

# Anti-Corruption: The Enabling CSR Principle

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April 2007

## Introduction

In the field of Corporate Social Responsibility (CSR) anti-corruption standards have received considerable less attention than the issues of labour rights, the environment or human rights. This is understandable, but unfortunate. It is understandable, because at first sight, the negative consequences of corruption on the living conditions of individuals are not self-evident.<sup>1</sup> Corruption is still seen by many as a problem pertaining exclusively to government officials and white-collar workers. Conversely, mainly due to the direct impact that labour rights, the environment and human rights have on our everyday lives, CSR advocates have generally given priority to the advancement of such rights.

Yet, the inattention that corruption has received from the CSR movement is also unfortunate. As a threat to society, corruption is an integral part of the CSR field, just like labour, human and environmental rights. Yet, corruption demands a different perspective. As evidenced below, anti-corruption standards should be considered as *enabling standards* without which the realisation of CSR objectives is unattainable. How can we expect to achieve improvements in the labour, environmental, and human rights conditions if the bases of the efforts are rotten by corruption?

## Anti-Corruption Policies as a Springboard for CSR

Voices urging for corruption to be addressed in the CSR movement were heard right after the Global Compact was launched in 2000 with its initial nine principles which did not address the

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<sup>1</sup> However, this is rapidly changing. The input from academic literature from a wide variety of fields is now showing the devastating effects of corruption on societies in general. This is mainly due to research conducted in the field of economics. In the past, the issue of corruption was addressed mostly by political scientists and legal scholars. Only in the last fifteen years economists have started to provide evidence in economic and monetary terms of the detrimental effects of corruption.

issue of corruption. It was soon realised that unless corruption was tackled, the Global Compact would not be effective; and as a result the tenth ‘Anti-corruption Principle’ was added in 2004.<sup>2</sup> Other CSR instruments, such as the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and business self-regulation initiatives, such as codes of conducts of several multinational corporations, also refer to the anti-corruption struggle as a shared responsibility of the business sector.<sup>3</sup>

Notwithstanding these positive developments the focus of the CSR movement on corruption continues to be incidental. In the light of the fact that business transactions free of corruption are essential in order to attain other CSR objectives, this *inattention* is all the more worrisome. Anti-corruption policies and standards enable the realisation of CSR values in two ways: first, as CSR values are mutually reinforcing, anti-corruption standards can also have a positive indirect effect on other CSR goals. Transparent business transactions guarantee a certain degree of fairness and permit the participation of different interested parties. In turn, these parties, such as civil society, the media, and labour unions, will each strive for their own interests, which will consequently result in better CSR conditions on the whole.<sup>4</sup>

Second, business practices free of corruption function as a secure and long-term basis on which to build a platform to work towards the attainment of other CSR goals. If corruption is not addressed at a pre-stage of any CSR effort, the work of CSR practitioners will be built on quicksand. This is especially true with regards to the environment. The presence of valuable natural resources may lead to bribes that affect the awarding of concessions for natural resource extraction. For example, a serious deforestation case in the region of Sundalan (Brunei, Indonesia, Malaysia, Singapore and Thailand) was based on corrupt practices. Due to the reliance on kickbacks from

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<sup>2</sup> “Business should work against corruption in all its forms, including extortion and bribery.” For the processes that lead to the addition of the anti-corruption principle, see *Roadmap for Consultation on the Potential Introduction of a Principle Against Corruption and Results of the Consultation Process*, available at [http://www.globalcompact.org/Issues/transparency\\_anticorruption/index.html](http://www.globalcompact.org/Issues/transparency_anticorruption/index.html)

<sup>3</sup> For information on the OECD Guidelines, see [www.oecdwatch.org](http://www.oecdwatch.org). For a comprehensive list and analysis of private sector codes of conducts and CSR reporting, see [www.ethicsworld.org](http://www.ethicsworld.org).

<sup>4</sup> For example, for an analysis of the mutually reinforcing effect between anti-corruption initiatives and human rights, see M. Buckley, “Anti-Corruption Initiatives and Human Rights: the Potentials”, in H.O. Sanno and G. Alfredsson (eds.), *Human Rights and Good Governance*, Kluwer Law International, 2002, p. 173-201.

illegal logging in all countries in Sundalan, the environmental problem has been difficult to tackle. Corrupt police officers and officials protect illegal loggers at the expense of local communities.<sup>5</sup> Unfortunately, well-intended CSR projects can be undermined by a corrupt background. For instance, in 2001 after allegations that a company had been used to transfer money to buy weapons for the Liberian government in violation of a UN embargo, the UN Security Council ordered the set up of a special account under an audit regime to make sure that the revenue was used for legitimate purposes. Although initially it was thought that the problem had been solved it was later revealed that the Ghana based Deloitte and Touche subsidiary had signed a secret agreement with the government of Liberia and had not carried out the audit in a transparent manner.<sup>6</sup>

Another valid example in this context is the UN Oil-for-Food programme. Designed to alleviate the suffering of Iraqi people, it was taken hostage by a few corrupt Iraqi Officials and many greedy multinational corporations. More than 2,000 companies paid over US\$ 1.7 billion in bribes during the programme.<sup>7</sup>

The above reasons make clear that anti-corruption standards are necessary conditions for any sustainable improvement of CSR. Hence, corruption should be a priority for the CSR movement. If not, resources and efforts will continue to be wasted, as corruption can always find its way to jeopardize CSR achievements.

## **The Way Forward**

In order to attain business practices free of corruption the CSR movement must take a combination of a confrontational and co-operative approach. Through a confrontational approach with the business sector, CSR practitioners will strive for reducing the margin of profit for corporations that incur in corrupt practices. This can take the form of, for example naming-and-

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<sup>5</sup> *Corruption and the Environment*, Environmental Science and Policy Workshop, Columbia University, April 2006, p. 23, available at

<http://www.columbia.edu/cu/mpaenvironment/pages/projects/spring2006/Transparency%20International%20final%20report.pdf#search=%22Corruption%20and%20the%20Environment%20Columbia%22>

<sup>6</sup> Liberian International Ship and Corporate Registry Case, *TUAC Internal Analysis of Treatment of Cases Raised with National Contact Points: February 2001-February 2006*, available at [www.tuac.org](http://www.tuac.org).

<sup>7</sup> Report by the Independent Inquiry Committee on the Manipulation of the Oil-for-Food Programme, 27 October 2005. Available at, <http://www.iic-offp.org/index.html>.

shaming initiatives or by having recourse to the ‘Specific Instances Procedure’ of the OECD Guidelines. In the latter case NGOs and Trade Unions usually bring cases before national offices called ‘National Contact Points’ against multinationals that in their operations do not comply with the OECD Guidelines. Although this procedure is not legally binding and has been subject to criticism it has triggered some positive consequences.<sup>8</sup>

However, although sometimes a confrontational approach is needed, it is usually the case that a co-operative initiative between CSR practitioners and the business sector will attain more effective and long term respect for CSR goals.<sup>9</sup> One of the advantages of the CSR movement is its strong linkage with the private sector. This constitutes the *niche* for CSR practitioners. Thus, this co-operation should be extended to increasingly cover anti-corruption policies and standards. The most important manifestation of a co-operative approach would be to conduct empirical studies to prove to the business sector the extent of damage that corrupt practices can cause them, especially in the long term. This is the so-called *business case against corruption*.

### **Highlighting the Business Case**

The reasons why businesses should combat corruption are usually divided according to an ethical or business reasoning. The ethical case against corruption does not seem to be as persuasive as the business case. This is in part due to the fact that one generally underestimates the negative effects of corrupt business practices on the everyday lives of people. On the other hand, the business case is probably more powerful in relation to the fight against corruption than with respect to issues of human rights, labour and the environment. Corruption can corrode the soul of financially efficient businesses. For example, a common corrupt practice within the private sector is the bribery

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<sup>8</sup> With regards to corruption, OECD Watch reports that up to March 2006 nine cases have been brought in reference to alleged violations by corporations of Chapter VI of the OECD Guidelines pertaining to “Combating Bribery”. See, *OECD Watch Quarterly Case Update*, Vol. I, Issue I, March 2006, available at [www.oecdwatch.org](http://www.oecdwatch.org). The Trade Union Advisory Committee to the OECD has also brought many claims against corporations, although in general they refer mainly to alleged violations of the Labour and Employment Chapter of the OECD Guidelines and only incidentally to issues of corruption. See, *TUAC Internal Analysis of Treatment of Cases Raised with National Contact Points: February 2001-February 2006*, available at [www.tuac.org](http://www.tuac.org).

<sup>9</sup> In this sense, see H. Labelle, “Civil Society and the Private Sector: Fighting corruption is good business”, in *Development Outreach*, World Bank Institute, September 2006.

by a potential supplier of an employee in charge of purchases in order to be selected as a regular supplier. In such an event, the most efficient supplier and the one providing the best cost will not be selected, which means that the company is wasting resources. Corrupt practices within the private sector are also common when hiring personnel or through embezzlement of property belonging to the company. These and other corrupt acts pertaining to the private sector can harm in many ways, and most notably financially, private sector entities, as the Enron scandal has so eloquently demonstrated. For that reason, CSR practitioners should concentrate on working together with the private sector in order to increase the level of transparency, first *within* the business sector, and second, and possibly as a result thereof, in their commercial relations with the public sector.

It is paramount to dedicate more resources and efforts to highlight the business case against corruption. A guide for companies on implementation of the Global Compact anti-corruption principle lists as part of the business case against corruption the following key reasons: legal risks; reputational risks; higher financial costs; tolerance will repeat demands; exposure to blackmail; erosion of internal trust; and a general vested interest of companies in sustainable social, economic and environmental development.<sup>10</sup> Yet, a central issue that has highly damaging consequences for the business community is not mentioned: *fair competitive markets*.

## **Competition**

An issue that demands urgent attention from both the business and CSR community is *competition*. If one company is bribing a foreign public official in order to secure a contract, competing companies will also have to incur in bribing that public official in order to remain competitive. This is the so-called prisoner's dilemma facing the business sector: "if others are doing it, I have to do it in order not to lose business opportunities". This argument is not new and was voiced repeatedly by the American business sector with regards to their European competitors after the enactment of the Foreign Corrupt Practices Act in 1977. As a result of the pressure from the

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<sup>10</sup> For more information on these reasons, see, Errath, B.; Brew, P.; Moberg, J.; Brooks, J.; Cote-Freeman, S., *Business against Corruption: A Framework for Action: Implementation of the 10<sup>th</sup> UN Global Compact principle against corruption*, available at [www.globalcompact.org](http://www.globalcompact.org).

business sector the US Government brought the issue to the OECD forum to work towards levelling the playing field in international business transactions regarding corrupt practices. As a consequence, the OECD Convention on Combating Bribery in International Business Transactions came into existence in 1997. All OECD Members and six non-Members have agreed to criminalise bribery of foreign public officials.<sup>11</sup>

Nowadays, with the raise in foreign direct investment (FDI) from emerging markets, once again international competition is unbalanced in favour of companies that incur in corrupt practices to secure international business deals. Emerging markets FDI outflow in 2005 was 17.1% of world total, compared to 12.7% in 2004 and 9.4% in 2003.<sup>12</sup> This shows a clear trend towards a greater role of multinational corporations from emerging markets, such as China, India, and Russia.

Conversely, mounting pressure on OECD Governments increasingly restricts the overseas action of multinationals from those countries. The United States is by far the leading force against corrupt business practices carried out abroad. In 2005 there have been more than 50 prosecutions in U.S. Courts against multinationals and currently more than 35 investigations are underway.<sup>13</sup>

Given the fact that multinational corporations from OECD countries cannot incur in corrupt practices abroad there is only one direction to go in order to balance the present uncompetitive situation: to lead countries from emerging markets to the path of prohibiting their multinational companies from engaging into corrupt practices in their international business deals. Evidently, this is not an easy task. Most of the emerging market countries, although they are making efforts to cut domestic corruption, have a lenient approach towards corrupt practices in businesses overseas. Lately, for example, it has been repeatedly reported that the presence of Chinese multinationals in Africa goes hand in hand with weak corporate responsibility standards. Companies from China

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<sup>11</sup> The non-OECD Members that are Parties to the Convention are: Argentina, Brazil, Bulgaria, Chile, Estonia, and Slovenia.

<sup>12</sup> *World Investment Prospects to 2010: Boom or Backlash*, The Economist Intelligence Unit, 2006.

<sup>13</sup> *2006 TI Progress Report: Enforcement of the OECD Convention on combating bribery of foreign public officials*, Transparency International, available at [http://www.transparency.org/global\\_priorities/international\\_conventions/projects\\_conventions/oecd\\_convention](http://www.transparency.org/global_priorities/international_conventions/projects_conventions/oecd_convention).

seem to be willing to use corrupt practices in order to get business deals in Africa.<sup>14</sup> Similar situations occur with the presence of multinationals from emerging economies in developing countries in Latin America and Asia.

Thus, if multinational corporations from OECD countries want to remain competitive they need to level the playing field with corporations from the rest of the world, just as it happened within the OECD region ten years ago. This requires joint efforts from the CSR movement and the business sector. Most of the existing CSR mechanisms focus on corporations from the western world and only rarely from emerging economies. Hence, it would be necessary to include emerging economies into existing CSR mechanisms.

Until now we have made reference to levelling the playing field between multinational corporations from different countries. However, corrupt business practices also distort competition between multinationals and small and medium sized enterprises (SMEs). It is true that competition between multinational corporations and SMEs is limited, however it needs to be addressed so as to erase corrupt practices from businesses at all levels.

As most efforts to combat corruption involving the private sector are aimed at big multinationals, SMEs escape from transparent business practices and thus possess a comparative advantage. This needs to be changed. For example, the implementation programme of the anti-corruption principle of the Global Compact is designed in a way that it would be impossible for SMEs to implement.<sup>15</sup> It is difficult to foresee SMEs hiring new personnel to manage new internal anti-corruption programmes, and adopting ethical codes and internal reporting procedures. All these are highly costly and it cannot be realistically expected from SMEs to embark in anti-corruption programmes if it demands them higher costs and less profit. The margin of profit of SMEs is substantially lower than the one of big corporations. Thus, private sector anti-corruption

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<sup>14</sup> In fact, China's presence in Africa might be threatening in another way. As their investments do not carry any 'conditionalities' on good governance or fighting corruption it undermines multilateral efforts. See, *Business Responsibility: The China Model*, Special Reports, Ethical Corporation, 19 December 2005; *The China Model of Development*, Ben Schiller, 20 December 2005. However, others like the economist Jeffrey Sachs are of the opinion that China gives more help to Africa and less lectures than western nations. See, *Chinese Take a Turn at Turning a Sub-Saharan Profit*, The New York Times, 18 August, 2006.

<sup>15</sup> See, *supra* footnote 9.

programmes have to be re-designed so as to add no or low costs to SMEs. Anti-corruption programmes for SMEs should be external, carried out by stakeholders in a consulting role. Most of the times it will be sufficient to make information readily available to SMEs so they can take informative decisions. To this end, more tools specifically conceived for the SME sector, such as reports or case studies, should be designed and made public.

Fighting corruption within the SME sector will not only enhance competitive markets but will also have a high impact on the fight against corruption generally. While efforts to combat corruption by big corporations have the effect of curbing grand corruption, the so-called petty corruption will be more effectively curbed by anti-corruption policies in the SME sector. Finally, given that SMEs comprise over 95% of all enterprises and account for two thirds of private sector employment,<sup>16</sup> it is vital to target corruption in SMEs' businesses in order to have a coherent and comprehensive policy against corruption worldwide.<sup>17</sup>

In dealing with corruption, both the CSR movement and the business sector should utilise a new CSR instrument: the UN Convention against Corruption. This treaty, which is not normally thought of as a CSR tool, can nevertheless prove valuable to address, generally different aspects of the fight against corruption, and particularly the levelling of the playing field in international business deals. The potential of the UN Convention is important as it already includes among its States Parties countries such as Russia and China that are absent in other anti-corruption initiatives.

### **The UN Convention against Corruption: A new CSR Tool**

Up until now the CSR movement has developed a series of tools in order to exercise pressure over the private sector to carry out their businesses while taking into account the social and environmental context. This can be achieved by utilising voluntary CSR initiatives, such as the UN Global Compact, the OECD Guidelines, the International Chamber of Commerce Anti-Corruption

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<sup>16</sup> *OECD SME and Entrepreneurship Outlook*, 2005 Edition.

<sup>17</sup> In fact, CSR overall should pay more attention to the SME sector. For an interesting report on this issue see, *Corporate Social Responsibility: Implications for Small and Medium Enterprises in Developing Countries*, UNIDO and The World Summit on Sustainable Development, 2002.



Commission, and the Extractive Industry Transparency Initiative. These non-binding CSR tools have been fairly efficient. However, in our opinion, both CSR practitioners and the business sector committed to higher CSR standards have a wider sphere of influence.

Corruption has been counterattacked through the development of an increasingly strong legal framework, both at the international and national levels, in the form of multilateral conventions, national laws and regulations.<sup>18</sup> So far, CSR advocates have concentrated on other CSR issues and have left the issue of corruption to be dealt with by law enforcement authorities. However, CSR practitioners can contribute to ameliorate the legal framework and enforcement mechanisms. The CSR movement in cooperation with the business sector should join current efforts to make of the fairly recent UN Convention against Corruption the most comprehensive and effective tool to curb corruption within and involving the private sector.

The Convention stipulates a long list of obligations and recommendations for States Parties that may have considerable impact on business practices. In this sense, *inter alia*, States must develop preventive anti-corruption policies and practices in the private sector, criminalise bribery of foreign public officials, criminalise bribery within the private sector, criminalise the embezzlement of property in the private sector, and ensure that legal persons held liable are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

The potential of the UN Convention is big, but there is a risk that it will end in dead letter unless States take action. The entry point for the CSR movement is to put pressure on Governments to implement and enforce the Convention. Moreover, part of the business community is threatened by the transparent business standards set forth in the Convention and will seek to prevent or delay its implementation. Thus, CSR practitioners, and most importantly, the business sector committed to higher CSR standards with their powerful influence over governmental policies should constitute an additional force to overcome such opponents.

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<sup>18</sup> The most notable multilateral conventions with regards to the private sector are: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the United Nations Convention against Corruption; the Inter-American Convention against Corruption; and the African Union Convention against Corruption. For an analysis of national laws and regulations against corruption, see the country reports of the OECD available at [http://www.oecd.org/document/24/0,2340,en\\_2649\\_34855\\_1933144\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/24/0,2340,en_2649_34855_1933144_1_1_1_1,00.html).

## **Conclusion**

This work has attempted to outline the importance of anti-corruption policies as a basis for an effective and sustainable CSR movement. Anti-corrupt standards and policies function as an enabling standard for other CSR principles. Thus, battling against corruption should be a priority among CSR practitioners. This can be achieved in varied forms however, we highlight the importance of the latest mechanism developed by the international community: the UN Convention against Corruption. An effective implementation and enforcement of this Convention will benefit the business sector as it will comprehensively level the playing field between business competitors. Conversely, the effectiveness of the UN Convention in turn could benefit from the collaboration between CSR practitioners and the private sector. The CSR movement possesses a privileged position as they can give life to the commitments made by States Parties by working towards turning the wording of the Convention into everyday business practice.