Ethics Institute of South Africa

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TOTAL

United Nations Global Compact
Case Study

Creating a culture intolerant of fraud and corruption In Total South Africa (Pty) Limited DRAFT 1

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1. Background

1.1 Total South Africa profile

Total South Africa (TSA) is a private, unlisted company and subsidiary of the Paris-based Total Société Anonyme (TotalSA), which is listed on the pan-European stock exchange, Euronext, and the New York Stock Exchange (NYSE). The term 'Société Anonyme' refers to a joint stock company in European company law.

TSA holds 50.1% of the shareholding and Johannesburg Securities Exchange (JSE) listed *Remgro* holds 24.9%. The balance of 25% is held by TSA's black economic empowerment partner, *Tosaco*. TSA has subsidiaries in Botswana, Namibia, Lesotho and Swaziland.

In addition to sales in the industrial and commercial markets, TSA has a retail network that includes approximately 530 service stations across South Africa.

TSA biographical data

Sector:	Private
Organisation type:	Private Company (French parent dual-listed on CAC40 and NYSE)
Industry:	Petroleum and retail
Population:	Approximately 1600 employees
Leadership:	CEO/Managing Director
Governance:	Compliant with the Second King Committee Report on Corporate Governance in South Africa (*King II*) best practice guidelines (voluntary compliance with *King II*). Non-executive Chairperson governs a board predominantly populated with independent non-executive directors. Subject to US legislation such as the Foreign Corrupt Practises Act (FCPA) and Sarbanes-Oxley Act (SOX) because of NYSE listing
Scope:	Serves an extensive consumer base in southern Africa, with the largest being in South Africa.

***Box 1:* TSA Biographical Data**

1.2 Ethics Institute of South Africa and TSA

TSA is a member of the Ethics Institute of South Africa (EthicSA). Early 2006, EthicSA was contracted to assist with an organised programme to create and maintain an organisational culture intolerant of fraud and corruption. This required the development and implementation of an ethics management programme within the South African operations. It is anticipated that the ethics management programme may take 18 months to implement.

The ethics management programme comprises:

- Securing senior management commitment to a formal process of promoting responsible conduct;
- Codifying TSA's values into a unique TSA Code of Ethics (that differs, but compliments, the TotalSA Code of Ethics);
- An extensive awareness programme aligned with the TSA Code of Ethics; and
- An independent assessment of progress at the end of the awareness programme.

What are the Foreign Corrupt Practices and Sarbanes Oxley Acts?

The *Foreign Corrupt Practices Act (FCPA) 1977, as amended 1998,* is US legislation making it a criminal offence for US companies, or, since 1998, entities with a US public listings (like on the NYSE), to exert any form of inappropriate influence with the aim of gaining some form of undue benefit from a foreign (non-US) government or its representatives.

The US lobbied its major trading partners and by 1997 the US and 33 other countries signed the Organisation of Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This served as a formal undertaking that legislation similar in effect to the FCPA would be enacted in these signatory countries. The FCPA also requires foreign US-listed entities to adhere to US accounting practices. The corruption prevention and accounting provisions of the FCPA operate in tandem and provide legal force to compliance with all US laws containing accounting prescriptions.

Currently, the FCPA excludes corrupt dealings with private-sector non-US entities.

The *Sarbanes-Oxley Act, 2002 (SOX),* was formulated and signed into law in the US as a result of the Enron and other major corporate scandals. Foreign companies, by virtue of a US public listing, need to comply with most elements of SOX. Some speculate that SOX was formulated specifically to counter future defence arguments, similar to those put forward by the former Enron CEO, the late Ken Lay, that he was ignorant off, and was therefore not liable for, what was being perpetrated in his organisation. It sets up a series of significant and onerous provisions, requiring of senior management to vouch for the integrity of the organisation's internal risk control and the truthfulness and materiality of its financial reporting. This culminates in significantly increased personal liability, jointly and severally, for directors. Importantly, through section 406 of the act, it is a legal requirement to have in place a Code of Ethics applicable to financial officers.

***Box 2:* The Foreign Corrupt Practices Act and Sarbanes-Oxley Act**

1.3 The United Nations Global Compact and TSA

TotalSA is a signatory to the Global Compact but TSA is yet to become a signatory of the local, southern African chapter of the Global Compact. As we shall discuss, its vision, mission and espoused values are in line with the principles of the Global Compact, since it aspires to good corporate citizenship and creating and maintaining an organisational culture intolerant of fraud and corruption.

TSA certainly needs to be encouraged to go through the formalities of joining the local Global Compact chapter.

1.4 Method of analysis

This article was based on data obtained from desktop research and personal interviews. We also rely on anecdotal evidence collected during ongoing advisory engagements with TSA.

We are fortunate that TSA has been forthcoming in making information available to us. In particular, a research report conducted by the *Good Corporation*, based in London, during 2005, was helpful in identifying some of the values and vulnerabilities within the organisation. We will periodically refer to this report in this article.

1.5 TSA: *From Good to Great*?

This case study analyses how TSA is developing an ethics management plan to support a TSA Code of Ethics setting clear boundaries in guiding responsible conduct within and beyond the organisation. The aim is proactively to build and sustain an organisational culture intolerant of fraud and corruption. TSA has adopted the slogan "*From Good to Great*" to describe this initiative.

As a petroleum company, dealing in a non-renewable and increasingly scarce resource, often extracted from parts of the world characterised by political unrest and poor governance, there are a number of imperatives that should move management to adopt a formal process of institutionalising ethical values within the organisation.

1.5.1 Legal imperatives

Legislation, both international and South African, embraces the concept of increased liability, jointly and severally, for directors. The FCPA specifically makes it a prosecutable offence to commit acts of corruption with non-US governments (see *Box 2*, above). By 1998, the FCPA was amended to include entities with US-based public listings. By the late 90s the OECD followed the same course by binding its members to a widely adopted convention, essentially based on several of the principles of the FCPA. Remaining on the international front, SOX, applicable to US and US-listed entities, introduced stringent internal risk control and financial reporting requirements.

In addition, and in keeping with international trends, the *South African Prevention and Combating of Corrupt Activities Act*, 2004, makes corrupt South African business activities, conducted beyond its borders, liable for prosecution within South Africa.

From the perspective of non-US companies with a NYSE listing, like TotalSA, the FCPA and SOX significantly increased the liability of directors on the South African front. The proposed revisions to the new *Companies Act* will support this expansion of personal legal accountability, not just on an individual basis, but both jointly and severally. This means that a director, deemed negligent in failing to uncover and deal with fraud and corruption committed by fellow board members or senior management, may also be held liable for losses that may accrue because of such events.

The last thing one wants is to have one's assets attached to pay for a class action suit brought by disgruntled investors, angry about the share price plummeting after it had became known that the CFO was stashing away company money on some island known for its good beaches and lax banking laws.

Therefore, significant corrupt activity without reasonable preventative control may have significant legal implications for individual directors even though they may not be party to such unethical conduct. The above-mentioned legislation requires directors to know, or indicate reasonable measures proactively to detect fraud and corruption within the organisation. Therefore, the legal imperative for building an organisational culture intolerant of fraud and corruption should be a major incentive as it may act as a type of insurance policy, hedging director liability.

Therefore, an ethics management programme, especially a Code of Ethics applicable to senior management and the rest of the organisation, may be considered a reasonable response to limiting individual legal liability of directors.

A director told the author the following during an executive management committee presentation:

> "It may become less and less prudent to sit on the board of a company that doesn't provide directors with the security of proactive ethics and corruption prevention management".

1.5.2 Regulatory imperatives

Apart from the myriad regulations governing the fuel industry and similar industrial complexes, TSA needs to contend, through their French parent, TotalSA, with listing requirements of the NYSE, Euronext, the US Securities Exchange Commission provisions, and the US Federal Sentencing Guidelines for Organisations (FSGO) that provides, prescriptions for instituting an ethics management programme.

In South Africa, the self-regulatory suggestions of the Second King Committee Report on Corporate Governance in South Africa 2003 (*King II*) refer with approval to the FSGO as providing a framework for South African organisations endeavouring to institute an ethics management programme.

Importantly, a common element among these regulatory bodies and *King II* is the call for organisations to codify and promote ethical values throughout the organisation.

As part of an organisation effectively straddling the planet, TSA, is exposed to global regulatory influence. Global exposure requires a response that satisfies local but also global best-practice standards. Whether here in South Africa or abroad, the highest ethical standard is the benchmark to attain, even if local standards may be lower. This would mean that TSA should take the FSGO guiding principles not just as voluntary aspirations, as described in the *King II*, but with the same force as if they are supporting law.

Given the tendency of local events to exert its disruptive influence globally, TSA can ill afford not to take the FSGO very seriously. Sharing an industry example, the Exxon-Valdez disaster tarnished the reputation of the whole organisation, not just that of its Alaskan operations.

1.5.3 Financial imperatives

The risk posed by non-compliance with the FSGO in the event of some major and damaging occurrence of unethical conduct, makes for a powerful argument that good ethics may indeed be good business, i.e. good for the financial bottom line. The difference between a fine of a few million US dollars and that of over $500 million, as in the case of Hoffman-La Roche, or $225 million as with BASF (for price fixing and bid rigging in the global vitamin sector) is easy to understand.

There is also an expanding body of evidence indicating that organisations that are clear and consistent in promoting ethical values, encourage employees to act confidently within well-defined boundaries. It is this confidence that promotes organisational efficiency, with efficient organisations being generally more profitable than inefficient ones. Interesting, there is also a relation between inefficient organisations and increased risk to succumb to fraud and corruption. This is because inefficient organisations are generally subject to higher levels of work pressure, observed misconduct, and employee dissatisfaction.

Coupling these risk indicators with weaker management of access and opportunities enabling fraud and corruption, it is easy to understand how significant the risks to such an organisation may be. Given that an inefficient organisation may also not be in proper compliance with the FSGO, the cumulative effect of corruption losses, criminal charges or large civil claims makes for a nasty loss calculation.

It would seem that ethical and efficient organisations are generally financially healthier and less prone to become dangerously imbalanced by occurrences of unethical conduct.

However in EthicSA's experience, good ethics is not *always* good business, certainly not in the shorter term. Any director of exploration or acquisitions knows how great the temptation can be. It certainly takes ethically committed organisations to withstand the pressures to trump ethical conformance with short-term financial performance goals. Considering how oil will become, increasingly scarcer and more valuable, such pressure will build as the 21st century matures.

The intersection point plotting rising demand and decreasing supply will most certainly test the ethical resolve of the oil industry to add long-term value and not just short-term profit.

Indeed, we foresee that this fundamental dilemma the industry faces, that of strong and rising demand competing with rapid depletion of supply, will be a major test to the ethical resolve of TotalSA. What will compound this pressure to do whatever it takes, is that as supply dwindles the concepts of long-term value and short-term profit will tend to contract into one.

Strategically, this of course points to the necessity for all petroleum companies, TotalSA included, to diversify into producing energy from sources other than fossil fuels.

What is the US Federal Sentencing Guidelines for Organisations?

The *US Federal Sentencing Guidelines for Organisations (FSGO) (1991)* set a series of minimum best-practise guidelines for US courts in assessing criminal or civil liability of organisations involved in serious ethical breaches. Using a carrot and stick approach, it involves using the guidelines to assess the capacity of an organisation to address proactively the risk of unethical conduct materialising in an organisation. In the event of an ethical breach resulting in material loss to shareowners or other interested parties, a base fine may be levied by a court of law. Acting in the interest of the aggrieved party, the court will determine, based on non-adherence to the principles of the FSGO, whether aggravating "multipliers" need to be added to the base fine.

In other words, for every principle the guilty organisation is found to be non-compliant, the base fine is multiplied according to a certain formula. A fine of a few million dollars applicable to a compliant organisation suffering from some major ethical crisis, may climb to a figure of several hundred million in the event of significant non-compliance with the principles. In South Africa the FSGO principles, are contained within *King II* as voluntary best practice guidelines, and are therefore not supported by law in the same manner as in the US.

The FSGO guidelines can be summarised as follows:
1. Adopt ethics compliance standards and procedures;
2. High-level personnel should oversee ethics initiatives;
3. Exercise due care when assigning discretionary authority;
4. (Re)develop a Code of Ethics;
5. Communicate and train on ethics;
6. Set up systems to achieve ethical compliance;
7. Enforce compliance standards, reward and discipline, respond to offences, and prevent recurrence; and
8. Measure the effectiveness of ethics and compliance interventions.

***Box 3:* The Federal Sentencing Guidelines for Organisations (FSGO)**

1.5.4 Reputation imperatives

In terms of promoting its reputation, TSA has done much in terms of exercising good corporate citizenship.

- It has engaged in broad-based black economic empowerment through *Tosaco*.
- The retail dealer network provides employment to at least 2 200 employees (mostly forecourt attendants) who in turn support some 6 500 dependants. By supporting black retail dealers like Mr Malanda of *Total Malanda Service Station,* wealth job opportunities are ploughed into disadvantaged communities.
- *Total Malanda Service Station* and the Department of Education also worked in partnership to fund the renovations of a local school. Signifanctly, 70% of workers in the renovation project were from the community.
- In a similar way, TSA awards minor contracts for the maintenance of service stations to local contractors. An estimated 30% of all investment expenditure (e.g. major contracts for new service stations) is awarded to BEE contractors.
- There is also a HIV/Aids programme in place in South Africa, Namibia, Botswana, Lesotho and Swaziland, aiming to prevent infection, but also to assist those living with HIV/Aids.
- Zakithi Zama from the corporate communications department brought the *Ikhayalobomi* Hospice and Care Centre for people living with HIV/Aids to the attention of TSA. The centre is sponsored by TSA, and is run by a young couple with the assistance of volunteers from their local community.
- In addition, TSA is addressing womens' empowerment within the business. A recently conducted survey on women, "*Understanding Women's Experiences at TSA,* revealed that efforts at addressing diversity are generally understood in race terms only and not in gender terms. Subsequently, TSA has embarked on a process of addressing womens' empowerment within the business.
- Outside of the organisation the interests of women are promoted by sponsoring the Female Farmer of the Year competition and various arts, education and healthcare projects.
- There is also an environmental outreach programme with TSA as the sole supplier of fuel to the Kruger National Park and the KwaZulu Natal Conservation Services. In a reciprocal deal, TSA sponsors the building and maintenance of rest camps and relocation of wildlife.
- Other projects supported by TSA are *My Acre of Africa,* and education programme for school children endorsed by former President Nelson Mandela and the *World Wildlife Fund*.

So, in other words, TSA is involved in many commendable good corporate citizenship projects, as one would expect from a local division of one of the worlds largest companies in terms of revenue.

However, the reputation enhancing capacity of corporate citizenship initiatives is tested by the trust stakeholders have in the business itself, in terms of its capability to return wealth and its commitment to responsible business conduct. These above-mentioned initiatives would not build organisational reputation if the organisational character itself is in doubt.

Calisto Tanzi of Parmalat, or the late Brett Kebble of Randgold Resources, may have engaged in extensive corporate social investments, in anything from hospitals to the promotion of South African art, yet these efforts did not sustainably build a good corporate reputation because the businesses were riddled with fraud and corruption. In a similar manner, the above-mentioned efforts by TSA may come to nothing if not built on ethically sound practices within the business itself. Corporate citizenship must be built, along with sound management, on a foundation of ethical conduct and, of course, a good business plan.

TSA possess competent management and is certainly a profitable and well run business. However, to enhance its likelihood of building and maintaining trust and promote responsible conduct, it needs to commit to a managed process of adopting and promoting ethical values within the organisation.

In addition, as nations become increasingly democratised and their leaders more accountable, it can be expected that they will become more selective in selecting business partners. With growth a necessity in a shrinking stock pool, a good corporate reputation will become vital to the sustainability of the industry and therefore of the organisation.

1.5.5 Moral imperative

We found that the moral imperative for adopting and promoting ethical values in an organisation is usually the most difficult to promote when engaging leadership on the subject of ethics management for the first time.

The need to provide convincing legal, regulatory, financial, and reputational arguments for the adoption of an ethics management programme is understandable. Yet, probably the most compelling argument is a simple moral one.

Morality refers to the capacity of people to adopt ethical values. We argue that organisations possess a similar moral capacity. As all people are continuously faced with moral choices in life – adhering to ethical values or not – so organisations face the same moral dilemmas.

These dilemmas arise when values clash, for example, when the value of honesty clashes with the value of loyalty on an individual or corporate scale. While not trying to discount the numerous grey areas that may exist between such poles, it is, terms of reporting on fraud and corruption, for instance, often a stark choice.

While honesty and loyalty will in many case not be conflicting values let us assume a case were they are. You have uncovered fraud and your manager wants you to be silent. Will you be honest and report or be loyal to the manager’s demand? The only way to resolve the dilemma is to regard one value more important than the other. With an organisation giving such guidance through a good Code of Ethics, much can be achieved.

Therefore, while the individual impact of the moral person in the street may be felt to be minimal, imagine what could be done if leadership of an influential organisation fully commits to responsible business conduct, striving towards rooting out fraud and corruption within its sphere of influence.

In the case of TSA, with over 2 000 contractors and suppliers, providing services of various kinds, the positive influence of TSA could be immense. If TSA internally commits to responsible business conduct and creating a culture intolerant of fraud and corruption, it would benefit approximately 1 800 employees and their families. Yet, if it exports that commitment to suppliers and contractors, the reach becomes tens of thousands.

It ultimately becomes a question of legacy, for leadership and for an organisational. What do you choose to leave behind – a surplus of solutions or problems? Given that imperative, even the most sceptical of leaders may not argue the principle of adopting organisational ethical values, but the methods to achieve it.

2. Creating a culture intolerant of fraud and corruption

Given these imperatives, let us examine what TSA has done and intends doing towards the goals of adopting ethical values and creating an organisational culture intolerant of fraud and corruption.

An important point to be taken from our discussion of the various imperatives for building an ethical organisation is the requirement to show clear leadership commitment through the codification of organisational values. Simply put, developing and rolling out a Code of Ethics is a necessary condition for building an organisational culture intolerant of fraud and corruption.

In 2000, TSA recognised the need to identify the organisation's core values and for those values to be captured in a Code of Ethics. At the time, five core values were identified namely: **Professionalism, Transparency, Pride, Diversity** and **HSEQ** (health, safety, environment and quality) and a rudimentary Code of Ethics, containing these values, were approved. Albeit an important step in the right direction, the Code of Ethics remained a little-used document, ill-distributed and not integrated into employee performance evaluations.

Following the development of this TSA Code of Ethics, in 2003, the chairman of the TotalSA Ethics Committee, Richard Lanaud, presented the TotalSA Code of Ethics, to group companies at a seminar held at the Sandton Convention Centre, Johannesburg.

This further heightened awareness of the importance of a Code of Ethics. In keeping with best practise, TSA also entered into a contract with an external hotline service provider to make available an anonymous reporting facility for reporting unethical conduct – the TSA Ethics Line.

In addition to this drive from TotalSA, André Barwick (Company Secretary of TSA) became concerned about the South African context with widely publicised fraud and corruption charges being brought in high-profile cases.

Given the above mentioned imperatives to formally adopting ethical values, and operating in a business environment fraught with ethical risk, TSA did not sufficiently proactively engage in building a culture intolerant of fraud and corruption throughout its business. With adequate internal audit and forensic controls in place, it required a well crafted Code of Ethics to carry a strong message of responsible business conduct throughout the organisation, and then into the supply chain.

In a recent interview, André Barwick put this as follows:

> "Suppliers' perception of TSA as an ethical organisation was based on the absence of scandals and news reports on the organisation and the need was identified for revisiting the Code of Ethics, revising it where necessary and re-launching it so that all employees, dealers, suppliers and contractors would know what TSA expected of them and in turn what they could expect of the organisation."

It was also fortuitous that TotalSA decided to assess group companies' commitment to implementing its Code of Ethics. The review was conducted by the London-based *Good Corporation*, in 2005, and confirmed some of the concerns André Barwick and colleagues had. This report was a major driver in the process of adopting an ethics management programme.

Findings indicated that although the organisation appeared not to suffer systemically embedded unethical conduct, there were a number of areas of concern. Among those, the report confirmed that the Code of Ethics was not properly integrated into organisational processes and general company culture, not much used in decision-making, or employee and supplier evaluation.

According to André Barwick, it was evident that some work had to be done.

In the third quarter of 2005, André Barwick contacted the EthicSA office to enquire about re-developing the Code of Ethics and the steps required to ensure its promotion throughout the organisation. It was felt that although the TotalSA Code of Ethics was a valuable guidance document, it was necessary to develop a complimentary Code of Ethics addressing issues unique to TSA.

3. Performance Analysis

3.1 Vision

The approach was, first and foremost, to ensure senior management commitment to the vision of promoting a culture intolerant of fraud and corruption, not just in the business but also into the supply chain. This vision is to be known in the organisation by the slogan *From Good to Great*.

The obvious first step was to engage the TSA executive management committee in a presentation to explain the benefits and process, and to persuade the organisation to commit time and resources to the project.

The strategy proposed to the committee involved, among others, was to re-develop the Code of Ethics in order to make it relevant to TSA employees, especially to facilitate understanding and use.

The response was very positive and enabled Mr André Barwick to provide EthicSA with a mandate for delivering the specialist services required.

EthicSA started by taking the organisational vision to deliver sustainable shareholder value and coupling it with the mission of (1) excellent corporate citizenship (2) being number one with the customer, and (3) being a great place to work.

With the vision providing the broad aspirational *goal* of the organisation, the mission addresses the *manner* in which TSA will strive to attain it.

The mission relates to three important components of the business:

1) **Excellent corporate citizenship** addresses the positive positioning of the organisation in terms of its pursuit of value for its shareholders, its contribution to the societal health of the communities it influences and the protection of the natural environment through which it is able to operate. Commonly called the *triple bottom line,* this positive evaluation of financial, social, and environmental costs and gains, is essential to good corporate citizenship.

2) **Number one with customer** acknowledges the importance of meeting customer needs when determining business strategy. With many companies prone to place the pursuit of short-term profit at the expense of customer satisfaction, this is an important acknowledgement by TSA that their responsibility extends beyond just supplying fuel to their dealer network to ultimately encourage proper service to clients filling up their vehicles from the dealer forecourts.

3) **Great place to work** directs the focus inwards again, towards the way the organisation treats its employees. It closes the circle, in effect realising the capacity of TSA to be an excellent corporate citizen (if you do not treat your employees well you cannot sustainably do so with

your external stakeholders) and to be number one with the customer (ill-treated employees cannot sustainably be made to provide good service).

The next step was to underpin the mission with the organisational values. While the vision of the organisation is the destination of sustainable shareholder value, the mission is the road that needs to be travelled to that destination (vision). The organisational values serve to be the beacons indicating the legitimate limits of the road (the mission), or the actions defining the road.

Probably the greatest dilemma advisors, internal or external, to an organisation face are requirements, on the one hand, to balance historical precedent within the organisation, and, on the other, to provide the organisations with the means to steer a new course.

EthicSA argued for a maximum of three values, very universal in nature and mirroring the three mission concepts, and TSA management motivated for retaining the concepts defined in the old Code of Ethics.

A satisfactory compromise was to collapse the fifth value, HSEQ (Health, Safety, Environment and Quality) into the value of Professionalism. This meant not a reduction in the importance of these guiding concepts but rather their increased significance through incorporation into an operational value, Professionalism.

This step made sense because the greater part of professional conduct in TSA is defined by conduct promoting health, safety environmental, and quality standards.

The values supporting the vision and mission in the revised TSA Code of Ethics thus became:

- **Professionalism**: Being able to perform to the highest levels of service, safety and excellence;
- **Transparency**: Being truthful and building trust in all our relationships and actions;
- **Pride**: Being able to grow the company by developing, recognising and trusting our people, and valuing the environment; and
- **Diversity**: Recognising the inherent worth of every human being.

With the codification of the organisation’s vision, mission and values complete, what remained was for the values to be explained by specific conduct provisions, do’s and don’ts, that operationally illustrated what needs to be done to be professional, transparent, proud and valuing diversity within TSA.

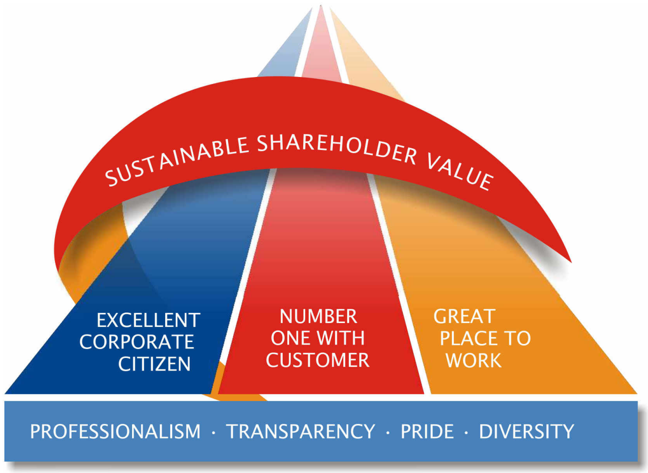

Figure 1**: TSA's Vision and Mission**

3.2 Leadership

Developing a Code of Ethics that is not integrated into the organisation's vision is, ultimately, a waste of time. In our experience, a Code of Ethics divorced from the organisation's strategy and daily decisions will never be anything other than something employees use to straighten pot plants on cabinets.

Leadership has to be committed to providing the resources for the Code of Ethics' integration into the operational fabric of the business. These resources are both financial and skills related.

Fortunately, since 2003, and to TSA's credit, the board already had in place an Ethics Committee, meeting twice annually, and chaired by André Barwick,

It was willing to earmark a budget to develop and institutionalise organisational values as part of the process to revise the TSA Code of Ethics, coinciding with the creation of a TSA Ethics Office. Along with the Ethics Committee, this demonstrated a high-level commitment by leadership.

The creation of the TSA Ethics Office meant the development of an internal organisational ethics management capacity. External specialists, like EthicSA, may assist an organisation in developing a Code of Ethics but certainly cannot own it. The organisation must own it, every employee in fact, and for that to happen there needs to be properly trained custodians, situated within the TSA Ethics Office, to manage the process from within the organisation.

Building an organisational culture intolerant of fraud and corruption is not a one-off intervention. It must become the organisational way of being or living if it is to succeed. It is a good test of leadership, and with a positive start already made, it is incumbent on TSA leadership to maintain the momentum in the coming years.

Mr André Barwick, who is the Company Secretary and fills the Ethics Office, successfully attended the 2006 national Ethics Officer Certification Programme. Having undergone five days of specialist training, he is now well positioned to be the custodian of the programme. However, in our experience, an organisation the size of TSA will require more than one person staffing the Ethics Office. Yet, given the youth of the programme, TSA has time to decide on further investment in its newly created TSA Ethics Office.

The TSA Code of Ethics further reflects the tone from the positive top by including a personal pledge by the CEO to adhere to container values and to lead the organisation by ethical example. Employees, dealers, suppliers, and contractors are also encouraged to exercise personal leadership in their own spheres of influence and to demonstrate this with an annual recommitment to the TSA Code of Ethics.

It has generally been a good performance from leadership in terms of its commitment in building an organisational culture intolerant of fraud and corruption. Leadership understood and tangibly supported a programme of adopting ethical values and promoting them among TSA's various stakeholders.

There were bumps on the road, most notably the recent changes of corruption brought against a member of senior management of Total Coal SA. Although in effect a separate company, it operates under the same Total brand, causing TSA to share in some of the reputational risk resulting from the charges. It is alleged that consultants hired by Total Coal SA bribed cleaning staff of a former business partner to steal trash containing competitive information, but this is yet to be proved in a court of law. Such events just underline how important this initiative is in making TSA's capacity to build trust robust enough to withstand such challenges, and how vital TSA's leadership commitment is to ensuring its success.

3.3 Empowerment

TSA has a responsibility to set ethical standards or values, and then to support the understanding of these values by a Code of Ethics, an awareness programme, and the like. It is the responsibility of employees and other appropriate stakeholders to meet or exceed the TSA ethics standards.

Thus, each value is specifically explained in terms of a series of broad conduct concepts. Each concept may be broken up into more specific prescriptions or prohibitions, including references to other documents, such as policies.

In this way, the TSA Code of Ethics becomes a kind of "central standard" as well as reference point for both the values and other policies and processes within the organisation.

Furthermore, all the TSA values deal with empowerment by setting boundaries within which employees can confidently operate. However, two of the values, Pride and Diversity, specifically target the empowerment and development of employees and select external stakeholders (see *Item 1.5.4*, above).

Pride is defined as the "ability to grow the organisation by developing, recognising and trusting our people". Diversity requires TSA stakeholders to recognise the inherent worth of every person.

The example below, illustrates how values are explained in terms of conduct concepts within the TSA Code of Ethics.

A commitment to ***diversity*** means recognising the inherent worth of every human being by:

1. Treating people fairly;
2. Providing a working environment free of unfair and unjust discrimination;
3. Fostering opportunities for personal growth and professional development for all employees;
4. Valuing the different cultures and beliefs of all TSA stakeholders; and
5. Respecting the expectations of the communities in which we are located.

3.4 Policies and strategies

Even before the *Good Corporation* review highlighted it, TSA became aware of a gap in formally documenting provisions that detail good business practices.

The organisation has subsequently embarked on an extensive exercise to formulate policies where they had not existed before, and reformulate those that required updating. A decision was then taken to refer to the relevant policies in the appropriate sections of the TSA Code of Ethics

The TSA Code of Ethics development presented an opportunity to identify the policy gaps and properly link them to organisational values. In this manner, the TSA Code of Ethics became a central and user-friendly reference book for many more detailed policies that have subsequently been drafted by the organisation. As a central reference point, it allowed TSA to avoid what so many organisations suffer from, namely, a host of isolated policies, some of which contradicted each other.

For instance, provisions on conflicts of interest in the TSA Code of Ethics may only contain the most salient points but will then reference the more detailed Conflicts of Interest policy for those requiring more information.

Some of the TSA Code of Ethics referenced policies are on substance abuse, information technology use, intellectual property, security, sexual harassment, conflicts of interest, gifts and entertainment and whistle blowing.

There are still gaps, most notably the need to upgrade the whistle-blower policy, but, overall, TSA has shown good improvement on the policy front. However, a good body of policies is of secondary importance to a culture intolerant of unethical practises like fraud and corruption. The policies serve to assist in the creation and maintenance of this culture, nothing more.

3.5 Resources

Significant effort is still required in respect of building whistle-blowing capacity, a key constituent of an ethics management programme. An effective whistle-blower process for safely reporting unethical conduct is essential to preventing fraud and corruption in an organisation. For this purpose, confidential reporting along line management will be encouraged during the ethics awareness campaign.

Provision is already made for anonymous reporting using the TSA Ethics Line, an independently operated facility set up in 2003. EthicSA does not believe that the TSA Ethics Line, as a key resource, has been effective as a fraud and corruption prevention tool, largely because it did not enjoy sufficient institutional support.

This is set to change with the creation of the TSA Ethics Office whose tasks will include ensuring that the Line operates safely and effectively. The forthcoming ethics awareness programme will also focus heavily on raising awareness of the TSA Ethics Line.

As is often the case, stand-alone ethics resources like the TSA Ethics Line, although already present in an organisation, will only come to be utilised effectively once linked into the holistic and inter-connected structure of an ethics management programme.

3.6 Innovation and process

While the development and launch of TSA Code of Ethics certainly does not represent any real innovation – it has been done before – not enough organisations invest sufficiently in this process.

EthicSA is often confronted by what we term the *Triple P Syndrome*. It entails **p**rinting a hastily constructed code, **p**osting it on the cafeteria walls and **p**raying it will have some impact. TSA has certainly not suffered from this syndrome and has, judging by initial engagements, indicated a desire to run the programme properly and with commitment.

It will be innovative for the organisation to measure progress after completing the awareness programme throughout the group, not just in general terms but in terms of the FSGO (discussed in *Box 3*, above). This process of running an ethics audit is in compliance with significant 2004 revisions to the FSGO requiring periodic external verification of organisational progress towards complying with FSGO principles. Few South African organisations have undertaken such an audit but TSA would certainly be encouraged to be among the early pioneers. Given the NYSE listing of its French parent, compliance with the FSGO, prescribing external verification of and ethics programme in the form of an ethics audit, is especially important.

3.7 Impact of people

The full impact of the programme is yet to be felt, given the youth of the programme. Generally, the most significant impact would be increased obligations on employees and appropriate external stakeholders to act responsibly. This will be counter-balanced with heightened leadership obligation to promote such responsible conduct within TSA and among its other stakeholders.

The TSA Code of Ethics sets the standards, accompanied by all the mentioned policies. The proposed awareness programme will carry these standards throughout the organisation and the TSA Ethics Office will oversee the process. It is the responsibility of employees and appropriate external stakeholders to act according to these standards, including the obligation to report observed fraud and corruption.

For employees, this would mean the inclusion of an assessment of adherence to TSA values in performance evaluations and disciplinary hearings.

Importantly, adherence to these values will be further promoted by team contracts entered into by employees (with fellow team members) pledging among themselves adherence to these values.

Subsequently, when actually receiving ethics awareness training in 2007, it will be easy to for them to make the connection between the organisation's values, employees' actions and company processes.

3.8 Impact on the value chain

The *Good Corporation* report indicated that suppliers generally perceive TSA as an ethical organisation that will not tolerate fraud and corruption. In terms of its reputation such positive perceptions among suppliers is of tremendous value. With procurement being an ethical hotspot such perceptions can assist in preventing corrupt solicitation originating from, or being accepted by suppliers to TSA.

By 2005 TSA management felt that these positive perceptions need to be proactively protected and enhanced by crafting a strategy of formally communicating TSA's values to service providers. In order to credible do this it was necessary to start a process of values adoption, within the organisation first before engaging service providers. This meant establishing the TSA Ethics Office, drafting a new TSA Code of Ethics, and commencing with an initial round of ethics awareness among employees, before formally advocating the TSA values in the supply chain.

In preparation the revised TSA Code of Ethics was crafted to address, along with employees, dealers, suppliers, and contractors as well. Scheduled for 2007 it will be a tremendous step in TSA using its considerable influence to promote responsible conduct far beyond the traditional boundaries of its business.

A further challenge for TSA to consider is taking its values into the dealer network, to ultimately reach the service station managers and forecourt attendants.

3.9 Impact on society

To assess the exact impact that such a drive to build a culture intolerant of fraud and corruption would have on broader society is difficult at the best of times. However, logic would dictate that in a society like South Africa, confronted daily by incidences of fraud and corruption in all sectors of society, any organisation exerting ethical influence among employees and other stakeholders would make a positive difference.

Organisations can no longer expect that all stakeholders that it engages with share a similar value set. The organisation has a responsibility to recognise its moral agency and set ethical standards for itself and its stakeholders to adhere to.

With traditional moral agents like religious institutions, the family and schools under strain, a moral vacuum is developing in society. Employers are in a unique position to fill some of that moral vacuum. Since it can be expected that the influence of those in the energy sector will increase throughout the 21st century, it is up to TSA to decide what that the nature of that growing influence would be – part of a solution or a problem?

As discussed under *Item 1.5.5*, above, it is really a question of leaving a moral legacy, for current and future generations to benefit from. We believe TSA is now well positioned to positively fill the vacuum.

3.10 Reporting and communication on progress

Effective communication remains a challenge. It would seem that as our technological capabilities to communicate increases the quality of communication suffers under a barrage of unstructured information. This is one of the benefits of the TSA Code of Ethics. It contains, in easily referenced format, vision, mission, values and key conduct provision applicable to a whole range of TSA stakeholders.

The TSA Code of Ethics itself then requires proper communication. Prepared in a paper based and electronic booklet format it will be widely distributed within the organisation and external stakeholders The TSA Code of Ethics will be made available on the TSA website as well.

The CEO, at a special event, will formally launch the new TSA Code of Ethics with a dedicated awareness programme to all employees following thereafter.

Dealers have access to a secure web-based facility for communications, and the annual dealers' convention will also be an important opportunity for communication the TSA Code of Ethics. A major challenge for TSA will be to ensure that forecourt attendants are aware of the TSA Code of Ethics, where to go to for advice and to confidentially or anonymously report unethical conduct.

4. Conclusion – Risks and rewards

TSA has undertaken an ambitious and commendable initiative. The rewards are easy to understand. A more ethical and subsequently, efficient organisation, capable of attracting and retaining the best employees and business partners, should make use of its scale to positively influence thousands in promoting conduct intolerant of fraud and corruption.

We believe TSA is in the process of doing this, starting, correctly so, within the organisation, before expanding outwards into the supply chain and dealer network. The TSA Code of Ethics is the constitution of the organisation directing the nature and manner of strategic engagements within and beyond the organisation. In this sense, the TSA values of professionalism, transparency, pride and diversity are the beacons defining the TSA mission, in pursuit of its vision of creating sustainable shareowner value. Without adherence to the TSA values, such a pursuit will not accountably create value, nor will it be sustainable.

What is less obvious is the risks involved in running such a programme. In our experience clients operating more mature programmes, of a similar scope, have the tendency to relax a bit after the completion of the initial programme. Invariably, awareness levels begin to drop, usually resulting in weaker controls best detected in human resources processes such as induction programmes and ongoing performance evaluations of employees and of the organisation. The temptation to say – its done! – and then become less vigilant always remains.

Operating in the energy sector, with its escalating challenges in terms of demand and consumption, TSA can ill-afford to allow the established benefits of a programme to wane because of relaxed vigilance. Organisational culture change is not a quick fix. The *King II Report* refers to a process of anything up to 5 years for the full benefits to surface. With TSA recently embarked on this journey much remains to be done.

5. Bibliography

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