

The second publication in the series  
“TAKING DEMOCRACY SERIOUSLY”

# Creating a Culture of Integrity

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Commonwealth Secretariat

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photo: Gisele Wulfschlag/Panos Pictures

**Fundamental values:** voter education programme in South Africa, in preparation for the country's first multiracial elections in 1994. Democracy is the key principle of unity on which the modern Commonwealth is based.

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# I Introduction

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The three topics of accountability, scrutiny and oversight are three of the core components of effective democratic governance. This Background Paper is an introduction to the place of each component in promoting good government along democratic lines. The aim is to provide readers with an overview of the accountability dimensions of democracy and to identify institutions capable of meeting the general requirements of accountability and the more specific requirements of scrutiny and oversight.

Democracy at its simplest refers to government by the people, carried out in the interests of the whole community. Democracy is often called ‘people power’. The central democratic idea is popular sovereignty: the idea that the people are the ultimate sovereign and that ‘good government’ demands that those who govern do so as representatives of the people whose welfare they hold in trust. Popular sovereignty is translated into practice by the people’s right to vote, and to stand for office, and so to determine who governs. The legitimacy of democratic governments flows from their dependence on the freely-expressed consent of their citizens. Elections provide one important opportunity for the expression of popular consent. Elections also serve an important accountability function by reminding those who govern that they are meant to put the public good ahead of their own particular interests. Elections are thus important tests of accountability for governments as well as tests of popular consent to either the serving government or to alternative parties or individuals seeking a representative role.

Accountability keeps government open and honest. Scrutiny and oversight are two leading forms of accountability. Examples of effective accountability include general public *scrutiny* of government decision-making by political and community bodies and more specialist *oversight* of government operations by competent public authorities. In democratic societies, similar devices of accountability restrain the use of power in many non-governmental organisations operating in the private sector of civil society. A democratic society promotes accountability in civil society as well as the state sector. The common consideration is to use accountability to protect the right of citizens to participate and have their say in the institutions that manage public affairs.

Democracy works through collective deliberation. The role of accountability is to remind decision-makers that they need to take account of community views when determining policy and administrative courses of action. Democratic governments rests on popular consent: accountability helps to sustain democracy by generating informed consent. Democratic accountability uses the power of publicity to help citizens see what government is doing. Accountability allows citizens to compare what governments say they are doing with investigations of what government is actually doing. In many cases, accountability strengthens public trust by confirming the competence and integrity of government. In other cases of lapsed or broken accountability, the reverse can occur, weakening public confidence in power holders. Thus accountability is important to democratic government in providing opportunities for those who govern to account for, explain and justify their use of the office and power of government.

Finally, attention should also be given to the use of government power to hold non-government bodies accountable. Democratic government is distrustful of concentrations of power in private as well as public hands. One of the traditional roles of democratic government is to protect the political rights of citizens. Another role is to protect the economic rights of individuals against the power of commercial enterprises. Still another role is to use the power of government to protect the social rights of individuals and groups by holding accountable those exercising socially exclusive prejudices which disrupt civil society with racial or ethnic hatred and intolerance. Although the focus of this Background Paper is on holding government accountable, we must acknowledge the important public accountabilities owed by non-government organisations for the public impact of their private power.

## II. The Democratic Commonwealth

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This Background Paper forms part of the Commonwealth Secretariat's 'Deepening Democracy' project, designed to promote informed discussion among Commonwealth countries about strategies for more effective democratic government. The Commonwealth Secretariat provides advice and assistance to The Commonwealth, which is an international organisation representing the interests of the Commonwealth's 54 very diverse member nations. The aim of the 'Deepening Democracy' project is to bring together ideas for comparison and shared consideration, but not to advocate any particular institutional practices as preferred models of democratic government.

The Commonwealth is united by its commitment to the democratic ideas of popular sovereignty and self-determination. It has not singled out any particular political system or constitutional regime as the definitive model of effective democracy. All member states of the Commonwealth have room to grow as more effective democracies. To this end, the Commonwealth has adopted a common set of principles for promoting the cause of democratic governance. Member nations have agreed to search together for fresh practices that can bring democracy alive within the different national and international settings in which the Commonwealth's many member states find themselves.

To quote the former Secretary-General Chief Emeka Anyaoku in January 2000: 'Democracy does not come in one universal format for progress which, once adopted, is capable of resolving differences equitably and creating a framework for meeting our varying needs for recognition and self-advancement'. Yet it is still possible to recognise certain fundamentals of democracy. As the former Secretary-General has also acknowledged: 'certain essential ingredients would need to be present in any genuine democracy'. Examples of such essential ingredients are: free elections; the rule of law; judicial independence; freedom of expression and of association; and, most importantly for this background paper, the 'continuing transparency and accountability of government' (ESU speech, December 1999).

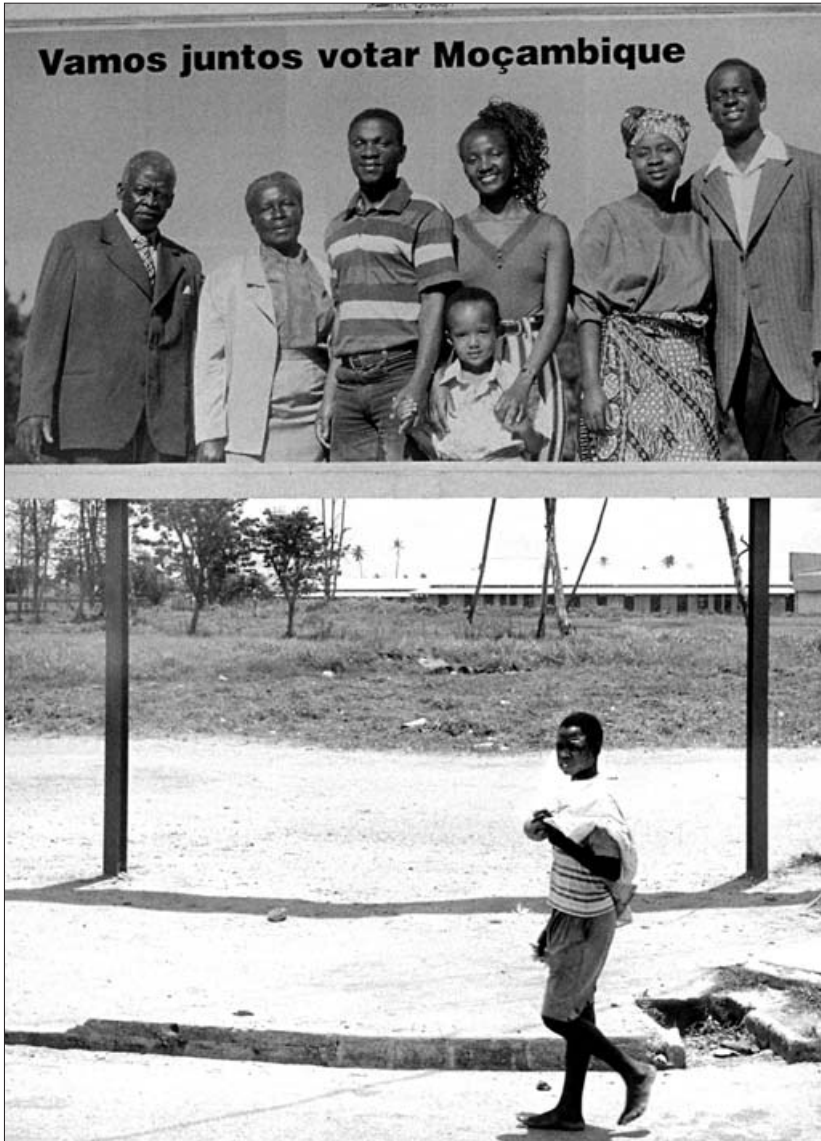


photo: Anders Gunnaritz/Panos Pictures

**Listening to the people:** *an election poster in Mozambique.* An accountable government is one that is responsive to the public and its representative institutions, and the legal and constitutional forms established to promote democratic governance.

Democracy has emerged as the international principle of unity within the national diversity of the modern Commonwealth. The Commonwealth is remarkable among the world's international organisations in that, despite this acceptance of national diversity, it stands out among multinational organisations as 'an association or club of democracies'. The Harare Declaration of 1991 acknowledges this blending of democracy and diversity: it speaks of the Commonwealth as 'a voluntary association of sovereign independent states', jointly committed to the 'Commonwealth way' which is 'to seek consensus through consultation and the sharing of experience'. The priority for the new century is consultation over enhanced democratic performance. The 'Deepening Democracy' project seeks to bring the promise of democracy to all the people as well as all the nations and governments of the Commonwealth.

At the beginning of this search for good governance, the Harare Declaration identified the Commonwealth member states' shared commitment to 'certain fundamental principles', including in particular:

- 'democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government'
- 'fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief'

These 'fundamental political values' were repeated most recently in the 1999 Durban Communiqué, with its declaration of the importance of what it identified as 'the democratic ethic' which has emerged as the common bond across the Commonwealth. Thus the 'Deepening Democracy' project builds on this momentum for good governance and, to use the Durban language, facilitates 'making democracy a way of life in the association' of the contemporary Commonwealth.

### III. Answerability and Responsiveness

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Accountability refers generally to the obligation on governments to account for and explain their performance and conduct. In some cases, accountability is satisfied simply through the provision of information. In other cases, accountability is not completed until those demanding an account can either reward or penalise those giving the account, depending on the quality of their performance. To make a further distinction, accountability can be distinguished from 'public accountability'. Many forms of accountability take



place out of public sight within the hierarchies of governmental and private organisations. Public accountability refers particularly to explanations made on the public record and intended for public consideration. But as previously mentioned, many private organisations (e.g., commercial enterprises) also face burdens of public accountability and are subject to scrutiny and oversight by public authorities to ensure their compliance with, for example, relevant standards of health and safety, or fair trading, or annual reporting.

Two important features of accountability are 'answerability' and 'responsiveness'. A government prepared to answer its critics is properly responsive to public criticism and takes its burden of accountability seriously. Answerability refers to the obligation to provide information in response to questions about performance. One important test of a government's commitment to accountability is its preparedness to have that information tested or evaluated by a competent independent authority. This happens, for instance, when a government releases its budget projections for



photo: Parliament of South Africa

**A Commonwealth Parliament in session:** taking democracy seriously means protecting the independence of representative assemblies, not only as legislative bodies but also as the central forum for community deliberation and decision making.

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examination by independent think-tanks, or when a government minister invites a non-government agency to review proposed policy guidelines, e.g., The World Health Organisation in relation to HIV-Aids.

Responsiveness is a closely related concept. Responsiveness within government refers to the general commitment expected of democratic governments to respond to relevant community opinion, even when a government might believe that such opinion is incomplete or flawed. For example, governments might quite properly release information to opposition parties in a political assembly in the hope of convincing opposition critics that they have been misguided or misled about alleged defects in government policy or administration.

Accountability is in practice an exercise in ‘answerability’. At its best, public accountability includes not simply statements about government performance and conduct but answers to non-government questions about that performance and conduct, for example from opposition political parties in an elected political assembly, or from the media or from an accountability agency such as a state auditor. As an exercise in ‘answerability’, the test of accountability is whether those giving the account can persuade those who are demanding ‘answers’ about the disputed merits of government performance and conduct.

An accountable government is one that is responsive to the public and its representative institutions, and the legal and constitutional forms established to promote democratic governance. Responsiveness is the general willingness to take seriously the obligations of answerability. Responsiveness and answerability refer to the accountability dimension of good government, to the need for checks and balances to protect the public interest against faulty or defective or even blatantly self-interested government decision-making. But accountability is not an end in itself: it is a protection against defective government, often acting as a preventive measure to alert government decision-makers to the need to justify conduct publicly. Knowing that they have to meet the demands of responsiveness and accountability, public officials are reminded that at some point they will face tests of how responsibly they have used their powers of office.

The anticipation of accountability is an important feature of accountability in everyday practice. The value of accountability does not always rely on the operation of close public scrutiny or extensive oversight. Simply knowing that at some point there is likely to be public knowledge and examination of official decision-making is frequently enough of a stimulus to better government. It is not really feasible for all aspects of government operations to come under close scrutiny. But the possibility that any aspect of government might attract public examination is often sufficient to restrain government officials from misuse of their powers.

## IV. Responsibility

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The concept of responsibility helps put accountability in context. Accountability and responsibility are the two sides of good governance. For example, terms like ‘the responsible minister’ refer to the responsibilities of office conferred on cabinet-level executive officials. In most democratic systems, these high officials hold such offices because they enjoy the confidence of the legislative assembly. Thus, offices of responsibility typically are positions of high public trust where the powers and responsibilities delegated to the political executive, and to the public servants serving at their direction, are balanced by the duties and accountabilities owed to the legislative assembly.



photo: ALSPIC

**The people’s representatives:** *an Australian parliamentary select committee in session.* Parliamentary select committees have a key role in the scrutiny of law making and the activities of government. They should enable parliamentarians to hear from civil society and local communities.

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Although accountability sounds like an impersonal quality, it is a living reality for those public officials exercising the power of government. Accountability is not an obligation confined to heads of government, although that is where it is most publicly visible. All public officials share in the burden of accountability because all officials hold offices of public trust. The obligations of accountability flow from the responsibilities of office authorised by the public's elected representatives. Those in the highest positions of responsibility face the most public burdens of accountability. Systems of accountable government are held together when those in lesser positions of responsibility (e.g. career public servants) play their part by assisting those with more public obligations of accountability (e.g. cabinet ministers).

Effective democratic government requires a deep sense of public responsibility in those who govern. Positions of responsibility in the political executive call on the discretion and judgment of their office-holders to give direction and energy to government. Even the most carefully designed legal and constitutional limitations on the powers of government still allow considerable freedom to elected governments to manage public affairs as they see fit, subject to a wide range of accountability obligations. Typical of these obligations are the accountabilities that ministers owe to parliaments to explain their conduct and justify their performance, particularly in response to questions about the standards of responsibility exercised by the government of the day. Responsibility and accountability are thus two sides of the same governance coin.

## V. Scrutiny and Oversight

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Our focus here is on the accountability side of democratic governance. Two basic forms of accountability are scrutiny and oversight. As used here, scrutiny refers to the general investigation of the ‘why’ of organisational conduct, particularly where there is considerable discretion exercised by the officials under investigation; and oversight refers to the investigation of the ‘how’ of organisational conduct, particularly where there is a greater expectation of official compliance with authorised policy. Thus for example, scrutiny typically targets official explanations of policy makers whereas oversight typically deals with justifications by administrative officials of implementation of approved policy. This is only a very approximate division of scrutiny and oversight, since it is well known that given the generality of most policy determinations most so-called ‘administrative’ decisions contain considerable ‘policy-making’. As used here scrutiny refers more to the public and political review of government operations, and that oversight here refers to less public and frequently technical review of government operations. For present purposes, scrutiny is the more general term, referring to the activity of reviewing government performance, as for example, in the wide-range of activities conducted in the name of parliamentary scrutiny of the government of the day. Scrutiny is performed by many types of scrutineering bodies: by political assemblies, by public agencies established by the political assembly or government, and by many non-government bodies of which the most common is the media.

Examples of scrutiny activities performed by a political assembly include question period and parliamentary debate involving non-government members (e.g. ‘the backbench’) or initiated by opposition parties. Legislative or parliamentary scrutiny refers to all those accountability tasks performed by members of the legislature when scrutinising the government: for example, when a parliamentary committee investigates government operations, or when a parliamentary chamber investigates the detail of a government bill, or when a parliamentary delegation travels internationally to examine the overseas impact of a government program or government contribution to an international program.

Examples of scrutiny activities performed by other types of public agencies include the general right of review of government operations exercised by an Auditor-General or the more limited right of inspection exercised by an internal auditor or Inspector-General working within a government department. Many scrutiny responsibilities are exercised by public authorities established to ensure that government operations conform to approved standards. For instance, a public service commission or public employment commission might be responsible for monitoring compliance with standards for public employment. The appropriate tests of due performance would include examinations of official conduct to ensure that the rights of the public to fair consideration in hiring were respected, and that the rights of public employees to fair treatment when employed were properly observed. Sometimes, the very body that establishes relevant standards is also the body with responsibilities of scrutiny to ensure compliance with duly-authorised standards. For instance, many consumer protection bodies are established with the power to set standards and with the power to review compliance, often even to the point of holding hearings and determining penalties for proven non-compliance.

Examples of scrutiny activities performed by non-public bodies include monitoring of government operations by interested stakeholders, as in the case of citizen groups acting to represent the health or transport interests of a community. The aim of such community watchfulness is to try to keep government honest by ensuring that officials do not ignore inconvenient but important public interest considerations when developing, for instance, health or transport schemes. The non-public body might be a group of concerned local residents, a national public interest group, or an international body like Transparency International (TI) which promotes models of international best practice in integrity and accountability. Other types of non-public scrutiny include media investigation and reports which are powerful means of informing communities of local, national or international developments relevant to them. Given that publicity is an essential component of accountability, it is difficult to overestimate the importance of the media and particularly of a free press in maintaining a public culture of accountability. A free press is a defining feature of a democratic civil society and a basic prerequisite for democratic governance.



**A disabled voter casts his ballot in post-war Sierra Leone:** one important aspect of elections is that they remind those who govern that they are meant to put the public good ahead of their own particular interests.

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Oversight activity is a more specialised form of accountability. In contrast to scrutiny, oversight activities are typically focused on a narrower range of defined operations. The form of oversight of government operations varies across policy areas. One common form involves an oversight agency responsible for ‘whole of government’ compliance with particular policies. For instance, a privacy commissioner might be empowered to act on citizens’ complaints about lapses in security within government agencies where confidential information is circulated without proper authorisation. Other oversight activities might be confined to one government agency, as in the case of a taxation ombudsman responsible for investigating complaints about the administration of taxation policy. Other oversight agencies might span a limited range of government operations, as in the case of a security watchdog established to ensure that ‘special operations’ in police or internal security forces do not breach working rules and approved practices.

The form of oversight of non-government operations also varies considerably. Under contemporary forms of contract-management, there are many examples of a government department exercising oversight in relation to a non-government service provider contracted to supply public services on behalf of the government. This might occur in relation to skills training or the provision of housing, and in both examples a government agency would be responsible for ensuring that the contractors delivered agreed services. Another instance might be across a defined industry sector, such as where a law establishes a banking ombudsman to investigate complaints from ordinary citizens about banking practices. Alternatively, a public entity might be established to regulate entry into a specific industry, as in the case of an authority approving commercial radio and television licences. Such an authority can impose public terms and conditions on approved private operators.

All forms of oversight seek to measure performance against certain standards. The general aim is to test compliance with those standards and to ensure that the entity in question is operating within proper bounds. One important boundary is that of legal authority. Many oversight activities investigate entities where appropriate legal authority might be stretched or bypassed, sometimes in the name of a supposed higher duty to protect the public interest. This is particularly the case in relation to defence and security operations within government. In such cases, oversight can take the unusual form of confidential or in camera hearings held between the overseer and the entity being supervised. An example might be the work of a parliamentary committee established to monitor the performance of, say, specified national security agencies.

In practice, activities of scrutiny and oversight tend to merge. The terms are frequently used interchangeably, and many accountability arrangements reflect aspects of both forms. Yet it still makes some sense to distinguish scrutiny and oversight as two important components of accountability. In the absence of oversight mechanisms, scrutiny processes might be called on to do the work of both forms of accountability, perhaps to the detriment of one or the other. So too accountability can suffer in situations where oversight mechanisms are called on to do the more general work of public scrutiny.

## VI. Separation of Powers

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An important structural element of accountability in democratic governments is the separation of legislative, executive and judicial powers into different branches of government. A basic separation protects the independence of the judiciary from the political executive holding office as the government of the day, and another separation protects the freedom of the legislature or parliament from domination by the serving executive government. Historically, modern constitutional government first separated out the judicial power from the combined weight of the other two powers: the accountability of government was strengthened by protecting judicial office-holders from interference from the two political branches. Thus a basic element of accountability are the protections enjoyed by the judiciary through such institutional features as security of tenure, freedom of decision-making and the rights of ordinary citizens to approach the courts to seek review of government decision-making.

Accountability is further enhanced through a separation of legislative from executive power, either by forming two distinct branches of government as in the case of presidential systems, or by devising institutional checks and balances to highlight the distinctive responsibilities of the political executive and the legislature. Most parliamentary systems have the political executive drawn from the party or parties commanding a majority of members of Parliament. Without special effort to protect the independence of the law-making function, parliamentary systems can degenerate into the subservience of the legislature to a dominating political executive which expects little more of the political assembly than that it 'rubber stamp' government initiatives. Taking democracy seriously means protecting the independent value of representative assemblies; making democracy effective means promoting the independence of the legislature as the central forum for community deliberation over law and policy. Accountability is best served where parliamentary systems are able to mobilise public *scrutiny* of the executive branch and to subject government operations to sustained *oversight* by parliamentary and other specialist authorities.

The approach to accountability evident in the separation of powers has been called ‘horizontal accountability’, i.e. accountability between equally autonomous if not quite equally powerful institutions. This is in contrast to most forms of accountability which illustrate ‘vertical accountability’, i.e. accountability between unequal institutions where one is acknowledged as the principal and the other as the subordinate agent. At times, both forms of accountability are combined. For instance, in many parliamentary systems the legislature might contend that its relationship with the political executive is one of vertical accountability, with the executive as the subordinate power. But the executive might regard the relationship as one of horizontal accountability, with equal rights on both sides consistent with its interpretation of the separation of powers doctrine.

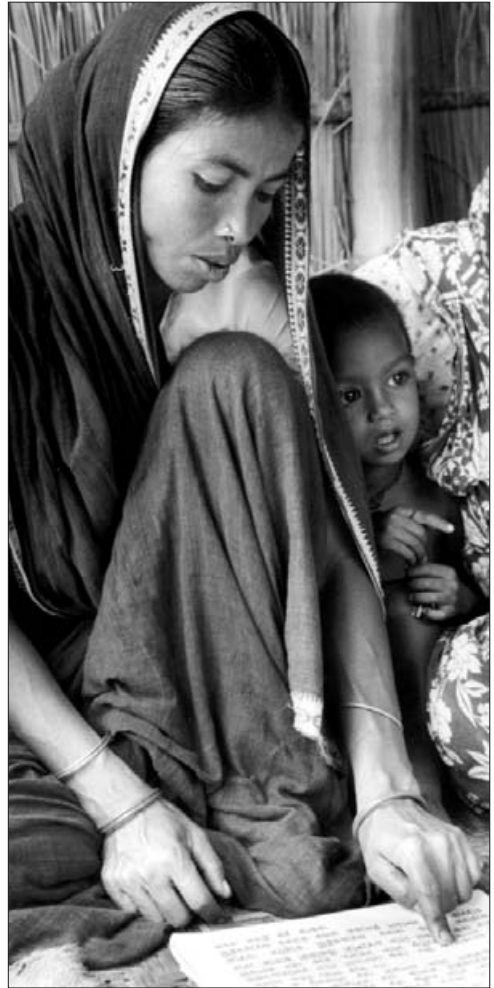


photo: Heidur Netocny/Panos Pictures

**Everyone has a role to play:** *rural literacy class in Bangladesh.* Ideally the community should be active participants in the political process: between elections as well as at election time. But if they are to exercise their proper degree of control over elected governments, they need basic information about government performance.

## VII. Responsible Parliamentary Government

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Parliamentary systems differ in how they structure the freedom of the legislature to manage the agenda of accountability. In terms of Commonwealth history, one of the most influential models of accountability is associated with the so-called ‘Westminster system’ of responsible parliamentary government. Many of the versions of this model reflect more of the imagination of their creators than the facts of any particular historical system. But among the attributed features of this system, one can find some that usefully highlight the evolution of accountability arrangements in parliamentary regimes. Speaking very generally, the democratic development of the ‘Westminster system’ has taken place in three broad phases: initially raising the need for government accountability to parliament and the courts; followed by the expansion of areas of government subject to parliamentary and related public scrutiny; and finally by extension of the range of oversight mechanisms designed to supplement parliamentary scrutiny.

The basic norms of the system of responsible parliamentary government reinforced the principles of representative government. Parliament was central to this institutional arrangement: the link between the people and the government. At their best, parliamentary institutions reinforced the principles of democratic government, moving steadily to expand the franchise to include all adult citizens. While awaiting the arrival of universal suffrage, responsible government systems tended to invest heavily in parliament as the primary agency of public accountability. Parliaments were expected to ‘hold the government to account’ by exchanging the core parliamentary favour of confidence in a particular ministry for formal parliamentary control over the government’s budget.

Putting developments in the judiciary, the courts and legal accountability to one side, most of the early components of parliamentary accountability related to financial control over government taxation and expenditure. An important parliamentary instrument of financial control was the establishment of an independent state auditor with a special relationship to a parliamentary public accounts committee to protect the cause of financial accountability. These arrangements most certainly placed parliament at the

centre of national governance, as the institution responsible for determining who holds executive power and under what terms and conditions.

Yet it is important to recognise that the ‘responsibility’ found in this classic model of parliamentary government was a prize conferred on those elected members capable of commanding a stable parliamentary majority. The responsible government model rested on norms of accountability that elevated the rights of those commanding the largest parliamentary parties. Accepting the responsibilities of executive office, leaders of the majority parties were inclined to emphasise the responsibility side of governance and downplay the accountability side.

Among the elements that helped to promote the cause of public accountability through this phase of responsible parliamentary government are some that go unnoticed or unappreciated. One such element is the growth of a parliamentary reporting staff capable of publishing a public record of legislative debates. Initially a springboard for political executives to broadcast their messages to the wider community, the parliamentary record has proven its democratic worth in ways that would never have been originally anticipated. For instance, now when government officials appear before parliamentary committees to answer questions as part of a parliamentary scrutiny of government operations, the external media can use the official transcript as evidence of the competence of government in managing public affairs. The integrity of the record is rarely in doubt, making it possible for busy parliamentarians and media investigators to return regularly to the accountability exchanges as significant illustrations of the conduct of government.

Accountability is easier to secure in political theory than in concrete practice. Consider the enormous challenge facing those pioneering civic activists interested in enhancing the accountability side of governance, which inevitably meant extending parliamentary controls over the spheres of responsibility exercised by the political executive. The growth of accountability beyond the original replacement of parliamentary for royalist foundations of executive authority was bound to go against the grain of executive convenience. Hence the importance of the later refinements to



**Justice for all:** *street scene in Trinidad and Tobago.* The protections enjoyed by the judiciary through security of tenure and judges' freedom of decision-making, and the rights of ordinary citizens to approach the courts to seek review of government decision-making are basic elements of accountability.

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scrutiny and oversight: left to itself, the attractive banner of 'parliamentary government' could be raised just as easily by unaccountable parliamentary oligarchs (not unlike the 'elected dictatorships' critics sometimes see in cabinet government) as by friends of parliamentary democracy.

Post-colonial developments have done much to reshape the original responsible government model. In many colonial settings, the responsible government model was altered by various attempts at power-sharing. Examples include conventions or treaties between settler communities and indigenous peoples designed to bring greater accountability to government by making it responsive to special community groups or distinct peoples. Another example is the use of federalism to structure power around several levels of government, each with its own centre of responsible government. At their best, federal arrangements provide citizens with multiple points of access to government. Federalism also allows a political system to operate on the principle of subsidiarity, which means that, wherever possible, government services should be provided at the lowest level of government in order to retain the maximum degree of responsiveness to community preferences.

Both of these devices of accountability are frequently found in written constitutions, which are another important instrument of accountability. The responsible government model rests on the extra-parliamentary protections of the common law and the power of the courts to hold government accountable. An important extension of this historical form of accountability comes through the adoption of written constitutions specifying the limited powers of government and protecting the rights of citizens to turn to the courts to keep government within its proper bounds. Written constitutions can also reinforce the powers of a parliament over executive governments, particularly through limitations on the legal authority of political executives to use public finances. Dry as they might seem, the legal provisions of written constitutions provide an important anchor-point for many promising accountability arrangements, including greater democratic control over representative government.

The arrival of democratic government required the reform of parliament to open it up to a wider range of civic interests, including more frequent popular elections and reductions in the lengths of parliaments to allow opportunities for parliaments to become more responsive to changing community opinion. Significant developments here included the steady if slow widening of the franchise (by class, then gender, then age) and the passage of laws designed to protect the integrity of the electoral process and accountability of electoral

participants, for example by protecting voters against the pressures of bribery and corruption at election time. Electoral systems provide the contemporary footing for responsible parliamentary government. The basic norms of accountability of the political executive to the elected political assembly reflects the authoritative value of the people's choice of who should rule. A responsible government is one that is responsible to the wishes of the people's elected representatives. Appropriate electoral systems can vary but the essential requirement is for free (i.e., free from restrictions on public participation) and fair (i.e., involving a fair contest on a level-playing field) elections held at frequent intervals, with no restrictions on the right of adult citizens to exercise their vote as they see fit.

The growth of the responsible government model also required the modification of traditional forms of responsible parliamentary government to permit the growth of the newer forms of accountability associated with sustained parliamentary scrutiny and newer mechanisms of government oversight, including greater public input into and media coverage of the arenas of accountability. This final development raises the issue of how best to promote the public accountability of accountability agencies themselves, to which we return in the Conclusion.

Acknowledgement should also be made of the distinctive challenges facing small states trying to implement responsible parliamentary government. Many small states are vulnerable to external threats to their sovereignty and have few means of holding accountable the powerful international forces that can affect their governance. Small states can also be vulnerable to internal difficulties, one of which derives from the limitations of small political assemblies lacking the capacity for sustained accountability, scrutiny and oversight. It is only small consolation to know that other international organisations, frequently non-government organisations, can sometimes come to the aid of smaller states by informing decision-makers and citizens of resources and options otherwise unavailable. But internal institutional restrictions remain a barrier to effective programs relying on sufficient numbers of non-government elected representatives to hold the political executive accountable. Under such circumstances, the responsible government model cannot work effectively because of limitations on the

capacity of 'the opposition' to carry out the full range of accountability functions. Some solutions can be found in trying to make smaller states and political assemblies more practical by using available resources to carry through with only a limited but important range of accountability functions.

We turn next to examine more closely the place of scrutiny and then oversight in securing democratic accountability. We begin with scrutiny because it is the form of accountability traditionally practised by parliamentary bodies, particularly Oppositions when putting the political executive in the public spotlight. Later we turn to examine mechanisms of oversight which have emerged more recently as supplements to scrutiny. Our aim in both cases is to identify institutions and mechanisms that can, often in quite different circumstances, promote democratic accountability. The fact that there is not one model to suit all political and social circumstances means that each type should be accepted as a useful but limited component in the extensive experimentation required to secure accountability in diverse political environments.

## VIII. Widening the Sphere of Scrutiny

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Public scrutiny is required of government and influential private enterprises to protect the community against abuses of power. The people affected by government and business need reliable information about the performance of those in power in public and private organisations. The rights of individuals and groups can be placed at risk when power-holders determine policy and administration about organisational priorities. To hold decision-makers accountable, the community needs access to information about the intentions and the consequences of policy and administration by the power-holders controlling public and private organisations.

Public scrutiny is called for when communities are searching for ways of holding decision-makers accountable. This can take many acceptable forms, ranging from direct control over organisations that impact on community affairs to quite indirect and limited control over less influential organisations. In many cases, only segments of a community will be mobilised to take an active interest in public scrutiny, with the result that accountability agencies will justify their own conduct with claims that they serve the wider public interest. Claims to represent the public interest can give rise to debate and confusion over conflicting mandates. Therefore it is prudent for accountability agencies to begin their scrutiny not with evaluation of the merits of policy but with verification of the actual track-record and results of scrutinised organisations. In this spirit, we begin with an outline of strategies for public scrutiny of government operations before turning briefly to look at strategies for public scrutiny of non-government entities.

Extending the reach of parliamentary control over political executives means strengthening the links between the people and parliament as well as those links between parliament and the executive government. Public scrutiny of public affairs generally is necessary for effective parliamentary scrutiny of government. Ideally, the community should be active participants in the political process: between elections as well as at election time. The people need basic information about government performance if they are ever to exercise their proper degree of control over elected governments.

Laws protecting the right to vote have to be joined by procedures to allow voters to come to an informed opinion about individuals and political parties competing for their vote. The activities of politicians in parliament must be fully reported in a free media and the qualities of those putting themselves forward for election must be open to public scrutiny. Government restrictions on a free media inhibit the operations of accountability by limiting the free circulation of public criticism of political affairs. It is difficult to over-emphasise the importance for public accountability of an independent media stimulating an active civil society, with many overlapping groups using press, radio and television as fundamental forums for public scrutiny of public affairs.



Basic to effective parliamentary scrutiny is recognition of the legislative supremacy of political assemblies, subject only to the fundamental law of each nation. Elected assemblies serve many functions, of which none is more important than law-making. Accountability requires close parliamentary scrutiny of proposed laws and the compliance of governments with the due processes of the law. A political assembly that is actively and independently involved in the legislative process is very likely to take on a broader range of scrutiny tasks. An assembly's capacity and willingness to bring greater accountability to the process of law-making is something of a test of its ability as an institution of public scrutiny.



photo: Sean Sprague/Panos Pictures

**Back to the people:** *a women's meeting in Kenya.* Accountability practices benefit when the range of individuals and groups helping to set the agenda is widened from an exclusive set of privileged power-holders to be as socially inclusive as possible.

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Effective scrutiny of law-making is best arranged through a committee system where elected representatives can share the burden of accountability. Committees have the added advantage of allowing community participation which is not feasible when the political assembly is conducting its business at large. Again, public participation in the scrutiny of law-making is an important test of a system's ability to take on wider scrutiny tasks. One neglected area for closer scrutiny is delegated or subordinate legislation (for example, regulations) made by executive government with the express

authority of parliament. Regulations are often made without close public scrutiny. Parliamentary scrutiny is greatly enhanced if a parliament has reserved for itself the right to disallow or veto executive regulations if they do not conform to specified standards of appropriate legal form and substance. In relation to bills and regulations, political assemblies face a threshold test of their willingness to promote greater public participation in the scrutiny of the core activities of government.

An open and accountable process of law-making is also the place to test the rights of individual elected members to take an independent stand on matters of law and policy. As a matter of convenience, democratic communities tend to structure their political activities around organised political parties. It is important that these political parties be protected from undue government restrictions. But it is equally important that elected representatives enjoy the right to participate freely and independently in the business of their political assembly. The task of parliamentary scrutiny is often best performed by elected members who bring a degree of independence to the determination of law and policy: balancing party sentiment and community preference. Thus it is important that the internal rules and orders for representative assemblies protect the rights of independent action by elected members.

Although democracy rightly operates through practices of majority rule, the cause of accountability is promoted when all voices have ample opportunities to participate in the deliberative process. Adequate parliamentary scrutiny of government requires that political assemblies see themselves as 'deliberative assemblies', providing opportunities for the widest range of community voices to participate and be heard in the process of public decision-making. One important ingredient of public scrutiny is an open and participative deliberative process, where the governing members have obligations to hear and respond to the fullest range of non-government opinions. It is one thing to allow rights of access to non-government interests; but it is equally important to provide occasions for government to hear and respond to such interests. This balance of argument and public debate is at the heart of genuine parliamentary deliberation, allowing the processes of scrutiny not simply to open government up to public view but also to contribute to better public decision-making.

Scrutiny requires protections of the rights of elected members to participate in effective committee processes. Among these protections are rules and facilities: for instance, rules making it possible for even newly-elected members of political assemblies to serve on committees, rules protecting the even distribution of places among the parties represented in the political assembly; and facilities such as staffing assistance and research capacity that can enhance the potential of committees to carry out their work.

Just as important to effective scrutiny is the co-operation of the executive government in releasing timely, accurate and accessible information on law and policy. No scrutiny mechanism can be expected to make a useful contribution to open government if government does not play its part in releasing relevant materials. It is characteristic of scrutiny operations that they are frequently reactive in nature - the initiative resting with the political executive to release materials at its own convenience. The public value of many scrutiny processes benefits greatly where the timetable is driven more by the institutional interests of the representative assembly.

Examples of effective scrutiny operations can be found in those parliamentary institutions which have taken the initiative and not waited for the political executive to set the pattern of initiative and response. Government by executive regulation illustrates this situation well. Among the best placed of scrutiny mechanisms are those which place the onus of accountability on the executive to comply with legislative terms and conditions, for example that proposed government regulations lapse unless tabled in the political assembly or affirmed through some parliamentary mechanism within a specified period. Another example is that government regulations may be disallowed within a specified period of parliamentary scrutiny if such scrutiny discloses that they breach parliamentary rules designed to limit the content and character of subordinate legislation.

Elected political assemblies are not the only source of effective public scrutiny of government. In many instances, governments themselves establish specialist bodies to take up the role of external critic of government. Many political executives appreciate that their own credibility in the eyes of the public will be strengthened if they establish appropriate

checks and balances in public decision-making. An example is the establishment of environment advocates with responsibility for monitoring the performance of government in protecting the environment. Such advocates can subject government to close scrutiny, drawing on their expert knowledge of the relevant policy field and establishing partnerships with non-government organisations also interested in the scrutiny task. Another example is the establishment of research bureaux within government with a charter to engage in independent analysis of policy impacts and options for alternative policy strategies. Research bodies within government that are encouraged to work at arm's length from those implementing government policy can use their access to scarce information to provide interested groups with an informed portrait of policy successes and failures.

Scrutiny of non-government entities can be structured by government and shared with well-placed non-government parties. The whole regime of 'corporate governance' is consistent with democratic governance in trying to apply standards of openness and transparency to business enterprises. Government can provide the basic legal framework for governance within the private sector and then expect institutions within civil society such as stock exchanges to manage the reporting and accountability obligations of participating firms. Public scrutiny does not always require constant involvement from elected political representatives, who can demonstrate their leadership by avoiding political interference and instead establishing monitoring mechanisms that are directly responsive to the modes of the commercial market.

## IX. Overhauling Oversight

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As used here, oversight refers to more finely-targeted exercises in accountability. This is a more specialised activity of government accountability that can be performed either by elected members willing to specialise in defined policy areas or, more frequently, by a dedicated public agency established by the political assembly to act as an independent umpire. Typically, oversight reviews performance against known standards, as for instance in the case of a police integrity unit responsible for investigating suspected cases of unethical or improper official police conduct. The effectiveness of such oversight is dependent on the credibility of the overseeing authority itself abiding by established standards acknowledged by those whose conduct is being reviewed. The topic of the accountability of scrutiny and oversight bodies is an important one that we take up again in the Conclusion.

Oversight can be overhauled and improved. All accountability agencies have a tendency to conserve their style of operations and to ‘play it by the book’. Scrutiny activities are the more general of the two forms of accountability under examination here and display greater flexibility in their modes of approach. Oversight activities have historically displayed greater compliance with ‘proper procedures’ because so many of their interests relate to possible breaches of standards. Oversight activity comes close to regulatory activity. Contemporary approaches to regulation are undergoing reform from traditional ‘black letter’ forms of heavily proscriptive penalties to newer forms of ‘smart regulation’ which try to devise incentives to motivate desirable individual and organisational conduct.

The institutions of civil society, particularly those operating in a nation’s economy, also have oversight responsibilities. The market gives rise to many forms of detailed monitoring of market developments. One of the most prominent of a democratic nation’s oversight institutions is an independent central bank to supervise the banking system generally and to manage a nation’s monetary regime. Central bank independence illustrates the limits that can sometimes be imposed on the powers of the political executive and the legislature. An independent central bank might accept a public accountability to report on its activities through meetings with ministers



**In the picture:** *reading at a newsstand in India.* It is difficult to overestimate the importance of the media and particularly of a free press in maintaining a public culture of accountability. A free press is a defining feature of a democratic society and a basic prerequisite for democratic governance.

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and the political assembly. But it would be an abuse of democratic accountability for a political executive to expect that a central bank be totally responsive to the will of the government of the day. The reason for a central bank's independence is that it is meant to protect the longer-term public interests of sound monetary policy.

Among the accountability institutions monitoring the operations of a central bank are international financial institutions such as credit ratings agencies. Again, it would be an abuse of democratic accountability for a central bank to render itself a captive of such international agencies and



manage its affairs so that they were simply responsive to the agencies' will. As ever, accountability requires a balance of responsiveness to external expectations and responsibility to internal obligations, particularly those flowing from a legislative charter of independence. This is not to deny that the international ratings agencies have an important role in the increasingly global world of accountability: they are prominent examples of oversight institutions which report developments against established standards. These international agencies attempt to focus their oversight on a limited range of market movements and their reports are designed to help the international community come to a judgment about the reliability and integrity of a nation's economic management.

In the political field, many oversight activities are conducted directly by elected political assemblies. An example might be a parliamentary committee established to monitor electoral law and practice and particularly to provide assurance to parliament that the electoral authorities are performing appropriately. Another example might be a parliamentary committee established to fund the independent audit agency, to help appoint the chief executive of that agency and to exercise a close degree of watchfulness over the audit agency. One reason for this type of close monitoring might be to try to detect any signs of executive interference with the proper independence of an audit agency. Thus while the state audit agency itself performs a general scrutiny function over government operations, a parliamentary oversight committee engages in this instance in a more limited form of accountability.

In many other cases, political assemblies prefer to stay with the more general form of accountability associated with parliamentary scrutiny, leaving the specialised tasks of oversight to arms-length agencies. Many such oversight agencies are regulatory in nature. They contribute to better accountability by ensuring that government complies with, for example, appropriate standards of financial reporting (one important role for an external auditor) or that business complies with, for example, appropriate standards of consumer protection (one important role of a consumer protection commission). Oversight agencies are often termed ‘watchdog’ agencies: they have a watching-brief to protect parliament and the public against sub-standard public administration or private business.

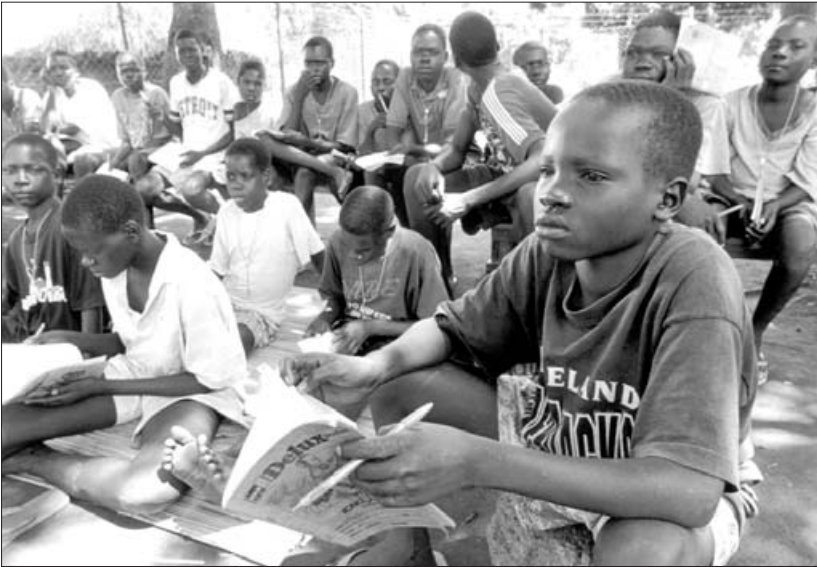
In some cases, the work of accountability is done simply through the power of publicity and reporting to parliament, as for example in the case of many Ombudsman offices, established to provide citizens with a right of redress against unresponsive bureaucracy. Many spheres of private business now use Ombudsman-type bodies to help concerned individuals deal with their complaints against a particular industry. In other cases over policy oversight, the detailed work of accountability is performed through public hearings and investigation, with published reports produced to show government the way forward for public policy, as for example in the case of human rights agencies or law reform commissions. In still other cases, the task of oversight is performed through regulation and regulatory review, as for example in the case of insurance or superannuation commissions. In a small number of cases, the oversight side of accountability is done by taking government to court, as for example in the work of directorates of public prosecution which exercise an independent assessment of the merits of evidence assembled by policing authorities.

A professional public service is protected by quite a number of oversight mechanisms. Increasingly the core values of merit and impartiality are centrally proclaimed, with considerable administrative discretion placed with agency executives to determine how best to promote such values in the practical work environments of each agency. In place of traditional forms of centralised management, many public service systems increasingly use a balance of routine devolution and strategic oversight, establishing various

types of oversight mechanisms to allow for tests of government agencies' compliance with proclaimed standards. Such tests can be in the form of appeals mechanisms, as for example in the areas of employment or entitlement rights, or in the form of inspectorates, as in the areas of financial accountability or fraud control. Many central personnel agencies have replaced the traditional reliance on centralised control with less intrusive oversight of broad strategy, with greater operational accountability on line agencies to manage as they see fit, within the general framework established from the centre. This policy of devolution allows the central agencies to take responsibility for general oversight of the system, while agency heads have greater responsibility for operational details. The task of oversight in these circumstances implies that those responsible for oversight use their powers to ensure that appropriate standards are being met.

In many areas of public administration, the determination of professional standards helps define the system of shared values. The task of oversight is to ensure that these professional standards are being adhered to. An example might be the internal integrity unit of a police department, responsible for monitoring police employees' compliance with established professional standards. Oversight and integrity frequently come together because the task of oversight is to investigate performance to ensure that it complies with appropriate standards of professional integrity.

One area of growing oversight activity is public sector ethics. Many countries now have ethics or integrity commissions responsible for establishing and monitoring standards of official conduct. The standards can take the form of a code of ethics, usually dealing with general values of public service, or a code of conduct, usually dealing with employment obligations. The standards can be established either through legislation or through the authority of a supervising or regulatory body. It is unusual but not unknown to have the standards-setting body also perform the role of investigator of alleged misconduct. Frequently, the two roles of promoting and investigating due standards are separated, with the responsibility for oversight resting with a separate reviewing agency with a direct line of reporting to employers.



**It all begins at home:** *young people at a class in Uganda.* The media, trades unions, professional associations, religious bodies, schools, universities and all others in civil society have important parts to play in nurturing a basic sense of social responsibility among citizens.

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With the breakdown of rigid separations between public and private sectors in many societies, democratic governance faces new challenges in devising accountability regimes for such growing areas as ‘the third sector’, defined as the non-for-profit sector. As governments delegate considerable public services to the private sector and also ‘the third sector’, new oversight arrangements are being sought which can provide the community with assurances about the quality and probity of these new forms of delegation. The checks and balances of an open and competitive economy can help in many ways, although there remains a role for government in maintaining the momentum of unrestrictive commercial exchange. So too the public spirited ambition of many of the advocates of ‘the third sector’ can promote the public value of private volunteers. Yet it is not the case that delegations to ‘the third sector’ bypass the need for public oversight: even volunteers performing important public services can benefit, just as much as the communities being served, from periodic review by accountability agencies.

## **X. Conclusion: Back to the People**

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Accountability, scrutiny and oversight come together as part of what the Commonwealth has described as a ‘culture of integrity’ that underpins good governance. No amount of regulation can keep up with changing social developments and with the changing social pressures on decision-makers in private and public spheres. It is vital that national governments accept their responsibility to promote a system-wide commitment to public integrity among leading decision-makers, and to provide incentives to those in offices of authority to invest in this very fundamental form of capacity building displayed through ‘a culture of integrity’.

But it is unreasonable to expect governments to accept sole responsibility for the ‘culture of integrity’. Civil society covers all those social networks that promote the values of civility and tolerance in social dealings. Churches, the media, trades unions, professional associations, schools and universities all have important parts to play in nurturing a basic sense of social responsibility among citizens. Where this spirit of social responsibility is strong, the tasks asked of accountability agencies are reduced to manageable proportions. In the absence of widespread social responsibility, national governments have no alternative but to expect that accountability agencies will ‘crack down’ on irresponsible conduct by those in positions of power. But negative campaigns designed to punish misconduct are, at best, short-term strategies: longer-term progress depends on cultivation of public spirit across society and a commitment to a democratic ethos or partnership of responsible decision-making. Civic responsibility implies that citizens honour their obligations to help others manage their own affairs. Government can assist but it cannot replace the contribution of the many private associations and institutions to a nation’s civic culture.

All citizens can play a part in the promotion of democratic accountability. By extending the sphere of civic responsibility to include more than the traditionally privileged groups, we can begin to refine the often-ignored accountability of many agencies of accountability. For example, by widening the sphere of stakeholders with rights to participate in reviews of environmental strategies, we broaden the catchment of social interests that flow into the scrutiny and oversight of public decision-making. Accountability

practices can benefit where the range of individuals and groups helping to set the agenda of accountability is widened from an exclusive set of privileged power-holders to more socially-inclusive forms. The presence of traditionally-excluded minorities can transform mechanisms of accountability by making them more responsive to a wider range of relevant social interests.

Democratic accountability implies that decision-makers are accountable to the people. Popular sovereignty means that those in power acknowledge that they act as representatives of the people from whom all legitimate public power is derived. In most contemporary democracies, the people participate most frequently through elections. Hence, one of the most pressing final challenges is to awaken voters to their full rights as agents of accountability. Representative governments have a tendency to take voters for granted, just as voters tend to take for granted the impediments and limitations facing reform of government practices. Many spheres in our societies – particularly within government and civil society – have a responsibility to help inform voters of their rights to use scrutiny and oversight to enhance democratic governance. As former Head of the Commonwealth Chief Emeka Anyaoku said (ESU address, December 1999): ‘...democracy is not a once and for all electoral conquest. Building democracy, like nation building itself, is a continuing chore, calling for vigilance and commitment to tackle effectively whatever impediments may exist in the way of consolidating democracy in individual countries’.

This Background Paper will have served its purpose if accountability, scrutiny and oversight find their place in this ‘continual chore’ of democracy promotion.

## **DEEPENING DEMOCRACY**

The reports of the Observer Groups which are present at elections in Commonwealth countries and the reports of the workshops in the Deepening Democracy series are also available from the Political Affairs Division of the Commonwealth Secretariat (see address at front of this pamphlet).

### **Deepening Democracy Workshops**

*Reports of these workshops are currently available:*

- *Money and Democratic Politics, November 2001*
- *Accountability, Scrutiny and Oversight, May 2001*
- *Broadcasting and Democracy, April 2001*
- *Decentralisation and Devolution, June 2000*
- *Democracy and Small States, May 2000*
- *Gender and Democracy, February 2000*
- *Domestic Election Observers, May 1999*
- *The Role of the Opposition, June 1998*

### **Observer Group Reports**

*At the time of publication the most recent Observer Group reports are:*

- *Nigeria National Assembly and Presidential Elections, April 2003*
- *Kenya General Election, December 2002*
- *Pakistan National and Provincial Assembly Elections, October 2002*
- *Sierra Leone Presidential and Parliamentary Elections, May 2002*
- *Lesotho General Election, May 2002*
- *Zimbabwe Presidential Election, March 2002*

*Other Publications include:*

- *Good Commonwealth Electoral Practice, June 1997*
- *Voting for Democracy: the Report of the Conference of Commonwealth Chief Election Officers, March 1998*
- *Political Financing in the Commonwealth, December 2001*

In this, the second publication in the Commonwealth Secretariat's *Taking Democracy Seriously* series, academic John Uhr:

- examines the roles and responsibilities of key democratic institutions in ensuring a culture of public accountability;
- highlights common problems and issues; and
- puts forward conclusions and recommendations for consideration by those who are working to improve the quality of Commonwealth democracy

