

## 'IMPLEMENTING EFFECTIVE ETHICS STANDARDS IN GOVERNMENT AND THE CIVIL SERVICE'

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### **1. Introduction**

This paper sets out a number of practical mechanisms for setting and institutionalising high standards of ethical conduct integrity and good Governance for elected officials and civil servants, based on the experience of Australia, New Zealand, Canada, the UK, Korea, Morocco and Ethiopia. In summary, the introduction of relevant Codes of Ethics and Conduct, to be effective, needs to be supported by a range of other mechanisms, training, and leadership by managers and political leaders alike. Examples of such mechanisms are given.

### **2. Discussion**

In most countries today there are increasing expectations from ordinary citizens, business leaders and Civil Society that Governments will establish and deliver higher standards of ethicality and integrity in the Civil Service, agencies of government (Ministries and parastatals), and Government itself.

In part this expectation is the result of better-focused media attention and public scrutiny, and increasing impatience by ordinary citizens and Civil Society, whose members want to see an end to the corrupt practices and systems of the past.

Bearing in mind the significant progress made in recent years in developing effective Civil Service Ethics, Codes of Conduct, transparency measures, Ethics and Integrity systems, and Anti-corruption agencies, there is now a need to concentrate on three areas of concern in particular, which are directly relevant to the problems of internalising integrity and Ethics in democratic governments and the Civil Service.

#### *Areas for Attention*

These are as follows:

1. **Anticipating specific threats to ethics standards and integrity in the public sector:** attention needs to be paid to systemic threats that could weaken adherence to core public sector ethics values, and commitment to good governance, and to preparing the necessary political and management responses;

2. **Strengthening the ethical competence of civil servants, and strengthening mechanisms to support “professional ethics”:** new techniques need to be undertaken to institutionalise ethically competent decisionmaking, disinterested advice to Government, and, ultimately, an ‘ethical culture’ which supports professional responsibility, self-discipline, and support for the rule of law ;
3. **Developing administrative practices and processes which promote ethical values and integrity:** new and proposed pro-ethics laws require effective implementation through, for example, effective performance management techniques which support the entrenchment of the ethical values set out in Civil Service (and parastatal) Codes of Ethics.

Specific strategies which should be considered include:

- effective laws which require civil servants to give reasons for their official decisions, (for example: a Freedom of Information law);
- management approaches which encourage all public officials and civil servants to deal positively with corruption and unethical practice when they encounter it.
- ‘whistleblower’ protection law to protect appropriate 'public interest disclosures' of wrongdoing by officials;
- ethics audits to identify risks to the integrity of the most important processes (for example financial management, tendering, recruitment and promotion, dismissal and discipline);
- new Human Resource Management strategies (which link, for example, ethical performance with entry and advancement, and ethical ‘under-performance’ with disciplinary processes), merit based promotion and recruitment, anti-discrimination protections;
- training and development in the content and rationale of Ethics Codes, the application of ethical management principles, the proper use of official power, and the requirements of professional responsibility, and
- effective external and internal complaint and redress procedures.

#### *The Insufficiency of Ethics Codes*

Most Civil Service regimes (certainly in the West) still equate “Public Sector Ethics” with anti-corruption efforts, and limit their engagement with professional practice issues to a minimalist written *Code of Conduct* or *Code of Ethics*, which is usually concerned with prohibiting conflict of interests and self-dealing, and encouraging political and other forms of impartiality, and (increasingly) service to the community.

In my view this is an insufficient effort. Publishing a Code of Ethics, by itself, will achieve little.

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It is now generally recognised that meaningful and enforceable Ethics codes, linked to systemic practices and procedures, based on legislation, and backed by management leadership and high-level political commitment, and ongoing 'professional ethics' training, are essential.

### *Ethics and Corruption*

Ethical conduct and corruption in the public sector are the two sides of the one coin.

To the extent that an organisation succeeds in enhancing its own ethical climate internally, and that which it operates in externally, (for example, by including suppliers and contractors within the scope of an ethics program), it reduces the acceptability of corruption.

Conversely, control opportunities for corruption and you make room for ethical practices to become established.

### **3. Ethics Laws, Codes of Ethics, and Codes of Conduct**

The major problem for implementing effective Codes of Ethics remains that no law or Code will be of much value if individual civil servants lack the technical competence to recognise an ethics problem for what it is, or if they do not know what standards their organisation expects of them, or (worst of all), if they consider it to be not in their interests, personally or professionally, to take a stand for integrity and against corruption.

The *Code of Ethics* is best regarded as a general statement of 'core values' which define the professional role of the civil service. In general, modern civil service Codes of Ethics set out broad high-level principles such as *Integrity, Accountability, Responsibility, Trustworthiness*, etc., but give little attention to how these principles are to be applied in specific circumstances.

By contrast, *Codes of Conduct* usually set out specific standards of conduct expected in a range of realistic circumstances, representing a particular organisation's preferred or required interpretation of the core values or principles which are seen as important to its work. (Hence the title - Code of Conduct.)

In most western civil service 'Codes of Ethics', (especially those developed over the period 1965-1990), there is a mixture of the two elements. The earlier the Code, the more likely it is to deal with 'ethics' in a general way, and ignore specific conduct or relationships. From about 1980 on, most Codes of Ethics include at least some of the more important (to the organization) specific conduct standards and prohibitions, and a good deal of procedural detail as well.

From about 1990 onwards, the distinction between Codes of Ethics and Codes of Conduct began to be made more clearly. This was necessary for two main reasons:

- employers began to find that disciplinary action based on an alleged breach of the general principles set out in a non-specific Code of Ethics was easily defeated; and

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- the new generation of civil servants born after the 1960's could not be assumed to share the same 'core values' of their predecessors, or alternatively, the civil service of the 1980's was very different from that of the 1970's, and was changing rapidly, so that 'core values' became harder to assert with any certainty.

In any case, by 1996, the OECD's influential Public Management Service endorsed a model of standard-setting which involved both 'aspirational' ethics principles, stated generally for the entire Civil Service of a country, together with specific Codes of Conduct which set down required conduct in a range of circumstances which reflected the work of each specific organization - both in terms of aspirational and disciplinary standards, so that there would be little doubt about what was prohibited conduct, and what was required.

Behind this approach lay a recognition of the practical fact that the circumstances faced by, say, a police officer are very different from those faced by a teacher, or a Government Minister. While each must abide by, for example, the ethical principle of Integrity, the actual problems faced by each in their workplace would be very different. (For example - it is probably necessary that a Minister should accept a valuable gift from a visiting foreign dignitary, but it is usually ok for a teacher to accept no more than a token gift from a student, and it is never acceptable for a police officer to accept any sort of gift from a known criminal). The examples can be multiplied indefinitely.

In my experience as an employment Appeals Tribunal over more than 15 years, Codes of Ethics - by themselves - are of little or no value in disciplinary matters, either because no manager will take the risk of making a disciplinary charge on the basis of vague general ethics principles in the absence of specific conduct standards, or if they do, because an appeal usually succeeds (and the manager's reputation suffers accordingly). Where this happens, very soon managers will avoid taking disciplinary action, usually by deliberately 'failing to see' the disciplinary problem. In this way, an Ethics Code may actually reinforce misconduct and corruption.

Conversely, in my experience, a Code of Ethics / Conduct which concentrates on providing a firm basis for disciplinary action will only succeed in developing a workplace culture which focuses on narrow compliance with the rules so as to avoid punishment. Good public administration and effective Civil Service Reform cannot be maximised against a 'compliance mentality' background, and may not be achieved at all.

Most modern Civil Service Ethics laws, and Codes of Ethics for civil servants and public officials, endorse the following minimum set of principles:

### ***Serving the Public Interest***

*Civil servants and public officials are expected to maintain and strengthen the public's trust and confidence in government, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the Constitution and the laws, and seeking to advance the public good at all times.*

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### ***Transparency***

*Civil servants and public officials are expected to use powers and resources for public good, under government policy. They should be accountable for the decisions they make, and prepared to justify their actions.*

### ***Integrity***

*Civil servants and public officials are expected to make decisions and act solely in the public interest, without consideration of their private interests. Public employment being a public trust, the improper use of a public service position for private advantage is regarded as a serious breach of duty.*

### ***Legitimacy***

*Civil servants and public officials are required to administer the laws, and to exercise administrative power on behalf of the Government, or the Parliament, or other such authority. That power and authority should be exercised legitimately, impartially and without fear or favour, for its proper public purpose as determined by the Parliament or their employer.*

### ***Fairness***

*Civil servants and public officials should make decisions and act in a fair and equitable manner, without bias or prejudice, taking into account only the merits of the matter, and respecting the rights of affected citizens.*

### ***Responsiveness***

*As agents and employees of the elected Government, Civil servants and public officials are required to serve the legitimate interests and needs of the Government, other civil servants, and all citizens, in a timely manner, with care, respect and courtesy.*

### ***Efficiency and Effectiveness***

*Civil servants and public officials are required to obtain best value for public assets deployed in or through public management, and to avoid waste and extravagance in expenditure and the use of public assets.*

It is important and encouraging that in a number of African countries where there is a significant Muslim tradition, other 'traditional' moral virtues such as '*Selflessness*' and '*Self discipline*', and '*courage*' are being invoked in their civil service Codes of Ethics, specifically as a corrective to official corruption, abuse of office, and conflicts of interest.

Codes of Ethics and Codes of Conduct, as described above, have been implemented in various forms in most if not all western Civil Service systems. Almost irrespective of the particular content of such Codes, however, it is essential that ongoing professional training, effective institutionalisation by management, and committed leadership by political and administrative elites, be maintained or strengthened if such Codes are to be worth more than the paper on which they are printed.

## **4. Charters of Service as Ethics Standards**

Charters of service-delivery developed by civil service agencies and parastatal increasingly emphasize service and accountability - the main aspects of civil service reform - and in so

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doing support a number of fundamental ethical principles and specific attitudes and practices:

- *Service*: Citizens have rights to services of many kinds. Civil servants are expected to concentrate primarily on serving the community, and the government, and in so doing to put possibilities for personal advantage to one side. Unnecessary administrative impediments to effective service delivery, ('bureaucracy', or 'red tape-ism'), should be identified and removed;
- *Accountability*: Decisions made by civil servants and public officials should be made as transparent and open as possible. Reasons must be given for official decisions.
- *Complaints*: Civil servants on behalf of their agencies are expected to provide effective mechanisms whereby citizens, including the business community, can lodge complaints about the agency's performance, (or failure to perform) and receive appropriate remedies. Complaints processes should be internally monitored by each agency so as to ensure that systems are reviewed and performance is improved.

In particular, Service Charters usually require specific standards to be set covering government service-delivery, but they may also be used to set and enforce standards of ethical conduct (by prohibiting bribe-seeking), departmental accountability (by providing redress for complaints), and procedural fairness (by requiring 'due process' and rule of law in decisionmaking).

In other words, improving citizens' access to 'quality of service' by government agencies is likely to have the effect of making government and the civil service more transparent and accountable.

In the same way, such *Charters* will also make Corruption and other forms of misconduct by officials easier to detect and correct, by making it easier to identify specific cases of poor performance, administrative obstruction, maladministration, and improper use of discretion in administrative decisionmaking.

### **5. Laws Against 'Maladministration'**

'Maladministration' refers to the making of an official decision in a manner which is contrary to law, arbitrary, unreasonable, without proper justification, lacking in procedural fairness, or made without due consideration of the merits of the matter, or made corruptly. In one respect at least, Maladministration may be no more than simple incompetence. The other aspects of Maladministration, however, shade into 'Abuse of Office' - misusing public office for private gain - which is the standard definition of Corruption. In either case, Maladministration by a public official is thus inherently unethical.

An 'official decision' means any decision made or purportedly made under a law or government policy, or an administrative procedure of a public body, by a civil servant or public official.

In many countries, official decisions affected by 'Maladministration' may be reviewed independently, (for example by an Ombudsman, Administrative Appeals Tribunal or Court), and corrected. Officials responsible for maladministration may also be disciplined by their employer.

## **6. Anti-Corruption Laws and Agencies**

In addition to establishing anti-corruption agencies, under laws which protect the public for reporting corruption many countries have also established, and enforce, a higher duty on civil servants and public officials for mandatory reporting of all instances of suspected corruption and official misconduct, including significant breaches of the body's code of ethics.

Failure to report known or reasonably suspected cases may be used as the grounds for disciplinary measures to be taken against civil servants.

## **7. Right To Obtain Access To Official Information**

Some governments provide citizens with a qualified right of access to any official information held by government agencies, civil servants, public officials and public bodies, usually under a 'Freedom of Information' law.

The right of access generally does not operate where the responsible minister determines that disclosure of part or all of the official information sought by a person, or the disclosure of the existence of a such information, would be likely to compromise the national interest, the economy, an investigation of a criminal matter, or national security, or would otherwise not be in the public interest.

The provision of FoI rights to citizens is now considered essential to ensuring accountability by public officials and Governments. The 'best practice' examples of such laws are to be found in Canada, the USA, Australia and New Zealand.

## **8. Right To Obtain Reasons For Official Decisions**

In some countries, citizens have an unqualified right, under law, to be advised of the reasons for any official decision of which they are directly the subject.

This includes the right to be advised, at the time of the decision and in writing, of the evidence and other information taken into account by the decisionmaker, and of the procedure, if any, for having the decision reviewed.

This provision is seen as potentially a major contribution to the integrity and probity of official decisionmaking, good governance, and the prevention and detection of corruption.

The international 'best practice' examples of providing rights to reasons for official decisions are to be found in Britain, USA, Canada, Australia, New Zealand some other OECD countries

## **9. Right of Review of Official Decisions**

In the interests of improved transparency and accountability, and recognising citizens rights to both substantive and procedural fairness, a number of countries have enacted laws which provide that a person who is adversely and directly affected by an official decision has a right to have the decision reviewed by an independent decisionmaker, who may make a fresh decision, or return the matter for reconsideration by the original decisionmaker.

All significant official decisions can be made subject to independent review, and effective administrative procedures (in particular the keeping of proper records), can be required to be maintained, so as to assist effective independent review.

Normally it is expected that an independent review would be conducted internally, but in more significant matters, or where effective independent review is not available internally, external review by another person or body ( for example, an Ombudsman, or a Court) may be provided for by law.

The international 'best practice' examples of such review processes are to be found in USA, Canada, Australia, New Zealand some other OECD countries.

## **10. Right To Procedural Fairness.**

Increasingly, citizens are becoming entitled by law to the protections of procedural fairness in the making of all official decisions about any matter which affects them directly.

This means in particular that citizens will have the right to a hearing concerning the matter at issue before any final decision is made; and the right to know the case or allegation to be answered. They may also be entitled to professional representation in more serious matters.

Under this approach, citizens also have the right to have their submissions properly considered by the official who is to make the decision, the right to a decision which is free from bias or apparent bias; and the right to a decision the making of which excludes irrelevant considerations and takes into account only the merits of the matter.

## **11. Right Of Protected Disclosure Of Official Wrongdoing ('Whistleblower' Protection)**

In the interests of improving accountability and fostering the fight against corruption, some countries have passed laws to establish a right whereby a person may make a protected 'public interest disclosure' of any suspected or actual corruption, misconduct, or Maladministration by a civil servant or public official.

The main task of "whistleblower" protection provisions such as this is to maintain a reasonable and workable balance between encouraging the desirable disclosure of official wrongdoing, (by protecting those who make disclosures against acts of reprisal or revenge).

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At the same time such laws protect the reputations of innocent individuals and government organisations (by providing significant penalties for knowingly false or malicious ‘disclosures’).

A disclosure will only be protected if it is made to a proper authority, and if the disclosure is based on an honest belief, held on reasonable grounds, that the disclosure is true.

A person making a public interest disclosure in these terms has the right to be protected from reprisal in relation to the making of that disclosure. Reprisal may be defined as an act of misconduct if the person is a civil servant or public official, or a breach of the relevant Criminal Code if the person is a private citizen.

Protections attached to the disclosure procedure should not be open to abuse: a person who makes a false public interest disclosure, knowing it to be false, commits an act of misconduct if the person is a civil servant or public official, or a breach of the criminal code -section if the person is a private citizen.

In general, whistleblower protection laws require government agencies to provide appropriate and effective administrative procedures for making a public interest disclosure, and for ensuring that the identity of the discloser is kept confidential to the maximum extent possible consistent with the effective investigation of the disclosure.

Government organisations are also required to provide an appropriate and effective procedure for ensuring that a person who makes a public interest disclosure is protected from reprisal. For example, the law can provide that a person who discloses improperly the identity of a person who has made a public interest disclosure commits an act of misconduct if the person is a civil servant or public official, or a breach of the Criminal Code if the person is a private citizen.

The restriction of protection to disclosures made to a ‘proper authority’ effectively prohibits disclosures to the media. The restriction of protection to disclosures which are reasonably believed to be true is intended to discourage malicious attempts to damage reputations.

No person should be able to disclose the identity of a whistleblower without proper authority. This is important to ensure that the protections available to the person who discloses wrongdoing are effective.

‘Reprisal’ should be defined broadly, by law, so as to include any act intended to cause, or actually causing, harm or damage, or the threat of harm or damage, to any person's property, career, employment, trade, business, well-being, or family, or any form of harassment, done because or in the belief that a person has made, or may make, a public interest disclosure, or a complaint.

This definition is intended to ensure the maximum possible deterrent to reprisal against a public interest disclosure: the definition includes, for example, threats against a third party (e.g. a member of the family of a discloser) and threats made in the belief that a person has made a disclosure, even where that belief is mistaken.

Britain, USA, Canada, Australia, and some other OECD countries have enacted effective 'Whistleblower Protection' or 'Public Interest Disclosure' laws in the past decade.

## **12. Public Finance management reforms**

Many countries have traditionally adopted stringent statutory controls on the management and expenditure of public finances, in an effort to control public expenditure and to minimize corruption, waste and inefficiency. Most such measures are overseen by an independent Auditor General, who is usually an officer of the Parliament, rather than a civil service office. Increasingly, Parliaments have adopted Public Accounts Committees to add to the oversight of Governments and their budgets.

More recent approaches have emphasized the need to ensure 'value for money' ('VFM') management and control strategies to ensure that public monies are controlled in such a way as to maximize the benefit to the Government and the public, and that expenditure controls are not unduly expensive to administer.

## **13. Regulatory Reform**

The elimination of unnecessary administrative 'red tape' – discretionary bureaucratic decisionmaking of little or no added value – is endorsed by OECD countries as potentially making a significant contribution to reducing the cost of government (by reducing the size of the public administration machinery), and the compliance costs to the community.

Perhaps more important, however, is the contribution that reduction of administrative controls may make to controlling corruption, by reducing the number of administrative opportunities for bureaucrats to extract bribes and 'facilitation payments', or subvert the process outright by 'losing' the file.

## **14. Integrity Testing**

Integrity tests are one measure for encouraging the observance of an organisation's Code of Ethics / Code of Conduct.

Integrity testing is generally employed by the employee's agency or an anti-corruption body, to detect individuals who are prepared to accept a bribe, or other inducement, to act corruptly by doing (or not doing) something that they are required to do in their position.

To be acceptable and credible, and fair, the 'test' set must be realistic, in that it must reflect the circumstances of the officer's position in relation to his or her responsibilities, and be carried out in such a way that the test does not amount to 'entrapment'.

This process is to be subject to independent review in every case, to prevent abuse of the power to impose a penalty.

## **15. Responsibilities Of Citizens In Dealing With Public Bodies**

A relatively recent development in the integrity field has been the introduction of formal requirements that all citizens in their official dealings with public bodies, civil servants, and

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public officials, are required to observe a number of responsibilities of good citizenship, in relation to, for example, honesty, lawfulness, and the prevention of corruption.

The responsibilities have regard to reasonable expectations of lawfulness, honesty, and integrity on the part of citizens, and seek to discourage citizens from to refrain from acting corruptly or unlawfully by offering inducements to civil servants improperly.

Under this provision, citizens are also expected to refrain from deceptive, dishonest or fraudulent conduct, to report any actual or suspected corruption, or misconduct to a proper authority, and to refrain from making frivolous or vexatious complaints or demands.

In the interests of enhancing public understanding of the way government organisations function, citizens are also required to give an honest account at all times of any dealings with a civil servant, public official, or public body.

In the event of a citizen's serious failure to comply with these requirements, a government organisation may impose an administrative penalty, usually in the form of a withdrawal of a service provided by the organisation, for a limited period of time. This penalty should be subject to independent review in every case, to prevent abuse of the power to impose a penalty.

This provides an important mechanism whereby a public body may exercise a measure of control over persons having official dealings with the body, such that unnecessary administrative actions, including the waste of time and other resources, and opportunities for corruption, might be minimised.

The approach also provides a measure of defence against persons who might seek to undermine the government organisation's Code of Ethics, for example by offering a bribe.

### **16. Human Resource Management Reform**

Many countries are now re-considering the effect of past and current HRM practices on the ethical climate of their Civil Services.

It may be fairly said that a civil service organisation which fails to implement, (through adequate and effective training and management leadership) and enforce (through effective leadership, disciplinary and management action) its Code of Ethics in practice, can expect to be ineffective in controlling corruption, and inefficient or incapable of providing services to the public.

In most established civil services, traditionally Promotion and recruitment to the civil service has been based on merit, not political or family connections, and is protected by law.

Patronage and favoritism in public employment is generally prohibited by law, and protected by effective independent appeals mechanisms. Increasingly, attempts to employ friends relatives and cronies contrary to merit-based procedures required by such laws are being treated as a serious form of corruption, and have led to dismissals and prosecution for public officials (including Ministers) who engaged in such practices. Arbitrary dismissal from the

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civil service through the intervention of a Minister, is unlawful, and may likewise be regarded as a form of abuse of office or corruption.

Civil Service Discipline and management practices must be objective, fair, and reasonable. Managers are expected to be trained able to deal with such matters as providing adverse assessments on performance, enforcing required work processes, requiring punctuality, and dealing with employee grievances, effectively and fairly, to ensure that the efficiency of the workplace is not compromised unnecessarily.

Perhaps most important of all, Civil Service salaries must reflect the cost of an adequate standard of living, both to minimise individuals' temptation to corruption, and to maximise the Civil Service's ability to attract and retain talented employees who can make a contribution to their community. Performance may be taken into account in setting pay, increment, or bonus levels, but must be based on actual performance, objectively assessed, and properly documented.

But *by itself* this implementation will be likely to be insufficient. Civil servants will not abide by an organisation's published Ethics Code if they see major breaches of the Code routinely ignored by the management of the organization.

Managers (including the political leadership of the organisation) must set the example.

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