

Fighting the bug within – Anti-corruption measures of the Utstein development agencies

**Harald W. Mathisen
Chr. Michelsen Institute**

September 2003

Introduction

Corruption in the development sector does not only reduce the effectiveness of aid, but it destroys the confidence in public services and greatly reduces the public's willingness to support development assistance. A few well-publicized scandals involving international aid agencies have also tainted the reputation of the service. Although the management and staff of the development agencies of the Utstein countries have felt that corruption within the agencies is a minor problem, the agencies have taken every opportunity to promote ethical behaviour by its employees.

Although the Utstein development agencies are a part of the civil service in countries with impeccable reputation, the same cannot be said for many of the countries in which they operate. In many partner countries, corruption is prevalent, transparency is low, banking is in its infancy, checks from the press and the civil society is largely absent, and business is conducted within personalized networks where gifts giving is frequent. Agency staff often has to deal with large-scale budgetary funds, directly rewarding public contacts, subsidies and grants. The recent trend of budgetary support and “partnership” between donors and recipients has relieved the donors from some of the formal responsibility for acting honestly and ethically. Still, strong incentives

for corruption, on both the demand and supply side, exist in countries where the agencies operate.¹

Another problem relating to detection and prevention of corrupt behaviour is the close working relations at embassies and stations. It is very difficult to blow the whistle on corrupt and unethical behaviour – especially if the person involved is someone senior. So where does the line go between behaviour that is permitted or not, and what should staff members do if they see a colleague have his official contacts slide into private ones or start receiving small favours? While illegal activities like *fraud* is easy to deal with through the judicial system, it is when behaviour moves towards the *unethical* and the *inappropriate* that the issue becomes difficult to regulate and monitor. Corruption nonetheless encompasses all three forms and is defined as misuse of public office, roles or resources, for private benefits (material and otherwise).

The question is – given the unique circumstances the development agencies operate under – is enough being done to protect them against corrupt behaviour?

An ethics infrastructure

The OECD has developed a good framework for how ethics and conduct can be managed within organizations. The infrastructure serves three functions: control, guidance and management.

Control can be exerted through a legal framework enabling independent investigation and prosecution. The legal framework is the teeth of the ethics infrastructure, setting out standards for behaviour and disciplinary measures if these are broken. Both criminal law, civil service laws and agency specific laws may be applied, depending on the severity of the offence. Effective accountability mechanisms like audits, investigations and reporting control the day-to-day conduct of public officials and make sure that due process are observed. Ideally, they encourage ethical behaviour by increasing the chances of exposure. Introducing whistle-blowing procedures displays a commitment to devolution of public accountability by providing a workable system for exposing unethical activities. Lastly, public involvement and scrutiny is also crucial for the control function.

¹ It is important to note that the potential exposure of the different agencies vary, with DFID in the UK and GTZ in Germany being most exposed, but also the “decentralization” of Dutch development aid services has increased the potential for misconduct.

Guidance can be given through a real and articulated commitment from the political and administrative leadership. This is in fact a precondition for the effectiveness of the other elements of the ethics infrastructure. An important impulse emanating from the top is the need for leaders to be good role models. The commitment by leaders needs to be operationalised through a code of conduct which defines the boundaries for ethical behaviour and states the legal obligations of the employees, thus also serving as a control function. Other ways of giving guidance is through the socialization mechanisms where employees are trained to transform other parts of the ethics infrastructure into ethical conduct. However, concerns have been raised about existing codes being too general or too specific, unknown or even unused.

Management can be achieved through effective human resources policies. Of particular importance is the need for protection of staff that is willing to expose unethical conduct through whistle-blowing and good co-ordination of the infrastructure through a co-ordinating body.

These elements depend on each other for credibility and effectiveness. As pointed out by the Public Management Committee (PUMA) of the OECD;

“bold statements from politicians, punitive legislation, a vigilant public, or strong co-ordination will not improve public sector integrity if standards are not translated and understood with the corporate culture of individual departments or agencies. Similarly, public servants who are aware of their accountabilities, read inspirational codes of conducts, and attain training sessions, may become disillusioned if the external elements do not enforce clear standards and disciplinary procedures”.

It is imperative that the framework is consistent and does not send out mixed signals. Likewise, it is important that it is not too bulky and complex, leading to risk-adverse behaviour. In the next section we will see how the Utstein agencies have fared across the most important parameters for an effective ethics infrastructures. Not all measures will be highlighted for each agency, but very positive and obvious missing parts will be given special attention. The development agencies are also a part of the public sector in their respective countries, and mention will therefore be made of the wider framework in which they operate.

Political Commitment

The **German** political commitment is evident in the BMZ (Federal Ministry for Economic Cooperation and Development) *Position Paper on Combating Corruption in German Development Cooperation*.² It is stated that prevention of corruption and bribery in Germany is an essential prerequisite for credibility in the political dialogue, and that this is an ongoing responsibility of the BMZ and its implementing institutions. To this effect, both federal and agency specific guidelines have been developed to combat corruption within projects and among staff.

The **Dutch** special edition fact-sheet published in the Global Forum on Fighting Corruption and Safeguarding Integrity in 2001 spelled out the need for searching one's own conscience and preventing corruption at home in order to be credible in anti-corruption activities abroad. The Global Forum acted as a spur for the Minister to inquire about the ethics measures of the Ministry, and subsequently initiating several measures to improve the internal framework for ethical behaviour.

Likewise, the **British** development agency in its *Anti-Corruption Strategy* emphasizes its responsibility to the taxpayers and the poor everywhere to ensure that development assistance does not become an opportunity for corruption.

The **Norwegian** development agency has the least publicly stated focus on its own administration – the reason being that the senior management feels that this is a minor problem. Still, the development agency has over the last years run an internal anti-corruption project where all aspects of the development practices have been reviewed and improved.

Summing up, it is evident that the agencies acknowledge that consideration has to be given to ethics within the agencies. This commitment is unevenly laid down in documents, but staff interviewed in all agencies showed a high degree of anti-corruption awareness – a finding that is confirmed in some internal surveys carried out by the agencies themselves.

²This and most other documents referred to in this report is available and downloadable from the U4 website page *Policy documents from the Utstein agencies* (<http://www.u4.no/document/policydocuments.cfm>).

Legal Framework

In **Germany**, legislation focusing on ethical behaviour has been in place for several decades. The Federal Government commitment to combat internal corruption is unmistakable in the *Federal Government Directive* concerning corruption prevention of 17 June 1998. The Directive is a thorough and detailed text, which deals especially with receiving gifts and favours by public officials. A very interesting set of non-binding recommendations is attached in the annex. Its function is to help implementing the Directive. Interested readers should pay special attention to the guidelines for superiors and heads of departments (No 10). From the legal side the German Federal framework is well developed and covers all pertinent aspects of an effective ethics framework. Measures in the later years have therefore gone into making rules clearer and more easily accessible.

In **Holland**, the legal framework of the civil service is very well developed, as ethics has been taken seriously for the last 10 years. The rules dealing with ethics in the Ministry have, however, been scattered around in several documents, which have made it somewhat difficult for staff to have a clear overview of the formal rules. To counter this, a working group is set up to formulate a composite document which lays out the formal rules on this issue. Its report is expected by summer 2003. The different rules that apply to the Ministry are available on the intranet. Nonetheless, it is clear that the Dutch focus is on prevention through training rather than strict rules, and most efforts go into the former activity.

The legal framework in the **United Kingdom** dealing with corruption dates back to 1889, 1906 and 1916, but the Home Office is still enacting legislation to improve the framework and counter new avenues for corrupt behaviour. Responsibility for the overall framework guiding conduct within the public service rests with the Cabinet Office, which has developed the *Civil Service Code* for this purpose. DFID's *Departmental Code of Conduct* and the Civil Service Code is integrated and laid down in *DFID Staff Handbook*, making information on this matter easily available to staff.

In **Norway** the rules for the ethical behaviour of civil servants are laid down for the entire public sector, like through the revised *Penal Code* (summer 2003) with its stricter legislation on corruption, embezzlement and interest peddling. The most important general rules are also laid down in the *Public Administration Act* and the *Civil Service Act*, which cover active, passive, direct

and attempted corruption of and by public officials. These acts also deal with other pertinent issues like travel, gifts and outside work.

In sum, all agencies have specific or public sector wide legislation at hand which defines the boundaries between legal and illegal behaviour. But although control exerted through legislation is necessary, it is not sufficient, as it tends to encourage minimum compliance. It is also based on absolutes, and the law can therefore be an inflexible tool for the day-to-day management of ethical problems.

Codes of Conduct

The manager of German technical development co-operation – **GTZ** – adopted in 2001 a *Code of Conduct*, which embodies its “Principles of ethical behaviour”. Exemplary behaviour set at the managerial level is expected to be followed up throughout the organization, and the agency expects its subcontractors and project partners to respect these principles. The Code draws a clear line between private and public interests, and leaves no room for doubt as to what is permissible behaviour. Active and passive bribe taking, accepting and giving gifts or other benefits, participation in sponsored activities, conflict of interest in personal and financial connections etc. are forbidden. Some leeway is given if the superior is informed, the gift offered is of small value (40 Euro per year) or the service offered is granted to the entire staff on the basis of contractual agreement. The rules also spell out that spouses/partners or children of an employee will be bound by the same rules. In the explanatory notes it is furthermore underlined that breaching these rules may constitute a criminal offence. The Code of Conduct is also stricter than the Federal Law, addressing the “grey areas” more directly. This has reduced the scope for misunderstanding of whether or not a certain action is permissible. It is spelled out that in cases of doubt, a superior should be consulted, and no action can therefore be excused in hindsight. The translation of the code into five languages is positive, as it gives local staff an opportunity to be acquainted with these regulations.

The anti-corruption strategy of **DFID** in the United Kingdom points out the importance of a *Code of Conduct* for all development agency staff. It sets out the standards of integrity expected of development agencies and their staff. The Code of Conduct is incorporated into the individual employment contract, and if breached can invoke dismissal or other internal disciplinary action.

The code in itself is very detailed and deals with all relevant issues that are specific to DFID, like outside occupation, gifts and business interests.

In the **Netherlands Ministry of Foreign Affairs**, which is responsible for Dutch development assistance, an ambitious project is currently running aimed at increasing the continuousness of its employees. As a part of the same initiative, a draft *Code of Conduct* has been developed. Both national and corporate codes of conduct were consulted in writing the draft version. In all, 140 reactions to the draft were collected, and a working group is tasked to come up with a final version by summer 2003. In line with the view that no set of formal rules are sufficient, the Dutch Code is quite general and emphasizes that everybody has to work for the common good.

The Norwegian development agency, **NORAD**, has no Code of Conduct. The *Public Administration Act*, which covers all national public servants, does not apply to local employees at foreign stations, and is not available in other languages. As such, the Norwegian framework is the least developed in the Utstein partner countries.

The German and the British agencies have quite specific codes, while the Dutch and the Norwegian frameworks are more loosely developed as they reflect a view that no set of rules can foster ethical behaviour. Still, the codes are readily available and staff interviewed for this report seems to be aware of their existence and content.

Permanent Structures

In addition to having a legal framework and codes of conducts in place, agencies should have a person or unit in place to coordinate anti-corruption efforts and serve as a reference point for employees who have questions or want to report questionable practices.

In Germany, both the BMZ and the GTZ has an *integrity advisor* that is open to receiving any report of potential breaches of the Code of Conduct from employees, and also from external partners and the public. Direct contact can be relayed on an e-mail address which is specifically set up to receive complaints. Information put forward can be dealt with confidentially. GTZ staff members are advised to first approach their superior or the person senior to him/her – but the integrity advisor can also be the first contact point. On the negative side, no mention is made of the possibilities for local staff members at stations to approach the advisor, and the protection

they are entitled to if they should want to encounter questionable practices by their German superiors.

In the Dutch Ministry of Foreign Affairs there are two persons permanently assigned for staff to contact if they have something to report. If needs be, this contact can be made anonymously, and advice is given on how to proceed. After a statement has been formulated, an internal investigation is set up, comprising of a specialist team. The Dutch also have an *integrity matters co-ordinator* set to follow up on the anti-corruption initiatives that emerged from the Global Forum in 2001. But even though the infrastructure is in place, it is clear from the statements of those involved that it is difficult for staff to come forward. As the working relations within the Ministry are close, it is difficult to blow the whistle, especially if the person under scrutiny is someone senior. Another problem is the lack of possibilities for local staff to report on unethical conduct. This is a problem of all the Utstein agencies.

Whistle-blowing in the United Kingdom is set down in the *Public Interest Disclosure Act* from 1998, which is to protect permanent and temporary staff suffering any detriment while disclosing information on wrongdoings like malpractice, breaches of policy etc. DFID in-house policy stipulates that such matters should be raised internally first. It is made quite clear that victimization will not be tolerated of persons bringing matters forward. Issues raised by plaintiffs are to be raised with their line manager, but if the staff member wishes, he can raise the complaint with the HR Policy Department. Anonymity is also an opportunity. In all, the DFID framework is very clear and it is also a plus that it is available on the intranet.

Although the Norwegian development agency has an *anti-corruption co-ordinator*, there is no permanent structure that staff can turn to for advice or to report on violations. In case someone wants to make a report on unethical behaviour, he or she would have to go through the chain of command on an ad hoc basis – i.e. the office for judicial affairs, departmental heads, ambassadors or whoever the staff member sees fit to handle the complaint. The anti-corruption co-ordinator says there is a high probability of underreporting in cases of corruption, but holds that the threshold for reporting has been lowered. Even so, NORAD should consider adopting the framework of some of the other Utstein partners, as the organization is clearly lagging behind in this aspect of the overall ethics framework.

Education and Training

Attaining ethical behaviour is not just establishing a list of rules or regulations, but an ongoing process of consultation and training. This view is held high by the Dutch, who claim that that no set of legal rules or codes of conduct can cover all issues that an officer encounters in the field. As a part of its efforts to improve its ethics framework and develop a code of conduct, the Dutch Ministry of Foreign Affairs tasked all directors and embassies to involve the staff in discussions over ethics issues. Using a predetermined set of questions and a video cassette, the exercise aimed at ethical dilemmas that employees may face. Issues like expense claims, use of official vehicles, use of internet for private matters, invitations, partners' work permits, gifts, sexual harassment and so on were discussed. The process within the Ministry has been so successful that the group responsible has been giving briefings to other Ministries on the exercise.

On the other end of the scale stand the internal training procedures of NORAD. The course for new employees does not focus in-dept on ethics training, there is no clause in the employment contract of new employees, and personnel leaving for field missions are not trained specifically on ethics issues.

Alternative Strategies

There are of course a host of measures that the agencies can employ to reduce the chances of corrupt behaviour. One is the rotation of personnel. Within the Dutch Ministry, people are to rotate every four years, even though staff who hold very technical positions rotate less often. In NORAD, staff are rotated every 3-5 years, but not for corruption prevention. A second preventive measure can be to publicize breaches of the ethics framework. The Dutch ministry publicizes violations in the annual report. No names are given, but the cause of the sanction is stated. The annual plan also mentions what has been done to improve the ethics framework.

Conclusions

It has not been possible to analyse all aspects of the ethics framework for each of the four national agencies, as some information has not been forthcoming, but based on the information available, a clear picture emerges.

All Utstein agencies have taken measures to counter corruption in development co-operation. Still, most effort has gone into addressing the problem at the recipient end, be it as a societal

problem or at the development programme or project level. All the agencies feel that the problem lies with the recipient side, and most effort is spent here. Lately, anti-corruption clauses have been inserted into all bilateral financial and technical agreements with developing countries. Recipients are to ensure that projects have been established without corruption. Violations will lead to suspension or termination of the agreement. Language has therefore become more punitive, and responsibility is today firmly laid on the “partner” institution or government. Even so, this is only a logical first step, as measures are not credible until more attention is put on reducing corruption within the agencies themselves.

From this investigation it has emerged that the **control** function of the ethics framework is satisfactory across the development organizations, as well as the regulatory framework across the wider public service. Both the penal code, civil service laws, and agency specific laws are available, and investigation and prosecution is forthcoming in cases of breaches. As an additional element, more effective accountability mechanisms like audits, investigations and reporting have been put in place. Whistle-blowing procedures have been introduced, with the exception of NORAD, which is lagging behind. When it comes to the important control function of external agents like media and civil society, one can safely conclude that all Utstein countries are blessed with a critical press and an attentive civil society.

Guidance, as the second element of the ethics framework, is primarily secured by political commitment, and there cannot be any doubt about the seriousness with which the political and administrative leadership of the Utstein agencies deal with corruption. The Utstein co-operation on corruption is indeed one proof of this commitment. This awareness has come on the back of the corruption debate in the last decade, but also from the increased attention and growing pressure from the public. There have also been a number of public cases which have hurt the credibility of the agencies, even though their public standing remains high. Also, with the exception of NORAD, the commitment for a corruption free environment has been operationalised through codes of conducts, which with varying degrees of detail cover the most pertinent issues facing staff.

Another important impulse emanating from the top is the need for leaders to be good role models. Even though this aspect has not been covered explicitly in this investigation, there really is no indications that the ministers or senior civil servants have in any way contributed to

producing a milieu where staff feels that “well if its ok for them – then, why not me”. Still, for the sake of discussion, there might be some questions raised to what can be labelled an “ambassador sphere”. In working close to the government, ambassadors are very often wined and dined in style. At the same time, they are seldom the most critical to corrupt behaviour, thus potentially creating an atmosphere that corruption is something that has to be worked around, rather than confronted.

On the issue of **management**, it is clear that all organizations are merit-based, and human resources policies are well developed. Again, all agencies have appointed anti-corruption coordinators or units, and (with the exception of NORAD) they have all developed a clear and explicit framework for protection of whistle-blowers.

Recommendations

This investigation sets out to consider the following question: what has been done to improve the ethical framework, and in doing so, have some agencies been innovative and is there a potential for learning?

Even though it may be possible to root out corruption altogether by employing even more elaborate inspection routines, this investigation has concluded that the routines of the Utstein agencies are well developed and satisfactory. More detailed provisions would be time-consuming and expensive, and result in a larger loss of efficiency than potential gains. Still, there needs to be a constant focus on developing effective routines that are easily understandable for development staff and external partners. But more importantly at this point is for the agencies to look closely at the ethics training of staff, including local staff. Codes of conducts are all good and well, but employees need training to transform the ethics infrastructure into ethical conduct. Even though all agencies have holes in their ethics framework, the recommendations are limited to three – one agency specific, one general, and one relating to local staff:

- NORAD should develop its own *Code of Conduct* through a participatory process. As a part of the new framework a permanent structure should be put in place, making it easy for staff to enquire and/or report on ethics issues.

- DFID, GTZ and NORAD should copy the Dutch model of ethics training by having all staff taking part in small group discussions on ethics, using a predetermined training manual which exposes the difficult grey area between rules and actual problems as they occur in the field and at headquarters. Training on ethics should be made a central component of the training of new staff. Likewise, country specific briefings on corruption and ethics should be given to staff taking up positions at stations. Still, training should be extended to all, including senior staff, because seniority is no guarantee against character flaws.
- All local staff should be included in the training programme. Codes of conduct should be translated into all relevant local languages, and be made readily available to all local staff. They should also be given the chance to make use of the integrity advisors. Furthermore, local staff should be given a clause in their contracts which states that blowing the whistle will not have negative consequences for their careers.

The recommendations given are just some of the ones the Utstein agencies can take on board to improve their ethics framework. Political will finds its clearest expression in the allocation of resources – but at this stage further improvement to the ethics framework does not need to be overly costly. The bottom line is: A well functioning ethics infrastructure provides incentives for public servants to conduct their business in a professional and ethical manor. Now the focus should be on sustained training, discussions, and consultations in order to make ethical conduct an integral part of the mindset of every employee of the Utstein agencies.