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**CONSTITUTIONAL
ASSEMBLY**

09 MAR 1995



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2nd March 1995

**Saaliegah Zardad
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Constitutional Assembly
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Dear Salliegah

Re: Public Hearing : Public Administration and the Constitution

I have enclosed two papers by Professor Robert Klitgaard which may be of assistance to you in your work on Public Administration and the Constitution.

Yours faithfully

**Professor Merle Holden
Professor of Economics**

Encls.

NATIONAL AND INTERNATIONAL STRATEGIES FOR REDUCING CORRUPTION¹

Robert Klitgaard²

February 1995

¹ Prepared for the OECD International Symposium on Corruption and Good Governance, Paris, 13-14 March 1995. The opinions presented are the author's and do not necessarily represent those of the OECD or its member nations.

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Summary

The OECD's excellent work on corruption in international business transactions focuses on a lacuna in current law in most OECD countries. If I as a citizen of one country bribe you as an official in another, I am not guilty of a crime in my country. The OECD recommends that individual countries should develop appropriate laws and policies to deal with this problem, and the OECD will monitor progress.

This conception of both the problem of corruption (bribery in international business transactions) and the way of addressing it (legal reform) may seem limited. True, international bribery can involve big money, and it can add 15 percent or more to the cost of major procurement contracts and public works. But as serious as the effects are, they are small when contrasted with the *systematic* corruption of legal systems, economic management, the delivery of public services, and policy making that plagues many developing countries. Systematic corruption can skew incentives disastrously, undermine voluntary compliance, deter investment, and render democracy ineffectual.

Systematic corruption is not inevitable or intractable, even in the poorest settings. Nor must we wait a generation for education, moral reform, cultural change, or other supposed long-run remedies. This paper summarizes a perspective for dealing now with systematic corruption—a perspective that focuses on corrupt systems rather than corrupt individuals. The paper outlines a *framework for policy analysis*, which emphasizes incentives, monopoly, discretion, and accountability.

A framework provides guidance but not specific steps, which experience suggests must be developed in each country, by local people. *Participatory diagnosis* involving top policy makers and citizens has proven successful. In two-day workshops, local people work together through (a) successful case studies of anti-corruption efforts from other countries, (b) frameworks for appraising corrupt systems, and (c) their own analysis of the types of corruption present in the given country or government agency. This process has proven useful in demystifying corruption, devising practical strategies, and generating ownership.

The components of an anti-corruption campaign vary, but they often include such elements as:

- experiments with incentive reforms in the public sector;
- mechanisms to enhance accountability, especially through the involvement of business and citizens;
- enhancing capabilities in investigation, prosecution, and the judiciary;
- legal reforms in campaign finance, illicit enrichment, and regulatory and administrative requirements; and
- structural reforms that designate an anti-corruption focal point and simultaneously facilitate inter-agency coordination.

Implementing these strategies requires political and managerial acumen. How might political will be generated, and how might the cynical culture of corruption be broken? In many countries, where ruling parties are known for corruption and top leaders suspected, helping the government attack corruption requires several pieces of convincing: (a) that something practical can indeed be done; (b) that doing it will not be political suicide, but in fact can become good politics domestically and internationally; and (c) that international help will be available, including a measure of political insulation. Once a government

wishes to act, it must attack the culture of corruption, for example by "frying big fish" (apprehending a few big offenders to signal that impunity is over) and taking other high-profile steps. These political dimensions of fighting corruption are important parts of an effective national strategy. They, too, require specification in a given situation, a task of the utmost delicacy.

Despite the sensitivity of devising and implementing strategies against systematic corruption, international organizations can help—and indeed already do help, through support for democratic reforms, more competitive economies, and improved governance. International aid can be allocated to countries willing to undertake reforms to address systematic corruption. International organizations can sponsor policy research where each country agrees to involve its private sector and civil society in investigations of corruption in a few areas, such as revenue raising, procurement, and the justice system. International organizations can help assemble and share examples of best practice and frameworks for policy analysis—what might be called "tool kits" for fighting corruption.

International cooperation in the private sector may also be important in fighting corruption. The private sector is part of the problem and part of the solution. A promising idea is to help the business community develop standards of conduct and credible self-enforcement mechanisms, with international linkages and assistance.

The international community is also part of the problem and part of the solution. And it is in this light that the OECD Recommendation and its focus on bribery in international business transactions have strategic importance. Because of corruption's sensitivity, foreigners will not be welcome discussants until they show that they recognize their own complicity in many corrupt activities. It may be only after the countries of the OECD show that they are serious about their part of the corruption problem in developing countries—especially the bribes their citizens pay—that developing countries will be willing to accept international assistance in addressing systematic reform.

1. Introduction

What is the problem of corruption, why is it surfacing now as an international priority, and what can individual countries and the international community do to control it? The present paper focuses on the last question, but in order to do so must briefly address the first two.

a. What is the problem?

What is the problem of corruption? Much of the OECD's recent work on corruption, as well as that of the new international NGO Transparency International, focuses on "corruption in international business transactions."³ A major example is bribery, where an international firm pays a government official to obtain a contract. Such bribery is only part of a generalized phenomenon of corruption, which now seems to threaten democratic and economic reforms from the former communist countries to Africa to some parts of Latin America and Asia. In some countries or sectors of countries, the "rules of the game" are delegitimized by the perception and the reality that corruption can sway policies as well as particular contracts, can reshape legislation, and can make a mockery of the justice system.⁴ Systematic corruption generates economic costs by distorting incentives, political costs by undermining institutions, and social costs by redistributing wealth and power toward the rich and privileged. When corruption undermines property rights, the rule of law, and incentives to invest, economic and political development are crippled.⁵

Tackling international bribery will make only a small dent in systematic corruption. Even if countries could agree upon and promulgate ideal laws against bribery in international business transactions and ideal codes of conduct for both public and private

³ OECD documents refer particularly to "illicit payments," "bribery in international business transactions," and "illicit payments in international commercial transactions." (I do not cite specific OECD documents because they are marked "Restricted.") Transparency International refers to itself as "the coalition against corruption in international business transactions." See also *Accountability and Transparency in International Economic Development: The Launching of Transparency International in Berlin, May 1993*, ed. Fredrik Galtung (Berlin: German Foundation for International Development and Transparency International, 1994).

⁴ Two authors have recently and independently drawn the distinction between one sort of corruption that is analogous to a foul in sports, and another sort which is the breakdown of the rules defining and enforcing fouls, where the sports contest virtually collapses. The latter is the systematic phenomenon of corruption that they fear is undermining development. Moreno Ocampo calls it "hypercorruption." Werlin's label is "secondary corruption," and he compares it to alcoholism. See Luis Moreno Ocampo, *En Defensa Propia: Cómo Salir de la Corrupción* (Buenos Aires: Editorial Sudamericana, 1993); and Herbert W. Werlin, "Understanding Corruption: Implications for World Bank Staff," August 1994, unpublished ms. available from the Public Sector Management Division of The World Bank. Another valuable source is Jean-François Bayart, *L'État en Afrique: La politique du ventre* (Paris: Fayard, 1989).

⁵ Corruption exists in all countries and, as recent events have revealed, is a major problem in many rich nations. But corruption tends to be more damaging in some developing countries because it has a more devastating effect on property rights, the rule of law, and incentives to invest. For analyses of various indicators of corruption and their negative effect on investment and growth, see Paolo Mauro, "Corruption, Country Risk, and Growth," Paper Prepared for Research Seminar in Positive Political Economy, Harvard University/Massachusetts Institute of Technology, November 1993. For a theoretical model of systematic corruption, see Andrei Schleifer and Robert Vishny, "Corruption," *Quarterly Journal of Economics*, 1993, pp. 599-617, and Jean Tirole, "Persistence of Corruption," IPR55, Working Paper Series (Washington, DC: Institute for Policy Reform, October 1992).

sectors, effective *action* must be complemented by changes in strategy, policy, and management. For these reasons this paper suggests that we ask ourselves what changes in strategy, policy, and management might reduce systematic corruption.

b. Why now?

This symposium is only one more important piece of evidence that the international community is now discussing openly a problem that even a decade ago was virtually taboo.⁶ Why is corruption surfacing now as an international priority? I have not encountered a fully convincing explanation. One possibility is that corruption is growing worse. But why? One argument cites the rapid rise of international trade and international communications, so that people are exposed to economic temptations as never before. Another points to the democratic and economic reforms that have swept the world, which have created new opportunities for corruption by rapidly changing the accustomed rules of the game and, in many cases, because policy changes are often not accompanied by sufficient development of the institutions and the public-sector incentives needed to make free markets and democracy work.

Or are we simply becoming less tolerant of corruption? One idea is that we perceive corruption to be a greater obstacle now that the Cold War has abated and economic policies and multiparty polities are roughly "got right." Another possibility is that we blame corruption for the fact the neither freer markets nor democratic reforms have yet lived up to expectations, in order that we can avoid admitting that those policies and polities may *not* be right everywhere. Or perhaps because political reforms have granted new freedoms to document and complain about corruption, we are made more aware of it.

I raise this second question "why now?" not to resolve it but in the hope that after pondering it for a moment we can set it aside. Whatever the reasons for today's greater concern over corruption, it is a change we should welcome. Simply put, corruption constrains economic and political development. Our work together at this symposium to distinguish different kinds of corrupt phenomena and analyze how we can work together to fight them is hardly an academic undertaking. It is an opportunity to catalyze badly needed change on a problem that has for too long been overlooked.

c. What works?

Which brings us to the third question: What *can* be done by individual countries and by the international community to attack deeply rooted corruption?

⁶ Among the documents from recent international conferences on corruption, one of the most valuable practical contribution is United Nations, *Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Co-operation, Practical measures against corruption*, manual prepared by the Secretariat, A/CONF. 144/8, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 29 May 1990.

2. National Measures

a. Legal reforms

(1) A legal lacuna

The OECD's preparatory work for this symposium usefully focuses on a void in existing national and international law. If I as the citizen of one country bribe an official in another country, I may not be guilty of an offense in my country. The OECD background papers make three important points about this lacuna.

First, there are good reasons in legal theory, and reasons if not always good ones in domestic politics, for restricting the application of the law in this way.

Second, there is apparently not the will among the developed countries to agree upon a law such as the U.S. Foreign Corrupt Practices Act, which does count bribery abroad as an offense at home. International organizations are limited in what they can do to forge that will.

Third, it is nonetheless true that almost every country, even the poorest, does have laws against bribery that could be applied to both local bribe-taker and foreign bribe-giver, if there were sufficient will and competence to apply them.

These three points suggest a strategic question: How can the international community help what OECD documents call the "victim" countries of international bribery to apply effectively the laws they already have against such transgressions?

The OECD recommendation includes several possibilities, which are included in the agenda for this symposium. Countries could pass new laws concerning: the tax deductibility of bribes (or commissions above some small percentage of the value of the contract); the accounting requirements of companies participating in large-scale public contracts; banking and financial provisions to improve the availability of data relevant to investigations of bribery; simpler and more transparent rules concerning bidding, licensing, eligibility for subsidies and tax breaks; and others. The OECD documents are persuasive that there is room for international progress in each of these areas.

Nonetheless, I wish to suggest two caveats. First, as noted earlier, progress in these areas will not attack the most serious manifestations of corruption in developing countries. Second, in most cases the principal obstacles to fighting corruption are not better laws.

(2) Four examples of needed legal reforms

When most of us consider how to reduce corruption, our reflex is to think of legal measures. Better laws can make a difference. Let me provide several examples, before explaining why I think that anti-corruption efforts must go beyond legal reforms.

(a) Financing political parties and campaigns

In many countries campaign financing involves coerced payments, and sometimes straight graft, which benefit a party if not a particular corrupt individual's bank account. When such behavior becomes systematic, even an "honest" political party may feel compelled by the corruption of its competitors to shake down businesses with implicit promises or threats. In the past in countries such as Bolivia and the Philippines, parties have used their members in public agencies such as the customs bureau or the internal

revenue service to siphon off public funds for their political war chests. In Venezuela, parties and local politicians set up "foundations" and non-government organizations into which public funds for "local development" can be channeled, without the usual government auditing procedures.

Pressures for these sorts of corruption can be reduced through strict limits on campaign activities and party finances, both externally audited, coupled with the public funding for campaigns and mandatory, balanced time allocations on television and radio. (For the record, I would put several OECD countries at the head of the list of nations that would benefit from reforms in campaign financing.)

(b) Laws against illicit enrichment

Another example concerns the illicit enrichment of public officials. Corrupt activities can be tracked in several ways: the actual transaction, the change in policies or practices that the corrupt activity entails, and large increases in the wealth of public officials. In some countries government officials can be prosecuted not only for direct evidence of having received a bribe—evidence which is always difficult to obtain—but also for possessing wealth beyond what can be explained as the result of lawful activities. Some countries have even reversed the burden of proof: a government official may be required to demonstrate that his wealth, and perhaps that of his immediate family, was acquired legally. In some countries there is no need to prove the individual is guilty of a crime.

Obviously, illicit enrichment laws carry risks. The power to demand proof can be misused. Excellent potential candidates for public office may be deterred by the possibility of having to open up their finances and the finances of their families to public scrutiny. And it may not be too cynical to note that in very corrupt situations such a law will drive corrupt officials to hide their wealth in secure places beyond the country's borders, which in the limiting case could leave corruption unaffected but reduce domestic investment and consumption.

Nonetheless, in Hong Kong the leverage obtained by a change in the law concerning illicit enrichment helped turn around the battle against corruption, as part of a wider-ranging package that included preventive measures, better enforcement, and public education and participation. A useful precedent internationally is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr. 1 and 2).⁷ The principle of forfeiture of assets applies, with the onus of proof on the accused. Because of possible abuses with regard to accusations of corruption, this reversal of the onus of proof probably should be restricted to the evidence and be made rebuttable.

(c) Laws relating to disclosure and penalties

"Sanctions by administrative authorities may not merely reinforce the threat of criminal prosecution but may constitute an even more credible threat."⁸ Criminal sanctions against corruption have not had great success against corporate bribery. But if bribery reporting is made mandatory to regulatory and tax authorities, the prospects change. Compared

⁷ See article 5, section 7.

⁸ United Nations, *Crime Prevention and Criminal Justice in the Context of Development*. . (fn. 6 above), p. 28, to which I am indebted for the ideas in this section.

with police, these agencies usually have access to better information and have more expertise. It is relatively easier for them to impose sanctions. Such agencies may also play on a divergence of interests within corporate structures (auditors and board members who may be reform-minded or merely self-protective).

A variety of informational requirements might be considered, and the OECD background documents mention several. The balance must be kept: obtain more information but also make sure not to create dysfunctional transactions costs--and make sure that enforceability is a prime consideration. Reporting requirements might be combined with self-policing by private corporate groups (see below).

(d) Laws affecting the ways anti-corruption efforts are structured

A fourth example: better laws can decisively affect the way anti-corruption campaigns are structured. For example, some countries such as Hong Kong and Singapore have set up anti-corruption agencies, whose job is to coordinate a government-wide effort. On a less grand (and less expensive) scale, anti-corruption statutes may simultaneously (1) create an anti-corruption "czar" from among existing agencies (such as the chief prosecutor, the controller general, the minister of justice, and so forth) and (2) enable and require various kinds of coordinating mechanisms and oversight functions, to ensure that the different pieces of the effort are articulated and that the public has the ability to monitor what the anti-corruption effort entails. An exemplary anti-corruption statute of this kind, in my opinion, is the draft law prepared by the unsuccessful Colombian presidential candidate Andrés Pastrana for the 1994 election.⁹

(3) "Better laws" are insufficient

There are many other examples of better laws that can help control corruption, such as when a flat tax or a simplified licensing law reduce the scope for illicit activities. But in my experience discussions of anti-corruption efforts are sometimes unhelpfully dominated by legal deliberations.

"Better laws" are usually insufficient to reduce corruption. In 1989, I interviewed a score of senior World Bank officials concerning corruption in Bank operations and in the countries with which the Bank worked. Typical was the judgment of one senior public works expert. He pointed out that Ecuador's procurement laws were the most advanced and sophisticated in the world. Nonetheless, he said, corruption plagued government procurement there. He gave other examples where differences in laws could not explain differences in the corruption and inefficiency that he had seen in ministries of public works. Other Bank officials confirmed this insight.¹⁰

Consider, too, Mexico's recent experience in fighting corruption. When Miguel de la Madrid became president in 1982, one of his first acts was to promulgate a new administrative law. His anti-corruption strategy, entitled *renovación moral*, coupled legal reform and ethical exhortation. Despite some successes, many observers believe that de la Madrid's efforts against corruption were not as effective as he had hoped. President

⁹ Andrés Pastrana Arango, "Estatuto contra la Corrupción," (Bogotá: Nueva Fuerza Democrática, 1993).

¹⁰ Robert Klitgaard, "Corruption and the World Bank," Division of Public Sector Management and Private Sector Development, The World Bank. December 1989.

Carlos Salinas's initiatives had more impact, and yet they relied hardly at all on new laws.¹¹

What other approach might supplement a legal perspective? Instead of seeing corrupt activities as deviant behavior by unethical individuals, we might examine them as the economic behavior of calculating actors in *corrupt systems*. Instead of seeing the preferred response as legal reforms and better rules, we might consider how to reform corrupt systems through improved information, incentives, competition, and participation. In this approach, better rules and laws help to the extent that they enhance information flows, induce competition and reduce monopoly, and avoid perverse incentives and create virtuous ones. But "better laws" comprise only a subset of the desired strategy.¹²

b. Analyzing corrupt systems

(1) Think systems, not individuals

Corruption is the misuse of office for non-official ends, usually personal enhancement although sometimes solely for the benefit of one's company or political party. It can occur in public and private organizations, can involve acts of omission as well as acts of commission, can be internal to an organization (for example, theft and embezzlement) or involve the organization's clients (for example, extortion, speed money, and kickbacks). As with other social ills such as pollution or disease, corruption involves questions of degree. It exists almost everywhere, but the forms of corruption and their extent differ, and therefore so do the social harms that corruption creates.

Corruption is a crime of calculation, not passion. Although it is true that different individuals react differently to the temptations of corruption, and many public and private officials refrain from corruption even when the temptations are great, it is crucial for fighting corruption to recognize that as temptations rise so do levels of corruption. As a first approximation, officials will be tempted to engage in corruption when the size of their corrupt gain is greater than the penalty if caught times the probability of being caught. The penalty includes the wage and other incentives they must sacrifice if they lose their jobs, as well as the severity of the punishment. And officials will have the opportunity to garner corrupt benefits as a function of their degree of monopoly over a service or activity, their discretion in deciding who should get how much, and the degree to which their activities are accountable. A stylized equation holds:

$$\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}$$

One can therefore reduce temptation and opportunity by varying these parameters.

- **Improve the incentives** facing public officials. In many countries pay levels have fallen so low that officials literally cannot feed their families without moonlighting or accepting side payments. Moreover, the linkages between pay and performance, and

¹¹ See Vlad Jenkins, "The 'Untouchables' of President Salinas," in *Dealing with Corruption and Intimidation in Criminal Justice Systems: Cases and Materials*, ed. Philip Heymann and Robert Klitgaard (Cambridge: Harvard Law School Program in Criminal Justice, 1991).

¹² Sometimes, perversely, new laws increase opportunities for corruption by restricting information flows, creating mini-monopolies in government (such as the granting of licenses and permits), or increasing rent-seeking incentives.

promotion and performance, have badly eroded. I believe that in many countries weak incentives are now the foremost institutional factor constraining the public sector.

In the next decade I believe we will see remarkable reforms in public sector pay, first in rich countries and later in developing countries, especially (1) the development of new ways to measure performance and (2) experiments-that-become-policies which base part of pay on performance. There are already encouraging examples, even in developing countries, of performance-based pay leading to improvements. What is needed are steps to change the conditions in which institutional reforms take place, such as improved information. Elsewhere I have tried to outline practical strategies for incentive reforms.¹³

- **Increase the effective penalties for corruption.** Because of ineffective investigatory, prosecutory, and judicial capabilities, accusations of corruption seldom stick. If they do, the penalties are often minimal in practice (for example, the official is fired). As a result, the expected penalty for engaging in corrupt activities is insufficient to deter transgressions. A key step is to strengthen the capacity and improve the incentives of the police, prosecutors, and judges.

- **Limit monopoly.** Promote competition in the public and private sectors. Avoid monopoly-granting regulations when possible (especially exchange controls and quantitative restrictions on imports). Open the economy to international competition.

- **Clarify official discretion.** Simplify rules and regulations via what are called "bright lines" circumscribing what is permitted and what is not. Help citizens learn how public systems are supposed to work (through brochures and manuals, help desks, laws and rules in ordinary language, publicity campaigns, the use of citizen-service-providers, etc.). Improve citizens' oversight of officials' actions.

- **Enhance accountability and transparency.** Promulgate clear standards of conduct and rules of the game, which make accountability easier. Encourage greater competition and openness in bidding, grant-giving, and aid projects. Strengthen internal auditors, government accounting, ombudsmen, inspectorates, specialized elements of the police, and specialized prosecutors. Involve citizens, unions, NGOs, the media, and business in a variety of ways, including citizen oversight boards, hot lines, inquiry commissions, and so forth. Generate and disseminate information about public service effectiveness. Commission external audits. Encourage self-policing by the private sector in procurement, contracting, regulating, and so forth.

To these headings may be added two more: the **selection of officials** for their moral and ethical character as well as their competence, and the encouragement of a more ethical "**corporate culture**" by exhortation, indoctrination, and example.¹⁴

¹³ Robert Klitgaard, "Incentive Myopia," *World Development*, Vol. 17, No. 4 (April 1989); Robert Klitgaard, "Information and Incentives in Institutional Reform," in *Economic and Political Institutions for Sustainable Development*, ed. Christopher Clague and Mancur Olson, forthcoming.

¹⁴ A detailed checklist for policymakers appears in my *Controlling Corruption* (Berkeley and Los Angeles: University of California Press, 1988) and *Adjusting to Reality: Beyond "State vs. Market" in Economic Development* (San Francisco: ICS Press and International Center for Economic Growth, 1991). These are hardly the last words on the subject. In particular, more subject-specific checklists and guidelines would be valuable for specific areas such as procurement, tax collection, police reform, and so forth. See also the United Nations publication mentioned in fn. 5 and the as-yet-unpublished manuscript of Philip Heymann entitled "Fighting Corruption" (Harvard Law School, 1993). Valuable documents have also been prepared by Transparency International.

These headings form a kind of “checklist for policy making” regarding corruption. A lesson from anti-corruption efforts is that although one can learn from general guidelines like these, specific measures must be devised by politicians, bureaucrats, and citizens in each locale. As a recent example, consider the recommendations of a Chilean commission (Box 1). These are still quite general and require a detailed working out. If locals must be involved in analyzing the problems and devising the solutions, is there a proven *process* through which local people—including government officials and people from business, labor, the press, and the church—can do so?

(2) Participatory diagnosis

In many countries, I have seen workshops emphasizing “participatory diagnosis” help generate this analytical mentality—and helped local people devise practical strategies for reducing corruption. Such workshops can and perhaps should occur at many levels, but it is important that the first one involve the highest levels of government. Ideally, the president issues the invitations for the workshop.¹⁵ The president invites ministers, military leaders, legislators, judges, police leaders, and perhaps people from the private sector (heads of labor unions, business groups, religious organizations, and so forth). The ideal number of participants is 20 to 25. The ideal format is a two-day retreat, but an alternative is 10-15 hours spread over the course of a week.

In such workshops, policymakers and officials are assisted in

- (a) working through a case study of an effective anti-corruption campaign,¹⁶
- (b) developing a systems approach to corruption,

Box 1

Forty-one Chilean Recommendations for National Measures to Fight Corruption

In July 1994 the Chilean Commission on Public Ethics presented its report to the President, “Public Ethics: Probity, Transparency, and Accountability at the Service of the Citizens.” Here is a summary of its 41 recommendations.

1. Draft and implement a national policy of public ethics.
2. Give constitutional status to principles of honesty and transparency in public office.
3. Incentives for public service: Raise the status of public servants and their pay. Improve the merit system.
4. Establish a public sector code of honesty.
5. Assign jurisdictional boundaries and responsibilities in the public sector.
6. Create offices of internal affairs in the public sector to issue information and receive complaints.
7. Review procedures to determine administrative accountability.
8. Prohibit trafficking in influences and the misuse of privileged information.
9. Improve regulations governing conflicts of interest among public duties.
10. Improve the regulations that govern governing conflicts of interest between public duties and private activities.

¹⁵ But this is not essential. In one country the Chief Justice of the Supreme Court was the convener; in another, the Minister of Planning.

¹⁶ Cases can be found in *Controlling Corruption and Dealing with Corruption and Intimidation* . . .

11. Have the judicial branch provide more information to the public. Set up a system to hear complaints about improper behavior by court officials. Eliminate irregularities and favoritism.
12. Strengthen ethical self-regulation within all branches of government.
13. Require the declaration of assets and personal interests for people entering or leaving public service.
14. Strengthen prohibitions against personal interests influencing public decisions.
15. Regulate the transition of public servants to the private sector, to prevent conflicts of interest.
16. Regulate the acceptance of gifts, payment for speeches, and the payment of travel expenses for public servants.
17. Remove local and national legislators from office when they use influence over public decisions for their own benefit.
18. Extend the legislation on conflict of interest to cover higher officials, including the President.
19. Use blind trusts as an option for the assets of high-level officials.
20. Reinforce congressional oversight in the House of Representatives.
21. Review and streamline administrative procedures and regulatory content. Penalize procedural delays.
22. Have private accounting firms carry out selective audits supervised by high-level federal officials.
23. Publicize information on management performance and the profits (or losses) of state enterprises.
24. In order to increase public control over government management, use greater transparency, link resources to goals, provide information to the public and NGOs.
25. Eliminate secret government accounts and discretionary executive spending unless fully justified.
26. Review and strengthen municipal control and oversight mechanisms for contracts, competitive bidding, concessions, and contract awards.
27. Draft and enact a framework law on contracts and competitive procurement.
28. Bring greater objectivity to municipal procurement.
29. Create a computerized adjudication system for state bidding to ensure transparency and the lowest purchase price on all items.
30. Define criminal penalties for influence peddling, insider trading, and illegal enrichment.
31. Strengthen mechanisms to report acts of corruption.
32. Improve legislation against the crimes of bribery, extortion, and conflicts of interest, which may not be covered under criminal law.
33. Reform the procedural code in order to introduce oral arguments into criminal proceedings, expedite court proceedings, and make them transparent. Create an executive branch public prosecutor's office so the judicial branch can remove itself from investigations.
34. Create an Office of Anti-Corruption Prosecutor.
35. Record and publicize contributions, over a predetermined amount, to political parties and campaigns, and introduce transparency into campaign funding in general. Elected candidates should declare funding sources. Political parties must use a single bank account and be denied banking secrecy privileges.
36. Limit campaign expenditures and the length of campaigns. Prohibit televised campaign spots.
37. Recognize and introduce public campaign financing in gradual stages.
38. Enact a freedom of information law.
39. Require government agencies to release regularly to the public their balance sheets and reports of activities.
40. Introduce active ethical instruction into curriculum at all levels of the educational system.
41. Encourage ethical self-regulation of professional associations, trade unions, and other civic groups. Strengthen their internal controls.

Source: *Accountability*, Phase II, No. 4 (December 1994), p. 9, with some editing.

(c) examining a second success story, where the politics of reform is crucial (more on this below), and finally

(d) facilitating their analysis of their own situation: types of corruption and their causes; how extensive; an analysis of alternatives building on the checklist of monopoly, discretion, accountability, incentives, the selection of officials, and the corporate culture; the politics of improvement; and concrete steps by participants in the next three months. One analyzes systems, rather than particular individuals or transgressions.

Such workshops have worked in more than a dozen countries, through no personal mystique but by helping local policymakers structure their thinking about anti-corruption activities and come up with their own locally appropriate lines of attack. It is remarkable how frank officials become when the focus is on corrupt systems rather than individuals. The abiding points are three: changing the way people think about corruption, using their indispensable local knowledge to design workable preventive measures and political strategies, and developing ownership of an anti-corruption campaign.

c. On the politics of fighting corruption

(1) Overcoming corrupt equilibria

The idea of such a workshop, and a list of proposed anti-corruption measures such as Box 1, may engender a skeptical reaction. "What if the people on top are themselves corrupt? What if international business people have powerful incentives to do the corrupting? If the people on top in the public and private sectors are benefiting, can reforms have a chance of taking hold?" The worry is that corrupt officials on top are monopolists unwilling to sacrifice their rents, and international and local businesses people are locked in an n -person prisoners' dilemma where the dominant strategy is to bribe. A corrupt equilibrium results, where rulers and top civil servants gain and some private companies gain, but society loses.

In such a situation what can be done? The reflexive answer is "nothing." But consider the analogous question, "Why would national leaders ever in their self-interest undertake free-market reforms, privatization, and the like, all of which sacrifice their personal control over the economy?" And yet such reforms have swept the world, as has a remarkable "third wave" of democratic reforms.

It is true that some governments resist good governance. But in the decade ahead the paradigmatic problem will not be how to induce governments to do something about corruption. Instead, increasing numbers of governments will be asking the international community for help in improving customs and tax agencies, cleaning up campaign financing and elections, reducing bribery and intimidation in legal systems and the police, and, in general, creating systems of information and incentives in the public sector that foster efficiency and reduce corruption. The international community can accelerate this process, *provided we can develop analytical tools and examples of best practice, and can generate an international consensus that fighting corruption is important for economic and political development.*

We must be sensitive to the politics of fighting corruption.¹⁷ In many countries, leaders are of two minds. They do appreciate and decry the costs of systematic corruption. But they also recognize that a lone actor has little chance to make a difference, even a minister or perhaps a president; and they are aware of the personal and party benefits of the corrupt system. To assist them in moving toward a long-term solution, several almost psychological steps are necessary.

First, leaders must see that improvements are possible without political suicide. Here is where the workshops mentioned above, with their examples from other countries and an analytical framework for analyzing corruption, can be particularly helpful. This point is also applicable in international deliberations, where political sensitivities may also short-circuit the consideration of systemic reforms. An international workshop can be useful in validating the idea that corruption is not just one country's problem (or one party's, one leader's, the public sector's . . .) and in generating a practical approach to a problem too often relegated to exhortation.

Second, leaders must develop a strategy that recognizes that not everything can be done at once. The anti-corruption effort might begin where the public perceives the problem acutely (for example, with extortion in the Philippines' Bureau of Internal Revenue; the licensing bureau in Venezuela; police and courts in many countries). One should undertake behind closed doors a kind of benefit-cost analysis, assessing those forms of corruption where the economic costs the greatest (for example, corruption that distort policies as opposed to who gets a specific contract) but also taking into account where it is easiest to make a difference. A good rule of thumb is that to be credible an anti-corruption campaign must have some tangible successes within six months.

Third, leaders need political insulation. Sometimes international collaboration can help provide it, as countries together admit a common problem and move to address it ("corruption is not just our problem"). The OECD's recommendation helps all countries recognize that corruption is an international problem requiring an international solution. At home, leaders can cloak themselves in popular outrage over corruption by seeming to be compelled to take action, even when this hurts powerful members of the establishment.

Finally, the private sector itself can help overcome a corrupt equilibrium. The greatest enemy of corruption is the people. If only they are consulted, citizens are fertile sources of information about where corruption occurs. The mechanisms for consulting them include citizens' oversight bodies for public agencies, the involvement of professional organizations, hot lines, call-in shows, educational programs, village and borough councils, and so forth. Business groups should participate in confidential diagnostic studies of how corrupt systems of procurement, contracting, and the like actually work—where the emphasis is on systems and not individuals. Finally, self-policing by the private sector, especially when supported with international investigatory capabilities (and credibility), can help businesses say "no" to requests for bribes.

(2) Breaking a culture of corruption

Once leaders are interested in change, they must first of all convince a cynical public that the rules of the game will henceforth be enforced. One way of doing so is "frying big

¹⁷ For reasons of space but not importance I omit here the phenomenon of using anti-corruption initiatives cynically to attack political opponents and curry favor with the international community.

fish": punishing a few high-level offenders from the public and private sectors, preferably from one's own political party.

Here are some examples. Hong Kong used to be awash in corruption. Then in 1973 a new Independent Commission against Corruption was formed. It had new teeth, and new eyes. It possessed powers to investigate suspected offenders and had new means for obtaining information about the wealth of public servants. But despite its powers, at first no one believed that the ICAC would succeed any more than previous efforts to rewrite laws and create investigatory bodies. Credibility came when the ex-police chief of Hong Kong was extradited from retirement in England and punished in Hong Kong. The ICAC also prosecuted the ex-number two and scores of other high-ranking police officials. To a skeptical public and a hardened civil service, frying these big fish sent a credible signal: "The rules of the game really have changed."

Mexico's President Carlos Salinas also created new capabilities of investigation and enforcement. But his efforts too were originally greeted with disbelief. They did not gain credibility until his enforcers pounced on the notorious head of the Pemex syndicate, on a leading narcotics trafficker, and on three high-powered business people who had fiddled with the Mexican stock exchange. One of the latter was the head of Salinas's political campaign in one state. The message: If these big fish can be caught and fried, political impunity is a thing of the past.

Besides frying big fish, other high-profile actions may be effective in creating a sense of momentum, in signaling the end of a culture of impunity:

- setting up an Independent Commission Against Corruption in the Hong Kong model or an anti-corruption "czar" who coordinates a government-wide effort against corruption;
- enacting the OECD measures mentioned above;
- aligning one's country with the new international NGO Transparency International as a so-called "island of integrity," including a new standard of conduct for public officials and for private firms engaged in government work, coupled with creation of self-policing mechanism for private firms that participate in government transactions;
- assigning a key activity to an international agency while retraining and reorganization take place (for example, Bolivia assigned procurement to two international firms, Indonesia the collection of customs duties to the Société Générale de Surveillance);
- a dramatic offer to eradicate coca growing—a major source of corruption—in exchange for international assistance that guarantees today's coca farmers attractive prices for alternative crops for five years (my proposal for Bolivia, alas not acted upon)
- an experimental program in revenue collection agencies, where officials share a proportion of additional tax revenues generated above some target in the next two years (this worked in Bolivia in the mid-1980s).

Such measures may help create the political conditions under which the *longer-term structural reforms* outlined earlier can be effective in preventing corruption (and more generally, to improve governance).

d. Summary of national measures

Bribery in international business transactions is a small albeit important part of the corruption that undermines economic and political development. Some legal issues do need addressing: campaign and party finance, laws against illicit enrichment, making corruption a violation under administrative as well as criminal law, and laws affecting the way government structures the fight against corruption. But in the face of systematic corruption, changing the laws may make little difference, nor will moral exhortation. Systematic corruption is a problem of systems, not unethical individuals. Fighting it requires a strategy, which means several things. First, anti-corruption efforts must emphasize systematic reforms of incentives, competition, bureaucratic discretion, and accountability. Second, the details of the strategy must be developed locally. The paper describes a participatory process involving top policy makers and citizens, which has proved successful in a variety of contexts. Third, a host of political obstacles must be overcome. In particular, one must rupture the culture of impunity by "frying big fish."

3. International Measures to Reduce Corruption

Despite the obvious sensitivity of devising and implementing strategies against systematic corruption, international organizations can help—and indeed already do help, through aid for democratic reforms, more competitive economies, and the improvement of governance. But a more focused effort is needed. If the past fifteen years were notable for macroeconomic and macropolitical reforms, the next fifteen years will be the era of *institutional adjustment*:

- In the private sector, not just the declaration of "competitive markets," but the improvement of market institutions, especially vis-à-vis the poor.
- In public administration, not just (or even) less government and fewer employees, but systems of information and incentives which encourage productivity, decentralization, and participation and which discourage rent-seeking and abuse.
- In democratic policies, not just multi-party elections, but limits on campaign financing, legislative reform and strengthening, and improvements in local governments.
- In legal systems, not just better laws and constitutions, but also systematic initiatives to improve the honesty and capacity of police, prosecutors, and judges.

These topics are obviously sensitive and context-specific, and there is less agreement internationally about the nature of the reforms to be pursued, compared with, say, the move to multi-party democracy. But the dynamics of reform in this area will not, I believe, require that all countries agree to the same anti-corruption agenda—or even that all participate. The problem will be less and less how to persuade sovereign governments to "do something" about corruption but *how* to do it. The momentum is toward a systematic attack on systematic corruption. In coming years donor nations will face ever greater pressures from their citizens not to aid countries perceived as corrupt. At the same time, the new wave of democratically elected governments in the developing world will be looking to the international community for help in controlling bribery, extortion, kickbacks, fraud, and other forms of illicit behavior. They are recognizing that neither free markets nor multi-party democracies will succeed if the institutions of the private and

public sectors are riddled with systematic corruption. And as a few countries make progress in fighting corruption, others will follow.

Outsiders can assist in a variety of ways, ranging from the indirect and subtle (support for civic associations, training for legislators, the management of justice systems) to the direct and forceful (the EBRD only gives loans to countries with suitable political systems). This symposium will no doubt produce a host of useful suggestions. Space constrains me to focus on three categories for organizing a new international effort against corruption.

a. Support three stellar national programs against corruption

International aid should be allocated to countries willing to undertake reforms to address systematic corruption. As an illustration to stimulate reflection, suppose the DAC countries created a program that promised seven years of special and significant support to the three developing countries that proposed the best national strategies against corruption. To help kindle interest in this "contest" DAC countries would fund international and local *workshops* in "participatory diagnosis," as described above. Then *cross-country studies involving both the private sector and the government* might focus on key areas such as revenue raising, procurement and public works, and the justice system. The focus would be on the vulnerability of systems to corruption, rather than on particular individuals. Participating countries would share the results of these studies, and national and international measures would then be designed to remedy structural defects. At this stage, interested countries would prepare their *national strategies against corruption*. Three of the strategies—perhaps one each from Africa, Asia, and Latin America—would be supported by special funds from the DAC countries. Other country strategies, or components thereof, might well be supported by other donors—and, of course, by the participating countries themselves.

The measures to be included in an anti-corruption strategy would depend on the context, but they would often include:

- experiments with incentive reforms in the public sector;
- mechanisms to enhance accountability, especially through the involvement of business and citizens;
- enhancing capabilities in investigation, prosecution, and judging;
- legal reforms in campaign finance, illicit enrichment, and regulatory and administrative law; and
- administrative reforms that designate an anti-corruption focal point and simultaneously facilitate inter-agency coordination.

b. "Tool kits"

The international community can help to assemble and disseminate examples of best practice, as well as frameworks for policy analysis—a combination that might be called "tool kits" for fighting corruption.

For example, working together the OECD countries and others might select aspects of corruption, and more broadly participatory development and good governance, that are (1) close to their priorities as bilateral donors, (2) important to emerging democracies, (3) perhaps less the comparative advantage of international agencies such as the United

Nations or the World Bank, and (4) areas where it is believed that we can all learn from each others' experience. Three areas might be given priority in controlling corruption: revenue raising, including tax and customs agencies; the justice system broadly construed; and government procurement, licensing, and contracting. A fourth topic might be added where many OECD countries themselves have much improvement to make: the interfaces between money and politics, including political contributions, party finance, and campaigns.

In each of these areas, countries working together would try to create toolkits containing the following:

- Analytical frameworks for diagnosing and dealing with corruption (generic frameworks but also specific ones for tax administration, customs administration, police, prosecution, judges, procurement, contracting, and so forth).
- Case studies of best practice and success in reducing corruption, at different levels of government and in different sectors and domains.
- Participatory pedagogies, which means a variety of devices to enable citizens, business, NGOs, the media, and government employees all to learn about, and teach each other about, corrupt systems and what to do about them.

The international community might also provide financial support for international institutions working for the control of corruption. For example, international NGOs might help organize the participatory workshops, provide backstopping for thematic studies of corrupt systems, and help validate and disseminate case studies of best practice.

c. Strenuously pursue the OECD recommendation

The international community should also take steps that acknowledge that international actors are also part of the problem and part of the solution. It is in this light that the OECD recommendation and its focus on bribery in international business transactions have strategic importance. Because of corruption's sensitivity, foreigners will not be welcome discussants until they show that they recognize their own complicity in many corrupt activities. It may be only after the countries of the OECD show that they are serious about their part of the corruption problem in developing countries—especially the bribes their citizens pay—that developing countries will be willing to accept international assistance in addressing systematic corruption.

INFORMATION AND INCENTIVES IN INSTITUTIONAL REFORM

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Summary

Free-market economic reforms and pluralistic political reforms are threatened by the inability of government institutions to deliver. It is increasingly recognized that one reason these institutions don't deliver is that they lack incentives to do so. A logical step would seem to be to improve incentives, not only by raising pay levels that have eroded greatly but also by generating measures of public-sector performance and linking part of pay to them. But there is a paradox, which is the subject of this paper: many of the same people who recognize incentives as part of the problem in institutional performance do not acknowledge them as part of the solution. Why not?

After illustrating this apparent paradox or tension—one not confined to the development literature—the paper provides a model that highlights the conditions under which performance-based incentives will be advantageous and when not. Then, in a less formal way, further dimensions are added to the incentives problem. The result is a kind of diagnostic framework for predicting when performance-based pay will work. The first answer is that under conditions often observed in developing countries, it will not work well—which explains the paradox, in that even though incentives are part of the problem, in a second-best bureaucratic environment they are not necessarily part of the solution.

Not necessarily, but possibly. Indeed, it is the author's prediction that in the next decade remarkable reforms will be made in public sector pay, especially (1) the development of new ways to measure performance and (2) experiments-that-become-policies which base part of pay on performance. There are already encouraging examples, even in developing countries, of performance-based pay leading to improvements. What is needed are steps to change the conditions in which institutional reforms take place, such as improved information. The very models that illustrate the conditions that affect the desirability of incentive-based pay also suggest ways that those conditions might be changed to enable incentive reforms. The author calls these changes "institutional adjustment," and the paper outlines practical steps to create an enabling environment for incentive reforms and improved government institutions.

1. Introduction

In the new World Bank report *Governance*, there is a box entitled "The Importance of Institutions: Evidence from the East Asian Miracle Economies." What aspects of institutions would you guess it highlights? The first of four points concerns "competent, honest, and realistically paid bureaucracies." The opposite, in other words, of many government institutions in developing countries, whose poor performance constrains economic, social, and political development.¹

Presumably such bureaucracies are everywhere sought. So the question becomes, how are they attained? According to the box, the East Asian countries have succeeded because, among other things, they have "merit-based recruitment and promotion, incentive-based compensation, and clearly defined, reward-oriented career paths."² The opposite, in other words, of seniority-based promotion, pay based solely on position, and vague career paths only weakly linked with rewards—characteristics of most bureaucracies in developing countries.³

So, does a clear recommendation emerge? Not quite. The rest of the report hardly mentions incentives. Civil service reform is a key topic, but "better pay and motivation" here means slightly higher base salaries for smaller numbers of public servants. In another box the report does state that African governments suffer from "recruitment based on subjective criteria; remuneration levels unlinked to productivity; and loyalty of employees to individuals rather than to the state" (p. 10). But the report says nothing about how countries might learn from East Asian or other examples of merit-based recruitment and promotion, or from the linking of pay and careers to performance.

Why not? I wrote a colleague at the Bank and asked. She shared my question. Back came a memo from one of the authors of the report. He is suspicious of designing "pay schemes so that employees can be rewarded against the achievement of performance targets."

This view has some support within the Bank's PSM [public service management] fraternity. Others [he lists himself and two others as examples] think it is dangerously naive, excepting in certain enclave situations and on a temporary basis . . . First, you have to get base levels right . . . Second, you have to get the rest of the budget right (no point in offering to reward performance if there are no materials for staff to work with). Third, you have to design a viable system of performance measurement. Fourth, you have to have a governance framework in place that is determined to reward performance and not patrimonial relationships. Call that a performance culture. Only now are the leading OECD reformers getting into performance pay, and gingerly (a badly designed performance pay scheme can just as easily demotivate staff) . . .

In short, pay is important, incentives are central, but the answer does not lie in pay linked to performance measurement. Rather, we like to think about creating an "enabling environment" for the public sector. That's a much broader concept that embraces budgeting as well as the civil service. Performance measurement

has a role in this, but to get a better handle on the outputs and outcomes associated with government interventions, with a view to learning how to improve performance. We see this as more important than using performance measurement as the basis for pay systems. .

“We do think about incentives,” the memo concludes, “but this doesn’t lead automatically to performance pay linked to performance measurement [sic].”

Incentives are recognized as a crucial problem but downplayed as part of the solution. Why? This question is the focus of this paper. Section 2 provides other examples of mixed feelings about incentives. Section 3 presents a simple economic framework for examining “incentive intensity.” It enables us to identify the conditions under which “intense” incentives will and will not be desirable. And it suggests how these conditions themselves might be altered to make incentives work better. Based on these considerations, Section 4 tries to clarify the tension between an acknowledgment of the power of incentives and a deep suspicion of institutional reforms that place incentives at the center, and then suggests ways forward.

2. Mixed Feelings about Incentives

For six years I had the good fortune to work with Derek Bok when he was president of Harvard University, and so it was with eagerness that I acquired his recent book, *The Cost of Talent*.⁴ Loaded with references and leavened with both caveats and wit, Bok argues that incentives in America have gone awry. Top managers and practitioners are paid from two to three times the amount necessary to attract able people and motivate them. (He justifies this statement using both cross-country and longitudinal data about pay levels. Understandably perhaps, he does not systematically justify the proposition through direct comparisons of productivity.) Moreover, civil servants, teachers, and social workers are paid too little, compared with those entering law or major businesses. In 1970, for example, a new graduate from a top professional or law school would earn a starting salary on Wall Street about equal to a starting salary in government and about two times the starting salary of a school teacher. By 1990, the multiples were Wall Street four, government two, school teacher one. At the top of U.S. businesses big pay increases occurred in the 1920s and the 1980s, and the only explanation, he thinks, is the *zeitgeist* and politics, not changes in markets and technologies and “economic factors.”

The solution is therefore to change the *zeitgeist* and the politics, in part presumably via books like Bok’s. But two questions arise. If skewed incentives are a problem, why aren’t better incentives a solution? Wouldn’t we move toward a solution by linking pay to performance?

Bok spends several pages on these questions. Merit pay, he says, has been tried for teachers, civil servants, lawyers, and chief executive officers, among others. “The striking fact about these attempts,” Bok says, “is that they have all either failed completely or fallen far short of expectations” (p. 243). Measuring performance proves difficult. Squabbling ensues, leading to unanticipated costs. Even when performance measures are implemented, employees undermine them by gaming, deceiving, even corrupting. He cites

five other problems, including the fact that performance bonuses often remain puny compared to total pay, so no real incentive is provided.

In critiquing performance-based pay Bok's tone seems to change. Earlier, when critical of relative pay levels, he is not critical of the ability of incentives to alter behavior. Indeed, his book is about the power of incentives. But when he turns to the possibility of systematically manipulating incentives within organizations, his skepticism surges.

As another example, consider Arturo Israel's 1987 book, *Institutional Development*. Its subtitle is intriguing: *Incentives to Performance*. The author, who was then the head of the World Bank's Public Sector Management and Private Sector Development Division, asserts that "the World Bank's experience suggests that distortions in wages and salaries are probably among the most costly obstacles to institutional development"—in particular, paying highly productive people in the public sector too little.⁵ And yet his theoretical treatment plays down the reform of economic incentives. He emphasizes instead what he calls intrinsic incentives having to do with the nature of the work and the availability of information about its results.

These are not isolated instances. Without having assessed the vast literatures on these subjects in personnel and in business administration, I think it is fair to say that the tension is chronic. On the one hand, analyses of highly successful firms often discover remarkable incentive systems based on performance. For example, a recent study of 60 major U.S. corporations examined compensation policies and the use of performance-based pay. Companies were classified into two categories, those using performance-based pay and those that did not. The former averaged almost 4 percent higher earnings per share over the previous three years, over 5 percent higher profit margins, and almost 5 percent higher profits and cash flow per employee.⁶ On the other hand, many personnel and management experts are reluctant to emphasize the *economics* of institutions.

In an early chapter of *In Search of Excellence*, Thomas Peters and Robert Waterman criticize the view that better incentives are the answer to institutional malaise.⁷ Yet when reporting their results they acknowledge that the high-performing firms had more intense and variegated incentives than the others. "We found rich systems of monetary incentives; but we expected that. We also discovered an incredible array of nonmonetary incentives and an amazing variety of experimental or newly introduced programs."⁸ The authors stress the non-economic rewards, diminishing the economic ones as only to be expected.

As a final illustration, consider the most important empirical analysis of performance-based incentives, the 1990 Brookings volume *Paying for Productivity*.⁹ This compilation of both "anecdotal" and econometric evidence in the United States, Europe, and Japan shows that incentive-based pay leads to higher productivity.¹⁰ Along the way, the book also provides evidence that employee "participation" does not work unless employees are paid more for participating effectively.¹¹

However, the book's evidence is not decisive about the usefulness of employee participation in the design of incentive systems; in many cases, such participation was neither sufficient nor necessary for success. And yet, in the editor's introduction, after acknowledging the weakness of the statistical evidence about workers' participation, its importance is treated as one of the surprising conclusions of the book.¹² Calling for

“participation” somehow tempers the call for “incentives”—perhaps a kind of sociological reassurance that no one is positing *homo oeconomicus*, even as economics is emphasized.

And here may be a clue to the tension over incentives. In part at least, the causes are disciplinary, even temperamental. The economist approaching institutions tends to begin with the simplifying assumptions that employees are maximizing their incomes and that pay should be set equal to the value of the marginal product. In the limiting economic simplification of perfect markets and perfect information as in the Arrow-Debreu framework (or the Samuelson textbook), there is no role for managers. As Joan Robinson described it, the job of the manager of a firm is looking up in the book of blueprints the correct page corresponding to current (and future) factor markets.¹³

Understandably, this does not correspond to the reality appreciated by sociologists of organization, personnel experts, and professors of management. Many things matter besides money, they say.¹⁴ And as James Q. Wilson says in his classic book, *Bureaucracy*, the economist’s principal-agent model is far too simple a model for real organizations. (On the other hand, it is worth noting this conclusion of Wilson’s: “The principal challenge facing public managers is to understand the importance of carefully defining the core tasks of the organization and to find both pecuniary and nonpecuniary incentives that will induce operators to perform those tasks as defined.”)¹⁵

Fortunately, recent work in economics provides an escape from the worst excesses (and nonsensical predictions) of reductionist economics. This work may help resolve the tension we have seen over incentives by showing that the importance of incentives linked with performance depends on various features of the specific situation. By analyzing a simple model and then introducing more complex considerations in a qualitative way, we can appreciate that, under the conditions faced in many developing countries, suspicions about the efficacy of incentive reforms are well-founded. And yet, we also see that as these conditions change (in part because of policy reforms), the potential increases for better incentives and for the more efficient bureaucracies such reforms will stimulate.

3. The Optimal Intensity of Incentives

This section tries to convey the essence of an institutional economics approach to the incentive problem, using a variation of the principal-agent model. A central idea is that since the agent’s performance is only imperfectly measured, paying a wage based on what the principal can observe creates a risk for the agent. Because of risk aversion, the agent would prefer a fixed wage that does not depend on performance. But the principal dislikes fixed wages, because then the agent has no economic incentive for higher performance. The optimal wage agreement strikes a balance between risk sharing and incentives. Usually this combines a fixed payment that does not depend on a measure of performance with a variable payment that does.

Suppose you are the principal, I am your agent. Your profits are a function of my efforts: Profit = $P(e)$. But my efforts are costly to me: Cost = $C(e)$. Ideally, you would pay me a wage equal to the value of my marginal product. But you don’t know my effort e , at least not perfectly. You can observe an indicator of my effort, which is

$$z = e + x,$$

where x is a random variable representing the measurement error.

You can also observe a variable y , which is not correlated to e but is correlated to x . For example, suppose z is sales of the product for this month. It is some function of my effort but also depends on industry demand y . You might take y into account to enable a more precise estimate of my effort.

The wage you pay me can be analyzed as having two parts, one fixed and one dependent on your assessment of my effort:

$$w = \alpha + \beta (e + x + \gamma y)$$

β is a measure of the *incentive intensity* of our wage contract. When it is zero, you pay me a fixed wage α . The parameter γ measures how much weight you give to y in relation to z .

What contract would be socially optimal (for the two of us?) Assume expected values of x and y are normed to zero (for convenience), and assume no wealth effects. My certain equivalent is equal to expected income - cost of effort - a risk premium for the income risk I bear because $(x + \gamma y)$ is a random variable. That risk premium turns out to be approximated by $1/2r \beta^2 \text{Var}(x + \gamma y)$.¹⁶ Your certain equivalent as a risk-neutral employer is the expected profit - expected wage.

Both of our certain equivalents depend on the four variables α , e , β , and γ . By the assumption of "no wealth effects," an efficient contract will maximize the sum of the certain equivalents. But there is also an incentive constraint, which says that I as your agent will set my effort level such that the marginal benefit = marginal cost. So an employment contract is efficient if and only if the choices α , e , β , and γ maximize the total certain equivalent among all "incentive compatible" contracts where $\beta - C'(e) = 0$. The solution generally has some fixed pay and some variable pay that is a function of the two measures z and y .

From this model we can derive the incentive intensity principle. The strength of incentives should be an increasing function of the marginal returns to the task, the accuracy with which performance is measured, the responsiveness of the agent's effort to incentives, and the agent's risk tolerance.

$$\beta = P'(e) / \{1 + r[\text{Var}(x + \gamma y)]C''(e)\}$$

where $C''(e)$ is the slope of the marginal effort curve. This formula is computed by maximizing the total certain equivalent of principal and agent with respect to e .¹⁷

The incentive intensity principle suggests that under some conditions it is optimal to have "highly intense" incentives, but under other conditions a flat wage is the right choice. Table 1 shows some of the extreme conditions favoring and not favoring performance-based pay.

In many public bureaucracies, especially in developing countries, the conditions seem to resemble those in the right-hand column of Table 1. Of particular importance is the difficulty of measuring performance—in the model, reducing $\text{Var}(x + \gamma y)$. In part this is

due to the nature of the goods being produced in the public sector.¹⁸ In part it is due to the primitive technologies and insufficient funds available for evaluation in many poor countries.

Table 1
Conditions Favoring and Not Favoring Pay-Performance Links

<u>Aspect of Incentive Intensity Principle</u>	<u>Favorable to Intense Incentives</u>	<u>Unfavorable to Intense Incentives</u>
$P'(e)$ = marginal social benefits of more effort by agent	Additional efforts by public servants lead to big gains in effectiveness	Because of other constraints, additional efforts by public servants yield no gains in effectiveness
r = agent's risk aversion	Employees are almost risk-neutral, perhaps because plentiful opportunities exist and they are already well-off	Employees are very risk averse, perhaps because poor
$\text{Var}(x+\gamma y)$ = how accurately agent's effort can be measured	Effort and results are easy to measure	Effort and results are almost impossible to measure
$C''(e)$ = responsiveness of agent's effort to incentives	Effort is very responsive to incentives (for example, high discretion)	Effort is not responsive to incentives (for example, fixed-pace activity)

The incentive intensity principle suggests a way to resolve the tension about incentives described above. Under some conditions, intense incentives will yield efficient bureaucracies. Even under unfavorable conditions, when the incentive intensity principle forswears performance incentives, it is still fair to say that the absence of performance incentives certainly does not encourage greater effort. And yet it is also fair to say that, under those unfavorable conditions, trying to raise β would have meager and indeed perhaps negative effects.

But there is a third point. The four parameters of the incentive intensity principle are not necessarily immutable. In particular, notice that when the measurement of performance improves, a wage package can be constructed that both enhances incentives and reduces risk.¹⁹ This is why *better information is at the heart of institutional reform*.

Low Wages May Be Optimal When Measurement Is Poor

We shall return to this point. But let us spend a moment more on what happens when performance measures are bad: it may be rational to have little or no incentive intensity. Using a different model of compensation, Timothy Besley and John McLaren show that

very poor information and highly imperfect measurement can make it optimal to do what many developing countries actually do—pay tax collectors low wages with compressed salary scales.²⁰ The alternatives—wages equal to those in the private sector, and efficiency wages above private sector wages in order to deter corruption—will, under conditions of widespread dishonesty and very imperfect monitoring, yield less government revenue, even though the low wages will virtually guarantee that many officials engage in bribe-taking.

But if monitoring effectiveness can somehow be improved—for example, if information is more widespread or more easily assessed—then the conclusion changes. Under many reasonable assumptions, with good monitoring and evaluation capabilities, the government's optimal wage strategy will be to pay efficiency wages.²¹

What about performance pay? Besley and McLaren have built a model in which monetary incentives based on performance are ruled out in advance. Thus, in the model wages cannot be varied according to performance—for example, according to revenues raised or frauds uncovered or quality of processing. Second, those who are caught offering or accepting bribes are not punished, except the bribe-taker loses his or her public sector job. Efficiency wages and steep hierarchies thus become the only way to reward officials for honest behavior.²² But when these assumptions are relaxed and we allow the employer to use β , then if measurement is “good enough” a superior solution may be to reward tax officers as a function of their performance.

But the point I wish to underscore in the Besley/McLaren result is the sensitivity of optimal pay schemes to the ability to measure. Even with the best of information, an employee's contribution to value-added may be hard or impossible to gauge, and much of the resistance to incentive-pay schemes in the literature is based on this undeniable difficulty.

Coping with Problems with Incentive Reforms

Table 2 summarizes some of the difficulties facing performance-based incentives. Beyond the categories suggested by the incentive intensity principle, it adds considerations of incentive dynamics, political economy, and layers of hierarchy.

In particular, agents and principals may take dynamic steps that undermine incentives and information. Consider agents first:

- Agents distort activities toward those things easily measured at cost of those things not easily measured.
- Agents engage in influence activities: distorting information, influencing evaluators of information, not revealing useful private information.²³
- If relative rankings of agents are used, agents may avoid useful teamwork or even sabotage others.
- Agents may avoid job transfers or the learning of new skills, for fear of losing bonuses attached to existing arrangements and competencies.
- Agents may act collectively to transmogrify performance bonuses into higher base pay.

Table 2
Summary of Some Conditions Affecting the Desirability of Performance-Based Incentives

$P'(e) =$	Marginal social benefits of more effort by agent
$r =$	Agent's risk aversion
$\text{Var}(x + \gamma y) =$	How accurately agent's effort can be measured
$C''(e) =$	Responsiveness of agent's effort to incentives

Additional complications:

1. How to afford incentive schemes (use non-monetary incentives as well; use samples; borrow measurement techniques when possible; involve agents and clients in performance appraisal; use partial fees-for-service; watch out for bonuses that become standard)
2. Extraneous factors determine $P'(e)$ (control for them statistically; use tournaments, contests, relative rankings, but these create side-effects)
3. Teamwork (may need group incentives, but then free-rider problems; collusion)
4. Dynamics and political economy (skewing agents toward the measurable to the detriment of the less measurable; "influence activities," including dissimulation, gaming, sabotage, and corruption; ratchet effect; creating disincentives for transfers, learning new skills, etc.: answers include a richer informational environment and processes that build transparency and credibility)
5. Layers of bureaucracy (evaluators may not have correct incentives)

Principals may also take steps that undermine the system:

- Ratchet effects: after learning more about the production function, principals move the goal posts, leaving agents worse off than before.
- Intermediate layers of the bureaucracy may simply lack incentives to undertake performance appraisal.²⁴ The appraisals are often limited to employee inputs, qualifications, or endowments, rather than to the much more difficult idea of contribution to value-added.
- In performance ratings, intermediate layers of the hierarchy collude with or extract rents from lower levels, undermining the system (and in extreme models leaving underlings no better off than before).

Such issues have been analyzed in the literature, and the complexities of reality soon overwhelm available economic models.²⁵ In particular, when dynamics are included, the incentive intensity principal no longer can be assured to hold.²⁶ Without a host of special assumptions, we cannot pretend to "compute" the optimal incentive intensity any longer, even in theory.

Nonetheless, the very categories suggested by theory as undermining performance incentives provide a framework for considering how in practice these problems might be

mitigated. Table 2 contains some examples. And, building on the incentive intensity principle, the framework for policy analysis in Table 3 suggests ways to make incentive reforms more likely to succeed.

Table 3
A (Partial) Framework for Policy Analysis

1. Strengthen the link between employee effort and the agency's value-added.
 - Make sure everyone understands what the value-added is and how it is being sought. What are the "key tasks" of the organization? What does it take to perform them better?
 - Incentive reforms require the participation of employees themselves in the specification of each agency's objectives, performance measures, and incentives. This helps educate everyone on the links between effort and value-added.
 - Help employees improve the quality of their efforts (training, feedback on achievements).
 - Sometimes $p'(e)$ is close to zero for any individual but is large for groups of employees. In such cases team incentives are more feasible and desirable than individual incentives. (Free-rider problems may then emerge, which demand another iteration of solutions.)
2. Reduce the risk aversion of employees.
 - Raise the level of the pay.
 - Help remove employees' uncertainties about pay-for-performance by running transparent *experiments* where employees (and clients) help to design quantitative and qualitative measures of performance, appropriate incentive schedules, and ways to evaluate the experiment's results in a relatively short time.
 - Make credible commitments about the evolution of pay-performance formulas over time, to avoid the "ratchet effect." Again, a process is often important. For example, if employees, management, and clients help appraise progress and set new incentive schemes, along with a guarantee to return to *status quo ante* under agreed-upon conditions, this may engender the confidence to enable an experiment with incentive pay to begin.
 - Avoid incentive master plans for all agencies and all time. Learn by doing. Make sure affected parties take part in the evaluation of the incentive experiments.
 - Facilitate employee self-selection. Introducing performance-based pay can be expected to lead workers with lower risk aversion to prefer public sector jobs.
3. Reduce the variance of measures of performance.
 - Include information from clients.
 - Empower clients. Seek analogies to market power or joint management. Experiment with user charges and analogies to them such as in-kind contributions, sharing them with employees.

- Quantitative and qualitative outcome measures can be used. So can peer ratings, as long as ratings are forced to be “on a curve” (i.e., not everyone can be rated “excellent”).
 - Extraneous variables can be taken into account in the design of incentive schemes (the y in the incentive intensity principle could try to measure such extraneous variables, which are given weight γ). Examples are controlling for students’ social backgrounds in estimates of school contributions to learning, and in the Philippines Bureau of Internal Revenue controlling for the tax base of a local district in estimating the efficiency of the district office in raising revenues. Also, an incentive scheme may employ measures of relative performance, analogous to tournaments, which help “control for” the extraneous variables that affect everyone’s performance up or down.
4. Reduce the costs to employees of additional effort.
- Begin with the easiest cases. In particular, try reforms in areas where performance is relatively easy to measure objectively and where the revenues raised or costs saved can make the experiment self-financing.
 - Through training and better equipment, shift the cost-of-effort curve.
5. Reduce the costs of providing incentives.
- Incentives include money but also other things, which may be less expensive: promotions, training, travel, special assignments, transfers, awards, favorable recognition, and simple praise. Even information about how well one is doing turns out to function as an incentive.
 - Remember the principle of the sample: incentives can be based on samples of performance. Especially in an experiment, there is no need for the comprehensive measurement of each and every outcome of each and every action.
 - Cultivate political support, particularly from unions and foreign donors. The idea of an experiment reduces their worries and involves them in design and evaluation.
 - Challenge technical assistance by foreigners. For example, learn by doing rather than attempting comprehensive studies that often end up being inconclusive or unsatisfactory. For example, use TA funds to finance experiments where local experts and even government officials carry out the required “studies” based on the participatory diagnosis of what is already known about problems and possible solutions.
 - Privatize creatively. This can mean experimenting with hybrids of public and private sectors working together to provide services. Information about performance may incidentally be enhanced.

The problems raised by dynamic considerations and the political economy of incentive reforms do not yield ready solutions. Probably, however, part of the answer concerns the *processes* through which (1) performance measures are designed and (2) incentives are constructed and tested and reassessed.²⁷

These changes in process can be understood, I believe, as a rational response to the possible dynamic and political economy problems with performance-based incentives.

4. Implications

It is widely stated that foreign assistance efforts at "institutional development" have not worked as well as hoped. Increasingly, evaluations emphasize that incentives have often not been adequately taken into account.²⁸ Pay is too low to attract and retain needed high-level talent in government, and performance does not drive reward schedules. On the negative side, for too long corruption has been neglected as an issue, and if it is raised, it is as a problem of law or ethics rather than of structures, incentives, and information.²⁹

On the positive side, when incentives are taken into account, good things can happen. Successful programs in developing countries have been built on appropriate bureaucratic incentives, which in turn depend on the generation of relevant performance measures.³⁰ For example, in the mid-1980s Indonesia reformed its rural credit program by creating performance-based incentives for local bank managers. First, information was developed about the savings generated from each village unit, the repayment rates, and who was getting the loans. Second, authority was decentralized to local bank managers so they could make decisions and respond to local conditions. Third, and crucially, local bank staff was paid depending on their results in getting loans to the poor, ensuring their repayment, and generating savings at local levels. Within three years 82 percent of the village units were making money. The rural banking system tripled its loan volume in three years. By 1990 it was the second biggest rural credit program in the world.

Another success story is the Bolivian Social Emergency Fund. After a year of stagnation, businessman Fernando Romero took over the SEF in 1986 and introduced better systems of information and incentives.

The SEF set up a process that asked the communities, working with the private sector constructors of schools, roads, sewers and so forth, to submit proposals that were vetted centrally through a comparison process. In a second round some technical assistance was given to the weaker communities that did less well in preparing projects.

Information and incentives again were crucial. The centralized information process included estimates of costs of per unit of things like rural roads and schools, so that when proposals came in with outrageous amounts officials had some way of telling that. The process included incentives for the people in the bureaucracy to monitor and evaluate operations rural areas.

Within two and a half years the SEF moved millions of dollars and created thousands of jobs. And it did so efficiently. Despite salaries considerably in excess of government norms and despite aggressive systems of promotions and incentives, the SEF's administrative cost per dollar moved to rural areas was less than 4 percent. This compared favorably with the amount that USAID would pay the UNDP to administer a project in Bolivia, which was 7 percent.³¹

There are many examples in the rich countries. The OECD countries, especially the United States, have experience with measuring and rewarding performance in the public sector.³² In Western businesses, what has been called "gainsharing" and "the new pay" is growing in acceptance.³³

Despite these successes, many people are skeptical about higher pay and performance-based incentives as solutions. The models of section 3 go some way toward resolving this tension. They show that the desirability and design of pay-for-performance schemes depend in predictable ways on aspects of the task environment. This has several implications. First, we should not expect the same incentive scheme to work equally well under all situations. Second, we should expect that incentive reforms will be differentially successful, depending on the variables we have identified. Third, these conditioning variables may themselves be subject to policy manipulation. Given the task environments found in many public bureaucracies in developing countries, performance pay will fail, and consequently low levels of performance and high levels of corruption will be chronic because, our models say, they are "rational" responses to a miserable organizational environment. For organizations to work better, this environment must change.

The last point opens new horizons for thinking about institutional development. From the perspective of a given manager or minister in a given system, reforming incentives may be impossible. Not only do civil service rules not permit it, but the manager may not have the authority or the resources to generate the measures of performance on which an effective incentive system depends. What is needed is analogous to structural adjustment: a change in the rules of the game, a new enabling environment. A key feature of the needed reform is better information about what government agencies do and what results they achieve. The task is daunting, precisely because public agencies take on the provision of the kinds of goods that private markets will not optimally supply. But it is not impossible, as is testified by an exciting array of efforts around the world.

"Efficient organizational design," writes Paul Milgrom, a pioneer in the new institutional economics, "seeks to do what the system of prices and property rights does in the neoclassical conception: to channel the self-interested behavior of individuals away from purely redistributive activities and into well-coordinated, socially productive ones."³⁴ There are interesting parallels between the free-market reforms that have swept the world in the past decade and incentive-based institutional reforms that I believe will sweep the world in the next two decades—not just in their advantages but also in their shortcomings, in the applicability of economic advice in the conditions faced by developing countries, and in the surprising opposition to these reforms from some experts in development economics and "development administration."

There are important differences as well, the contours of which are suggested by section 3. Two stand out in my mind.

First, the importance of *experimentation*. The idea of designing an incentive master-plan is misguided. Performance measures are so problematic in the many senses we have uncovered that, especially in difficult cases, we are well-advised to begin with partial, incomplete experiments and then learn from the experience.

Second, the importance of *process* in institutional reform. It seems wise, especially in the challenging cases where performance is multidimensional and hard to measure, to involve employees and clients in the design of the performance measures, the design of incentive schemes, and the evaluation of performance-pay experiments. What we have called the dynamics and political economy considerations of incentive reforms—such as

the danger of manipulation and influence activities, and the threat of ratchet effects later denying employees the benefits of their improved performance—can in many cases only be mitigated through a transparent process that builds trust, creates quasi-objective measures, and enables credible commitments. Thus, in comparison with free-market reforms, institutional reforms will be slower, involve more participation by employees and clients, and will vary according to the conditions of different countries and ministries.

Aid donors can help in many ways. On the negative side, they can stop pushing the standard approach to civil service reform, which emphasizes more training, more foreign advisers, more studies, and has the goal of horizontal equity and the “rationalization” of jobs. Table 4 contrasts this approach with a different one building on information and incentives.

Table 4
Two Approaches to Civil Service Reform

	Prevalent Approach	Proposed Approach
Ends of reform	Across-the-board pay increases; horizontal equity across jobs	Selective pay increases that eventually spread; incentives linked to performance targets
Means	Long-term studies leading to system-wide reform; foreign TA do the studies; learning by planning	Experiments with a few key elements of the civil service; public officials define measures of success; learning by doing
Constraints	Budgetary austerity; donor pressure to reduce wage bill	Begin with revenue-raising and cost-saving experiments that can pay for themselves; use aid to fund experiments
Facilitating conditions	Studies; technical assistance; political will to reduce the size of the public service	“Institutional adjustment,” including better information, more client participation, competition.

Donors can fund experimental projects that stimulate local people, including the beleaguered and much abused public officials, to think more creatively about what their institutions are trying to accomplish, how this might be measured, and how rewards might be linked to success.

Donors can help create an enabling environment for such reforms. Most important are system-wide efforts to obtain better information on the performance of public institutions, through a wide variety of mechanisms including client surveys, partial fee payments, peer assessments, statistical data of many kinds, ratings by immediate superiors, self-assessments, critical-incident studies, and others. Better information promotes transparency. It also motivates bureaucracies, especially of course when it is linked with better incentives.

A lesson of this paper is that even when incentives are poor, conditions may be such that performance-based incentives will not by themselves lead to an improvement. But it is also true that under the same conditions, bureaucracies exhibiting very low pay, weak links between careers and performance, and corruption are unlikely to be improved by the usual approaches to civil service reform, institutional development, and public management. This suggests that the underlying conditions is what deserves systematic attention. It is time to experiment with new approaches. To stimulate a rethinking, Tables 2 and 3 summarize both the challenges facing incentive reforms and some possible ways to meet those challenges. I hope they can serve as a kind of framework for policy analysis of incentive reforms in developing countries. They show that although sometimes incentive reforms by themselves will work, more generally incentive reforms should be one ingredient in a more wide-ranging effort of "institutional adjustment"—a strategic approach to public institutions that emphasizes the improvement of information, incentives, competition, and participation.

¹ In this paper I take as stylized facts that many public agencies are failing because of incompetence, dishonesty, and poor incentives, and that these failures threaten the delivery of social services, the administration of justice, and the management of the economy, which in turn undermine free-market and democratic reforms.

² *Governance: The World Bank's Experience* (Washington, D.C.: The World Bank, 1994), p. 8. The report doesn't make the reference explicit, but the source is apparently The World Bank, *The East Asian Miracle: Economic Growth and Public Policy* (New York: Oxford University Press for the World Bank, 1993), pp. 174-180. Although this document stresses "incentive-based compensation," high pay for top officials, stiff penalties for malfeasance, and prizes for performance, it does not mention linking civil service pay to performance targets. Robert Wade's discussion of the economic bureaucracy in Taiwan and South Korea leaves it rather mysterious how the acknowledged high performance was achieved (for example, "we know rather little about the inner workings of East Asian bureaucracies generally," p. 337). He says salaries in government in Taiwan are 30 to 50 percent below those in the private sector (p. 219). Robert Wade, *Governing the Market: Economic Theory and the Role of Government in East Asian Industrialization* (Princeton: Princeton University Press, 1990).

³ Again, this paper will simply assent to these stylized descriptions, without trying to support them with evidence.

⁴ Derek Bok, *The Cost of Talent: How Executives and Professionals Are Paid and How It Affects America* (New York: The Free Press, 1993).

⁵ Arturo Israel, *Institutional Development: Incentives to Performance* (Baltimore: The Johns Hopkins University Press, 1987), p. 126.

⁶ Jay R. Schuster and Patricia K. Zingheim, *The New Pay: Linking Employee and Organizational Performance* (New York: Lexington Books, 1992), p. 279.

⁷ One of the eleven commonly held beliefs criticized by the authors is this: "Get incentives right and productivity will follow. If we give people big, straightforward monetary incentives to do right and work smart, the productivity problem will go away. Over-reward the top performers. Weed out the 30 to 40 percent dead wood who don't want to work." Thomas J. Peters and Robert H. Waterman, Jr., *In Search of Excellence: Lessons from America's Best-Run Companies* (New York: Harper & Row, 1982), p. 43.

⁸ *Ibid.*, p. 242. "As we did this research, we were struck by the wealth of non-monetary incentives used by the excellent companies. Nothing is more powerful than positive reinforcement. Everybody uses it. But top performers, almost alone, use it extensively" (p. 269).

⁹ *Paying for Productivity: A Look at the Evidence*, ed. Alan S. Blinder (Washington, D.C.: The Brookings Institution, 1990).

¹⁰ Incidentally, Bok does not mention Blinder's book. Bok asserts: "At the most basic level, all pay-for-performance schemes proceed from a belief that the prospect of monetary rewards will motivate people to work harder and more efficiently. Although the premise seems obvious, there is surprisingly little empirical evidence to support it" (p.

244). Precisely this sort of evidence is what Blinder's book overwhelmingly (in my judgment) provides.

¹¹ "The postulated link between participation and improved efficiency is one of information . . . To an economist it should not be surprising to find that participatory arrangements, such as quality circles, that are designed to elicit better information without offering any stake in the returns to such information are usually short-lived." Daniel I. Levine and Laura D'Andrea Tyson, "Participation, Productivity, and the Firm's Environment," in *Paying for Productivity*, p. 186.

¹² For example: "It appears that changing the way workers are *treated* may boost productivity more than changing the way they are *paid*, although profit sharing or employee stock ownership combined with worker participation may be the best system of all" (p. 13). I believe the book establishes no such conclusion.

¹³ Related by Joseph E. Stiglitz, "Incentives, Information, and Organizational Design," NBER Working Paper No. 2979 (Cambridge: National Bureau of Economic Research, May 1989), p.3.

¹⁴ To which one wag has responded, "Pay isn't the most important thing. But it's way ahead of whatever is in third place."

¹⁵ James Q. Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1989), p. 174.

¹⁶ Paul Milgrom and John Roberts, *Economics, Organization and Management* (Englewood Cliffs, NJ: Prentice-Hall, 1992), p. 247.

¹⁷ Milgrom and Roberts, pp. 222-223.

¹⁸ James Q. Wilson distinguishes four types of public organizations, depending on the measurability of what might be called their efforts and their outputs. In "production" organizations, both efforts and outputs can be measured; here, the prospects for performance-based incentives are strong. At the other extreme, "coping" organizations, in which neither efforts nor outputs can be gauged, are weak candidates for incentive pay. (Indeed, Wilson says, "In coping organizations effective management is almost impossible" [p. 175].) As prospects for performance pay, the two other corners of the table are inbetween.

	Can measure effort	Cannot measure effort
Can measure outcomes	Production (e.g., internal revenue, social security, post office, FBI)	Craft (enforcement agencies, corps of engineers, forest rangers)
Cannot measure outcomes	Procedural (e.g., armed forces in peacetime)	Coping (foreign service, some schools, some police activities)

Source: Based on Wilson, *Bureaucracy*, chap. 9.

See also Christopher Clague, "Bureaucracy and Economic Development," mimeo, IRIS and Department of Economics, University of Maryland, June 1994, pp. 20-28.

¹⁹ There is an associated monitoring intensity principle. More resources should be spent on monitoring when it is desirable to give strong incentives. Measuring performance carefully and providing intense incentives are complements. It is also possible that policy changes exogenous to any particular manager improve the ability to gather, process, and interpret information about performance. If so, incentive intensity will increase, and so will the welfare of agents and the performance of the organization.

²⁰ Timothy Besley and John McLaren, "Taxes and Bribery: The Role of Wage Incentives," *The Economic Journal*, Vol. 103, No. 416 (January 1993).

²¹ Besley and McLaren think Malawi may be a contemporary example. They also allude to the nineteenth century case of Robert Hart taking over the corrupt Shanghai customs bureau, raising wages, increasing monitoring and using foreign inspectors, and immediately dismissing officials guilty of improprieties. "The effect on tax revenues was resounding" (p. 136). They cite S. Wright, *Hart and the Chinese Customs* (Belfast: Mullan and Son, 1950); and, on Malawi, J.F. Medard, "Public Corruption in Africa: A Comparative Perspective," *Corruption and Reform*, Vol. 1, No. 2 (1986), and D. Lindauer, O. Meesook, and P. Suebsaeng, "Government Wage Policy in Africa: Some Findings and Policy Issues," *World Bank Research Observer*, Vol. 12, Nos. 1-2 (1986).

²² On the correspondence between efficiency wages and steep hierarchies, see Jeremy Bulow and Lawrence Summers, "A Theory of Dual Labor Markets with Application to Industrial Policy, Discrimination, and Keynesian Unemployment," *Journal of Labor Economics*, Vol. 17, No. 2 (1986).

²³ Paul Milgrom and John Roberts, "An Economic Approach to Influence Activities in Organizations," *American Journal of Sociology*, Vol. 94, Supplement (1988).

²⁴ Although most organizations use formal appraisal systems--one estimate in the United States put the figure at 80 percent of manufacturing companies--in practice these systems are often said to be ineffective. For one thing, managers may lack incentives to report honestly on the performance of their subordinates. Unlike China of old, superiors are not themselves rewarded or punished on the basis of the subsequent performance of those they appraise. Around 1000 A.D. the Chinese possessed an elaborate system of recommendations. When you recommended someone, you were held partly responsible for the person recommended. If he did well, you could receive "requement and commendation." If he did badly, you could be punished. For example, if he committed a crime punishable by death, you could be deported. If he was deported, you could be given forced labor. If he was sentenced to forced labor, you could be beaten with a heavy or a light rod. And so forth. E. A. Kracke, Jr., *Civil Service in Early Sung China, 960-1067* (Cambridge: Harvard University Press, 1953), chap. 10.

²⁵ Though dated, a still useful reference to some of these complications is Bengt Holmstrom and Jean Tirole, "The Theory of the Firm," in *Handbook of Industrial Organization*, Vol. I, ed. R. Schmalensee and R.D. Willig (Amsterdam: Elsevier Science Publishers, 1989), pp. 106-126.

²⁶ Jean-Jacques Laffont and Jean Tirole note that optimal linear incentive schemes "were no longer so once dynamics, political economy, or multi-principal conditions were

thrown in." *A Theory of Incentives in Procurement and Regulation* (Cambridge: MIT Press, 1993), p. 663.

²⁷ Thus, Schuster and Zingheim say that "[t]he major thrust of new pay is in the area of introducing variable pay to employee groups where most organizations pay only base pay" (*The New Pay*, p. 153). But the process of doing this tends to involve important changes (p. 156) including:

- formation of employee-organization partnerships
- improved collaboration between organizations and employees
- primary emphasis on customer interests
- organizational success affecting all rewards
- downplaying of tenure and entitlement
- quality and customer value initiatives
- experimentation with new reward programs

²⁸ On the failures of civil service reform, see Mamadou Dia, *A Governance Approach to Civil Service Reform in Sub-Saharan Africa* Technical Paper No. 225 (Washington, DC: The World Bank, 1993). Even more broadly that civil service reform, institutional development efforts have foundered on pay levels too low to retain talented staff and incentives unconnected to performance. In contrast, many successful projects and integrated rural development efforts paid close attention to these incentive problems. Dennis Rondinelli, *International Assistance for Institutional Development: Forty Years of Experience* (Research Triangle Park, NC: Research Triangle Institute, 1989), *passim*. and pp. 28, 37, 42, 44, 57, 59. See also Israel, *Institutional Development*. In a related vein perhaps, a recent review of institutional development components of World Bank projects concludes: "Few ID projects or components have provided for monitoring progress against explicit performance criteria or dated targets . . . As a result, ID issues repeatedly identified in successive projects often remain unresolved." Operations Evaluation Department, "Support for Institutional Development," *OED Précis*, No. 57 (December 1993), p. 2.

²⁹ Robert Klitgaard, *Controlling Corruption* (Berkeley and Los Angeles: University of California Press, 1988); Robert Klitgaard, "Gifts and Bribes," in *Strategy and Choice*, ed. Richard Zeckhauser (Cambridge: MIT Press, 1991).

³⁰ Robert Klitgaard, "Incentive Myopia," *World Development*, Vol. 19, No. 4 (April 1989).

³¹ Robert Klitgaard, *Adjusting to Reality: Beyond "State vs. Market" in Economic Development* (San Francisco: ICS Press and International Center for Economic Growth, 1991), chs. 7, 9.

³² See, for example, the fourteen selections under the heading "Productivity Measures and Improvement in Government and Nonprofit Institutions" in the massive *Handbook for Productivity Measurement and Improvement*, ed. William F. Christopher and Carl G. Thor (Portland, OR: Productivity Press, 1993), and Maria Maguire and Robert Wood, "Private Pay for Public Work?" *The OECD Observer*, No. 175, April/May 1992.

³³ Blinder, ed., *Paying for Performance*.

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FROM / VAN: H. S. MAY

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**ANSWERS TO THE QUESTIONS RAISED IN THE FIRST REPORT
OF SUBTHEME COMMITTEE 6.1. PUBLIC ADMINISTRATION**

1.1. Should the Public Service be regulated by way of a constitutional provision? If so, what should be the content and form of the constitutional provision?

Yes. Key principles regarding the Public Service which would form the foundation for the entire Public Service should be embodied in the constitution. A good example of these principles appears in the Interim Constitution under Chapter 13. Nevertheless, a separate Act which should contain much more detailed provisions with regard to the Public service should be passed. An excellent example in this instance is the Public Service Act 1993 Act No. 200 of 1993.

2.1 How is the Public service to be defined and which institutions of government should be incorporated in the definition?

Public Service can be defined as all those services which are rendered to the civil society by traditional state departments. It can also be referred to as consisting of persons who are employed in rendering public services and who occupy positions in the fixed establishment of traditional state departments. Emphasis here is placed on TRADITIONAL state departments. These are departments which have cabinet ministers as political heads of departments.

This definition embraces all such departments and at the same time excludes for example, parastatals, universities and research institutions. It also excludes what are referred to as statutory servants like the Judges, Auditor General and Public Protector. Administrative personnel should in the judiciary be part of the Public Service, the reason being that judges have the Judicial Service Commission, whereas their administrative personnel is not catered for under the Judicial Service Commission.

2.2. What should be the guiding values and principles for the Public Service?

Guiding values and principles could be the following:

1. A non partisan, loyal and professional public service.
2. Committed to fairness, reasonableness, impartiality, efficiency and effectiveness in its service delivery.
3. Protecting the basic human rights as enshrined in the constitution.
4. Accessible to all citizens.
5. A public service that is committed to maximum accountability with regard to its commissions and omissions.
6. A public service that fully recognises and respects the supremacy of the legislature.
7. A public service that is broadly representative of the people of South Africa.

- 2.3. What would be appropriate, speedy and effective mechanisms for ensuring accountability of public servants for their actions or inactions?

This can be done by means of effective control exercised by the Minister as political head of department and more importantly, by the Director General and his subordinates. This can be done by making use of control instruments such as inspection, reporting and checking.

The Public protector is an important functionary in ensuring that public officials speedily account for their deeds or misdeeds.

Security of tenure should be modified or done away with so that public officials like executives in the private sector, know that their jobs depend on the satisfactory job performance. This would keep public officials on their toes at all times, wanting to do best in performing their work.

- 2.4 How should the concept of a representative Public Service be defined and what affirmative action mechanisms and procedures will assist in achieving such representivity?

In simple terms it can be defined as a public service that reflects the demographics of our country. In other words, blacks should constitute the majority of public officials, when one makes the inventory of the total number of public servants. This is in fact logical when one considers what is happening in other countries.

Affirmative Action seems to be an effective tool for actualising this representivity. Strategies of Affirmative Action could be

1. VOLUNTARY STRATEGY

This is a strategy which allows institutions to implement Affirmative Action on a voluntary basis by way of removing those obstacles which stand in the way of its implementation. Specific actions amongst others, could be placing advertisements which target the disadvantaged groups and instituting training programmes to uplift their standards. All these obstacles must be identified and removed thereby leading to the achievement of the desired results. If the desired results are not attained the employer must convince the Compliance Officer that reasonable steps are being taken to hire and promote members of the group in question and that failure to do so resulted from factors which were beyond his control.

2. QOUTA STRATEGY

The objective of this strategy is to mandate results through hiring and promotion restrictions. Desirable hiring goals are operationally treated as required employment quotas. In simpler terms this means that in the South African context, the gouta could be worked out by aiming at the representiveness of the public service. For argument's sake, if blacks constitute 80% of the population, Coloureds 6% Indians 4% and Whites 3% then this formula should be used in constituting a representative public service. Again here, the Compliance Officer will have to ensure that this gouta is being pursued by the employer.

2.5 Does representivity entail deracialisation, as well transformation of state institutions?

Yes. This question is in the main answered 2.4. above.

2.6. Should the public and public employees be entitled to participate in formulating policy on public services and should public service managers be responsible for creating mechanisms for such participation?

Members of the public should indeed be entitled to take part in the formulation of policy but mainly as contributors to its formulation and to some rare extent as individuals, they can initiate policy. One has to bear in mind that it is difficult for one person to make a serious impact in the formulation of policy. It is when individuals act as an organised group where they can

make a meaningful impact in this regard. It is with the organised groups representing various shades of public opinion that consultations can be entered into when policy is to be formulated. It is vital that public officials encourage the establishment of interest groups that could articulate the needs of the public, thereby making it possible for them to know the wishes of the people.

Public service managers are important role players in policy formulation, this is so because as policy implementors they are heavily involved in making political policy implementable. This they do by considering the financial and practical aspects of its application. It is the public managers who are the chief advisors to Ministers as to the feasibility of proposed policy and in a number of instances also its initiators. Therefore, public service managers cannot be ignored when it comes to policy-making.

2.7 Should there be an obligation on public managers to monitor and evaluate the implementation of public policy and what would be the appropriate mechanisms?

Yes. It is part of the management duties of public managers to monitor and evaluate the implementation of public policy. There is no way that they can be exonerated from this responsibility because if they do not do this, they would be failing in their duties.

They should do the on-the-spot inspections to make sure that the policy is on track. They should demand period reports from their subordinates to keep themselves informed as to the progress of policy implementation.

They should introduce and implement auditing procedures such as financial, performance, effectivity and allocations auditing procedures.

2.8. What forms of review and redress should the public/public employees have in relation to dissatisfaction with service delivery?

Since members of the public are consumers of public services and goods, a number of avenues should be made available to them should they have complaints concerning service delivery. These avenues could be:

a) The member of parliament they have elected to represent their interests. This is their man/woman whom they know and trust it is he/she who can have their voice heard in the highest echelons of

the state. One does concede that a good number of people are not familiar with this arrangement, nonetheless it is the duty of the member of parliament to educate his/her constituency about their rights and his/her duty towards them.

b) The Public Protector as provided in the Interim Constitution. This is a mechanism that should be accessible to all people which provides the quickest and the cheapest redress to grievances of both members of the public and public officials.

c) Interest/Pressure Groups. These groups provide an avenue to both members of the public who are their members and public officials. It is important that an individual public official to act in responsible and professional manner must first follow internal grievance procedures before resort can be made to pressure or interest groups.

3.1. Should there a separation of powers between policy-making and policy administration?

There is no way that there could be effective separation between policymaking and administration because administration is an integral part of policymaking. An administrator is an expert in the making of policy whereas the Minister is someone who points out to the public manager, the need of having a particular policy to satisfy the interests of the people. It is the public manager's responsibility to make the policy proposal from the Minister work. The public manager can and does suggest to the Minister the adoption of a particular policy that would best serve the needs of people, and in a number of instances such suggestions from public managers have assisted the ministers to make meaningful policy proposals to their colleagues in the cabinet.

3.2. Should provision be made for limited appointments in the South African Public Service? If so, what should be the procedure and criteria for such appointments?

The making of political appointments in the public service should be handled with utmost care. One needs to understand that public service is a career service taking years of training and accumulation of relevant experience. Also it is important to bear in mind that public servants, especially those in the top echelons of government, are experts in their respective fields and have therefore the unquestioned ability to guide and advise ministers in the functioning of their respective ministries. Public managers are a mainstay of the government sector. It is they who provide continuity and stability in as far as running of the country's affairs and the day to day delivery of public goods and services are concerned.

Introducing someone from outside the public service to occupy a top position by means of political appointment, poses some destabilising dangers to the public service, some of these are:

I) Such an appointee will have to be replaced when the tenure of the minister he/she is serving expires, for example when a new government takes over and most probably when there is a change of ministers.

I) Colleagues of such an appointee are bound to view him with suspicion with the result that the desired cooperation and the esprit de corps will to a large extent be lacking.

An alternative to limited political appointments could be the appointment of Consultants in areas where it is felt have a special need for improvement. This could be done on an Ad Hoc basis. This type of outside expertise would benefit both the Minister and the public manager without bringing unnecessary problems to the functioning of the department.

4.1. Should an institution such as the Public Protector be embodied in the final text of the constitution? Is there a need for another body such as the Public Service Commission, that deals exclusively with ombuds aspect relating to the Public Service?

Yes. This is done in most countries where an ombudsman system has been established. Only basic guiding principles should be embodied in the constitution such as provided in the Interim Constitution under chapter 8.

An ombudsman should be an independent institution not in any way connected with the government, its main function is to be the public protector of the ordinary person against government actions or inactions. It should be accountable only to parliament and parliament could appoint a select committee which could scrutinise the annual report submitted by the ombudsman to parliament which committee would subsequently report fully to parliament. Placing the ombudsman under the supervision of the Public Service Commission or any similar committee would defeat the very aims of establishing the office of the public protector.

4.2. What should be the respective roles and responsibilities of the Ministry for the Public service and the Commission? What if any should be the relationship between the Ministry and the Commission?

The responsibility and role of the Commission should be of an independent expert body which advises and recommends to various departments of state on personnel matters which relate among other things, the requirements for appointments, promotions, discharge, efficient performance of work and to maintain uniformity of standards. Also of importance here, is to keep the appointment, promotion and discharge of public officials away from politicians so as to maintain equity and fairness in the entire public service. It should be borne in mind that the powers of the Commission are simply RECOMMENDATIONS, and the Ministers of various departments can accept or reject them. No minister is forced to accept these recommendations, this is also true with regard to its directives.

The Ministry for the Public Service has no right to exist as a fully fledged state department, otherwise it will usurp the vital functions which should be performed by the Commission. The department cannot be entrusted with the work that should be the responsibility of experts. One should understand that although politicians are elected representatives of the people, they are not experts. For the legislature to make informed decisions about matters relating to the public service, it needs expert and scientific advice. The Commission needs only to be coupled to an existing Ministry so that the Minister could act as a link between the Commission and Parliament.

4.3. What role should the Parliamentary Select Committee play in relation to the Public Service and the oversight of policy formulation and implementation? Should the Public Service Commission be accountable to a Select Committee on the Public Service?

The Parliamentary Select Committee its role should be to enforce accountability on the part of public managers. One should remember that public managers are Accounting Officers and this they can do in parliament through the Select Committee. It is not appropriate to burden the Committee with policy formulation and implementation because as politicians they have little time to engage themselves in these complex and time consuming activities. Policy formulation should be largely left to political organs and functionaries and policy implementation should at the same time be seen as the responsibility of the public managers.

The Public Service Commission should be made accountable to Parliament which in the first place appointed it. As Parliament does not have sufficient time to study the Commission's annual report, the Select Committee could act as body which scrutinises the annual report in the first place, and report its findings to Parliament.

4.4. Should the Public service Commission act as a body of appeal for public servants or should this role be entrusted to an independent agency?

Yes the Commission should act as a body of appeal because it better equipped than any body to do this. It has the infrastructure, the expertise and the experience necessary. It should however, not be the final appeal body. The Minister could be such a body.

4.5. Who should represent the state as employer in the bargaining process and who mandates these representatives?

If the Ministry for the Public Service exists, then it should represent the state as employer and the minister mandates officials of his department who will be representing him in the bargaining process. If the Public Service Commission is accepted as body dealing with the affairs of public servants exclusively, then its representatives will represent the employer with the mandate from the Minister through parliament.

SUBMITTED BY



H.S. MAY

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24 February 1995
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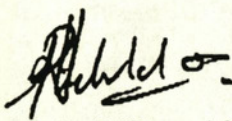
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Ms Saaliegah Zardad

PUBLIC HEARING: PUBLIC ADMINISTRATION AND THE CONSTITUTION

Please find attached the comment from the School for Public Management and Administration at the University of Pretoria, on the above-mentioned aspect.

Yours sincerely



1 Prof. C Thornhill

Director: School for Public Management and Administration



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CONSTITUTIONAL ASSEMBLY
PUBLIC HEARING: PUBLIC ADMINISTRATION AND THE CONSTITUTION

THEME COMMITTEE 6 : SPECIALISED STRUCTURES OF GOVERNMENT

1. INTRODUCTION

It should be stated clearly at the outset that a constitution should meet particular requirements, inter alia it should

- be formulated and written in understandable terminology i.e. be user friendly;
- contain only the principles required to establish a contract between the state and its organs on the one hand and the citizens on the other hand; and
- not contain issues that may be affected in the short term by smaller changes in society or the political structures.

QUESTION 1

Should the Public Service be regulated by way of a constitutional provision? If so, what should the content and form of the constitutional provision be?

If the aforementioned points concerning a constitution are accepted it becomes clear that although the Constitution should refer to the Public Service, it should not prescribe in detail what its form and content should be. The Constitution should only provide for a Public Service that is non-partisan, effective and efficient as well as professional, simultaneously requiring it to operate within the framework of relevant legislation. The rest of the existing constitutional provision could be considered superfluous as the rights of public servants are guaranteed in Chapter 3, i.e. Fundamental Rights. The same fundamental rights that apply to citizens of South Africa also apply to members of the Public Service and therefore they enjoy sufficient protection against unfair practices.

QUESTION 2

The role of the Public Service

2.1 How is the Public Service to be defined?

It has become an accepted practice in South Africa that the so-called "services" do not form part of the Public Service and are therefore not subject to the Public Service Act, 1994. However, considering the new developments in South Africa and the efforts to ensure that all employees of the public sector adhere to the same norms and standards a major change should be considered. By including the army and police (health and education employees are part of the Public Service) to all the other public sector employees, could contribute considerably to achieving a unified Public Service accepting a common set of principles.

The situation with local government officials is totally different. Loyalty should be obtained to a particular local government and should therefore, rather be excluded from the Public Service. Furthermore, salaries and service conditions of members of the Public Service are usually uniformly determined. Relatively high salaries of public employees in smaller towns could disturb the existing remuneration arrangements in such town. It should also be mentioned that various industrial council labour agreements have been reached at local government level. Any change would require extensive negotiations which is not considered advisable in the present labour climate.

Professionalism has progressed considerably at local government level e.g. town clerks, and municipal accountants. Changes in legislation could seriously affect the relative calm presently experienced as a result of the unique arrangements that exist.

Parastatals are usually established to undertake unique functions that cannot be performed within the normal state structures. This usually also entails peculiar and often flexible administrative arrangements e.g. SOEKOR, Atomic Energy Corporation, Atlas. A uniform Public Service puts too stringent restrictions on structures that have to act in an uncertain and flexible

environment. It is therefore, suggested that parastatals should not fall under the Public Service except if the intention is to reverse the existing arrangements in this regard and abolish parastatals as para-public institutions.

2.2 Guiding values

Each Public Service develops its own principles. The viewpoint is that the South African Public Service should embark on an extensive programme to establish common guidelines acceptable to every member. The orientation programme for Directors-General presently being conducted was considered a first step in this direction.

In general the guidelines should contain *inter alia* the following:

- The legislature is the supreme authority for the Public Service (acting within the guidelines of the Constitution)
- The Public Service should always be in a position to render account in public (e.g. through Parliament, Select Committees, Commissions of Enquiry) for all actions performed on behalf of society
- The Public Service should adhere to community values including e.g. the tenets of democracy, fairness and reasonableness, unbiased decisions and actions, probity and economy and efficiency.
- The Public Service should always strictly act within the ambit of the law to serve as an example to society and also to give effect to the fundamental rights and other conditions prescribed in the Constitution.

2.3 Appropriate, speedy and effective mechanisms for ensuring accountability

Various mechanisms exist for obtaining accountability. However, these mechanisms only operate after the act has been performed or transgression committed. Particular attention should be devoted to *ex ante* control through strict adherence to programmes, and other prescribed procedures. Accountability should be maintained and could be enhanced through cost-accounting and value for money auditing. However, steps should be

developed to allow the Select Committee on Public Accounts to act on the Auditor-General's report sooner than is presently the case (sometimes two or more years after the end of the financial year for which the report as been compiled).

2.4 Representative Public Service

Representativity is perhaps one of the most difficult goals to describe as it could refer to gender, race, sex, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture or language as per fundamental rights, section 8 on Equality. With this in mind representativity should perhaps be formulated broadly to prevent any possible actions as a result of so-called un-representativity.

2.5 Representativity : deracialisation and transformation

See question 2.4. Representativity could mean different things to different people. It will depend on the point of departure of the person interpreting the Constitution and especially chapter 3. In some countries it has been argued, for example that public institutions should be created for different language groups or different religious or ethnic groups. The argument is thus again that representativity should be a long term goal, but that it should not be overemphasized in the Public Service as it could be detrimental to the efforts to create a unified Public Service or alternatively formulated as a Public Service of National Unity.

2.6 Public and public employees' participation in policy formulation

Public employees and especially Managers in the Public Service are by definition involved in policy formulation. Their roles are however, clearly defined in the sense of identifying the need for policy changes, obtaining factual information and formulating policy proposals for Ministers. However, it should be stated categorically that public sector managers are not involved in party political policy formulation, but in executive policy formulation. The Public Sector Manager is also suitably positioned to establish value

considerations, but the weighting of values remains a function of the politicians.

The need for the public to be "involved" in policy formulation is accepted as a *sine qua non*. However, the members of the public are seldomly if ever in a position to submit factual information. They could be involved through interest groups or NGO's or CBO'S in a particular functional area. To allow the public to become involved willy nilly in policy making would create total confusion. Contributions should be limited to particular areas in accordance with the knowledge (expertise) of the group. If a blanket invitation is extended, the process of policy formulation will be delayed and become unmanageable. The establishment of the invitees to participate in policy-formulation should therefore be determined by the policy issue.

There is unquestionably a duty on the public sector managers to consult employees and the public in relation to policy issues, but as important, they should be informed of the processes for execution as well. For example in the case of housing the process of obtaining land, planning, installing infrastructure and building take a rather long time. The public should be fully informed of the time required to prevent frustration and ensure stability.

2.7 Monitoring and evaluating implementation

It is an inherent duty of any manager to exercise control over the executive functions entrusted to his/her organisational unit. Public managers should therefore be required to monitor and execute control regarding the policies entrusted to his/her organisational unit. However, it should be stated clearly that monitoring is limited to the extent to which a policy is effected and does not cover the extent to which party political philosophies are being realised. The public manager serves society and not a party and although he/she should be sensitive towards party political issues, the executive policy as adopted by government (i.e. Government of National Unity) should be the framework within which control is exercised. The Minister and Cabinet

provides a value judgement on the effectiveness of policy execution. The actual measurement of execution rests with the public manager.

Mechanisms available for monitoring include e.g. reporting, but subject to particular criteria e.g. prescribed contents, consideration, timeliness and follow up. Some government agencies could assist e.g. Auditor General or internal control sections could be utilized i.e. it should be part and parcel of the administrative system.

2.8 Review and redress regarding dissatisfaction

A clear distinction should be made between the public and public employees. Firstly, the public has access to inter alia the particular department's managerial personnel. Should satisfaction not be obtained the Minister is the next level for complaints. A third mechanism is surely the political representative. However, it should be borne in mind that different constitutional bodies have been established to assist in this regard e.g. the public protector. Section 112 of the Constitution empowers the public protector to investigate on own initiative or on receipt of a complaint inter alia maladministration, unfair, capricious, discourteous actions or delay, or a variety of other maladies in the public sector. This could be considered sufficient.

Secondly the public employees could report dissatisfaction with service delivery to their superiors if it concerns complaints resulting from their official capacities. If it concerns them in their private capacities the other mechanisms, already mentioned, are available.

3. POLITICS AND ADMINISTRATION

3.1 Separation of powers re policy-making and administration

Unquestionably the answer should be affirmative. However in practice a distinction should be made amongst the levels of policy e.g.

- party political policy which is clearly the duty of politicians

- executive policy as formulated by government which requires the assistance of public managers, i.e. DG, DDG, Chief-Director and directors, they however, operate within the framework of a broad policy within the scope of government's framework.
- operational policy which concerns the departmental policy to give effect to government policy which would be the responsibility of the public managers without interference from politicians.

Separating policy from administration cannot, therefore be answered with a simple yes or no. The director general walks a tight rope in being involved in and assisting with executive policy and involved in political discussions with the Minister and interest groups. It is often stated that the politics/administration issue is a dichotomy.

3.2 Political appointments

This is a difficult question to reply to. Different political systems provide for different approaches. Justification can be found for limited political appointments, but then without career opportunities. Such appointments should be made by Ministers but outside the normal Public Service to enable a Minister to dismiss such advisor/appointee should he/she fail to meet the requirements of the Minister or if new requirements arise that demand another type of expertise.

The criteria for appointment should vest in the particular Minister. Remuneration should, however, conform to conditions determined by the central personnel agency - not necessarily the same as for career officials.

4. PUBLIC SERVICE COMMISSION

4.1 Public protector in the constitution

The appointment of a public protector should be embodied in the Constitution but only as far as the principle of such an office is concerned. Qualifications etc can be contained in other legislation - as is the case with

the Public Protector Act presently. The Public Service Commission should deal with issues within the Public Service i.e issues concerning public employees. Sufficient mechanisms exist for public employees to raise concerns within the existing mechanisms. The public protector should be available to private citizens or public employees acting in their private capacities.

The Public Service Commission should be an independent Commission to consider administrative issues (e.g. personnel, organisational, work procedural and control issues) in an independent manner on receipt of proposals by the office of the Commission. The latter should consist of expert employees not linked to line function departments.

The Commissioners should be appointed by the head of state (President) for a fixed term of office. Accountability should be through reporting but only if the reporting complies with strict and fixed criteria. Under the former system the Commission sometimes simply withdrew unpopular decisions thus preventing Parliament from determining the quality of the decisions.

The Constitution should only provide for the establishment of a Public Service Commission. Its composition, appointment and terms of reference should be contained in enabling legislation. This would ensure that the Constitution remains true to the requirement of containing only principles.

4.2 Roles of Minister and Public Service Commission

The Minister is responsible for the political issues. The Commission's duty concerns the "technical" or administrative matters regarding the Public Service. If the Commission does not enjoy the confidence of the Minister, the composition of the Commission should be changed. There should be continuous liaison between the Minister and the Commission. The present entrenchment of the two commissioners from the former system should be amended. It is presently counter productive.

4.3 Parliamentary Select Committee on the Public Service

The establishment of such a Committee is strongly supported as it would bring other administrative arrangements in line with financial accountability.

4.4 Public Service Commission as appeal body

Should this be envisaged the role of the PSC should be reconsidered. A PSC cannot take responsibility for determining service conditions and act as an appeal body. It can be either the one or the other. A separate appeal body could rather be developed under the Public Service Labour Relations Act, 1994.

4.5 Representative of state as employer in bargaining and mandate

If the PSC is composed in such a way that it enjoys the confidence of the public employees it could represent the state as employer. The mandate is then also clearly derived from the status of the Commission and its legal position.

4.6 Provincial PSC's

I doubt if provincial PSC's really serves a purpose. However, it will depend on whether South Africa moves more in the direction of a federal state. If the latter holds true, provincial PSC's are justified. In a unitary state with one Public Service as established in the Interim Constitution different interpretations of the same act by provincial PSC's could be counter productive.

4.7 Norms and standards for public administration

Refer to question 2.2 regarding the acceptability of norms and standards. This could only apply if acceptable to society and to the corps of public employees. However, internationally acceptable norms and standards have to be considered. Reference to acceptable norms and standards in other countries could be a worthwhile exercise (must include European and African experiences).

5. PUBLIC SERVICE AS AGENT FOR DEVELOPMENT

5.1 Public Service as agent for development

Every Public Service in the world is an agent for development. However, countries, such as South Africa which is presently engaged in extensive reconstruction and development should change its focus on the rate of development as well as the nature of the development envisaged. Public Services have the inherent duty of developing societies, but in countries aimed at changing a particular economic, social and political order require a totally different perspective, mission, vision and goals.

Any Public Service is caught between two opposing forces. On the one hand a positive force requires the public employee to be adaptive, innovative and not rule bound. The other negative forces requires of a public employee to be able to render account for every action, not only for the results achieved, but also for the procedure adopted i.e the need for transparency. Neither of these forces can be overemphasised or ignored. An accountable and responsive Public Service, therefore, have to take note of both requirements.

It is suggested that the Constitution is not the suitable mechanism to provide for flexibility. It is an administrative reconsideration that is required. Control should be aimed at measuring results not necessarily methods or procedures. Political office bearers should be persuaded to identify critical performance indicators and public managers encouraged or orientated to develop a sense of efficiency and economy, but with an emphasis on results achieved. It is more a case of managerial competence that would develop flexibility and assisted by administrative and managerial arrangements.



UNIVERSITEIT VAN STELLENBOSCH
UNIVERSITY OF STELLENBOSCH

9 March 1995

Fax 461-4339 (5pp).

The Co-ordinator
Theme Committee 6
Constitutional Assembly

ATTENTION : N Nyoka / S Zardad

Dear Sir/Madam

PUBLIC HEARING : PUBLIC ADMINISTRATION AND THE CONSTITUTION

Your request dd 21 February 1995 for views regarding above topic, refers.

I hereby confirm that this Department will make an oral submission to your committee on 13 March 1995, any time after 11:00, along the lines summarised in this document.

The delegation will consist of 4 persons : Prof Erwin Schwella (chairperson of the Department), myself and Messrs Andries van Rooyen and Ivan Meyer.

I will be the main spokesperson, but any one or more of my colleagues may decide to add briefly to my submission. We would like to expand orally during the hearing on the basic replies to your written questions summarised in the annexure hereto.

Yours sincerely,

Prof Fanie Cloete

PS : Please confirm the time of our presentation.



DEPARTEMENT OPENBARE EN ONTWIKKELINGSBESTUUR
DEPARTMENT OF PUBLIC AND DEVELOPMENT MANAGEMENT

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SUMMARY OF SUBMISSION**BY****THE DEPARTMENT OF PUBLIC AND DEVELOPMENT MANAGEMENT OF
THE UNIVERSITY OF STELLENBOSCH****TO****THEME COMMITTEE 6
OF THE CONSTITUTIONAL ASSEMBLY****ON****THE PUBLIC SERVICE AND THE CONSTITUTION****1 NATURE OF CONSTITUTIONAL PROVISIONS**

- 1.1 The Public Service should be regulated by way of a brief constitutional provision relating firstly to the fact that it is subject to the supremacy of the Constitution and to all the principles of democratic government contained in the current Interim Constitution (esp the Constitutional Principles and the Bill of Rights pertaining to freedom of action and information, as well as administrative justice).**
- 1.2 Secondly the Constitution should provide for the principle of a representative, effective, efficient, accountable and responsive Public Service regulated both by the norms and principles contained in the Constitution and in terms of supplementary legislation which are consistent with Constitutional provisions.**
- 1.3 Technical details about the Public Service should be contained in such supplementary legislation.**

2 ROLE OF PUBLIC SERVICE**2.1 DEFINITION**

- 2.1.1 The Public Service (in Afrikaans "die Openbare Diens") should be defined generically in the Constitution as including all personnel in the public and parastatal sectors at all levels of government (central, provincial and local)**

who are paid from public funds and are accountable to the Constitution. This includes all sectors mentioned in question 2.1.

- 2.1.2** Simultaneously, the definition should authorise the principle of separate sectoral and provincial arrangements where needed, eg for educational, local government, police, health, provincial and other staff corps.
- 2.1.3** Uniform minimum standards for human resource management in the Public Service should be formulated in national legislation, while sectoral and regional diversity should also be accepted and recognised by authorising their regulation in separate supplementary national or provincial legislation consistent with the Constitution.

2.2 GUIDING VALUES AND PRINCIPLES

- 2.2.1** The principles of good, democratic governance contained in the Constitution should be the basic guiding force, supplemented by the principles of effective, efficient and professional service delivery and/or management
- 2.2.2** Other principles follow in subsequent paragraphs, in response to other specific questions.

2.3 ACCOUNTABILITY MECHANISMS

- 2.3.1** A comprehensive system of accountability including freedom of information, transparent governmental processes, an effective ombud under effective parliamentary control, individual and collective ministerial responsibility, personal liability for wrong deeds.

2.4 PUBLIC SERVICE REPRESENTIVITY

- 2.4.1** Representivity as goal or target and not as a quota, means not only racial and gender representivity but also geographical representivity. Various strategies can be considered to achieve stated goals. A sunset clause should be linked to affirmative action strategies to confirm the temporary nature of it. Thereafter professional merit should be the main criterion for staff selection and promotion.

- 2.6.1** Yes, it is important to enhance the legitimacy, responsiveness and effectiveness of service provision. but it should not deteriorate into populist attempts to control government policy making. This is contrary to the principle of representative government.

2.7 MONITORING AND EVALUATION OF POLICY IMPLEMENTATION

- 2.7.1** Yes, the principles of effective management planning and project management can be very useful.

2.8 REVIEW OF & REDRESS FOR BAD SERVICE PROVISION

- 2.8.1** Legal, political and financial redress should exist, including compensation for infringement of rights and even the dismissal of wrongdoers and personal liability for wrong deeds.

3 POLITICS AND ADMINISTRATION

3.1 SEPARATION BETWEEN POLICYMAKING AND ADMINISTRATION

- 3.1.1** There is no clearcut separation between policymaking and administration. Officials are in many cases the main policy advisors and even policy designers in government.

3.2 LIMITED POLITICAL APPOINTMENTS

- 3.2.1** As a result of the above conclusion, a maximum of 2 special political advisors to be appointed by the minister concerned should be allowed as formal members of a ministerial staff complement. In addition, the current

system of contractual appointments for professional and not political Directors General, should continue.

4 THE PUBLIC SERVICE COMMISSION

- 4.1** The principles of a Public Protector and PSC should be contained in the Constitution. The PSC should only be an advisory body.
- 4.2** The Minister responsible for the Public Service should be the political decision maker about Public Service staff, and the PSC should only advise him what to do. The Office of the Commission should be reduced to only researchers on human resource management who should monitor the staff situation in the Public Service and advise the Minister accordingly.
- 4.3** Parliamentary Select Committees should play an indirect supervisory role as is the case with other portfolios.
- 4.4** The PSC should not be a body of appeal. This role is a political one which should be performed by the Minister involved, or his department in cases of administrative review of actions. In other cases the industrial court should be involved.
- 4.5** The Minister and his department should negotiate with unions where necessary.
- 4.6** A separate provincial service commission is necessary with its own powers at provincial level, to set up a totally separate management structure if needed. This may stimulate competition among provinces, which will enhance higher quality outputs. This must be regulated in the Constitution.
- 4.7** A system of total quality management should be developed, while the basic principles summarised in this document should be contained in the Constitution. Provincial and local powers should be guaranteed in the Constitution and spelt out in more detail in other legislation.

5 PUBLIC SERVICE AND DEVELOPMENT

- 5.1** Yes, the Constitution should provide an enabling framework for development by establishing the necessary principles spelt out above. Public officials should always facilitate development and promote all initiatives in this regard.

F A X M E S S A G E F R O M

S A A E P

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Date:	9.3.95
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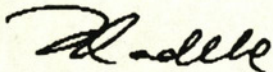
Dear Saaliegah

On behalf of the Southern African Advanced Education Project, I have attached our submission to the Constitutional Assembly Public Hearing on Public Administration and the Constitution.

We have restricted our comments to the areas in which we have expertise, as an NGO which focuses on human resource development.

I hope this submission is useful, and extend good wishes for the continuing important work of the Constitutional Assembly.

Yours sincerely


Thuthu Radebe (Ms)
Deputy Director

SUBMISSION TO CONSTITUTIONAL ASSEMBLY THEME COMMITTEE 6 - PUBLIC HEARING ON PUBLIC ADMINISTRATION

With reference to Questions 2.4, 2.5 and 5.1, SAAEP wishes to comment as follows:

"The Reconstruction and Development Programme recognises clearly that economic development must be a central priority for the new Government. The RDP recognises that:

No political democracy can survive and flourish if the majority of its people remains in poverty, without land, without their basic needs being met and without tangible prospects for a better life. Attacking poverty and deprivation will therefore be the first priority of the democratic government. (RDP White Paper, 1.2.7)

Human resource development for public administration must have as a central aim the restructuring of a public service based on 40 years of implementation of apartheid policies, which excluded the entry of people into senior public service positions on the grounds of race.

The RDP itself recognises that the public service in South Africa must become representative of the population of South Africa as a whole. This is vital if the public service is to be able to fully unlock the potential of all the people and harness all available talent to addressing the pressing development needs of the country.

So it is not practicable or wise to de-link the issue of restructuring from the issue of increasing the capacity of government to meet developmental needs.

We would suggest that a representative Public Service will be one in which all major population and language groups are represented in proportion to their representation in the population as a whole, and are able to participate to the fullest extent. The Public Service should provide conditions of recruitment and service which are conducive towards the achievement of this objective.

This means that substantial steps need to be taken to redress the imbalances at all levels in the current profile of the Public Service. In particular, recruitment criteria will need to be reconsidered and broadened, to ensure that those whose formal education was disrupted, or who were educated abroad, during the apartheid years are nonetheless able to apply with confidence for positions in the public service.

An affirmative action approach to the Public Service will also need to recognise the need to provide particular training and development opportunities for staff where they would have been in the past excluded from access to such opportunities for reasons of race, or other reasons unrelated to their potential or ability.

An affirmative action programme for the Public Service will need to be carefully monitored on a continuing basis to ensure that targets are met, and where progress is unsatisfactory to ensure that remedial action is taken. Progress towards achieving targets should be transparent, so that the public can be involved in assessing the progress made".

make a meaningful impact in this regard. It is with the organised groups representing various shades of public opinion that consultations can be entered into when policy is to be formulated. It is vital that public officials encourage the establishment of interest groups that could articulate the needs of the public, thereby making it possible for them to know the wishes of the people.

Public service managers are important role players in policy formulation, this is so because as policy implementors they are heavily involved in making political policy implementable. This they do by considering the financial and practical aspects of its application. It is the public managers who are the chief advisors to Ministers as to the feasibility of proposed policy and in a number of instances also its initiators. Therefore, public service managers cannot be ignored when it comes to policy-making.

2.7 Should there be an obligation on public managers to monitor and evaluate the implementation of public policy and what would be the appropriate mechanisms?

Yes. It is part of the management duties of public managers to monitor and evaluate the implementation of public policy. There is no way that they can be exonerated from this responsibility because if they do not do this, they would be failing in their duties.

They should do the on-the-spot inspections to make sure that the policy is on track. They should demand period reports from their subordinates to keep themselves informed as to the progress of policy implementation.

They should introduce and implement auditing procedures such as financial, performance, effectivity and allocations auditing procedures.

2.8. What forms of review and redress should the public/public employees have in relation to dissatisfaction with service delivery?

Since members of the public are consumers of public services and goods, a number of avenues should be made available to them should they have complaints concerning service delivery. These avenues could be:

a) The member of parliament they have elected to represent their interests. This is their man/woman whom they know and trust it is he/she who can have their voice heard in the highest echelons of

the state. One does concede that a good number of people are not familiar with this arrangement, nonetheless it is the duty of the member of parliament to educate his/her constituency about their rights and his/her duty towards them.

b) The Public Protector as provided in the Interim Constitution. This is a mechanism that should be accessible to all people which provides the quickest and the cheapest redress to grievances of both members of the public and public officials.

c) Interest/Pressure Groups. These groups provide an avenue to both members of the public who are their members and public officials. It is important that an individual public official to act in responsible and professional manner must first follow internal grievance procedures before resort can be made to pressure or interest groups.

3.1. Should there a separation of powers between policy-making and policy administration?

There is no way that there could be effective separation between policymaking and administration because administration is an integral part of policymaking. An administrator is an expert in the making of policy whereas the Minister is someone who points out to the public manager, the need of having a particular policy to satisfy the interests of the people. It is the public manager's responsibility to make the policy proposal from the Minister work. The public manager can and does suggest to the Minister the adoption of a particular policy that would best serve the needs of people, and in a number of instances such suggestions from public managers have assisted the ministers to make meaningful policy proposals to their colleagues in the cabinet.

3.2. Should provision be made for limited appointments in the South African Public Service? If so, what should be the procedure and criteria for such appointments?

The making of political appointments in the public service should be handled with utmost care. One needs to understand that public service is a career service taking years of training and accumulation of relevant experience. Also it is important to bear in mind that public servants, especially those in the top echelons of government, are experts in their respective fields and have therefore the unquestioned ability to guide and advise ministers in the functioning of their respective ministries. Public managers are a mainstay of the government sector. It is they who provide continuity and stability in as far as running of the country's affairs and the day to day delivery of public goods and services are concerned.

Introducing someone from outside the public service to occupy a top position by means of political appointment, poses some destabilising dangers to the public service, some of these are:

I) Such an appointee will have to be replaced when the tenure of the minister he/she is serving expires, for example when a new government takes over and most probably when there is a change of ministers.

I) Colleagues of such an appointee are bound to view him with suspicion with the result that the desired cooperation and the esprit de corps will to a large extent be lacking.

An alternative to limited political appointments could be the appointment of Consultants in areas where it is felt have a special need for improvement. This could be done on an Ad Hoc basis. This type of outside expertise would benefit both the Minister and the public manager without bringing unnecessary problems to the functioning of the department.

4.1. Should an institution such as the Public Protector be embodied in the final text of the constitution? Is there a need for another body such as the Public Service Commission, that deals exclusively with ombuds aspect relating to the Public Service?

Yes. This is done in most countries where an ombudsman system has been established. Only basic guiding principles should be embodied in the constitution such as provided in the Interim Constitution under chapter 8.

An ombudsman should be an independent institution not in any way connected with the government, its main function is to be the public protector of the ordinary person against government actions or inactions. It should be accountable only to parliament and parliament could appoint a select committee which could scrutinise the annual report submitted by the ombudsman to parliament which committee would subsequently report fully to parliament. Placing the ombudsman under the supervision of the Public Service Commission or any similar committee would defeat the very aims of establishing the office of the public protector.

4.2. What should be the respective roles and responsibilities of the Ministry for the Public service and the Commission? What if any should be the relationship between the Ministry and the Commission?

The responsibility and role of the Commission should be of an independent expert body which advises and recommends to various departments of state on personnel matters which relate among other things, the requirements for appointments, promotions, discharge, efficient performance of work and to maintain uniformity of standards. Also of importance here, is to keep the appointment, promotion and discharge of public officials away from politicians so as to maintain equity and fairness in the entire public service. It should be borne in mind that the powers of the Commission are simply RECOMMENDATIONS, and the Ministers of various departments can accept or reject them. No minister is forced to accept these recommendations, this is also true with regard to its directives.

The Ministry for the Public Service has no right to exist as a fully fledged state department, otherwise it will usurp the vital functions which should be performed by the Commission. The department cannot be entrusted with the work that should be the responsibility of experts. One should understand that although politicians are elected representatives of the people, they are not experts. For the legislature to make informed decisions about matters relating to the public service, it needs expert and scientific advice. The Commission needs only to be coupled to an existing Ministry so that the Minister could act as a link between the Commission and Parliament.

4.3. What role should the Parliamentary Select Committee play in relation to the Public Service and the oversight of policy formulation and implementation? Should the Public Service Commission be accountable to a Select Committee on the Public Service?

The Parliamentary Select Committee its role should be to enforce accountability on the part of public managers. One should remember that public managers are Accounting Officers and this they can do in parliament through the Select Committee. It is not appropriate to burden the Committee with policy formulation and implementation because as politicians they have little time to engage themselves in these complex and time consuming activities. Policy formulation should be largely left to political organs and functionaries and policy implementation should at the same time be seen as the responsibility of the public managers.

The Public Service Commission should be made accountable to Parliament which in the first place appointed it. As Parliament does not have sufficient time to study the Commission's annual report, the Select Committee could act as body which scrutinises the annual report in the first place, and report its findings to Parliament.