OECD

THE GLOBAL COMPACT

TRANSPARENCY INTERNATIONAL

Alliances for Integrity –
Government and Business Roles in Enhancing African Standards of Living

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March 7-8, 2005

Jointly organised by the Investment Committee of the Organisation for Economic Cooperation and Development (OECD), the New Partnership for African Development (NEPAD) and the United Nations Global Compact in partnership with Transparency International

ISSUES FOR DISCUSSION

The following issues for discussion are proposed by the conference sponsors. They are designed to stimulate discussion. Programme participants are invited to take them into consideration and to introduce their own issues and concerns.

Day 1	**7 March 2005**

Plenary session. The role of transparency in achieving Africa's development goals

If the countries of Africa are to meet the Millennium Development Goals (MDGs), both the public and private actors will have to assume their responsibilities and to interact constructively to promote development. The private sector will need to create wealth and the public sector to support this process (e.g. through protection of property rights) and to provide other services that enhance the quality of life (e.g. through provision of appropriate regulation and social services). All countries face an ongoing challenge of promoting transparency, integrity and accountability – this session explores how the Africa is meeting this challenge and how this affects its development prospects.

- Are integrity, transparency and accountability in the private and public sectors necessary supports for meeting the MDGs in Africa and elsewhere?

- Does the rapid development of the international, regional and national integrity framework point to the emergence of a global consensus on the need to promote integrity in private and public life?

- Does the considerable involvement of African governments, regional organisations as well as of business and civil society organisations in these initiatives indicate widespread support in Africa for promoting integrity, transparency and accountability[1]?

- Do participants agree that promoting transparency, integrity and accountability is a permanent challenge for all countries and that the particular challenges countries face depend on their economic structures, level of development, institutional framework, and other regional and national features?

- Is there an African (that is, continental) dimension to the challenge of enhancing transparency, integrity and accountability or do the regions and countries of Africa face widely different challenges?

  - What is an appropriate allocation of roles in promoting transparency and integrity?

  - Among international organisations, regional and national organisations?

  - Among business, government, NGO and trade union actors?

- Is international cooperation in support of this emerging framework effective? What could be done to improve it (e.g. enhanced mutual legal assistance – including asset recovery -- to and from African countries)?

- Are OECD governments and international organisations doing all they can to help Africa to fight corruption (e.g. by ensuring that overseas development aid is managed with integrity)?

Panel discussion – What are the practical implications for business of the emerging integrity framework?

The framework for supporting private and public transparency, integrity and accountability has been developing rapidly at the international, regional and national levels. Noteworthy developments include: the UN Convention against Corruption, further work on the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions and the African Union Convention on Preventing and Combating Bribery. This session focuses on what this emerging framework means for conducting business in Africa:

A multi-layered integrity framework appears emerging that involves international, regional, national and sectoral initiatives (some of these are described in the Panel sessions).

- Is business aware of its new commitments and legal obligations under this emerging framework?

- Are these initiatives starting to have a noticeable effect on the way business is conducted?

- What are the strengths and weaknesses of the existing framework in the African business context?

- Can participants cite areas where there is a need for further development in the framework?

[1] Thirty-two African countries have signed the UN Convention against Corruption, xx have signed the African Union Convention and South Africa has asked to adhere to the OECD Convention (its request is currently the subject of active consideration) .

Breakout Sessions – How can the private sector and the public sector work together in the fight against corruption?

Break Out Session 1.1.: – Defining Corporate and Government Responsibilities

- The mission of the OECD is to promote the effectiveness of market economies and of public policy. In carrying out this mission, it produces norms describing appropriate public and private sector roles and conduct. With respect to the role of the business sector, the OECD view is that its core responsibility is to create wealth by developing value-maximising investment projects. At the same time, businesses have to comply with law and with other expectations that might not be written down in law books. Managing for both value-creation and for legal and ethical compliance requires significant expertise. The OECD Guidelines for Multinational Enterprises and the OECD Corporate Governance Principles provide guidance for companies (and others) in these areas.

  – Do participants wish to comment on this definition of corporate responsibility?

  – Do they agree that business compliance with law and other societal expectations is a major management function that requires investment in management and reporting systems and in developing work-force expertise and commitment?

- The Transparency International Business Principles formalise good business practices for countering bribery. These include board level responsibility; appropriate structuring of relations with business partners (e.g. subsidiaries, agents, suppliers); effective human resource management, training, internal controls and audit and monitoring and review.

  – When these management practices are adopted by companies headquartered in the OECD, do they make a difference in the way business is conducted in Africa? Alternatively, is there a gap between what headquarters says and what happens in the field?

  – OECD research shows that investment in such systems is a major trend in international business. Have African-based companies participated in this trend?

- Governments can help companies be responsible by: 1) providing a framework for the protection of civil, political, social and economic (including property) rights; 2) providing effective public services (e.g. appropriate regulation so that companies know what is expected of them).

  – What are the implications for "corporate responsibility" when governments are unwilling or unable to take up their responsibilities?

  – In such circumstances, do companies have extra responsibilities (that is, can they and should they seek to "make up" for things that the government is not doing)?

  – If so, what "extra" responsibilities do they have (e.g. should they observe a higher standard of transparency; should they say no to business opportunities that are not structured so as to conform to international standards in such areas as transparency and choice of business partner)?

Break Out Session 1.2. Public/private interfaces – how can corruption be avoided?

Many African countries have large, unmet needs for infrastructure. Meeting these needs will require effective public-private partnerships. Structuring these partnerships so that they are transparent and accountable will be a challenge. Such challenges arise in the many areas where public sector and business activities overlap -- privatisation, companies with mixed public/private ownership, public/private joint ventures, outsourcing of government services and public procurement. Political engagement by companies is another area of overlap that has sometimes been associated with problems, in African and elsewhere.

- Do these overlaps between public sector and business activities pose particular transparency/integrity challenges?
- If so, what private and public actions are needed to meet these challenges?
- Are there particular sectoral dimensions to the integrity issues associated with public-private partnerships in infrastructure development (for example, are integrity issues associated with public-private partnerships different in the energy sector than in telecommunications, water, etc.)?
- Is there a need for formalising good practice for both public and private actors in such areas of privatisation, competitive tendering, public procurement?
- Is enough known about political engagement by companies in an African context?

Day 2 8 March 2005

Plenary session. Business perspectives on integrity and transparency

The integrity of businesses and markets is central to the vitality and stability of economies and is a necessary underpinning to successful economic development. The private sector is a key player in any effort to enhance transparency, integrity and accountability. Day 2 takes stock of business efforts in this area.

- One of the UN Global Compact's Policy Dialogues[2] notes that business initiatives should not undermine governments' willingness and ability to assume their own responsibilities. This echoes themes developed by business, trade unions and NGOs during implementation of the OECD Guidelines for multinational enterprises – no one wants a *de facto* privatization of public sector responsibilities.
  - Is there any reason to be wary of such a *de facto* privatization in an African context?
  - Has Africa-based business been, on the whole, a progressive force in moving the integrity agenda forward?
  - Are there suggestions for how Africa-based businesses can improve their contributions in this area?
  - What is the scope for African-based businesses to forge alliances with other partners -- civil society and trade union partners?

2 See "the Role of the Private Sector in Zones of Conflict' www.unglobalcompact.org

Breakout Sessions – Good practices and examples of company policies

Break Out Session 2.1. Corporate Governance – Creating value with integrity

Effective corporate governance has proven to be an elusive goal for many companies. This session explores the African dimension of this global problem.

- One of the most striking lessons of recent years is that conflicts of interest are widespread and can often lead to behaviour detrimental to shareholders, investors and stakeholders. Is this as much of a problem in African countries as it is in the rest of the world? If so, is there a specifically African dimension to conflict of interest?

- The OECD Corporate Governance Principles define responsibilities for the Board of Directors that include establishing a code of corporate ethics, ensuring compliance with laws and standards and oversight of internal control systems for financial reporting. Are these recommendations relevant for African-based companies?

- The internal and external audit functions are crucial for financial market integrity. Recent years have shown failures in these functions in many countries. Generally speaking, do these processes work well in African countries? Do governments and businesses need to take steps to strengthen audit processes?

- The case study of OECD-based investors in pre-reform Democratic Republic of Congo showed that certain key investors were closely held private companies (sometimes including off shore components)? For some of these companies, it was sometimes not possible to obtain even basic business information (e.g. about ownership). Do such companies contribute to transparency problems? If so, what can be done to mitigate such problems (e.g. should public sector entities such as state-owned enterprises refuse to deal with companies that do not observe high standards of financial and non-financial transparency)?

Break Out Session 2.2 Conducting business with state-owned enterprises

State-owned enterprises are prominent features of many economies, in Africa and elsewhere. OECD research shows that, while state-owned enterprises can sometimes be an effective way of achieving public goals, they can also generate inefficiencies and non-transparencies.

- The OECD Corporate Governance Principles state that the corporate governance framework should 'protect and facilitate the exercise of shareholders' rights.' Is there a need to enhance protection of the rights of African citizens (who are the ultimate shareholders of "their" state-owned companies) by improving governance of state-owned enterprises?

- Should state-owned enterprises be held to internationally-accepted corporate governance standards (e.g. on board selection, avoidance of conflict of interest, audit, reporting, etc.)? {Note: the OECD is in the process of finalising the OECD Guidelines on Corporate Governance of State-Owned Assets, which apply the principles established in the OECD Corporate Governance Principles to state-owned enterprises).

- Should OECD-based companies conduct business with state-owned enterprises that do not adhere to basic transparency norms (e.g. with respect to internal and external audit, board selection, avoidance of conflict of interest)?

- If private companies do conduct business with weak-governance state owned enterprises:

- Do they have an extra duty of care to ensure that they are not complicit in doubtful operations? What would might such an extra duty of care consist of (extra duty of transparency? More rigorous due diligence in assessing the risk of conducting business with the state-owned enterprise)?

- Should companies involved in such business relations ensure that their commercial and financial transactions conform to the arms-length rule even if this is not required by law or by financial rules in the host country?

- The OECD case study of investors in pre-reform Democratic Republic of Congo shows that OECD-based investors sat on the Boards of Directors of mixed public/private companies that did not observe international governance standards (for example, in relation to the structure of the board of directors, avoiding conflict of interest, external and internal audit and reporting).

  - Should OECD-based companies be encouraged to promote better governance practices in such mixed-ownership companies?

  - Do other companies (e.g. accountancy firms, banks) and other institutions (e.g. international financial institutions) have a role in promoting better governance in the state owned enterprise sector or are their responsibilities limited only to those defined in their audit contracts?

Break Out Session 2.3. Business recommendations to the public sector

- OECD-based companies often claim that while the OECD Convention significantly increases deterrence for the supply side of bribery, little has been done to enhance deterrence on the demand side (that is, for people who ask for or accept bribes) – their view is that, for the most part, the demand side still operates with relative impunity[3].

  - Do participants agree with this claim?

  - Business has requested that OECD governments assist it in dealing with the demand side of bribery and extortion? How active still is this issue?

  - What can African and OECD governments and civil society do to assist companies in the making their contribution to the fight against corruption more effective?

- Business has mentioned that it often receives information on solicitation that it would like to make available to anti-corruption practitioners.

  - Does business have a role in speaking out when it is aware of wrongdoing of this sort?

  - What are the risks for business in speaking out in this way and how can these risks be mitigated?

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3 See, for example, the 2004 Annual Report on the Guidelines, section VI.c, pages 27-29.