



BEN-Africa

The Business Ethics Network of Africa

**Strengthening the commitment and competence of Africans
to do business with moral integrity**

'BUT IT WAS NOT ILLEGAL!'

**THE NEED TO SEPARATE COMPLIANCE AND
ETHICS IN THE ENERGY SECTOR –
PSYCHODYNAMIC REFLECTIONS FROM THE FIELD**

Great leaders. We shape them.

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Intro

- Why this topic?
- “We did not do anything illegal!”
- Under pressure, compliance overpowers ethics – even in organisations that may regard themselves to be ethical. But more about this later
- How can organisations be managed to be both compliant and ethical?

The current state of combining ethics and compliance

- **US Sentencing Guidelines: “High-level personnel of the organization shall ensure that the organisation has an effective compliance and ethics program”.**
- **Compliance and Ethics Leadership Council**
- **Ethics Resource Centre**
- **Corporate Executive Board**
- **Chief Compliance Officer = Chief Ethics Officer?**
- **Compliance = ethics?**
- **Clear rules and enforcement**

Caution!

- **US Sentencing Guidelines:** “to establish sentencing policies and practices for the federal criminal justice system by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes”
- **McKendall et al. (2008):** “compliance based ethical programs do not lessen legal violations, but serve as window dressing to deflect attention and culpability resulting from illegal actions”.

TO STATE THE OBVIOUS, ETHICS AND COMPLIANCE ARE DIFFERENT

- **Compliance –**
 - Legal, GAAP, SOX,
 - Clear but reactive
- **Ethics**
 - Philosophical, moral reasoning
 - Ambiguous, but proactive

WHY THE UNBEARABLE LURE TO COMBINE ETHICS WITH COMPLIANCE?

- Organisational culture and its unconscious mechanisms
- Moral behaviour less a function of rational intent than often believed
- Much of culture and behavior is unconscious and can be apparently irrational

Are all animals equal?

- Compliance and ethics equal partners?



- Performance pressure = anxiety
- Psychological defences
- Rationalisation and intellectualisation
- Under pressure, compliance trumps ethics!

The importance of leadership

- Salz Review: “moral intuition disappears by a context which clouds our intuition and encourages compliance behaviour instead of thinking and sound judgment”
- “What interests my boss, fascinates the hell out of me.”

Compliance is more equal than ethics – but at a moral cost

- Compliance significantly lower ethical expectations.
- A values-based ethical approach is significantly more effective than a compliance-based approach to increase both ethical and legal behaviour
- Ardichvili et al.(2009): a culture that encourages ethical conduct also encourages legal compliance, but not the other way around.

The inconvenient truth from the pigs' victory in the long run

- Combining ethics and compliance infringes on good governance
- The need for independence of ethics
- Tax avoidance and evasion

Who is who in the Animal Farm zoo?

- Compliance officer ≠ ethics officer
- US Sentencing Guidelines: “Specific individual(s)
- Compliance officer:
 - clarity and prefer the clear guidelines of rules, legislation and codes and rules.
 - external locus of control – the legislators decide what is right and wrong
- Ethics officer:
 - sensibly engage in ethical reasoning to resolve issues for which there is not clear right or wrong answer
 - internal locus of control – being able to work within the ambiguity, and still takes accountability for actions.

In conclusion

- **No perfect solution**
- **Do not structurally or implicitly combine ethics and compliance!**

Questions?



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