# 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).

## 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,

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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.

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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:
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> - 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]

*"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.*

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]

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:

*It is essential to reconcile legal formality with the need for cooperation, compliance discussion and informal information exchange.*

**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

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**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**

### Establish new rules
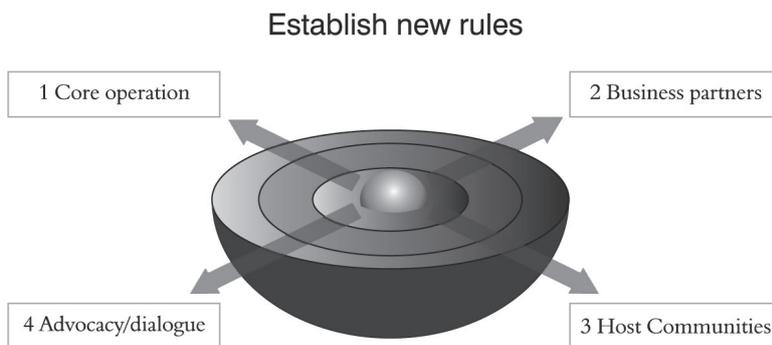


Prince of Wales International Business Leaders Forum, Janet Breeze, "Corruption: Sharing What Works" (2002) page 10. TESEV is an independent think-tank which forms a bridge between academic research and the policy-making process. TESEV

## 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.