

# DE BEERS

A DIAMOND IS FOREVER

**Dialogue 5: Business integrity in Africa – Accountability as the basis for sustainable development**

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**What are the ethical challenges and what is the role of businesses exploring and operating in weak and unstable economies, and what can be done when unethical business or small-medium enterprises damage the reputation of the sector?**

**Key themes:**

- **The need for more comprehensive definitions of corruption:** Despite a relatively well-established body of definitions, the line between legitimate and corrupt practice can be hard to identify – particularly in places of weak governance. A key example of this is the role of leading citizens and politicians on the boards of local units of foreign mining companies in Africa. Whilst this practice, which is common in the West, would give access to legitimate influence, connections and skills, this could – under certain circumstances – make a company vulnerable to allegations of corrupt practice. As a result, clearer rules are needed to address this and other scenarios in order to help guide companies. This might be based upon a test of the interests of the government versus the interests of the individual, or the government's ability to remove that individual from his position if it so desires. Similarly donations to political parties can present similar challenges. In such cases, the best approach appears to be a fully transparent approach that offers reputational protection for companies. There is a clear distinction, however, between situations where the government is an actual shareholder in a company, and so enjoys legitimate representation, and where a company is fully owned by foreign investors, but is nonetheless subject to direct government influence on its decision making. Where there is a joint venture with the government, however, companies may have little choice as to who is represented on their boards. Another point is that where companies are required to make investments or operate with a local partner, they may similarly be constrained in choice and put in potentially compromising positions.
- **Ethical dilemmas posed by anti-corruption measures:** In many instances, there can be a fine line between petty corruption and charity, with unpaid, low-level officials seeking to feed their families. Similarly, where a company takes positive action within a community, there are potential questions to raise over the effects of this in terms of bolstering the political support of certain politicians who might take personal credit for such benefits. This is an issue in areas of both weak and strong governance and requires a test of 'public interest'.
- **Company performance can be defined by context:** Company performance can to some degree be determined by the context in which they operate, with countries such as South Africa, Namibia and Botswana offering relatively strong regulatory environments compared to other sub-Saharan African states such as DR Congo and Angola. Even then, however, some dialogue participants noted that there may be challenges, with some questioning whether Black Economic Empowerment (BEE) in South Africa potentially poses a conflict of interest in some instances due to their partial nature as well as the central role played by ANC members. Similarly, whilst Canada is considered to be very low risk in terms of corruption, there have been instances where indigenous groups have blockaded mining companies' operations in order to add to or improve the terms of pre-agreed community deals. The Canadian government has in some instances been unwilling to intervene, forcing companies to yield to protesters' demands. In another context, this could easily be characterised as extortion. Again this emphasises the need for a high degree of formality in the governance framework and transparency of the action in question.

- **The inflexibility of the “zero tolerance” approach:** Whilst general agreement can be reached in terms of the need to eradicate corruption, constraints are often placed on companies by actual conditions on the ground, as well as the imperative for economic development. This is particularly the case if the relevant location may not necessarily represent corruption challenges in relation to large-scale contracts, but does in terms of day-to-day living. Where petty corruption is unavoidable, it is not necessarily reasonable for a company to pull out in response – either in commercial terms or in terms of the economic development of that country. A broader view is needed of corruption that puts individual instances into the context of worldwide practices, takes account of the negative impacts of investments not taking place and acknowledges contextual differences. Companies need to equip their teams with the skills to deal effectively with the realities of the contexts in which they operate, rather than taking a narrow focus of ‘zero tolerance’ which may in many cases be impossible to live up to. In particular, an approach that uses cases studies and scenarios – as well as ‘resist strategies’ – may be more constructive than the imposition of absolute rules that must be adhered to in every case. Similarly, companies need to enter into dialogue with their own employees to determine the best approach, given on-the-ground contexts.
- **The need for companies to focus on both micro- and macro-level corruption:** Companies need to look at what is happening at both a macro- and micro-level of corruption when dealing with challenges in countries of weak governance. Whilst micro-level corruption is common and relatively easy to identify, it is macro-level corruption – particularly in relation to mining revenues and royalties – that potentially plays a far more serious role in undermining African development. The EITI is a good example of a means by which governments can be held more accountable with respect to resource revenues, but it would be much enhanced if companies were willing to commit to the principle of revealing comprehensive accounts with respect to each country they operate in. Micro-level corruption should not necessarily be ignored however, with facilitation payments often representing a significant operational cost. Where they are made, it may prove beneficial to companies to record them in a transparent manner as with any other operational costs in order to avoid any accusations with respect to opaque practice and to demonstrate a minimum standard of accountability.
- **Potential solutions: dialogue and civil society capacity building:** Dialogue with relevant communities offers potential solutions with respect to corrupt practices – particularly if a company is able to make itself a ‘legitimate’ voice through longstanding and constructive engagement. Furthermore, this means that companies and local communities can potentially cooperate in tackling higher level corruption through the exchange of information and the application of grass roots pressure. Equipping civil society with the means to hold officials to account and promoting understanding of anti-corruption issues will also help companies determine what is in the public interest when circumstances are ambiguous. Cooperation and dialogue with civil society will also help determine who actually represents communities. Potential financial backing for such an approach, as well as civil society capacity building with the support of NGOs, may be provided via EU and government aid – to be explored.
- **Potential solutions: Third party interlocutors and collaboration:** Gaining a “legitimate voice” in anti-corruption efforts can be assisted through third parties, such as NGOs, who can act as interlocutors seeking to balance the interests of both companies and communities. It can also relieve companies from pressure from individuals seeking to further their own interests. Third parties can also be used to provide assurance with respect to arrangements made in ambiguous circumstances either by creating an audit trail or by evaluating whether the final outcome of such arrangements were desirable or not. If a company falls under scrutiny for its past cost-benefit decision-making over potentially corrupt practices, this could be particularly helpful. Collaboration and information exchange between companies can do much to improve anti-corruption performance – including cross-sector alliances – in order to apply common standards and increase leverage with respect to corrupt individuals and groups, as well as those in government responsible for anti-corruption efforts. Common rules also offer a degree of reputational protection when dealing with potentially ambiguous circumstances. However, such collaborations can be challenged by individual companies’ desire to seek short term competitive advantage through lower standards.
- **Monitoring and impact assessment:** Ongoing impact assessments are important in countering corruption in order to ensure that efforts are effective and to avoid complacency. This requires a focus on future corruption risks and scenario planning. This approach also allows companies to put in place appropriate partnerships, whether with other companies, NGOs or civic groups, in order to ensure frameworks are in place from the start in order to deal with corruption challenges as they arise.

**How important has relatively high levels of integrity and good governance in Botswana contributed to its success, and what lessons does the country offer for elsewhere?**

**Key themes:**

- **Reasons for Botswana's exceptional good governance characteristics and prospects for their 'export':** Though it is hard to pinpoint the exact reasons for the country's low levels of corruption, there are certain factors that appear to be unique to the country and that would be hard to export, including:

- Strong social coherence;
- Culture that is antipathetic to ostentatious wealth;
- Limited colonial impact on traditional structures; and
- Small population.

Other factors that would better lend themselves to potential export include:

- Prudent spending of diamond revenues;
- A relatively educated and well paid civil service;
- A longstanding emphasis on anti-corruption by the country's leadership; and
- The involvement of Botswana citizens in the running of the economy and an associated desire to "build the nation"; and
- Strong and legitimate government.

Despite these advantages, the country is notable for the fact that civil society is not particularly strong and is concentrated on traditional power structures such as chieftainships. Similarly, such is the strength and legitimacy of the central government that this can actually help stifle criticism at the civil society and NGO level as there is a strong overlap between "citizenship and subject". Whilst resource revenues are spent prudently, there remains a large gap between rich and poor, though the situation is improving as wealth begins to trickle down further.

- **The role of business in Botswana's performance and vice-versa:** The case of Botswana suggests that the following business strategies can be used in order to improve other countries' corruption performance:
  - The holding of equity shares in the local business unit by the government;
  - The employment of local people;
  - The creation of "emotional equity" amongst local people;
  - Good performance with respect to the environmental and social impacts;
  - Protection of the value proposition of the resource in question in order to ensure continued avenues for export; and
  - Ongoing and in-depth dialogue between companies, communities and governments.

Responsible companies can export all of these factors to other locations in a way that is beneficial to both the host country and foreign investors. Botswana's relationship with the extractive sector – where there are long and high value timelines involved – suggests that companies require the level of transparency offered by Botswana in order to profit. Furthermore, Botswana is to a degree dependent on companies to protect the reputation of the products they sell in order to ensure export markets remain intact. Similarly, the country stands to benefit directly from company efforts to introduce beneficiation within the mining sector and to promote technology transfer.

- **Whether the national partnership model can be repeated in other countries:** Whilst this model can probably be repeated elsewhere, there would be challenges owing to the particularly favourable environment offered by Botswana. Joint ventures are the best means to do this as it involves the government and other stakeholders in the profit motive and encourages the company to identify and support government goals in order to lay the basis for a strong and long-term relationship. Whilst some countries in Africa such as Angola and DRC are going to involve greater challenges in terms of the transparency and probity of government partners, companies should ultimately seek to achieve the same kind of relationship as found in Botswana in order to establish mutually beneficial conditions of governance.

- **Potential ethical challenges posed by this approach:** The ethics of this approach will not always be clear-cut. For example, in South Africa the ANC represents individuals who have often sacrificed a great deal in order to create a new country and to whom it may appear unfair that new entrepreneurs are the ones who reap most of the benefits. Similarly, active members of the ANC will often include the best and brightest of black South Africa making their involvement in high level business unsurprising. In Angola many individuals in or close to government want to benefit from many years of armed struggle and this expectation is not necessarily unreasonable. However, care must be taken as to where the line is between acceptable interests on the part of such individuals and parties, and the kind of dynamics seen in Zimbabwe where the behaviour of “war veterans” backed by the government is clearly on the wrong side of the line. It will be a challenge for companies trying to try and resolve such challenges – which are often of a cross-generational nature – in a decent and prudent way. A useful test in this respect would be whether political and legal structures let ordinary citizens engage with the government and challenge its behaviour or decisions – particularly with respect to use of revenues and profits.

#### **Conclusions:**

The ability of mining companies to navigate the ambiguous nature of many of the corruption issues they face in Africa would be much enhanced through stronger collective action and the use of minimum standards to ensure the line between acceptable action and corruption is not crossed – whether in countries such as South Africa or Angola.

Companies also need to maintain strong dialogue with all stakeholders (including their own employees), help educate local communities in relation to corruption issues and use third party interlocutors. These will help balance a community, company and government interests, and to aid effective communication between all groups.

The transfer of anti-corruption information and expertise has an important part to play in guarding the ultimate interests of all groups, whilst assisting in capacity building at the grass roots level of civil society increases government (and company) accountability. Transparency offers a high degree of reputational protection – particularly for companies operating in borderline areas or where the line between legitimate practice and corruption is ambiguous. Anything else will only prompt suspicion.

Finally, World Vision and Transparency International agreed to follow up an examination of potential measures to increase the sharing of anti-corruption information as a means of improving knowledge and awareness amongst NGOs and companies facing these kinds of challenges.

#### **Next steps:**

- To provide feedback. Please send revisions to this note to: [alyson.warhurst@maplecroft.net](mailto:alyson.warhurst@maplecroft.net) by Friday 16 May to ensure the final version of this report will be uploaded to our shared websites at [http://share.maplecroft.com/Diamond\\_Dialogue](http://share.maplecroft.com/Diamond_Dialogue), <http://www.business-humanrights.org/Documents/DiamondDialogue>. Other stakeholders interested in hosting these reports are invited to contact Alyson Warhurst as above.
- To ensure insight and questions from the Diamond Dialogues are addressed in the Report to Stakeholder 2008.
- To continue the Diamond Dialogues in 2008. A programme of work is in development and we value your opinion and suggested topics for discussion. The topics likely to be covered by request from participants include: artisanal diamond mining, engagement with governments, environment (energy, climate and water).