

ROLE OF WHISTLEBLOWING AND ANTI-CORRUPTION MEASURES FOR BOARD MEMBERS

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INTRODUCTION

- The principal responsibility of Board members is wealth creation and value preservation for shareholders
- we have established a complex maze of laws and institutions to fight corruption in Kenya
- we dutifully pay taxes to fund these institutions
- we spend tons of company money to attract and retain the best C-suite talents

INTRO... Cont

- We are busy shuttling between multiple boards or multiple engagements; or just fighting to stay afloat especially in volatile markets
- so why should Boards be bothered about/burdened with the fight against corruption?
- why should professionals such as accountants and auditors be required to wage this war?

CONTEXT... Cont

- Post Enron Corp and Arthur Andersen – increased focus on Boards and their role in corporate governance and corporate ethics
- Rise of powerful transnationals (often with more economic power than GDPs of some countries in the Global South but unelected and unaccountable)
- Legislations such as the US' Foreign Corrupt Practices Act (FCPA) and the UK's Bribery Act imposes legal obligations on companies for the behavior of their partners across their global value chains

CONTEXT... Cont

- Important to pay attention to both the internal and external environments
- Corruption perception index – Kenya ranks 144/180 (score of 27/100... against global average of 43) – 2018; improved one position but has stagnated at 25 – 27
- Interested in the intersectionality between corporate governance and national governance and corporate political activity as a resource

INTERNAL/EXTERNAL ENVIRONMENTS

Internal

- corporate governance shapes rules for company's strategic and operational management
- Shape key aspects such as statutory compliance, contract enforcement, rule of law and property rights
- In places where external institutions are weak, corporate governance and ethics play a much more critical role in sustainable competitive advantage, growth and development

MEASURES TO COMBAT CORRUPTION

External

- Collective action to reform the business climate to make it more transparent.
- Push for ethical standards and fair practices in dealing with the government e.g. industry-initiated integrity pacts.
- Corporate political strategy/activity

MEASURES... Cont

Internal

- Establishment of strong corporate governance internally
- Good corporate governance – can lead to greater efficiency, access to capital and sustainability; but also can be an effective anti-corruption measure
- The main aim of corporate governance is to promote ethical business/behavior of firms
- Discourage bribery at the operational level
- Reduces opacity at the decision-making level

OPPORTUNITIES

Legal Framework

- Constitution of Kenya 2010
- Anti-corruption and Economic Crimes Act
- The Public Officer Ethics Act
- The Witness Protection Act, Cap 79 Laws of Kenya

OPPORTUNITIES... Cont

Institutions

- Three arms of government
- Ethic and Anti-corruption Commission (EACC)
- Directorate of Criminal Investigations (DCI) – investigations
- Office of the Director of Public Prosecutions (ODPP) – prosecution
- Attorney-General of the Republic
- Comptroller and Auditor General
- Police service
- Courts of Law – rule of law and administration of justice
- Director of the Witness Protection Program
- Financial reporting Centre

OPPORTUNITIES... Cont

- Central Bank of Kenya (CBK)
- Public procurement regulatory Authority (PPRA)
- Public procurement review board
- Asset recovery agency
- Multi-agency
- Non-state actors – Transparency International
- Media – investigative journalism
- Interpol
- Confessional box?

PLUGGING THE GAPS

- Whistleblowers Protection Law – TI-Kenya has had engagements with (Kenyan) members of the African Parliamentarians Network against Corruption (APNAC) who resolved to support the tabling of the Bill through a Private Member's Bill
- Multi-Sectoral Initiative Against Corruption – business-led
- Creation of the Open Government Partnership National Action plan III with a framework to enforce Beneficial Ownership Transparency in the country

CHALLENGES

- Rule by law vs rule of law
- Severity vs certainty
- Deep state/institutional capture
- Foundation – on treachery
- Culture – punishment of merit and reward of mediocrity/criminality
- National/21st century asset-rustling
- Omerta – see no evil, speak no evil
- Jurisdiction – why should magistrates preside over grand/mega corruption cases? (much easier to compromise than Judges)

RECOMMENDATIONS

- Strengthen the policy, regulatory and institutional frameworks and systems to protect honest and engaged individuals who report acts of wrongdoing.
- Establish programmes to protect whistleblowers against retaliation, including appropriate channels for disclosure, independent review and efficient follow-up mechanisms.
- Collect and regularly publish (at least annually) data and information regarding whistleblowing in the institutions (in compliance with relevant privacy and data protection laws)

HOW TI CAN HELP

- Collaborative in building “coalition of the concerned”
- Capacity building for boards and staff to enhance knowledge and skills
- Provide assistance in development/strengthening of internal whistleblowing and complaints management mechanisms
- Support review and monitoring of internal whistleblowing mechanisms

CONCLUSION

- No Board member can succeed in a failed Board
- No Board can succeed in a failed organization
- No organization will succeed in a failed economy/society
- Effective management of the external environment is the Board's business

Corruption Monster



Chief

