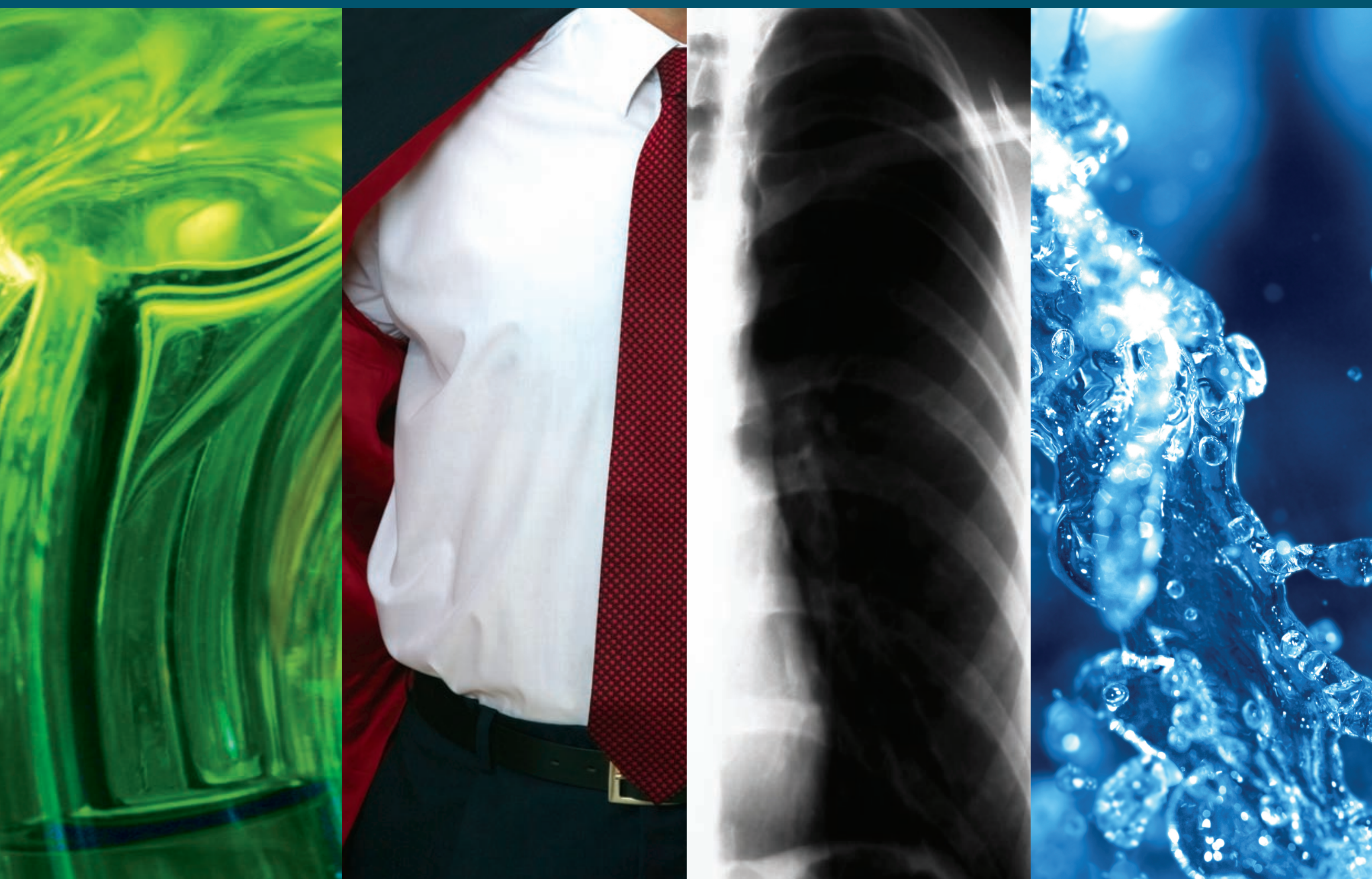
Case studies Series

Business Fighting Corruption: Experiences from Africa



United Nations Global Compact Learning Forum

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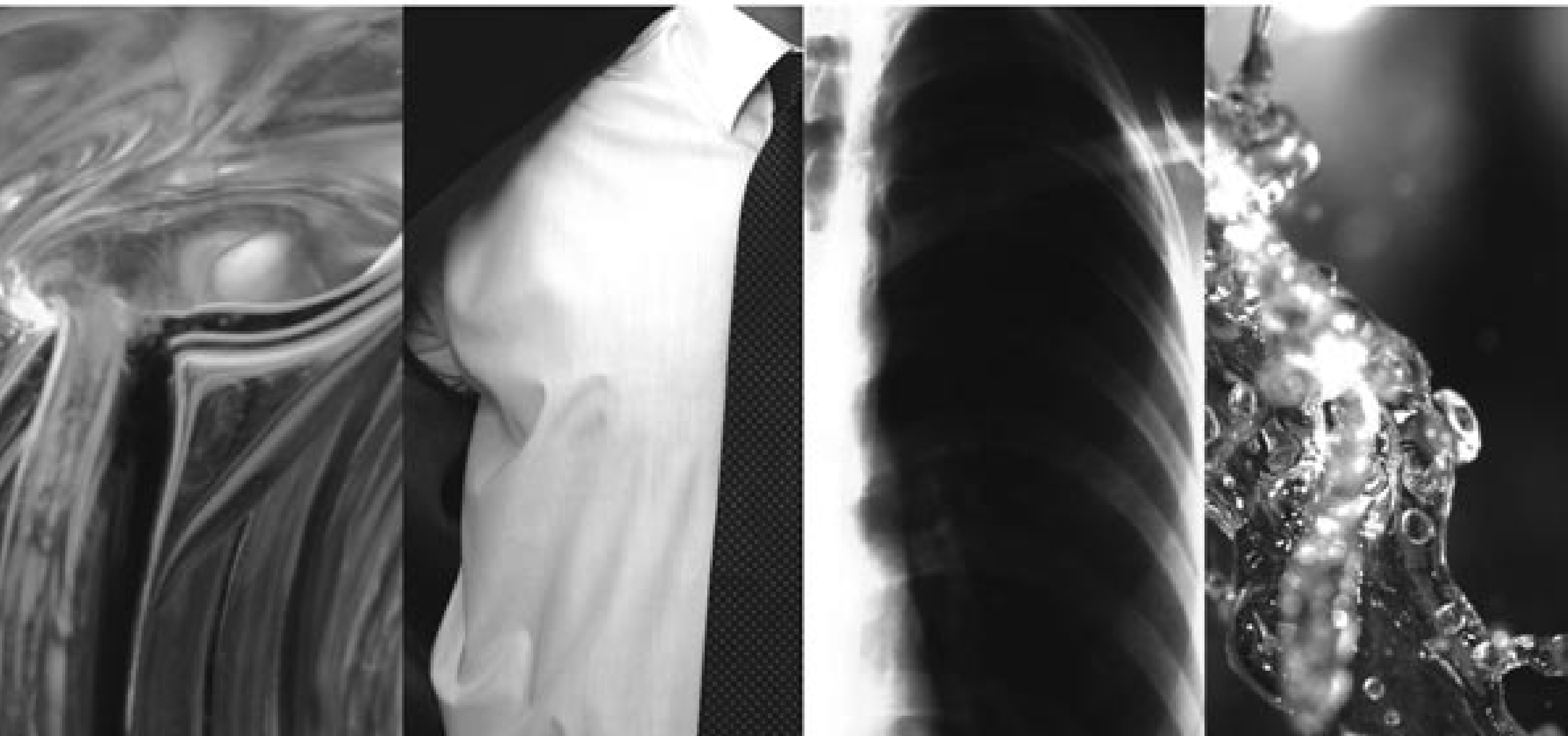

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Designed by Andri Steyn, South Africa

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Foreword

It is universally acknowledged that eliminating corruption is a prerequisite for societal and economic development. Good governance and transparency are building blocks of modern democratic societies. The question is no longer whether corruption hinders sustainable development, but much more how societal actors can collaborate to eliminate corruption in all its forms, including bribery and extortion.

Through its tenth principle, the UN Global Compact asks the private sector to do its part in fighting and preventing corruption. Companies are expected to integrate the principle into their day-to-day business operations, and to engage in collective action and multi-stakeholder initiatives against corruption.

In November 2006, Global Compact participants gathered for the 4th International Learning Forum Meeting, which took place in Ghana. Among others, the topic of collective action against corruption was high on the agenda. To facilitate the debate, two country case studies were developed and presented: the South Africa National Anti-Corruption Forum and the Malawi Business Action Against Corruption. In addition, the Regional Learning Forum asked the Ethics Institute of South Africa to document the experiences of five individual organizations in their quest to create an ethical culture with accompanying operational guidelines and processes.

This publication captures these case studies and good practices, with the aim of assisting managers in the development of their organization's approaches to preventing corruption and increasing transparency. It also shares some background information on existing concepts and frameworks with a special focus on Africa, and additional knowledge on related topics such as monitoring and measuring the impact of anti-corruption initiatives.

This publication came into existence through the personal engagement of some dedicated individuals. First of all, I would like to thank all the managers within the companies and organizations who agreed to share their own experiences for the case study development. Similarly, a special word of gratitude goes to the case authors – who spent relentless hours in interviews, reading background material and in drafting their findings – as well as to the other contributors to this publication. Girum Bahri and Liz Stewart spent great efforts in their meticulous editorial work. Last but not least, I would like to thank the German Ministry for Economic Cooperation and Development (BMZ); and the Gesellschaft für technische Zusammenarbeit (GTZ) for their generous financial contribution.

I hope this book inspires managers throughout Africa to take up the fight against corruption, and towards the establishment of an ethical and value-driven corporate culture.

Ellen Kallinowsky
Global Compact Regional Learning Forum
Pretoria, June 2007

The Global Compact

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards and the environment. The principles are as follows:

Human rights

Principle 1 | Businesses should support and respect the protection of internationally proclaimed human rights; and
Principle 2 | make sure that they are not complicit in human rights abuses.

Labour

Principle 3 | Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4 | the elimination of all forms of forced and compulsory labour;
Principle 5 | the effective abolition of child labour; and
Principle 6 | the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7 | Businesses should support a precautionary approach to environmental challenges;
Principle 8 | undertake initiatives to promote greater environmental responsibility; and
Principle 9 | encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10 | Businesses should work against corruption in all its forms, including extortion and bribery.

The relevance of the United Nations Convention against Corruption for African nations and its influence on business fighting corruption

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Corruption reduces economic growth.

Introduction

One by-product of the accelerating globalization process[1] of our time is that the phenomenon of corruption has gained more significance in the international community than it has ever experienced before. Whether it is because international newspapers increasingly report on allegations of corruption in all its forms, or because international non-governmental organizations (NGOs) such as Transparency International (TI) 'name and shame' individuals, companies and organizations supposedly involved in corrupt activities, corruption has long passed the stage of being a taboo.[2] Moreover, although there is no empirical evidence to suggest that globalization has led to increasing corruption, the reduction of trade barriers and escalating opportunities for the free flow of goods, information and money appear to facilitate the occurrence of worldwide corrupt practices.

This, in turn, has led to increasing awareness of the enormous negative social and economic consequences of corruption, particularly for the poor in developing countries,[3] but also for public and private investment opportunities. In fact, corruption reduces economic growth by lowering incentives to invest (for both domestic and foreign entrepreneurs) and therefore has huge adverse effects on private investment and economic growth.[4]

As a consequence, many national, regional and international initiatives and instruments have been launched to fight corruption in all its manifestations.[5] However, despite increasing efforts to fight this phenomenon, corruption is still widespread. This appears to be particularly true of African nations. For example, the former Nigerian president Olesegun Obasanjo recently stated that corruption costs Africa an estimated 25 per cent of its collective national income, and US$148 billion are lost each year as the result of corruption.[6] These numbers are alarming, and raise the question of how corruption can be tackled effectively on the African continent. Since the private sector is also involved in corrupt activities in many instances,[7] the question of how to involve business in the fight against corruption is pressing.

The UN Convention against Corruption (UNCAC), adopted by the UN General Assembly in October 2003,[8] was intended to give answers to these and similar questions. This article aims to investigate the potential impact of the UNCAC on the establishment of an enabling environment in the African region to fight corruption, as well as on business fighting corruption.

The United Nations Convention against Corruption: an overview

The UNCAC was signed on 9 December 2003 in Merida, Mexico, and entered into force on 14 December 2005.[9] As of 5 September 2007, a total of 95 nations have ratified the convention, most of them developing countries. With its almost all-embracing and universal[10] character, the UNCAC is the strongest anti-corruption convention to have been adopted so far. It complements other regional anti-corruption instruments such as the Inter-American Convention against Corruption of the Organization of American States (OAS);[11] the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention);[12] and the African Union Convention on Preventing and Combating Corruption (AUCPCC).[13]

The UNCAC is divided into eight chapters. Most importantly, it requires states that have ratified the convention to

- *Prevent*: This chapter covers the public and the private sector. It includes the requirements to establish anti-corruption bodies; to foster the involvement of civil society in anti-corruption efforts; and to emphasise transparency in financial matters and public procurement (chapter II, Preventive measures, article 5 ff).
- *Criminalise*: This chapter includes provisions on bribery of national and foreign public officials as well as officials of public international organizations, embezzlement, abuse of functions and trading in influence and corrupt behaviour (chapter III, Criminalization and law enforcement, article 15 ff).
- *Cooperate internationally*: This section covers every aspect of the fight against corruption, including prevention, investigation and the prosecution of offenders, with particular focus on mutual legal assistance and extradition. It includes provisions requiring that countries that have no legal assistance agreement with third countries can have direct recourse to the UNCAC to request legal assistance or extradition. It also weakens the requirement of 'double incrimination' to a meaningful extent[14] (chapter IV, International cooperation, article 43 ff).
- *Recover assets*: A major breakthrough is the chapter on asset recovery, which is explicitly referred to as a fundamental principle of the convention and is vitally important for countries

The UNCAC has the potential to play a major role in building an enabling environment to fight corruption.

in which state funds or the proceeds of natural resource extraction have been misappropriated by kleptocrats and corrupt elites and transferred into foreign accounts. To facilitate the complicated legal process of recovering stolen assets, the chapter foresees enhancements in international cooperation and mutual legal assistance (chapter V, Asset recovery, article 51 ff).

- *Support developing countries in implementing the UNCAC*: The chapter on technical assistance aims to support developing countries to implement the convention by, inter alia, establishing training programmes for states parties personnel responsible for preventing and combating corruption (chapter VI, Technical assistance and information exchange, article 60ff).

However, many of the provisions in the UNCAC are optional,[15] and it is left to the discretionary power of member states to implement them. In addition, an effective implementation mechanism that monitors state compliance with the UNCAC has yet to be adopted, which weakens the convention considerably.

Does the convention play a major role in building an enabling environment in the African region to fight corruption?

The influence that the UNCAC might have (much will depend on the effectiveness of its implementation mechanism, which has still to be established) on the African region in terms of fighting corruption is enormous. Corruption in Africa is at least perceived to be more prevalent than anywhere else. According to Transparency International's (TI) Corruption Perceptions Index (CPI) for 2006, for example, no fewer than 11 African countries are ranked among the 22 least performing countries.[16]

On the other hand, African countries so far have demonstrated – at least on paper – relatively strong political will to tackle corruption in all its forms. Despite the adoption of many national[17] and regional initiatives (most prominently the AUCPCC),[18] as of 5 September 2007, no fewer than 30 African countries (of a total of 53 nations) have ratified the UNCAC, which demonstrates a clear commitment to the fight against corruption.[19]

With its almost all-embracing character, the UNCAC has the potential to play a major role in building an enabling environment to fight corruption in the African region. Although the UNCAC has been labelled a 'patchwork' of other anti-corruption conventions, it is broader than anti-corruption conventions that have been adopted so far. Its chapter on criminalization and law enforcement, for example, is comprehensive and includes almost all elements of an offence related to corruption. African countries that have ratified the convention are henceforth required, inter alia, to penalize bribery of national and foreign public officials as well as officials of public international organizations, embezzlement and many other corruption-related offences. By including parliamentarians in the official definition of article 2 (including the term 'public official') the convention is broader than many other anti-corruption conventions.

In terms of prevention of corruption, the convention requires the adoption of a national anti-corruption strategy, which includes preventative anti-corruption policies and practices; the promotion of the participation of society in anti-corruption efforts; and collaboration with one another and with regional and international organizations to exchange 'good practices' in this context (article 5). Article 6 requires the establishment of an anti-corruption body that shall develop, maintain, revise and monitor the implementation of effective, coordinated anti-corruption policies within the state party's strategy mandated by article 5. Here, too, the requirements are more comprehensive than any anti-corruption convention adopted so far.

The UNCAC is vitally important in terms of the recovery of stolen assets. In many African countries kleptocrats and former dictators (for example Nigeria's former president Sani Abacha)[20] have transferred state funds and the proceeds of natural resource extraction to foreign accounts. Chapter V establishes the recovery of stolen assets as a fundamental principle of international law and facilitates the highly complex recovery process to a meaningful extent.

However, although the potential of the convention for African countries in terms of fighting corruption is enormous, many African countries have ratified it without creating the conditions for active implementation. Full compliance with the UNCAC entails adapting national legislation and enacting effective implementing regulations. Many African countries, however, do not have the know-how to fully implement at least its mandatory provisions.

Hence, technical assistance (in the area of good governance too) is essential to facilitate the process of implementation in partner countries. The German Technical Cooperation (GTZ), for example, has provided technical assistance in the context of anti-corruption in many African countries. This includes support to the Serious Fraud Office (an institution established according to article 6) in Ghana; anti-corruption education with the focus on preventive initiatives of the Anti-Corruption Commission in Sierra Leone; and assistance in the implementation of the South African anti-corruption law, with the emphasis on standards of integrity in public administration.

Business fighting corruption and the UNCAC

The UNCAC also addresses the private sector in the fight against corruption. In terms of prevention, article 12 requires states to enhance accounting and auditing standards in the private sector; adopt effective, proportionate and dissuasive civil, administrative and criminal penalties for failure to comply with such measures; and disallow the tax deductibility of expenses that constitute bribes. To design and safeguard the integrity of private entities, this includes the promotion of codes of conduct, guidance on corruption, corporate governance codes, conflict of interest regulations and internal audit controls.

In terms of criminalization and law enforcement, several provisions oblige states to adopt measures that criminalize the intentional bribery of national public officials (article 15), foreign public officials, and officials of public international organizations (article 16). Moreover, states shall consider adopting such measures that criminalize bribery in the private sector as well as those that criminalize embezzlement of property in the private sector (articles 21, 22). Article 26 establishes the liability of legal persons for participation in offences established in accordance with the UNCAC, since it touches the sensitive issue of the legal personality of corporations. However, although states are required to adopt measures that establish the liability of legal persons, the state decides whether liability is established through criminal, civil or administrative measures, which weakens this article significantly.

Conclusion

Fighting corruption on the African continent remains one of the biggest challenges in terms not only of good governance and poverty reduction, but also of investment opportunities. The UNCAC as the most comprehensive – and the only global – anti-corruption convention addresses many aspects of a coherent fight against corruption. It has huge potential for an efficient and effective fight against corruption in African countries. However, to fully implement the convention, technical assistance will be necessary, particularly for developing countries.

Without addressing the supply side of corruption as well, the fight against corruption will probably be abortive. Apart from fighting corruption per se, addressing private sector corruption has a number of benefits: enhancing investor confidence; protecting consumer interests; and denying the supply side of corruption in the public sector. The UNCAC is a welcome correlative to business fighting corruption initiatives such as the UN Global Compact.

Notes

1 In general, globalization is a contested term and there is no accepted definition. However, it is widely agreed that 'it is foremost an economic process'. In this sense, 'economic globalization' means 'a process associated with increasing economic openness, growing economic interdependence, and deepening economic integration between countries in the world economy.' See Deepak Nayyar, Towards Global Governance, in *Governing Globalization*, Oxford, Oxford University Press, 2002, pp 3–18, at p 6.

2 The process of 'breaking the taboo of corruption' started in the early 1990s, considerably influenced by the foundation of TI in 1993 (see http://www.transparency.org/, accessed on 9 April 2007) as well as by efforts of the World Bank, which initiated its campaign against corruption in 1996, when the president, James D Wolfensohn, gave a famous speech in which he described 'the cancer of corruption' as one of the major impediments to development.

3 The Country Review Report and Programme of Action of the Republic of Ghana, for example, states: 'Pervasive and rampant corruption has distorted the economies of many African countries, as scarce resources are diverted from supporting economic growth and providing essential social services to service debt repayments accumulated by authoritarian and dictatorial regimes, corrupt politicians and bureaucrats. It is the poor who pay the high price of corruption – they are denied basic social services and have no resources to pay bribes to corrupt public servants.' *See* African Peer Review Mechanism, Country Review Report of the Republic of Ghana, June 2005, available at http://www.nepad.org/2005/files/aprm/APRMGhanareport.pdf (accessed 11 July 2007), at p 35, paragraph 75.

4 See Pulo Mauro, Corruption: Causes, Consequences and Agenda for Further Research, 1998, available at http://www.worldbank.org/fandd/english/pdfs/0398/010398.pdf (accessed 4 September 2007).

5 Initiatives and instruments that aim to tackle corruption include the anti-corruption strategies of international financial institutions (for example the World Bank and the European Bank for Reconstruction and Development (EBRD) have adopted anti-corruption strategies), and regional and international anti-corruption conventions

(anti-corruption conventions have been adopted for example by the African Union (AU), the Council of Europe (CoE), the Organization for Economic Cooperation and Development (OECD) and the Organization of American States (OAS), all aiming to fight corruption in their regions). Cf the adoption of the African Union Convention on Preventing and Combating Corruption (AUCPCC) in Maputo on 11 July 2003 (entry into force on 6 August 2006).

6 See British Broadcasting Corporation (BBC), Africa Corruption Crisis, 17 February 2006, available at http://www.bbc.co.uk/worldservice/learningenglish/newsenglish/witn/2006/02/060217_nigeria.shtml (last accessed 11 July 2007).

7 Cf Lahmeyer International's involvement in the bribe scandal in the Lesotho Highlands Water Project (LHWP).

8 Cf UN General Assembly, Resolution 58/4 of 31 October 2003.

9 The convention can be found at http://www.unodc.org/unodc/crime_convention_corruption.html#workinggroup (accessed 10 April 2007).

10 Unlike regional conventions, the UNCAC has universal reach and can be ratified by every state worldwide.

11 The convention was adopted in Caracas on 29 March 1996. It entered into force on 6 March 1997. The Inter-American Convention was the first anti-corruption convention specifically aimed at tackling corruption.

12 The OECD Anti-Bribery Convention was adopted on 17 December 1997 and entered into force on 15 February 1999.

13 Adopted on July 2003 and entered into force on 4 August 2006.

14 This means that it is not necessary that an alleged behaviour should be described as exactly the same offence in two countries for a request for legal assistance or extradition to be implemented.

15 There are three major categories of provisions in the convention: mandatory requirements (obligation to take legislative or other measures); optional requirements (obligation to consider); optional measures (measures states parties may wish to consider). See UNODC, Legislative Guide for the Implementation of the United Nations Convention against Corruption, New York, 2006, available at http://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf (accessed 31 July 2007), at p 1.

16 These countries are Guinea, Sudan, DR Congo, Chad, Equatorial Guinea, Côte d'Ivoire, Sierra Leone, Nigeria, Kenya, Congo (Republic) and Angola. Cf Transparency International, Corruption Perceptions Index 2006, available at http://www.transparency.org/content/download/10825/92857/version/1/file/CPI_2006_presskit_eng.pdf (accessed 11 July 2007).

17 Many African countries, including Ghana and South Africa, have adopted national strategies that aim to fight corruption. Cf in

this context U4 Helpdesk Query, national action plans to combat corruption (with focus on experience in sub-Saharan Africa), available at http://www.u4.no/helpdesk/helpdesk/queries/query42.cfm (accessed 10 April 2007).

18 This includes the Economic Community of West African States (ECOWAS) Protocol on the Fight against Corruption, the Southern African Development Community (SADC) Protocol against Corruption and events such as the African Forum on Fighting Corruption, which is designed to find a common African position to fight corruption.

19 Cf UNODC, UNCAC: Signatories and Ratifications, available at http://www.unodc.org/unodc/crime_signatures_corruption.html (accessed 5 September 2007).

20 See The Southern African Information Portal on Corruption, The Nigerian Experience, available at http://www.ipocafrica.org/cases/assestsrecovery/nigerianexperience/index.htm (accessed 5 September 2007).

Measuring and monitoring corruption: challenges and possibilities

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Introduction

Measuring corruption is not quite as simple (or relaxing) as counting sheep. Any attempt to measure corruption is bound to face certain challenges. The first problem arises from trying to measure what is hidden in a society, which poses certain methodological questions. The second, more political problem is that people often do not want to know the real levels of corruption. There are those who believe that if the figures come in too high, it will be detrimental to investment in the country. On the opposite side are those who fear that if figures are too low, one will struggle to galvanise people (such as the business community) into action.

To address the first fear, one has to acknowledge that the investment community has a general sense of corruption levels in any event. People are seldom surprised by the results of a survey (although tangible figures always sell a few more newspapers). To those harbouring the second fear, one can use a similar argument. People know to what extent corruption is problematic to them, and a single survey result will not do much to bring them to action if they do not already have a sense of the problem. The purpose of a survey, however, is to provide a benchmark against which one can assess the situation over time. Should surveyed corruption levels double over a period of five years, it would make a much better case to show that things are deteriorating and that we have to do something about it. Chances are that people will already have a sense of this, and the figures help to confirm that they are not merely suffering from apocalyptic paranoia.

Current mechanisms

The first (and still most prominent) instrument for measuring corruption was Transparency International's (TI) Corruption Perception Index, which was launched in 1995. Credited for its role in raising global awareness, it has been receiving increasing criticism for only measuring perceptions (and these predominantly of the business community). Another problem is that it is a composite index[1] – a survey of surveys. While this means that we can now plot a large number of countries on a single scale, it also, in practice, means that we lose sight of exactly what we are measuring. More importantly, its methodology means that improvements or deteriorations in governance standards within a country seldom impact on that country's rating. While it is tempting to succumb to these single corruption figures as conclusive, the instrument has its shortcomings and has lost credibility among certain decision makers.

To supplement this perception-based data, TI has compiled a single source survey, which, among other things, asks respondents how many bribes they have had to pay to certain government institutions. This 'global corruption barometer' provides the best indication of actual experiences of corruption across many countries. It makes for interesting reading to see how the actual experiences differ from perceptions in some countries. The coverage is limited, however, since single source surveys are costly to implement. The other limitation is that it focuses predominantly on administrative corruption as opposed to political or grand corruption. In assessing the latter, it is not clear whether one should measure the frequency, scale or impact. This, and other factors, means that quantifying grand corruption is more difficult than counting the amount of atoms in a sheep.

One survey does make a brave attempt. In 2000 Hellman, Jones and Kaufmann[2] used data from the Business Environment and Enterprise Performance Survey (BEEPS)[3] to look at forms of corruption in 22 Eastern European and former Soviet Union countries. In their paper they disaggregated corruption into the following categories:

- Administrative corruption: 'petty forms of bribery in connection with the implementation of laws, rules, and regulations'
- State capture: 'firms shaping and affecting formulation of the rules of the game through private payments to public officials and politicians'
- Influence: 'doing the same without recourse to payments'

The concepts of state capture and influence (which are indicators of some form of grand corruption) are pertinent to the transition economies which they assessed, but might not be the most pertinent grand corruption problem in other parts of the world. This was also a particularly expensive survey with a limited country coverage, which means that your country is probably not included.

All the above instruments have one thing in common: they try to measure the prevalence of some form of corruption. Another approach has been taken by Global Integrity, which monitors countries' governance features that should impact on corruption levels. Using teams of in-country researchers, and quantified integrity indicators, they measure whether these governance features are in place and also whether they work in practice. Country scores are posted on their website,[4] which provides an online resource of comparable, trackable data. Since Global Integrity focuses on specific governance features, the assessed countries also have an indication of exactly where they can improve.

There is growing concern about the limited extent to which the business community acknowledge their role as corruptors.

There is growing concern about the limited extent to which the business community acknowledge their role as corruptors.

There is as yet no standard for conducting in-country surveys.

Governments in developing countries are increasingly frustrated by having fingers pointed at them while many large corporations from developed countries actively engage in grand corruption in the developing world. Transparency International's Bribe Payers Index (launched in 1999) was started to address this aspect. It gives a ranking of 30 of the leading exporting countries, showing the propensity of firms from those countries to pay bribes outside their borders. This is undoubtedly a good start, but even for countries listed it gives very little information on other private sector corruption issues.

Developing instruments to monitor the private sector

The limited amount of data that comes from international studies has prompted some countries to implement their own monitoring programmes. This is often done by the government or by civil society organizations, with the focus predominantly on government as a whole.

In some cases, collective business bodies are measuring their own experiences and governance standards. In South Africa, Business Against Crime and the German Agency for Technical Cooperation (GTZ) conducted a survey of this kind. The obvious advantage of having a business body involved is that it begins to communicate business's commitment to addressing the problem. The outcomes can be used proactively by business to self-regulate rather than wait for government intervention. In countries with a poor governance environment, surveys could assist concerned businesses to raise the profile of the problem. It is not imperative that business leads such monitoring projects, and in some cases the independence of a civil society organization or academic institution would be crucial to the legitimacy of the study.

Unfortunately there is as yet no standard for conducting in-country surveys. While each country might have its own specific issues that need to be addressed, some standard questions would assist international benchmarking. This would obviously require that the data from other country studies should be accessible. It is not unthinkable that the results of these 'base questions' should be forwarded to an internationally legitimate organization (such as TI) to be kept in a database that is accessible through the Internet.

While more thought and discussion needs to go into what such 'base questions' should include, my initial proposal for a survey of the business community is that it should assess the following:

- Perceptions and actual experiences
- Types of corruption
  - Administrative corruption
  - Political/grand corruption
- Risk areas (for example customs, police, specific regulators or industry sectors)
- Impact of corruption on business community
  - Cost/confidence in economy, etc.
- Governance standards/practices
  - What is in place (for example independent audit committees, ethics programmes, whistleblowing hotlines)
  - What works

It should be kept in mind that the corruption landscape within a country is a complex matter. Corruption takes place within and between government, business and civil society organizations. Different people have different experiences of corruption, with the way it affects large business being significantly different from the way it affects remote rural communities. Determining one's sample base informs many other aspects of the survey, and also how big a part of the corruption picture will be revealed.

While it might be difficult to obtain collaboration from businesses around issues of corruption, it cannot be denied that addressing the problem is in the interest of all of those who are concerned with the long-term sustainability of the economy. In many countries it will be up to these mutually concerned parties to start discussions. Corruption is a politically sensitive topic. Monitoring corruption and governance trends ensures that there is more concrete knowledge to bring to the table. In time one hopes that this knowledge will reveal that things are improving.

Notes

1 S Knack, Measuring *Corruption in Eastern Europe and Central Asia*. World Bank Policy Research Working Paper 3968. World Bank 2006.

2 Hellman *et al*. Seize the State, Seize the Day. World Bank Policy Research Working Paper 2444. World Bank 2000, p 4.

3 The BEEPS was conducted by the World Bank (WB), together with the European Bank for Reconstruction and Development (EBRD) in 1996, 1999 and 2005.

4 www.globalintegrity.com

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Organizational approaches against corruption: what are the golden rules?

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Introduction

Corruption is a complex issue, especially the design and implementation of programmes enabling its prevention. As in all short articles on a complex topic, there are limitations and I will try to be as informative and as economical as possible. I will also be frank about a sensitive topic that affects so many people worldwide, conscious that I may run the risk of not addressing all the historical and social causes that underpin the prevalence of corruption in Africa.

Because corruption in Africa often results in human rights abuse, and condemns millions to grinding poverty, I will be solution focused, describing problems without exploring all the causes, and exhorting African leaders to be responsible, act accountably and take control, even though some of the blame for widespread corruption on the continent may lie on the shoulders of others.

The organization as organism

Efforts to prevent corruption must focus on structures and process, as well as the organizational culture created by employees, comprising the soul of the organization.

Leaders are in denial regarding the state of corruption in their countries and organizations.

In order to discuss the components of an ethics management programme it is important to clarify how to best understand organizational dynamics.

I do not believe that the mechanical model that is often used to describe organizational dynamics is adequate. While I absolutely support a systematic approach to ethics management and corruption prevention, the image of an organization as a machine greatly hampers our understanding of causes and, thus, limits the remedies we formulate and apply for treating corruption-related ailments.

Mechanistic-model-oriented thinking about combating corruption tends to be very reactive in focus: if some part of the mechanism breaks, then we'll fix that part. This reductionist approach means that we tend to isolate parts of the business process as possible causes of corruption without understanding that what is observed may merely be manifestations, symptoms of a more systemic malaise. The result is that isolated solutions are applied to isolated system components, rarely making such interventions effectual for longer than the initial period of implementation. In other words, when the mechanics leave, the problem returns. The result is that managers keep on running after problems, rather than managing lasting solutions.

This mechanistic model also accounts for the fact that corruption prevention is mostly understood as policy or structure maintenance. The image of servicing a vehicle every so many thousand kilometres is applicable. This limited understanding of prevention means that you do nothing between service intervals to ensure the integrity of the system, and prevention suffers because of a focus on defective parts of the machine, rather than the deviant behaviour of people who are supposed to use it.

The model that I think is more appropriate is a biological one. I am convinced that viewing an organization as an organism, constituted and given identity by both its physical structure and its soul, is better suited to promoting the understanding of causes and effects of problems such as corruption. In terms of the biological model, the physical aspects of the organism constitute the policy framework, business systems and processes of an organization. The soul of the organism is the organizational culture moulded by the people that operate and live within the organization.

This means that efforts to prevent corruption must focus on structures and process, as well as the organizational culture created by employees, comprising the soul of the organization. Therefore, sound corruption prevention has a physical and a psychological dimension. The psychological dimension is more powerful than the physical. This means that in terms of policy and process, you may create whatever you like, but if the attitudes of people towards these systems cause them to disrespect those interventions, then your efforts will ultimately not be successful.

The biological model also highlights that the organization must be understood in the context of the environment it operates in. The environment comprises the organizational history, the broader macro-economic and political milieu, and the cultures and attitudes of its major stakeholders.

I once met informally with food aid workers who were active in a drought-stricken country. They recounted their frustration at watching people die of starvation because the state did not recognise, or more correctly, was 'officially unaware' of any famine.
So often the official line is that everything is fine, with those saying otherwise being labelled unpatriotic or foreign troublemakers. Similar stories are encountered among those raising alarm about corruption in organizations, industries and countries.

Enabling change

Combating corruption in organizations is subject to the same conditions that govern all types of change initiatives. These conditions roughly follow a sequential pattern, meaning that you need to address one condition before you can effectively address those that are supposed to follow from it.

Ensure leadership acknowledgement and commitment

To address any problem, there must be high-level recognition that there is a problem concerning corruption, and a commitment to do something about it. This may sound an overly simple principle, but all over the African continent leaders are in denial regarding the state of corruption in their countries and organizations.

Also, very importantly, awareness of a problem does not automatically translate into a desire to do something about it. To create the desire, one often needs the benefits of stakeholder activism, a system recognising political accountability to the people, a robust civil society, and a free and responsible press.

Leaders must openly, and with confidence, declare that corruption is a problem deserving dedicated attention and then act accordingly. Awareness must be coupled with the desire to properly resource those with the skills, courage and mandate to act against the corrupt.

Organizations may best benefit from anti-corruption programmes that are designed to increase the likelihood of proactively detecting such activities.

Nothing creates more cynicism than leaders talking the anti-corruption walk, but not walking the talk.

Build a regulatory framework

To translate the formal acknowledgement and desire of leaders to combat corruption into action, a legal framework (in a country) and a policy framework (in an organization) need to be drawn up. This framework should always reflect ethical standards with universal appeal, such as honesty, fairness and responsibility.

Laws greatly assist in the investigation and prosecution of those involved in corruption, but rarely assist in the prevention of corruption. The simple reason is that the corrupt fear detection more than prosecution.

Think about it, what do you consider more important when robbing a bank: what you are going to tell the authorities when you are caught, or how you can avoid being caught in the first place? This suggests that organizations may best benefit from anti-corruption programmes that are designed to increase the likelihood of proactively detecting such activities.

On an organizational level, the policies in place reflect the formal position of the organization: what leadership says or should be saying. This is valuable, for it acts as a benchmark to measure consistency of application and transparency of process. Yet, just as laws have their limitations, so policies suffer from similar factors that inhibit their ability to promote responsible conduct.

The common refrain in many of our client organizations is that over the years of trying to combat corruption, they have built an enormous but ineffectual policy framework in attempting to fix people-related problems with more policies.

My brief analysis of the limitations of the regulatory framework does not mean that it is unimportant. It is a vital step in translating leadership commitment to combating corruption into real action. But the establishment of a proper regulatory framework is not an end, it is just the beginning of walking the talk.

Drive institutionalization

To sustainably combat corruption, the ethical values that informed the creation of the regulatory framework must be made part of the organizational culture. Its culture is the soul of the organization, and is created by the attitudes and prejudices of the people that work in and with the organization.

The good effect of a regulatory framework is significantly hampered in an organization with a bad (unethical) culture, because that culture is more powerful in directing human behaviour than a regulatory framework can be.

In practice, this means that you may write whatever policy you like to combat corruption, but if corruption is part of the organizational culture – the way business is done – it will have little positive effect. Conversely, a poor regulatory framework will still have a positive effect among those influenced by a good (ethical) organizational culture.

In other words, building an ethical organizational culture is the only sustainable way to prevent corruption by making people intolerant of it and more likely to report observed incidences of misconduct. Changing organizational culture is not an instant affair. It usually requires between two and five years of consistent application of a number of processes and disciplines, including:

Building an ethical organizational culture is the only sustainable way to prevent corruption by making people intolerant of it and more likely to report observed incidences of misconduct.

Be an ethical leader

Most important of all, leadership must adopt a strong and visible formal position on the need to combat corruption, setting a clear example in their everyday actions. The fish rots from the head. It is important to remember that the abbreviation CEO stands for both chief executive officer and chief ethics officer. Act accountably, even if others are responsible for many of the problems you face. Leaders who play the blame game often do so to escape accountability, because victims by default have far more rights than duties. Avoid at all costs glorifying victimhood. Africa has seen enough victims. Responsible, principle-driven leadership is what Africa requires most.

CEO stands for both chief executive officer and chief ethics officer.

Be an ethical role model

You may ask whether leadership and role modelling are not one and the same. They may be, but usually they are not. A leader may be the top person in a country or organization, but such a person mostly has little influence on the day-to-day activities of the bulk of citizens and employees. Role modelling is most active up to two employment tiers above your own tier. Those in line management influence your daily work experience directly, more so than top management does.

They may also set agendas that differ from the official top position. These agendas you may usually ignore at your peril. In all organizations there are formal designated leaders, and there are informal leaders. The informal leaders are usually more powerful

The proper custodian for corruption prevention initiatives is a separate ethics office.

role models than the formal leaders. If they are corrupt, you will be under severe pressure if you wish to avoid becoming part of that criminal web.

Build internal ethics management capacity

One of the most common mistakes that clients' organizations make is to place too many expectations on the shoulders of external consultants. Without a proper home in an organization and a sound internal custodian, all initiatives proposed by consultants will ultimately lose momentum and fail. When clients do attempt to give the initiative a home, they then make the mistake of associating corruption prevention with forensics, internal audit or human resources. All of these are important in combating corruption, but none should own it.

Forensic officers are investigators, possibly lacking the skills to influence the values and mindset of organizational leaders and employees alike. While forensic officers play a vital part, they must not be the drivers of such programmes.

Internal audit works best when focused on monitoring and control of processes, including a corruption prevention initiative, or ethics management programme. If the programme resides within internal audit, who then audits the auditors?

Lastly, human resources, in our experience, struggle with the legal concepts and processes that accompany corruption prevention. Unfortunately human resource practitioners often allegedly cannot keep secrets, mostly because the human resource-related requirement for confidentiality is not perceived to carry the same weight as it does in corruption prevention programmes.

The proper custodian for corruption prevention initiatives is a separate ethics office. This office, headed up by an ethics officer (a full- or part-time function) coordinates all ethics initiatives, follows up cases sent to human resources and forensics for action, and reports to the board on the organization's ethics progress and related risks.

Over seven years of doing this type of work, we have seen this model work where others fail. The ethics officer may need some adminstrative support, especially in large organizations, but in many cases he or she is a facilitator who brings together the right people and processes, possibly already in existence.

Measure your risks

Leaders and role models have a direct influence on the organizational culture. They set the tone, so to speak. To understand what this tone is, the informal culture must be measured, along with the effectiveness of the organization's formal standards. This is done to identify risks and opportunities, and inform appropriate management responses where problems or concerns are greatest.

Discongruence between the formal statements of leadership and the way that people, especially role models, really act severely undermines efforts to combat corruption.

You must be able to measure if you are to manage the prevention of corruption. Yet many organizations expect management to perform against benchmarks that have not been established. Using a biological model again, prescription before diagnosis is malpractice.

For leadership to simply go around and ask what the issues are seldom works. Most employees find such an approach too confrontational and intimidating. Their response may be to remain quiet, or to misinform, usually because of an organizational culture that requires employees and middle managment to tell senior leaders exactly what they believe they want to hear.

Best practice entails periodic independent assessment by a suitably experienced service provider who is external to the organization that is to be measured.

An organization, like a country, needs a statement of ethical intent – a constitition – to inform and guide all other policies and process.

Set your organizational standards

An organization, like a country, needs a statement of ethical intent – a constitition – to inform and guide all other policies and process. The purpose is to set the ground rules governing the manner in which the vision and mission of the organization are pursued. A code containing only values has little operational meaning, for people invariably attach multiple definitions to undefined concepts. In contrast, a code containing only detailed rules is usually so dry, unappealing and sterile that it is little used in daily interactions.

A proper code of ethics should contain the organization's values and the most salient of its rules. The code of ethics acts as policy reference point – a mother of all policies - with which all other policy initiatives need to be aligned.

Sanitize your organizational standards

With a good code of ethics in place, organizations may confidently tackle what may be a vast body of policies that have lost organizational relevance or contradict one another. This process is called policy sanitization, and entails the whole body of policies being re-evaluated for relevance. If necessary, they will be rewritten to fit the salient prescriptions in the code of ethics. It is not uncommon

With knowledge comes increased awareness and, if well directed by leadership, desire for change.

for an organization to reduce 20,000 pages of policies to 150, using the code of ethics as a guide. The result is greater compliance and increased relevance.

Alternatively, a good code of ethics may be used to identify the gaps in a policy framework for organizations.

Communicate on your organizational standards

You may possess the best of intentions and a concise and relevant set of standards. Yet, if you do not communicate them to stakeholders, you cannot expect consistent compliance. The difficulty of communicating on organizational standards should not be underestimated.

Effective communication requires constant application and as wide an array of communication media as possible. Although simplicity of content is always desirable, using different platforms is one case where less is not more. The most effective method of communication remains one to one, person to person, but presents a number of logistical and cost challenges.

It is critical to time your communication initiatives correctly. For instance, communicating a requirement to employees to acknowledge that they have understood a code of ethics before they have even received it breeds unnecessary resistance to an ethics programme component that might otherwise have been readily accepted.

Communicating good content to the wrong audience also undermines credibility. Intensity, simplicity, aim and timing are the guiding principles for good communication strategies.

Train on your organizational standards

Training is very useful to increase awareness, desire and knowledge of the need to institute a corruption prevention programme. These elements may be vital potential points of resistance in attempts to build an ethical culture intolerant of corruption. In many cases people do not question corrupt informal practices in their organization because they believe that this is the only way that things are done. With knowledge comes increased awareness and, if well directed by leadership, desire for change.

Among more senior decision makers it is vital that this desire for culture change should be supplemented with structured knowledge of what an ethics management programme entails. Knowledge and desire on this level allow an ethics officer to garner the neccessary skills and resources to maintain an effective ethics office.

Those responsible for training programmes may find that the use of trainers who are external to the organization works best when engaging senior managers or particularly resistant groups. An external trainer is not subject to organizational politics or hierarchy issues, and can often be a lot more frank about the weaknesses of an organization than an internal trainer. Internal trainers work best when engaging employees from similar or lower hierarchies to themselves.

> I am personally sceptical of using remote learning platforms as a primary learning mode. Devices such as Internet- or intranet-based learning seem to work best when they supplement face-to-face training in groups up to 30, led by a skilled facilitator.

Advise on your organizational standards

Part of the function of the ethics office is to provide employees with advice on ethics and on resolving ethical dilemmas. In this regard, the ethics officer may rely on line management as a first port of call, or on what may be termed 'ethics champions'.

Ethics champions are interested and respected employees that have received special training on key policies such as the code of ethics and on resolving ethical dilemmas. A good network of ethics champions becomes a vital extension of the ethics office and a good point of peer-to-peer advice on ethical issues.

Appoint according to your organizational standards

Surprisingly, many organizations conduct very basic vetting procedures or none, even when appointing staff to high-risk positions. The competency of an individual, rather than race, gender, political affiliation or ethnicity, should determine whether a person is suitable for consideration.

We also recommend that candidates should be subjected, at a minimum, to CV and criminal record checks. Do not assume that when people who are applying for positions, especially senior positions, state their qualifications that these may all be true. For certain positions and in certain industries, psychometric examination, polygraphy and voice stress analysis may also be required.

Ensure that you integrate your ethical standards into performance evalutions and disciplinary processes.

Discipline and reward based on your organizational standards

Ensure that you integrate your ethical standards into performance evalutions and disciplinary processes. Better than any type of communication strategy, this will ensure high levels of awareness and the desire to adopt proper organizational standards.

What is also relevant, in terms of reporting, is that employees are far less likely to tolerate or remain indifferent to others abusing these standards. An important condition is consistency of application. Apply similar standards to similar situations, and to all employees, irrespective of hierarchy.

Report on deviations from standards

Ultimately, if all these components are in place and well managed, you will probably convince employees that they should report incidences of unethical conduct such as corruption. This is sometimes referred to as whistleblowing.

Detection is vital in combating fraud and corruption, for these are usually hidden or enveloped in a culture of silence. Many people may know about the activity, but will not report it, for fear of victimization, out of apathy, or because of receiving direct or indirect benefit from the acts of corruption.

Provided that the reporting facility is well managed – reports being properly actioned and followed up – and makes provision for confidential and anonymous reporting, the likelihood of creating enough momemtum to shatter this culture of silence is greatly increased. Experience indicates that the most trusted reporting facilities are operated by private contractors independently of the organization. Apart from South Africa, to my knowledge this service is not offered in other African countries.

Depart from your values in time of crisis, and you run the risk of turning trauma into disaster.

Revert to your standards in times of crisis

At some stage all organizations go through a crisis. When this happens, leadership should always be guided by stated organizational standards, even though these standards may point towards making unpopular and expensive decisions.

History has shown that organizations that remain committed to their stated values in times of crisis usually survive the crisis with the ability to repair their dented, but not destroyed reputations. Depart from your values in time of crisis, and you run the risk of turning trauma into disaster. Everybody will know that when the heat is on, all that stuff in the code of ethics is empty talk.

Conclusion

There are no easy solutions to creating an ethical culture in organizations. Even if you succeed, there will always be those who ignore your efforts. For this reason, good forensic capacity in all organizations will remain important. With successful implemention of the points described above, you will probably be able to satisfy five components required for organizational change to take place:

- You will have built *awareness* for the need for change
- You will have increased the *desire* for change

- You will have established the *knowledge* required to support the change
- You will have developed the *ability* of those tasked to drive the change
- You will have put in place the mechanism required to constantly and consistently *re-inforce* the need for culture change[1]

The key to the success of this approach is the establishment of internal capacity, an ethics office, responsible for driving and coordinating ethics promotion and corruption prevention in organizations.

Many aspects could not be discussed here, but I trust I have provided leaders with basic considerations when setting out to build a culture intolerant of unethical conduct such as corruption.

Note

1 Hiatt M Jeffrey, *ADKAR, A Model for Change in Business, Government and our Community*, Loveland, Colorado: Prosci Research, 2006.

Case studies: Fighting corruption within an organization

Introduction

This section consists of five case studies, written by Willem Punt of the Ethics Institute of South Africa (EthicSA).[1] The institute was commissioned by the Global Compact Regional Learning Forum to share the model they had developed on the issue of ethics or corruption prevention within an organization. This experience sharing was envisioned to happen by way of practical examples through case studies on relevant organizations.

The EthicSA Ethics Officer Certification Programme is designed to equip individuals with the skills to manage integrity promotion programmes in large organizations. Ethics officers are introduced to elements of systems theory to assist them to analyse and react to the complex environmental factors that influence their ability to promote cognitive and behavioural competencies for combating corruption among all employees.

To combat corruption, certain conditions must be addressed, almost in sequence. These include building a policy framework, being an ethical leader and role model, setting and communicating organizational standards and reporting on deviations from these standards.

The first of the case studies concerns the Global Fund to Fight Aids, Tuberculosis and Malaria. The Global Fund services communities all over the world, dispensing funds irrespective of race, gender or religion. This case study describes the development of a whistleblowing policy for a global organization that is active in more than 100 countries.

The second study describes, among other aspects, how Massmart, a managed portfolio of wholesale and retail chains, undertook an independent verification of its ethics management process.

Third, the study on enterprise governance within the Nedbank Group includes the creation of the Nedbank Ethics Office, staffed by trained ethics officers, and the development of the code of ethics.

The fourth study describes the establishment of the South African Revenue Service (SARS) Ethics and Governance Office and discusses its mandate. This unit is responsible for the development and review of the code of ethics and associated policies.

The fifth study depicts the development and implementation of an ethics management programme within the South African operations of Total South Africa (PTY) Ltd.

Note

1 The Ethics Institute of South Africa (EthicSA) is an independent non-partisan organization that promotes and advances ethical practices in South Africa.

Instituting a whistleblower policy in the Global Fund to Fight Aids, Tuberculosis and Malaria

WILLEM PUNT

ETHICS INSTITUTE SOUTH AFRICA

Introduction

The Global Fund to Fight Aids, Tuberculosis and Malaria: profile

By the end of the millennium it had become clear that, along with

Kofi Annan, former Secretary-General of the United Nations, meeting with African leaders in Nigeria in 2001, called for the creation of a global fund to channel supplementary resources to those already being utilized by governments and non-governmental organizations in fighting these diseases.

By January 2002 a permanent secretariat, responsible for the management of the Global Fund, had been established.

the threats of climate change, war and poverty, three diseases – Aids, tuberculosis and malaria – were going to be the global cause of preventable death and suffering in the twenty-first century. These diseases often exist in deadly symbiosis, with Aids greatly diminishing the capacity of patients to resist tuberculosis and malarial infections.

For years, public healthcare specialists knew of effective interventions in combating these diseases. However, these interventions, where practised, were generally too localized to make a global impact. A global response was required to halt the course of these diseases.

In 2000, the leaders of the world's most prosperous industrialized nations, the G8, met in Japan and acknowledged the need to commit resources, financial and human, to developing a global response to the scourge of Aids, tuberculosis and malaria.

With Africa suffering escalating rates of Aids infection, increased incidences of (fatal) tuberculosis infection and widespread prevalence of malaria-infected mosquitoes, the former Secretary-General of the United Nations Kofi Annan, meeting with African leaders in Nigeria in 2001, called for the creation of a global fund to channel supplementary resources to those already being utilized by governments and non-governmental organizations (NGOs) in fighting these diseases.

The United Nations General Assembly itself responded in the same year by calling a special session on Aids, committing itself to creating such a body, with the G8 undertaking to financing it. In record time, all within the space of a year, a 'transitional working group' had been formed to work out the logistics of creating the Global Fund to Fight Aids, Tuberculosis and Malaria (the Global Fund). By January 2002 a permanent secretariat, responsible for the management of the Global Fund, had been established, the first grants being released to recipients in 36 countries. Based in Geneva, the Global Fund employs approximately 250 people in its secretariat, utilizing only about 3% of grant moneys for administration. At the time of writing, the Global Fund had committed US$5.2 billion to more than 363 programmes in 131 countries.

Overall, its results have been impressive. By June 2006 it had provided funding to:

- Treat 544,000 people with HIV and Aids
- Test 5.7 million people voluntarily for HIV
- Treat 1.43 million people with tuberculosis
- Treat 7.3 million people with malaria

- Supply 11.3 million families with insecticide-treated mosquito nets

It is generally considered an organization of indisputable reputation, being chosen to administer funds from the G8 countries and the world's leading company foundations, including substantial donations from individuals such as Bill Gates and Warren Buffet.

Innovative support for the Global Fund also came from singer-activist Paul Hewson (aka Bono) from the rock group U2 and American philanthropist Bobby Shriver. They came together to launch Product Red,™ which entails that designer label brands donate a percentage of their profits to the Global Fund.

At the time of writing, the Global Fund had committed US$5.2 billion to more than 363 programmes in 131 countries.

The Global Fund biographical data

Sector:	Non-profit public benefit organization
Organization type:	Multilateral organization with legal immunity in place
Industry:	International donor fund manager
Population:	Secretariat hosting approximately 250 employees
Leadership:	The chairman of the board is Dr Carol Jacobs. Executive director Dr Richard Feachem leads the secretariat
Governance:	Organization governed by a board of directors, supported by four sub-committees, with a secretariat responsible for administrative functions. Other specialist panels are utilized to ensure objectivity in grant allocation and to provide oversight in the use of grants
Scope:	Principal services comprise the provision of grants to worthy recipients to finance the combating of Aids, tuberculosis and malaria in more than 130 countries
Total advances:	$5.3 billion (2006)

Box 1 The Global Fund biographical data

The Global Fund's general principles

The Global Fund operates as a financial instrument, not an implementing entity. Its purpose is to attract, manage and disburse resources to fight Aids, TB and malaria. It does not implement programmes directly, relying instead on the knowledge of local experts.

It makes available and leverages additional financial resources. The Global Fund finances programmes only when it is assured that its assistance does not replace or reduce other sources of funding, or those that support public health more broadly.

It supports programmes that reflect national ownership. The Global Fund encourages local ownership by assessing only the technical merits of programme proposals, while leaving the design of programmes to local experts.

It operates in a balanced manner in terms of different regions, diseases and interventions. In awarding grants, the Global Fund gives priority to effective proposals from countries and regions with the greatest need, based on the highest burden of disease, emerging epidemic status and the fewest financial resources to fight these epidemics.

It pursues an integrated and balanced approach to prevention and treatment. The Global Fund takes a comprehensive approach to Aids, TB and malaria, funding both prevention and treatment according to locally determined needs.

It evaluates proposals through independent review processes. The Global Fund uses an independent panel – a technical review panel (TRP) – that ensures that limited resources are targeted to technically sound programmes with the greatest chances of success.

It establishes a simplified, rapid and innovative grant-making process and operates transparently, with accountability. Building on performance-based grant making, the Global Fund is working with recipient countries to identify a small number of key indicators to be used to measure progress, and to ensure that, where possible, Global Fund reporting requirements rely on existing processes. The use of credible and approved local quality controllers – local fund agents (LFAs) – is another accountability mechanism designed to provide appropriate oversight while respecting local implementation.

Box 2 General operating principles of the Global Fund

In attempting to avoid the pitfalls associated with global organizations acting in the domain of national governments and other donor agencies, it adheres to a number of key principles in guiding its conduct.

Overall, these principles are designed to protect the Global Fund's neutrality; to avoid funding duplicate or competing programmes; to ensure local involvement in projects; and to maximize accountability and quality control. (For a more detailed description of these principles, please refer to box 2.)

Ethics Institute of South Africa and Global Fund

The Ethics Institute of South Africa (EthicSA) is active in the Global Fund. Its CEO, Professor Willem Landman, serves as an ethics advisor on the Global Fund's Ethics Committee. Professor Landman was requested to develop a whistleblowing policy for the Global Fund. This case study explores the development of this policy in greater detail.

The United Nations Global Compact and the Global Fund

There is no direct relationship between the Global Compact and the Global Fund. They are very different organizations with different modus operandi. They do, however, share the influence of one man in their genesis: Kofi Annan, former Secretary-General of the United Nations (UN). The Global Compact came into being when Kofi Annan challenged business leaders at a World Economic Forum meeting in 1999 to commit to business principles supporting human rights, proper labour standards, sound environmental practices and, later, to combat corruption.

In the same way, Kofi Annan galvanized resolve among G8 leaders and UN structures to facilitate the creation of the Global Fund in 2001.

The two organizations share a broad vision: building a just society. The Global Compact focuses on building a coalition of the willing among private sector enterprises, and the Global Fund acts as a unique type of global donor to combat diseases that threaten life and the social fabric it requires to prosper.

Interestingly, both organizations are associated with the UN, but operate, to varying degrees, separately from many of its bureaucratic structures. For the Global Fund, the link with the UN is that the World Health Organization (WHO) has some influence in its governance, formally employing many involved in its administration.

Uganda became one of the first countries to receive a significant grant from the Global Fund. Unfortunately, the Ugandan capacity to responsibly manage a large influx of funds was found to be lacking.

Corruption is not a victimless and somewhat luxurious interplay between inappropriate influence and undue benefit.

Method of analysis

This case study is based on knowledge that EthicSA gained of the Global Fund because Professor Landman served on the Ethics Committee, in particular the research and study required to develop their whistleblowing policy.

Balancing risk and reward: The Uganda example

Uganda possesses one of the more successful Aids-combating initiatives on the African continent. In the last two decades it has enjoyed political stability under the rule of President Yoweri Museveni. Uniquely among African leaders, Museveni has not been afraid to speak directly and unambiguously about Aids, its origins, its impact and what is required to combat it. The Ugandan government generally exhibits sincere commitment to working with donor agencies and other bodies to combat this disease.

Subsequently, Uganda became one of the first countries to receive a significant grant from the Global Fund. Unfortunately, the Ugandan capacity to responsibly manage a large influx of funds was found to be lacking. It is worth quoting from a recent media report.

> … the phrase ‘Global Fund’ has become synonymous with graft in Uganda. A government inquiry recently revealed that tens of millions of dollars of the country's Global Fund grants have gone missing, much of it plundered by high-ranking public officials. Through months of hearings, which began in September and concluded just a few weeks ago, a disgusted Ugandan public heard how money meant for lifesaving Aids drugs were spent on personal phone bills, lavish ‘Christmas packages’ and fancy four-wheel- drive vehicles.[1]

A Ugandan judicial probe investigating the mismanagement of Global Fund grants recommended that the former health minister and top aides should be investigated for possible criminal prosecution.

It is not only in the public sector that such activities have occurred. Cases have been reported of unscrupulous clinic owners and doctors siphoning off Global Fund grants meant for the purchase of medicines and other vital supplies. Furthermore, Uganda is not alone in suffering from corruption. There are emerging, but as yet unsubstantiated, reports of similar mismanagement of Global Fund grants in Kenya and Nigeria.[2]

Obviously corruption has to be combated if the Global Fund is to fulfil its mandate. It is in countries that are most prone to corruption that diseases such as Aids, tuberculosis and malaria pose the greatest danger to populations. Yet corruption undermines the capacity of local governments and the Global Fund to reach to those in greatest need. There seems to be a disturbing symbiosis between corruption and the prevalence of these disease vectors.

A world map (see figure 1) that indicates the results of the 2005 Corruption Perception Index of Transparency International (TI) clearly underscores this point. It is telling that almost the whole of the equatorial belt falls within the high-risk category. It is in this region that all three disease vectors are present and that most of the world's poorest and most weakly governed states occur.

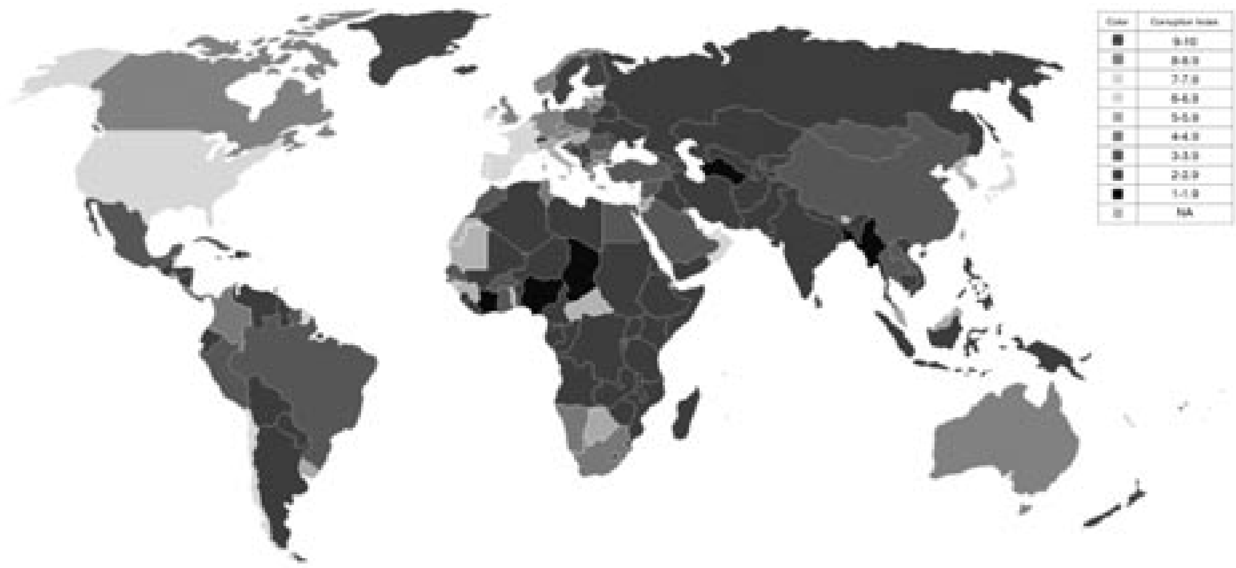

Figure 1 Transparency International 2005 Corruption Perception Index

Corruption is not a victimless and somewhat luxurious interplay between inappropriate influence and undue benefit, as some tend to think. Many excuse corruption with cold factual statements such as: "That is the way things work around there." Of course it is the way things work in many countries: the data in figure 1 highlights this disturbing fact – but that is exactly the problem. The more appropriate question is normative in nature: "Is this the way things *should* work around there?" The answer is no, and emphatically so.

Corruption is a human rights abuse. Worse, in the field of deadly disease relief, it can be equated with murder, for many would not have died, had they not been denied access to medicines and care because of corruption.

In the field of deadly disease relief, corruption can be equated with murder, for many would not have died, had they not been denied access to medicines and care because of corruption.

The more the local logistical and planning control exercised by a remote donor increases, the more the ability to gain access to worthy recipients may suffer.

In the case of the Global Fund, a failure to return value to clients – patients – does not mean a loss in capital return, but a loss of life. The stakes are high and the Global Fund has certainly learned some hard lessons. Victor Bampoe, the Global Fund's portfolio manager for East Africa, has been quoted as saying that, in retrospect, there may have been a degree of naiveté in not expecting to encounter such brazen corruption; but he struggles to see how he would have done things differently.[3]

Bampoe highlights the dilemma suffered by the Global Fund. Although it strengthened oversight by appointing independent local institutions to manage fund payouts in certain countries, there remained a tension between control and efficiency, with efficiency potentially meaning the difference between life and death. Experience among the donor community has shown that the more the local logistical and planning control exercised by a remote donor increases, the more the ability to gain access to worthy recipients may suffer.

Without the support for instance of an often-complex web of national, provincial and municipal political interests, the delivery of health services may be impossible. External players simply do not know the social, political or even physical landscape well enough to do the job properly.

The Global Fund, when dispensing funds *and* managing implementation, will also sacrifice much of its prized political neutrality. It has to be trusted by country leaders to effectively function in recipient countries. To do so, it has to walk a "tightrope" between social advocacy and political activism.

Dispensing funds to entities that qualify according to transparent criteria generates space for political neutrality. The Global Fund services all deserving communities, all over the world, irrespective of race, gender, religion or ethnicity. However, this politically neutral position is precarious and requires protection, given that where there is money, there is power. The Global Fund, next to the UN itself, controls the second largest donor pool in the world.

If the Global Fund becomes intimately involved in the local politics of resource allocation and delivery, it will most certainly sacrifice such a precarious position of nurtured neutrality, and other communities elsewhere in the world may be disadvantaged. It can, of course, refuse funding to countries that do not show commitment to responsible management of its grants, but again in doing so deserving recipients will suffer.

Therefore, resolving the dilemma requires balancing the interests of those in particular countries, such as Uganda, with the interests of other deserving communities all over the world. This implies that the Global Fund should not become more politically involved in countries where its grants are abused, but should cease to allocate funds to such countries only as a last resort. However, it will need to enable structures to manage the risks it suffers, while remaining a funding, and not an implementing body.

Performance analysis

Vision

The first risk involves conflicts of interest arising within and among Global Fund structures. Conflicts of interest are progenitors of corruption because all incidences of corruption have their origins in unresolved conflicts of interest. Therefore, by managing and resolving conflicts of interest proactively, one may in effect prevent corruption from occurring.

The main body in the Global Fund that is tasked with managing conflicts of interest is the Ethics Committee. Its main function is to provide guidance on protecting the good reputation of the Global Fund. This may involve ruling on issues of conflicts of interest, interpreting and overseeing implementation of Global Fund bylaws and operating procedures, and developing new policies and procedures designed to manage ethical risk in the organization.

In ruling on conflicts of interest, the Ethics Committee operates well within the boundaries best practice dictates. However, when conflicts of interest have evolved into allegations of corruption, it may deliberate on cases, but is not suited to leading investigations. An ethics committee is an advisory organ and not a forensic investigative instrument. Therefore, in July 2005, the board made provision for the creation of the Office of the Inspector General, which began its work in December 2005. Working closely with the Ethics Committee, it provides the investigative oversight mechanism that the Ethics Committee lacks.

Conflicts of interest within the Global Fund need constant vigilance to manage. Many other incidences of corruption involve parties that operate outside the Global Fund. As in the Ugandan example, corruption often occurs when people acting as official custodians of these grants abuse the trust placed in them. The policing of conflicts of interest within the Global Fund will not prevent these corrupt activities from occurring. Another mechanism is required – one that allows the Global Fund to retain a neutral but involved position.

Terms of reference of the Global Fund Ethics Committee

- It oversees the Conflict of Interest (COI) Policy and its implementation
- It reviews any conflicts of interest that have been disclosed and determines what action, if any, is required
- It provides guidance and information on the application of the Conflict Of Interest Policy
- It advises the members of the bodies and staff of the Global Fund on conflict of interest and ethics issues
- It arbitrates local fund agent conflict of interest issues
- It takes such other actions as are consistent with the Global Fund bylaws, board operating procedures, COI Policy and these rules, as are necessary and appropriate for achieving the objectives of the committee
- It provides guidance and information on the application of the COI Policy, and advises members of the bodies and staff of the Global Fund on conflict of interest and ethics issues
- It resolves differences in the interpretation of conflicts of interest

- At its discretion, it brings any conflict issue it considers necessary to the board for discussion and determination
- It keeps appropriate written records of its activities
- It reports annually to the Foundation Board

Box 3 Terms of reference of the Ethics Committee

The guiding business principle of remaining a funding institution and not an implementing institution needs to be protected. On the other hand, if it exerts no control, it may be burdened by countless losses similar to those in Uganda, suffering damage to its reputation and becoming morally complicit in human rights abuses.

Its vision is therefore to increase its capacity to detect abuses of the grants under its direction. Were it not for a courageous individual blowing the whistle on corrupt officials in Uganda, the Global Fund might have remained unaware that it was not funding the combating of disease, but the lifestyles of kleptocrats.

Leadership

The Global Fund is administered by a secretariat. Many individuals formally employed by the WHO staff this secretariat. Given the administrative complexities involved in dispensing grants to hundreds of recipients worldwide, some ethical risk exists within the secretariat, especially in terms of unresolved conflicts of interest.

A board of directors, supported by four sub-committees (the Ethics Committee being one of them), governs the Global Fund. Key international partners such as the WHO, Joint United Nations Programme on HIV/Aids (UNAIDS) and the World Bank are represented on the board. The board meets twice annually and formally approves grants, among its many duties.

Grant recipients are identified by country-coordinating mechanisms (CCMs). These generally involve a local body represented by government, often the national Department of Health (MoH), the private sector and civil society. There are variations on this theme in different regions of the world (as seen in the country models in figure 2). In all cases, the CCMs are multi-stakeholder bodies, responsible for taking receipt of grants applications, and once awarded, for oversight in implementation.

The CCMs do not award grants, but may nominate and refer worthy recipients to the technical review panel (TRP) for consideration. The TRP is an independent panel of experts, balanced in composition in terms of areas of expertise and global representation. Given the utmost importance of this function, it is imperative that those serving on the TRP should be not encumbered by conflicts of interest. This is a risk area in the enterprise that requires constant special attention.

Terms of reference of the Office of the Inspector General of the Global Fund

The Office of the Inspector General has seven substantive responsibilities:

- To undertake investigations of potential fraud, abuse, misappropriation, corruption and mismanagement (collectively 'fraud and abuse') within the Global Fund and by principal recipients, sub-recipients, country coordinating mechanisms, LFAs, where permitted under applicable arrangements
- To identify systemic weaknesses that provide opportunities for fraud and abuse in the Global Fund's programmes and operations and make recommendations to address them
- To review internal management processes, including the grant application and grant awards process, funds disbursement, and risk assessment processes
- To conduct audits and inspections of sites relating to the Global Fund's programmes and operations, where permitted under applicable arrangements
- To develop and administer, as resources permit, a training programme for the prevention and detection of fraud and abuse within the Global Fund programs and operations
- To create mechanisms for reporting potential fraud and abuse; and intake procedures to evaluate incoming reports of potential misconduct within the Global Fund programmes and operations; and to oversee the implementation of appropriate protections for the Global Fund employees and other reporting concerns as well as those who are the subject of such reports, in accordance with procedures approved by the board
- To keep the board and, where appropriate, the executive director, fully and currently informed of the activities and findings of the Office of Inspector General, through the submission of annual reports, reports of particular investigations and audits, and other communications as deemed appropriate

Box 4 Terms of reference of the Office of the Inspector General of the Global Fund

Were it not for a courageous individual blowing the whistle on corrupt officials in Uganda, the Global Fund might have remained unaware that it was not funding the combating of disease, but the lifestyles of kleptocrats.

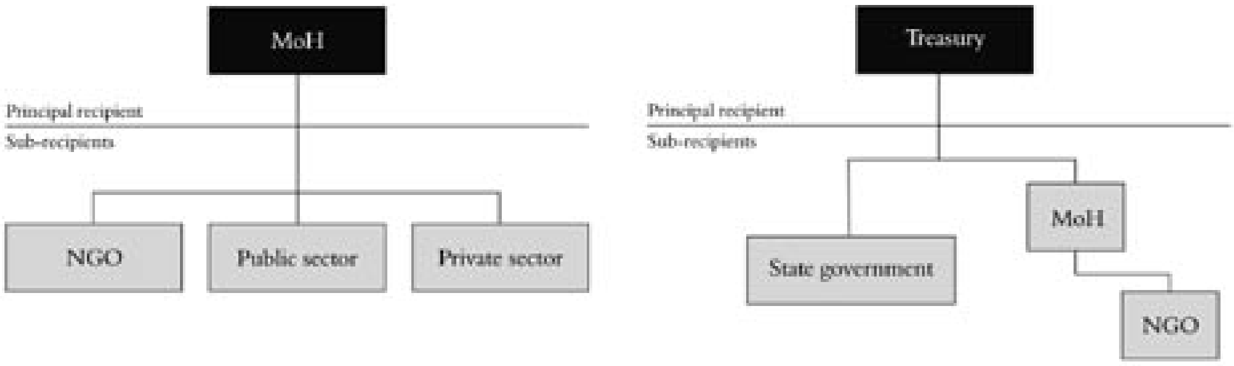

Figure 2 Examples of country-coordinating mechanism models

The TRP provides its recommendations in the form of four categories, ranging from acceptance of a grant proposal with minor or no alterations to the rejection of a proposal. These recommendations are then formally presented to the board for ratification. Grant recipients may appeal a decision, but these will be considered only if evidence of significant error or major procedural unfairness by the TRP is presented.

Upon awarding the grant, money is made available according to the specific grant structure. In Ghana money goes directly to the Ministry of Health for distribution to sub-recipients. In South Africa it flows into the State Treasury, which then, according to the grant guidelines, dispenses the money to national government and a partnership platform consisting of the Ministry of Health and civil society.

As in the Ugandan example, corrupt elements in the CCM structure cannot be tolerated. The CCM is formally in charge of providing grant oversight in this implementing phase. However, the actual service provider tasked with this important function is an LFA appointed not by the CCM, but by the Global Fund itself.

The LFA acts as the Global Fund's local representative, chosen through a competitive bidding process, to verify that grants are appropriately managed and spent. It is not an agent of the Global Fund, in that it may not make statements on behalf of the Global Fund or represent the Global Fund in any capacity other than acting in a programme oversight role. The Office of the Inspector General may be used by an LFA to assist with investigations.

The potential for bribery occurring in the TRP in order to secure a favourable grant award does exist, but is greatly mitigated by its composition and the transparent adjudication process. Conflicts of interest are more likely to occur among board, secretariat and TRP members, both with recipients and even LFAs.

Again such conflicts of interest are difficult to hide, given the profile of, and due diligence paid to those serving on these bodies. Of these bodies, the secretariat probably falls into a higher-ethical-risk category, owing to the opportunities for abuse that are normally presented in the administration of funds.

A more problematic issue for Global Fund leadership is the dilemma of former employees (who had served on the TRP for instance) using their specialist knowledge to set up lucrative private consultancies, in which they advise recipient countries on how to successfully structure grant applications. A cool-off period has been suggested, but this is always controversial, with no evident simple solution to this problem.

Some of the ethical-risk areas reside within the Global Fund itself, but since it is not an implementation body, a greater amount of ethical risk actually resides within the country structures. Implementation is the greatest risk area, because of the amounts of money involved, along with weaker Global Fund control of how the money is spent.

In short, a great amount of risk resides outside the Global Fund, in the CCM structure, the recipients and to a lesser extent the LFAs. No amount of management of conflicts of interest on behalf of the Global Fund will lessen this type of risk. What is required is a leadership response that will allow the Global Fund to detect abuses quickly so that appropriate action can be taken.

Dr Brian Brink, the private sector representative on the Ethics Committee, pointed out the established practice of providing whistleblowing facilities in large private sector enterprises. Dr Brink contended that a private sector model might be adapted for a multilateral environment such as the Global Fund. Certain state institutions also provide such facilities. For example, in South Africa, the Public Service Commission (PSC) administers a national reporting line that may be called to report unethical conduct such as corruption.

The provision of whistleblowing facilities also addressed a concern among Ethics Committee members. Within the Global Fund, management of conflicts of interest is dependent on self-reporting. The voluntary reporting of conflicts of interest holds obvious risks, as those with mal intent will have no incentive to report on their conflicted interests.

To avoid conflicts of interest arising, the LFA (often an audit firm):

- May not participate in the design of the grant-funded programme
- May not participate in the implementation of the programme
- May not provide technical assistance to the principal recipient or sub-recipients
- May not provide capacity building to the principal recipient or sub-recipients
- May not make decisions on the grant (all decisions are made by the Global Fund)
- May not audit a principal recipient for which it is the LFA

The establishment of whistleblowing facilities within the Global Fund is therefore a prudent leadership response to ethical risk within and outside the organization.

Implementation is the greatest risk area, because of the amounts of money involved, along with weaker Global Fund control of how the money is spent.

Empowerment

The whistleblower in Uganda that exposed massive abuse of Global Fund money is an example of the effective use of this method of combating corruption. By 2006, the Global Fund's response was to develop a mechanism for safe reporting of unethical conduct. If successfully implemented – meaning that it is considered safe to use and effective in securing results – it will be a powerful tool in combating corruption.

Whistleblowing is hugely empowering for an organization with a global reach, but minimal local presence.

Whistleblowing is hugely empowering for an organization with a global reach, but minimal local presence. Being able to provide safe and effectively managed facilities for reporting unethical conduct allows the Global Fund to quickly surface allegations of corruption. These allegations can then be further investigated by the Office of the Inspector General and, if required, be passed on to the relevant country authorities for further action.

The importance of safe and effective whistleblowing procedures cannot be underestimated. In the developing world in particular, where most of the Global Fund's recipients reside, corruption patterns tend to deviate somewhat from developed world norms. In developed world environments, high-level corruption is usually a very secretive affair committed by very well-educated or technically proficient individuals.

In countries with entrenched corruption risks, corruptors and corruptees are protected by a culture of silence, sustained by fear, apathy, complicity and even admiration.

These patterns are found in the developing world, of course, but an additional factor should be considered: in the developing world, in countries with entrenched corruption risks, corruptors and corruptees are often well known to relatively many people. They are protected by a culture of silence, sustained by a combination of fear, apathy, complicity and even admiration.

It is a silence that is sustained by what may be called a cynical acceptance of corruption. According to the country head of the Ugandan chapter of Transparency International (TI), years of witnessing graft being rewarded and not punished have aroused acceptance and even admiration for those showing the inventive energy to exploit the system. Those that do not accept or admire criminals are threatened to the point of fearful silence.

Corruption also generates economies from which good and seemingly honest people benefit from (see box 5). If it is so entrenched that it becomes part of the way that things are normally done, then in most cases those that are supposed to act against corruption in their midst are in some way implicated. They become tainted or do not enjoy the political freedom to responsibly assert themselves.

Furthermore, in the absence of a free press, as in many of the recipient countries, an independent whistleblowing facility may be one of the few vents for a public conscience.

Without independently managed whistleblowing facilities, the culture of silence in which corruption breeds will not easily be broken under these circumstances. Corruption will flourish, with the Global Fund becoming aware only of those cases that are so brazen or ill executed that even a culture of silence cannot contain them from scrutiny.

An independent whistleblowing facility may be one of the few vents for a public conscience.

Policies and strategies

Safe and effective reporting facilities are essential to break a web of secrecy and deception or the stranglehold of a culture of silence. It is not an organizational luxury if the business of the organization is to dispense billions of dollars for the benefit of vulnerable populations.

Addressing any form of organizational concern requires three important steps from leadership:

- Step 1 is *formal acknowledgment* that a problem exists, that it is of concern, and that it should be addressed
- Step 2 is the *creation of the required formal infrastructure* to address the concern. In large NGOs this would take the form of a policy framework
- Step 3 is *implementing the policy framework* by building infrastructure and management capacity within the organization

In terms of whistleblowing, the board has fulfilled steps 1 and 2 by tasking the Ethics Committee to draft a whistleblowing policy for the Global Fund. This policy is meant to provide guidelines for safe reporting and effective management of reports. It is written in simple language, focusing on satisfying the most basic elements of successful whistleblowing without reverting to complex legal language. The policy is directed towards guiding the reporting of unethical conduct within the Global Fund, among employees and associates, and externally among recipients and affected citizens. Reaching the latter in particular presents significant logistical challenges. The policy is structured to define whistleblowing, and how it is supported by the Global Fund's duty of trusts.

It is "the moral duty of the Global Fund to be a responsible custodian or trustee of funds entrusted to it, by protecting the interests of all its stakeholders: donor countries, recipient countries, or diverse beneficiaries alike".

For the Global Fund, intentional mismanagement or misappropriation of its funds is a serious *breach of trust*, for two obvious reasons:

- First, donors cannot be expected to continue donating funds that are managed irresponsibly or wasted
- Second, and most importantly, the intended beneficiaries, namely those affected by Aids, tuberculosis and malaria, would be harmed

The rationale for a global whistleblowing policy is that it is "the moral duty of the Global Fund to be a responsible custodian or trustee of funds entrusted to it, by protecting the interests of all its stakeholders: donor countries, recipient countries, or diverse beneficiaries alike".

The policy then defines reportable conduct and typically who should report. Further distinctions are made between:

- *Illegal conduct*, being against national or international law
- *Unprocedural conduct*, which violates the Global Fund, and other organizational rules
- *Unethical conduct*, which violates basic universal values such as honesty and fairness
- *Wasteful conduct*, which involves the misuse of Global Fund resources

Assurances of confidentiality and anonymity support whistleblower protection guidelines as well as detailed guidelines for reporting. The policy concludes by listing some of the most prominent international whistleblowing protection legislation in countries around the world.

Resources

In terms of implementation, much remains to be done. The whistleblowing policy was well received by the board and accepted with only minor amendments. This is an accomplishment in itself, considering that cultural prejudices against the concept of whistleblowing are widespread throughout the world.

Implementing the policy requires setting up a whistleblower facility that will be of value to those operating in the central structures in Geneva and those in country structures throughout the globe. The Office of the Inspector General developed reporting procedures and established an internal reporting line, based on the policy guidelines. (An extract from the guidelines is shown in box 6.)

Although it is a very positive development, the current implementation approach has some shortcomings. For instance, the whistleblowing facility is not outsourced, but situated within central Global Fund structures. In our experience this may undermine trust in the facility, especially as there may be concern about safeguarding anonymity. In an organization whose central structures are small and populated by only a few hundred employees, people may fear that their voices will be recognized when they phone. Reporting electronically, using an intranet or e-mail system is generally not trusted because it limits the number of people that may be in a position to report and it leaves identity traces. If it is centrally based and internally operated, those in the country structures may not reap the full extent of benefits intended by the whistleblowing policy.

Nor does there seem to be specific provision for anonymous reporting. Normally an anonymous caller would be given a case number with which to identify him- or herself when providing further information or requesting feedback. If the anonymous reporting option is not clearly communicated, it is our experience that potential whistleblowers, already nervous and potentially fearful, would rather not report.

Another challenge may be that the reporting facility is under the custodianship of the structure that conducts forensic investigations (the Office of the Inspector General). Such structures are usually distrusted to some extent because of the nature of the work they do, and this may very well negatively influence perceptions of the reporting facility. By placing the whistleblowing facility within the Office of the Inspector General, it seems to communicate the message that only reports concerning fraud and corruption may be made. In practice, well-functioning facilities receive most reports in the human resource environment, some in the fields of employee assistance and health management, and also a number of bogus entries, with only a few fraud and corruption allegations in proportion to the total reporting volume.

Those active in the field of forensics and investigation are usually ill equipped to deal with reports that fall outside the forensic field – such as human resources. The line between human resource abuses and fraud and corruption may be artificial. Elements such as high work pressure and work dissatisfaction, combined with frequent observations of misconduct among colleagues, are risk indicators that make people more susceptible to committing fraud and corruption. Human resource issues may be quickly resolved, thereby managing ethical risk and building trust in the facility at the

Office of the Inspector General: Guidelines on reporting

What should be reported?
Any serious concern you have about the operations of the Global Fund or in programmes financed by the Global Fund such as:

- Illegal acts such as theft, fraud, corruption or money laundering
- Improper or unethical conduct
- Contract irregularities or violations of procurement guidelines
- Gross waste or misuse of resources
- Violation of policies, procedures, rules or regulations

What we need
We carry out formal investigations when we have reason to believe that improper acts have been committed. Please make your complaint as specific as possible, and include the following detail:

- What alleged wrongdoing are you reporting?
- Where and when (dates and times, if available)?
- Who carried out the act?
- How the individual or firm committed the act?
- Why you believe the activity was improper?

Box 6 Office of the Inspector General: Guidelines on reporting same time. Criminal investigations may take years, with nothing of consequence on which to provide feedback during that period. This may create the impression that nothing is being done. While this may not be so, resolving a case of human resource abuse, even a very serious case such as sexual harassment, may be done far more quickly than a corruption case. This assists in building trust among users that reports detailing fraud or corruption will receive similar attention, even if nothing is heard or seen for some time.

In our experience, newly established whistleblowing facilities may fall victim to bogus reports submitted to those playing office politics or more seriously by those attempting to harm the reputation of opponents. Again, those trained within a forensic field, eager to investigate and sanction, may not possess the presence of mind to assess all reports for authenticity before commencing an investigation. The damage to reputation may already be done, even if nothing incriminating is found.

A whistleblowing facility is a powerful resource in combating corruption, but special care needs to be taken in positioning it and resourcing it.

In summary, a whistleblowing facility is a powerful resource in combating corruption, but special care needs to be taken in positioning it and resourcing it within the Global Fund. The financial resources may be sufficient, but having it internally operated within central structures may greatly limit use by both those in central, and those in country structures. We are not saying that placing the whistleblower facility within the Office of the Inspector General will not work, merely that attention will have to be paid to managing perceptions and ensuring adequate training for those involved.

Innovation and process

Developing a whistleblower policy for a multilateral organization requires a great deal of innovation. But using the guidelines of such a policy to implement whistleblower facilities on a global scale will present a greater challenge and new levels of innovation. It has been done before, but in a multinational corporate environment. The lessons learned in the private sector may prove invaluable in shaping the process of implementing the adopted whistleblower policy within the Global Fund.

Some of these lessons have been incorporated in international best practice. These indicate that it should be possible for whistleblower reports to be made through an independent external party that provides anonymous reporting options. These reports then should be forwarded to a neutral party that will order them according to category, and distribute them to appropriate structures for action.

Such a neutral party is often called an ethics office. The neutrality of an ethics office is maintained through it being an advisory body, and not becoming involved in the actual resolution of incidences, especially not criminal investigations. In the Global Fund, an ethics office may be considered the executive and administrative arm of the Ethics Committee and, as such, reports to the board.

No such structure currently exists within the Global Fund, but an ethics office would typically:

- Advise on the stated ethics position of the board, secretariat, senior management and other leadership platforms
- Coordinate ethical conduct-related policy development
- Monitor and assess the organizational culture for ethical risk
- Develop additional ethical conduct promoting policies (such as a code of ethics)
- Advise on consistent application of policy, especially disciplinary and reward mechanisms
- Coordinate ethics and good governance training, awareness and ongoing communication programmes
- Administer whistleblower reports

Managing the whistleblower facility would entail the collection, distribution and reporting on incidences received from an independent third party.

Impact on people

The full impact of the implementation of the whistleblowing policy has yet to be felt within the Global Fund structures, but logic and experience indicate that it will play an important part in combating the secrecy and silence associated with corruption.

Probably one of the most important functions of an ethics office or similar custodian of the whistleblowing facilities will be to ensure that a culture of reporting takes hold within the Global Fund and among its country structures. Possessing a policy on whistleblowing is meaningless if people do not have the inclination or confidence to use such facilities.

At the moment this facility falls under the custodianship of a structure that is active in investigations, is not independent, and does not provide obvious anonymous reporting options. This is not ideal in attempting to nurture a culture of reporting and in our opinion needs to be addressed sooner rather than later.

Possessing a policy on whistleblowing is meaningless if people do not have the inclination or confidence to use such facilities.

What may be problematic in nurturing such a culture of reporting is that a dual governance system exists within the Global Fund. When it was established, an administrative service agreement was adopted with the WHO because there was no time to recruit and train a secretariat and other functions. Without WHO intervention, the Global Fund would not have been able to dispense its first grants within months after coming into existence.

Thus, although the Global Fund operates separately in terms of possessing its own board, its own offices and its own organizational culture, the WHO formally employs those who serve in central structures. The WHO does not possess a whistleblowing policy in the manner of the Global Fund policy. By virtue of being responsible for the final pay cheque every month, it may model behaviour that conflicts with the strategic intentions of the board. In our opinion the dual governance requires further attention.

The Global Fund enjoys the benefit of immunity from court jurisdiction.

Impact on the value chain

The Global Fund enjoys the benefit of immunity from court jurisdiction, similar to structures within the UN and the World Bank, largely because of its enormous fund base. Moving billions of dollars within short timeframes all over the world, and in the process often procuring vast amounts of medicine and equipment, makes it an attractive target for lawsuits. Without this immunity, the Global Fund might have been subject to constant lawsuits over compensation for losses attributed to fraud or corruption, defective medicines or equipment, or even allegations of favouritism or anti-competitive practices.

Possessing legal immunity increases the need for professional conduct among employees.

Possessing legal immunity increases the need for professional conduct among employees. The Global Fund should take additional care, in the absence of certain threats of legal sanction, to conduct itself according to standards of ethical excellence and based not merely on compliance with the law and regulations. The latter is of course very important, but should be the minimum standard for responsible business conduct, the aspiration for ethical excellence being the principal guiding professional behaviour within the Global Fund.

The Global Fund should be encouraged to export its commitment to responsible business conduct to those from whom it procures goods and services by clearly communicating its ethical standards and by making its whistleblowing facilities accessible to suppliers.

Impact on society

It is in the interest of the Global Fund to promote good governance in recipient countries while providing grants for the combating of disease. A vehicle for promoting good governance would be to provide whistleblowing facilities in parts of the world where these would not otherwise exist. In this manner, the Global Fund and its partners may create islands of integrity among the corrupt. The Global Fund has enormous budgets under its custodianship, and the application or retraction of these funds does not happen without considerable influence.

This does not mean that the Global Fund should sacrifice its position of political neutrality. Neither should it entertain thoughts of attempting to govern innocently. The Global Fund has an undisputed moral agenda and that implies that it should willingly adopt ethical values with universal appeal. These core values, such as honesty, respect and fairness, transcend cultural boundaries and form the basic standards of conduct that should guide all business activities within it.

Especially in parts of the world where the vulnerable are subject to disease largely because of mismanagement, it may be considered a moral duty of the Global Fund to promote these values through encouraging accountable governance/government.

Whistleblowing facilities that are accessible to affected parties may be a quiet, but very effective way of advocating for responsible conduct without falling into the trap of engaging in political activism. Thus a whistleblower facility that is accessible to all affected parties, deep within country structures, may greatly assist in making tangible the Global Fund's moral obligation to assist in changing some of the socio-political conditions that allow disease to flourish. Global Fund whistleblower facilities may even partly compensate for the lack of a free press or independent judiciary in surfacing incidences of corruption.

The Global Fund has an undisputed moral agenda and that implies that it should willingly adopt ethical values with universal appeal.

Reporting and communication on progress

The Global Fund maintains an extensive website with continuous posting of news events, minutes of meetings and guidance documents.

At the moment, no specific global communication on the whistleblowing policy and structures has been put in place by the Office of the Inspector General. This is largely because the initiative is so new and many of the structures required to enact the whistleblowing policy are not in place yet or are subject to review.

Conclusion

The Global Fund is a remarkable organization that has made a significant impact in addressing the debilitating influence of Aids, tuberculosis and malaria on vulnerable populations all over the world. It has significant influence in administering vast amounts of donor funds. This influence can be used to good effect by promoting responsible conduct among its own employees, grant recipients and suppliers.

One mechanism for achieving this positive role modelling is the development of a whistleblowing policy that provides safe and effectively managed facilities. Without the whistleblowing opportunities offered by the Global Fund, the likelihood of cracking conspiracies of secrecy and the culture of silent protection of transgressors is far more remote.

The Global Fund has managed to partly implement this according to the policy guidelines. But best practice indicates that whistleblowing facilities should be the care of a neutral body, taking receipt of reports from an externally located whistleblowing service provider. Such a neutral recipient may be called an ethics office that will assess the nature of the reports and distribute them to the appropriate Global Fund structures for action.

Despite these challenges, the Global Fund is in the process of charting new territory in promoting a culture of whistleblowing in multilateral environments and deserves our praise.

Special thanks to

- Professor Willem Landman, CEO, Ethics Institute of South Africa, Ethics Committee member, Global Fund
- Dr Brian Brink, director, Anglo American Corporation, Ethics Committee member, Global Fund
- Bart Migone, legal counsel, Global Fund

for sharing invaluable insights during the compilation of this case study.

Notes

1 Rachel, Scheier, African Graft Stings Donors, *Christian Science Monitor*, available online at http://www.csmonitor.com/2006/0601/p06s02-woaf.html?s=hns. (Accessed July 2007).

2 Indeed a 2006 African Development Bank Report estimated that continental losses attributed to corruption amounted to $148 billion

per annum. This figure is equal to approximately 26% of the gross domestic product of Africa's largest economy – South Africa – and is three times that of the gross domestic product of Uganda.

3 Christian Science Monitor, available online at http://www.csmonitor.com/2006/0601/p06s02-woaf.html?s=hns. (Accessed July 2007).

4 J Collins and J Porras, *Built to Last, Successful Habits of Visionary Companies*, New York: HarperCollins, 1994, p 54.

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Massmart Ltd
A moral community

WILLEM PUNT

ETHICS INSTITUTE SOUTH AFRICA

Background

Massmart profile

Massmart is a managed portfolio of 11 wholesale and retail chains, each focused on high-volume, low-margin, and low-cost distribution of branded consumer goods for cash. The group, which operates in 10 countries in Southern Africa, is the third largest distributor of consumer goods in Africa, the leading retailer of general merchandise, liquor and home improvement equipment and supplies, and the leading wholesaler of basic foods.

Ethics Institute of South Africa and Massmart

Massmart is a founding subscription member of The Ethics Institute of South Africa (EthicSA).

What is the King II Report?

In response to a heightened awareness of the importance of responsible business conduct and the influence leadership can have in shaping good corporate behaviour, the King II Report was published in South Africa in March 2002. It originated from an earlier report, a more basic document, the First King Committee Report on Corporate Governance, published in 1994. Its convener, retired High Court judge Mervyn King, brought various experts in the field of corporate governance together to craft a series of best-practice guidelines which, if followed with real leadership commitment, might result in lowered ethical and reputational risk for organizations, including more responsible stakeholder engagement, within and outside organizations.

While not intended to be of relevance to any sector exclusively, it is often interpreted to apply to large private-sector concerns and not to small and medium-sized enterprises (SMSEs), civil society or the public sector. It is our experience that the South African public sector has been taking King II more seriously in recent times, but the challenge of interpreting King II in addressing the governance

EthicSA was responsible for training ethics officers (13 since 2004); evaluating the Massmart Code of Ethics (2004); providing advisory services on ethics management; and conducting an independent verification – the Massmart Ethics Indicator (2005) – of its ethics management programme (the Massmart culture and ethical risk indicators in the Group).

Other service providers, working closely with EthicSA, were responsible for conducting further training and awareness initiatives throughout the Group.

Massmart biographical data

Sector:	Private
Organization type:	Publicly listed holding company on the Johannesburg Securities Exchange
Industry:	Retail
Population:	Approximately 15, 500 employees
Leadership:	Mark Lamberti (CEO and deputy chairperson)
Governance:	Compliant with King II best-practice guidelines. Non-executive chairperson governs a board predominantly populated with independent non-executive directors
Scope:	Serves an extensive consumer base in a wide-ranging series of retail business in 10 African countries, South Africa being the largest
Turnover:	ZAR 26.6 billion (approximately $4 billion)
Last audited results	
Profit:	ZAR 679 million headline earnings (approximately $110 million)

The standards governing our engagement with Massmart are in part derived from the King II Report, the United Nations Global Compact Principles and the South African Constitution.

It is especially in terms of the 10th Principle of the United Nations Global Compact – combating corruption – that EthicSA takes a holistic view to encouraging organizational adherence. We acknowledge that strengthening the forensic and investigative capacities of an organization is essential in order to combat corruption. However, to truly enable effective forensic and investigative work, it is important to enhance the capacity to detect such crimes within the organization as well.

This goal is at the heart of a corruption prevention programme and should be kept in mind when considering our evaluation of Massmart in this article.

The United Nations Global Compact and Massmart

At the time of writing, Massmart is not a signatory to the Global Compact, yet it takes seriously the principles of the Global Compact in exercising its corporate citizenship. Massmart institutionalized similar values, through its ethics management programme, into its business strategy and daily operations.

These values – such as honesty, respect and fairness – underpin the Global Compact principles and the Massmart Ethics Management Programme, which is designed to ensure responsible business conduct.

Method of analysis

An ongoing relationship with Massmart enabled EthicSA to develop good knowledge of Massmart, through anecdotal evidence collected during training and advisory engagement, special research for this article, and the Massmart Ethics Indicator.

Massmart Ethics Indicator

While internal monitoring and reporting on ethics are beneficial, Massmart, following the recommendations of King II, undertook an independent verification of its ethics management process. This involved voluntarily opening the organization to scrutiny by external organizations.

Such scrutiny included an ethics perceptions survey that was conducted by another external consultant and a comprehensive ethics review, conducted by EthicSA: the Massmart Ethics Indicator (hereafter MEI).

EthicSA had unfettered access to engage employees of all employment hierarchies, all of whom were free to provide feedback anonymously, depending on their preference.

The MEI provided a scientifically sound benchmark against which to measure the performance of further interventions over time.

requirements of SMSEs and civil society organizations remains unresolved.

It is within the sustainability section (section 4) of King II that the best-practice guidelines for ethics management governing our engagement with Massmart Ltd are contained.

Box 2 The King II Report

"While business is not democratic, the context of modern democracy demands transparency, accountability and stewardship from all entrusted with assets or power."

Mark Lamberti, CEO and deputy chairperson

Statistical integrity

The instrument used for the MEI yielded excellent results from a statistical point of view:

- Reliability
  - Reliability refers to the extent to which a research instrument produces consistent results with repeated measurements
  - The international benchmark is 70.0%
  - The MEI reliability score is 94.84%
- Validity
  - Validity refers to the extent to which a research instrument measures what it intends to measure
  - The international benchmark is 60.0%
  - The MEI validity score is 69.0%

Employing the Global Compact performance model, we will provide further analysis and insight into the activities of Massmart. Where possible, results from the MEI will support discussion of these points.

Evaluating Massmart's corporate citizenship

It is not often that one finds a company where financial success is matched by demonstrated ethical commitment. Massmart may be viewed as providing tangible evidence for the assertion that well-managed companies are motivated to act ethically.

From a financial perspective, the Group has performed very well, achieving nine successive years of record turnover. In its five years as a listed company, the Group has achieved compounded growth in headline earnings of 33.1%. This has been supported by compounded growth of 35.6% in trading cash flow and has led to an 81% compounded growth in dividends to shareholders.

Being a holding company that evolved rapidly through a vigorous acquisition programme and not through long-term organic growth, leadership was faced with the challenge of retaining the organizational characteristics that made its divisions attractive acquisitions in the first place. In addition, Massmart is a publicly listed entity, needing to comply, at a minimum, with regulatory standards set by the Johannesburg Securities Exchange (JSE) and national legislation.

However, as we shall see, Massmart leadership went beyond a minimalist compliance approach and aimed for ethical excellence in pursuit of its goal of becoming a highly profitable retail force, capable of returning sustainable value to its stakeholders. The issue of sustainable value creation and the diversity of the various businesses led Massmart leadership to adopt a ‘soft hands’ approach, avoiding unnecessary interference in the culture and practices of the divisions, while using an ethics management process to craft an overarching ethical framework guiding the conduct of its constituent divisions.

The main ingredients of Massmart’s success are therefore its leadership, in terms of strategic vision, business skill and ethical commitment; and its capacity, through an ethics management programme and other supporting systems, to encourage ethical behaviour throughout the Group.

The performance model

Defining the vision: the organization as moral community?

Mark Lamberti’s comment mirrors our experience of Massmart as an organization that is highly competitive in a very competitive industry, but with monetary gain being understood and realized in terms of value creation: in other words, in terms of the Massmart values, encompassing goals broader than the limited pursuit of headline earnings at any cost. According to Collins and Porras, the authors of the acclaimed work ‘Built to Last’, this is the characteristic that differentiates the good from the great, the short-lived from the lasting. “Profit maximization does not rule, but visionary companies pursue their aims profitably. They do both.”[1]

In many respects this predisposed the company to develop a vision of itself not solely as a legal vehicle pursuing profit, but as a moral entity pursuing sustainable value creation. As a holding company, the concept that springs to mind is that of a moral community. This is an interesting concept, for it has wide-ranging implications. Most generally it requires a high level of vision, leadership and organizational maturity. It is worth briefly exploring this concept by reverting to a bit of philosophy.

The American philosopher John Rawls contrasted the so-called private and social natures of humankind. The private nature, whether it encompasses individuals or associations, tends to pursue its own selfish ends that are in themselves competing with other ends. A second aspect of this private nature is that since it possesses no inherent values other than immediate gratification governing its

Who was John Rawls and why is he important?

Rawls is an American philosopher who is much involved in the development of an understanding of the ethical dimensions of communities. In his seminal work, A Theory of Justice (1971), he argues that the merging of individuals into larger communities, sharing a common purpose, is vital to the moral development of the community as an entity and therefore those that operate within it. The importance for business ethics and those interested in the theoretical foundations of the Global Compact’s goals for enhancing responsible business conduct is Rawls’s insistence that a business, as a social unit, is a moral community, and therefore not just a legal construct with compliance imperatives projected upon it, but rather ethical obligations originating from within it.

interaction with self and others, it experiences engagements with stakeholders as a burden to be avoided. All social arrangements are therefore perceived only as means to private ends. Common sense indicates that this is not a premise upon which a sustainable or moral community can be built.

In describing the social nature of humankind, it is best to quote Rawls directly:

> *The social nature of humankind is best seen by contrast with the conception of private society. Thus human beings have in fact shared final ends and they value their common institutions and activities as good in themselves. We need one another as partners in ways of life that are engaged in for their own sake and the successes and enjoyments of others are necessary for, and complementary to, our own good.*[2]

Rawls regards the development of a social nature – essentially that of a caring society or organization – as being critical to the attainment of justice. In order to do so, the society, Massmart, needs to encourage 'justice' through the pursuit of what is good, right and fair, because it is the correct thing to do. Justice originates from the way you are, not so much from the way you act. The business spin-off is welcome, but incidental.

Massmart leaders, who possibly do not have an academic interest in philosophy in general or Rawls in particular, have been growing the organization to be what Rawls describes as a moral community. Massmart is, in that sense, being actualized to be more than a vehicle pursuing profit, while being profitable in the process. They have been doing so by merging competence with universal ethical principles as social glue welding the members of the community (divisions, departments, employees) together into a recognizable Massmart whole, while acknowledging the uniqueness and autonomy of those in the community.

This pragmatic but principle-oriented approach to ethics Collins and Porras describe as having a core ideology.[3] It informs the organization's core values, guiding principles, and its purposes, its fundamental reasons for existence beyond merely making money. Without it, they state, organizations flounder when faced with the constant tension between conformance and performance in entrepreneurial environments. It has nothing to guide its action beyond the peculiarities of specific circumstance, which explains why so many others get lost along the way.

Evaluating leadership

This position of principle was espoused during a recent interview with the Massmart CEO, when Mark Lamberti stated his refusal to adhere to different ethical standards when engaging in countries where officials commonly demand bribes. Not withstanding these positive sentiments by leadership, ethical leaders do not automatically lead ethical organizations. Leaders need to work at being ethical role models. Statements alone, although important, will not sufficiently influence the behaviour of those being led, especially in the lower echelons of the organization, far removed from head office and the boardroom. The espoused commitment to responsible business conduct must be matched by a perceived commitment of leadership and senior management to walk the proverbial talk.

The MEI provides interesting data, comparing levels of stated commitment to ethical conduct from leadership with perceived commitment (that is, whether leadership will turn away business that does not meet these standards).

While a full alignment in any organization is unlikely, it is important that the gap between these two indicators is not too great. Emerging from this comparison, 88% of employees reported being aware of top management's exposed commitment to ethical values, with 76% believing top management to be sincere in this regard.

"If I cannot get my stock off the ships without paying bribes, I will offload them myself. If I cannot get it out of the port for the same reason I will get out of the country.[4]"

Mark Lamberti, CEO Massmart

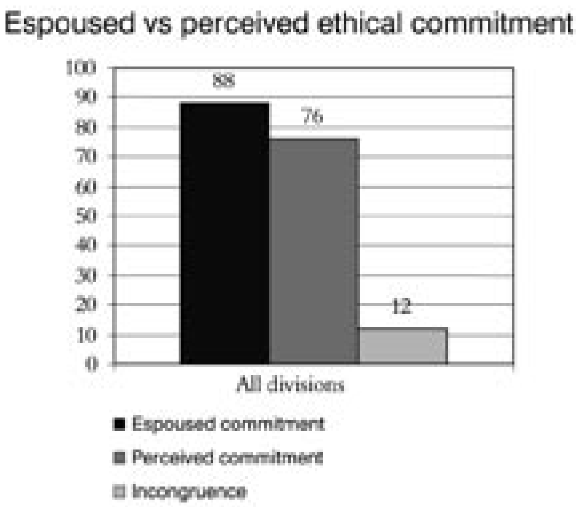

Figure 1 Espoused vs perceived ethical commitment

Highly ethical conduct:

Plays a significant role in good corporate risk management

Facilitates better and more consistent corporate decision making

Elicits more constructive responses from business partners and stakeholders

Promotes employee happiness, effectiveness and workplace satisfaction

Brian Leroni, Director of Corporate Affairs

From this analysis one may deduce that only 12% (see figure 1) of top management is not perceived to be sincere. Inversely explained, with seven out of eight managers perceived to walk the talk, this is a positive confirmation that ethics in Massmart has developed beyond just talk emanating periodically from the boardroom.

To achieve such positive statistical results, the vision of Massmart as a moral community required a vehicle to become a reality, a vehicle that needs to be steered by leadership and maintained by management. Subsequently the Massmart Executive Committee undertook to implement a comprehensive ethics management programme in March 2004.

The cornerstone of this programme was a practical vision for ethical practice. A key consideration in the collaborative formulation of this vision was that it had to have intuitive relevance for employees at all levels in the organization. An essential component involves the use of practical examples to describe the target ethics end state. The Massmart vision for ethics is described in figure 2.

Our organization is free of	Our organization is committed to
Politics, back-biting, favouritism, abuse of power, vindictiveness, machismo, theft, fraud, discrimination, corruption, intimidation, sexual harassment	Transparency, fairness, personal respect, accountability, employment equity, honesty, individual privacy at work, social responsibility, fair remuneration, respect for HIV positive people, natural environment
Our organization facilitates and ensures	
Effective ethics education and communication, encouragement of ethical behaviour, consistent enforcement of discipline, immediate reporting of ethical misconduct, adherence to the regulations, integrity considered in promotions, ethical violations addressed openly, responsiveness to ethical concerns, employee accessibility to competent ethics officer, no pressure to behave unethically	

Figure 2 Massmart vision for ethics

Importantly, embarking on an ethics management process in Massmart was not preceded, as is often the case, by some major critical event of an ethical nature. Commendably, leadership had the vision to embark on an organized process of trust enhancement among all stakeholders rather than post-haste, post facto attempts at trust recovery.

Furthermore, very positively, an ethics management programme in Massmart has not been interpreted as an attempt to fix a defective business plan; something that, in our experience, it can never do.

Employees that do not have confidence in their employer's ability to consistently apply the company's own policies tend to resist making decisions.

Driving empowerment: making ethics a part of daily work life

Employees that do not have confidence in their employer's ability to consistently apply the company's own policies tend to resist making decisions, fearing some form of real or perceived backlash. Accordingly, decisions are then made in a committee context, an often cumbersome vehicle that may be designed solely to deflect personal accountability in case of blame. In our experience, organizations that are suffering from a lack of leadership vision and clear management guidelines encourage inconsistent application of their policies and promote the breeding of a blame culture.

A blame culture, often originating from inconsistent application of policy encourages a flight to more policy.

Such a blame culture inhibits organizational ability to innovate and quickly react to changing market conditions. This is because, in an ironic twist, a blame culture – often originating from inconsistent application of policy – encourages a flight to more policy. Without recognizing that the underlying cause may not be the policy itself, but those utilizing it, the organizational response to a blame culture is often more policies, which may very well lead to further inconsistent application. The result is the inevitable blossoming of organizational bureaucracy that a low-margin, high-volume business such as Massmart could ill afford.

Subsequently, the desired manner of empowerment meant retaining the entrepreneurial qualities of successful shopkeepers – hard working, honest, straightforward and innovative – and exporting them into every aspect of its business. Therefore its aim was to empower employees, and ultimately stakeholders beyond the Group, to understand exactly what types of conduct would be supported by Massmart and what types it would not support. Good ethics facilitates good and defensible decision making, and subsequently increases general organizational effectiveness.

Good ethics facilitates good and defensible decision making, and subsequently increases general organizational effectiveness.

The MEI provides compelling evidence that the organization is starting to reap the benefits derived from its leadership's vision (see figure 3).

To achieve such empowerment, and in pursuit of its vision of a moral community, Massmart established a dedicated ethics management

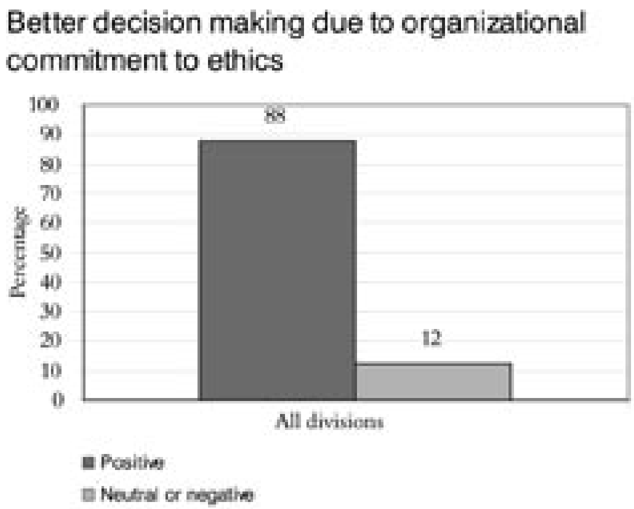

Figure 3 Better decision making due to organizational ethics commitment

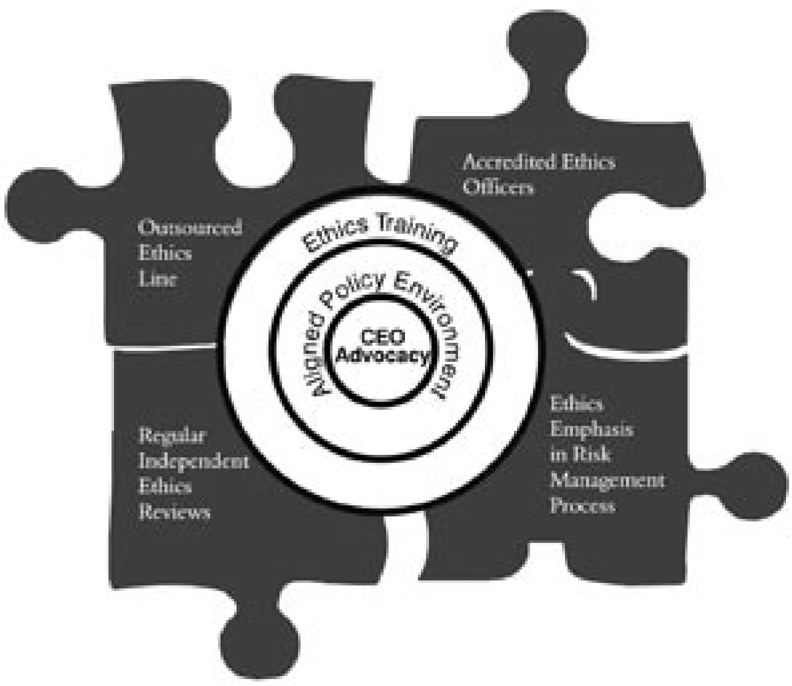

Figure 4 Massmart's ethics management programme

process in order to provide a decision-making framework designed to integrate responsible conduct into the daily work lives of its employees. This has been achieved by the combined effects of ethics advocacy by the CEO; ongoing training; a policy environment that is aligned to ethical good practice; and a robust process for encouraging and enforcing good ethical practice. These elements are combined into a comprehensive programme that is integrated into all divisions and at all levels of the Massmart group (see figure 4).

One of the special benefits of this empowerment programme is the creation of a culture of reporting unethical conduct. An ethics management programme is designed to ensure the availability of safe and well-managed reporting facilities, internal and external to the organization. It is the creation of this culture that ultimately ensures that every employee becomes a weapon in an organizational arsenal for combating corruption.

Every employee becomes a weapon in an organizational arsenal for combating corruption.

Formulating policies and strategies

Codifying the values: ethical principles for all stakeholders

> *'Our belief is that successful business is built on the foundations of good corporate citizenship, which we take to mean acting responsibly and with the highest standards of ethics and integrity in our dealings with all stakeholders.'*[6]

With the vision of Massmart as a moral community as the starting point, the organization defined ethical principles that would have relevance for all its stakeholders. In keeping with good practice, Massmart established ethical standards that would apply to everyone in the chain of business: employee, customer or supplier.

The group defined eight stakeholder engagement principles, incorporating practical examples to facilitate understanding:

Stakeholder engagement principles

- We will always abide by the spirit and the letter of the law in the way that we conduct our business
- We will always maintain accurate and reliable records that provide a fair representation of all business transactions and that are consistent with generally accepted accounting practices (GAAP), as well as our legal and financial reporting requirements
- We will always strive to create a stimulating and safe working environment that is underpinned by respect for the rights of individuals and that is free of prejudice in all its guises

The ethics officers are specifically tasked with ensuring that instances of alleged ethical misconduct are thoroughly investigated and properly resolved.

- We will always act in the best interests of our customers, paying particular regard to their expectations of product quality, product safety, competitive pricing and advertising that is not false or misleading
- We will always compete fiercely in our chosen markets, but we will not resort to dishonest tactics in order to gain advantage over our competitors
- We will maintain strictly professional relationships with suppliers of goods and services. We will specifically not engage in any activity, accept or offer gifts, favours or hospitality that may compromise our ability to deal with our suppliers objectively and without special favour
- Our employees will always perform their responsibilities professionally, honestly and in a way that serves the legitimate interests of our stakeholders
- We will always act as a compassionate and responsible corporate citizen that is in touch with the issues facing the communities in which we operate

These principles serve as benchmarks against which Massmart evaluates its decision making, in terms of both its internal management and its corporate strategy.

Ongoing awareness: scenario-based training

The decision to conduct interactive, scenario-based sessions was, in part, driven by awareness that it better facilitates learning, especially ethics learning, and, in part, by the diversity of operating cultures within the divisions throughout the Group.

The training is based on eliciting employee responses to topical public and work life scenarios. Participants in the training are required to debate ethical dilemmas such as the conflict between the need for punishment and the need for compassion: a dilemma that managers constantly face. Furthermore, the training requires participants to evaluate their own ethics and those of their managers and the organization in a series of predefined ethics questionnaires. This offers an opportunity for introspection and provides the company with important feedback about employee perceptions of the Group's approach to ethics. During the first six months after renewing its ethics drive, Massmart exposed in excess of 14,000 employees to the Group's ethics training process.

Establishing internal management capacity: accredited ethics officers

Massmart took an early decision to appoint accredited ethics officers in all its chains. Trained by EthicSA and acting under the guidance of a group ethics officer, they are the custodians of ethics in the organization. Ethics officers are tasked with ensuring that instances of alleged ethical misconduct are thoroughly investigated and properly resolved. Their independence is indicated by the fact that the chief ethics officer reports to the Massmart Audit Committee, the chairperson of which is a non-executive director. This arrangement is significant for another reason: it enables Massmart to integrate its ethics activities with the Group's broader risk management process. Subsequently, internal ethics audits are conducted at regular intervals by the Massmart Internal Audit Department.

Independent ethics reviews: the Massmart Ethics Indicator

While internal monitoring of ethics practices is extremely beneficial, Massmart has voluntarily opened its ethics practices in the Group to scrutiny by external organizations. Such scrutiny has included a comprehensive ethics review– the MEI – conducted by EthicSA. The MEI provided a scientifically sound benchmark against which to measure the performance of further interventions. Another advantage, based on recommendations derived from the survey results, is that Massmart may customize interventions to meet the specific requirements of each division.

Outsourced ethics line: the Massmart Ethics Line

Since the capacity to detect unethical conduct is central to a corruption prevention programme, Massmart, in conjunction with confidential internal reporting paths, established an anonymous Massmart Ethics Line, run by an independent private company.

This line is available to employees and suppliers as a mechanism of last resort for creating awareness about unethical conduct. The line features a 24/7 service and is staffed by operators who are proficient in five languages. A total of 251 calls were made to the ethics line in the period June 2005 to May 2006. All calls are investigated, followed by appropriate remedial action. Callers are able to anonymously track the investigative process and the Group's response to the call through the use of a unique tracking number.

There is anecdotal evidence that the Massmart Ethics Line appears to be working. Bryan Hacking, ethics officer within a major division of Massmart, recently told the author of a victimization case affecting a unionized worker. The case was reported via the ethics line by the employee's union representative, specifically to test whether the facility is effective. Being sceptical, the union representative was surprised when the report was dealt with, resulting in the transgressors being disciplined. A similar case was reported by John Hawksley, the chief ethics officer, in which the ethics line was recently instrumental in exposing a major fraud being conducted in the organization.

Such successes greatly enhance employee confidence in the line and are possibly more compelling indicators of an anonymous reporting line's success than survey data can ever offer.

However, again looking at the MEI, survey results confirm that the ethics line appears to be working, although better in certain divisions than others.

In terms of combating unethical conduct such as corruption, through the MEI, management has objective data indicating the levels of observed misconduct, its frequencies, and the tendency to report such events.

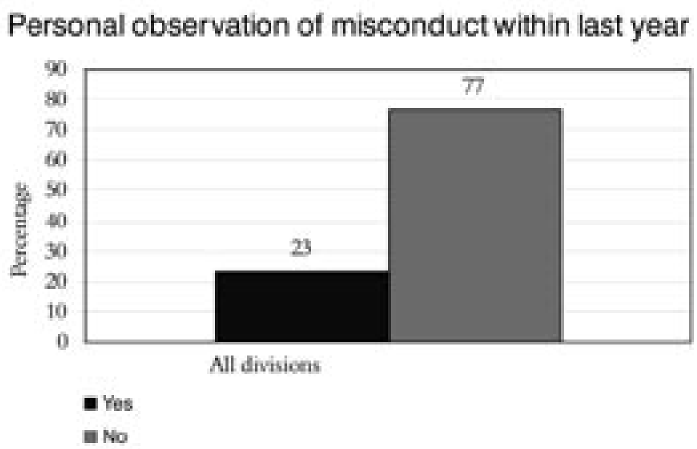

Figure 5 Observation of misconduct in 2005

Judging from figure 5, approximately every fourth employee in Massmart observes some form of unethical conduct in the Group. From other data, it emerged that in almost 60% of all cases this is at infrequent and very infrequent rates. Given the extent of the opportunities for unethical conduct in a large organization retailing physical goods, this is overall positive, but certainly not a perfect finding.

Many of the types of observed misconduct that were reported during the survey were not theft, fraud or corruption, but issues falling within the traditional human resource domain (sexual harassment, intimidation, etc). This was confirmed by the majority of reports to the ethics line, which were also of a human resource nature. This may indicate that in some divisions more attention needs to be given to establishing trust in traditional grievance procedures, usually administered by human resources departments.

That over a third of employees do not report observed incidence of misconduct is worrisome and reflects general cultural biases against using ethics lines, real concerns over safety and fear of victimization, and a general distrust in the effectiveness of the facilities (see figure 6). Massmart, however, has made progress in addressing these concerns and a future ethics indicator study may provide objective data that confirms anecdotal evidence that a culture of reporting is taking hold in many of its divisions.

A sustainable commitment to an ethics management programme and good corporate citizenship requires the custodians of such initiatives to be properly trained and supported.

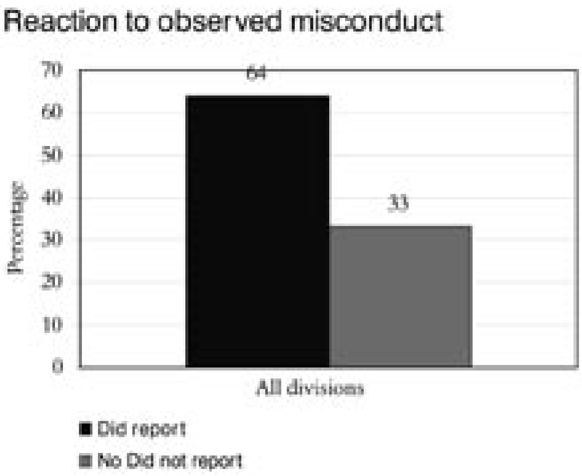

Figure 6 Reporting observed misconduct

Providing resources: a sign of true commitment

EthicSA often encounters espoused commitments to responsible conduct from leaders when engaging with organizations. However, in many cases such commitments are compromised by a lack of resources to get the job done. Sufficient resource allocation both in human and financial terms is a sign of true commitment to any organizational initiative.

Human capital

Organizations without internal capacity cannot sustainably commit to any initiative, let alone an ethics management programme. External advisors cannot manage an organizational culture or the manner in which it endeavours to live its vision on behalf of management or leadership. A sustainable commitment to an ethics management programme and good corporate citizenship requires the custodians of such initiatives to be properly trained and supported. These custodians are often ethics officers, that is, members of management specifically tasked with managing ethics throughout organizations.

At Massmart, ethics officers are tasked to interpret daily the ethics vision emanating from leadership. Under the coordination of a chief ethics officer, located in head office, ethics officers operating in the divisions meet quarterly to pool experiences, provide feedback and plan future strategies. None of the Massmart ethics officers fill their positions full time and all have other roles within their divisions. These ethics officers in turn are supported by other departments in the organization in terms of ongoing training and awareness, investigations and general counsel. They are subject to internal audit procedures, conducted by internal auditors that received ethics officer training.

Ethics champions are the first point of ethics advice for fellow employees.

The biggest shortcoming in terms of the collective Massmart Ethics Office is an apparent lack of support in terms of what may be called an ethics champion network comprising members from all employment hierarchies. Ethics champions do not manage an ethics programme in the way that ethics officers do, but receive special training in elements of the ethics management process, often the code of ethics, in order to be the first point of ethics advice for fellow employees. In Massmart, members of senior management in each division received additional special awareness training but, being further removed from shop-level employees, it is unlikely that they will be approached by employees with the same level of candour as ethics champions from among their peer group.

A lack of easily accessible ethics champions, and possible trust concerns with grievance procedures under the custodianship of human resources, may result in external reporting procedures being used to ask for advice or report on incidences best handled elsewhere.

When one looks at the high levels of human resource-related reports that are described to the Massmart ethics line, this may very well be true in some divisions.

Financial capital

In terms of the ethics management programme, an initial budget of approximately R1.6 million was allocated for specialist consultancy fees and training of ethics officers and more widely among employees throughout the Group. However, since then the daily running of the ethics offices has been fully incorporated into normal business operations with no specific and separate budget allocated.

The running costs of the ethics line and the investments required for periodic ethics indicator surveys as well as specialist consultancy costs are borne by head office. Owing to committed leadership support for ethics management, resource allocations are generally good and commendable.

Innovation and process

Corruption prevention

The most effective detection tools in an organization are fellow employees. Yet corrupt acts are often enveloped in a culture of silence, where employees are either too scared or too apathetic to report corruption. An ethics management programme is designed partly to ensure the availability of safe and well-managed reporting facilities, such as a hotline, to break the culture of silence in which corruption thrives.

However, Massmart did not attempt to specifically combat corruption when embarking on an ethics management process. Rather, the focus was to holistically develop a responsible business, committed to good corporate citizenship, the pursuit of which includes building an organizational culture that does not tolerate corrupt acts. Therefore, the simple premise is that an organization committed to good corporate citizenship will be dedicated to protecting human rights, upholding proper labour standards, protecting the environment and strengthening its capacity to prevent, detect and act upon corruption within its sphere of influence.

Importantly, the combating of corruption, in a preventative sense, cannot always be distinguished from combating and resolving other issues of an ethics nature. Massmart managers reported that cases of sexual harassment, religious factionalism, conflicts of interest and favouritism surfaced through the reporting paths within the

The most effective detection tools in an organization are fellow employees.

Corruption thrives in a culture of silence.

A good ethics management programme forms the heart of organizational attempts to protect human rights, to adhere to internationally accepted labour standards, to protect the environment, and to combat corruption.

organization. Successfully resolving these issues builds confidence in the organization, and its reporting procedures. This may result in the organization being better able and prepared to detect and successfully manage cases of fraud and corruption.

Corporate citizenship

Massmart knew that to sustain its corporate citizenship vision, it had to promote responsible business conduct in its businesses or divisions, hence the ethics management programme and, in particular, the code of ethics informing the nature of its corporate social investments. Massmart avoided a common problem among many engaging in corporate social investments, namely that such initiatives, designed to enhance the sustainability of the organization, are built on unstable bases, with the promotion of ethical conduct not being advanced or integrated into the operational fabric of the organization.

We are of the opinion that without a strong ethical base, corporate social investments become mere investor relations exercises rather than sustainable initiatives flowing from an internal commitment to responsible business conduct. Therefore, we argue that a good ethics management programme forms the heart of organizational attempts to protect human rights, to adhere to internationally accepted labour standards, to protect the environment, and to combat corruption. Simply, an organization that is not committed to responsible business conduct in its operations cannot sustainably commit to responsible business conduct in the communities in which it operates.

With the foundations of the Massmart Ethics Management Programme in place, the capacity to promote ethical conduct among employees increased. With a lowered internal risk profile, Massmart could thus pursue corporate social investment initiatives, not as isolated projects, but as coherent expressions of its vision and values.

Impact on people: taking ethics home

Probably the most fundamental impact among Massmart employees has been the capacity of the ethics management programme to enhance organizational effectiveness, both through increasing the capability and confidence of employees in making decisions and taking responsibility and the creation of a culture of reporting, which has significantly increased Massmart's ability to detect corruption.

It is worth quoting directly from the general conclusion of the MEI:

> In respect of all of these components of the survey, Massmart divisions show very positive results. Generally speaking, individuals across all employment levels are satisfied with working in Massmart divisions and think highly of their integrity, not only as proclaimed but, very significantly, also in respect of 'walking the talk'.
>
> Interestingly, in various ways recent ethics initiatives at Massmart divisions are clearly known and positively appraised. Employees appear to have developed capacities and inclinations to make ethical distinctions, to reason about ethical issues they face in the workplace, to seek advice on ethical issues, and to report ethical misconduct.
>
> Importantly, the data reveals that not all Massmart divisions are on a par in respect of their ethical performance. However, those that are lagging behind, for whatever reasons, appear to benefit significantly from these recent ethics management interventions, which is very positive and encouraging.[7]

There is a misguided notion that the retail industry has little environmental impact.

Impact on the value chain

Since Massmart procures goods and services from thousands of suppliers, it has the opportunity to export its commitment to responsible business conduct to those with whom it has regular business. Given the variety of products and the scope of concerns that may arise, this can be very challenging.

A classic example recently recounted to the author concerns the stocking of a condiment. This product is very popular with consumers and was passed by South African health authorities. But international evidence started to emerge that the product contained significant amounts of very harmful chemicals. In such cases, do you refraining from stocking your stores with the product, in spite of consumer demand, or do you simply give the client what he or she appears to want? Where does the organization's responsibility begin and, more importantly, where does it end?

Another case involved the stocking of a specific kind of braai (barbecue) equipment that appears to encroach on the patent rights of a famous high-quality South African brand. The product is intentionally made to look the same, but is significantly cheaper and of inferior quality. Massmart decided not to stock this particular product any more.

We are of the opinion that Massmart could do more to set up clear guidelines, derived from their vision and code of ethics, to provide managers with the tools to resolve such dilemmas.

Good corporate citizenship requires an organization to match its position of influence with a commitment to act ethically and responsibly.

One often neglected aspect of the supply chain, to which Massmart did pay detailed attention, is mitigating the environmental impact of some of its suppliers.

Protecting the environment: ethical practice in the supply chain

While a common notion tends to exist that the retail industry has little environmental impact, this is misleading. Massmart embarked on a programme to encourage suppliers to be more aware of their environmental impact. One example is the fishing industry, the popularity of seafood resulting in many marine species being over-fished. Subsequently Massmart identified its fish and shellfish suppliers as a priority focus area.

Over a five-month period, it conducted a survey of supplier fishing practices to verify that the Group was applying responsible marine procurement practices. The survey served to highlight that:

- None of the fish species that Massmart stocks are listed on the 'No Sale Species' list of the World Wide Fund for Nature's Southern African Sustainable Seafood Initiative
- The group only stocks dolphin-friendly tuna and does not sell bluefin tuna, which is severely over-fished
- Massmart's locally caught hake are sourced from Marine Stewardship Council (MSC) certified fisheries. Gaining MSC approval requires that these fisheries adhere to stringent operating principles, which are verified by experts

Gauging the impact on society

As an organization with a large employee population that procures products and services from thousands of businesses, often from within the communities in which it operates, Massmart has considerable influence on society. Good corporate citizenship requires of Massmart to match its position of influence by a commitment to act ethically and responsibly.

Massmart is using its code of ethics as one of the vehicles to guide the Group's internal and external responses to business imperatives. In this way, the Group has brought to life, from within the organization, its commitment to highly ethical conduct in the broader community. In keeping with its vision as a moral community, this involved moving beyond a narrow interpretation of ethical practice that focuses solely on protecting the Group's obvious commercial interests. Massmart has shown commendable willingness to extend its ethical commitment beyond the realm of direct commercial self-interest into the ambit of public interest.

Some examples are worth mentioning:

- *Participation in the JSE Socially Responsible Investment Index*
  Massmart has qualified for inclusion on the JSE Socially Responsible Investment (SRI) Index each year since its launch in 2004. In its 2006 SRI Index assessment, Massmart scored a total of 181 points, substantially exceeding the baseline qualification mark of 78 points.
- *Nurturing new businesses*
  Meeting the socio-economic needs of South Africa's poorest is a national concern that cannot be addressed by government alone. In South Africa this means providing assistance to marginalized groups such as unemployed youth and rural women. Massmart responded through a partnership with the *Umsobomvu* Youth Development Fund to create enterprise development opportunities for unemployed black youth. The project received a R1 million contribution from Massmart (and a matching contribution from *Umsobomvu*), which is being used to establish unemployed youth in micro or entry-level franchise businesses.

  Massmart has also provided a R1 million interest-free loan to Women's Development Businesses (WBD), which runs a micro-finance programme for rural women. The programme provides small loans to very poor rural women, so that they can develop micro-enterprises to generate household income. Massmart pays the salaries of two WDB field workers, who provide the participating women with ongoing advice and support.
- *Investing in communities*
  Following from the commitment to "act as a compassionate and responsible corporate citizen", the Group's overarching corporate social investment (CSI) objective is to support the education of previously disadvantaged individuals. Each trading entity is required to spend 1% of after-tax profits on educationally focused CSI initiatives. This is in addition to the Group's focus on unemployed youth and rural women.

A fine balance is required between 'publishing' worthy accomplishments and engaging in inappropriate traditional marketing.

Reporting and communication on progress

In our experience, large organizations tend to suffer from poor

It is important for investors and other stakeholders to know what the organization is doing.

communication, both internally and externally to stakeholders. While we have no particular knowledge of how well Massmart communicates on subjects other than ethics, we may deduce that if it is proficient in one aspect, it may very well be proficient in communicating other subjects pertinent to its business.

When reporting on various corporate citizenship initiatives, be they internal or external to the organization, a fine balance is required between 'publishing' worthy accomplishments and engaging in inappropriate traditional marketing.

External communication

It is important for investors and other stakeholders to know what the organization is doing, but in a manner that underlines a commitment to doing the right thing, primarily out of principle and only secondarily from a desire to effect favourable outcomes for the business. The most logical vehicle is the annual report and ideally a special corporate citizenship report. In this respect Massmart has shown significant improvement. But a special corporate citizenship report, independently verified by an appropriate assuror, is still lacking and would be highly beneficial.

Massmart employs specialists to manage regular press releases on its corporate citizenship initiatives. Further, the Massmart website[8] has an extensive section on ethics and governance, including a web-based version of the code of ethics. A copy of the *MEI* is also published on the website.

Internal communication

Generally, the MEI paints a positive picture of employees enjoying high levels of ethics awareness.

Some data from the survey supports this view:

- 98.8% of respondents were aware of Massmart's ethical standards
- 90.5% of respondents find the ethical standards useful
- 89.4% of respondents are aware of avenues for reporting ethical misconduct
- 81.3% of respondents indicate that they can report misconduct without fear of retaliation
- 81.3% of respondents indicate that line managers are held accountable if they are caught violating the organization's ethical standards

This dataset vindicates the time, money and energy spent on driving a programme of responsible business conduct through the organization. Massmart circulates a regular internal magazine, addressing various topics. At the time of writing, the current copy in circulation contains an article on ethics and ethics management by Mark Lamberti, the CEO.

Conclusion: the way forward

Massmart has achieved a great deal in a short period of time. In many respects the organization has implemented a model ethics management programme. Its outreach programmes in the community also make a positive difference to the lives of those who are touched.

Organizations can always do more, however, and the areas requiring greatest attention are probably the environmental field and the field of corruption prevention. In environmental terms, this would include decreasing Massmart's environmental footprint, especially in terms of energy use, and launching programmes similar to the responsible fisheries project (above) to encourage good environmental practices among suppliers. In terms of corruption prevention, its efforts to create a safe reporting culture have been very successful in certain divisions, but less so in others. Organizational culture change does not happen overnight and requires sustained efforts of up to five years in order to make a culture of reporting, of effective corruption prevention, evident in all divisions.

Organizations can always do more, however, and the areas requiring greatest attention are probably the environmental field and the field of corruption prevention.

Strategically, from a risk perspective, the greatest risk may well be an aspect that counts so much in favour of Massmart, namely its profitability. In the current climate of robust economic growth and high consumer demand, some may argue that Massmart's management has yet to pay a significant price for its principled commitment to good ethics. Yet there are already worrying signs that South African economic growth is driven, not by increased remuneration, but by increased credit extension. As household debt levels escalate, any change in the interest rate environment may very well have an adverse effect on consumer demand. This may result in pressure to conform to ethical standards.

Also, in the light of the continued need to unlock new markets, especially in Africa, where corruption is often ingrained in the operating cultures of those economies, the need to maintain ethical conformance may be further outweighed by the need to perform financially. The risk remains as a mergers and acquisitions environment is often a graveyard for many espoused ethical ideals.

This challenge is not unique to Massmart, but it does underline the necessity of values-based leadership and proper succession planning. The current CEO, an integral force behind the development of Massmart as a moral community, was due to retire at the end of 2006. The incumbent, Grant Pattison, has an obligation to maintain the 'moral community' that is Massmart.

Special thanks

- To Mark Lamberti, CEO and deputy chairperson of Massmart, for leading a company whose efforts are so satisfying to report on
- To Brian Leroni, director of corporate affairs at Massmart, for supplying valuable source material in researching this article.

Notes

1 Mark J Lamberti, CEO and deputy chairperson.

2 J Collins and J Porras, *Built to Last, Successful Habits of Visionary Companies*, New York, HarperCollins, 1994, p 54.

3 John Rawls, *A Theory of Justice*, Harvard University Press, 1971, p 422.

4 Collins and Porras, *Built to Last*, p 73.

5 Mark J Lamberti, CEO and deputy chairperson.

6 Collins and Porras, *Built to Last*, p 54.

7 Mark J Lamberti, CEO and deputy chairperson.

8 Massmart Ethics Indicator, p 29.

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Enterprise governance within the Nedbank Group

WILLEM PUNT

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Introduction

The Nedbank Group profile

The Nedbank Group Ltd (formerly Nedcor Ltd) is a holding company for its principal banking subsidiary, Nedbank, and other members of Nedbank Group Ltd (hereafter the Group). It operates as one of the four largest banking groups in South Africa.

As a firmly established South African institution, it has links with the oldest South African bank, the Cape of Good Hope Bank, established in 1831. However, more accurately the bank's history starts with the establishment of the *Nederlandsche Bank en*

Credietvereeniging (NBCV), founded under Dutch royal charter in Amsterdam in April 1888. In August 1888 the bank opened a branch in Church Street, Pretoria, with capital of R100,000 (£50,000 in those days). The first year's profit was R11,706 and the dividend 3%.

While originally a foreign-owned bank, it became wholly South African over a number of decades, starting when the NBCV took a far-reaching decision in 1940. When the Netherlands fell to Nazi invaders, all the NBCV assets were transferred to Pretoria. Thus, South Africa essentially became the NBCV world headquarters.

The company became wholly South African-owned by 1969 and listed its ordinary shares on the Johannesburg Securities Exchange (JSE) that same year. By 1971 it had adopted its current name, Nedbank, and appointed its first South African managing director.

Nedbank Group Ltd biographical data

Sector:	Private
Organization type:	Publicly listed holding company on the JSE
Industry:	Financial services (banking)
Population:	Approximately 22,000 employees
Leadership:	Tom Boardman (CEO)
Governance:	Compliant with King II best-practice guidelines. The board comprises 19 members of whom 17 are non-executive. Eight of the 17 non-executive directors are independent
Scope:	Principal services comprise corporate and retail banking, property finance, investment banking, private banking, foreign exchange and securities trading

Last audited results: 2005

Headline earnings:	ZAR 3,167 million (approximately $ 22,000 million)
Total advances:	ZAR 248,408 million (approximately $ 1.7 billion)
Total assets:	ZAR 352,258 million (approximately $ 2.5 billion)

Box 1 The Nedbank Group biographical data

Today the Group offers a wide range of wholesale and retail banking services through three primary business clusters: Nedbank Corporate, Nedbank Capital, and Nedbank Retail. The principal services offered by the Group comprise corporate and retail banking, property finance, investment banking, private banking, foreign exchange and securities trading. The Group also generates income from private equity, credit card acquiring and processing services, custodial services, unit trust and trust administration, asset management services and bancassurance.

With headquarters in Sandton, Johannesburg, the Group has large operational centres in Durban and Cape Town, which are complemented by a regional network throughout South Africa. It also has a small presence in other Southern African countries. In addition, the bank is aligned with affiliate financial institutions and representative offices in certain global key financial centres that serve to meet the international banking requirements of South Africa-based clients.

Ethics Institute of South Africa and Nedbank Group

The Group is a member of the Ethics Institute of South Africa (EthicSA) and the Group's ethics officer has attended the Ethics Officer Certification programme and is awaiting certification. The Nedbank Code of Ethics was developed in conjunction with EthicSA, with EthicSA also assisting the group in the rollout of its training programmes on the code.

The United Nations Global Compact and the Nedbank Group

The Group is committed to respecting human rights in all its activities through compliance with South Africa's Bill of Rights as enshrined in the Constitution, labour legislation and its support of the United Nations Global Compact principles. It is a signatory of the Global Compact, intending to support and advance those principles within its sphere of influence. It is further committed to making the Global Compact and its principles part of the Group's strategy, culture and day-to-day operations. The Group is a regular participant in the South African Global Compact Learning Forum and other related events.

Method of analysis

EthicSA is advantaged by being involved, but remaining independent of the Group. This case study is based on the knowledge that EthicSA gained of the Group, working as a partner in assisting with various aspects related to the enterprise governance function.

Crises

By the turn of the millennium, the once shining star of the South African banking establishment had become tarnished by corporate governance scandals and falling revenue. A marked deterioration of business conditions caused crises from which the Group has still to fully recover.

These crises saw the Group tumble from a premier bank position, in many cases that of market leader, to one that shed clients, slid in efficiency ratings and lost market share to its competitors. The reasons for these events are multiple and cannot be fully discussed here. However, there are salient causes that warrant brief elaboration.

- By the mid 1990s top management had come to see banking not as a service, but as a commodity. Therefore, the reasoning went, the bank that could cut its cost-per-client ratio the most would be the one to come out on top. But placing an inordinate amount of faith in information technology and embarking on a cost-cutting programme, mainly in bank-to-client contact services, turned out to be costly mistakes. Banks should have clients, not customers, and the changes resulted in complex, less efficient and ultimately less satisfying client experiences. This led to a steady exodus of clients in almost all divisions. (In capital markets, however, Nedbank retained its edge and continued to be highly valued by clients.) With economic theory indicating lower levels of differentiation in product and service requiring lower margins (reduced client costs) to attract compensatory transaction volumes, the Group failed to reduce their bank charges. Often being the most expensive in an expensive sector, the Group started haemorrhaging clients and sliding in market share. It was in an unappetizing situation of low service differentiation, depressed transaction volumes and high operating costs. These are the business conditions that, unless arrested, usually precede a meltdown.
- Around the same time, the Group started to model their individual business units on an internal competitive model. The theory indicated that in order to bring out the best in the various business units, the Group should be viewed as a microcosm of society, subject to capitalistic market forces. It was believed that internal competitive drive within the Group would weed out the weak and induce better efficiencies within the units, and thus the wider organization. It failed to take into

account that banking efficiency demands cooperation *between* units as much as *within* units. With these units in competitive mode, the Group turned into a confederacy at odds with itself. Soon silos developed, or were further entrenched, at great cost to the Group. With differing systems, visions and objectives, the Nedbank brand started to suffer, along with a further deterioration in client services. The cost savings in client service infrastructure brought about by this 'frugality' were neutralized by the costs inherent in a group consisting of silos containing mirrored machinery. So the Group ended up where it had intended not to be, with reduced client services, greater costs and shrinking revenue.

- These two points made for a perfect storm from which the bank started to emerge only in 2004. Tom Boardman, as a no-nonsense entrepreneurial type, was appointed CEO and he and his team engineered an ambitious recovery. If they pull it off, and results indicate very positive trends, it would be a major achievement in the annals of corporate South Africa.

Tom Boardman has commented on the Group's progress:

"Nedbank Group made significant progress during 2005. In 2004 the base was set and during 2005 we gained momentum as the Group became more outwardly focused. The Group's resources are now being directed to improving client service. This outward focus will enable us to meet the commitments we have made to our shareholders, clients and staff."

Performance analysis

Vision

Thus, 2004 became a watershed for the Group. In that year the strategy was to stabilize the situation and commence with the major strategic and structural changes required to set the Group on a recovery path. In response to the poor financial performance of preceding years, the Group had to return to profitability and competitiveness by addressing:

- Client-oriented banking
- Efficient use of information and process in and among group units
- Combating silos by promoting a common vision and set of values

Trust results from a proper organizational reputation and a proper reputation floats on a sea of good ethics.

Trust can only be built from the ground up, instilling ethical values as the foundation of a commitment to responsible business conduct among management and employees alike.

Stressed organizations are more prone to major ethical lapses.

This resulted in the development of a 'Deep Green' vision: to become Southern Africa's most highly rated and respected bank by its staff, clients, shareholders, regulators and communities.

Banking is a trust business. Without trust one can achieve nothing in the industry. Trust results from a proper organizational reputation and a proper reputation floats on a sea of good ethics. In this sense the CEO is not just the chief executive officer, but also the chief ethics officer.

Even a well-established institution such as Saambou (another South African bank) imploded in 2000 when depositors lost trust in top management – not so much in their technical capacity to run a bank, but because of the perceived dishonest way they went about it. Trust can only be built from the ground up, instilling ethical values as the foundation of a commitment to responsible business conduct among management and employees alike.

The Group certainly lost reputational capital during this crisis, with recovery requiring a formal programme to mend and strengthen fences. The strong focus on building trust is the strength of the Deep Green vision. While good ethics cannot fix a technically defective business plan, in the case of the Group it was impossible to attempt to fix technical aspects of the business process without building trust in the process in itself.

Stressed organizations are more prone to major ethical lapses. Reputationally and financially stressed, the Group could ill afford the financial losses caused by preventable fraud and corruption or any other corporate governance scandal. Sustaining further financial and reputational damage at such a fragile period in the Group's history could be very damaging.

Therefore, it was essential that the Deep Green vision should incorporate a proactive drive to detect and root out unethical activities such as fraud, not just through forensics, but also through good governance. This meant that the Deep Green vision required the conciliation of two seemingly opposing forces: improved financial performance with increased accountability to stakeholders, while doing so.

To navigate between these tensions, organizational beacons had to be developed to define the recovery path towards accountable value creation. Therefore, the Deep Green vision, indeed the entire recovery strategic framework (see box 2) is underpinned by the Group's values:

- *Integrity*: Honest, trustworthy, truthful, consistent, open. Act according to the highest ethical standards. We communicate openly, directly and ethically.

- *Respect*: Treat others as you would have them treat you. Use diversity as a strength. Listen to others and treat people with dignity. Provide individuals with fertile ground on which to grow. Treat everyone in the organization as important. Foster individual strength to build the whole.
- *Accountability*: Be prepared to make commitments and be judged against your commitments. Deliver on commitments. Be responsible for your actions.
- *Pushing beyond boundaries*: Play to the maximum of your abilities, as individuals, as teams and as an organization, across boundaries.
- *People-centred*: We invest in our people. We create empowering environments through development, support, mentoring, coaching, recognition and reward. People are the source of our strength.

The first four of the values were inherited from a controlling shareowner, Old Mutual Plc, while the fifth, people-centred, was chosen by employee ballot. It reflects where the Group suffered most in terms of investment in clients and employees, both heavily commodified and neglected.

The entire recovery strategic framework is underpinned by the Group's values:
Integrity
Respect
Accountability
Pushing beyond boundaries
People-centredness

Leadership

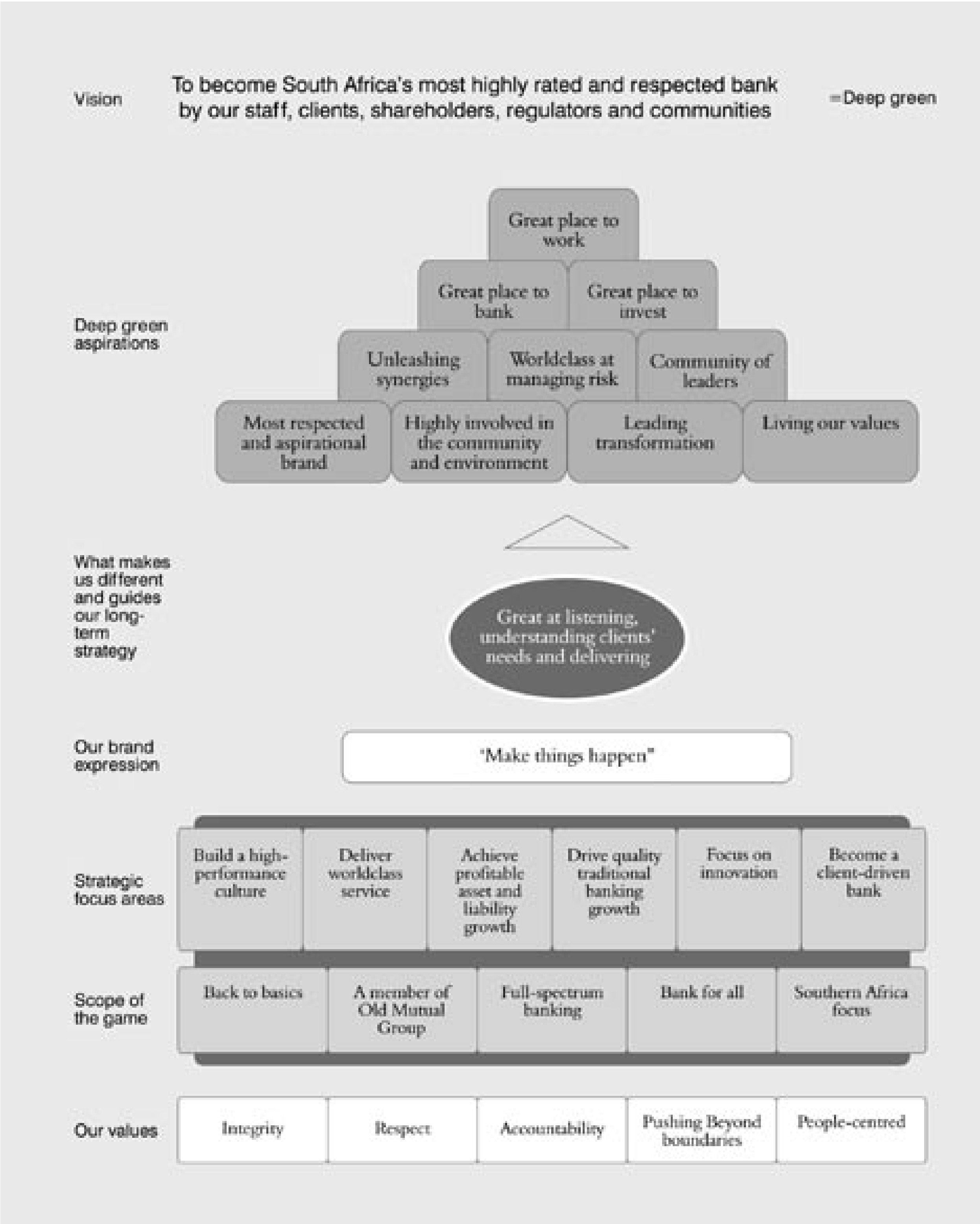
There is no miracle moment. Small incremental wins in one common direction will restore the Nedbank Group to a highly rated and respected financial institution.[1]

Building on the need to strike a balance between conformance to good ethics and performance-driven management, leadership adopted an approach that took corporate governance out of the boardroom and into the wider enterprise.

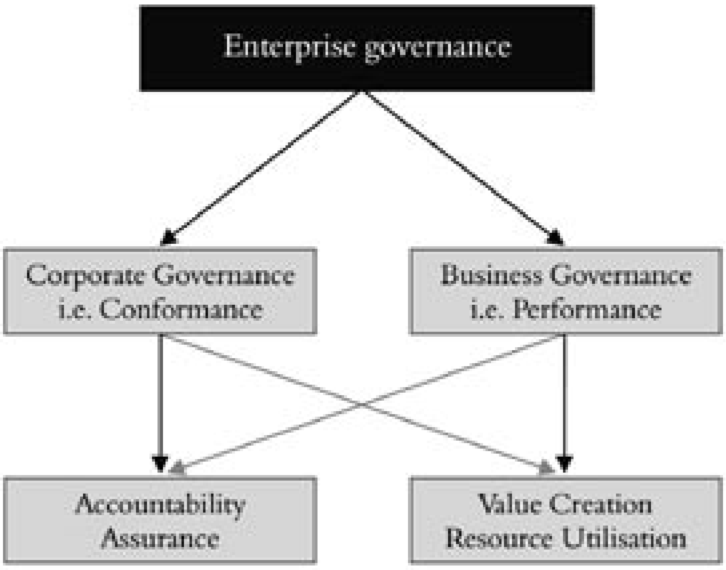
While much has been written about corporate governance, both before and after high-profile corporate collapses, the term 'enterprise governance' is an emerging one. Enterprise governance has been defined as the set of responsibilities and practices exercised by the board and executive management with the goal of providing strategic direction, ensuring that objectives are achieved, ascertaining that risks are managed appropriately and verifying that the organization's resources are used responsibly.[2]

Enterprise governance has been defined as the set of responsibilities and practices exercised by the board and executive management with the goal of providing strategic direction; ensuring that objectives are achieved; ascertaining that risks are managed appropriately; and verifying that the organization's resources are used responsibly.

The risk that all organizations face is that conformance and performance operate separately, with a legal silo seeking conformance and an operational silo seeking maximum performance. These elements need to be in balance.



Box 2 Nedbank Group strategic framework



Box 3 The enterprise governance framework

If conformance is too dominant, the organization becomes overly bureaucratic and ultimately ineffective. If performance considerations are too dominant the organization tends to run the reputation risks associated with charging after every opportunity for short-term profit.

An International Federation of Accountants (IFAC) research piece lists 27 international case studies detailing causes of corporate successes and failures. In 16 of the cases, it was apparent that the inability of the board to balance conformance with performance had led to major corporate failures. In the remaining 11 cases, the board had managed to get the balance right, taking a conscious decision to take good governance seriously, because it was good for the corporation, financially, and not only because of legal requirements.

Enterprise governance proposes that a board should evaluate conformance and performance differently. While conventional wisdom would indicate that business performance should be evaluated according to its ability to create value, and corporate governance through its ability to provide accountability to leadership, enterprise governance allows for a different view of the role of both.

Conformance needs to be evaluated in the context of value creation and resource utilization, not in the context of considering what ensures accountability. In turn, performance should be evaluated in terms of accountability, providing assurance of responsible business conduct. With accountability intertwined with value creation, this represents a marked departure from conventional thinking on the subject.

The Group supports this view of enterprise governance, with the board's stated objectives reflecting their dual role in monitoring (conformance) and strategy (performance):

Board objectives

1. Maximization of levels of efficiency and profitability of the Group within an acceptable risk profile and appetite
2. Implementation of the Group's strategy and compliance within the strategic framework of the Group
3. Commitment by executive officers of the Group to adhere to corporate behaviour that is universally recognized and accepted as correct and proper
4. Balancing the interest of shareholders and other stakeholders who may be affected by the conduct of directors or executive officers of the Group, within a framework of effective accountability
5. Mechanisms established and maintained to minimise or avoid potential conflicts of interest between the business interests of the Group and the personal interests of directors or executive officers
6. Timely and accurate disclosure of matters that are material to the business of the Group or the interests of stakeholders
7. Finding the correct balance between conforming to governance constraints and performing in an entrepreneurial way
8. Achievement of a balanced and integrated economic, social and environmental performance (triple bottom line) and implementation of a best-practice corporate citizenship framework
9. Efficient and effective functioning of the Enterprise-wide Risk Management Framework
10. Compliance in substance, not just in form, with the provisions of the Code of Corporate Practices and Conduct of the King Report on Corporate Governance 2002 (King II), the Banks Act and regulations, other sources of corporate governance best practice and requirements of Nedbank's holding company, Old Mutual plc

It obviously demands a board that is knowledgeably engaging with top management, who in turn are required to integrate this new approach into the performance and evaluation systems of business units and individuals. This is no easy task and requires the systematic re-engineering of major components of the business.

Empowerment

To determine value creation in the context of performance and business performance in the context of accountability, the Group positioned the Nedbank Values (see box 2) as an evaluative filter. Simple put, any conformance element within the bank's control, such as a policy, that does not conform to the Nedbank Values will not create value in the Group and has to be changed or scrapped. Also any transaction or deal that is not compatible with these values will not amount to responsible business conduct and therefore should not be considered.

Those operating within the conformance sphere of the organization would be responsible for determining, through the Nedbank Values, whether their conformance objectives are contributing to the Group's goal of financial recovery.

All those operating within these domains of business are required to use the Nedbank Values to determine whether they have remained committed to responsible business conduct in their dealings. The values become the foundation for an organizational constitution. Leadership in both domains of business – conformance and performance – are the custodians of the Nedbank Values because through these values the enterprise, that is, the Group, can be responsibly governed.

This was a visionary and very empowering move to understand the relationship between values and the need to return to profitability within a context of trust between employee and client.

The commitment to the Nedbank Values, at the heart of the enterprise governance model, forms the basis of Group decision making. To break down silos, one cannot merely state one's vision, one needs to manage this vision in fractured business systems and cultures. The empowering potential of institutionalizing the Deep Green vision is that the Group gains operational beacons, Nedbank Values common to all, guiding conduct in all business units.

Policies and strategies

This drive towards responsible business conduct culminated in the creation of the Nedbank Enterprise Governance and Compliance division. Responsible for directing and advising enterprise governance in all business units, it is a major tool for use by top management in combating the debilitating silo mentalities prevalent in Nedbank before the onset of the recovery plan. Aptly headed by the former national Public Protector, the Enterprise Governance Unit comprises a multidisciplinary team that complements the various conformance functions within the Group.

Located within the Nedbank Enterprise Governance and Compliance division is the Nedbank Ethics Office. The first ethics officer was trained in 2006. This officer is responsible for the management of all the ethics promotion interventions within the Group.

Central to this initiative is a code of ethics for the Group. The Nedbank Group's Code of Ethics was developed in November 2004, and the final document was approved by the board in February 2006. The purpose of the code is to give operational meaning to the Nedbank Values, for use throughout the Group, among all employee hierarchies. It provides the framework for an additional ethics statement adopted by the board. This statement is displayed at head office, and has been communicated to head office staff.

The code format consists of the key conduct provisions, further supported by a pledge of adherence by the CEO and instructions for reporting unethical conduct. The code is also a reference point for detailed policies in the Group. Importantly, the explanatory conduct provisions supporting the Nedbank Values form best-practice guidelines for future policy development and existing policy evaluation.

This highlights the strength of having ethics and compliance components of enterprise governance under one roof. The code references the policies, and sets the parameters for what they should contain and how they should be engaged within the Group. Salient examples are a Conflicts of Interest Policy and a Gifts Policy, both critical in preventing inappropriate influence and undue benefit – corruption – from arising within the Group.

These policies are being reviewed to ensure that they are consistent with the Code of Ethics. A Fraud and Corrupt Activities Policy has also been formulated and takes into account the requirements of the Prevention and Combating of Corrupt Activities Act (12 of 2002). The Group has reported a total of 1,335 matters to the South Africa Police Service, of which 1,055 reports were made in 2005.

In this way the code is effectively a bridge between the Deep Green vision, containing the Nedbank Values, and detailed compliance objectives.

Resources

The responsibility for ethics resides in the Enterprise Governance and Compliance division. The chief governance and compliance officer serves on the Group Executive Committee and reports directly to the chief executive. He also has direct access to the chairman of the board, and attends board and board committee meetings as an invitee.

The division is responsible for corporate governance, compliance and sustainability aspects throughout the Group. It is a conscious attempt to ensure that the Group moves beyond a mere compliance approach to one that addresses compliance in terms of value creation.

While technical compliance with law and industry regulation is a huge aspect of modern banking, the Nedbank Ethics Office is a major resource.

Each employee is required to make a personal commitment to complying with the code, and to report violations of it. To ensure that staff (and clients) can report issues (such as non-compliance with the law, non-conformity to company policies and procedures, abuse or misuse of company assets, bribery and/or corruption, sensitive issues and financial misstatements) anonymously, the Group has a contract with an external hotline service provider.

The intention is for a helpline, a confidential advisory service, managed by Enterprise Governance and Compliance, to be available for use by employees. Enterprise Governance and Compliance are supposed to respond to all queries within 24 hours, with the resolution of the query being dependent on its complexity.

In addition, as a network supportive of the Ethics Office, compliance officers throughout the Group have been trained as ethics champions. These compliance officers are given an opportunity not merely to ensure technical compliance, but to contribute towards enterprise-wide culture change. These are certainly not easy tasks, generally requiring years of sustained effort.

Although there have been setbacks, the foundation, in terms of setting up the correct ethical culture change infrastructure, has almost been laid. The next step will be active implementation, dovetailing with the concomitant phase in the financial recovery plan.

Innovation and process

Coupling the Group recovery plan to a values process is in itself innovative, since it is tempting for those that generally lead such recoveries – lawyers and accountants – to approach them only from

The mission of the Ethics Office is formulated as follows:

To create and embed an ethical culture in the Nedbank Group by designing an Ethics Programme that will enable the Group to identify, assess, manage and monitor ethical risk of the Group. The Ethic Officer will also provide guidance and clarity on the Code of Ethics, the organizational policies and procedures and provide advice and action in the case of a potential ethical dilemma or breach to any employee.

Each employee is required to make a personal commitment to complying with the code, and to report violations of it.

Success coupled with humility breeds success, but success with arrogance breeds ignorance, usually witnessed as leadership becoming removed from the organisational realities.

a legal, regulatory or financial systems perspective. Of course, these elements are absolutely integral to the Group's recovery, but in addition the enormous influence of organizational culture needs to be factored into the overall strategy.

Organizational culture is a powerful determinant of behaviour. In the workplace its influence may cause a middle-class and loving parent to behave criminally when at his or her workstation. It can of course have a good effect, deterring inclinations towards deviant behaviour through a system of positive role modelling, threats of sanctions and the promise of rewards for responsible conduct.

Returning to the most salient obstacles the Group faces on its road to recovery, it becomes clear that organizational culture will play a central role in removing these barriers to success. Valuing the client, not as a human being with a free will, but as a commodity purchasing commodities in the form of banking products, has been the raison d'être for the recovery plan in the first place. Banking is a relationship that requires mutual integrity and respect to be nurtured. A return to the Nedbank Values, as foundational to the way business is approached, will ensure the success of more technical interventions to restore the Group to its winning ways.

Yet, the Group still needs to do a lot of work in this respect. With the recovery plan focused on ensuring internal reorganization, it must now enter a new phase, comprising an assertive roll-out of the Nedbank Values, in the form of the code and supportive business policies and systems, throughout the Group.

Organizational fragmentation, made visible in insular business silos or disruptive cliques, is the product of politics – office politics on a grander scale. It always remains a failure of leadership if such silos come to dominate the organizational landscape. The technical business systems associated with these silos may have contributed to their development, but are not the sole reason for their existence. People pursuing conflicting objectives are the reasons that silos exist.

The development of a single set of Nedbank Values that form the basis for performance evaluation is a powerful tool to combat the debilitating effects of silos. Consistently applied, it models behaviour congruent with a common vision. This will require the code to be fully integrated into the performance evaluation system of all units.

Hubris, that descriptive Greek word denoting pride and ignorance, conspires, in the manner of the ancient tragedies, to bring about the usually chaotic entry of a crushing humbling event – pride coming to a fall. Success coupled with humility breeds success, but success with arrogance breeds ignorance – usually witnessed as leadership becoming removed from the organizational realities.

The Nedbank Enterprise Governance approach, using the Deep Green vision and Nedbank Values, is a beacon to leadership, keeping them focused on the strategic intent of the Group, while remaining involved as positive role models for the benefit of those in all hierarchies. Leaders shape organizational culture. If well managed, and it does not meet particular resistance, it becomes a trickle-down effect where the influence of leadership extends throughout the Group. Nedbank is well advanced in driving organizational culture change through positive role-modelling through the Group. But a regular Group-wide ethics audit is necessary to identify possible resistance to the ethical role-modelling efforts of leadership.

Impact on people

Lack of clear guidelines in resolving the tension between conformance and performance is often the cause of unethical conduct such as fraud or corruption occurring within the work environment. A high level of awareness of the Code of Ethics will be meaningless in an environment where the annual review system measures performance to the exclusion of values – enforcing the silos that the recovery plan needs to combat.

Another challenge is to educate staff that the Code of Ethics is also (perhaps especially) applicable to routine and mundane daily decisions, and not only to circumstances surrounding fraud and corruption. The conditions that increase the likelihood of fraud and corruption lie mostly in the traditional human resources domain. Widely experienced work pressure, discontent and lack of faith in grievance procedures may cultivate a culture of entitlement, leading even those of stronger moral character into temptation.

Corruption is investigated in the forensic domains, but has its origins in the human resources domain. The inconsistent application of performance reviews strengthens this negative dynamic, especially if employees who are known to be unethical are positively rewarded through promotions and the like.

To surface these issues, the Group regularly conducts staff surveys, in which, among others, perceptions of ethical conduct are measured (see box 4). In 2006 the ethics officer conducted a small-scale organizational ethics assessment that brought to light unhappiness with annual performance reviews.

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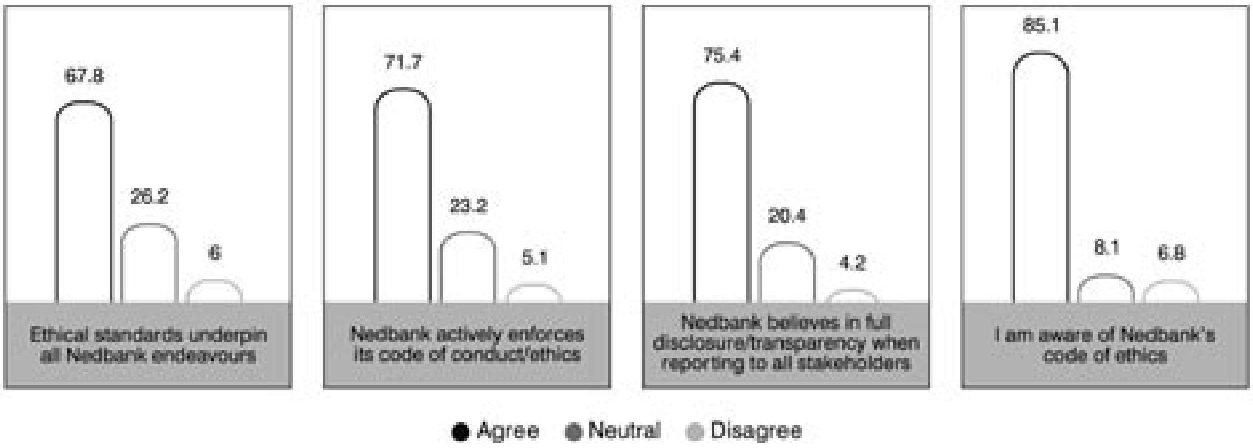
Corruption is investigated in the forensic domains, but has its origins in the human resources domain.



Box 4 Results of staff survey (ethics questions)

If the organization does not ensure that its values underpin all its activities, this discontent can become a serious problem, given that one of the strategic focus areas for 2006–2008 is "Building a High-Performance Culture to Achieve Targets and Improve Client Service".

Impact on the value chain

The direct impact on the value chain brought about by enterprise governance has yet to be fully felt. Forming part of the Group recovery plan, it may be measured in the results of the Deloitte Best Company to Work for Survey (see box 5).

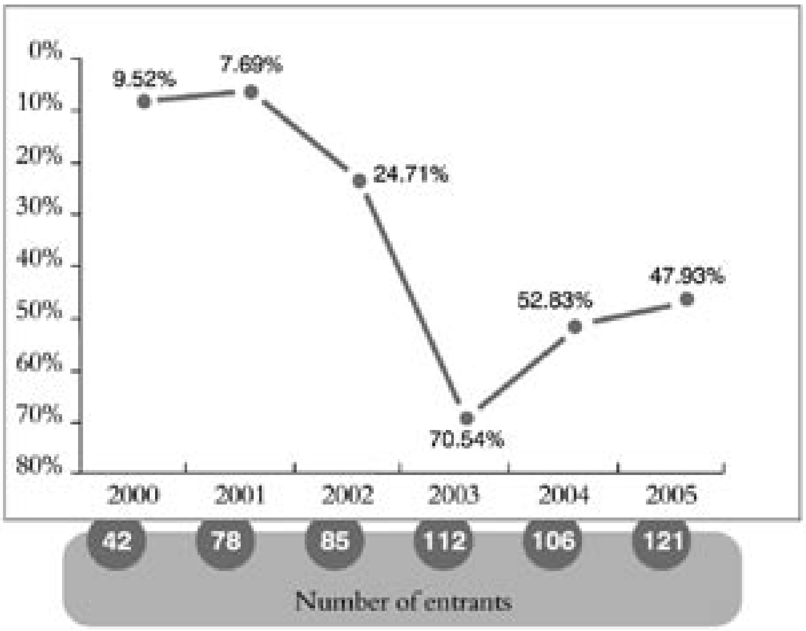
While the Group has apparently succeeded in reversing the negative trends in its ratings, the survey, in addition to other data, highlighted that the areas of rewards, recognition and performance management required attention.

One cannot sustainably provide for a positive impact on the value chain if one cannot attract and retain the best people. Charity begins at home, the saying goes, the graph indicating just how steep the slide from 2001 was, as well as the positive effect of the recovery plan instituted in 2004.

One example of conduct directly affecting the value chain is the significant progress in setting up a fast supplier payment mechanism. Large organizations possess significant power over their suppliers in terms of dictating stipulations for payment. For small and medium-sized suppliers, this can result in financial ruin, as they do not have the ability to carry debtors for an extended period of time. To this effect, the Nedbank Group has improved their systems to facilitate a seven-day payment turnaround if a supplier requires this. It is telling that most of their suppliers make use of the facility. This has a major impact in relieving the pressure on suppliers to present false or inflated invoices.

In addition to the imperatives of the Financial Sector Charter, the Group has adopted the Procurement Policy of The Old Mutual Group SA, which requires the evaluation of their ethical, labour and environmental standards when choosing suppliers.

Group leadership cannot demand with credibility ethical conduct and intolerance of fraud and corruption among employees and not practise it in the client or partner domain.



Box 5 Nedbank's rating in the Deloitte Best Company to Work For Survey

Impact on society

The obvious impact of banks on society concerns the manner in which, and to whom, they provide credit facilities and other financial services. It has been said that behind every corrupt transaction there is a bank facilitating payments and transferring ill-gotten gains. Group leadership cannot demand with credibility ethical conduct and intolerance of fraud and corruption among employees and not practise it in the client or partner domain.

To ensure compliance with MDB requirements regarding environmental and social risk management, certain actions are carried out:

- Screening and categorizing subprojects according to potential environmental risk
- Ensuring that appropriate environmental and social assessment studies are carried out by the borrowers
- Verifying that the borrowers implement and monitor environmental and social risk management programmes
- Submitting periodic reports on the implementation of environmental and social procedures and performance of the investments to the MDB concerned

Some have argued that a bank is merely a morally neutral facilitator of financial transactions. We do not consider this position morally defensible. For example, in the early 1990s the number of banks in Liberia trebled, as the economy was imploding, ostensibly to take advantage of the profits to be made from channelling the spoils of kleptocratic rulers to foreign bank accounts. In essence, banks profited at the expense of civilians who were subjected to acts of barbarity perpetrated in the name of these rulers.

This may be a case *in extremis*, yet the principle of a moral position applies throughout, including less severe circumstances. We acknowledge that its moral position is a major dilemma for most responsible banks, as ethics advocacy among clients is more easily said than done. Apart from the tension to create short-term profit while remaining accountable, it is not always easy to identify these ethically suspect transactions. However, considerable effort, driven by compliance with money-laundering legislation, has been undertaken in the last few years to identify and report suspicious transactions to the authorities.

Although the Group has adopted a position of ethical advocacy among clients and partners, there are limits to the extent that it should police its clients. Again the centrality of the code comes into question. Based on an organizational reputation derived from complete adherence to the code, clients should recognize the Group as an ethical bank, with those clients lacking in integrity preferably banking elsewhere.

In terms of suppliers, the Group should demand conformance to the Nedbank Values, as these values are reasonable, have universal appeal and are well defined in terms of explanatory principles. Among clients and partners, obvious criminal activity presents no problem in terms of the Group acting against these individuals or institutions. It is dealing with activities that are not necessarily unlawful, but may be unethical, that requires more careful consideration.

The environmental field is a case in point. Known as a ‘green’ bank, the Group realizes that the projects that it finances could have significant environmental impact. The credit, legal and risk teams have undergone training to take the environmental impact into account in their decision making. While clients are required to complete environmental impact assessments, Nedbank has endeavoured to go beyond the requirements of the host country and the standards of Multilateral Development Banks (MDBs). See sidebar for overview of actions.

The Group is the first South African bank to adopt the Equator Principles.[3] These principles (which are supported by banks that represent 80%–90% of the global project finance market) ensure that projects that are financed are developed in a socially responsible and environmentally sound manner. Becoming a signatory to the principles is in line with the Group's relationships with the United Nations Environment Programme, the World Wildlife Fund South Africa and African Development Bank, among others.

Reporting and communication on progress

In addition to the Ethics and Compliance officers who were trained as ethics champions, the majority of clusters have started with some form of awareness training. Enterprise Governance and Compliance is also in the process of including information about the ethics officer on various information platforms. These include the CEOs and the head of the Enterprise Governance and Compliance division undertaking road shows, making presentations at Governance and Compliance Forums, as well as making use of existing internal communication channels.

Yet, like all large organizations, communication can always be done better. The Deloitte survey identified communication as an area requiring development. 'Although some very positive scores were received in certain questions under this dimension, people indicated that they did not feel informed about what other departments were doing and did not necessarily feel free to communicate with top management.' There are obvious ethical risks associated with such perceptions, especially in terms of reporting on fraud and corruption.

Apart from continuing the process of rebuilding trust with clients and investors, much of the remaining challenge, on an organizational culture front, lies in implementing a successful Group-wide awareness programme. This will need to take the form of integrating provisions of the code in all measurement and evaluation systems and conducting training sessions customized for the various divisions.

The Equator Principles ensure that projects that are financed are developed in a socially responsible and environmentally sound manner

Conclusion

This case study illustrates that successful financial recovery is dependent on the re-establishment of trust in the business. The technical reorganization of the enterprise is critical, but needs to be complemented with a formal programme to build trust among employees, clients and investors.

Ethical excellence must complement financial achievement.

Ethical culture change is a process and in large organizations takes years of dedicated application.

In the case of the Group, this meant the establishment of an Enterprise Governance and Compliance division, which is tasked to ensure that performance pressures are accountably relieved and conformance requirements enacted in a way that ensures maximum value-add for the Group and its stakeholders. It is a break from more traditional governance models that equate performance solely with financial value added and conformance, mostly of a legal nature, with accountability.

While there is no doubt that financial performance and full legal compliance are critical to the future of the Group, the aim is towards ethical excellence complementing financial achievement. This would be a sound foundation upon which trust can be rebuilt, from inside among employees, towards external stakeholders such as clients and investors.

To build the trust required for its recovery, the Group had to embark on a process of creating and strengthening a culture intolerant of fraud and corruption. It forms a vital part of the reputation enhancement and risk management drives associated with recovery efforts. It highlights that fraud and corruption prevention programmes cannot successfully be initiated in organizations that do not enjoy trust.

When employees do not have faith in the ethical intentions of leadership and management, and when standards of conduct are inconsistently applied, this creates a culture conducive to abuse. Ethical culture change, correcting these disruptive practices, is a process and in large organizations takes years of dedicated application. The Group is well advanced on that road.

Special thanks

- To the members of the Nedbank Enterprise Governance Office for providing material used in the preparation of this article.

Notes

1 Tom Boardman, CEO.

2 International Federation of Accountants (IFAC), Professional Accountants in Business Committee, *Enterprise Governance: Getting the Balance Right*. (nd)

3 Available online at http://www.equator-principles.com/. (Accessed July 2007).

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South African Revenue Service (SARS): The creation of a SARS Ethics and Governance Office

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SARS has the reputation of being one of the most efficient of the South African semi-state entities, meeting or exceeding its revenue targets for seven years running.

Background

South African Revenue Service profile

The South African Revenue Service Act 34 of 1997 provided for the amalgamation of two government departments, namely the old Departments of Inland Revenue and Customs and Excise. The new entity was named the South African Revenue Service (SARS) and granted autonomy to manage its affairs as a semi-state entity.

SARS plays a critical role in the development of the South African economy. Having grown from a meagre 1.5 million registered taxpayers in the early 1990s to a registered tax base exceeding 13 million in 2006, its expanding client pool reflects the significant growth in the South African economy over the last decade.

To ensure that infrastructure development keeps pace with this growth, an efficient and responsible tax collection system is vital. Under the leadership of Commissioner Pravin Gordhan, in recent years SARS has provided government with budget surpluses amounting to billions of rand.

It is therefore not surprising that SARS has the reputation of being one of the most efficient of the South African semi-state entities, meeting or exceeding its revenue targets for seven years running. This may explain why employees and external commentators often characterize SARS as a challenging employer, with a very strong emphasis on financial performance.

SARS biographical data

Sector:	Public
Organization type:	Semi-state national entity (parastatal)
Industry:	Collection of taxes, duties and levies
Population:	Approximately 15,000 employees in more than 100 offices across South Africa
Leadership:	Commissioner Pravin Gordhan
Governance:	Governance framework is determined mainly by the Public Finance Management Act 1 of 1999 and the South Africa Revenue Service Act 34 of 1997 as amended.
Mandate:	Collect all revenues due; ensure maximum compliance with legislation; provide a customs service that will maximize revenue collection; protect South African borders; and facilitate trade
Revenue collected:	R418 billion in the last financial year (ended 31 March 2006)

Box 1 SARS biographical data

Ethics Institute of South Africa and SARS

SARS is a member of the Ethics Institute of South Africa (EthicSA) and to date has trained and certified three ethics officers within the organization. A fourth SARS manager has finished the ethics officer training, and is completing the practicum required for certification.

EthicSA's early engagement with SARS involved the establishment of internal ethics management and corruption prevention capacity. The aim was to create a SARS Ethics and Governance Office that would provide preventative capacity to complement forensic investigative functions within the organization. The ethical challenges faced by SARS are numerous, with EthicSA's ongoing involvement with the Ethics and Governance Office being mainly in the provision of training and advisory services.

Approximately two thirds of interventions designed to combat corruption and promote responsible conduct should be focused on people management and only about one third on ensuring the presence and functioning of policy or technology.

The United Nations Global Compact and SARS

As a public sector entity, SARS is not a signatory to the Global Compact. However, it should become clear when engaging this case study that, especially with reference to principle 10 of the Global Compact, combating corruption, SARS makes an effort to embrace the ideals of the Global Compact.

Method of analysis

This case study is based on knowledge that EthicSA has gained through ongoing engagements with SARS since 2004. It included a review of practicum assignments developed by SARS ethics officers, an article developed by the Ethics and Governance Office on its genesis and challenges, and a critical analysis of a paper presented by the head of the Ethics and Governance Office, Brian Kgomo, at a 2006 conference in Cape Town.

Background

SARS is an organization that is characterized by change. Essentially a hybrid organization (being the integration of two very different government departments), it may be considered somewhat change fatigued. The difficulty of merging differing organizational cultures was compounded by greater performance demands, requiring the new organization to rapidly adapt to an increasingly complex South African economy. Furthermore, the organization had to cope with the implementation of new technology, often requiring employees that had worked for years on specific systems and formulae to become proficient in entirely new processes, supportive hardware and software in a short space of time. In between these organizational

The reasons are multiple:

Human resources are often the most neglected of departments.

Human resource managers are seldom sufficiently trained to deal with the complexities of managing people in large and developing organizations.

High-performance organizations with very definite financial targets and rigid strategic objectives tend to under-invest in human resource infrastructure.

Human resources has the reputation of not being able to keep secrets.

Office politics may be exacerbated by job specialization.

In high-performance environments, it may very well happen that top management tolerates behaviour or even rewards individuals in spite of unacceptable conduct solely because of their special knowledge status.

Many modern organizations suffer from so-called management by objectives.

The formal culture of an organization, being its regulatory and policy framework, is more receptive to change management interventions than the informal culture.

It is the informal culture of an organization that results in formal culture modifications being effective or not.

stressors, SARS went through numerous personnel shuffles associated with affirmative action and general reorganizations of its operations.

Our research has shown that approximately two thirds of interventions designed to combat corruption and promote responsible conduct should be focused on people management and only about one third on ensuring the presence and functioning of policy or technology. Yet organizations facing challenges, as SARS does, especially organizations with very strong performance cultures, often suffer most in terms of human resource management.

The reasons for this are multiple:

- Human resources are often the most neglected of departments, and are not taken seriously by a leadership cadre trained as either accountants or lawyers. Attuned to think of people in terms of debits and credits or risk and liabilities, they often regard human resources as a form of internally oriented public relations (PR), more akin to the spin of investor relations than the management of a valuable resource. In high-performance organizations this form of PR generally equates to a 'take it or leave it' attitude from top management.
- Human resource managers, mainly as a result of these attitudes, are seldom sufficiently trained to deal with the complexities of managing people in large and developing organizations. While a typical manager in a financial environment may require extensive formal training and experience in order to be considered for the job, we often find human resource managers with little to no training taking control of aspects as important and far-reaching as employee performance measurement and reward allocation. When one considers the variables that rapid change introduces to such evaluations, one realizes that many human resource managers are simply out of their depth.
- High-performance organizations with very definite financial targets and rigid strategic objectives tend to under-invest in human resource infrastructure. This may include the neglect of data management and communication systems or, most basically, investment in proper ergonomic office facilities. If you consider how widely dispersed SARS operations are, with offices in some of the most remote localities, this makes the execution of human resource management very difficult and inevitably pedestrian in responding to existing and emerging challenges.

- Human resources has the reputation of not being able to keep secrets. This may be attributed to a possible lack of professionalism in the field, but also, in all fairness, to an important aspect of human resource management: performance evaluation. By its very nature contentious, performance evaluations are the fuel that feeds the fires of office politics, almost always burning brightest in and around human resource departments. It should therefore be no surprise that human resources are seldom trusted. Forming a vicious circle, this usually translates into low use of formal grievance procedures, further hampering any possibility of building trust through the successful resolution of personnel-related problems.
- Office politics may be exacerbated by job specialization. It is our experience that specialization, along with organizational size and history, tends to increase the likelihood and extent of organizational silos developing, where groups and individuals fragment into entities that are prone to communication breakdowns and rivalries. Really a dynamic that is not different from the primary-school gang or the bright-eyed clique surrounding the head girl or boy, special position, equating to special knowledge, in turn corresponds to special identity. These 'special knowledge groupings' are mostly resistant to change because change usually threatens the internal power and benefit arrangements within these groupings. Human resource practitioners are often aware of these issues as symptoms, but generally lack the organizational support required to treat the causes.
- In high-performance environments, it may very well happen that top management tolerates behaviour or even rewards individuals in spite of unacceptable conduct solely because of their special knowledge status. They are so valuable to the organization that it is better to sweep under the carpet than to risk alienating the geese that lay the golden eggs. With human resources tasked to implement and evaluate the conduct of employees against formal policies and management objectives applicable to all, this inevitably leads either to the credibility of human resources being undermined by interference in its authority or to inconsistency of application of its own evaluation practices.
- Many modern organizations suffer from so-called management by objectives. Entailing the setting of objectives within a line management environment, this is designed, in theory,

The vision of SARS can be summarized simply: it is about building trust.

to enable top management to devolve their organizational objectives throughout management down the line management function. The CEO's objectives become fragmented into operation priorities, each addressed by a responsible executive, with further objective fragmentation down the management line. Obviously the deeper the organizational structure, the more fragmented the original message becomes, with the associated increased difficulty of lower management in seeing the proverbial bigger picture. With line management now also involved in the evaluation of employees against these set objectives, and invariably some of their personal agendas thrown in as well, they effectively compete with human resources for the attention of those they evaluate, while compromising the likelihood of consistent application of evaluation criteria.

- The formal culture of an organization, being its regulatory and policy framework, is more receptive to change management interventions than the informal culture. In terms of the formal culture of organizations, it is relatively easy to do a desktop review and develop new or revised policies to supposedly address gaps and new challenges. Yet it is the informal culture of an organization – its values, composed of its history, its myths and legends and the habits, manners and objectives of its leaders and role models – that results in formal culture modifications being effective or not. Simply put, you may develop any type of policy to address change and transformation, but if the informal culture of organizations does not support it, it will have very little effect. Apart from not understanding this dynamic, human resources may simply not have the clout and interdepartmental support to successfully command the resources and cooperation required to address informal culture modification.

SARS suffers from many of these ailments, being very successful at fulfilling its mandate as a collector of state revenue, but less successful in managing the access to and opportunities for unethical conduct among its own employees. To address this systemic risk required a change of thinking and management practices

Performance analysis

Vision

The vision of SARS can be summarized simply: it is about building trust. If we define trust as the residue of promises fulfilled, then the challenge is to ensure that SARS consistently keeps its promises to its stakeholders – among others, its employees, taxpayers and government. Efforts to ensure such consistency have a strong ethical dimension that encompasses values such as honesty, fairness and respect. It is living these values that may be said to constitute integrity, in a personal and organizational sense.

Without integrity, there is no trust. The vision – to build trust – therefore had to logically focus on the promotion of organizational integrity. Corruption is a direct threat to personal and organizational integrity, and therefore any integrity promotion intervention had to concentrate strongly on combating corruption.

The Preamble of the United Nations Convention against Corruption states that corruption threatens the stability and security of societies by undermining the institutions and values of democracy, ethical values and justice and jeopardizes sustainable development and the rule of law. Corruption in the public sector results in funds being diverted from infrastructure and development projects into the pockets of corrupt officials, further increasing the costs of public services, while retarding service delivery.

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Recognizing its role in facilitating service delivery and the promotion of good governance, SARS top management, in late 2004, decided to take the lead in the public sector with the establishment of the Ethics and Governance Office, which was responsible for the prevention of corruption and the promotion of responsible business conduct

While SARS was in part responding to corporate governance standards such as the Second King Committee Report on Corporate Governance (2002), key legislation and the South African government's anti-corruption programme (see box 2), an important driver was the need to address systemic risk and improve the trust that taxpayers have in the organization. The latter is particularly important for the creation of a voluntary taxpaying culture.

Addressing systemic risk proactively is a necessary condition for sustainable reputation enhancement. Building trust in an organization must come from within, and no amount of marketing can make up for lack of trust. Indeed it is often said that the more a distrusted organization attempts to promote itself in the public domain, the faster the bad news travels. The building of organizational trust cannot be divorced from proactively engaging systemic risk, ethical risk. Otherwise the stated vision of SARS will come to nothing.

Building trust in an organization must come from within, and no amount of marketing can make up for lack of trust.

SARS' vision statement is therefore:

… to optimize revenue yield, facilitate trade and enlist new tax contributors by promoting awareness of the obligation to voluntarily comply with South African tax and customs laws, and to provide a quality and responsive service to the public.

The South African context

The South Africa anti-corruption campaign began in 1997. Two years later (1999) the first National Anti-Corruption Summit was held, and this was followed by the publication of the Public Service Anti-Corruption Strategy in January 2002.

The strategy contains the following proposals:

- Review and consolidation of the legislative framework relating to corruption
- Increased institutional capacity (minimum anti-corruption capacity)
- Improved access to report wrongdoing and protection for 'whistleblowers' and witnesses
- Prohibition of corrupt individuals and businesses
- Improved management, policies and practices
- Management of professional ethics
- Partnerships with stakeholders
- Social analysis, research and policy advocacy
- Awareness, training and education

Corruption, in both the public and the private sector, has been broadly defined and criminalized in the Prevention and Combating of Corrupt Activities Act 12 of 2004.

The Second Anti-Corruption Forum (March 2005) formulated resolutions with regards to ethics programmes and the prevention of corruption:

- Leadership committed to a culture of integrity and restoring confidence in the fight against corruption
- Foster culture of integrity and accountability
- Protected reporting, whistleblowing
- Ethics training
- Values and principles of code of ethics promoted and enforced through a defined programme
- Research to audit the state of professional ethics in each sector

Box 2 South African public service anti-corruption context

Leadership

Leadership can be evaluated on two levels: that of the organization as a whole; and that of the Ethics and Governance Office itself.

On an organizational level, the merger that created SARS brought the legacy of two government departments that suffered from chronic corruption and malpractice, poor skills and working conditions, and a lack of adequate internal controls. Leadership realized that in order to address these concerns, physical reorganization of assets and resources had to be complemented with a change in organizational culture. This was the primary innovation that drove the process of promoting responsible conduct within SARS, being focused not solely on policy and procedure, but also on how employees engage with these policies and procedures.

To build trust, a change in organizational culture was needed. This is because organizational culture, the unwritten rules of 'how things really get done', is more influential in encouraging behaviour than formally stated policies and procedures. If the organizational culture is impregnated with unethical conduct, such as corruption, it will undermine efforts on a policy level to combat it.

Without committed leadership, it is unlikely that an organization will sustain the changes that it attempts to make. Commissioner Pravin Gordhan has acknowledged the role that ethics plays in ensuring the continued success of SARS' strategic efforts, and recognizes that sustainable change, in creating a culture intolerant of corruption, requires backing up the right words with the right actions.

Therefore the approach was first to clearly define an 'ideal future state'. Progress towards this future state must then be supported by formal systems (policies, procedures, processes) and informal systems (the unwritten rules). Without measurement of progress and commensurate rewards, it was also understood that it is unlikely that positive and lasting changes will be made to the organizational culture.

This meant a preventative approach to combating corruption was required. If the Ethics and Governance Office were to build trust, it would have to:

- Enjoy full recognition, support and respect from senior management
- Be populated by specially trained individuals
- Be active throughout the organization, in all locations and facets of business

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Without committed leadership, it is unlikely that an organization will sustain the changes that it attempts to make.

Without measurement of progress and commensurate rewards, it is unlikely that positive and lasting changes will be made to the organizational culture.

- Enjoy organization-wide trust and not be directly involved in employee evaluative processes
- Not be prone to becoming embroiled in organizational politics
- Set and be custodians of consistently applied standards for ethical conduct throughout the organizations among all employment hierarchies
- Possess the knowledge, skill, budgets and organizational support to address the building of an ethical organization

The Ethics and Governance Office, somewhat controversially, included a forensic unit. The head of the Ethics and Governance Office headed this unit too. Other units within the Ethics and Governance Office – the Integrity Unit (responsible for vetting employees), the Ethics Awareness Unit (responsible for ethics training), and the Governance Unit (responsible for policy development and research) – operate separately from the forensic section, which is the Internal Corruption Investigations Unit.[1] Forensic personnel do not engage in integrity promotion activities and vice versa.

Normally we would advise against the head of an ethics and governance office also being the head of a forensics unit, because forensics personnel, by the reactive nature of their work and training, are often not well liked in organizations, mostly through no fault of their own. This potentially negative association may undermine the neutral advisory position and capacity of an ethics and governance office to proactively promote responsible conduct. A single organization carrying a carrot and stick may sacrifice trust. A further reason for concern is that the image of an investigations unit is usually that of corporate policemen, since the SARS Internal Corruption Investigation Unit works closely with the South African Police Service. This may not be an image that one wishes to be associated with an Ethics and Governance Office. It is in the training and awareness environment in particular that one tends to sacrifice candour from participants when the awareness-related unit and the forensic investigative units are perceived to be very closely associated

However, given the organizational history of SARS, its very specific risks in terms of fraud and corruption and the fact that the two offices are run and branded as separate entities, it seems to be a marriage of good convenience. This marriage works, we believe, because of the sensitivity of the current head of the Ethics and Governance Office. But it will continue to require careful monitoring.

Box 3 SARS Ethics and Governance Office structure

Empowerment

Empowerment may be evaluated on a national governance scale, or in terms of employees. A well-functioning revenue system will empower the state. It should ensure that sufficient state revenue is applied for the benefit of all citizens, and governmental accountability is strengthened. On an employee level, approximately 15,000 members of staff are located at 100 sites across South Africa. These employees are the face and the hands of the organization. One of the major challenges of the Ethics and Governance Office is to ensure that all employees are empowered with cognitive, behavioural and managerial competencies in order to combat corruption in their spheres of influence.

Cognitive competence

The purpose of cognitive competence is to acquire the intellectual knowledge and skills to make proper ethical analyses and judgements, and to realize the consequences of not doing so. The current SARS Ethics Training Seminars (one-day programme) for employees, which are presented by certified ethics officers within the Ethics and Governance Office, address this at a high level by covering values and a general overview of ethics. The programme also educates employees on SARS values, policies, codes and rules, procedures and systems, including the role and function of the Ethics and Governance Office.

Ethics requires living one's values, not merely recognizing them.

Many large organizations that are active in the South African economy have no formally established ethics management capacity.

Behavioural competence

However, the main focus of the programme is to help employees to develop behavioural competence, that is, the inclination and commitment to behaving ethically. In order to be ethical, one has to act on the knowledge surfaced by cognitive competency development. In other words, ethics requires living one's values, not merely recognizing them.

The use of case studies in teaching business ethics connects ethical aspirations with the experiences of employees. While discussing a scenario, participants have an opportunity to identify problems or dilemmas; apply the relevant codes, policies or rules; decide on the correct course of action (ethical decision making), and recognize that moral courage is often required in following the correct course of action. By presenting their findings to the rest of the group, there is a further opportunity for learning when evaluating the suitability, feasibility and acceptability of the suggested solution.

Managerial competence

Key employees, especially those working within or alongside the Ethics and Governance Office, require managerial competency. Therefore EthicSA has trained four ethics officers on behalf of SARS in the last two years.

The four SARS ethics officers are:

- The head of the Integrity Unit
- A specialist ethics researcher
- Two ethics awareness programme specialists

Given the size of the organization, four ethics officer are probably not enough. For example, an organization of similar size, Massmart Ltd,[2] South Africa's largest publicly listed retailing group, has 13 ethics officers. Yet, if placed in perspective, many large organizations that are active in the South African economy have no formally established ethics management capacity.

Policies and strategies

SARS has formulated the principles they subscribe to in their commitment to providing 'excellent service to the public':

- Mutual trust and respect
- Equity and fairness
- Integrity and honesty

- Transparency and openness
- Courtesy and commitment

SARS subscribes to the principles of respect and honesty in terms of stakeholder engagement, and efficiency in terms of performing services and managing the organization.

These values provide the mandate for the Ethics and Governance Office. SARS can draw support for these principles and values from the *Batho Pele* principles (see box 3). Meaning 'people first' in the Sotho language family, it is a conscious attempt by the Department of Public Service and Administration to sensitize public servants to the fact that their positions are not opportunities for self-enrichment, but are obligations of service requiring care, diligence and integrity.

SARS continues to introduce and refine the ethics-related documents that provide further guidance to employees on the application of the values. The Ethics and Governance Office, specifically the Governance Unit, is responsible for the development and periodic review of the code of ethics and associated policies.

The SARS Gifts Policy is a case in point, describing how difficult such a task may be. Introduced in August 2005, and prohibiting all SARS officials from accepting gifts, it met with some resistance, but was generally positively received. The giving of gifts, especially those of major monetary value, may result in conflicts of interest or unwanted expectations of reciprocal favours. These factors are almost always the origin of corrupt relationships. Widespread and consistent compliance with this policy is therefore especially important to combat corruption.

The policy states that all gifts will be declined and returned or, where it is not possible to return gifts, the Ethics and Governance Office will ensure that these gifts are donated to charity. Reasonable expectations of compliance exist for all the major points of entry and other large offices. Yet it is the remote office, sometimes not much bigger than a container home in the desert, that presents SARS with a number of compliance challenges. Personnel who man these remote outposts are often reliant on passing travellers, farmers and traders to buy and deliver basic goods such as canned food and maize. These employees get a salary, but may not have the opportunity to visit a shop for weeks on end. Under these conditions, the provisions of the SARS Gifts Policy are meaningless. The border official, dependent on the 'client' to ensure his or her comfort and survival, is in no position not to accept gifts and is essentially deeply compromised and vulnerable to corrupt solicitations.

SARS subscribes to the principles of respect and honesty in terms of stakeholder engagement, and efficiency in terms of performing services and managing the organization.

The Batho Pele principles

The South Africa Department of Public Service formulated the Batho Pele principles as a standard of professional ethics in service delivery in the public service. The principles are:

- Consultation
- Setting service standards
- Increasing access
- Ensuring courtesy
- Providing information
- Openness and transparency
- Redress
- Value for money

Box 4 Batho Pele principles

When vulnerability and monopoly are combined in a service environment, this represents access to and opportunities for exploitation to which many people succumb.

Few individuals possess the character and moral courage to withstand such pressures. That is the role of the organization: to provide an environment that supports employees in doing the right thing.

The reverse is also true. Since national borders in Africa are mainly political constructs that do not follow ecological or social boundaries, people often need to pass between borders regularly to tend to livestock, buy groceries or visit family. These people are also vulnerable to exploitation, with the SARS official possessing an effective monopoly in terms of allowing movement between borders. When it comes to economic and political refugees pressing upon our borders, the risks are significantly amplified.

History has shown that when vulnerability and monopoly are combined in a service environment, this represents access to and opportunities for exploitation to which many people succumb. Few individuals possess the character and moral courage to withstand such pressures. That is the role of the organization: to provide an environment that supports employees in doing the right thing.

These basic infrastructure inadequacies are not addressed in any university treatise on ethics, and result in systemic ethical risk that the mere existence of a policy will not mitigate. The policy acts only as a risk measurement device that informs leadership of the challenges they still face and nothing more. This is a major challenge for SARS, with important positive advancements already having been made, despite the long road still to be travelled.

Other policies that address ethics issues are in various stages of implementation:

- Declaration of interest policy
- Whistleblowing policy (draft format)
- Personnel vetting policy
- Pre-employment enquiry policy

Resources

When the Integrity and Ethics Awareness Units were started in 2004, it was staffed by one employee, who was certified as an ethics officer by EthicSA in 2005. The recruitment of qualified staff continues, and two more ethics office employees have been certified as ethics officers and a fourth is in the process of completing the practicum required for certification.

The Ethics and Governance Office provides telephonic as well as e-mail assistance to SARS employees. Advice may be required in interpreting policies and resolving ethical dilemmas. The office also maintains a web page that provides general guidance on these aspects, as well as a frequently asked questions (FAQ) section.

An independent third party administers a SARS anti-corruption hotline, which is accessible to SARS employees and members of the public to report acts of corruption. The hotline allows for anonymous reporting. While the focus on combating corruption is commendable, there is a risk that the name of the hotline, the Fraud Line, will result in ethics being understood only as white-collar crime, to the exclusion of other issues (for example harassment and discrimination).

The conditions that give rise to corruption almost always have their roots in a human resources environment, with classical risk indicators such as work pressure, dissatisfaction and high levels of observed misconduct contributing directly to the risk of corruption. By addressing the basic and apparently unrelated human resource-issues via internal and external hotline reporting paths, in effect one proactively mitigates conditions that may make one's organization more prone to corruption.

The conditions that give rise to corruption almost always have their roots in a human resources environment.

Given the low levels of trust placed in internal grievance procedures within SARS, an external hotline that may be used for this purpose will be invaluable.

Innovation and process

SARS considers itself the leader in the government sector. It has claimed this position because of its initiative in establishing an Ethics and Governance Office, a first for the South African public service.

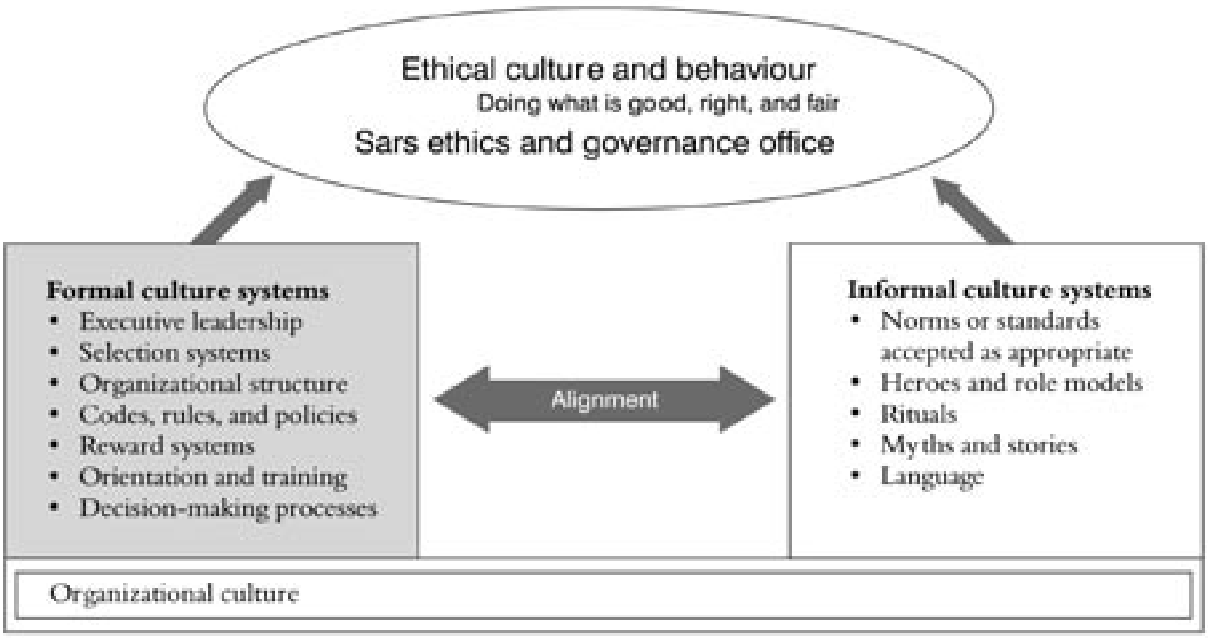
Probably the greatest innovation is not in introducing ethics management, but in the conscious effort to address the discrepancies and incongruence between formal culture elements and the informal culture of the organization. This is where ethical risk lies and, as the problem of consistently implementing a Gifts Policy within an environment containing basic people management inadequacies has shown, it requires holistic effort to address.

What is required is that the informal leaders scattered throughout the hierarchies support a drive to combat corruption and other ethical practices.

The Ethics and Governance Office, to its great credit, can be defined as a managed effort to reconcile these two layers of the organization, the formal and the informal, in such a manner that ethical risk, like corruption, is well contained. Ultimately the ideal is close alignment, where the SARS policy framework reflects the ethical culture that the Ethics and Governance Office aims to direct in its building. While it is a subject worthy of more lengthy discussion, it may be sufficient to recognize that formal leadership is not enough. What is required is that the informal leaders scattered throughout the hierarchies support a drive to combat corruption and other ethical practices. Box 5 graphically indicates the zones of intervention required to align these two spheres of influence to transform the SARS principles for responsible conduct into living statements.

Impact on people

The King Report on Corporate Governance for South Africa (2002) and the National Anti-corruption Forum (NACF) require an evaluation, assessment or audit of the effectiveness of ethics programmes. The business case to assess organizational ethics further strengthens the argument. In order to manage any organizational issue, it needs to be properly measured. Box 5 indicates some of the zones of assessment required to paint a proper picture of corruption risk, especially in terms of detection and the creation of a culture of reporting.



Box 5 Alignment of formal and informal culture elements

When the Ethics Office was established in 2004, an interview tool was developed for use in an organizational assessment. A limited number of interviews were conducted because of time constraints and the infancy of the Ethics Office, but the results of the assessment have been beneficial in establishing a baseline for subsequent assessments. The assessment identified a number of clear ethical risks that SARS faces. The same interview tool was used in 2005 and the number of interviews was significantly increased. From the results of the assessment, the Ethics Office staff were pleased to note increases in awareness among employees, which they believe can be ascribed to the awareness campaign and training programmes taking place throughout the organization. They were able to use the results to tailor the contents of the training programme to address relevant issues.

The study confirmed areas of concern, especially in terms of high levels of employee dissatisfaction, pressure to perform and observed misconduct levels. In addition, it highlighted a performance management system that measures performance strictly in accordance with financial targets, thereby creating the risk of delivering financial results at the expense of the values and ethical conduct that the organization claims to be embracing.

Another challenge is the decentralized manner in which the organization operates. SARS has more than 100 offices across South Africa, including every border post and port of entry. Numerous employees are responsible for customs at OR Tambo International Airport, Johannesburg, for instance, with easy access to facilities and transport, but this is in sharp contrast to some of the border posts to the north of the country where the closest town (with only the most basic goods available) is hundreds of kilometres away. In such conditions, the infrastructure may consist of a container which acts as office and accommodation for the two SARS officials, one bed being used by the employee who is not on shift.

A further challenge at border posts is that three organizations operate in that environment: SARS Customs Office, the South African Police Service and the Department of Home Affairs, which is responsible for immigration. This results in a blurring of boundaries, especially in the public eye. An employee from either of the other organizations may commit an act of corruption that impacts negatively on SARS' reputation.

To objectively assess these risks, SARS plans to conduct an independent verification or ethical risk audit in 2007.

SARS leadership has a simple choice: to lead an organization that is part of a crime-fighting solution, or part of the problem.

Impact on the value chain

An organization of the size of SARS represents significant purchasing power. For example, a recent tender for the provision of container scanners was to the amount of R1.5 billion.

SARS leadership has a simple choice: to lead an organization that is part of a crime-fighting solution, or part of the problem. By expanding a zero-tolerance approach into the supply chain, SARS can create a positive island of integrity, promoting responsible conduct far beyond its organizational borders. The Public Finance Management Act (PFMA), provides the legal framework for such an exercise, prescribing minimum corruption prevention capacity within the organization and its supply chain (see box 6). The PFMA was introduced to regulate financial management in national and provincial governments as well as constitutional institutions and public entities. The PFMA holds the accounting officer (CEO, head of the department, constitutional institution or public entity) responsible for ensuring that all revenue, expenditure, assets and liabilities under his or her control are managed effectively and efficiently. One of the proposals of the Public Service Anti-Corruption Strategy was to increase institutional capacity through the development and prescription of minimum anti-corruption capacity.

The Public Finance Management Act

The minimum anti-corruption capacity requirements oblige the accounting officer to:

- Specifically focus on and analyse corruption risk as part of risk assessment required in terms of the PFMA
- Implement fraud plans required in terms of the PFMA, which must specifically address the corruption risk
- Verify the previous employment, qualifications, citizenship and criminal record of all persons before they are employed
- Establish a system or systems that encourage and allow employees and citizens to report corruption, which must provide for confidentiality of reporting, the recording of all allegations of corruption received through the system or systems and a formal institutional arrangement for acting on such allegations
- Establish a capacity to investigate allegations; institute and complete disciplinary action for cases of corruption; detect corruption; and refer allegations of corruption to a relevant law enforcement agency or other appropriate agencies/bodies in terms of a formal arrangement
- Establish an information system that has records of all allegations; is able to track the progress with the management of each allegation; reveals systemic weaknesses and recurring

risks and inform managers and employees of systemic weaknesses/risks; provides feedback to employees on the management of corruption allegations; and provides minimum information to designated national departments

- Establish programmes that inform employees on an ongoing basis on what constitutes corruption; promote the departmental and national policies that must be adhered to, including the values and principles of public administration as contained in the Constitution and standards of professional conduct; inform employees of corruption risks; encourage employees to report corruption; informs employees on the nature and working of protected disclosures and witness protection; and inform employees of obligations and rights in terms of the Access to Information and Promotion of Administrative Justice Acts
- Ensure that the employees responsible for the minimum functions have positive security clearances; and disclose financial interests to the accounting officer on an annual basis

Box 6 The Public Finance Management Act and minimum anti-corruption capacity requirements

Impact on society

An encouraging result from the 2005 organization assessment was that 100% of respondents indicated that they believe they are making a contribution to society as a result of the work they perform. There is a general sense that, in spite of problems, SARS is honouring its mandate.

SARS has been successful in building trust in society, with anecdotal evidence indicating that many South Africans have more faith in SARS' ability to responsibly collect revenue than the government's ability to responsibly spend it.

This raises an important point. Although SARS may perform very well financially, its societal value should be measured in the context of government generally being incapable of spending this revenue meaningfully owing to skill shortages, bad leadership and management, and the inheritance of infrastructure neglect.

Seen from a critical distance, the good performance of SARS should allow government to focus its energy on addressing

SARS has been successful in building trust in society, with anecdotal evidence indicating that many South Africans have more faith in SARS' ability to responsibly collect revenue than the government's ability to responsibly spend it.

SARS should act as an example of responsible governance – an ethical sentinel.

developmental shortcomings, without having to concern itself with a problem that is endemic to the rest of Africa: the general inability to pay for schemes designed to stimulate the economy.

From the perspective of the promotion of responsible government, the good performance of SARS allows for South African citizens to demand full accountability from public officials for lack of service planning and provision, since they know that cases of non-performance are mostly due to leadership failures and poor management, rather than lack of funds. This underscores the truth that in any society intent on good and responsible government, an effective revenue service is a necessity.

Therefore, with SARS playing a vital role in the overall governance framework of South Africa, it should not merely be effectively run, but should act as an example of responsible governance – an ethical sentinel.

Reporting and communication on progress

At the time of writing, SARS communications are focused on raising awareness of its corruption combating and ethical conduct promotion programmes. External communications take place in the annual report, the minister of finance's report and the report from the auditor-general.

More could be done to raise awareness of the activities of the Ethics and Governance Office. In engagements with government departments we find that too few officials know about the energy spent and successes already achieved within that office. There is a lot to be proud of but, as often occurs, these achievements are under-reported.

Conclusion

The SARS Ethics and Governance Office does groundbreaking work in the sphere of public sector concerns. It has managed to avoid what so many government departments suffer from: lack of continuity in terms of personnel and stifling bureaucracy.

The founding and expansion of the office was an evolutionary process with commendable leadership support enabling it to be established in a short space of time. Evidence is also emerging that it is having a positive influence on the ability of SARS to combat corruption. Most certainly there are higher levels of awareness among employees. Reporting corruption also appears to have become more prevalent, with a number of significant cases being investigated.

What remain of concern are the challenges in the human resource environment and the lack of infrastructure support in many of the more remote regions. These issues are receiving attention, but in a culture highly driven to produce financial results, these requisites for good ethical conformance always run the risk of suffering from under-investment.

Given that the current commissioner may hand over the reins in the foreseeable future, proper succession planning and continued top management support for the Ethics and Governance Office and its activities are of the utmost importance. SARS is on the right course – a luta continua.

Special thanks

- To the members of the SARS Ethics and Governance Office for presenting EthicSA with valuable information required in producing this article.

Notes

1 Throughout the article, when discussing the Ethics and Governance Office, activities within the Internal Corruption Investigations Unit are not addressed unless explicitly stated.

2 www.massmart.co.za.

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Creating a culture intolerant of fraud and corruption in Total South Africa (Pty) Ltd

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Background

Total South Africa profile

Total South Africa (TSA) is a private, unlisted company and subsidiary of the Paris-based Total Société Anonyme (TotalSA), which is listed on the pan-European stock exchange, Euronext, and the New York Stock Exchange (NYSE).[1] TSA holds 50.1% of the shareholding and Johannesburg Securities Exchange (JSE)-listed Remgro holds 24.9%. The balance of 25% is held by TSA's Black Economic Empowerment (BEE) partner, Tosaco. TSA has subsidiaries in Botswana, Namibia, Lesotho and Swaziland.

In addition to sales in the industrial and commercial markets, TSA has a retail network that includes approximately 530 service stations across South Africa.

TSA biographical data

Sector:	Private
Organization type:	Private company (French parent dual-listed on CAC40 and NYSE)
Industry:	Petroleum and retail
Population:	Approximately 1,600 employees
Leadership:	CEO/managing director
Governance:	Compliant with King II best practice guidelines. Non-executive chairperson governs a board populated predominantly with independent non-executive directors. Subject to US legislation such as the Foreign Corrupt Practices Act (FCPA) and Sarbanes-Oxley Act (SOX) because of NYSE listing.
Scope:	Serves an extensive consumer base in southern Africa, the largest being in South Africa.

Box 1 Total South Africa (TSA) biographical data

Ethics Institute of South Africa and TSA

TSA is a member of the Ethics Institute of South Africa (EthicSA). Early in 2006, EthicSA was contracted to assist with an organized programme to create and maintain an organizational culture intolerant of fraud and corruption. This required the development and implementation of an ethics management programme within the South African operations. It is anticipated that the ethics management programme may take 18 months to implement.

The ethics management programme comprises:

- Securing senior management commitment to a formal process of promoting responsible conduct
- Codifying TSA's values into a unique TSA Code of Ethics (that differs from, but complements the TotalSA Code of Ethics)
- Developing an extensive awareness programme aligned with the TSA Code of Ethics
- Undergoing an independent assessment of progress at the end of the awareness programme.

The Foreign Corrupt Practices Act and the Sarbanes-Oxley Act

The Foreign Corrupt Practices Act (FCPA) 1977, as amended 1998, is United States legislation that makes it a criminal offence for US companies or entities with a US public listing (as on the NYSE) to exert any form of inappropriate influence with the aim of gaining some form of undue benefit from a foreign (non-US) government or its representatives.

The US lobbied its major trading partners and by 1997 the US and 33 other countries had signed the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This served as a formal undertaking that legislation similar in effect to the FCPA would be enacted in these signatory countries. The FCPA also requires foreign US-listed entities to adhere to US accounting practices. The corruption prevention and accounting provisions of the FCPA operate in tandem with and provide legal force to compliance with all US laws containing accounting prescriptions. Currently, the FCPA excludes corrupt dealings with private-sector non-US entities.

The Sarbanes-Oxley Act (SOX) 2002 was formulated and signed into law in the US as a result of the Enron and other major corporate scandals. Foreign companies, by virtue of a US public listing, need to comply with most elements of SOX.[2] It sets up a series of significant and onerous provisions, requiring senior management to vouch for the integrity of the organization's internal risk control and the truthfulness and materiality of its financial reporting. This culminates in significantly increased personal liability, jointly and severally, for directors. Importantly, through section 406 of the act, it is a legal requirement to have in place a code of ethics applicable to financial officers.

Box 2 The Foreign Corrupt Practices Act and Sarbanes-Oxley Act

As a petroleum company, dealing in a non-renewable and increasingly scarce resource that is often extracted from parts of the world that are characterized by political unrest and poor governance, a number of imperatives should move management to adopt a formal process of institutionalizing ethical values within the organization.

The United Nations Global Compact and TSA

TotalSA is a signatory to the Global Compact, but has yet to become an active participant of the local South African network. The vision, mission and espoused values of TotalSA are in line with the principles of the Global Compact, since it aspires to good corporate citizenship and creating and maintaining an organizational culture intolerant of fraud and corruption.

TSA certainly needs to be encouraged to go through the formalities of joining the Global Compact and engaging in the local network.

Method of analysis

This article was based on data obtained from desktop research and personal interviews. We also rely on anecdotal evidence collected during ongoing advisory engagements with TSA. In particular, a research report conducted by the Good Corporation, based in London, in 2005 was helpful in identifying some of the values and vulnerabilities within the organization.

TSA: From good to great?

This case study analyses how TSA is developing an ethics management plan to support a TSA Code of Ethics that sets clear boundaries for responsible conduct within and beyond the organization. The aim is proactively to build and sustain an organizational culture intolerant of fraud and corruption. TSA has adopted the slogan 'From Good to Great' to describe this initiative.

As a petroleum company, dealing in a non-renewable and increasingly scarce resource that is often extracted from parts of the world that are characterized by political unrest and poor governance, a number of imperatives should move management to adopt a formal process of institutionalizing ethical values within the organization.

Legal imperatives

Legislation, both international and South African, embraces the concept of increased liability, jointly and severally, for directors. The FCPA specifically makes it a prosecutable offence to commit acts of corruption with non-US governments (see box 2). By the late 1990s the OECD had followed the same course by binding its members to a widely adopted convention, essentially based on several of the principles of the FCPA. Remaining on the international front, SOX, applicable to US and US-listed entities, introduced stringent internal risk control and financial reporting requirements.

In addition, and in keeping with international trends, the South African Prevention and Combating of Corrupt Activities Act, 2004, makes corrupt South African business activities, conducted beyond its borders, liable for prosecution within South Africa.

From the perspective of non-US companies with a NYSE listing, such as Total SA, the FCPA and SOX significantly increased the liability of directors on the South African front. The proposed revisions to the new Companies Act will support this expansion of personal legal accountability, not just on an individual basis, but jointly and severally. This means that a director who is deemed negligent in failing to uncover and deal with fraud and corruption committed by fellow board members or senior management may be held liable for losses that accrue because of such events.

It may become less and less prudent to sit on the board of a company that doesn't provide directors with the security of proactive ethics and corruption prevention management.[3]

Therefore, significant corrupt activity without reasonable preventative control may have major legal implications for individual directors, even though they may not be party to such unethical conduct. This legislation requires directors to know about, or indicate reasonable measures proactively to detect fraud and corruption within the organization. Therefore, the legal imperative for building an organizational culture intolerant of fraud and corruption should be a major incentive as it may act as a type of insurance policy, hedging director liability.

Whether here in South Africa or abroad, the highest ethical standard is the benchmark to attain, even if local standards may be lower.

An ethics management programme, especially a code of ethics applicable to senior management and the rest of the organization, may be considered a reasonable response to limiting individual legal liability of directors.

Regulatory imperatives

Apart from the myriad regulations governing the fuel industry and similar industrial complexes, TSA needs to contend, through its French parent, TotalSA, with the listing requirements of the NYSE and Euronext, the provisions of the US Securities Exchange Commission, and the US Federal Sentencing Guidelines for Organizations (FSGO), which provide prescriptions for instituting an ethics management programme.

The self-regulatory suggestions of the Second King Committee Report on Corporate Governance in South Africa 2003 (King II) refer with approval to the FSGO as providing a framework for South African organizations endeavouring to institute an ethics management programme.

Organizations that are clear and consistent in promoting ethical values encourage employees to act confidently within well-defined boundaries.

It takes ethically committed organizations to withstand the pressure to trump ethical conformance with short-term financial performance goals.

Importantly, a common element among these regulatory bodies and King II is the call for organizations to codify and promote ethical values throughout the organization. As part of an organization effectively straddling the planet, TSA is exposed to global regulatory influence. Global exposure requires a response that satisfies local and global best-practice standards. Whether here in South Africa or abroad, the highest ethical standard is the benchmark to attain, even if local standards may be lower. This would mean that TSA should take the FSGO guiding principles not merely as voluntary aspirations, as described in King II, but with the same force as if they are supporting law.

Given the tendency of local events to exert their disruptive influence globally, TSA can ill afford not to take the FSGO very seriously. Sharing an industry example, the Exxon-Valdez disaster tarnished the reputation of the whole organization, not just that of its Alaskan operations.

Financial imperatives

The risk posed by non-compliance with the FSGO in the event of some major and damaging occurrence of unethical conduct makes for a powerful argument that good ethics may indeed be good business, that is, good for the financial bottom line. The difference between a fine of a few million US dollars and one of over $500 million, as in the case of Hoffman-La Roche, or $225 million as with BASF (for price fixing and bid rigging in the global vitamin sector) is easy to understand.

There is also an expanding body of evidence that indicates that organizations that are clear and consistent in promoting ethical values encourage employees to act confidently within well-defined boundaries. This confidence promotes organizational efficiency, which leads to increased profitability. Interestingly, there is also a relationship between inefficient organizations and increased risk of succumbing to fraud and corruption. This is because inefficient organizations are generally subject to higher levels of work pressure, observed misconduct, and employee dissatisfaction.

Coupling these risk indicators with weaker management of access and opportunities enabling fraud and corruption, it is easy to understand how significant the risks to such an organization may be. Given that an inefficient organization may not be in proper compliance with the FSGO, the cumulative effect of corruption losses, criminal charges or large civil claims makes for a nasty loss calculation.

The US Federal Sentencing Guidelines for Organizations

The FSGO (1991) set a series of minimum best-practice guidelines for US courts in assessing criminal or civil liability of organizations involved in serious ethical breaches. Using a carrot and stick approach, it involves using the guidelines to assess the capacity of an organization to address proactively the risk of unethical conduct materializing in an organization. In the event of an ethical breach resulting in material loss to shareowners or other interested parties, a base fine may be levied by a court of law. Acting in the interest of the aggrieved party, the court, based on non-adherence to the principles of the FSGO, will determine whether aggravating 'multipliers' need to be added to the base fine.

In other words, with every principle with which the guilty organization is found to be non-compliant, the base fine is multiplied according to a certain formula. A fine of a few million dollars applicable to a compliant organization suffering from some major ethical crisis may climb to a figure of several hundred million in the event of significant non-compliance with the principles. In South Africa the FSGO principles are contained within King II as voluntary best-practice guidelines, and are not supported by law in the same manner as in the US.

The FSGO guidelines can be summarized as follows:

- Adopt ethics compliance standards and procedures
- High-level personnel should oversee ethics initiatives
- Exercise due care when assigning discretionary authority
- (Re)develop a code of ethics
- Communicate and train on ethics
- Set up systems to achieve ethical compliance
- Enforce compliance standards, reward and discipline, respond to offences, and prevent recurrence
- Measure the effectiveness of ethics and compliance interventions

Box 3 The Federal Sentencing Guidelines for Organizations (FSGO)

It would seem that ethical and efficient organizations are generally financially healthier and less prone to becoming dangerously imbalanced by occurrences of unethical conduct. However, in EthicSA's experience, good ethics does not always constitute good business, certainly not in the shorter term. Any director of exploration or acquisitions knows how great the temptation can be. It certainly takes ethically committed organizations to withstand the pressure to trump ethical conformance with short-term financial performance goals. Considering how oil will become increasingly scarcer and more valuable, such pressure will build as the twenty-first century matures.

The intersection point plotting rising demand and decreasing supply will certainly test the ethical resolve of the oil industry to add long-term value and not just short-term profit. Indeed, we foresee that the dilemma the industry faces, of strong and rising demand competing with rapid depletion of supply, will be a major test of the ethical resolve of TotalSA. This pressure to do whatever it takes will be compounded because, as supply dwindles, the concepts of long-term value and short-term profit will tend to merge.

Reputational imperatives

In terms of promoting its reputation, TSA has done much in terms of exercising good corporate citizenship.

- It has engaged in Broad-Based Black Economic Empowerment (BBBEE) through Tosaco.
- The retail dealer network provides employment to at least 2,200 employees (mostly forecourt attendants) who in turn support some 6,500 dependants. By supporting black retail dealers, wealth job opportunities are ploughed into disadvantaged communities.
- Total Malanda Service Station and the Department of Education worked in partnership to fund the renovations of a local school. Significantly, 70% of workers in the renovation project were from the community.
- In a similar way, TSA awards minor contracts for the maintenance of service stations to local contractors. An estimated 30% of all investment expenditure (for example major contracts for new service stations) is awarded to BEE contractors.
- A HIV/Aids programme is in place in South Africa, Namibia, Botswana, Lesotho and Swaziland, aiming to prevent infection, and also to assist those living with HIV/Aids.

- The Ikhayalobomi Hospice and Care Centre for people living with HIV/Aids is sponsored by TSA, and is run by a young couple with the assistance of volunteers from their local community.
- In addition, TSA is addressing women's empowerment within the business. 'Understanding Women's Experiences at TSA', a survey conducted recently, revealed that efforts at addressing diversity are generally understood in race terms only and not in gender terms.
- Outside the organization, the interests of women are promoted by sponsoring the Female Farmer of the Year competition and various arts, education and healthcare projects.
- There is an environmental outreach programme with TSA as the sole supplier of fuel to the Kruger National Park and KwaZulu-Natal Conservation Services. In a reciprocal deal, TSA sponsors the building and maintenance of rest camps and relocation of wildlife.
- Other projects supported by TSA are My Acre of Africa, an education programme for schoolchildren endorsed by former president Nelson Mandela and the World Wildlife Fund.

In other words, TSA is involved in many commendable corporate citizenship projects, as one would expect of a local division of one of the world's largest companies in terms of revenue.

However, the reputation-enhancing capacity of corporate citizenship initiatives is tested by the trust stakeholders have in the business itself, in terms of its capability to return wealth and its commitment to responsible business conduct. These initiatives would not build organizational reputation if the organizational character itself were in doubt. [4]

In a similar manner, efforts by TSA may come to nothing if not built on ethically sound practices within the business itself. Corporate citizenship must be built, along with sound management, on a foundation of ethical conduct and, of course, a good business plan. TSA possesses competent management and is certainly a profitable and well-run business. However, to enhance its likelihood of building and maintaining trust and promote responsible conduct, it needs to commit to a managed process of adopting and promoting ethical values within the organization.

In addition, as nations become increasingly democratized and their leaders more accountable, it can be expected that they will become more selective in choosing business partners. With growth a

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Corporate citizenship must be built, along with sound management, on a foundation of ethical conduct and, of course, a good business plan.

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Imagine what could be done if leadership of an influential organization fully commits to responsible business conduct, striving towards rooting out fraud and corruption within its sphere of influence.

It ultimately becomes a question of legacy, for leadership and for an organization. What do you choose to leave behind: a surplus of solutions or problems?

necessity in a shrinking stock pool, a good corporate reputation will become vital to the sustainability of the industry and therefore of the organization.

Moral imperative

The moral imperative for adopting and promoting ethical values in an organization is usually the most difficult to promote when engaging leadership on the subject of ethics management for the first time. The need to provide convincing legal, regulatory, financial, and reputational arguments for the adoption of an ethics management programme is understandable. Yet, probably the most compelling argument is a simple moral one.

Morality refers to the capacity of people to adopt ethical values. We argue that organizations possess a similar moral capacity. As all people are continuously faced with moral choices in life – adhering to ethical values or not – so organizations face the same moral dilemmas.

These dilemmas arise when values clash, for example when the value of honesty clashes with that of loyalty on an individual or corporate scale. While not trying to discount the numerous grey areas that may exist between such poles, in terms of reporting on fraud and corruption, for instance, the choice is often stark.

While honesty and loyalty in many cases will not be conflicting values, let us assume a case in which they are. You have uncovered fraud and your manager wants you to be silent. Will you be honest and report this or be loyal to the manager's demand? The only way to resolve the dilemma is to regard one value as more important than the other. When an organization gives such guidance through a good code of ethics, much can be achieved.

Therefore, while the individual impact of the moral person in the street might be felt to be minimal, imagine what could be done if leadership of an influential organization fully commits to responsible business conduct, striving towards rooting out fraud and corruption within its sphere of influence.

In the case of TSA, with over 2, 000 contractors and suppliers, providing services of various kinds, the positive influence could be immense. If TSA internally commits to responsible business conduct and the creation of a culture intolerant of fraud and corruption, it would benefit approximately 1,800 employees and their families. In addition, if it exports that commitment to suppliers and contractors, the reach becomes tens of thousands.

It ultimately becomes a question of legacy, for leadership and for an organization. What do you choose to leave behind: a surplus of solutions or problems? Given that imperative, even the most sceptical of leaders may not argue the principle of adopting organizational ethical values, but the methods to achieve it.

Creating a culture intolerant of fraud and corruption

An important point in building an ethical organization is the requirement to show clear leadership commitment through the codification of organizational values. Simply put, developing and rolling out a code of ethics is a necessary condition for building an organizational culture intolerant of fraud and corruption.

In 2000, TSA recognized the need to identify the organization's core values and for those values to be captured in a code of ethics. At the time, five core values were identified, namely professionalism, transparency, pride, diversity and HSEQ (health, safety, environment and quality), and a rudimentary code of ethics, containing these values, was approved. Albeit an important step in the right direction, the code of ethics remained a little-used document, ill distributed and not integrated into employee performance evaluations.

In 2003, the chairman of the TotalSA Ethics Committee, Richard Lanaud, presented the TotalSA Code of Ethics to group companies at a seminar at Sandton Convention Centre, Johannesburg. This heightened awareness of the importance of a code of ethics. In keeping with best practice, TSA entered into a contract with an external hotline service provider to make available an anonymous reporting facility for reporting unethical conduct: the TSA ethics line.

In addition to this drive from TotalSA, André Barwick, company secretary of TSA, became concerned about the South African context with widely publicized fraud and corruption charges being brought in high-profile cases.

It is essential to formally adopt ethical values. Operating as it does in a business environment fraught with ethical risk, TSA did not sufficiently engage in building a culture intolerant of fraud and corruption throughout its business.

In a recent interview, André Barwick stated:

> "Suppliers' perception of TSA as an ethical organization was based on the absence of scandals and news reports on the organization and the need was identified for revisiting the Code of Ethics, revising it where necessary and re-launching it so that all employees, dealers, suppliers and contractors would know what TSA expected of them and in turn what they could expect of the organization."

The approach was first and foremost to ensure the commitment of senior management to the vision of promoting a culture intolerant of fraud and corruption, not merely in the business, but also in the supply chain.

It was fortuitous that TotalSA decided to assess the commitment of group companies to implementing its code of ethics. The review was conducted by the London-based Good Corporation in 2005 and confirmed some of the concerns of André Barwick and colleagues. This report was a major driver in the process of adopting an ethics management programme.

Findings indicated that although the organization did not appear to suffer systemically embedded unethical conduct, there were a number of areas of concern. Among those, the report confirmed that the code of ethics was not properly integrated into organizational processes and general company culture; nor was it much used in decision making or employee and supplier evaluation.

In the third quarter of 2005, André Barwick contacted the EthicSA office to enquire about re-developing the code of ethics and the steps required to ensure its promotion throughout the organization. It was felt that although the TotalSA Code of Ethics was a valuable guidance document, it was necessary to develop a complementary code that addressed issues unique to TSA.

Performance analysis

Vision

The approach was first and foremost to ensure the commitment of senior management to the vision of promoting a culture intolerant of fraud and corruption, not merely in the business, but also in the supply chain. This vision is to be known in the organization by the slogan ‘From Good to Great’.

The obvious first step was to engage the TSA Executive Management Committee in a presentation to explain the benefits and process, and to persuade the organization to commit time and resources to the project. The strategy proposed to the committee involved, among others, re-developing the code of ethics to make it relevant to TSA employees, especially to facilitate understanding and use. The response was very positive and enabled André Barwick to provide EthicSA with a mandate for delivering the specialist services required.

EthicSA started by taking the organizational vision to deliver sustainable shareholder value and coupled it with the mission of excellent corporate citizenship; being number one with the customer; and being a great place to work. With this vision providing the broad aspirational goal of the organization, the mission addresses the manner in which TSA will strive to attain it.

The mission relates to three important components of the business:

- 'Excellent corporate citizenship' addresses the positive positioning of the organization in terms of its pursuit of value for its shareholders, its contribution to the societal health of the communities it influences and the protection of the natural environment through which it is able to operate. Commonly called 'the triple bottom line', this evaluation of financial, social and environmental costs and gains is essential to good corporate citizenship.
- 'Being number one' with customers acknowledges the importance of meeting customer needs when determining business strategy. Many companies are prone to pursue short-term profit at the expense of customer satisfaction. This is an important acknowledgement by TSA that their responsibility extends beyond merely supplying fuel to their dealer network to ultimately encouraging proper service to clients filling up their vehicles from the dealer forecourts.
- 'A great place to work' directs the focus inwards again, towards the way the organization treats its employees. It closes the circle, in effect realizing the capacity of TSA to be an excellent corporate citizen (if you do not treat your employees well, you cannot sustainably do so with your external stakeholders) and be number one with the customer (ill-treated employees cannot sustainably be made to provide good service.)

The next step was to underpin the mission with the organizational values. While the vision of the organization is the destination of sustainable shareholder value, the mission is the road that needs to be travelled to that destination. The organizational values serve as beacons indicating the legitimate limits of the road, or the actions defining the road.

Probably the greatest dilemma facing advisors, internal or external, to an organization is the need to balance historical precedent within the organization and providing the organization with the means to steer a new course. EthicSA argued for a maximum of three values, universal in nature and mirroring the three mission concepts, but TSA management motivated for retaining the concepts defined in the old code of ethics. A satisfactory compromise was to collapse the fifth value, HSEQ, into that of professionalism. This did not mean a reduction in the importance of these guiding concepts, but rather their increased significance through incorporation into an operational value, professionalism. This step made sense because the greater part

The values supporting the vision and mission in the revised TSA Code of Ethics:

- Professionalism: Being able to perform to the highest levels of service, safety and excellence
- Transparency: Being truthful and building trust in all our relationships and actions
- Pride: Being able to grow the company by developing, recognizing and trusting our people, and valuing the environment
- Diversity: Recognizing the inherent worth of every human being

of professional behaviour in TSA is defined by conduct promoting health, environmental safety, and quality standards.

With the codification of the organization's vision, mission and values complete, what remained was for the values to be explained by specific conduct provisions, do's and don'ts, that operationally illustrated what needs to be done to be professional, transparent, proud and valuing diversity within TSA.

Developing a code of ethics that is not integrated into the organization's vision is, ultimately, a waste of time.

Figure 1 TSA's vision and mission

Leadership

Developing a code of ethics that is not integrated into the organization's vision is, ultimately, a waste of time. Leadership has to be committed to providing the resources for the integration of the code of ethics into the operational fabric of the business. These resources are financial and skills related. Fortunately, since 2003, and to TSA's credit, the board has had in place an Ethics Committee, which meets twice annually, and is chaired by André Barwick. It was willing to earmark a budget to develop and institutionalize organizational values as part of the process to revise the TSA Code of Ethics, coinciding with the creation of a TSA Ethics Office. Along with the Ethics Committee, this demonstrated a high-level commitment by leadership.

The creation of the TSA Ethics Office meant the development of an internal organizational ethics management capacity. External specialists may assist an organization in developing a code of ethics, but certainly cannot own it. The organization must own it, every employee in fact, and for that to happen, properly trained custodians, situated within the TSA Ethics Office, must manage the process from within the organization.

Building an organizational culture intolerant of fraud and corruption is not a one-off intervention. It must become the organizational way of being or living if it is to succeed. It is a good test of leadership, and with a positive start having been made, it is incumbent on TSA leadership to maintain the momentum in the coming years.

André Barwick, who is the company secretary and fills the Ethics Office, successfully attended the 2006 national Ethics Officer Certification Programme. Having undergone five days of specialist training, he is now well positioned to be the custodian of the programme. However, in our experience, an organization the size of TSA will require more than one person staffing the Ethics Office. Yet, given the youth of the programme, TSA has time to decide on further investment in its newly created Ethics Office.

Building an organizational culture intolerant of fraud and corruption is not a one-off intervention. It must become the organizational way of being or living if it is to succeed.

The TSA Code of Ethics further reflects the positive tone from the top by including a personal pledge by the CEO to adhere to stated values and to ethically lead the organization by example. Employees, dealers, suppliers and contractors are encouraged to exercise personal leadership in their spheres of influence and to demonstrate this with an annual recommitment to the code of ethics.

There were bumps on the road, most notably the recent charges of corruption brought against a member of senior management of Total Coal SA. Although in effect a separate company, it operates under the same Total brand, causing TSA to share in some of the reputational risk resulting from the charges. Consultants hired by Total Coal SA allegedly bribed cleaning staff of a former business partner to steal trash containing competitive information, but at the time of writing this had yet to be proved in a court of law. Such events underline how important this initiative is in making TSA's capacity to build trust robust enough to withstand such challenges, and how vital TSA's leadership commitment is to ensuring its success.

Empowerment

TSA has a responsibility to set ethical standards or values, and then to support the understanding of these values by a code of ethics, an awareness programme, and the like. It is the responsibility of employees and other stakeholders to meet or exceed the TSA ethics standards.

A commitment to diversity means recognizing the inherent worth of every human being by:

1 Treating people fairly
2 Providing a working environment free of unfair and unjust discrimination
3 Fostering opportunities for personal growth and professional development for all employees
4 Valuing the different cultures and beliefs of all TSA stakeholders
5 Respecting the expectations of the communities in which we are located

Thus, each value is specifically explained in terms of a series of broad conduct concepts. Each concept may be broken up into more specific prescriptions or prohibitions, including references to other documents, such as policies. In this way, the code of ethics becomes a kind of 'central standard' as well as a reference point for the values and other policies and processes within the organization.

Furthermore, all the TSA values deal with empowerment by setting boundaries within which employees can confidently operate. However, two of the values, pride and diversity, specifically target the empowerment and development of employees and select external stakeholders.

Pride is defined as the 'ability to grow the organization by developing, recognizing and trusting our people'. Diversity requires TSA stakeholders to recognize the inherent worth of every person.

Policies and strategies

Even before the Good Corporation review highlighted it, TSA became aware of a gap in formally documenting provisions that detail good business practices. The organization has subsequently embarked on an extensive exercise to formulate new policies and reformulate those that required updating. A decision was then taken to refer to the relevant policies in the appropriate sections of the code of ethics.

The development of the code of ethics presented an opportunity to identify policy gaps and link them properly to organizational values. In this manner, the TSA Code of Ethics became a central and user-friendly reference book for many more detailed policies that have subsequently been drafted by the organization. As a central reference point, it allowed TSA to avoid what so many organizations suffer from, namely a host of isolated policies, some of which contradicted others. For instance, provisions on conflicts of interest in the TSA Code of Ethics may contain only the most salient points, but will then reference the more detailed Conflicts of Interest policy for those requiring more information.

Some of the referenced policies are on substance abuse, use of information technology, intellectual property, security, sexual harassment, conflicts of interest, gifts and entertainment, and whistleblowing.

There are still gaps, most notably the need to upgrade the whistleblower policy, but overall TSA has shown good improvement on the policy front. However, a good body of policies is of secondary importance to a culture intolerant of unethical practices such as fraud and corruption. The policies serve to assist in the creation and maintenance of this culture, nothing more.

Resources

Significant effort is still required in building whistleblowing capacity, a key constituent of an ethics management programme. An effective whistleblower process for safely reporting unethical conduct is essential to preventing fraud and corruption in an organization. For this purpose, confidential reporting along line management will be encouraged during the ethics awareness campaign.

Provision has already been made for anonymous reporting using the TSA Ethics Line, an independently operated facility set up in 2003. EthicSA does not believe that the TSA Ethics Line, as a key resource, has been effective as a fraud and corruption prevention tool, largely because it has not enjoyed sufficient institutional support.

This is set to change with the creation of the TSA Ethics Office, whose tasks will include ensuring that the line operates safely and effectively. The forthcoming ethics awareness programme will also focus heavily on raising awareness of the TSA Ethics Line.

But stand-alone ethics resources such as the TSA Ethics Line, although already present in an organization, will be utilized effectively only after they have been linked into the holistic and inter-connected structure of an ethics management programme.

Innovation and process

EthicSA is often confronted with 'the triple P syndrome'. It entails printing a hastily constructed code, posting it on the cafeteria walls and praying that it will have some impact. TSA has certainly not suffered from this syndrome and, judging from initial engagements, has indicated a desire to run the programme properly and with commitment.

It will be innovative for the organization to measure progress after completing the awareness programme throughout the group, not just in general terms, but in terms of the FSGO. This process of running an ethics audit is in compliance with significant revisions to the FSGO in 2004 that require periodic external verification of organizational progress towards complying with its principles. Few South African organizations have undertaken such an audit, but TSA would certainly be encouraged to be among the early pioneers. Given the NYSE listing of its French parent, compliance with the FSGO is especially important.

A good body of policies is of secondary importance to a culture intolerant of unethical practices such as fraud and corruption.

Ethics resources such as an ethics line will be utilized effectively only after they have been linked into the holistic and inter-connected structure of an ethics management programme.

Adherence to these values will be further promoted by team contracts entered into by employees (with fellow team members), pledging adherence to these values among themselves.

Impact on people

The full impact of the programme has yet to be felt, given its youth. Generally, the most significant impact will be increased obligations on employees and appropriate external stakeholders to act responsibly. This will be counter-balanced with heightened leadership obligation to promote such responsible conduct within TSA and among its other stakeholders.

The TSA Code of Ethics sets the standards, accompanied by all the policies. The proposed awareness programme will carry these standards throughout the organization and the TSA Ethics Office will oversee the process. It is the responsibility of employees and appropriate external stakeholders to act according to these standards, including the obligation to report observed fraud and corruption.

For employees, this will mean the inclusion of an assessment of adherence to TSA values in performance evaluations and disciplinary hearings.

Importantly, adherence to these values will be further promoted by team contracts entered into by employees (with fellow team members), pledging adherence to these values among themselves.

Subsequently, when actually receiving ethics awareness training in 2007, it will be easy for them to make the connection between the organization's values, employees' actions and company processes.

Impact on the value chain

The Good Corporation report indicated that suppliers generally perceive TSA as an ethical organization that will not tolerate fraud and corruption. In terms of its reputation, such positive perceptions among suppliers are of tremendous value. With procurement being an ethical hotspot, these perceptions can assist in preventing corrupt solicitation originating from or being accepted by suppliers to TSA.

By 2005 TSA management felt that these positive perceptions needed to be proactively protected and enhanced by crafting a strategy of formally communicating TSA's values to service providers. To do this credibly, it was necessary to start a process of values adoption within the organization before engaging service providers. This meant establishing the TSA Ethics Office, drafting a new TSA Code of Ethics, and commencing with an initial round of ethics awareness among employees, before formally advocating the TSA values in the supply chain.

In preparation, the revised TSA Code of Ethics was crafted to address dealers, suppliers and contractors as well as employees. Scheduled for 2007, it will be a tremendous step in TSA using its considerable influence to promote responsible conduct far beyond the traditional boundaries of its business.

A further challenge for TSA to consider is taking its values into the dealer network, to ultimately reach the service station managers and forecourt attendants.

Suppliers generally perceive TSA as an ethical organization that will not tolerate fraud and corruption.

Impact on society

To assess the exact impact of building a culture intolerant of fraud and corruption would have on broader society is difficult at the best of times. However, logic would dictate that in a society such as South Africa, which is confronted daily with incidences of fraud and corruption in all sectors, any organization exerting ethical influence among employees and other stakeholders would make a positive difference.

In a society such as South Africa, which is confronted daily with incidences of fraud and corruption in all sectors, any organization exerting ethical influence among employees and other stakeholders would make a positive difference.

Organizations can no longer expect that all their stakeholders share a similar value set. An organization has a responsibility to recognize its moral agency and set ethical standards for itself and its stakeholders to adhere to.

With traditional moral agents such as religious institutions, the family and schools under strain, a moral vacuum is developing in society. Employers are in a unique position to fill some of that vacuum. Since it can be expected that the influence of those in the energy sector will increase throughout the twenty-first century, it is up to TSA to decide what the nature of that growing influence will be: part of a solution or a problem?

It is really a question of leaving a moral legacy for current and future generations to benefit from. We believe TSA is now well positioned to positively fill the vacuum.

An organization has a responsibility to recognize its moral agency and set ethical standards for itself and its stakeholders to adhere to.

Reporting and communication on progress

Effective communication remains a challenge. It would seem that as our technological capabilities to communicate increase, the quality of communication suffers under a barrage of unstructured information. This is one of the benefits of the TSA Code of Ethics. It contains, in easily referenced format, the vision, mission, values and key conduct provision applicable to a whole range of TSA stakeholders.

The TSA Code of Ethics itself then requires proper communication. Prepared in paper-based and electronic booklet formats, it will be widely distributed within the organization and external stakeholders, and will be available on the TSA website as well.

The CEO, at a special event, will formally launch the new code of ethics, with a dedicated awareness programme to all employees afterwards.

Dealers have access to a secure web-based facility for communications, and the annual dealers' convention will be an important opportunity for communicating the code of ethics. A major challenge will be to ensure that forecourt attendants are aware of the code of ethics, and know where to go to for advice and to report unethical conduct confidentially or anonymously.

Conclusion: risks and rewards

TSA has undertaken an ambitious and commendable initiative. The rewards are easy to understand. A more ethical and subsequently more efficient organization, capable of attracting and retaining the best employees and business partners, should make use of its scale to positively influence thousands in promoting conduct intolerant of fraud and corruption.

A more ethical and subsequently more efficient organization, capable of attracting and retaining the best employees and business partners, should make use of its scale to positively influence thousands in promoting conduct intolerant of fraud and corruption.

We believe TSA is in the process of doing this, starting, correctly so, within the organization, before expanding outwards into the supply chain and dealer network. The TSA Code of Ethics is the constitution of the organization, directing the nature and manner of strategic engagements within and beyond it. In this sense, the values of professionalism, transparency, pride and diversity are the beacons that define the TSA mission, in pursuit of its vision of creating sustainable shareowner value. Without adherence to TSA values, such a pursuit will not accountably create value, nor will it be sustainable.

The risks involved in running such a programme are less obvious. In our experience clients who are operating more mature programmes of similar scope have a tendency to relax a little after the completion of the initial programme. Invariably, awareness levels begin to drop, usually resulting in weaker controls that are best detected in human resource processes such as induction programmes and ongoing performance evaluations of employees and of the organization. The temptation to say "It's done!" and then become less vigilant always remains.

Operating in the energy sector, with its escalating challenges in terms of demand and consumption, TSA can ill afford to allow the established benefits of a programme to wane because of relaxed vigilance. Organizational culture change is not a quick fix. The King II Report refers to a process of anything up to five years for the full benefits to surface. With TSA having recently embarked on this journey, much remains to be done.

Special thanks

- To André Barwick, company secretary of TSA, for supplying valuable information in researching this case study
- To Korien Sander, colleague and project consultant for EthicsSA, for providing background research

Notes

1 The term 'société anonyme' refers to a joint stock company in European company law.

2 Some speculate that SOX was formulated specifically to counter future defence arguments, similar to those put forward by the former Enron CEO, the late Ken Lay, who claimed that he was ignorant of, and was therefore not liable for, what was being perpetrated in his organization.

3 Personal communication to author.

4 Calisto Tanzi of Parmalat, or the late Brett Kebble of Randgold Resources, may have engaged in extensive corporate social investments, yet these efforts did not sustainably build a good corporate reputation because the businesses were riddled with fraud and corruption.

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Case studies: Collective action against corruption

Introduction

Corruption is a societal problem that needs to be combated with concerted action by all sectors of society. This section contains two case studies, both of which describe collective engagement in the fight against corruption.

The first study in this chapter, the South African National Anti-Corruption Forum, which was initiated by the South African government, involves the sectors of government, organised business and civil society. From the outset it rapidly became clear that coordination and structures for collaboration would have to be improved if the forum were to be practicable. But after the initial growing pains and with the necessary modifications, the forum is starting to deliver tangible projects that will impact on corruption in South Africa.

The second case study – titled Malawi Business Action Against Corruption – describes how the Malawi Leaders Forum, a cross-societal coalition that involves government, private business, civil society, donor agencies and the media, launched the initiative Business Action Against Corruption to tackle the problem of widespread corruption in Malawi. The task force produced the Business Code of Conduct one year later and at that point were awaiting its approval and adoption by government and the business community. Meanwhile participants in the forum and task force were surveyed on the progress of the initiative. The results of the questionnaire are consolidated and assessed in this paper. Although the consensual process must inevitably be long term, it may be seen from the findings that the participants are resolved to maintain momentum, nurture deeper involvement and extend the reach of the anti-corruption movement in Malawi.

The South African National Anti-corruption Forum[1]

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Abstract

South Africa's approach to fighting corruption is unique in terms of international practice in that government, business and civil society are collectively engaged with the problem. From the first formal dialogue held by government in 1998, corruption has been

Government invited organised business and civil society to join them in the collective fight against corruption.

Given South Africa's past, the presence of corruption was not surprising, but must not be tolerated.

acknowledged to be a societal problem that needs to be addressed collaboratively by all sectors of society.

In 1999, setting off into previously uncharted territory, government invited organised business and civil society to join them in the collective fight against corruption. The National Anti-Corruption Forum (NACF), consisting of these three sectors, was launched in 2001 with huge enthusiasm. However, it became clear within a very short period of time that coordination and formal structures for collaboration would have to be improved if the forum were to justify its existence. Business and civil society in particular had to find ways of coordinating their input and activities, and the forum itself had to streamline its structure to speed up decision making and enable a focus on tangible projects. At the time of writing, at the end of 2006, after surviving severe growing pains and adjustments, the forum is beginning to deliver the kinds of projects that were envisioned at the outset.

Introduction

South Africa has a past that is characterized by unequal treatment and unequal distribution of resources and services. Since the apartheid government had to limit transparency to achieve its ends, such a context was a breeding ground for corruption. In leaving the discriminatory past behind, the presence of corruption must not be tolerated.

President Nelson Mandela emphasised this in his Opening Address to Parliament in 1999:

> "Our hope for the future depends on our resolution as a nation in dealing with the scourge of corruption. Success will require an acceptance that, in many respects, we are a sick society. It is perfectly correct to assert that all this was spawned by apartheid.
>
> No amount of self-induced amnesia will change the reality of history. But it is also a reality of the present that among the new cadres in various levels of government you will find individuals who are as corrupt as – if not more than – those they found in government. When a leader in a provincial legislation siphons off resources meant to fund service by legislators to the people; when employees of a government institution set up to help empower those who were excluded by apartheid defraud it for their own enrichment, then we must admit that we have a sick society. This problem manifests itself in all areas of life."[2]

The advent of democracy promised a democratic society with a strong human rights-based culture to ensure that the lives of ordinary South Africans are improved. Enshrined in its new Constitution[3] are the guarantees of equality, freedom of movement and speech, as well as civil rights and civil liberties. The self-same Constitution places significant emphasis on a high standard of professional ethics in the public service. This value was to be the guiding beacon in building a national integrity framework in South Africa, and in fighting corruption.

Since 1994 government has made a concerted effort to further the fight against corruption through the introduction of a comprehensive legislative and regulatory framework that would regulate ethical conduct and build national integrity. There was early recognition that the application of a successful framework could not be the sole responsibility of government and that broad-based partnerships needed to be developed to provide the necessary assistance and capacity to fight corruption. Strong components of such partnerships were the business sector and civil society.

It was realized early that the public service could not succeed in the battle against corruption alone and that broad-based partnerships had to be developed to assist.

A national dialogue began in 1998 with the hosting of the Public Sector Anti-Corruption Conference, followed by the first national Anti-Corruption Summit in 1999. This summit led to the formation of the National Anti-Corruption Forum (NACF), a body consisting of all sectors of society, its primary objective being to contribute towards a national consensus through the coordination of sectoral strategies against corruption. Both the conference and summit were critical in moving the anti-corruption debate more towards an 'us' rather than a 'them' approach.

This partnership approach continues to be reinforced at the highest echelons of government, as articulated recently by the minister for public service and administration in an address to the Conference of Internal Auditors of South Africa and the Association of Certified Fraud Examiners on 24 April 2006 where she stated:

> "Given the magnitude of the scourge of corruption, the public sector cannot act alone, but needs to act in concert with other institutions from the civil society and business sectors to protect the public interest. Thus, there is little argument of the need for strategic partnerships to combat corruption. An anti-corruption approach that ignores this will not therefore succeed."[4]

> The Public Service Commission is required to be impartial and independent and to "exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service".

Initiating a cross-sectoral approach: The origins of the NACF concept

In the hands of government

The formal fight against corruption has its origins in a cabinet decision in 1997 that launched the National Anti-Corruption Campaign. Recognising the need for a coordinated approach in combating corruption, a ministerial committee, consisting of the ministers of justice, public service and administration, safety and security, and provincial affairs and constitutional development (currently known as the Department of Provincial and Local Government), was mandated by cabinet in October 1997 to consider proposals on the implementation, at national and provincial level, of a national campaign against corruption.

At this stage, the Public Service Commission (PSC) was designated a flag carrier of anti-corruption efforts. The PSC is an independent body established in terms of the Constitution to provide oversight over public administration. In line with its constitutional mandate and its founding act, the PSC is required to be impartial and independent and to "exercise its powers and perform its functions without fear, favour or prejudice in the interest of the maintenance of effective and efficient public administration and a high standard of professional ethics in the public service".[5] As such, the PSC plays a key role in the promotion of good governance in the South African Public Service.

This ministerial committee requested the chairperson of the PSC to call a meeting of all stakeholders who through their mandates and activities come into contact with corruption and the control and prosecution of corrupt practices. The primary objective of this meeting was to organize a summit at which measures for the control of corruption would be considered by all the stakeholders.[6]

After initial planning meetings, the Public Sector Anti-Corruption Conference was held in Cape Town in November 1998. This was attended by over 200 delegates from parliament, the public service, local government and organized labour in the public sector. There was also considerable interest from media and donor organizations, whose representatives attended as observers. This was the first time in the history of South Africa that parliament had opened its doors to host a conference of this nature. Such symbolism was powerful: the holding of the conference in the 'corridors of power' showed that government was serious about addressing corruption in South African society. Of greater significance was the call made at the conference for the anti-corruption effort to become a national concern that would include all sectors of society.

Inviting the other sectors

This call was taken up when the PSC arranged a series of meetings with representatives of organizations who had attended the conference as well as representatives from organized business, religious bodies, non-governmental organizations (NGOs) and the media to plan the way forward for the first National Anti-Corruption Summit. A planning committee, consisting of members of these sectors, was established and the final workshop of the planning committee was held on 13 April 1999, a day before the first summit itself. At this workshop it was agreed that "corruption can only be addressed if it is tackled in a holistic way with all role players working together to develop concrete action plans and programmes".[7] Corruption was recognised as a societal issue and defined more widely than the traditional 'public sector abuse of power for personal gain'.

As organizers, the PSC faced the challenge of ensuring inclusive cross-industry representation at the summit. This was no mean task, since this was the first national meeting that would attempt to deal with corruption in all of its complexity. The challenges of ensuring broad representation, organizing the logistics, and arranging for the attendance of delegates from across the country were daunting. All this had to happen within a very short time (between November 1998 and April 1999) and was coordinated by a very small team of people within the PSC. As a result, certain groups may not have been sufficiently represented at the first summit.

The first National Anti-Corruption Summit was held in Parliament, Cape Town, in April 1999. It was attended by 263 delegates, representing government leaders, organized business, organized religion, NGOs, the media, organized labour unions, academic and professional bodies and the public sector. The theme of the summit was 'Fighting Corruption: Towards a National Integrity Strategy'. The mood embodied a sense of collective responsibility that extended beyond the doors of parliament, as was reflected in extensive media reporting on the event.

In his keynote address, the then executive deputy president of South Africa, Thabo Mbeki, wished the conference success, "confident that it will not disappoint the expectations of our people whose spirit is vexed because they are the daily victims of the scourge of corruption which is a blight on our society".[8]

Cabinet ministers, leading businessmen and prominent leaders of society committed themselves to:

- Stamp out corruption at all levels in society
- Develop a culture of zero tolerance of corruption
- Visibly support and subscribe to the national integrity strategy in order to combat corruption in all sectors of civil society and government
- Educate all persons in South Africa to work together towards a higher moral purpose

One of the resolutions of the first summit called for the establishment of a national coordinating structure to lead, coordinate and monitor the National Anti-Corruption Programme.

Cabinet ministers, leading businessmen and prominent leaders of society were present, representing their various sectors. At the summit all sectors committed themselves to:

- Stamp out corruption at all levels in society
- Develop a culture of zero tolerance of corruption
- Visibly support and subscribe to the national integrity strategy in order to combat corruption in all sectors of civil society and government
- Educate all persons in South Africa to work together towards a higher moral purpose

The big resolution

The summit adopted resolutions aimed at combating and preventing corruption, building integrity and raising awareness. One of the resolutions adopted under the theme of combating corruption called for the establishment of "a cross-sectoral task team to look into the establishment of a National Coordinating Structure with the authority to effectively lead, coordinate and monitor the national Anti-Corruption Programme".[9] This resolution led to the formation of the National Anti-Corruption Forum, the NACF.

Once again the PSC was called upon to establish a task team to look into the establishment of a national coordinating structure. A post-summit planning meeting, chaired by the PSC, was held in August 1999. Members of business and civil society were present. It was agreed at this meeting that the cross-sectoral task team would consist of one person per sector, and would have an interim lifespan focusing on the setting up of the National Coordinating Structure to oversee, coordinate and monitor the national Anti-Corruption Campaign.[10] For the duration of its existence, the task team was chaired by Prof Stan Sangweni of the PSC.

Between the April 1999 Summit and the creation of the NACF as the national coordinating structure in March 2001, some of the sectors put in a lot of work towards realizing the intent of the summit resolutions. Government gave effect to resolutions that led to the enactment of the Prevention and Combating of Corrupt Activities Act, the Protected Disclosures Act and the Access to Information Act, as well as the establishment of specialized commercial crimes courts and whistleblowing hotlines. It was also during this period that the Public Sector Anti-Corruption Strategy took shape.

The other sectors, however, found it more difficult to provide impetus to their initiatives. The business sector, hosted and coordinated by Eskom, drafted the South African National Code for Business Conduct (SAN Code). Though a positive initiative, the code was not broadly accepted. The problem during this initial phase was coordination. The efforts of the various sectors were not being harnessed into a focused national plan.

The journey towards coordination

At a meeting of the cross-sectoral task team in March 2000, it was decided that a committee must be set up to report to the cross-sectoral task team on a process outlining the establishment of the National Coordinating Structure.[11] Much of the discussion at the meeting revolved around the model of such a structure. Strong feelings emerged as to whether it should be a statutory body or an advisory one. The NGO representative at the time wanted a statutory body, as he believed that this would give it the necessary 'teeth' to act. Government representatives on the other hand wanted it to be an advisory body that gave input to government on how to manage corruption. Some advocated the establishment of a formal public/private partnership, but these mostly represented fringe views. In truth, being confronted with the task of creating this new body *ex nihilo*, cross-sectoral members were quite uncertain about how it should look. Articulating an acceptable structure was largely left up to the PSC secretariat.

After toing and froing between the secretariat and the task team and submissions to the sectors, the minister for public service and administration tabled a draft memorandum of understanding on the establishment of the National Anti-Corruption Forum at a meeting of the cross-sectoral task team on 26 October 2000. Two deadlines had already been missed and it had become clear that reaching consensus on the type of structure was not as easy as had originally been thought. (Although it is more time consuming, the NACF continues to make decisions by consensus rather than voting to prevent the alienation of any of the stakeholders.)

At this meeting a task group was appointed to flesh out the principles underpinning the choice of structure and to decide on either a memorandum of understanding or a constitution, since both options were included in the original recommendation to the cross-sectoral task team.[12]

The next meeting of the cross-sectoral task team was held in March 2001, at which the task group submitted its report-back on the memorandum of understanding. The memorandum of understanding (annexure I) was adopted at this meeting, reflecting the NACF as an advisory body.

The NACF comprises the public, business and civil society sectors and was established to coordinate sectoral strategies against corruption and advise government on national initiatives to combat corruption.

Launch of the NACF

Two years after the first National Anti-Corruption Summit, after much debate and preparation, the National Anti-Corruption Forum (NACF) was launched in Cape Town on 15 June 2001. At its launch ten ministers, high-profile business and prominent civil society representatives were present. Significantly, the NACF was launched in Langa, an impoverished township of Cape Town, underscoring the collective commitment to protect public interest, to enhance public participation in the fight against corruption and to remain mindful of the impact that corruption has on the developmental goals of the country.

The NACF comprises three sectors, namely civil society, business, and the public sector. Each sector is represented by ten members, who are nominated by their constituencies. Significantly, nine of the ten members of the public sector are ministers or deputy ministers. The tenth is the chairperson of the PSC. In terms of the memorandum of understanding adopted at the launch of the NACF, the role of the NACF is to:

- Contribute towards the establishment of a national consensus through the coordination of sectoral strategies against corruption
- Advise government on national initiatives on the implementation of strategies to combat corruption
- Advise sectors on the improvement of sectoral anti-corruption strategies[13]

The adoption of this role was a deliberate attempt to position the NACF as more than a 'talkshop'. It was obvious to all representatives that something extraordinary was expected of them to advance the fight against corruption.

The memorandum of understanding went further to indicate that:

- Members of the forum shall be fit and proper persons who are committed to the objectives of the forum and who are suitable leaders within each sector
- Each sector shall ensure that members of the forum are representative of the sectors and that members provide continuity in their contributions to the work of the forum

In terms of the memorandum of understanding, the PSC is the secretariat of the NACF.[14]

Preparatory stages leading to the establishment of the NACF saw government in the driving seat, with the secretariat carrying the load not only of arranging meetings, but also of driving the content of such meetings. It was initially difficult to obtain attendance and participation of all role players at the meetings. However, the resilience and determination of government to realize the ideal of establishing a national coordinating structure kept the concept alive, even in the face of this initial inactive participation.

At its inaugural meeting in July 2001, Advocate Dali Mpofu of the National Association of Democratic Lawyers (currently CEO of the South African Broadcasting Corporation, representing civil society, was elected as the first chairperson of the NACF. At the same meeting, an executive committee was established, comprising nine members (three members of each sector). The various sectors were led by Adv Dali Mpofu (civil society); Minister G J Fraser-Moleketi, deputy chairperson of the NACF (public sector); and S Mathuysen, deputy chairperson of the NACF (business).[15]

Subsequent to the first meeting of the NACF there was a very long delay in convening a second meeting. This was as a result of the inability to reconcile the diaries of members of the NACF, and also of the unavailability of certain key role players. The next meeting was held only in November 2002. At this meeting the chair of the NACF was assumed by the minister for public service and administration. The meeting was a direct response to concerns regarding the inactivity of the NACF that had been raised with the president by the National Religious Leaders Forum (NRLF). The meeting was therefore called to galvanize the NACF into action. Specific proposals were made to improve liaison with membership, for example that umbrella bodies for business and civil society should be used to facilitate interaction within and between sectors and that the executive committee's composition should be reduced from three to two members per sector.[16] It was felt that a smaller executive council would facilitate arrangements of meetings.

The next meeting, on 10 February 2003, demonstrated a more content-driven approach. The three sectors reported on their own initiatives to combat corruption, and sought the collaboration of the other sectors where appropriate. It was agreed that a presentation to the Parliamentary Portfolio Committee should be made in March 2003 regarding the activities of the NACF.[17] This presentation was duly made and reflected on activities since the first Anti-Corruption Summit in 1999. Parliament represents the people of South Africa, and through this presentation the NACF was accounting to South Africans on what it had achieved.

The resilience and determination of government to realize the ideal of establishing a national coordinating structure kept the concept alive, even in the face of this initial inactive participation.

Inability to reconcile diaries and unavailability of key role players delayed convening of the second meeting of the NACF and concerns were raised by the National Religious Leaders Forum with the president.

A turning point in the NACF was a robust debate regarding allegations of reported fraud by parliamentarians. It was agreed that future meetings should provide space for topical issues relating to corruption.

Consolidating the NACF has not been an easy task. Concerns again arose about its functioning and at the NACF meeting in December 2003, the minister for public service and administration as chairperson commented that while the forum had been successful in promoting itself, a number of shortcomings had been identified. Areas of concern related to the problems experienced in agreeing on dates for meetings, and the absence of the full quota of business and civil society representatives. Given these shortcomings, it was important to review the forum and assess its objectives. Among others, it was indicated that the forum did not achieve much, owing to shortcomings of the secretariat, budgetary constraints and its limited capacity. It was decided that the forum should adopt an incremental approach to its work and look at ways of strengthening the secretariat. In terms of taking its work forward, it was agreed that a simplified message would be conveyed to the public indicating the cost of corruption to development.[18]

To some degree, the next meeting, in August 2004, was a turning point in the NACF. There was robust debate, and a sense that the other sectors called government to account. At the time of the meeting media reports had broken over allegations of fraud by parliamentarians. The meeting decided to note the allegations and monitor the situation, but, more importantly, agreed that future meetings should provide space for discussion of topical issues related to corruption. Furthermore, a request for a dedicated secretariat was made to cabinet to strengthen and enhance the capacity of the secretariat.[19]

The NACF began preparations for the Second National Anti-Corruption Summit. This was to be its first public event since its launch in 2001. The summit was held on 22–23 March 2005 in Pretoria. Its theme centred on 'Fighting Corruption Together: Past Achievements, Future Challenges'. Similar to the first National Anti-Corruption Summit in 1999, the Second National Anti-Corruption Summit presented an opportunity for all sectors of South African society to collectively reflect on past achievements and strategies and future challenges in fighting corruption and then to craft a common programme of action for the immediate and long-term future.

President Thabo Mbeki delivered the keynote address, indicating that:

> "… corruption is inimical to development; it constrains our ability to fight poverty, negatively affects our economic development, damages social values and undermines democracy

> and good governance. Responding to all of that, in the last ten years we have put in place laws, policies and programmes to root out corruption in our society, established partnerships amongst social partners and collaborated with regional, continental and international partners. Yet more will have to be done to fight corruption and I am confident that this summit will give more impetus to our ongoing work and help all of us to overcome whatever weaknesses may exist in our programmes and systems, designed to fight corruption."[20]

A total of 390 delegates attended the summit, comprising 43 from business, 191 from the public sector, 122 from civil society and 34 representing donors and other interested parties including the Southern African Development Community (SADC). They adopted a wide range of resolutions centring on ethics and awareness; combating corruption; corruption and transparency; and oversight and accountability.

It was agreed to translate the resolutions into a programme of action within three months of the summit.[21] The resolutions adopted covered, among others, the following topics:

- Encouraging whistleblowing in all sectors
- Better coordination among anti-corruption agencies
- Effective implementation of anti-corruption legislation
- Encouraging post-public sector employment regulation
- Research into ethics practices in each sector
- Extending financial disclosures to local government
- Raising awareness through ethics training in all sectors
- Institutional arrangements to streamline the NACF

Over the next few years, these resolutions would form the basis of the national fight against corruption.

The national anti-corruption programme: A programme of action

The partnership of civil society, public and business sectors was further consolidated through the development of the National Anti-Corruption Programme (NAP). Delegates undertook to implement the resolutions as far as they pertained to their sectors. The emphasis on the adoption of the 27 resolutions displayed the contention that practical outcomes needed to be realized with regard to the fight against corruption. Emanating from the summit, the secretariat, in conjunction with members of the NACF, prepared a draft NAP for submission to the NACF.

This draft was presented to the NACF in May 2005. It was agreed that an Implementation Committee should be established to oversee and monitor the implementation of NAP projects. One convener from each of the three sectors was appointed to serve on the committee. It consists of the convenor of the Civil Society Network Against Corruption, the CEO of Business Against Crime, the director-general DPSA (Department of Public Service and Administration) (chairperson), and the PSC as secretariat. [22]

At a special meeting of the NACF, in June 2005, the NAP was adopted and launched as the work programme of the NACF.[23] Membership of the sectors was also finalized. (A list of members is attached as annexure II.) The NAP was adopted as a two-year programme and it serves as an important benchmark against which the public can hold stakeholders accountable. The focus of the NAP was to yield 'quick wins', to enhance the profile of the NACF, and to give results that are measurable and practical.

The NAP focuses only on joint projects. Progress on sector-specific projects relating to other resolutions is reported regularly to the NACF and the Implementation Committee at scheduled meetings. The approach of a select number of joint projects has taken into account the need for the NACF to be modest in launching a NAP. This is largely because of limited capacity within the NACF. Fewer projects will ensure better focus and increase the potential for success. Therefore, the Implementation Committee has identified key areas of priority and believes that it would be more appropriate to tackle a few high-quality projects, campaigns and initiatives than to commit itself to a long list of projects that the NACF will not be able to deliver on.

Many of the resolutions adopted at the summit impact on projects that are already being implemented at sectoral level. Each sector has its own reporting mechanisms for these projects. (The list of NAP projects with intended outcomes/outputs is presented in annexure III.) Government showed its commitment towards the implementation of NAP projects by making R4.5 million available for the 2006/2007 financial year. This funding is managed by the PSC as secretariat of the NACF.

Since the development of the NAP, the pace of the NACF's activities has noticeably accelerated. This is largely because activities are structured with defined times, and sectors are held accountable for their undertakings. Furthermore, there is an expectation that the NACF must report to all provincial legislatures and parliament on its achievements.

Key current projects

Three initiatives to improve the image and identity of the NACF were launched recently. The NACF logo was approved, and soon afterwards the website was launched. The website provides space for the profiling of the NACF and the work of the three sectors. In future, it will also contain case studies on combating and preventing corruption. This will afford organizations and individuals fighting corruption an opportunity to benchmark their efforts against those of others and also draw lessons from such case studies.

Third, the Integrity Pledge was adopted and signed by the leaders of the sectors. All sectors are expected to encourage their members to sign the pledge and to popularize it within their constituencies. Signing the pledge shows voluntary commitment by individuals to serving the country and its people with respect, dignity and integrity, consistent with the values and principles of the Constitution. NACF members thus committed themselves to setting an example through the promotion of high standards of service and ethical behaviour that are conducive to the development of the economy and the eradication of poverty.

The work of the NACF has also been characterized by substantial projects that have ignited debate in society at large. Civil society presented a report on 'Apartheid Grand Corruption', sparking intense debate over whether those responsible for corruption during the apartheid era should be brought to account.

The NACF also hosted a roundtable on the 'Prohibition of Corrupt Persons and Businesses'. It was well attended by all sectors, as well as academics and other interested role players, and focused on the feasibility of establishing a common database of corrupt persons and businesses for use by all sectors. The challenges in establishing such a database were deliberated, and it was agreed that a committee of specialists should meet to discuss and recommend an appropriate course of action for the NACF.

Legislation all over the world is written in traditional legal language that some may find difficult to understand. South Africa's Prevention and Combating of Corrupt Activities Act is no exception. For this reason, the NACF decided to publish a guide to the act using simplified language, examples and illustrations. The Promotion of Access to Information Act stresses the need for government to make important information available to the citizenry, which is why the NACF found it necessary to produce the guide. The NACF hopes that this guide will raise more awareness on the need to fight corrupt activities, thereby promoting honesty and integrity in a young democracy, which in turn will lead to better and more effective service delivery for all. The NACF believes that by publishing a reader-friendly guide, it has contributed in a small way towards bringing legislation closer to the people.

It is clear that the NACF has evolved from a relatively inactive past to a present that displays active participation and tangible outcomes.

The NACF has evolved from a relatively inactive past to a present that displays active participation and tangible outcomes.

The difficulties of the endeavour

The task of getting three diverse sectors to work together will never be without its challenges. Representatives of the sectors were interviewed to give their perspectives on the process.[24] A synopsis follows of the main themes that emerged.

Silence after the storm ...

The NACF was launched almost two years after the task team started its work.

After the initial enthusiasm about the idea of the NACF, a lot of time passed before it started to function 'as an entity in itself'. The resolution 'to look into the establishment of a national coordinating structure'[25] came from the First National Anti-Corruption Summit in April 1999. A task team was put together to look into convening a national cross-sectoral anti-corruption body by August 1999. It was almost two years later, in June 2001, that the NACF was formally launched, however.

There was so much expectation and then nothing happened. Did we give birth to an organisation that was dying or dead?

This initial delay might be explained by the very problem that the NACF was envisaged to overcome: there was no formal structure for collaboration on this topic. Nor at the time were there unified bodies from business or civil society to speak on the issue of corruption. Business Unity South Africa (a merger of the Black Business Council and Business South Africa) was formed only in October 2003. Business Against Crime, which is currently the key business body on the forum, had been formed in 1997, but had little involvement in the early discussions. Civil society was even less organised around the issue.

After the drawn-out process of convening the NACF, the inaugural meeting was held promptly in July 2001, but another 16 months passed before the next meeting in November 2002. The president tasked Minister Geraldine Fraser-Moleketi (minister of public service and administration) with getting things moving again, and it was only after this meeting, where she took over the chair, that the NACF started to gain momentum.

Representatives from all the sectors expressed their frustration at this lull in activity. Roderick Davids of the PSC remembers this as one of the lowest points of the process.

> "There was so much expectation and then nothing happened. Did we give birth to an organization that was dying or dead? There was a lot of scepticism that this thing may not work because of the diversity of the role-players, and the difficulty of bringing them together and to concede to a common programme of work. The work programme was regarded as the instrument that would give us impetus and momentum, and if we couldn't meet, we couldn't even discuss this ..."

The lack of accountability structures had a definite impact on the inactivity of the forum.

Many offered their diagnosis of the problem. One view was that there was a serious leadership problem. At the inaugural meeting it was decided that Adv Dali Mpofu (representing civil society) should chair the NACF, but there was little movement during his tenure. The DPSA forwarded proposals for the rejuvenation of the NACF during this time, but received no response.

The inactivity could be put down to the priorities of a busy man, but a contributing factor was the lack of accountability structures within civil society. By their very nature, business and civil society are not cohesive hierarchical units in the way that government is. There is a much looser organization of entities around specific concerns in the non-governmental sectors, which means that an individual might not be called to account by his or her constituency or leadership, as is bound to happen in government.

Internal accountability in the non-governmental sectors has improved significantly during the evolution of the forum, but it seems that this stems more from a committed group of peers than from constituencies.

The involvement of high profile players showed political commitment, but arranging meetings was impossible.

High profile players = full diaries

Another aspect that added great difficulty to the PSC as secretariat in convening the early meetings was the seniority of some of the role players. This was an issue in the business and the public sector, but has been more problematic in the latter. All of the government representatives on the NACF are ministers or deputy ministers and trying to match these diaries proved a near impossibility. While exceptionally well intentioned and showing great commitment from government at political level, having so many senior politicians onboard had negative administrative consequences. The issue has been raised at a number of NACF meetings, but remains unresolved.

Sectoral representatives have differing views on the issue. Some believe it should be resolved through having fewer ministers as representatives, while others believe it would be sufficient if the ministers delegated their representation to individuals who can contribute meaningfully and ensure continuity. The issue of full diaries has been partly overcome by the secretariat sending out known meeting dates annually in advance. Nonetheless, the only time that there was full ministerial attendance was at the first meeting.

There are still frustrations, especially from business representatives, that they receive invitations to activities at an unrealistically late stage. These are often for meetings at which their input is requested, but the late notification makes it impossible for them to participate. A little bit of forward planning can remove this problem, but because this has not happened, they feel excluded. Business has raised this issue in the past and believes that it still needs to be successfully addressed. Secretariat representatives indicate that decisions of dates for meetings are often communicated to them at a late stage. The other point of communication breakdown could be between the business representatives on the Implementation Committee and their members.

It remains a challenge to get wider constituencies involved.

Constituencies and communication

Many believe that the issue of 'constituencies' remains a challenge, especially under civil society representation. How large a segment of the population is represented by civil society and how successfully are they reached by the NACF?

Many of the NGOs that have an anti-corruption focus, although they advocate the interests of society, do not represent communities. They do not have a large constituency base and speak largely 'for themselves'. Many have also expressed their dismay that the workers unions have not taken up their involvement as actively as one would have wished. The South African NGO Coalition (SANGOCO) and the NRLF are the only active members of the forum with constituencies, but two-way communications between constituencies and representatives remain a challenge.

Hassen Lorgat of SANGOCO and chairperson of the South African chapter of Transparency International (TI-SA) admits to these difficulties. He would like to see more involvement at community level. Through TI-SA they are currently launching 'national integrity networks' that aim to mobilise communities into grassroots activism. Civil society, however, is made up of a disparate group of interests, which makes it difficult to report back to constituencies without overloading people with information that might not be of interest to them. He acknowledges that the NACF has given civil society an opportunity to focus on one key issue and to organise themselves around it. But he does feel that since serving on the NACF requires one to possess focused expertise on corruption-related matters, it will prove difficult to involve the 'constituency' NGOs. He would like to see the depth of civil society expertise and contribution increase into the future.

The NACF have a responsibility to enable smaller NGOs to participate.

For some of the less well-funded civil society organizations it remains a challenge to attend the NACF meetings and therefore to contribute in a meaningful way. Ruan Kitshoff of the DPSA suggests that it is the responsibility of the NACF to enable these organizations to participate, not only by providing for their travel to meetings, but also by distributing information which will capacitate them and enable their meaningful contribution.

The civil society sector has improved its internal communication through the creation of the Civil Society Network Against Corruption.

Internal communication within the civil society sector has been improved through the creation of the Civil Society Network Against Corruption (CSNAC). This group of NGOs have improved accountability and communication among themselves. However, they are only one of the ten civil society representatives on the forum, and there is concern that communication does not reach the rest of the representatives. The problem is getting not only one representative voice, but also continuity and progress on the issues under discussion. Kitshoff comments:

> "We would meet with a representative from Cape Town, and then at the next meeting it would be a representative from Johannesburg, and in the discussion of issues it becomes clear that they have not communicated on the matters in the interim, which means that the discussion is still open as if no conclusion has been reached."

Business has institutionalised its representative structures through an alliance between Business Against Crime (BAC) and Business Unity South Africa (BUSA), who are the most representative body for business in South Africa. BAC has a number of project areas, including commercial crime, under which corruption falls. Once a month BAC holds an Industry Alignment Forum (IAF) meeting at which a broad range of business organizations are represented, including BUSA.

Every month, just prior to the IAF, a meeting is held by a business anti-corruption working group, which is an extension of the NACF delegation. Feedback is then given to the IAF on the activities of the working group and the NACF projects.

Alvin Rapea, of BAC, admits that there are problems in getting buy-in from more businesses, which has led to an uncoordinated approach to addressing corruption within this sector. This, he says, is largely because businesses would like to see the impact that programmes are having to their bottom line. He is confident, however, that business projects launched as a result of the NACF, such as a baseline study into corruption in the private sector, will be successful in garnering more business involvement. The baseline study will show the impact that corruption has on specific industry sectors, which could provide impetus at these levels.

In contrast to the other two sectors, government is a far more cohesive unit, which simplifies internal communication and accountability. However, to reach all departments and levels of government the Anti-Corruption Coordinating Committee, consisting of various role players in government, meets regularly to discuss the Public Service Anti-Corruption Strategy. Some provinces have their own coordination structures, which are currently being brought into the discussions more consistently.

The secretariat

A number of representatives have expressed their concern about the functioning of the secretariat. At the time of writing, officials from the PSC fulfil their roles in the secretariat in addition to their other tasks, which means that the NACF has no full-time staff members. Ruan Kitshoff of the DPSA stresses that the secretariat should fulfil more than merely an administrative function. Like company secretaries, they should keep the members informed on current issues relevant to the work of the forum that should inform the debate and the identification of future priorities.

Admill Simpson of the PSC feels that these criticisms belong to a previous era of the NACF. He explains that many of the concerns about the role and capacity of the PSC as secretariat, especially the expectation that it should drive content, have been addressed through the establishment of the cross-sectoral Implementation Committee and the development of a NAP. Where it was previously expected of the secretariat to drive content, it has now become the responsibility of the sectoral convenors who serve on the Implementation Committee, as well as the EXCO. The secretariat, being in an independent support role, does not have the authority to act outside such processes. Therefore any concerns about the secretariat cannot be seen in isolation from the role of the Implementation Committee.

He suspects that there might still be some confusion in the sectors about these new responsibilities. When it comes to attendance at special meetings, or obtaining inputs from within the sectors, the secretariat communicates this to the Implementation Committee representatives. It is then their responsibility to communicate and coordinate with their sectors. The secretariat, however, still experiences a lot of frustration at the apparent lack of intra-sectoral communication. In practice, this means that they have to follow up on matters such as inputs into combined projects, or ensuring sufficient attendance from the sectors at events.

Treasury, however, has approved a budget that makes possible the appointment of two full-time PSC employees to focus on NACF matters. This should address any other capacity concerns in the secretariat.

Something for the 'man on the street'

While a lot has happened in terms of establishing new legislation, anti-corruption institutions and other initiatives, especially in the public sector, little is known about this by the man on the street. Peter Just of the NRLF says that people have the perception that corruption is rife in South Africa and that no one is doing anything about it. He feels that the NACF should be more vocal on issues of concern to ordinary people and build awareness of its activities through engaging with the press.

While not everyone is clear about how to achieve this, all sectors agree that there should be more awareness of the NACF and its activities among the public. Ultimately NACF activities should have a tangible impact on the levels of corruption experienced by ordinary citizens. Since corruption is a societal problem, one needs awareness of the issue among citizens to successfully combat it.

The contribution of the non-governmental sectors

The non-governmental players are not onboard the NACF merely to support government in its Anti-Corruption Strategy. All players acknowledge that civil society and business have a responsibility to address corruption in their own sectors and still have some way to go towards making this impact felt. Business is currently completing a survey into corruption in the private sector, which could lay the foundation for future work. Organised civil society, however, is still

Civil society and business have a responsibility to address corruption in their own sectors and still have some way to go towards making this impact felt.

Some feel that business should show more financial commitment.

faced with resource and structural challenges that make this kind of activity very difficult.

Another matter that is mentioned rather tentatively is business's lack of financial or resource contribution to the NACF and its projects. There seems to be agreement that civil society will not be able to contribute beyond time, networks and expertise, but this is not the case with business. Many role players expect business to bring their resources to the party. These can be financial or for example making venues available for conferences, providing experts for research and hosting the website. Some business representatives feel that the problem is a national one, however, and therefore something that the taxpayer should fund. The NACF and its projects have been quite successful at attracting donor funding, to the benefit of all the sectors. Detractors feel that while this gets projects implemented, more financial commitment is needed, especially from business. There is clearly still some discussion to be had on this matter.

To talk or not to talk …

Although it was decided at the meeting on 17 August 2004 that space should be created for discussion of topical issues, civil society in particular still feels that the forum should be more vocal on current incidents of corruption. Alison Tilley mentions that it is still difficult to talk about real-life examples of corruption within the forum.

> "There is a discussion about corruption, but it's very much de-identified, which makes the debate abstract. The purpose of the forum is to create a place where the three sectors can talk about how to create a more enabling environment to fight corruption. The quality of the planning to achieve this is totally dependent on the quality of the discussion. If you are really constrained in the quality of the discussion, it impacts on the quality of your planning, which has an effect on outcomes."

That said, civil society does feel that its voice has been heard and that some difficult issues have been discussed at the forum. These notably include the report entitled 'Apartheid Grand Corruption', and the current NAP project to 'Establish a Joint Research Initiative to Evaluate the Implementation by the Executive of Resolutions made by Parliament and its Committees Pertaining to Corruption'.

The prominent face of government

An underlying issue that is mentioned is that the NACF still has a somewhat governmental face, particularly with the chairperson being the minister for public service and administration. The other sectors would like to see this change over time, but seem to acknowledge that they will need to achieve more maturity in their own structures before this can happen. Prof Sangweni, chairperson of the PSC, says that the intention was always to have a partnership of equals.

> "We all have to maintain the equilibrium of equity in this partnership. But at the same time the government cannot abdicate its institutional responsibility to ensure that action is taken against corruption."

Are some key players missing?

Rather more striking than the 'governmental face' is the inactivity of some key government players. Although the minister of safety and security (under whom the South African Police Service falls) and the deputy minister of justice are members of the NACF, there is very little input from them or their representatives at forum meetings. Corruption is a problem of societal values, but it also remains a criminal problem. It has often been said that while South Africa has world-class legislation and regulations, a lot of work remains in the implementation of these. This certainly implies that these two ministries should have a keen interest in a forum such as the NACF.

Government cannot abdicate its responsibility to ensure that action is taken against corruption.

An active forum

Something about which everyone agrees is that at the time of the writing, the NACF was at its most active since its establishment. This activity has been largely attributed to the existence of the NAP. This programme has linked the resolutions of the Second National Anti-Corruption Summit to specific outputs with responsibilities allocated, time frames set and budgets assigned. The existence of the much smaller Implementation Committee, which consists of only one representative per sector, has facilitated communication and provides necessary oversight over the projects. Furthermore, individuals have been nominated to serve on cross-sectoral task teams to implement specific projects. To many people who have been involved since its inception, this is the kind of functioning that they have been waiting for.

The nature of the projects is also significant. Many of the legislative and institutional changes in the country had already been implemented as an outcome of the first summit. The second summit had a more difficult task of deepening this work. In compiling the NAP, there was a conscious decision to be modest in the tasks taken on, to ensure their successful implementation. These programmes also provide the foundation for further anti-corruption work and it was therefore important to be strategic in choosing projects that the NACF can build on incrementally. Roderick Davids of the PSC stresses that the projects must deliver something tangible and sustainable.

> "We must vigorously implement this anti-corruption programme to the best of our ability. We must build on that success. It will give us confidence and it will open up new opportunities. We are starting at the bottom by, for example, doing an ethics scan in schools and tertiary institutions. The outcome of this project will open up new work opportunities. It is important that the projects stem from a mandated summit. We've got a good mandate and a good foundation to build on."

Conclusion

Current projects provide the foundation for future work.

When speaking to representatives, one can sense that there is engagement from all parties. It has taken a while for the forum to come to the point that real substantive projects are being implemented which will impact on corruption in South Africa. Initially the forum was a loose grouping of well-intentioned people. As its evolution indicates, it takes a lot more than good intentions to organise three diverse sectors to interact meaningfully and to get to a point where productive work is being achieved.

Notes

1 The case study was commissioned by the Public Service Commission. Academic oversight was provided by Prof Mollie Painter-Morland, director of the Centre for Business and Professional Ethics at the University of Pretoria, and associate professor of Philosophy at DePaul University in Chicago, USA. Peer review was provided by Ralph Hamman from the Centre for Corporate Citizenship, Unisa, South Africa. The case study was paid for by GTZ.

2 President Nelson Mandela, Opening Address to Parliament, 1999.

3 Constitution of the Republic of South Africa, 1996.

4 G J Fraser-Moleketi, Minister for Public Service and Administration. Address to the Conference of Internal Auditors of South Africa and the Association of Certified Fraud Examiners on 24 April 2006.

5 Constitution of the Republic of South Africa, 1996, Section 196.

6 Fighting Corruption, Towards a National Integrity Strategy, Public Service Commission, 1999, p 3.

7 Ibid, p 68.

8 T Mbeki, deputy president of South Africa. Keynote address to the National Anti-Corruption Summit, 14 April 1999.

9 Fighting Corruption, p 3.

10 Minutes of the Post NACS Consultation Meeting, 11 August 1999.

11 Minutes of the National Anti-Corruption Cross-Sectoral Task Team, 31 March 2000.

12 Minutes of the National Anti-Corruption Cross-Sectoral Task Team, 26 October 2000.

13 Memorandum of Understanding, NACF, 15 June 2001.

14 Ibid.

15 Minutes of the NACF, 19 July 2001.

16 Ibid, 21 November 2002.

17 Ibid, 10 February 2003.

18 Ibid, 5 December 2003.

19 Ibid, 17 August 2004.

20 President T Mbeki, Keynote Address, Second National Anti-Corruption Summit, 22 March 2005.

21 Report on the proceedings of the second National Anti Corruption Summit, NACF, 2005, p 137.

22 Minutes of the NACF, 12 May 2005.

23 Ibid, 24 June 2005.

24 To facilitate open communication the interviews were conducted independently by Kris Dobie of the University of Pretoria, Centre for Business and Professional Ethics. Interviewees were given the option of remaining anonymous, but were in fact quite open with their views, perhaps signalling the maturity of debate at the NACF.

25 Fighting Corruption, p 3.

Annexure I

Memorandum of understanding: Establishment of the National Anti-Corruption Forum

Preamble

Whereas the National Anti-Corruption Summit held in Parliament, Cape Town, on14–15 April 1999, recognized the serious nature and extent of the problem of corruption in our society;

And whereas the delegates to the National Anti-Corruption Summit committed themselves to develop a culture of zero tolerance of corruption;

And whereas it has been resolved at the National Anti-Corruption Summit that sectoral cooperation is required for the prevention and combating of corruption;

And whereas it has been resolved at the National Anti-Corruption Summit that various measures and sectoral cooperation are required to prevent and combat corruption;

Now therefore a National Anti-Corruption Forum is established.

The founding of a National Anti-Corruption Forum

A non-statutory and cross sectoral National Anti-Corruption Forum (hereinafter "the Forum") is established:

- To contribute towards the establishment of a national consensus through the co-ordination of sectoral strategies against corruption;
- To advise Government on national initiatives on the implementation of strategies to combat corruption;
- To share information and best practice on sectoral anti-corruption work;
- To advise sectors on the improvement of sectoral anti-corruption strategies;

The members of the Forum

The Forum shall consist of thirty (30) members on the basis of ten (10) representatives from each of the sectors envisaged in the resolutions of the National Anti-Corruption Summit.

The members of the Forum shall be fit and proper persons who are committed to the objectives of the Forum and who shall serve as members on a voluntary basis. Such representatives shall be suitable leaders within each sector.

The forum shall appoint a Chairperson with two deputies from the other representative sectors.

Each sector shall ensure that members of the Forum are representative of all constituent parts of the sector and that members provide continuity in their contributions to the work of the Forum.

The Minister for the Public Service and Administration will convene members of the Public Sector.

Convening the Forum

Meetings of the Forum shall be convened by the Forum. Any sector represented in the Forum may call for a meeting of the Forum.

The Forum shall be assisted by a secretariat provided by the Public Service Commission.

The Public Service Commission shall at the first meeting of the Forum submit a proposal to the Forum on the manner, nature and impartiality of support of the secretariat.

The Public Service Commission shall, under the guidance of the Forum, convene an Anti-corruption Summit on a bi-annual basis.

The Forum shall consider its composition, capacity and continued functioning after one year.

Functions of the Forum

The functions of the Forum shall be to do all such things as are reasonably possible to achieve its objectives as set out in paragraph 1 above. The Forum shall at its first meeting adopt a plan of work in order to achieve the objectives set out in the Memorandum of Understanding.

Reporting

The Public Service Commission shall prepare an annual report on the activities of the Forum. The annual report must be approved by the Forum. The Public Service Commission shall publish the annual report, including to Parliament, at the bi-annual Anti-corruption Summits and on the Public Service Commission's official Website.

Any report by the Forum shall be distributed by the members of the Forum to the entities they represent to be made as widely available as is reasonably possible.

Expenditure

The Public Service Commission will bear all expenditure emanating from secretarial support, excluding the cost of publication and printing of annual reports. Each sector undertakes to bear all costs related to the attendance of Forum meetings and the bi-annual Summits. The Public Service Commission will strive to obtain donor funds and sponsorships for the activities of the Forum and the bi-annual Summits.

Annexure II

Members of the National Anti-corruption Forum

Public sector	Civil society sector	Business sector
Ms G J Fraser-Moleketi Minister of Public Service and Administration	Ms Zandile Mdladla Moral Regeneration Movement	Mr W V Lacey Business Unity South Africa
Prof Stan Sangweni Chairperson: Public Service Commission	Mr Z Vavi Congress of South African Trade Unions	Adv D Mpofu South African Broadcasting Corporation
Mr Trevor Manuel Minister of Finance	Mr M Skhosana National Congress of Trade Unions	Mr Jerry Vilakazi Business Unity South Africa
Dr Z P Jordan Minister of Arts & Culture	Mr D George FEDUSA	Dr J Minnaar Afrikaanse Handels Instituut
Mr A Erwin Minister of Public Enterprises	Mr Joe Thloloe Chairperson: SA National Editors Forum	Karen Borcher Programme Co-ordinator: Business Against Crime
Mr C Nqakula Minister of Safety and Security	Peter G Just National Religious Leaders' Forum	Michael Broughton Managing Director: Consumer Council of South
Mr R Kasrils Minister of Intelligence	Ms Zanele Twala Executive Director: South African Non Governmental Organizations' Coalition	Mr A Rapea Business Against Crime
Mr M K N Gigaba Deputy Minister of Home Affairs	Mr Hassen Lorgat Transparency South Africa	Jacques Marnewicke Head: Group Forensic Service SANLAM
Adv J H de Lange Deputy Minister of Justice & Constitutional Development	Mr Eddie Makue Convenor: Economic, Social and Cultural Council of South Africa	Ms Andiswa Ndoni CEO: Black Lawyers Association
Ms N Hangana Deputy Minister of Provincial and Local Government	Ms Allison Tilley Convenor: Civil Society Network Against Corruption	Anton van Achterbergh Business Unity South Africa

Annexure III

Projects as contained in the NAP

Resolution	Projects
To promote leadership in all sectors of society that is committed to the creation of a culture of integrity and to restore confidence in the fight against corruption	Promote the NACF as a vehicle for leadership and as a mechanism to feed into the country policy process, and for feedback to sectors and citizens An identity for NACF: Develop a Logo for the NACF, letterheads etc Raise awareness on the role and functioning of the NACF Implement a website for the NACF
Ethics training must form a critical part of the ethics and awareness programme of all sectors, including incorporation in the school curricula	Develop a generic ethics statement for leaders of all three sectors to sign at an appropriate media launch. Do environmental scan in order to link up with existing initiatives in the area of curriculum development with respect to ethics training for both secondary and tertiary institutions
To foster a greater culture of transparency and accountability in all sectors	Promote application of the Promotion of Access to Information Act; Protected Disclosures Act and Prevention and Combating of Corrupt Activities Act Produce user-friendly guide to Prevention and Combating of Corrupt Activities Act for all sectors Promotion of the above acts to take place at national, provincial and local levels of society
To conduct a joint research programme to audit the state of professional ethics in each sector	Repeat 2001 study and identify ethics training needs for all sectors
To promote, support and strengthen co-operation and co-ordination between and within the different sectors	Strengthen functioning of NACF, including inter-sectoral cooperation through a programme of workshops/roundtables with satellite links where necessary Host a National Anti-Corruption Conference engaging issues pertaining to good practice on the combating and prevention of corruption. This will coincide with the hosting of the next National Anti-Corruption Summit
To acknowledge the role-played by government in the establishment of a database for blacklisting, and to further support this initiative by the creation of a common database for blacklisting across all sectors. A mechanism for information sharing across all sectors should be developed	Information sharing session on OPSC report on blacklisting. A mechanism for information sharing across all sectors should be developed. Thereafter sectors to respond to issues relating to blacklisting
Establish a joint research initiative to evaluate the implementation by the Executive of resolutions made by Parliament and its committees pertaining to corruption	To engage with Parliament on proper procedure for taking this forward Report to NACF will be produced

Each sector should have a plan of action with regard to representation of the NACF within 3 months of the Summit The NACF will strive to ensure participation of the professions	Each sector will report on a regular basis on how they intend to involve professional associations in their respective sectors

Annexure IV

Integrity pledge to the people of South Africa

As a committed South African, I will strive to serve my country and its people with respect, dignity and integrity, and consistent with the values and principles of the Constitution.

I commit myself to set an example through ethical conduct for the furtherance of integrity and good governance and to report all corruption and other forms of unethical practice that I am aware of.

I will not accept or offer any advantage, gifts or benefits that might be seen to prejudice my position or lead to conflicts of interest.

I am prepared to explain honestly and be accountable for my actions when dealing with all spheres of society. Therefore, my actions will be transparent.

I will strive for high standards of service and ethical behaviour that are conducive to the development of the economy and the eradication of poverty.

I will promote these values in those around me.

Through the above actions I hope to promote the welfare of all our people.

This is my pledge to the people of South Africa.

Malawi Business Action Against Corruption

OONAGH FITZGERALD
QUEEN'S UNIVERSITY SCHOOL OF BUSINESS,
SENIOR GENERAL COUNSEL, CANADA

JAMES NGOMBE
JHANGO HEINEMANN, MANAGING DIRECTOR, MALAWI

"… [O]ne of the issues that I have found most challenging but in the end helped in influencing the progress that we have made is … creating partnerships." Daisy Kambalame, the African Institute of Corporate Citizenship (AICC).

The negative effects of corruption are readily apparent, but few are willing to abstain from corrupt practices, while others continue to reap personal gain from them.

Executive summary

Corruption is widespread in Malawi, and is seen to be a major impediment to achieving the Millennium Development Goals (MDG).[1] The negative effects of corruption are readily apparent, *The forum's success in launching the process will need to be sustained by continued integrative negotiation processes.*

Enthusiasm for the initiative and commitment to its objectives are still high among the leaders.

but few are willing to abstain from corrupt practices, while others continue to reap personal gain from them. Multi-stakeholder negotiations to bind all participants to abstain from corrupt practices seem to provide the means for a systematic and concerted attack on Malawi's corruption problem.

With leadership from the private sector, a cross-societal coalition called the Malawi Leaders Forum – involving government, private business, civil society, donor agencies and the media – launched Business Action Against Corruption to tackle the problem and implement the 10th Principle of the UN Global Compact in Malawi.[2]

This national multi-stakeholder negotiation process produced a broad-ranging action plan to combat corruption in the public and private sectors. Analysing this initiative from the perspective of negotiation theory and methodology, it is clear that the forum's success in launching the process will need to be sustained by continued integrative negotiation processes to ensure effective implementation of the action plan and systematic eradication of corruption in Malawi.

In 2006, a year after the inaugural Leaders Forum, the Anti-Corruption Task Force produced a Business Code of Conduct and was awaiting its approval and adoption by government and the business community. At this point participants in the Leaders Forum and task force were surveyed about their views on the progress of the initiative. The survey posed questions about developments in implementing the goals and action plan to ascertain whether the multi-stakeholder process was bringing about cross-societal progress in fighting corruption. The consolidated, anonymous summary of the responses to the questionnaire contained in this paper demonstrates that enthusiasm for the initiative and commitment to its objectives are still high among the leaders. The responses also suggest it may be time to enlarge the reach of the initiative, using the Business Code of Conduct to launch a broader public debate.

It is probably too soon to say with certainty that the Business Action Against Corruption initiative is having an enduring impact locally, in civil society, at company level, at professional association level, and within government. Nonetheless, participants legitimately feel that Malawi has never been closer to coming to grips with the challenge of corruption, while recognizing much more remains to be done.

Introduction

The UN Global Compact has identified three key conditions for successfully combating corruption: "High level commitment from the most senior echelons of government; investment in the building of corruption prevention infrastructure; and implementation and management of such infrastructure with the aim of effecting ethical culture change".[3] This paper describes how a broad-based leaders' coalition was established through multi-stakeholder negotiation and collective business action. It then examines progress, fifteen months after the Leaders Forum had articulated an initial action plan for the elimination of corruption.

Integrative multi-stakeholder negotiation

This Malawian case study was analysed within a framework of integrative negotiation. Variously called cooperative, collaborative, win-win, mutual gains or problem-solving negotiation, integrative negotiation is well suited to a problem such as corruption in which many parties across the spectrum of society are implicated in its continued practice and need to make mutually binding pacts to eliminate corrupt practices in future.[4]

Unlike distributive negotiation (in which each side seeks to gain for themselves the largest piece of a fixed pie), in integrative negotiation each side understands that through negotiation it may be possible for all sides to gain much more than the original pie. Integrative negotiation differs from distributive bargaining because it focuses on commonality and not on difference; and attempts to address needs and interests and not positions. It requires a free flow of information and ideas. Participants must commit to meeting the needs of all involved parties. Parties invent options for mutual gain and use objective criteria to measure the implementation of the negotiated agreement.[5] Bargaining from positions is ineffective when there are many interested parties and tends to lead to dysfunctional and unsatisfactory negotiation results. By focusing on interests and not on values, numerous solutions reveal themselves.[6]

"In integrative bargaining, the parties either begin with compatible goals or are willing to search for ways to align their goals" so that all can gain.[8]

Consensual negotiation is characterized by voluntary and face-to-face participation (possibly facilitated),[11] choosing representation to build long-term relationships, sharing the costs of the procedure as

Fisher and Ury propose that positional bargaining should be avoided altogether and parties should negotiate according to merits, using the following framework:

- Participants are problem–solvers
- The goal is a wise outcome reached efficiently and amicably
- Separate the people from the problem
- Be soft on the people; hard on the problem
- Proceed independently of trust
- Focus on interests, not positions
- Explore interests
- Avoid having a bottom line
- Invent options for mutual gain
- Develop multiple options to choose from; decide later
- Insist on using objective criteria
- Try to reach a result based on standards independent of will
- Reason and be open to reason; yield to principle, not pressure[7]

Lewicki et al identify the key steps in the integrative negotiation process:

- Identify and define the problem jointly.
- Understand the interests and needs that underlie the problem.
- Generate alternative solutions by refocusing questions to reveal win-win options.
- Carefully evaluate and select from a range of alternatives to produce final agreement in which the needs are integrated.[9]

The six principles of Susskind and Field's Mutual Gains Approach provide a useful framework for addressing multi-stakeholder public conflict:

- Acknowledge the concerns of the other side.
- Encourage joint fact finding.
- Offer contingent commitments to minimize impacts if they do occur; promise to compensate knowable but unintended impacts.
- Accept responsibility, admit mistakes, and share power.
- Act in a trustworthy fashion at all times.
- Focus on building long-term relationships. [10]

a stake in the process and long-term investment, setting the ground rules collectively, seeking out mutual gains and voluntarily accepting the resulting action plan.[12] Significant procedural and substantive benefits can be derived from consensual negotiation. First, it produces a fair and open process, resulting from broad participation and public accountability. Second, it is efficient, with the full range of issues and perspectives being brought into the discussion and used in finding solutions, leading to collective buy-in for implementation. Third, decisions reached through consensual negotiation are characterized by wisdom and foresight, having benefited from a broad range of insights and experience and collaborative inquiry to develop shared understanding. Fourth, agreements resulting from consensual negotiation are stable, owing to the emphasis on feasibility, realistic timetables, reciprocal achievable commitments, flexibility to adjust as new facts or circumstances come to light, and investment in longer-term relationships.[13]

The types of major public crises that are best attacked through multi-stakeholder negotiation do not lend themselves to quick and simple fixes. Partners are engaged, issues are identified and solutions are realized through a three-part consensus-building process:

- Pre-negotiation phase: getting started, representation, drafting protocols and setting the agenda, joint fact-finding
- Negotiation phase: inventing options for mutual gain, packaging agreements, producing a written agreement, binding the parties to their commitments, ratification
- Implementation or post-negotiation phase: linking informal agreements to formal decision-making, monitoring, creating a context for re-negotiation[14]

To help a complex multi-stakeholder negotiation make the transition from successful deal-making to successful implementation, participants should:

- Start with the end in mind.
- Help the other parties to prepare for implementation.
- Treat alignment as a shared responsibility because failure affects all parties.
- Send a common message.
- Manage the negotiation like a business process requiring preparation and post-negotiation evaluation.[15]

Integrative multi-stakeholder negotiation and the Malawi Leaders Forum

The impetus for the Malawi Leaders Forum was the shared desire by the public and private sectors and civil society to enable Malawi to achieve its MDGs by improving the stability, reliability, and transparency of its investment climate. The integrative negotiation process was started when the African Institute of Corporate Citizenship (AICC) facilitated a series of business-sponsored roundtable discussions in partnership with the Malawi Global Compact. At each event some 20–30 leaders from business, government and civil society discussed issues related to the Global Compact and the role of business in achieving the MDGs.

The first of these discussions was held in January 2005 and focused on the newly introduced 10th principle on corruption.[16]

Until then, the private sector had not been active in the fight against corruption, despite government's publicly declared intention. This meeting produced an agreement to hold a one-day Leaders Forum on Building Alliances to Eliminate Corruption. The forum brought together leaders from government, the business sector, civil society, the media and donor organizations, and was wholly funded by private sector organizations. This was strategically significant because experience suggests that financial contributors are "always more likely to remain engaged, take a project seriously and demand practical results".[17]

Experience also demonstrates that "the *political will* to reduce corruption and to revive honesty and integrity in Government contracting is a sine qua non for success".[18] Thus it was auspicious that the president of Malawi, Dr Bingu Wa Mutharika, opened the event, describing corruption as a major burden to society that was substantially eroding the economic resources otherwise available for ensuring a country's sustainable development, and reiterating his commitment to fighting corruption. He commended the private sector for holding the event and the active participation of a large number of company CEOs, and acknowledged the support of the international donor community in the fight against corruption. Pledging his assistance, the president encouraged participants to work actively with partners from government and broader civil society to build powerful alliances to effectively eliminate corruption. Thus, he helped to set the stage for successful negotiation by publicly committing to support a collective effort, and signalling to the nation that a major societal shift was happening.

The types of major public crises that are best attacked through multi-stakeholder negotiation do not lend themselves to quick and simple fixes.

The impetus for the Malawi Leaders Forum was the shared desire by the public and private sectors and civil society to enable Malawi to achieve its MDGs by improving the stability, reliability, and transparency of its investment climate.

"The political will to reduce corruption and to revive honesty and integrity in Government contracting is a sine qua non for success".

Participants crafted a framework agreement, a common text to which all provided input, as an initial action plan for progressing towards the elimination of corruption.

The other keynote speakers were clearly chosen as strong representatives of their constituencies, in anticipation of developing good channels of communication.

Their key recommendations to the framework agreement:

- To establish an independent taskforce that would drive the action plan forward
- To review existing codes and adopt or develop a code of conduct for the private sector and state enterprise in Malawi to promote a zero tolerance approach to corruption
- To initiate an independent body that would build value around or incentivize a zero tolerance policy on corruption, particularly as it related to the supply chain of larger companies, state enterprise and government procurement. This would include the application of a scorecard or rating model that companies would agree to respect in terms of obtaining or providing goods or services. The Nigerian Convention on Corruption model was highlighted as a potential model if it were viewed to be appropriate to the Malawian context
- To strengthen corporate governance practices of private and public sector businesses
- To develop a system for publicising all major procurement contracts and transparent processes for deciding on successful bids
- To form a government working group to highlight inefficiencies in the system that created loopholes for corrupt practices, and devise ways of eliminating them.
- To ratify the AU Convention on Corruption (government)
- To provide greater support by donors for multi-sector alliance-building initiatives to eliminate corruption in the country[19]

Issue identification at the forum was wide ranging, covering a variety of perspectives and identifying many critical needs, for example training and consciousness raising for all employees in government and the private sector; a public communications campaign with announced time-bound commitments; and strengthening professional independence and professional discipline in the legal and judicial field.

After discussion of the challenges, participants crafted a framework agreement, a common text to which all provided input, as an initial action plan for progressing towards the elimination of corruption.

Analysis of the formation of Malawi's multi-stakeholder process

In tackling a systemic, countrywide issue such as corruption, there are numerous potential sources of difficulty for successful consensual negotiation and collective action. It is essential to reconcile legal formality (including legal prohibitions, legal rights and litigation positions) with the need for cooperation, compliance discussion and informal information exchange to better understand the problem. It takes skill and patience to de-escalate self-righteous, winner-takes-all attitudes, combativeness and defensiveness. It is not easy to reconcile past, current and future business and legal risks when long-entrenched, lax business practices are replaced with strict codes of conduct. It is challenging to determine how to cooperate with competitors in ethics partnerships without losing competitive position. It is difficult to achieve the right balance between procedural perfection and common-sense solutions that can be readily implemented and applied. It is critical to ensure that participants are adequately trained to apply the new rules.[20]

It is essential to reconcile legal formality with the need for cooperation, compliance discussion and informal information exchange.

One can also anticipate difficulties in managing political pressures and political opportunities, and in maintaining momentum over the long term. Because major instances of corruption often involve public procurement, it is almost inevitable that the fight against corruption will become politicized.[21] The president's actions on corruption have been challenged by his opponents as politically motivated. It is important to keep moving forward on several fronts, build credibility and overcome setbacks.

With so many interests and risks at stake, it was critical to develop an effective multi-stakeholder negotiation process to break the impasse and create cross-societal coalitions to find solutions that would produce system-wide reform. Such a process would allow shared ownership of the anti-corruption issue, so that it did not depend on the fortunes of one person or one sector of society, but was sustained by the actions of many champions across society.

To harness commitment to the collective interest it is necessary to overcome or at least reframe self-interest in maintaining the status quo:

The Integrity Pact developed by Transparency International illustrates consensual negotiation at a very practical level. It consists of an agreement between a government department and a company bidding on a public sector procurement contract not to "pay, offer, demand or accept bribes of any sort, or collude with competitors to obtain the contract, or while carrying it out". Bidders are required to disclose all commissions and similar expenses paid by them to anybody connected with the contract. Breach of the agreement will result in sanctions, ranging "from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages to blacklisting for future contracts on the side of the bidders, and criminal or disciplinary action against employees of the Government".[28]

> Although business managers increasingly recognize that corruption is a serious business challenge, they may not always accept that they have a responsibility and key role in changing practices that have become endemic. The dilemma is to balance doing what is right against putting business operations at a competitive disadvantage … business managers may perceive that promoting a change in accepted local business practices could jeopardise their business interests. It is often relatively easy to get business managers to acknowledge that it would be beneficial to both them and their competitors if corruption were eliminated. What is more difficult is for them to take the first steps to act together in combating corruption, for fear of losing out to each other.[22]

"Corruption is by its very nature a team sport", characterized by inappropriate influences originating from the private sector and undue benefits accruing to members of the public sector.[23] Although on one level the solution to corruption is as easy as saying "no", this is not workable unless people can be assured that others will also say "no", and support one another in a collective effort to put an end to corruption. In other words, businessmen and -women may tend to view "business as usual" as their best alternative to a negotiated agreement (BATNA).[24] They may see maintaining the status quo as being better and easier than the difficult negotiating and trust-building required for collective action against corruption.

Collective approaches are well suited to tackling corruption and improving business standards:[25] In practice, collective action with other companies offers an effective way to create a level playing field on which to compete and increases the impact on local business practices beyond the capacity of any one company. Knowing that other companies in your sector or location are committed to good practice helps to build mutual confidence and the sustainability of changes in behaviour.[26]

Competing businesses share an interest in improving their business environment and together can have a greater impact in reducing corruption in their sector. Acting together, companies can tackle locally relevant issues, set realizable targets, and more effectively integrate anti-corruption policies and codes into their own operations and their supply and distribution chains. Transparency International, a non-governmental leader in fighting corruption, uses a coalition-building approach to bring together actors from government, business, academia and the professions, the media, and civil society organizations to combat corruption. Indeed, there is a growing inventory of models and best practices to enrich implementation of the initial action plan.[27]

The facilitator role played by Sean de Cleene, executive director of the AICC Africa Corporate Sustainability Forum, was particularly helpful in encouraging dialogue between sectors of society and urging business to commit to immediate and purposeful collective action towards eliminating corruption. It seems such an individual or the forum itself will need to coordinate the refinement of undertakings and implementation of commitments for the foreseeable future.

Consensual negotiation involving the broad range of stakeholders provides a methodology for discovering common interests, harnessing shared commitment, and building and maintaining the anti-corruption infrastructure. Because all parties depend on one another for the successful eradication of corruption, they need to negotiate in a way that maximizes the effectiveness of each: developing the agenda collaboratively to ensure all can prepare adequately; sharing information to achieve a common understanding of the issues; working to achieve practical solutions that all sides can support; creating a web of interconnected commitments to ensure all sides are involved in and accountable for implementation.[30] At the same time, it is important to guard against the multi-stakeholder process becoming so large and unwieldy as to be incapable of taking decisive action.[31]

Reviewing the multi-stakeholder process after twelve months

It was clear from the outset that the Malawi Business Action against Corruption Initiative would be a long-term project, requiring the sustained engagement of the various sectors of society. The authors of this study had the opportunity to review progress one year after the initial Leaders Forum. The most significant milestone at that point was the development of the Business Code of Conduct for Combating Corruption in Malawi (see annexure III). This was achieved through the work of a multi-stakeholder steering committee[32] and task force.[33] The purpose of this drafting exercise was to "describe a Code of Conduct to be observed by institutions, organizations and companies operating in Malawi in order to ensure that they do not engage in corrupt practices".[34] Adoption of this code is meant to be a strategic decision for an organization, with the specific design and implementation of the code being influenced

The Nigerian Convention on Business Integrity relies on consensual negotiation processes to combat corruption. It is voluntary, involving pledge-making by public and private sector participants, recognition and modelling of good conduct, and peer pressure through a mutual accountability network. The convention is a declaration against corrupt business practices; it is not a legal document, but represents a moral agreement between consenting parties. Its primary purpose is to encourage the establishment of a minimum standard for business integrity in Nigeria. Under the rules of the convention, a whistleblower is granted anonymity and can present a complaint to a core group of convention members, who would then approach that company, asking it to appoint a senior level ethics counsellor to work through the issue with them and monitor compliance.[29]

Strengths of the initiative

- The president's presence at the inaugural meeting
- Government 's commitment to the initiative
- High-level support from business leaders
- Private sector anti-corruption measures
- Broad support and lack of negativity towards the initiative

It is important to guard against the multi-stakeholder process becoming so large and unwieldy as to be incapable of taking decisive action.

It was clear from the outset of the Malawi Business Action against Corruption Initiative that it would be a long-term project.

by "varying needs, particular objectives, the products or services provided, the processes employed and the size and structure of the organization".[35] It is intended that the code should be used by internal and external parties to assess the organization's performance in combating corruption. By September 2006 the Business Code of Conduct had been completed and was awaiting approval and adoption by government, as well as widespread adoption and implementation by businesses and other organizations. At that time members of the steering committee and task force were contacted to participate in a survey (see annexure II).

Consolidated results of the survey

In-person interviews were conducted and documented by co-author Dr James Ngombe.[36] The accuracy of the content of statements by respondents was not verified. The statements are reproduced in summary form to indicate participants' personal impressions of the initiative. Given the small sample size and nature of the questionnaire, the consolidated results are offered as informed impressions of the initiative at this particular time (October 2006).

Participants were asked to what extent their organization had been involved in the initiative. Most cited the Business Leaders Forum and involvement in the task force developing the Business Code of Conduct. Two multinational companies cited their own "risk management" programmes.

Participants were questioned about their input or assistance. Some had alerted their staff to the need for vigilance. Government participants had kept the task force up to date on developments within government. Comments were made on the draft Code of Conduct.

Participants were asked about the major challenges facing the initiative. Responses included rampant entrenched corruption; no punitive measures; having the general business sector accept the outcome; and having a business conduct rating system accepted and enforced.

To further the initiative, some respondents said they would introduce zero tolerance of corruption in their organizations. All expressed willingness to assist in the implementation stage, despite time constraints.

Respondents were unanimous in saying they would recommend that the initiative be replicated elsewhere. One multinational business representative said they would push for a similar approach in other countries in which they do business.

Respondents saw the drafting of the Business Code of Conduct as a key step in implementing the action plan. They suggested that the next course of action could be determined only after the code had been adopted by government. Others commented that the code had not been given enough publicity; that companies needed to sign onto the code and implement it in their organizations; and that the code would need refinement as implementation proceeded and publicizing it in the media would generate informed discussion.

Respondents believed that the members of the task force had remained on course, coordinating well, and demonstrating their ongoing commitment. It was noted that it would take committed leadership to drive the initiative forward.

Respondents were asked whether a leaders' coalition ensured that the negotiations stayed on track. Responses varied. One questioned whether the task force was the right vehicle to deliver the anti-corruption initiative. Another stated that the role of the task force had not been decided, beyond drafting the Business Code of Conduct. A government respondent noted the crucial role played by the AICC in this initiative.

Participants were asked whether an independent advisory body had been defined and established and if so, who were the members and what its functions were. Most respondents believed that this body had not been established.

The questionnaire asked whether international organizations, donor organizations and foreign governments were involved effectively to support the anti-corruption effort.[37] One respondent thought the donor community could offer debt relief, allowing government to pay employees adequately and thereby prevent corrupt practices. Another commented that the donor community was interested in the initiative, and might provide funding if the government endorsed the Code of Conduct.

Participants were asked what steps are being taken to ensure that the initiative survived changes of leadership in organizations and sectors. Some respondents commented that the initiative was slowly taking root, but corrupt practices were rampant. Respondents observed that civil society groups were being formed to create awareness and initiate action and there was hope that practices in government institutions would improve.

The survey asked whether best practices from contexts such as integrity pacts and business integrity conventions have been adopted, and if so, whether they work well in these contexts. Respondents mentioned that the Code of Conduct had been developed with

Weaknesses of the initiative

- Lack of expertise of some members of task force
- Entrenched corruption
- No punitive measures for non-compliance
- Slow progress in adopting code
- Pressing demands on task force members

The next big challenge would be to obtain widespread adoption and implementation of the code.

For an issue of such magnitude and complexity, the commitment to the consensual negotiation process has to be long term.

reference to existing codes and best practices from the African continent and the international community. A government respondent said he was not aware of related developments in the private sector. One respondent suggested that the starting point for combating corruption in business was effective risk management. Respondents cited successful local programmes that had been developed without waiting for the code to be launched.

The questionnaire noted that a key problem was weak capacity in government. Some respondents considered that the problems were being addressed by government organs such as the ACB, while others thought the problems were still to be identified. Some respondents remarked that there were some noticeable efforts, but that they would take time to have impact. Government could do more, as could the business sector. One respondent expressed concern that the courts might not be helpful in fighting corruption.

Five points were listed as possible causes of lack of capacity in government: lack of adequate training; inadequate salaries; lack of a code of ethics; defects in the reward systems; and lack of independence of public servants. Responses varied. Some respondents had difficulty in identifying the causes. Each point was noted by at least one respondent as an underlying problem. A question asked whether these problems had been addressed. Answers varied. According to a government respondent, measures were being taken to address weaknesses in training, ethics codes and the independence of public servants. Private sector respondents were less aware of these developments. All respondents thought the programme would need time to work.

Finally there was a question about the steps that were being taken to target the next generation through ethics training for teachers. Responses suggested that education should be considered seriously. One respondent thought that employees who signed the Business Code of Conduct would pass it on to the next generation. Another commented that the code needed more publicity.

Observations

The results of the survey were positive, confirming that there is continuing commitment in government, the business sector and civil society to working together to eradicate corruption. Respondents apparently felt that development of the Business Code of Conduct had been an appropriate first major project and that it had gone well, although important questions about the code's future were outstanding. Many respondents thought that progress had been slow and it was difficult to contribute effectively to the initiative and balance other work pressures.

Respondents recognized that the next big challenge would be to obtain widespread adoption and implementation of the code. Responses suggested that ongoing communication among the engaged sectors of society could be enhanced. Some responses thought that the multi-stakeholder negotiation process should be expanded to engage a broader swathe of society. Public consultation would be useful in raising awareness and increasing nationwide support for the initiative, although the negotiation process must not become so open-ended as to be unwieldy and ineffective.

Uncertainty about the infrastructure of the initiative and the specifics of its future work plan suggest that this may be a good time for the leaders to regroup and set up the appropriate structures for the next phases of implementation. This would probably involve the establishment of an independent agency that would promote, and assist in measuring, compliance with the code. Funding for such an agency would need to be negotiated. Finally, periodic surveying of participants might be a useful way to verify that the initiative continues on track and to facilitate mid-course corrections if needed.

Conclusion

Malawi Business Action Against Corruption provides an excellent illustration of a consensual approach to resolving public crisis, although it is still too early to judge whether it will achieve its laudable objective of eradicating corruption. For an issue of such magnitude and complexity, the commitment to the consensual negotiation process has to be long term. The roundtables, the Leaders Forum, and even the development of an initial action plan were only the beginning, with extensive mutual commitments being forged, long-term relationships deepening, and substantial investment in implementation to continue into the foreseeable future. One year later, the initiative has successfully crafted a Business Code of Conduct to guide all sectors, and participants are still deeply committed, which bodes well for the longer-term survival of the initiative. Malawi Business Action Against Corruption has inspired a nation to action. Its challenge now is not to lose momentum for the great task ahead. By staying true to the principles of multi-stakeholder negotiation processes, this initiative can nurture involvement and participation, and broaden the reach and deepen the roots of the anti-corruption movement in Malawi.

Malawi Business Action Against Corruption has inspired a nation to action. Its challenge now is not to lose momentum for the great task ahead.

Notes

This study was prepared in collaboration with Daisy Kambalame and Sean de Cleene of the African Institute for Corporate Citizenship of Malawi (AICC), and with the support of Ralph Hamann of the University of South Africa (UNISA) and Birgit Errath of the UN Global Compact.

1 Malawi slid from 42nd in 2000 to 97th in 2005 on the Transparency International Corruption Perception Index.

2 United Nations Global Compact Principle 10, "Businesses should work against corruption in all its forms, including extortion and bribery."

3 The Global Compact, *Business against Corruption: Case Studies and Examples*. Implementation of the 10th United Nations Global Compact Principle against Corruption, The Global Compact April 2006, p 177.

4 R Lewicki, D Saunders, B Barry and J Minton, *Essentials of Negotiation*, McGraw Hill Irwin 2001, pp 95–119.

5 Lewicki et al, *Essentials of Negotiation*, p 95.

6 Interests are "needs, desires, concerns, or fears – the things one cares about or wants. They underlie people's positions – the tangible items they say they want." In contrast, values are closely tied to identity and feelings of self-worth such that they are far less amenable to negotiation and compromise. L Susskind and P Field, *Dealing with an Angry Public: the Mutual Gains Approach to Resolving Disputes*, The Free Press 1996, p 154, citing W Ury, J Brett and S Goldberg, *Getting Disputes Resolved*, Cambridge, Mass 1993.

7 R Fisher and W Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Penguin 1991, p 13.

8 T Williams, Negotiation and Conflict Management, Queen's University Business School course materials 2001, session 3, p 8.

9 Lewicki et al, *Essentials of Negotiation*, p 98–113; Williams, Negotiation and Conflict Management, Session 2, p 5.

10 L. Susskind and P. Field, *Dealing with an Angry Public: the Mutual Gains Approach to Resolving Disputes*, The Free Press 1996, pp 37–38.

11 Consensual negotiation may be unassisted or assisted by a third party. The latter can involve different approaches – eg facilitation, mediation and non-binding arbitration.

12 L. Susskind and J. Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*, Basic Books 1987 p 78.

13 Susskind and Cruikshank, *Breaking the Impasse*, pp 21-33.

14 Ibid, table 4.1, p 95.

15 D Ertel, "Getting Past Yes: Negotiating as if Implementation Mattered", *Harvard Business Review* 60 (November 2004):63.

16 The second was held to discuss the role of corporate governance in promoting MDGs. The third and fourth roundtable discussions

were on opportunity creation and sustainable development in the agriculture sector and the development of a promotional campaign to this effect. Sponsorship for the roundtable discussions was received from BP Malawi, Limbe Leaf Tobacco Company, Monsanto, Yara Malawi, Multi Choice and Dulux Limited. From Malawi Leaders Forum on Building Alliances to Eliminate Corruption, Final Report 2005.

17 The Global Compact, *Business against Corruption*, p 132.

18 The Global Compact, *Business against Corruption*, p 137.

19 Final Report of the Malawi Leaders Forum on Building Alliances to Eliminate Corruption (7 June 2005).

20 Susskind and Cruikshank, Breaking the Impasse, pp 35–79.

21 News reports suggest this is a serious problem, with competing allegations that prosecutions against senior opposition party members are politically motivated and that the president and members of his cabinet should also be the subject of corruption investigation but are protected by the Anti-Corruption Bureau. Available at afrol News / The Chronicle, 21 November 2005; Misanet / IRIN, 9 February 2006; afrol News / IRIN, 26 May 2006.

22 The Global Compact, *Business against Corruption*, p 128.

23 Ibid, p 176.

24 Fisher and Ury, *Getting to Yes*, p 98ff et seq.

25 The Global Compact, *Business against Corruption*, p 133.

26 Ibid, p 128.

27 Ibid, p 141. Transparency International's primary objective is "to infuse transparency and accountability into the global value system as generally recognized public norms".

28 Ibid, p 134.

29 Formally launched in Lagos on 2 October 1997, the convention promotes ethical conduct in business, as well as competence, transparency, accountability, and a commitment to doing what is right, just, and fair. The Global Compact, *Business against Corruption*, pp 143–144.

30 Ertel, "Getting Past Yes", p 65.

31 The Global Compact, *Business against Corruption*, p 131.

32 The Steering Committee, led by Sean de Cleene of the AICC, comprised the AICC–African Corporate Sustainability Forum, the Malawi Anti-Corruption Bureau, Chemicals and Marketing Co Ltd., Malawi Bureau of Standards, Malawi UN Global Compact, Rab Processors Ltd, USAID, and Yara Malawi (PVT) Ltd.

33 In addition to the members of the Code Steering Committee, the task force currently includes Africa Leaf, Illovo Sugar (Malawi) Ltd, Limbe Leaf Tobacco Company Ltd, Malawi Revenue Authority, Malswitch – Reserve Bank of Malawi, the Ministry of Trade and Private Sector Development, the Office of the Director of Public

Procurement, Multichoice Malawi, Press Corporation Limited, Safetech Malawi, Dimon (Malawi) Ltd, MSC Malawi, Africa Online, Press Corporation Limited, Press Trust, Chemical and Marketing Malawi, Air Malawi, Mediterranean Shipping Company, Multi Choice, The Society of Accountants in Malawi (SOCAM), and UNDP.

34 Business Code of Conduct for Combating Corruption in Malawi, August 2006, Foreword, p 3.

35 Ibid.

36 Dr Ngombe was assisted by Vales Machila, Dip Ed, Dip Journalism.

37 USAID, UNDP, SIDA-Norad and World Bank are currently assisting the Office of the Director of Public Procurement.

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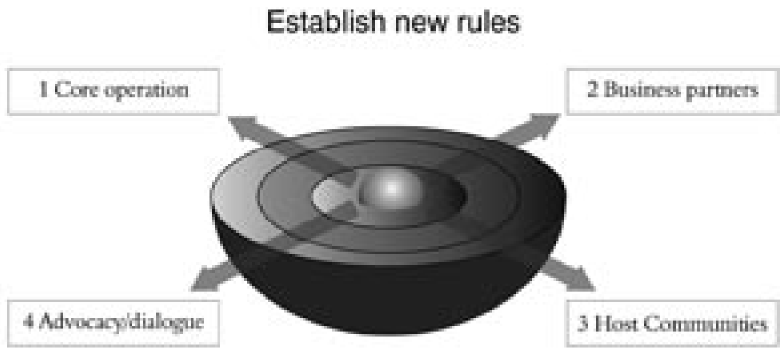
Annexure I

Collective action to combat corruption



Prince of Wales International Business Leaders Forum, Janet Breeze, "Corruption: Sharing What Works" (2002) page 10. TESEV is an independent think-tank which forms a bridge between academic research and the policy-making process. TESEV

Annexure II

Questionnaire for participants

Malawi leaders forum to combat corruption

Introduction

You are kindly being requested to participate in this survey because of your involvement in or knowledge of the Malawi Leaders Forum to Combat Corruption. In this connection this questionnaire in most cases is looking for a simple yes or no answer to be filled in the gaps. However, a few more lines have been provided to allow for extended answers where you are requested to provide explanations beyond the simple answers.

We thank you in advance for your cooperation.

1 To what extent has your organization been involved in the initiative recently undertaken by the business community in the fight against corruption in Malawi?

2 What input/assistance have you provided?

3 In your opinion what are the major challenges facing the initiative?

4 In your opinion what are the strengths and weaknesses of the initiative?

5 What are the constraints facing the initiative?

6 How do you hope to assist in the furtherance of the initiative?

7 Is the initiative something you would recommend to be replicated elsewhere on the globe

8 Has the action plan been broken down into manageable tasks? If yes, is there a detailed action plan with responsibilities assigned, timelines, reporting and accountability?

9 Is there a coordinated and accountability mechanism to ensure all parts live up to their commitments? Please explain.

10 Is there a leader's coalition responsible for ensuring the integrative negotiations continue, and stay on track over the long term?

11 Has independent advisory body been more fully defined and established? If yes, what is the membership and what are its functions?

12 Are international organizations, donor organizations and foreign governments being involved effectively to support the anti-corruption effort?

13 What steps are being taken to entrench change, so that the initiative survives changes of leadership in various organizations and sectors?

14 Have best practices from other contexts such as integrity pacts or Business integrity conventions been adopted? If yes, do they work well in these contexts?

15 One key problem identified was weak capacity in government. Have the causes of the problems been identified? If not, which of the following could you cite as the cause(s):

- Lack of adequate training
- Inadequate salaries
- Lack of code of ethics
- Defects in the reward systems
- Lack of independence of public servants
- Respondents had problems identifying these causes.

16 Have any steps been taken to address the problems in 15 above?

17 Is the initiative being effectively publicized? If yes, who is responsible for their production and management in the Campaign?

18 (a) Are there anti-corruption train the trainer programmes for the workplace?

(b) If yes, are these programme supported by business? If no, who supports them?

19 (a) Have business codes of ethics been adopted?
(b) Are sanctions against corruption built into contracts? If yes, is there a way to enforce them?

20 Is the prosecution function independent of and insulated from the possibility of political influence? Please explain.

21 What steps are being taken to target the next generation through ethics training for teachers so they can teach ethics in schools?

Annuxure III

Business code of conduct for combating corruption in Malawi

(August 2006)

Introduction

The Business Code of Conduct for Combating Corruption in Malawi has been developed by a multi-sector steering committee that forms part of a wider Malawi Business Action against Corruption taskforce. The code has been developed, through private sector initiative, as a tool to assist organizations to develop effective actions in combating corruption in all its forms.

The Code of Conduct draws on various international initiatives, in particular:

- Business Principles for Countering Bribery, an initiative of Transparency International and Social Accountability International
- Business Action Against Corruption (BAAC) – a flagship pan-African governance programme under Business Action for Africa which was set up at the G8 Summit to promote support for Africa's development. The BAAC is currently managed in partnership by the AICC African Corporate Sustainability Forum (ACSF), Commonwealth Business Council (CBC) and SADC Southern African Forum Against Corruption (SAFAC), which includes the region's anti-corruption commissions, the Southern African Human Rights Trust (SAHRIT) and the Nigerian-based Convention on Business Integrity
- but includes other initiatives such as:
- African Union Convention on Corruption

- Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery
- International Chamber of Commerce (ICC) Rules of Conduct to Combat Extortion and Bribery
- Interpol Global Standards to Combat Corruption
- United Nations Convention on Corruption

Scope

General

This code provides a framework for good business practices and risk management strategies for countering corruption. It is aimed at assisting organizations to:

- eliminate corrupt practices
- demonstrate their commitment to countering corruption
- make a positive contribution to improving business standards

Application

Though the code is specifically designed for use in large and small public and private companies, the requirements contained herein are in themselves generic and are intended to be applicable to all organizations, regardless of type, size and product/service provided, that wish to demonstrate their ability to combat corruption.

Definitions

Corrupt practices include bribery, fraud, theft, abuse of position or authority, embezzlement, extortion, influence peddling; facilitation payments.

- Bribery: promising, offering, giving or soliciting of any benefit in cash or in kind that improperly affects the actions or decisions of any person
- Fraud: false representation or concealment of material facts in order to part with something of value
- Abuse of position or authority: use of one's vested authority to improperly benefit oneself or an entity or another person
- Embezzlement: This involves theft of resources by persons entrusted with the authority and control of such resources
- Extortion: This involves coercing a person or entity to provide a benefit to himself, another person or an entity in exchange for acting (or not acting) in a particular manner

- Influence peddling: The practice of using one's influence with persons in authority to obtain favours or preferential treatment for another, usually in return for payment
- Facilitation payment: These are small payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement. Also called "facilitating", "speed" or "grease".

Corrupt practices

Corrupt practices include:

- Behaviour that involves any of the following: bribery, fraud, theft, misuse of position or authority, embezzlement, extortion, influence peddling or the providing of facilitation payments
- The offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person
- The offering, giving, acceptance or soliciting of a bribe in any form or the use of other routes or channels for the benefit of an employee or that of the employee's family, friends, associates or acquaintances
- The abuse of entrusted power for private gain or any conduct or behaviour in relation to persons entrusted with responsibilities which violates their duties and which is aimed at obtaining undue advantage of any kind for themselves or for others
- The unauthorized dissemination or solicitation of confidential or restricted information for reward

Principles for combating corruption

- The enterprise should prohibit corrupt practices in any form whether direct or indirect.
- The enterprise should commit to the fundamental values of integrity, transparency and accountability.
- The enterprise should aim to create and maintain a trust-based and inclusive internal culture in which corruption is not tolerated.
- The enterprise shall commit to implementation of a programme to counter corruption.

Requirements

Development of a programme for combating corruption

- An organization, institution or company should develop a programme reflecting its size, business sector, potential risks and locations of operation, which should, clearly and in reasonable detail, articulate values, policies and procedures to be used to prevent corruption from occurring in all activities under its effective control.
- The programme should be consistent with all laws relevant to countering corruption in all the jurisdictions in which the organization or company operates.

Standards of conduct

Each organization, institution or company should be committed to following practices as they relate to corrupt practices, and should put measures in place to

- Prohibit corrupt practices by any employee, agent, or any other person under the employment or authority of the enterprise
- Make corruption by an employee subject to severe disciplinary measures;
- Establish a system for the recruitment of employees who are of high integrity, and systems for promotion and termination that are not arbitrary but based on fairness, openness, ability and performance
- Provide adequate safeguards to prevent abuse of powers by those engaged in the anti-corruption system and to minimize unnecessary infringements of individual rights
- Establish systems for the procurement of goods and services that are based on openness, efficiency, equity and certainty of the rules to be applied and that seek the best value for money
- Set up and maintain effective mechanisms to oversee and detect failures to meet standards and enforce the high standards of conduct required
- Train its employees to understand and practice honest, ethical and appropriate behaviour, to avoid conflicts of interest, and to report acts of corruption
- Require the reporting of all known instances of corruption to the relevant authorities
- Require public disclosure of all its political or charitable contributions, or sponsorships
- Protect employees from repercussions for reporting corruption.

Specific programme requirements

In developing the programme for countering corruption, an organization, institution or company should analyse which specific areas pose the greatest risk from corruption. The programme should address the most prevalent forms of corruption relevant to the organization, institution or company, but to a minimum should cover the following areas:

Bribes

- The organization, institution or company should prohibit the offer or acceptance of a bribe in any form or the use of other routes or channels to provide improper benefits to customers, agents, contractors, suppliers or employees of any such party or government officials.
- The organization, institution or company should prohibit an employee from arranging or accepting a bribe from customers, agents, contractors, suppliers, or employees of any such party or from government officials, for the employee's benefit or that of the employee's family, friends, associates or acquaintances.

Political contributions

- The organization, institution or company, its employees or agents should not make direct or indirect contributions to political parties, organizations or individuals engaged in politics, as a way of obtaining advantage in business transactions.
- The organization, institution or company should publicly disclose all its political contributions.

Charitable contributions and sponsorships

- The organization, institution or company should ensure that charitable contributions and sponsorships are not being used as a subterfuge for corruption.
- The organization, institution or company should publicly disclose all its charitable contributions or sponsorships.

Facilitation payments

- Recognising that facilitation payments are a form of bribery, the organization, institution or company should work to identify and eliminate them. Facilitation payments are payments made to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement.

Gifts, hospitality and expenses

- The organization, institution or company needs to have a publicly available policy on what constitutes appropriate behaviour in relation to gifts hospitality and expenses. This policy should prohibit the offer or receipt of gifts, hospitality or expenses whenever such arrangements could affect the outcome of business transactions and are not reasonable and bona fide expenditures.

Implementation requirements

The organization, institution or company should meet the following minimum requirements when implementing the programme:

Board and management responsibilities

- The board of directors or equivalent of the organization, institution or company should base their policy on this code of conduct and provide leadership, resources and active support for implementation of the programme.
- The chief executive officer is responsible for ensuring that the programme is carried out consistently with clear lines of authority.
- The board of directors, chief executive officer and senior management should demonstrate visible and active commitment to the implementation of this code.
- The board of directors or CEO should oversee that all management and if appropriate all staff members should sign an individual contract of agreement to abide by the policy as set out by the company.
- A structure will be established that provides for regular reporting to senior management and the board on the nature and magnitude of exposure to corrupt practices and an assurance to the board, and it's audit committee in particular, that procedures to follow the principles as laid down in this code are in place and being properly applied at all times. Internal reporting of actual corrupt practices should remain transitional subsequent to reporting to the appropriate authority.
- That the board and/or its audit committee reviews the mandate and actions undertaken by both the internal and external auditors, with particular reference to issues outlined within this code, and undertake any corrective action deemed necessary to ensure progress towards fully adhering to the principles laid down in the code. Any significant concerns would also be reported to the full board.
- That each director (both executive and non-executive) submit signed attestations, in a public disclosure statement to the effect they are fully satisfied that all the organizations anti-corrupt practices are being followed, monitored and managed appropriately in accordance with the code and that procedures are in place to achieve this.

Business relationships

The enterprise should apply its programme in its dealings with subsidiaries, joint venture partners, agents, contractors and other third parties with whom it has business relationships.

Subsidiaries and joint ventures

- The organization, institution or company should conduct due diligence before entering into a joint venture.
- The organization, institution or company should ensure that subsidiaries and joint ventures over which it maintains effective control adopt its programme. Where an organization institution or company does not have effective control it should make known its programme and use its best efforts to monitor that the conduct of such subsidiaries and joint ventures is consistent with the code.

Agents

The organization or company should not channel improper payments through an agent.

- The organization, institution or company should undertake due diligence before appointing an agent.
- Compensation paid to agents should be appropriate and justifiable remuneration for legitimate services rendered.
- The relationship should be documented.
- The agent should contractually agree to comply with the enterprise's policy on corrupt practices.
- The organization, institution or company should monitor the conduct of its agents and should have a right of termination in the event that they pay bribes.

Contractors and suppliers

- The organization, institution or company should conduct its procurement practices in a fair and transparent manner.
- The organization, institution or company should undertake due diligence in evaluating major prospective contractors and suppliers to ensure that they have effective anti-bribery policies.
- The organization institution or company should make known its anti-bribery policies to contractors and suppliers. It should monitor the conduct of major contractors and suppliers and should have a right of termination in the event that they pay bribes.
- The enterprise should avoid dealing with prospective contractors and suppliers known to be paying bribes.

Human resources

- Recruitment, promotion, training, performance evaluation and recognition should reflect the organization institution or company commitment to the programme.
- The organization institution or company should make it clear that no employee will suffer demotion, penalty, or other adverse consequences for refusing to pay bribes even if it may result in the organization institution or company losing business.

Training

- Managers, employees and agents should receive specific training on the programme, which should include integrity training and principle based training.
- Where appropriate, contractors and suppliers should receive training on the programme.

Raising concerns and seeking guidance

- To be effective, the programme should rely on employees and others to raise concerns and violations as early as possible. To this end, the organization, institution or company should provide secure and accessible channels through which employees and others should feel able to raise concerns and report violations ("whistle-blowing") in confidence and without risk of reprisal.
- These channels should also be available for employees and others to seek advice or suggest improvements to the programme. To support this process, the organization, institution or company should provide guidance to employees and others with respect to the interpretation of the programme in individual cases.

Communication

- The organization, institution or company should establish effective internal and external communication of the programme.
- The organization, institution or company should, on request, publicly disclose the management systems it employs in countering corruption and bribery.
- The organization, institution or company should be open to receiving communications from relevant interested parties with respect to the programme.

Internal controls and audit

- The organization, institution or company should maintain accurate books and records, available for inspection, that properly and fairly document all financial transactions. The enterprise should not maintain off-the-books accounts.

- The enterprise should establish feedback mechanisms and other internal processes supporting the continuous improvement of the programme.
- The organization, institution or company should subject the internal control systems, in particular the accounting and record keeping practices, to regular audits to provide assurance that they are effective in countering bribery.

Monitoring and review

- Management of the enterprise should monitor the programme and periodically review the programme's suitability, adequacy and effectiveness and implement improvements as appropriate. They should periodically report to the board of directors or shareholders, or any such appropriate body, the results of the programme review.
- The board of directors, shareholders, or any such appropriate body should make an independent assessment of the organization, institution or company regarding the adequacy of the programme and make its recommendations.

Criteria for compliance

Organizations wishing to demonstrate their compliance to the requirements of this code shall be voluntarily audited and rated on the level of compliance to this code. Such a rating system is currently being developed in Malawi and ratings will be determined by identifying process, mechanisms and practices within the organization that enable it to comply with the requirements of the code and ensure that corrupt practices, as far as can be ascertained, are not taking place within the organization.

Abbreviations and acronyms

ACB	Anti Corruption Bureau (Malawi)
ACSF	African Corporate Sustainability Forum
AICC	African Institute of Corporate Citizenship
ARV	Antiretroviral
BAC	Business Against Crime
BATNA	Best Alternative to a Negotiated Agreement
BBBEE	Broad-Based Black Economic Empowerment
BBEE	Broad-based Black Economic Empowerment
BEE	Black Economic Empowerment
BUSA	Business Unity South Africa
CSI	Corporate Social Investment
CSNAC	Civil Society Network Against Corruption
DPSA	Department of Public Service and Administration
FCPA	Foreign Corrupt Practices Act

FSGO	Federal Sentencing Guidelines for Organizations
GAAP	Generally Accepted Accounting Practices
IAF	Industry Alignment Forum
IFAC	International Federation of Accountants
JSE	Johannesburg Securities Exchange
MDBs	Multilateral Development Banks
NBCV	Nederlandsche Bank en Credietvereeniging
MSC	Marine Stewardship Council
NACF	National Anti-Corruption Forum
NAP	National Anti-Corruption Programme
NGOs	Non-governmental Organizations
NRLF	National Religious Leaders Forum
NYSE	New York Stock Exchange
OECD	Organization of Economic Cooperation and Development
PFMA	Public Finance Management Act
PSC	Public Service Commission
SADC	South African Development Community
SANGOCO	South African Non-governmental Organization Coalition
SARS	South African Revenue Services
SIDA	Swedish International Development Cooperation Agency
SME	Small and Medium-sized Enterprises
SMSEs	Small and Medium-sized Enterprises
SOX	Sarbanes-Oxley Act
SRI	Socially Responsible Investment
TI	Transparency International
TSA	Total South Africa
WDBs	Women's Development Bases

Further website links

Intergovernmental anti-corruption instruments

- **United Nations**
  The UN Convention against Corruption
  http://www.unodc.org/unodc/en/crime_convention_corruption.html
- **OECD**
  Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1999
  http://www.oecd.org/document/21/0,2340,en_2649_34859_2017813_1_1_1_1,00.html

  Revised Recommendation on Combating Bribery in International Business Transactions, May 1997 http://www.oecd.org/document/32/0,2340,en_2649_33725_2048160_1_1_1_1,00.html

  OECD Guidelines for Multinational Enterprises 2000 Review
  http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html
- **The Financial Action Task Force on Money Laundering FATF**
  The Forty Financial Action Task Force Recommendations, Revised 2003 http://www1.oecd.org/fatf/pdf/40Recs-2003_en.pdf

- **Organization of American States**
  Inter-American Convention against Corruption IACC, June 1996
  http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/documents/eng/publications.asp
- **Council of Europe**
  Council of Europe Civil Law Convention on Corruption, 1999
  http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm
- **Council of Europe Criminal Law Convention on Corruption, November 1999**
  http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm
- **European Union**
  The European Union Convention on the Fight against Corruption
  Involving Officials of the European Communities or Officials of Member States, 1997
  http://europa.eu.int/scadplus/leg/en/lvb/l33027.htm
- **African Union Convention on Preventing and Combating Corruption and Related Offences, 2002**
  http://www.africaunion.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf

Business principles

- **Transparency International**
  http://www.transparency.org/building_coalitions/private_sector/business_principles.html
- **International Chamber of Commerce**
  www.iccwbo.org
- **World Economic Forum Partnership against Corruption Initiative**
  www.weforum.org/site/homepublic.nsf/Content/Partnering+Against+Corruption

Sector-wide initiatives against corruption

- **International Federation of Consulting Engineers FIDIC**
  Code of Ethics and Policy Statements
  http://www1.fidic.org/about/ethics.asp
- **International Council on Mining and Metals ICMM**
  Sustainable Development Charter, ICMM Ten Principles
  http://www.icmm.com/html/corporate_governance.php

- **"Publish what you pay"**
  http://www.publishwhatyoupay.org/
- **UNICORN, Trade Union Anti-Corruption Network**
  http://www.psiru.org/corruption/
- **The Extractive Industry Transparency Initiative**
  www.eitransparency.org

General anti-corruption links

- **UN Global Compact**
  www.unglobalcompact.org
- **OECD**
  www.oecd.org
- **International Business Leaders Forum**
  www.iblf.org/corruption
- **Transparency International**
  www.transparency.org
- **Corisweb**
  The web-based resource centre managed by Transparency International. Corisweb has a catalogue of hundreds of international and local organizations and resources that are relevant for the fight against corruption
  www.corisweb.org
- **Avoid corruption – guide for companies, published by the Confederation of Danish Industries**
  www.di.dk
- **Facing up to corruption, published by Control Risks Group**
  http://www.crg.com/static/corruption_report_03.pdf
- **TRACE Transparent Agents and Contracting Entities**
  www.traceinternational.org
- **World Bank – Anti Corruption Knowledge Center**
  www.worldbank.org/publicsector/anticorrupt/index.htm
- **United Nations Office for Drug Control and Crime Prevention**
  www.unodc.org
- **Anti-Corruption Gateway for Europe and Eurasia**
  www.nobribes.org
- **Anti-Corruption Network For Transition Economies**
  www.anticorruptionnet.org

- **Global Witness**
  www.globalwitness.org
- **Center for International Private Enterprise**
  www.cipe.org
- **Ethics Resource Centre**
  www.erc.org

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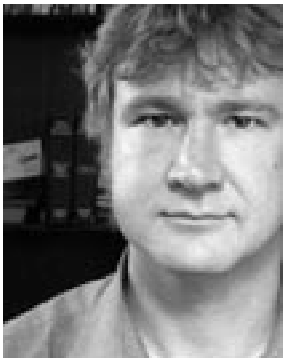

Kris holds a BL and MPhil in workplace ethics from the University of Pretoria. He was appointed assistant director at the Centre for Business and Professional Ethics, where he has been since 2004. He has been involved on a number of projects in ethics management and corruption prevention in the South African public and private sectors.

In 2005 Kris led a project that was aimed at implementing anti-corruption support to local government. He played a major role in developing a guideline document as well as a training module that was designed to assist South African public service departments with the implementation of minimum anti-corruption capacity.

He led a team that conducted a survey on corruption in the private sector on behalf of Business Against Crime, which was released early in 2007. He has also completed research into the measurement of corruption, which he presented at the Fifth Global Forum on Corruption.

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Dr Oonagh E Fitzgerald has been a lawyer with the federal government of Canada since 1983, as well as a manager since 1995, working in the fields of international law, constitutional and administrative law, human rights, ethics, transparency, criminal and regulatory law.

Oonagh has written two books, *The Guilty Plea and Summary Justice* (Carswell 1990) and *Understanding Charter Remedies* (Carswell 1995), and edited a collection of essays: *The Globalized Rule of Law: Relations between International and Domestic Law* (Irwin Law, 2006)/ *Règles de droit et mondialisation: rapports entre le droit international et le droit intern* (Éditions Yvon Blais, 2006).

She taught at Carleton University Department of Law, Ottawa University Faculty of Law, the International Institute for Human Rights (Strasbourg) and the International Institute for Humanitarian Law (San Remo).

With a Bachelor of Fine Arts, Bachelor of Laws, Master of Law (criminal law) and Doctorate of Juridical Science (constitutional and human rights law), Oonagh is now completing an Executive Master's of Business Administration at Queen's University in Canada. Her focus is on corporate social responsibility and helping to design the corporation of tomorrow.

Through Queen's University School of Business, Oonagh has been pursuing research projects on Costing corporate social responsibility; embedding human rights in business practice; multi-stakeholder negotiation processes to combat corruption; corporate social responsibility in marketing; and corporate social responsibility and the legal profession.

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Besides working at the headquarters of GTZ in Eschborn, Germany, he practised for three months in a GTZ Good Governance project in Accra, Ghana. Before being employed at GTZ since January 2007, he worked at the International Commission of Jurists in Geneva (Global Security and Rule of Law Programme), was scientific assistant at the Karl-Franzens University in Graz, Austria, dealing with questions of constitutional, European and public international law, and assisted at various civil and penal courts in Styria, Austria.

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Ellen Kallinowsky currently heads the Global Compact Regional Learning Forum for sub-Saharan Africa with offices in South Africa. The goal of the Regional Learning Forum is to increase business services in the field of corporate citizenship and to support the development and functionality of local Global Compact networks in Africa. She joined the United Nations Global Compact Office in June 2002 as head of the Learning Forum.

Ellen became a leading expert for public/private partnership through her function as PPP-Regional Coordinator for Africa at GTZ – deutsche Gesellschaft für Technische Zusammenarbeit – a German development agency, focusing on technical assistance and capacity building.

Ellen gained extensive development experience as planning officer and project leader for community-based programmes in the GTZ Health Department. In 1996–1997, Ellen worked for GTZ as advisor to the Ministry of Health in Kenya, focusing in particular on reproductive health issues and the health sector reform programme.

From 1992 until 1996 she worked as director for projects and advocacy in the newly founded German Foundation for World Population. She was advisor to the German Government Delegation for the 1994 UN World Conference on Population and Development, Cairo.

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Daisy Kambalame is Country Manager for the African Institute of Corporate Citizenship (AICC) in Malawi. She has been working in the area of corporate social responsibility (CSR) since 2000 and the role that CSR principles can play on influencing sustainable development.

She was one of the main facilitators to work with the United Nations Development Programme (UNDP) and launch the Global Compact Network for Malawi. She is currently responsible for the coordination of this network, which has initiated a number of multi-sector partnership programmes aimed at eliminating corruption and creating opportunities in the agricultural sector.

Daisy is an expert member of the International Standards Organization (ISO) working group for the formulation of a guidance document on social responsibility, with an emphasis on stakeholder engagement and raising awareness within Africa. She is also a member of the Chairman's Advisory Group for ISO, representing NGOs from developing countries. Before joining AICC, Daisy worked as a business consultant, with a focus on CSR and social audits, as well as a production planner and statistician.

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Willem Punt has been with EthicSA since November 2001, helping to create the organizational ethics arm of EthicSA. He has been instrumental in establishing EthicSA as a credible standard-setting organization in the fields of organizational ethics management and white-collar crime prevention.

He was educated at the Universities of Pretoria and Nijmegen in the Netherlands and is currently enrolled in a master's degree programme at the University of Stellenbosch, South Africa, in ethical risk measurement.

He is an experienced facilitator and project leader and regularly engages in ethics management, training, research and advisory support services to EthicSA's international base of clients in the public and private sectors.

He has acted as guest lecturer at the Gordon Institute for Business Science, and Universities of Pretoria, the Orange Free State, and the Witwatersrand. He is also a member of the Institute of Directors of Southern Africa.

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