

ETHICS – THE CORNERSTONE OF GOOD GOVERNANCE

N. Alli

The South African National Roads Agency Limited, South Africa

alli@nra.co.za

ABSTRACT

Transparency International (TI) has identified the construction sector as one of three sectors rife with corruption. It is contended that tackling corruption is about entrenching ethical behaviour and moral integrity in the application of entrusted power.

How can power be bound by laws? What is the role of civil society for social change? What motivates people to act the way they do and can an incentive system be engineered for integrity? Measuring and understanding corruption becomes even more complex when the focus shifts from bribery to subtle forms of upstream corruption at the business-government nexus.

Governance means different things to different people. Keefer, 2004 – “the extent to which governments are responsive to citizens and provide them with certain core services, such as secure property rights and, more generally, the rule of law; and the extent to which the institutions and processes of government give government decision makers an incentive to be responsive to citizens”.

Ethics, on the other hand, is elucidated as follows by William Greider: “everyone’s ethics are defined by what they will tolerate when it is done to others”.

The matter of ethics has since found its way into legislation, both in South Africa and internationally, but laws governing conduct do not necessarily prevent unethical behaviour. This often gives rise to a moral dilemma between right and wrong / good or bad with regard to the consequences of the actions. The solution to these dilemmas can be found in peer review mechanisms, policies, standards and good governance based on ethics.

1. INTRODUCTION

Road infrastructure plays a key role in development, and government investments in this sector is high. Given the size of the investments, the opportunity for corruption can be extensive as a large number of players – constructors, consultants, material suppliers etc – responsible for the delivery of tangible goods and services are involved.

Both the public and private sector are continuously confronted with a balancing act between the complexities of technology, people, profit, resources and the environment – compounded by the challenge of doing this as efficiently and effectively as possible. It has been suggested that moral integrity is the foundation on which good governance is based; it is the best tool to face these challenges head-on. The predicament, however, relates to the effect of our actions: Are our actions ultimately harmful to people and the environment, or do they

demonstrate a serious commitment to and concern with the social, environmental and economic impacts, thereby ensuring sustainability and maximisation of the quality of life of all people?

In an attempt to address aforementioned, one needs to focus on the evaluation of conduct, actions and principles and for this we need an indicator – ethics. This paper will firstly investigate the concepts of good governance, corruption and ethics. Secondly, the relationship between ethics, governance and rule of law will be explored, as well as the dilemmas which these give rise to in our complex societies. Finally, we will need to examine the application of *ethics* in our companies or organisations, as well as possible solutions to the ethical predicaments we face.

2. GOVERNANCE AND CORRUPTION

A clear understanding of what corruption means, what is involved, the temptations that lead to becoming involved in corrupt practices and the dire consequences of such actions for the poor, is a vital first step in removing this blight on society. Measuring and understanding corruption in business becomes even more complex when the focus shifts from bribery to subtle forms of upstream corruption at the government-business nexus. This is when there is no exchange of money, but entrusted power is leveraged to build positions of influence and control. Recognizing the link with how improving governance can reduce corruption and engender a culture of probity is the foundation on which an effective strategy for detecting and deterring corruption can be laid.

Definitions of Corruption and Governance

Governance and corruption mean different things to different people. Examples of definitions used by various entities and academics are summarized below;

Australian Government, Department of Finance and Administration – website:

“The people, policies and processes that provide the framework within which managers make decisions and take actions to optimize outcomes related to their sphere of responsibility”.

World Health Organization, based on UNDP definition:

“The exercise of political, economic and administrative authority in the management of a country’s affairs at all levels.... a neutral concept comprising the complex mechanisms, processes, relationship and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences”.

Keefer, 2004

“The extent to which governments are responsive to citizens and provide them with certain core services, such as secure property rights and, more generally, the rule of law; and the extent to which institutions and processes of government give government decision makers and incentive to be responsive to citizens”.

Examples of definitions of corruption used by entities and academics:

Transparency International (TI)

“Corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them”.

Leys, 1965

“Behaviour that breaks some rule, written or unwritten, about the proper purpose to which a public office/institution has been put”.

World Bank

“Corruption is the abuse of public funds and/or office for private or political gain”.

3. ETHICS

In literature pertaining to good governance, reference is made to ethics in one form or another. Various annotations refer to ethical conduct, ethics codes, ethical behaviour, etc. But what does the word “ethics” entail? From a philosophical perspective, ethics are usually associated with moral principles (*The Internet Encyclopaedia of Philosophy: 2004*). Underlying this philosophy, are the concepts of acceptable and non-acceptable behaviour.

The Webster’s Dictionary (1913: “ethics”) defines “ethics” as “rules of practice in respect of a single class of human actions – whether true or false”. Although ethics, in an analytical sense, were first explored by Greek and later Roman philosophers including philosophers such as Socrates, Plato and Aristotle, this field of research has expanded to modern-day meta ethics (studies concerned with the origin of ethics), normative ethics (taking a more practical stance and arriving at moral standards) and applied ethics (examining specific controversial issues e.g. abortion, animal rights etc.) (Free definition: 2004: available at <http://www.free-definition.com/Ethics.html>>Ethics).

Defining ethics, however, is not as simple as it appears to be. Various definitions are available, classifying “ethics” as an all-encompassing term or minutely detailed in respect of one of the aforementioned classifications. However, when the origin of the word from the Greek “ethos” is examined, the true meaning of ethics comes to the fore. Ethos, meaning moral character, depicts the social rules or etiquette of a society, holding with it the implied tension between the moral choices of the society versus the choices of the individual within the society. The words of William Greider immediately come to mind: “Everyone’s ethics are defined by what they will tolerate when it is done to others.” The complexities and tensions within the concept of ethics seem to be best defined by this statement.

4. ETHICS AND GOOD GOVERNANCE – A FUTILE EXERCISE?

It is evident from the above that good governance and ethics imply certain stresses and tensions. For this very reason, psychologists such as Maslow, Rogers and Giligan examined ethics in order to try and codify rational behaviour. Due to said tensions, no consensus could be reached on such a codification. Even in politics, various political scientists moved away from ideology and looked at ethics as the solution. As far back as the late 17th century, Robespierre (1794:1) coined the phrase “political morality”, i.e. acknowledged principles in accordance with which government could serve the interests of its people. The dilemma still exists despite these attempts.

The mere existence of groups within societies, i.e. groups with their own codes of morality or moral behavioural patterns, puts morality at odds with itself. The question most frequently asked is whether morality only refers to the guide put out by a particular society, or whether it includes or excludes the codes or morality of the groups contained within?

When compared with the good governance dilemma, our challenge becomes even greater. The pursuit of profit often leads to ethical conduct being neglected. Lobbying, circumventing the law and pedalling influence have become the order of the day to ensure profit. Philip Atkinson (1998:1) compares our behaviour with that of the growth of an infant. A sense of ethical and moral behaviour is absent at birth. Small children enjoy the affections of most people and these unrestrained affections could lead to the creation of immoral humans or selfish people. It is through restraint and the discovery of patience, endurance and the need for self-sacrifice that we become moral beings. In business, the same applies. We constantly need to be aware of the needs of others, have respect for the rule of law; the community within which we operate and the desire to be a responsible corporate citizen - all of which can only be developed through a code of discipline.

Thus, even if we are faced with moral dilemmas, anomalies and paradoxes, these codes of discipline serve as general behavioural guidelines.

5. QUALITY OF LIFE, LEGISLATION AND ETHICAL BEHAVIOUR

There is an intrinsic relationship between the quality of life of citizens of a country, the legislation governing the conduct of its citizens and the mores and norms of society. These include the norms of good behaviour in the Civil Service. The advent of democracy in South Africa confronted South Africa with the challenge of redressing the legacies of the past. These included the development of various state owned enterprises with legislation providing for accountability and sound management within a developmental state.

But how does this pertain to the concepts of good governance and ethics? The South African Constitution - and especially section 195 thereof – concerns itself with the very nature of principles relating to good governance and ethics. These principles are widely regarded as both a code of ethics as well as a guide to good governance. This section states:

(1) Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

- (a) A high standard of professional ethics must be promoted and maintained.
- (b) Efficient, economic and effective use of resources must be promoted.
- (c) Public administration must be development-oriented.
- (d) Services must be provided impartially, fairly, equitably and without bias.
- (e) People's needs must be responded to, and the public must be encouraged to participate in policy-making.
- (f) Public administration must be accountable.
- (g) Transparency must be fostered by providing the public with timely, accessible and accurate information.
- (h) Good human-resource management and career-development practices, to maximise human potential, must be cultivated.
- (i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

Further to this, a number of new laws were introduced to counteract the legacies and mistakes of the past, for instance:

- Prevention of Organised Crime Act No 121 of 1998 (anti-corruption measures)
- Companies Act, No 71 of 2008 (codifies the conduct of companies including not for profit companies)
- Insider Trading Act No 135 of 1998 (conflict of interest, fair business practices, honesty)
- Employment equity Act No 55 of 1998 (promotion of development of human capital)
- Labour Relations Act No 66 of 1995 (employment practices between employees and employers)
- The Public Finance Management Act, No 1 of 1999 (promotion of sound management of expenditure, assets and liabilities in the institutions to which the Act applies)
- Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000 (fair treatment of employees, anti-racism etc.); and most recently
- Prevention and Combating of Corrupt Activities Act, No 12 of 2004

However, as mentioned, legislation is often not enough to prevent immoral and/or unethical behaviour. As additional aid in this regard, various other guides have also been commissioned. These include, *inter alia*, The King Report on Corporate Governance, 2009 (King III) and the Protocol on Corporate Governance in the Public Sector (approved by Cabinet in September 2002).

The need for King III

King III became necessary because of the new Companies Act and changing trends in international governance. As with King I and King II, the King Committee endeavoured to be at the vanguard of governance internationally and this has again been achieved by paying attention on the importance of reporting annually on how a company has both positively and negatively affected the economic life of the community in which it operated during the year under review. In addition, emphasis has been placed on the requirement to report on how the

company intends to enhance those positive aspects and eliminate or revolutionize any possible negative impacts on the economic life of the community in which it will operate in the year ahead

King III has broadened the scope of corporate governance in South Africa with its core philosophy revolving around leadership, sustainability and corporate citizenship. The King III Report, 2009 on governance states that the governance of corporations and government departments can be on a statutory basis or as a code of principles and practices, or the combination of the two. King III, like the 56 Commonwealth and 27 EU countries, has adopted a different approach. Rather than adopt the Sarbanes-Oxley approach of 'comply or else' regime they have adopted a 'comply or explain' regime, in addition to certain governance issues being legislated. The King III recommendations are particularly pertinent in light of the new Companies Act (no 71 of 2008). The new Act now deals explicitly with and sanctions corporate governance.

King III

- Principles-based
- Risk-based approach
- Risk Management
- Sustainability
- Innovation
- Social transformation
- Apply or explain
- The concept of combined assurance
- Alternative dispute resolution and stakeholder relationships
- Integrated Reporting and Disclosure
- IT governance and IT risk management
- Compliance with laws and regulations

The two principles are highlighted.

- **Sustainability** is now the primary moral and economic imperative and it is one of the most important sources of both opportunities and risks for businesses. Nature, society, and business are interconnected in complex ways that need to be understood by decision makers. Incremental changes towards sustainability are not sufficient – we need a fundamental shift in the way companies and directors act and organise themselves.
- **Social transformation** and redress is important and needs to be integrated within the broader transition to sustainability. Integrating sustainability and social transformation in a strategic and coherent manner will give rise to greater opportunities, efficiencies, and benefits, for both the company and society.

The question, however, remains: If laws and codes are not sufficient to determine human behaviour, what else needs to be done?

6. THE SOLUTION – GOOD GOVERNANCE?

As alluded to earlier, the challenge facing all societies is to create a system of governance, which promotes, supports and sustains human development and quality of life. The question arises whether the solution to the aforementioned challenge is not linked to good governance in some way or other. Governance, which includes accountability, covers the whole spectrum of practices within an institution to ensure that the outputs and activities meet the intended goals and standards. Furthermore, that it results in a behavioural and culultural change of the individual and company. In order to achieve this objective, companies – and their Boards in particular - are provided with basic guidelines, such as:

6.1 Fiduciary Obligations

Board members are expected to adhere to fiduciary obligations, which relate to the abuse of power and conflict of interest. These are, *inter alia*:

- Acting in good faith and in the best interests of the company.
- Not using one's position or its privileges for personal gain or to improperly benefit another.
- Not using confidential information for personal gain or to improperly benefit another.
- Disclosing to the Board any direct, indirect, personal or business interests one might have, which also includes those of one's spouse, partner or close family members.
- Recusing oneself from meetings when such matters are being considered.

In addition to ensuring an acceptable code of conduct, Board obligations also extend to the quality of deliberations and decisions derived at. Moreover, a Board is compelled to ensure that the necessary systems are in place to guarantee adherence to the requirements of efficiency, effectiveness and transparency, so as to render value to its product or service.

Procurement has long since been recognised as one of the main areas of concern relating to unethical behaviour - and in some cases to downright corruption. In this instance, the fiduciary obligations of a Board and its members ensure fair, equitable, transparent, competitive and cost-effective procurement measures. Section 217 of our Constitution impresses the importance of this principle.

Finally, a Board also has the responsibility of applying its mind to the matters at hand. This might seem easily attainable, until one considers the duties involved. The Board, for instance, needs to ensure that information requiring a decision is relevant, sufficient, clear and all encompassing. For the purpose of a decision, the Board should be *au fait* with all relevant legislation – which in turn places a huge burden on all members.

6.2 Liability and Accountability

The concepts, *liability* and *accountability*, are often regarded as synonyms. However, whereas *liability* refers to a legal obligation, *accountability* pertains to the obligation of being answerable to someone. Simply put, legislation (and/or common law) is used as the basis for determining liability. This implies that any action, or absence thereof, is regulated in terms of law. Contravention of the relevant law will deem one liable. Understandably, this becomes an additional responsibility for decision-makers.

Contrary to the above, *accountability* is not always regulated by law. In this instance, both ethical behaviour and good governance provide the discipline to behave and act in such a manner as to be accountable for one's behaviour and actions.

6.3 Peer Review Mechanisms

Recently, Peer Review has become significantly important to ensure transparency, good governance and ethical behaviour. NEPAD, for instance, has as one of its main priorities the implementation of a Peer Review mechanism within Africa to provide guidance to countries and evaluate principles of good governance, equality, human rights and respect for democratic processes. Not only will this mechanism provide a benchmark for evaluation purposes, but it will also allow countries to gain experience from their peers and aid the development of improved systems.

Applying the same mechanism to our companies and organisations is certainly worth considering. In following suit, we can compare experiences, share commonalities and together develop better systems and guides to ensure that our actions are ethical, moral and reflective of best practice at all times.

7. PUBLIC SECTOR VERSUS PRIVATE SECTOR

When comparing good governance in the public sector to that of the private sector, a number of interesting distinctions can be made. The first obvious difference relates to basic operating principles and/or the environment in which the two sectors are active. The public sector operates mainly on the basis that its actions should always be in the best interest of the society it serves, and furthermore, comply with government policies. The private sector, on the other hand, is focused on profitability and the best interests of its shareholders. Flowing from this, the actions of and decisions made within the public sector (in most instances) have an influence on more lives than those of the private sector. One needs to bear in mind that the public sector, by virtue of its stewardship of taxpayers' monies, should be of service to society as a whole.

Government has recognised the significance of this responsibility and therefore subscribes to good governance (also known as corporate governance). Although the private sector also subscribes to corporate governance, the major difference lies in the application thereof. The public sector is governed by, inter alia, the Public Finance Management Act, 1999 (PFMA), which has as its ultimate goal not to aim for, or work towards accountability and sound management – but to secure it.

One might argue that the PFMA is just another Act. However, in comparing the obligations of directors in the respective sectors, the following is evident: The director in the private sector needs to take cognisance of the Companies Act and the King Report on Corporate Governance. The director in the public sector needs to take note of the aforementioned, the PFMA and its regulations, as well as the Protocol on Corporate Governance in the Public Sector. This list excludes all other legislation applicable to the specific organisation – in many instances even its founding legislation. And when examining the PFMA closely, the penalties imposed on public sector directors are more grave than those applicable to directors in the private sector. For instance, if fiduciary, general and reporting duties are not exercised

properly; this could lead to a prison sentence of up to five years. The question arises whether the private sector is not lagging behind in our common quest of good governance.

In addition, Government promulgated the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004). In order to protect our rights enshrined in the Bill of Rights, this legislation was introduced to strengthen Government's measures to prevent and combat corrupt activities. This Act applies to both the public and private sector - and special mention is made of directors' responsibilities in chapter two of the Act. Government and the public sector are not only bound by legislation to ensure good governance, but certainly are far more active in ensuring ethical and moral behaviour.

By no means generalising, it certainly seems as though the private sector is not as active in promoting good governance. The ever-increasing interaction between the public and private sector, however, now necessitates the stepping up of good governance in the private sector.

8. CONCLUSION

South Africa undoubtedly is at a critical junction in the life of its young democracy. We have the nation's attention and it therefore becomes imperative that we remain vigilant in protecting our hard-won freedoms. Unethical behaviour not only stunts growth and robs the poor, but it inhibits investment and reduces public trust.

Our efforts, obligations and general conduct must ultimately culminate in practice that respects the dignity of the individual, but also promotes and supports sustainable human, economic and environmental development. Good governance is based on ethical best practice, which provides us with guidelines in respect of the optimum use of resources, both monetary and human, to ensure the effective and efficient working of our organisations. The institutions and organs of civil society must therefore be strengthened to ensure that our democratic achievements are not sacrificed at the altar of unethical practices.

REFERENCES

1. Lawes, A. 2004. <http://www.itsmf.com/bestpractice/aboutbp.asp>
2. The Department of Trade and Industry of the United Kingdom. 2004. <http://www.dti.gov.uk/bestpractice/index.htm>
3. Drummond, T. 1994. A Brief Summary of the Best Practices in Teaching. North Seattle Community College.
4. Robespierre, M, 1794. On the Principles of Political Morality, February 1794.
5. World Bank Group, 2009. Transport Papers – Deterring Corruption and Improving Governance in Road Construction and Maintenance, September 2009.
6. Institute of Directors, Southern Africa, 2009. King III Report on Governance for South Africa.
7. Transparency International, 2009. Anti-Corruption Research News, Issue 1, November 2009, available at www.transparency.org
8. Atkinson, A. 1998. A Study of our Decline – The Role of Morality available at www.ourcivilisation.com/moral
9. Free definition. 2004: available at www.free-definition.com/Ethics.html
10. The Internet Encyclopedia of Philosophy: 2004. available at <http://www.iep.utm.edu>
11. Microsoft. 2004: available at <http://www.microsoft.com/windows>
12. Webster's Dictionary. 1913. available at www.websters-online-dictionary.org