherever they may be employed, and it was given full autonomy—being only responsible to Parliament. It was given powers to establish branches at districts and other administrative levels as it considered necessary for better performance. It was given an independent budget, appropriated by Parliament. The Inspectorate was given special powers (Article 230) to investigate, cause investigation, arrest, cause arrest, prosecute or cause prosecution in respect of cases involving corruption and the abuse of authority or of public office. The office was given powers to inspect offices or property of any department of government, person or authority, to call for and examine, retain any document or item in connection with any case it wanted investigated. It only has to report to Parliament every six months on its performance.

The Office of the Auditor-General

The Constitution provides for the Office of the Auditor-General, appointed by the President with the approval of Parliament. The person under consideration must be a qualified accountant of not less than fifteen years standing and a person of high moral character and proven integrity.

This person is authorized to audit and report on the public accounts of Uganda and of all public offices, including the courts, the central and local government administrations, universities and other such public institutions, and any

public corporation or other bodies or organizations established by an act of Parliament. That person is authorized to conduct financial audit to check on value for money in respect of any project involving public funds. This person reports to Parliament. In performing these functions, he or she is not under the direction or control of any person of authority.

The Uganda Police Force

The Constitution provides for a police force that must be patriotic, nationalistic, professional, disciplined, competent and productive, and whose members must be citizens of good character. Its functions are to protect life and property; to preserve law and order; to prevent and detect crime; and to cooperate with the civilian authority, other security organs established under the Constitution and with the population generally. The force is under the command of the Inspector-General, assisted by his Deputy, guided by the *Police Act* and other relevant laws.

The police play a significant role in the fight against corruption. Unfortunately, some officers in the police force are corrupt. Officers and men of the force take bribes. Traffic policemen often take money from taxi operators when they drive vehicles that are not road-worthy. There has been a Commission of Inquiry into the maladministration in the Police Force (*the Sebutinde Commission*) that unearthed many problems in the force. At the time of writing this chapter, this report has not been made public.

The Legislature

The Parliament of Uganda was established for making and enacting laws. It has powers to make laws on any matter for the peace, order, development and good governance.

The Parliament has performed well so far. It has censured ministers who ultimately lost their positions and has suspended a Member of Parliament for misbehaviour. It has caused authorities to reconsider decisions it did not like and has at times queried the worth of candidates proposed by the President for positions. It can be said that the Members of Parliament are instrumental in fighting against corruption. This they can ably do by enacting laws to combat

corruption. A good example is the above-mentioned *Leadership Code of Conduct*.

The Directorate of Public Prosecutions

The Directorate of Public Prosecutions exists to prosecute all criminal cases in the country on behalf of the state. Its key functions are:

- To direct the police to investigate any information of a criminal nature;
- To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial;
- To give advice and guidance to the Criminal Investigation Department (CID), in particular and other government departments, in general, on the conduct of criminal investigations or decision to prosecute and the basis of charges;
- To collaborate on and pursue appropriate, prompt and successful investigations and prosecutions of criminal complaints and cases with institutions involved in identifying, investigating and prosecuting criminal complaints; and
- To discontinue at any state before judgement is delivered any such criminal proceedings instituted or undertaken by the Director, or with the consent of Court, those instituted or undertaken by any other person or authority.

Article 120 of the Constitution makes the Director of Public Prosecutions fully independent in exercising his or her duties. The intention is to make him or her fully free. However, the enabling law (act) is not in place yet.

Movementocracy as a system of governance

The Movement System of Governance devolves powers to local governments. The essence of this system is to ensure that functions, powers and responsibilities are devolved and transferred from the centre to the periphery in a coordinated manner. Decentralization is the principle applying to all levels of local government and, in particular, from higher to lower local government units to ensure the peoples' participation and democratic control in decision-making (Constitution: Article 176). The arrangement en-

sures that local governments oversee the performance of persons employed by government to provide services in their areas. Through this system, they can monitor who is spending how much and from where the funds may be coming from. They can therefore detect big spenders with little income, or those with illicit enrichment, and investigate where the extra comes from.

Non-governmental actors

The liberalization of the media

Originally, Uganda had only one radio station, which was controlled by the government. Today, there are over 28 private FM stations. The print media were also dominated by the government. Today, there are a number of newspapers that are free to print and inform the public. Both the print and electronic media play a very important role in informing the public about unethical behaviour that takes place.

Prominent among these are *Radio Buganda* and *Radio Simba*. Even the President of the country has been forced to try to answer for some of the unethical government conduct against which they have brought up information. The *Monitor* newspaper has also been keen in raising public awareness about corrupt tendencies in government and the army and among ministers. *Uganda Confidential*, also leading in this endeavour, has been harassed through the Courts of Law. Usually, its editor has been acquitted.

Non-governmental organizations

There are a number of NGOs, civil society organizations and donors who supplement government effort in enforcing ethical behaviour. Transparency International (Uganda), Uganda Human Rights Initiatives, Action for Development, Legal Aid, Centre for Conflict Resolution, Church of Uganda Life Ministries, Community Concern, Uganda Private Midwives Association, National Association of Women's Organization in Uganda, Safe Motherhood Initiatives, Uganda Joint Christian Council, Uganda Catholic Secretariat and the United Nations High Commissioner for Refugees are among the many organizations mentioned in this work.

In the Ugandan case, where national budgets are heavily funded by donor agencies, donors play a big role in enforcing ethical behaviour. Donors insist on accountability of funds given before they can release more funds. Donors sometimes also insist on good governance, policy adjustment and commitment as conditions before the release of funds.

As a result of all these measures, Uganda has won recognition as a country in the forefront in the fight against unethical behaviour. Transparency International has identified Uganda as one of the leading countries in Africa to seriously fight corruption. The World Bank and UNDP have also recognized this fact.

Recommendations

While each institution created to uphold ethical behaviour may have particular bottlenecks, there are those that cut across most of them. These are:

Poor resources

Almost all of the institutions do not receive sufficient funds to run their affairs. Because of budgetary constraints, most of the investigations are not made, vehicles are not available and office resources are not enough.

Absence of a proper remuneration package

We have indicated some information about payments made to government employees. These are insufficient wages. The employee cannot live on such earnings, as the money would hardly last a week. He or she is forced to look for money from any source in order to survive. Some even say that it is more worthwhile to live violently in corruption than peacefully in poverty.

The staff members employed are inadequate both in skills and numbers.

People who have experienced severe economic hardship are a problem. The new generation of young people who have grown up in tribulations do not give importance to ethical standards. Such people shamelessly and inappropriately exploit opportunities.

Inadequacy of punishment

People caught in corrupt behaviour receive small sentences. There was a case of someone who stole two million shillings and was sentenced to eight years. Another case involved someone who stole 100 million shillings and was sentenced to two years. It is as if the law condones stealing a lot of money by delivering a smaller sentence. Indeed the Auditor-General has identified many who engage in corrupt practices, and the government has only suspended them. Laws that can confiscate the property of the corrupt are needed.

Unavailability of records

Some documents cannot be accessed. For example, the Auditor-General cannot access records pertaining to classified expenditure in the Ministries of Internal Affairs and Defense and the President's Office. These offices have not been audited for many years, although they spend large sums of money.

Lack of a strong civil society

The absence of a strong civil society has led the government to ignore and seldom punish those caught in corrupt acts. These officers have just been retired, dismissed or pensioned off instead of being prosecuted. The electorate is composed of people predominantly of peasant background who live in rural areas and often watch in disbelief, without acting. An erring leader from such a region is not afraid to return to it because he or she will not likely be sanctioned or ostracized.

Lack of integration

While there are many bodies involved in the fight against unethical behaviour, they lack coordination and integration at the strategic level. In some cases, their functions overlap and/or duplicate each other, resulting in the waste of resources. There have been instances where those commissioned to catch the corrupt have ended up becoming corrupt.

Complexity of corruption

There is reciprocation involved in engaging in corruption. For example, an act of bribery needs two parties. If they mutually accept the trans-

action, then the one will not let the other down and is unlikely to testify against him or her. Yet courts need adequate evidence to convict the accused. This problem is compounded by the collusion that is required in acts of corruption.

Cultural problems

Some people exhibit an attitude that stealing a little from the workplace is all right because the money belongs to the "people". Stealing from public funds, especially when there is no food at home, is taken to be a less serious offence.

The successful implementation of reforms is expected to improve the performance of public officers, making them accountable, transparent,

less corruptible and service-oriented. The public officer is supposed to do so through discipline, dedication, integrity, accountability, loyalty, impartiality and professionalism. But for him or her to be able to do so, the environment must be conducive.

To a large extent, an institutional framework to create such an environment has been put in place. The government has created the institutions to fight unethical behaviour. But they lack resources as indicated. Hence the government should address the issues raised here. True, the transition to democracy cannot always be smooth sailing, but efforts should be made to reduce the turbulence.

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ANNEX 1: SUMMARY OF RECOMMENDATIONS

Public Service Environment

Country	Uphold merit or professionalism	Ensure fair representation of all social groups	Enforce civil service regulations	Improve remuneration	Better equipment and resources	Improve transparency or record keeping	Open up and make transparent public tenders
Cameroon	x	x			x		
Gabon	x		x				
Ghana	x			x			
Kenya	x		x				
Madagascar	x				x		x
Namibia						x	x
Nigeria				x		x	x
Senegal		x				x	
South Africa							
Uganda	x			x	x	x	

Guidance and Management of Conduct in the Public Service

Country	Strengthen ethics or anti-corruption legislation	Implement codes of conduct	Train on administrative procedures and ethical norms	Verify or make public disclosures of conflicts of interest	Demonstrate political support from high level	Coordinate existing institutions	Conduct more research
Cameroon	x	x	x			x	
Gabon			x				
Ghana	x	x		x			
Kenya	x	x			x	x	
Madagascar	x	x		x	x		
Namibia		x		x			
Nigeria	x	x		x	x	x	
Senegal		x	x				
South Africa	x	x	x	x		x	x
Uganda			x				

Control of Conduct in the Public Service

Country	Improve complaints procedures	Encourage and protect whistle-blowing	Give more resources and independence to investigating agencies	Strengthen oversight role of parliament	Improve policing and other law enforcement	Prosecute corrupt acts or train prosecutors	Give judicial independence
Cameroon			X				X
Gabon							X
Ghana		X	X		X	X	
Kenya				X			
Madagascar							
Namibia	X	X	X				
Nigeria	X		X	X		X	
Senegal					X		X
South Africa						X	
Uganda			X			X	

Non-Governmental Actors

Country	Adopt Charters and Service Standards for Citizens	Organize national ethics/anti-corruption strategy or coalition	Promote civic education or NGO participation	Encourage traditional leaders to promote ethics	Support freedom of press or train on investigative journalism	Promote ethics in the private sector
Cameroon	X	X	X			
Gabon			X	X		
Ghana	X	X				
Kenya	X		X			
Madagascar	X		X			
Namibia			X	X	X	X
Nigeria	X		X		X	X
Senegal			X		X	
South Africa	X		X		X	
Uganda			X			