

# ETHICS AND GOOD GOVERNANCE IN NAMIBIA

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## ETHICS AND GOOD GOVERNANCE IN NAMIBIA

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## **Introduction\***

**Rt Hon. Hage G. Geingob**

**Prime Minister of the Republic of Namibia**

First of all, I would like to thank our distinguished guests from Botswana, Ghana, South Africa, Tanzania, Uganda and the United States for coming to participate in this seminar. I appreciate your having spared your time to help us address the very important issue of how to create an ethical society. I extend to you a very warm welcome and hope that your stay in Namibia will be pleasant.

The topic of the seminar is not as easy as it might sound at first glance. For instance, the definitions of ethics are not that easily understood. Very often, the issues surrounding ethics and corruption are bogged down by perceptions that may have no validity in reality. A clear handle on these issues is very important for a seminar such as this.

As I had stated in June last year “most will agree that corruption in government is the misuse of public power for private profit. Transparency International elaborates on this definition by stating that ‘corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawful enrich themselves, or those close to them, by the misuse of public power entrusted to them.’” I had further stated that “Absence of specificity results in corruption meaning different things to different people. That perhaps is the nature of the beast. As one scholar has pointed out, normative statements about corruption require a point of view, a standard of ‘goodness’ and a model of how corruption works in particular instances.” We will need to keep on returning to these definitional issues as we deliberate on the various facets of the problems and their solutions.

But one thing is clear. Globally there is an increasing awareness to eradicate corruption because it undermines the effectiveness of the state in promoting democracy, competitiveness, and sustainable development and in reducing poverty. There is also an increasing recognition that in an environment of open economies, free flow of capital and global inter-linkages, corruption does not recognize national boundaries. That is one of the reasons why the Foreign Corrupt Practices Act was passed in the United

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\* Address Of Rt Hon. Hage G. Geingob - Prime Minister of Namibia The Opening Seminar on The Promotion of Ethics and Combating Corruption, 26.03.1998

States in the mid-seventies. It basically said that companies couldn't bribe people to gain orders. Elsewhere, not only are the companies allowed to do that, but they are also allowed to take tax deductions for it. However, on the positive side, the US standard is becoming quite widespread. Recently, OECD countries agreed to prohibit companies to seek favours by bribing. This is just one example of the fact that ethics is a global issue and corruption needs to be stopped globally.

This is quite a break from the past when corruption was a given. Therefore, in recent times, many countries have come under considerable criticism because of the pervasiveness of corruption at the national level. Some of them have, indeed, come to be labelled as corrupt. There are corruption indexes being compiled.

Happily, however, of late, literature on the subject suggests that many countries are winning the battle against corruption. In Africa, Botswana, Ghana, Tanzania and Uganda have made significant progress in this area. I am therefore very pleased that participants in this seminar will be able to draw on the experience of these countries.

Fortunately in Namibia, we don't have a serious problem of corruption. But we do have a problem of perception. A survey of UNAM students conducted by a scholar suggests the extent of this problem. Regrettably, such surveys of perceptions are taken by many as truth when in fact the perceptions have not been tested against the reality on the ground. Further, the questions in the survey can themselves be loaded. For example, when a question is asked "Who are people in government mostly concerned with helping?" there is an expectation of a specific answer, thus making the question value loaded. Similarly, when a question is posed whether the respondents think that the politicians should be more honest than others, there is an assumption that it is okay for others to be dishonest. If society has strong ethical values, I don't see how leaders of that society can be any different. After all, individual behaviour is informed by societal behaviour. That is why it is so important to have a holistic and integrated approach to promoting ethical values and countering corruption. Therefore, the questions in the survey that I have referred to leave one with the impression that an attempt is being made to promote hatred for politicians. Similarly, I know of instances where teachers brainwash children into thinking that politics is dirty, thus creating perceptions.

These issues aside, the fact, however, remains that we need to correct certain perceptions. Therefore, we cannot afford to be complacent. That is why we undertook the initiative to contain, reduce and, if at all possible,

some day eliminate corruption. We are doing this not to please anyone but because we believe that it is good for our country.

As bureaucratic corruption is invariably opportunistic and its extent is closely linked to the extent of government regulation of economic and other activities, we felt that we need to look at the whole issue of promoting ethical behaviour in an integrated way.

Therefore, in August 1996, the Cabinet had established an organizational framework comprising an Ad Hoc Inter-Ministerial Committee and a Technical Committee to examine the whole issue and develop a programme for combating corruption and promoting ethics. Subsequently, the terms of reference of the Ad Hoc Committee were worked out. The terms included:

1. Necessity of adoption of code of conduct for public service staff members and public officials;
2. Specifying the norms for transparency and accountability;
3. Examining procedural issues related to the granting of contracts, licences, quotas and grants;
4. Examination of laws and procedures for the investigation of corrupt practices and punishment of culprits; and
5. Institutional requirements to give effect to the implementation of policies for promoting ethics and combating corruption.

Subsequently, on June 6 last year, the first seminar on the subject identified the issues involved by addressing questions, such as:

1. The definition of corruption;
2. How to develop an appreciation that corruption is always bad;
3. Causes of corruption;
4. Role of private sector in promoting as well as combating of corruption;
5. Examination of the impact of corruption on development; and
6. Identifying and promoting principles of public life to counter corruption.

To address the various issues, the technical committee was divided into Syndicate Groups, focusing on various topics. Members of the various Syndicate Groups were drawn from the public service, private organizations and NGOs to make our initiative broad-based. Some of the members are consumers or providers of government service and therefore their input brings in perceptions and realities viewed from the other side of the counter.

Equally, thinking about the issues at hand, visiting other countries to see what work has been done in the areas concerned, has, I am sure, focused

the attention of respectable members of our community on this important issue of national importance. This broadened focus is clearly discernible in the reports produced by the various Syndicate Groups. These reports will no doubt be discussed and dissected at this seminar. But I would like to take this opportunity to thank the members of the various Syndicate Groups and other members of the technical committee for their dedication and innumerable hours of selfless service.

The previous seminar had devoted time deliberating on the nature and causes of corruption. Our task at this seminar is to focus on corruption clean up and examining mechanisms to plug any loopholes that allow corruption to seep in. How well we are able to address this focus will determine the success or failure of the seminar.

Obviously, strategies for combating corruption and promoting ethical values have to be examined from social, legal, market and political perspectives and the technical committee's overall effort has focused on all of these perspectives. Nevertheless, I feel compelled to make a few comments on some broader issues.

First and foremost, all of us, government employees, businessmen and women and everyone else need to recognize that good ethics is good government and good ethics is good business.

But to make a success of good ethics initiative and to ensure that we succeed in building a society where there is low tolerance for unethical behaviour, it is important that tone is set at the very top. We cannot say that one rule applies to the leaders and another for the rest. For everything else, a bottom up approach is good, but for countering corruption, we must have a top down approach.

This view is shared by many experts in the field as well. As the chairman of KPMG says, 'This is something we expect from you but not from someone higher up in the organization.'

Ethics also has a strong social responsibility element. Laws by themselves cannot overcome the problem. All they do is shift corruption to a different level. Consider, for instance, that a person is caught breaking law, whether he or she is arrested or charged or convicted depends on the police, the prosecutor, and the judge. Do we then need structures to police the police, police the prosecutor, and police the judges? In fact, one of the reasons for the failure of efforts for countering corruption in some countries has been a lack of constraints on counteracting agencies charged with policing and enforcement of the laws and the bureaucrats who work in those agencies.



That is why I continue to emphasize that the issue needs to be addressed in an integrated way.

I know of societies where people brag about bribing and income tax evasion. Then there are other societies where a person guilty of income tax fraud is considered a social outcast. This is the kind of culture we want.

Evolution of such a culture requires that we have the right rules that regulate the activities of individuals. For instance, civil servants may not know if they are doing the right thing because rules often lack clarity. As a result, a civil servant might take up certain outside responsibilities that result in conflict of interest. The point that I am trying to underscore is that rules should not be vague. Obviously, there will always be new situations, but we must have mechanisms to address any emerging ambiguities. How do we overcome the problems created by such ambiguities? Is it practical for us to have an ethics councillor who can advise on conflict of interest? This councillor is not akin to those in the United States who investigate but the one who helps a person make the right decisions before the fact.

Referring to the vagueness of the rules, is it right for a Cabinet Minister to accept an air ticket from the organizers of a conference overseas? What about the Permanent Secretaries accepting such an offer? What about gifts received from visitors? Is it wrong to accept gifts? Does accepting a gift automatically mean that something is not kosher? Or is it that big gifts are not good and small gifts are okay? If not, is it wrong to keep them or should they be turned over to the treasury? Obviously, we need specific rules to address such issues in detail.

Another issue that is fraught with difficulties is the suggestion that political office bearers and civil servants should declare their interests and assets. Would such declarations serve the purpose that needs to be addressed? I recall that when the ANC was asking NP leaders to declare their interests, one NP leader's response was that he had no objection to declaring assets but before he did that, perceptions must change because, in the eyes of the ANC, all the whites were regarded as having stolen even though this wealth was hard earned. Further, is it true that in South Africa, gifts are declared publicly but business interests are declared in private to some individual? Perhaps our learned colleague from South Africa can enlighten us on these issues and how the whole question of declaration of assets is being addressed.

In the United States, a businessman or woman entering politics establishes a trust to keep private interests at arms lengths. Does it work? Is it suitable for us in Africa?

Similarly, we need to address the issue of discretionary control rights at the disposal of politicians and bureaucrats, be they granting of fishing, banking and other licenses, awarding of exemptions from income tax, allocation of real estate, facilitating monopoly powers to some investors or traders, etc. Many of these issues can be addressed by appropriate economic reforms, liberalization, and limiting the government's role to core activities, tax law reforms by simplifying tax laws and minimizing deductions, well paid civil service, broadening of the decision making authority, and building a strong civil society.

The World Bank's World Development Report of 1997 aptly points out that "Corruption cannot be effectively attacked in isolation from other problems. It is a symptom of problems at the intersection of the public and the private sectors and needs to be combated through a multipronged strategy." It points out that, to combat corruption, we need to:

1. Create a rule-based bureaucracy with a pay structure that rewards civil servants for honest efforts;
2. Build a merit-based recruitment and promotion system to shield the civil service from political patronage;
3. Introduce credible financial controls to prevent the arbitrary use of public resources;
4. Reduce the opportunities for officials to act corruptly, by cutting back on their discretionary authority, and
5. Enhance accountability by strengthening mechanism for monitoring and punishment - using not only criminal law but also oversight by formal institutions and ordinary citizens.

I have only raised questions but I know that the task ahead is daunting. It is no less than creating a new society - clean, caring, and conscientious, but above all committed to rooting out corruption. Rewards of success will be a better Namibia for all. We therefore look forward to the outcome of the proceedings of this seminar with great expectations.

I thank you.

**Hage Gottfried Geingob** was born in the Grootfontein area on 3 August 1941. He attended the Augustineum Training College and qualified as a teacher in 1961. At the Fordham University, New York, he obtained a BA degree in 1970 and a MA dedgree (International Relations) at the Graduate

Faculty of the New School for Social Research, New York, in 1978. In 1972, he was appointed to the UN Secretariat as Associate Political Affairs Officer, a position he held until 1975 when he was appointed as Director of the UN Institute for Namibia, which he started from scratch in Lusaka. He held that position until 1989.

Member of the Central Committee and Politburo of SWAPO, Director of the Election Campaign in 1989, and thereafter serving as Chairman of the Constituent Assembly which drafted the Namibian Constitution, adopted on 9 February 1990.

Geingob was sworn in as the first Prime Minister of the Republic of Namibia on 21 March 1990.



# **Public Service Ethics in Africa Country Report: Namibia\***

**Mary Moller**

**United Nations Development Programme**

## **I. INTRODUCTION**

This country report on Namibia aims to summarize and capture additional information omitted by the questionnaire from the Public Service Ethics in Africa Project. It focuses on the ethics and conduct of public servants rather than elected officials. However, in practice, the political-administrative interface is difficult to define. In the public eye, public and elected officials tend to be seen as one and the same. The following items are highlighted:

- The background on the National Public Service
- The background on Public Service Ethics and Anti-Corruption Initiatives
- Guidance for Public Servants
- Management of Conduct in the Public Service
- Control of Conduct in the Public Service
- Non-Governmental Actors
- Recommendations

The management of ethics and conduct is not just about monitoring and policing behaviour. It is about promoting integrity and good conduct. It is about seeking some consensus on what is good behaviour and giving public servants some guidance as to how they should act, make decisions, and use discretion in their everyday work.

## **II. BACKGROUND ON THE NATIONAL PUBLIC SERVICE**

### **a) Establishment of a Public Service in Namibia**

The Public Service in Namibia was established at independence in 1990. It is to be impartial and professional in its effective and efficient service to the Government in policy formulation and evaluation and in the prompt execution of Government policy and directives so as to serve the people and promote their welfare and lawful interests.

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## **b) Composition of the Public Service**

The public service consists of persons who are employed permanently or temporarily on a full-time or part-time basis or under a special contract or under any contract of employment contemplated in section 34(1)(a) of the *Public Service Act 1995*.

The public sector comprises of the central and local governments, together with the associated agencies of the State, including parastatals. The public sector plays a major role in the Namibian economy due to the services it provides – including education, health, infrastructure, defense and general administration.

There are two offices of higher authority (the Office of the President and the Office of the Prime Minister) and twenty ministries in the central government. The highest level of local government is represented by the Regional Councils, established in terms of the *Regional and Local Government Act* and implemented after the 1992 local and regional elections.

The Prime Minister, in terms of the Namibian Constitution, is directly responsible for the management of the public service. This stems from the fact that the Prime Minister is the coordinator of the work of the Cabinet and accountable for government business in Parliament. This includes the formulation and implementation of policies affecting the mobilisation, development, utilisation, and motivation of the public service.

The resources devoted to public service are very substantial: both in terms of the proportion of GDP devoted to public expenditures and in terms of the number of civil servants in proportion to the total population.

Namibia's ratio of 1 civil servant per 24 Namibians makes Namibia's proportionally one of the largest public administrations in the developing world. Therefore, improving the public service must depend on making it more effective and efficient, rather than giving it an even larger share of national resources.

## **III. BACKGROUND ON PUBLIC SERVICE ETHICS AND ANTI-CORRUPTION INITIATIVES**

### **a) Namibia's Initiative**

In August 1996, the Namibian Cabinet launched a national consultative process involving all key institutions of society to elicit opinion and develop proposals for a comprehensive legislative, administrative and public

education framework for the promotion of ethical behaviour and the prevention and combating of corruption at all levels of national life.

The Namibian anti-corruption/ethics promotion process considered the international efforts in which initiatives in favour of good governance, greater accountability and transparency, and co-operation in combating corruption are being undertaken by many nations, particularly in the developing world.

The Namibian process was enriched by the experiences and best practices of other countries, particularly in Africa, that are also engaged in efforts to promote ethical conduct and to combat corruption.

#### **b) Establishment of the Ad Hoc Cabinet Committee on the Promotion of Ethics and its Technical Committee**

The Prime Minister launched the Ad Hoc Cabinet Committee on the promotion of Ethics and the combating of corruption on 5 March 1997.

At the same time, a Technical Committee comprising representatives of government, the private sector, and the non-governmental organisations was established to assist the Ad Hoc Cabinet Committee.

#### **c) The Technical Committee's work**

The Technical Committee was charged with the responsibility of researching and analysing the issues covered by the Terms of References, guiding the consultation and public education process.

#### **d) Definition of Corruption**

In the early stages of the work of the Technical Committee, a consensus emerged to the effect that the definition of corruption should not be limited to "the misuse of public office for private gain." This definition does not place adequate emphasis on the role of the private sector in corrupting public officials and ignores the fact that corruption can exist within the private sector and within public entities outside of government, such as trade unions, community organisations, sports or political parties. In this context, corrupt practices should be seen as those involving the misuse of entrusted power for personal gain or the benefit of a group to which one owes allegiance.

The key activities and achievements of the Technical Committee included:

- The preparation of institutional profiles by each ministry, private sector or non-governmental institutions represented on the Technical Committee, containing information concerning the governing structures, ethical standards and problems with corruption in each institution;
- A seminar on 6 and 7 June 1997 at Midgard at which several international experts presented and discussed the elements of a national integrity strategy and certain international best practices, and Namibian experts aired their preliminary views as to what should be Namibia's strategy;
- The organisation of the members of the Technical Committee and additional participants into six syndicate groups, charged with the responsibility to study various key areas of the terms of reference and to make detailed reports containing recommendations for the national strategy. The syndicate groups addressed the following topics: criminality, procurement, issuance of licences and permits, freedom of information, open meetings and whistle-blowing codes of conduct and agencies/unit for the implementation of the national strategy. Almost 100 persons representing dozens of institutions were nominated to the syndicate groups;
- Study missions to Botswana, Tanzania and Uganda to learn firsthand about their experiences in combating corruption and to visit their specialised anti-corruption agencies;
- A second Midgard seminar from 25 to 28 March 1998 at which the members of the Technical Committee, the Ad Hoc Committee and additional members of the syndicate groups, assisted by the critical input of international experts from Ghana, Tanzania, Uganda, Botswana, South Africa and the United States, considered the recommendations;
- The establishment of the Preparatory Committee for the National Conference on Integrity/Promotion of Ethics and Combating of Corruption which was held from 7 to 9 October 1998 in Windhoek;
- A launch by NBC Radio, in co-operation with the Project Team, of a national media campaign against corruption, run from July until September 1998;
- 10 regional workshops were held throughout the country during the month of August to prepare for the National Conference;

The following recommendations were formulated at the National Consultative Conference in October 1998:



- That the international definition of corruption be widened to include the private sector and an improved understanding of corruption through public education;
- That a Namibian Chapter of Transparency International be established;
- That a new and comprehensive Anti-Corruption Statute with wide reach, inclusive of the Executive as well as parastatals, boards, trusts, welfare organisations etc. be enacted and that provision also be made for extra-territorial jurisdiction:
- That a mandatory uniform Code of Conducts be introduced. The Code should work in support of specific Professional Codes of Conduct in particular domains, including a Leadership Code such as exists in Uganda. A register of assets should be put in place for both public and private disclosure;
- That the procurement policy be improved to enhance open competition and transparency.
- That there should be public oversight over tender procures that extend to the post awarding stage as well;
- That an affirmative obligation be placed on Government as well as on other public institutions that operate on taxpayers' money to disclose maximum information to citizens. A Freedom of Information Act should be passed and constitutionally safeguarded;
- That an effective mechanism is established for the protection of the identity of persons who blow the whistle on corrupt practices;
- That existing legislation which governs the granting of licences, permits and concessions is strengthened and that a law is enacted to ensure greater transparency in this process;
- That an anti-corruption agency or unit be established.

#### **e) The Office of the Prosecutor-General**

As the final step in the consultative process, the recommendations of the Conference were placed before the Cabinet for consideration during March 1999. The Cabinet endorsed the recommendations and opted for the capacity of the Office of the Prosecutor-General, an existing agency of the Government whose primary Constitutional remit is to prosecute in the name of the Republic of Namibia in criminal proceedings. The Office would be strengthened by creating a special unit within it, charged with the specific responsibility to prevent, investigate and prosecute all corruption cases.

This decision by the Cabinet is a clear expression of the commitment and political will required to support the Government's anti-corruption initiative.

Cabinet on the 28 March 2000 rescinded this decision and instead decided that an independent anti-corruption unit be created. The head of such a unit is to be appointed by the President after consultation with Parliament. The Ministry of Justice is to render logistical support to the unit.

#### **f) Causes of Corruption in Namibia**

Opinions have been expressed that certain peculiar problems arising from the apartheid era also contribute to corruption and unethical practices in Namibia. On the one hand, old apartheid loyalties and ways of doing business among certain white businesses perpetuate discriminatory, non-competitive practices and collusion, exacerbated by the fact that whites largely control the business community. Further, some of the effects of corrupt practices introduced by the division of the nation into ethnic-based administrations are still present. On the other hand, there is a view held by some black Namibians that because they were deprived of opportunities to amass wealth in the past, they now need to find ways to get rich quick. As a result, certain leaders – senior officials or others who are in position to influence decisions or have access to inside information – have adopted attitudes that they should be entitled to receive lucrative economic rights, without necessarily having to adhere to the procedures or to meet the substantive requirements involved in obtaining or holding such rights. Such attitudes threaten to erode the principle of service to the nation that guided the founding mothers and fathers, replacing it with values which tolerate the misuse of official positions by public servants in order to conduct private business. However, these perceptions have been fully debated and addressed in the proposed Code of Conduct.

### **IV. GUIDANCE FOR PUBLIC SERVANTS**

#### **a) Public Service Ethical Standards**

The Public Service Act, 1995 (Act 13 of 1995) and the regulations promulgated thereunder require that public servants do not engage in remunerative activities outside of the public service without the requisite permission. It includes as misconduct, subject to disciplinary procedures, the following conduct:

- performance of private work by public servants related directly or indirectly to his or her official functions or to those of his or her office or failure to declare that any member of his or her household undertakes such work;
- use of position to promote or prejudice the interests of a political party;
- use of position or use of property of the State to promote the interests of a private business or private agency, except in the performance of official duties;
- acceptance of a commission, fee or reward, pecuniary or otherwise, to which he or she is not entitled by virtue of his or her office, or failure to report the offer of the same;
- misappropriation or misuse of property of the State;
- contravention of a prescribed code of conduct.

In addition, public servants are required to make a written declaration to their Permanent Secretaries, or in the case of a Permanent Secretary, to the Secretary to Cabinet, of certain private interests. Significant shortcomings include the fact that the public service standards are not well-published among public servants, the declaration requirement is often not adhered to, and there are no guidelines as to what types of outside interests are permissible or impermissible. However, this is also not clear in Namibia.

## **b) Codes of Conduct**

The Namibian Constitution provides a general framework concerning the standards of conduct of the President, Ministers and Members of the National Assembly and National Council and Members of Regional Councils, by setting qualifications to hold office and, in the case of the members of the Cabinet, establishing the following broad rules:

*“Cabinet Ministers may not take up any other paid employment, engage in activities inconsistent with their positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests.” (Article 42(1)).*

*“No members of the Cabinet shall use their position as such or use information entrusted to them confidentially as such members of Cabinet, directly or indirectly to enrich themselves.” (Article 42(2)).*

Like any other set of management tools, the effectiveness of the ethics infrastructure will depend on whether it is implemented, understood and applied consistently.

The public service does not yet have an approved code of conduct. However, a draft was completed. The procedure is that before it can be implemented, it has to be presented to the Public Service Commission and then be approved by the Prime Minister.

The Code of Conduct provides guidance to staff members on the behaviour expected of them, both in their individual conduct and in their relationship with others. Compliance with the Code will help to enhance professionalism and maintain confidence in the Public Service.

If the provisions of the Code of Conduct are not met, the question of misconduct may arise, and staff members could be liable to disciplinary action under the Public Service Act. (Section 25 of Act 13 of 1995).

**i) The Code of Conduct is based on three main principles:**

1. Staff members should perform their duties with professionalism and integrity and serve the government of the day efficiently.
2. Fairness and equity are to be observed in official dealings with colleagues and members of the public.
3. Real or apparent conflicts of interest are to be avoided.

The Code includes *inter alia*:

**ii) Responsibilities of staff members**

Perform official duties with skill, care and diligence, using authority in a fair and unbiased way;

Be familiar with and abide by statutory and other instructions, covering their conduct and duties, for example, the Public Service Act and Regulations, Treasury Instructions and Circulars. (Regulation 10(a));

Promote sound, efficient, effective transparent and accountable administration;

Report to the appropriate authorities any incident of fraud, corruption, nepotism, maladministration or any other act which comes to their notice in the course of their official duties and which constitutes an offence, or which is prejudiced to the public interest (Regulation 19);

### **iii) Conflict of interest (Regulation 11)**

If staff members find that they have some personal, financial, or other interest that might influence the way in which they perform their official duties, they must discuss the matter with their supervisor, and take whatever action is necessary to avoid a conflict of interests. They may not engage in any transaction that is in conflict with or infringes upon the execution of their official duties.

### **iv) Managing official information (Regulation 17)**

Staff members are not permitted to use or disclose information other than for official purposes without the approval of the permanent secretary.

### **v) Use of Official Position (Section 25(1)(l) of Act 13 of 1995 and Regulation 11(b)(ii))**

Staff members may not use their official position to seek or obtain a financial or other advantage for themselves, their families, their friends or any other person or organisation. Staff members will excuse themselves from any official action or the staff member should properly declare decision-making process, which may result in improper personal gain.

### **vi) Accepting Gifts or Benefits (Section 25(1)(l) and Regulation 16)**

Staff members may not use their official position to obtain private gifts or benefits for themselves during the performance of their official duties, nor may they accept any gifts or benefits when offered, except with the approval of the Prime Minister, as these may be construed as bribes.

### **vii) Working outside the Public Service (Section 25(1)(e) of Act 13 of 1995 and PSSR D.XVIII/I and III)**

Staff members may not, without the approval of the permanent secretary/accounting officer on the advice of the Public Service Commission, undertake remunerative or unpaid work outside their official duties or use office equipment or other resources for such work.

## **V. MANAGEMENT OF CONDUCT IN THE PUBLIC SERVICE**

The Public Service Act of 1995 provides for the establishment and management of the public service. Part II outlines the administration of

human resources, including providing rules and guidelines for recruitment and promotion. Part III outlines establishes disciplinary procedures for misconduct. Misconduct is defined to include contravening or failure to comply with the Public Service Act, wilful disobedience to lawful orders, negligence, conflict of interest through operating or having a household member operating an outside business relating to the performance of official duties without prior approval, misuse of position, excessive use of alcohol or drugs without a prescription, unlawfully disclosing information gained as a result of position, accepting bribes or not reporting attempts at bribery, misuse of state property, committing a criminal offense during the course of official duties, undue absence, influence peddling, and failure to comply with any provisions of a prescribed code of conduct.

If misconduct is established before a disciplinary committee, the public servant can be cautioned or reprimanded, fined not exceeding N\$2000, transferred to another post, demoted or have salary reduced, or discharged from the public service.

## **VI. CONTROL OF CONDUCT IN THE PUBLIC SERVICE**

### **a) Office of the Auditor-General**

The office of the Auditor-General is established in terms of Article 127 of the Constitution and has the responsibility to audit the accounts of all Ministries and agencies of central government, of local and regional authorities, of parastatals and statutory bodies. The Auditor-General and his or her staff are entitled to seek explanations from employees of the institutions undergoing an audit to assist in fulfilling their functions. The Auditor-General reports weaknesses in systems of financial accounting and control which were identified during the audit and recommends ways in which improvements can be made to reduce risk of errors, misuse of monies and fraud. In line with current private sector auditing standards, the Auditor-General does not have the duty of detecting fraud or corruption but nevertheless plays an important role in prevention through its reports and recommendations and also through the few performance audits which it has been able to conduct. It is the view of the current Auditor-General that the primary responsibility for detecting fraud and corrupt practices should lie with the internal audit sections of the audited institutions, but it is acknowledged that many of the aforesaid institutions, lack the human resource capacity to fulfil this responsibility.

#### **b) The Namibian Police (NAMPOL)**

All fraud and corruption-related crimes are presently investigated by the Commercial Crime Investigation unit of NAMPOL, which is divided into three sub-units, namely the Commercial Fraud Unit, the Fraud Syndicate unit and the General Fraud Investigation unit. The unit consists of fifteen members, of whom four are experienced. It is based in Windhoek and there are no similar units elsewhere in the country. In addition to investigation of crimes of fraud and corruption, its responsibilities include crimes under numerous and varied statutes. It works closely with the banks and financial institutions. NAMPOL does not have members who are trained in accounting or other specialised skills relating to the investigation of white-collar crime.

#### **c) Office of the Prosecutor-General**

Article 88 of the Constitution confers on the Prosecutor-General the sole power to prosecute in the name of the Republic of Namibia. He is assisted by a staff of eighteen State advocates at the High Court and Supreme Court, and approximately sixty-one prosecutors assigned to Magistrates Courts throughout the country. However, the Prosecutors lack specialised training and the Office suffers from the persistent drain of experienced prosecutors, due to inadequate remuneration.

#### **d) Public Service Commission**

The Public Service Commission is an independent body nominated by the President and appointed by the National Assembly in terms of the Constitution. Its functions include advising the President and Government on the appointment of certain categories of public servants and constitutional office-bearers and exercising adequate control over disciplinary procedures to ensure the fair administration of personnel policies. The Public Service Commission Act (Act 2 of 1990) empowers the Commission to conduct inquiries, summon witnesses and require the production of documents.

#### **e) Office of the Attorney-General**

Article 87 of the Constitution charges the Attorney-General with the functions and duties, among others, to exercise final responsibility for the Office of the Prosecutor-General, to act as the principal legal advisor to

Government and to take all action necessary for the protection and upholding of the Constitution. The establishment of the Attorney-General consists of Legal Advice (8 posts), Government Attorney (11 posts) and Prosecutor-General (9 posts). Through this advice to the President, the Prime Minister, Cabinet and Ministries or agencies on a daily basis, the Office of the Attorney-General plays an important preventative role by ensuring that government conducts business in a lawful, fair and non-arbitrary manner. Lawyers from the Office are assigned to conduct investigations into any malpractice of the government ministries, to chair Commissions of Inquiry or to act as investigating officers in complex public disciplinary proceedings.

#### **f) Office of the Ombudsman**

The Office of the Ombudsman is established in terms of Article 91 of the Constitution and is the only agency expressly given the responsibility in terms of the Constitution to investigate instances of corruption and the misappropriation of public funds. Article 91(f) provides that it shall be the duty of the Ombudsman to investigate allegations or suspected instances of corruption or misappropriation of public monies by officials and to take necessary steps, including sending reports to the Prosecutor-General or the Auditor-General. This is only one of many functions ascribed to the Ombudsman by the Constitution and the Ombudsman Act (Act 7 of 1990). The Ombudsman does not have law enforcement powers and normally fulfils his or her functions through making confidential recommendation to Government Ministries or agencies and seeking compliance through persuasion and negotiation. The Ombudsman has the duty to report to Parliament on his or her activities. The Ombudsman's Office is not empowered to initiate its own investigations in the absence of a complaint having been lodged, and its jurisdiction to investigate corruption is limited to the public sector. The Office of the Ombudsman, like the other State agencies mentioned herein lacks adequate human and material resources to fulfil its broad functions.

### **VII. NON-GOVERNMENTAL ACTORS**

#### **a) Citizen Demands**

Making the government more client-oriented has been a central platform of public management reform in Namibia. This means that, at the same time as having to manage with fewer resources, public servants will also face



pressures from increased public demands for more and better quality services. This pressure is exacerbated by governments own attempts to publicly state standards and levels of service to be achieved (through, for example, the Public Service Charter)

### **b) The Media**

The nameless, faceless public servant is becoming a relic of the past. Greater transparency in government operations, including through public access to official information, coupled with an increasingly zealous media and well-organised interest groups mean that public servants are more and more subject to direct scrutiny.

Private media play a role in exposing unethical behaviour. Examples of cases in point are: the National Housing Enterprise single quarters scandal in which senior officials from the organisation and those from the Ministry of Regional Local Government and Housing were convicted and sentenced. Another involved the Minister of Fisheries' gifts for his wedding from fishing companies.

When the actions of public servants are more visible, so are their mistakes and misdemeanours. It could be argued that the apparent increase in wrongdoing is more a function of greater transparency and scrutiny than an actual increase in cases. What was before hidden in bureaucratic secrecy is now open to public and media scrutiny.

### **c) Namibia Chamber of Commerce and Industry**

The current character of the Namibian chamber movement is largely reflective of narrow and parochial interests, deriving from the pre-independence legacy, which typified chambers as being essentially exclusive business clubs. To address this reality, it necessitated the embracing of a democratically derived mission, common values, and strategic objectives, aimed at promoting the prosperity of all Namibians.

In September 1998, it transformed into the Namibian Chamber of Commerce and Industry. This transformation enables the chamber movement in Namibia to consolidate its position as a credible business organisation, serving the interests of its broad-based constituency, through performing the functions of advocacy, representation and the provision of relevant services. In its new form, the chamber movement will play an even greater role in the tripartite paradigm of smart partnership as it relates to the achievement of national economic objectives.

## **VIII. RECOMMENDATIONS**

Public servants operate in a changed and changing environment. They are subject to greater public scrutiny and increased demands from citizens. They have to assume greater responsibilities and adopt new ways of carrying out the business of government in an efficient and cost effective manner. While public management reforms have realised important returns in terms of efficiency and effectiveness, some of the adjustments may have had unintended impacts on ethics and standards of conduct. This is not to suggest that changes have caused an increase in misconduct or unethical behaviour. But they may place public servants in situations involving conflicts of interests or objectives where there are few guidelines as to how they should act. Changing social norms and the increasingly international environment in which they work also influences their behaviour. The following are therefore recommended:

### **a) Codes of Conduct**

A national umbrella code should be adopted which would address specific codes of conduct of the organs of the state, parastatals as well as certain sections of the private sector, professional bodies, trade unions, NGOs, and other community organizations. Where such codes already exist, they should be reviewed for adequacy and incorporated in the national code.

A national code and the specific codes should be enforceable, to the extent possible. The national code should have the binding force of law, otherwise it would become just another nice piece of paper.

### **b) Freedom of Information**

All public information is public property unless otherwise stipulated by law, and the public have the right to know what is going on in government. Therefore information should be made available except in specified circumstances e.g. where security is at stake.

### **c) Whistle-Blowing**

The freedom of speech as enshrined in the constitution gives protection to individuals for whistle-blowing. The community must be educated in what is required from them to be whistle-blowers and how to serve the country in this way. Their reward would be a corruption free society. The following basic principles are recommended.

- A clear right to disclose information relating to mal-administration, corruption and unethical behaviour and a right of protection for whistleblowers.
- Companies must also have the right to complain about contractual or commercial matters such as tenders, licenses and to be protected from reprisals.
- The rights of private individuals must be safeguarded against malicious and unfounded allegations.
- Complaints or disclosures must be treated with confidentiality.
- Complaint mechanisms must involve an element of independence in the investigation of complaints in order to ensure objectivity.
- Complaints must be handled promptly.
- The complaint mechanism should be well-publicised and accessible to any potential complainant.
- Professional codes of conduct should obligate professionals such as auditors, accountants, lawyers and doctors to reveal corrupt and improper practice.

All persons covered by the leadership code should be required to make a declaration of their interest, assets and liabilities. These declarations should be subject to public scrutiny. Any “conflict of interest” provision should be enshrined in law and accompanied by criminal sanctions.

#### **d) Transparency and Accountability in Awarding Tenders**

The entire tendering process needs to be open and transparent. All decisions should be taken in the public interest and should be open to public scrutiny. Deviations from standard procedures should be questioned, and reasons must be given for taking decisions when so required. This pre-empt or eliminates loopholes and other opportunities for corruption.

The inclusion of affirmative action is a necessary component in setting up tender procedures and measures, but it must not be at the expense of efficiency.

Existing tender law and procedures need to be reviewed in order to close all possible loopholes. In addition, tender procedures for central, regional and municipal authorities need to be harmonised.

National political office bearers should be excluded from taking any decisions involving the procurement of goods and services and the authorisation of exemptions.

Legislation and or regulations must specify the circumstances under which exemptions may be granted, and reasons for not inviting tender should be made public.

#### **e) Granting of Licenses and Procurement**

Political office bearers should not be involved in the granting of licenses. Any person who is involved in the granting of licenses should not be involved when his/her next of kin is the applicant.

A mechanism should be established within government to inform the public on procedures about the granting of concessions, quotas, licenses, work permits, mining rights and study grants.

A code of conduct and ethics should be drawn up for the private sector, which should include procurement regulations and guidelines. Some areas of private sector procurement require statutory regulations, such as the subcontracting of government tenders.

In order to gain the confidence of the public and to encourage whistleblowing, any office or agency designated to receive whistleblower complaints must have adequate personnel to investigate complaints promptly and to take prompt action in cases of victimisation.

Codes of ethical conduct in all sectors should be reviewed and revised to include the aforesaid principles.

Public bodies and private companies should review their complaints procedures, in conjunction with trade unions or staff associations to ensure fairness and adequacy to deal with complaints impartially and to protect employees who make complaints in good faith and those who have been the subject of complaints which prove groundless.

#### **f) The Role of Traditional Authorities, Institutions and Civil Society**

Some of the practices of traditional leaders that seem to be in accordance with their culture should be looked at, and the leaders should be educated to stop practices that may be corrupt.

The public at large, politicians and civil servants should also be identified as targets of public education campaigns. Elements can be incorporated in the curriculum of primary and secondary schools to promote ethical conduct. It is also recommended that the role of the churches and the family in the promotion of ethical conduct need to be explored further. Namibian Society should, therefore, be encouraged to view corruption as an evil.

The media has an important role to play in educating the public and exposing corruption. It's role is critical for the success of a national integrity system. There is a need for better, objective, more investigative and analytical journalism. The need for responsible reporting has been emphasised. The media must perform its work in a professional and impartial manner. "Witch hunts" and unsubstantiated accusations can unfairly harm individuals and undermine anti-corruption efforts. A code of ethical conduct covering media practitioners and a more effective regime of government/media liaison is, therefore, recommended.

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# **A Namibian Perspective on Good Governance and Ethics**

**Prof Joseph Diescho**

The subject of good governance with a culture of a bureaucratic ethic continues to be on the agenda of the debate about strengthening democracy in Namibia. More often than not, tendencies within office bearers of the state indicate a disturbing pattern of mal-administration and general abuse of power. The result is a total lack of accountability on the part of those in positions of political power. At the heart of the problem is a blatant disregard of ethics enshrined in the Constitution of the Republic. This situation is compounded by general ignorance of the rules of the game in a democratic order, a lack of collective understanding as to what constitutes good governance and ethics and a lack of a common goal after independence was achieved. Namibia is a young nation and Namibians ought to look at their situation through Namibian lenses in order to develop a perspective that might help those who are not familiar with the historico-political background to understand the new situation better.

An ethical culture in government and good governance do not necessarily go hand in hand. Neither western colonization with its emphasis on exploitation and racial domination, nor the struggle for liberation with its emphasis the ends justifying the means, laid the grounds for a culture of democracy based on accountability, equity and tolerance which are the cornerstones of good governance. As a result there is no consensus in Namibia as to what should be the acceptable norms according to which governance should happen. It is JAZZ POLITICS - where improvisation rather than the national hymnal imprimatured by the Constitution are the order of the day.

At the time of independence in March 1990, there existed no well defined and effective anti-corruption and pro-good governance ethics in Namibia. What existed were three logics: to eliminate colonialism by any means necessary; to survive in the climate of dramatic and unexpected changes on the part of those who benefited from the old order; and to ensure that one's access to political power meant the end of material poverty and the struggle based on sacrifice. What is at play in Namibia today is a refrain of what has been the story of post-independence Africa where the abuse of political office for personal gain is more the norm than the exception, and civil society has neither the wherewithal nor the grammar to do something effectively about it.

Since the dawn of political independence in Africa, beginning with Ghana's independence in March 1957 African countries have been plagued by bad governance, ineffective governments, repressive political regimes and the ongoing malaise of official deviances of corruption, malfeasance and misfeasance. After ten years of national independence, Namibia seems to have been unable to escape the road traversed by older states in Africa. Corruption is on the incline, and often the general view of what would be clear signs of corruption in the western world does not strike the average Namibian to be corruption at all. The only noises about corruption are seen to emanate from and are meant to benefit opportunistic opposition quarters, and have very little to do with the ethics and political comportment of members of the ruling party.

It is important to start from the premise that the people of Namibia are, just like any other socio-political collection of people in history, both physical and spiritual, have always been and are still in search of good living. Namibians, like any other peoples dwelling on Mother Earth, are prone toward both establishing as well as deviating from what the old philosopher Hobbes and other social theorists to a lesser extent described as a social contract. Through a social contract a people as a collective of humans living together from time immemorial devised ways and rules to guide their members to be, in the very least, considerate of fellow members.

As Namibians evolved from being small communities that were migrating southwards from North Africa in search of grazing land and water (good living) into bigger societies fashioning some codes of peaceful coexistence with fellow members, they need new social contracts for the benefit of all.

The continuous search came about to establish better harmony in this new world. The quest for a better world became stronger as Namibians realised that the process and practices of colonisation was rendering the indigenous populations of Africa less than human. Ironically, the presence of a common enemy, the white colonialist, became the impetus for the formation of the Oshigwana sha Namibia, the Namibian nation. The struggle for liberation as such was an extension of the need for a different ethic of governance - governance that would derive its authority from the governed, as opposed to the one that was imposed from elsewhere. Similarly a government that derives authority from the governed could only exist if there was a general understanding of what is good for and acceptable by the greatest number of the people who consider themselves legitimate members of such a society or community.

In order to gauge any ethics that people in Namibia may uphold, it is important to bear in mind that what is now known as Namibia is a new reality



altogether, an extension and consequence of colonial history in Africa. The process of colonisation has created a host of unintended consequences, amongst them, the evolution of an elite political leadership which did not come about organically. The liberation movement such as the South West Africa People's Organisation (SWAPO) was an offshoot of colonial history which gave rise to it. Thus, SWAPO's main aim was to dislodge foreign rule and replace it with self-rule. The ethics of such self-rule as such was predicated upon an understanding of how not to be like a colonial administration rather than what is good for the African people of Namibia. Neither colonialism nor the liberation movement was founded on the principles of good governance or ethical administration. Both these processes were about the usurpation of the political power and space by persons and/or groups who would not necessarily have been political leaders if Africa's own self development was not rudely interrupted by colonial imperialism. The two tracks contributed largely to the narrowing of the political space and possibilities. In fact the political space was reduced to a performance space giving room only to actors on the stage and mimickers of colonial masters, while the rest of the population was left to contend with the trappings of the politics of patronage.

The new elite leadership, educated in the mode and pedagogy of western politics proved to be the lesser of the two devils (colonialists and freedom fighters), but which behaved to all intents and purposes just like the colonial masters they replaced. The new polity inherited the nation-state which was intended as a mechanism of oppression of African people and kept it intact not to deliver on the promises of freedom, but to serve themselves as those who are more equal than others.

It is important to reiterate that neither colonialism nor the struggle for political independence as we have known it prepared a post-independence Namibia to be an egalitarian society where good governance rather than persons, is important. Both colonialism (even worse its latter version of apartheid) and the struggle for liberation created a climate of US VERSUS THEM with a built-in principle of permanent dependency on THEM. Colonial masters had no intention of relinquishing power, hence the wars of independence that were rendered inevitable by the intransigence of colonial practices.

Independence leaders are equally unprepared to give up political power, hence the withdrawal of civil society from the business of the state and the inevitable state-society struggle that has become characteristic of African politics post 'flag independence' or 'national anthem independence'. Thus in both colonial rule as well as post-independence regimes, the majority of African populations are ruled without meaningful participation. In this

environment of massive poverty, illiteracy and underdevelopment, the ethic of survival becomes the norm that continues to dominate African politics, and Namibia is no exception. It is also very important to point out that neither colonialism nor the struggle for self-rule prepared Namibia for true democracy. In point of fact, both colonialism and the struggle for liberation were ill-preparations for real democracy and good ethics of governance.

Both colonialism and the struggle were based on mistrust, self-righteousness and the desire to destroy the enemy at the slightest provocation, and neither of them committed genuinely to democratic order outside of its immediate self. The colonial administrators and their conduct were totally antithetical to democratic culture. The struggle for self-rule, legitimate though it was, had more to do with the desire to end foreign rule and less with real democracy.

It is important for any discussion on ethics and good governance not to lose sight of the fact that colonialism, and apartheid in particular, were extremely corrupt systems. Not only did they not derive authority from the governed, but used brutal means to justify and perpetuate their ubiquitous presence. Consequently, the struggle leaderships which invariably emulated the colonial potentates and race maniacs found themselves repeating the very same ills which they had fought 'their struggles' against, and found themselves behaving exactly the same ways as did the colonial masters they had successfully dislodged, a la George Orwell's *Animal Farm*.

In other words, the histories of oppression and liberation struggle as we know them do not serve as yardsticks for a culture of ethics and good governance. They were linear histories with the aim to serve only one end. In the final analysis, therefore, any discussion about good governance and ethics in Namibia has to begin with the noble beginning of constitutional democracy in Namibia. The ethics that will serve as the foundation for future democracy and good governance in Namibia have to derive from that commendable commitment the 72 Founders made to a constitutional order as the basis of the new covenant between the governor and the governed vertically, and between individuals or groups horizontally. All other ethics outside of the self-evident standards of human decency would be either too sectarian, thus divisive, or not universal, thus not terribly helpful. To be sustainable, ethics have to be acceptable beyond one group or community, and a nation by its very nature is a collection of communities that differ in sociological specificities such as language, religion, cultural expressions, ethnicity or even political organisation.

Many commentators on African politics continue to commit mistakes in their description of the malaise within the body politic of Africa nations by

defining a lack of morality, unethical conduct and maladministration as one and the same thing. Though there exists a relationship among these admittedly interrelated matters, it is important to treat these concepts differently from one another.

What are the differences, then? Morals are a body of codes of conduct whereby people qua persons are able to delineate between right and wrong and according to which they can determine what is observed as good and not because it is demonstrable. For instance, it is a moral imperative in Africa to treat any child as one would treat one's own. In this context, black Namibians had a moral duty to liberate their people from colonial oppression, and it is thus immoral for those who are in positions of leadership to enrich themselves at the expense of those who are not. Ethics on the other hand are an ensemble of moral principles accepted by a group of people and according to which such group forms judgements about the conduct of its members. The consequences of such judgements are either to approve or condemn, and in so doing the group perpetuates its core values. In this context, Namibia is still a nation under construction, and needs acceptable ethics in order to solidify and propel itself forward. Maladministration (bad administration) refers to an incongruence between what is expected from a particular office and what is done in reality by the incumbent person holding such office. It is usually the case that the person holding the office invests himself too much in the rules of the office that s/he confuses personal choices with objective goals of the office. Often the office holder then uses the resources of the office for personal aggrandizement at the expense of the greater number of the people. In the scheme of things, therefore, morals are higher than ethics and ethics are essential to prevent maladministration.

In Namibia, it remains one of the challenges to create an environment conducive to preventing and combatting unethical conduct on the part of those who hold public office. These are the people who are expected to be the custodians of the values around which the nation could coalesce and hold an organic dialogue about the future. As the independence euphoria began to dissipate and the focus turned from colonial rulers to the new ruling class, the charge is often made that the prevalence of corrupt practices by government and state officials in Namibia signify a lack of ethics. Reference to corruption presupposes the existence of something better before and which degenerated into something less desirable now. This is not the case, for there was neither a constitutional state nor democratic governance in Namibia prior to what we have now. What we see in independent Namibia is simply deviant official behaviour, malfeasance

and misfeasance are repugnant to what the Constitution of the Republic prescribes as acceptable. This is so because very little in the past would serve as a useful barometer of incorrupt practices or good governance. For instance, it was acceptable in certain groups in Namibia that a chief expected and even extorted gifts from his subjects in exchange for favourable decisions.

In other quarters, the chief who was the guardian of communal land was at liberty to grant portions of such trust land to persons who gave him large gifts. In other groups, it was considered an honour to the husband whose wife the chief demanded for a night. In most cases, the chief was above the law as he was the accuser, the prosecutor, the chief defence counsel and the judge of the highest appeal at the same time. In such circumstances, the subjects who understood the absolute powers of the chief would behave accordingly to survive. Such practices were not bad governance and not corrupt as there existed nothing against which to measure them.

It is this background that makes objective discussions of ethics, corruption and good governance in Namibia difficult as people mean different things at different times when they ironically refer to the same practices. One example is that when the Minister of Fisheries and Marine Resources used his good offices to get business people to contribute monies to his wedding banquet, and the nation saw that as corruption, President Nujoma saw it as a normal African practice of asking people to contribute to ones wedding. What this case illustrated is that there are commonly accepted moral values that, when violated in pursuit of self-glory, shame would be visited upon the perpetrator. At the same time, people would evoke African culture opportunistically to defend ill-behaviour and maladministration, pure and simple!

To be ethical or not should have the Constitution of the Republic as the only barometer until such time that the greatest number of Namibian citizens, not subjects, will have internalised the values such as honesty, integrity, service, equality, justice and respect for all. This is both true and important for future planning because even civil society as we know it is a creation of the state and must be cultivated by the citizenry based on the fundamentals in the Constitution.

It is, however, neither fair nor adequate to commence everything good and ethical on the day the Constitution was adopted. There are three pillars upon which a future with ethics and good governance principles can be built, namely, (a) the ancestral past; (b) people's knowledge of self which buttressed the struggle for liberation as such; and (c) the deliberate choices made by representatives who drafted the Constitution of the Republic.

First, there was life before 1990, and there are most certainly edifices of ethical and moral codes in the body politic of pre-colonial communities which we know were alive and vibrant, however nondescript. The ancestors of today's Namibian communities must have mortgaged a life for their children with and through a pedagogy of ethics and good living. To start with, in the Namibian communities of old, there existed what is today loosely described as taboos, but which served as barometers of the good conduct for the members of these communities to be and remain in good standing.

Although these taboos were not necessarily part of the styles of governance at the time, they nevertheless provided people with working rules regarding the DOS and DON'TS to regulate their lives such that there was equilibrium in the community.

The people in northern and central Namibia had what is described as thidhira, shidira, sidira (RuKavango), oshidhila, oshidila (Oshivambo), mwila (Lozi), otjizera (Oshihero) - a code which informed individuals that there were certain things in the collective living of humans that one did not do without inviting the disapproval and even wrath of the larger group to which an individual was subject. For instance, one did not have sexual relations with members of one's family from a particular lineage, or else such relationship was a source of shame, or even inevitable bad luck with one's offspring. Violation of the community code was a guarantee of some form of punishment, directly (by the community that imposed a sanction) or indirectly (by the ancestors who meted out punishment to the offender). To remain a respected member of a society, one needed to abide by certain rules and expected others to do the same, and so society propelled itself forward. To be guilty of a breach of such codes, one would be disqualified from any form of good standing in society, including the right to lead or represent politically.

Stealing and dishonest behaviour were discouraged in most spheres of life. A chief who was caught depriving his people of resources over which he as the leader stood only in suretyship, was shamed and expunged from the position of authority. Similarly, acquiring a position of leadership through dishonest means ensured punishment for both the perpetrator and his offspring. Members who comported themselves in an exemplary fashion were rewarded richly: songs were written about them, more babies were named after them in order to immortalise them as standard bearers of the values they epitomized.

Second, knowledge of self buttressed the struggle for freedom in ways more fundamental than we give credit for. It is always a moving experience to

listen to the stories of countless Namibians, particularly young ones, who left their country in search of a higher role to play in liberating their country. These are people who left, often under the cover of darkness, and walked long distances till they found other Namibians with whom they joined in camaraderie to liberate the country. The extent to which they understood themselves to be better than what the colonialists were telling them, the level of their sacrifice, and their commitment to something not that clear to them at the time, could only be something driven by a high ethic of pursuing a selfless goal.

In addition, there are lessons from the liberation struggle that point to something much higher than the persons involved in it. A closer look at the lives of people during the hard days of struggle for independence, especially from SWAPO's side, reveals an ethic that cannot be ignored when building a foundation for the future. The struggle for freedom encompassed higher values and norms that the cadres at the time committed to as an integral part of building a better Namibia. It was accepted that the struggle for liberation required people who subscribed to the ideals of sacrifice, dedication, loyalty (not blind- but critical loyalty), pride, honour, service, the unity of Namibia (One Namibia, One Nation), hard work, and education in order to serve better. It was common cause that the collective spirit of the struggle eschewed all tendencies towards the accumulation of material wealth. Such capitalist desires were seen as part of a bourgeois culture which was antithetical to the struggle to end suffering.

Furthermore, the role of the Church in Namibia cannot be overlooked in so far as the ethic of service and the task of prophecy were concerned. This is important not only because Namibia is the most Christian country in Africa, but also because the Church, in particular the Lutheran Church, was in the frontline in the fight for human rights, justice and nationhood. In 1971, the Lutheran Church under the leadership of the late Bishop Auala and Pastor Gowaseb broke the classic church silence and issued an Open Letter to the then South Prime Minister John Vorster, calling for an internationally supervised election in Namibia that could lead to Namibia's sovereignty. With this, the Church chose the path of courageous advocacy and fearless campaign on behalf of the underdog.

Third, the trust the Namibian people reposed in the 72 members of the Constituent Assembly who crafted the Constitution in 1989/90 constitutes a serious foundation of faith in a democratic culture of give and take and attendant compromise. The compromise ethic was central to the democracy in Namibia in a way that is unique to the African experience compared to western democracies with 'the winner takes all' logic. By accepting as

binding the product of the 72 members of the Constituent Assembly as the vox populi, the whole nation accepted that the disparate communities that had evolved in the past would cease to exist as independent parts and that they would become part of a stronger whole, the nation.

In sum, the tapestry against which we have to consider the need for good governance and ethics in Namibia points to one reality, namely, that Namibia ought to take out of the sordid past that which is noble and good and build upon such a better future. The beginning has been made with the embrace of the first truly democratic Constitution on the African continent. The people of Namibia had a space that was never enjoyed by older self-ruled African countries that were sandwiched between two super power ideologies with little choice left to themselves. Namibians were the first in Africa to craft their own constitution, and in a record time of 80 days - no small feat.

The down side is that not all practices of the past must be retained. There is a contradiction between traditional African values and practices and the values inherent in a constitutional democracy. African traditions of governance are based upon ascription whereas a constitutional democracy is based upon negotiated and agreed-upon principles. As opposed to a single locus of authority, ie the chief, in a democracy power is devolved to various institutions that provide a system of checks and balances to ensure that what had been agreed to actually happens continuously, consistently and equitably.

This suggests that traditional leadership must be revisited such that those who govern must derive their authority and power from the governed. This ethic should be one that cannot be compromised.

Good governance, like the democratic project, is not an event. There is not a single nation that can claim to have perfected good governance. All nations, severally through their own institutions and laws, and jointly through international bodies such as the United Nations and other regional organizations, strive to bring about a better world which guarantees all citizens good living. Good governance is an ideal, an ideal that is sought after as a nation meanders through history - it claims successes at times, and failures other times. It is an experience that stretches beyond the contributions of individuals, it is indeed a cathedral perpetually under construction.

Despite the many examples of bad governance in the Namibian body politic one would be remiss if one did not acknowledge that a solid foundation has been laid for good governance in Namibia in the first ten years of its

democracy, the commitment of a few leaders notwithstanding. The ruling party must be commended for its selfless commitment to the principles enshrined in the Constitution. Since independence the fundamental freedoms have been upheld, and there are ongoing efforts to strengthen governance with accountability in the country.

Namibia has a great potential to establish an ethical society. Examples abound in Namibia's African history that provide a fundamental pedagogy for a moral and conscientious society. In order to elaborate an ethical universe wherein people, disparate though they might be culturally, linguistically, religiously and politically, some fundamentals must be enunciated by denouncing the bad conduct now prevalent in the country. Similarly, those entrusted with positions of leadership ought to lead by example, and must be subject to recall by the electorate. The two old adages, a government without accountability is a tyranny, and power tends to corrupt and absolute power corrupts absolutely, come to mind when we reflect upon ethics in Namibia.

In conclusion, in order to expand on a culture of good governance a proactive national campaign promoting good governance and ethics is needed. The Namibian school system, inter alia, must incorporate into its curriculum a programme that aims at creating and preparing a Namibian Personality with an understanding of the pillars of good governance: **accountability, diversity, equity, honesty, honour, openness, the rule of law, self-respect, thankfulness, and tolerance** - for the future governors and governed of the country.

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# **Societal Consideration in Developing Ethical Standards in Namibia**

**Hon. Nahas Angula**

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## **Which way Namibia?**

Namibia was ranked 30th on the 2000 Corruption Perception Index (CPI) of Transparency International. The rank is based on the Corruption Perception Index (CPI) scores. Such scores reflect perceptions of the degree of corruption as seen by business people, risk analysts and the general public. Such perceptions are derived from surveys conducted by Transparency International. For a country to be listed on the CPI at least three surveys were conducted on such a country. The CPI ranges from 10-0. The index of 10 indicates that a country was highly clean from corruption. For 2000 CPI it was only Finland which scored 10.0. Nigeria on the other hand scored 1.2. A zero score denotes that the country was highly corrupt.

With regard to Namibia, four (4) surveys were used. The 2000 CPI score for Namibia was 5.4. Out of 90 ranked countries Namibia stood at 30. Namibia may therefore be characterised as a middle corrupt country. There is therefore a justification to ask the question: Which way Namibia? This short paper will look at the question of ethical standards in Namibia. Specifically, the paper will focus on societal considerations in developing such ethical standards in a young country like Namibia. The perceptions that Namibian society is half-corrupt is indeed a serious one. Corruption implies deterioration of ethical standards in society. The threat to ethical standards inevitably leads to moral crisis. Moral crisis in society clouds the values of right and wrong. In other words, the conduct of public life and administrative integrity becomes questionable. Such state of affairs seriously compromise the welfare of a nation. It is, therefore, an opportune time for Namibia to reflect on the issues of public ethics, moral integrity and above all, good governance. First, let us put these issues in context.

## **The Namibian Context**

Namibia emerged out of a peculiar colonial experience just ten years ago. Prior to independence public civic life was characterised by racial domination buttressed by patrimonial rule of co-opted traditional rulers and corrupted Bantustan authorities. The apartheid colonial rule was by

definition corrupt. It exercised power through naked force and blatant racial discrimination. It co-opted traditional governance institutions on the basis of divide-and-rule and therefore made such institutions direct accomplices in colonial corruption. Resource distribution was discriminatory. The rule of law was sacrificed on the altar of colonial interests. The whole colonial edifice was anything but transparent. All in all, institutions of governance - colonial and traditional - were corrupted and compromised.

At independence the new ethos of equity, justice and democracy were made the foundations of a new society. Equity underpinned social equality. Justice was founded on the rule of law. Democracy ensured public accountability. The founding article of the Constitution of Namibia reads in part as follows

*“The Republic of Namibia is hereby established as sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all.*

*“All power shall vest in the people of Namibia who shall exercise their sovereignty through the democratic institutions of State“* (Constitution of the Republic of Namibia Chapter 1, Article 1(1) and (2).)

Governance in Namibia is predicated on these lofty ideals.

Moreover, Namibia is a multicultural society. Management of cultural and economic diversity should be informed by the underlying ethos of the national Constitution. Cultural diversity is a source of strength and at the same time a potential area of conflict. Diversity gives our nation a cultural panorama full of rhythm and dynamism. In order to enhance diversity as a source of wealth, the nation should embrace the concept of unity in diversity. Unity in diversity is celebrated through mutual respect, justice and tolerance for different cultures. Economic diversity on the other hand could be managed through the creation of economic space for all without discrimination. The ethos of equal opportunity should be central to economic empowerment. Our history of colonial and racial discrimination has economically marginalized the majority. It is fair therefore for those who were historically disadvantaged to demand redress through redistribution. Redress and redistribution could empower but at the same time could create conflicts if not properly managed. Creation of a levelled playing field for economic opportunity is a challenge to governance and the management of public affairs in Namibia today.

In short, the Namibian context is characterised by a history of discrimination, the new ethos of fair play and unity in diversity. Such a situation is pregnant with both opportunities and dangers. Opportunities

could only be realized if a civic and ethical culture pervade the public realm. Danger of conflicts developing in a heterogeneous society are real and apparent if the public realm is not well managed. The 2000 Corruption Index (CPI) of Transparency International is a wake-up call for Namibia. It is time for the nation to reflect on its ethical standards. Are the actions, behaviours and conduct of the political and administrative public officials beyond reproach? Is there a moral crisis developing in the nation? Is there a need for a national integrity system? As the saying goes, where there is smoke there is fire. The Corruption Perception Index points to the fact that all is not well in the management of public affairs. It appears, therefore, to be an opportune time for Namibia to develop ethical standards which should serve as benchmarks for public conduct.

### **Toward a National Integrity System**

The need for a National Integrity System for Namibia could not be over emphasized. Such a system should define standards for ethical behaviour and conduct in public life. Such standards should, first and foremost, be defined for political office bearers within the context of the Namibian Constitution. The Constitution promotes the ethos of democracy, the rule of law, justice and the sovereignty of the people. Democracy demands accountability of the political elite to the electorate. Public accountability is promoted through openness and institutional oversight. In particular, the division of power among the three branches of government, namely the Executive, the Legislative and the Judiciary, should be respected and upheld. The rule of law is enhanced through the independence of the Judiciary. The Legislature on the other hand should keep the Executive in check. Ethical standards for political office bearers should be based on the principle that political office bearers should be guided in their conduct, actions and behaviour by the notion of achieving the greatest happiness for the greatest number of people. Promotion of the welfare for all should at all times guide the decisions of political office bearers. Secondly, the political conduct of political office bearers should be guided by norms and rules which sustain a functioning state. The decisions, conduct and behaviour of the elected public office bearers should therefore be scrutinised against two mirrors: public welfare and respect of laws, institutions and norms.

Integrity in public administration on the other hand should address issues of honesty, justice, efficiency, effectiveness and moral virtues. Ethical standards should be developed in order to prevent civil servants from falling into administrative corruption. Administrative corruption manifest itself in

various ways. These include: accepting bribes in order to perform a public duty; self-enrichment at the expense of the public; misuse of public power for personal benefit; taking a decision on the basis of ulterior motives; and institutional unfairness, just to mention a few. A National Integrity System setting out ethical standards of conduct of civil servants should help the public to judge the conduct of these public officials. This is necessary not only to promote the general welfare of the community but more importantly to protect the integrity of public servants who are sometimes accused of corruption on a malicious basis.

The question, “Which way Namibia?” should constantly be asked if the nation wants to safeguard the letter and the spirit of the Constitution, promote good governance and enhance the welfare of the greatest majority. Besides the creation of a National Integrity System, enforcement measures should be put into place. For example, an Act on Integrity in Public Life should be promulgated to eliminate corruption and enforce the National Integrity System. This should be understood as a means of promoting good governance and safeguarding the welfare of the people and peace of the nation. Namibia cannot afford to slide deep into an abyss of corrupt practices. Corruption is like cancer. It destroys the moral fabric of society. A moral crisis is difficult to turn about because the principles of wrong and right, good and bad will have been violated. “Which way Namibia?” should be a constant question on the lips of well meaning citizens.

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# **Ethics and Decentralisation**

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## **Decentralisation**

Decentralisation follows the principle of subsidiarity which implies that any public function that does not necessarily have to be handled by central authority can be decentralised and entrusted to governmental authorities at sub-national level (Dobiey, 2000:1). Decentralised reflects not only a structural process, identifying and empowering sub-national structures, but also a political and administrative process, involving people in determining their own destiny through self-governance and self-administration, while addressing problems and issues at a subsidiary level. It is equally a supportive and complementary process sharing and supporting national governance at sub-national level.

Decentralisation is part of a democratic process of governance. This should be reflected in the credibility and the efficiency of programmes for economic development, poverty reduction, employment opportunities, general upliftment, social services and in the promotion of sustainable development. Equally important is an accountable government and customary friendly governance. The principle of equity should always be adhered to in the decentralisation process.

There is a nexus between grass-roots development and grass-roots democracy. Democracy at central level cannot be functional and cannot become properly operative if it is not supported by democracy at grass-roots level. Each and every citizen in Namibia is a role player in the decentralisation process. A spirit of mutual respect and complementary support as well as the acceptance of the legitimacy of the role of each participant in the decentralisation process are essential components of building partnerships between government and civil society in decentralised structures. One of the outcomes of decentralisation should be the enhancement of intimate and productive relations between electors and the elected.

A number of factors determine the success of decentralisation, among them well-trained administrators, an adequate infra-structure at sub-national level, sufficient financial means and resources, proper coordination of decentralisation at national level, a political will and moral commitment among all the stakeholders in the decentralisation process.

## **Public Administration and Politics**

Public administration is referred to as the action or active part of government and the means by which the purpose and goals of government are achieved. It is the medium by which the reason for being and the objective of government are realised, the sum total of human as well as material means through which the government operates in the fulfilment of objectives of common interest and in the enhancement of the general well-being (Dobers, 1980:24; Corson and Harris, 1969: 142-143). It can be agreed that government administration is intensively involved in the shaping of public life in its daily course of activities.

Public administration operates and functions in a political environment. It is also a social mechanism which as much as politics influences and controls interactions in society. Both aim to satisfy desires and needs in the population at large. Public administration pursues as much as politics societal values (e.g. progress, stability, equity), contributes to the development thereof, and performs social and political authority (Hesse, 1982:14). This executive task alone puts public administration directly within the realm of politics as much as the implementation of political decisions.

A hallmark of participative and cooperative democracy is a conducive and productive relationship between politicians and public administrators. Public administration as much as politics cannot operate independent of each other or in isolation. What has been defined by politicians, being the legitimate law-makers, as the manifested purposes of public administration has formed the basis of legitimacy for all its functions and operations. Goals and objectives are predominantly set by the political power holders, the government, but the realisation rests totally which the public administrator. This makes him or her so important in the implementation of the decentralisation policy. There is certainly no governmental activity which is not related to public administration.

## **Public Administration, Governance and Ethics**

The public administrator is conscious of the fact that his solidarity has to be two-fold: towards the political authority in whose services he or she is and towards the citizenry whose interests he or she is expected to serve. The public administrator is constantly in need to reassess his or her role performance. The public administrator's task fulfilment will be tested against many criteria, not in the least how legitimate his or her role and task performance is. Other criteria include credibility, accountability, probity, trustworthiness, efficiency, competence and moral responsibility.

Particularly ethics and public accountability are critical for political and administrative systems as they underline the legitimacy of both government and public administration. The latter cannot escape political co-responsibility on any decisions taken by the political office holders. Any political action should reflect not only the will of the state but also the will of the people. The public administrator through his or her input, executing and evaluating function, becomes a co-stakeholder in the political and administrative process.

Quality of good administration is determined by objectivity, commitment towards the government and the public, good organisation, appropriate communication system, goal and objective orientation, analytical skills, good interpretation, sensitivity of human needs, helpfulness, inventiveness, responsibility and responsiveness. Factors which contribute to ethical standards include sense of accountability, the ability to make rational and responsible decisions, to practice honesty and integrity, professionalism, to respond to public needs, to accommodate public interests, to be committed towards equality and equity and to practice courtesy, to be loyal and dedicated and to be concerned about social and economic needs as well as gender and environment issues.

Deteriorating economic and social conditions favour unethical conduct. Unethical conduct is also influenced by the awareness and adherence to moral standards and ethical values in society. Decentralisation will not succeed in Namibia if unethical behaviour should prevail at national level. The consequence would be the decentralisation of unethical conduct and behaviour.

Ethics is concerned with both individual and collective morality. Ethics as a collection of moral principles and views is about a collection of acceptable and also unacceptable actions in public. It involves motive and action. In moral philosophy it deals with values relating to rightness or wrongness of certain actions, and to the goodness or badness of the motives and the ends of such actions. Ethics is concerned with what is morally defensible.

Ethics as a social phenomenon can thus be considered as a set of morals, rules and standards governing the conduct of the members of an organisation, in this case that of government and public administration. Such values, often reflected in established norms, should guide decisions and the implementation of policies. According to the Public Service Commission of Namibia (1998) ethics in the public sector refers to a category of discretionary decision-making involving moral standards in official work within the context of a specific political, economic and social

environment. Ethics in the public sector is thus about the application of moral standards in the course of official work. Lack of professional ethics causes loss of personal integrity and lack of respect of human dignity.

Ethics deals with values relating to human behaviour, particularly pertaining to rightness or wrongness of certain actions, and the goodness or badness of the motives and ends of such actions. Any action taken by a politician or public administrator reflects a value statement. Ethics is therefore related to human behaviour and actions. Applied to the decentralisation process, such actions imply service to the community and the well-being of the community and individuals. Politicians and public administrators are expected to make morally defensible contributions to the improvement and quality of life of all members of society based on the principle of equity.

Ethics is not only about how public servants and political office bearers behave and perform but also about the employment environment, the participatory and democratic atmosphere within which they operate, and the culture and standard within which people grow up and are socialised. Cultural norms, education, training and experience determine the value system of a politician and public administrator. These factors influence and have an impact on behaviour, arguments and decisions. Decisions are, however, not only based on values and ethical considerations, although accepting their normative character, but also on empirical data, thus facts. Public actions should at all times be rationally and ethically defensible.

### **Ethics and Decentralisation**

Decentralisation must be performed in a conducive environment. It is performed within the context of a particular political culture. Political culture refers to a widely held set of attitudes, beliefs, values and feelings concerning politics and administration in a state at a given time, what government and public administration should do, how both of them should operate, and the relationship between the citizen and the government and its executing agencies.

Political culture is shaped by a national history and by the ongoing process of social, economic and political activity. Namibia is committed towards participatory and cooperative democracy at national, regional and local level. In 1996 it decided on a policy of decentralisation to ensure economic, social and political development at all levels of government. The population has been given the opportunity to participate in their own decision-making at all levels of governance and administration. Extension and participating in decentralised structures is based on national ideals and values. This is particularly reflected in the Decentralisation Enabling Act of 2000.



The Ministry of Regional and Local Government and Housing plays a decisive role in the decentralisation process. As an initiating government agency it is tasked to coordinate all decentralisation activities. It will be a mentoring and monitoring role. It is only since independence in 1990 that the country has been divided into thirteen regions and 102 constituencies. The Ministry was also responsible for the development of local governance in Namibia from which the majority of Namibians were excluded before independence. A new political culture has thus been shaped which naturally affects the conduct of individuals in their political and administrative roles. It has also brought to the fore particular political demands related to decentralisation and how demands should be met adequately and in a responsible and equitable way. Political culture shapes the actions of people as much as political systems' actions have an influence on shaping political culture.

Every political culture is prone to unethical conduct. Most common forms of unethical behaviour include corruption, bribery, fraud, patronage, nepotism, self-enrichment at the cost of public goods, conflict of interest, misuse of public resources for private gain, influence peddling, favouritism to friends and family, moonlighting, division of loyalty, destructive office behaviour, insubordination, sexual harassment, improper handling of government property, breach of secrecy, leaking of unauthorised information, false claims and budgeting, tax evasion, own-invoicing, falsification of documents, collusion, obtaining goods by false pretenses, extortion, and blackmailing.

The government is particularly concerned about corruption representing a serious departure from administrative ethical norms. Corruption is, according to Heidenheimer (Public Service Commission, 1998:5), a behaviour which deviates from the formal duties of a public role whether elective or appointive because of private-regarding wealth or status gain; or which violates rules against the exercise of certain types of private-regarding influence.

Corruption is thus related to the illegitimate use of public resources for private gain by public administrators and political office bearers. Such practice causes alienation between state and society and contributes to lack of trust in state institutions. Citizens are particularly concerned about the self-enrichment process which can only contribute to the widening gap between rich and poor in the Namibian society.

In a research report undertaken by the National Democratic Institute for International Affairs in Namibia in 1998, forty percent of the respondents felt

that corruption is common in Namibia and forty-five percent said it is very common. Altogether forty-five percent claimed corruption to occur at national and executive level but to a much lesser extent at regional and local level. Almost fifty percent of the respondents indicated that economic growth was the single issue most negatively affected by corruption in Namibia. Unemployment rated next with ten percent.

Decentralisation addresses socio-economic development as a priority and is particularly concerned about the levelling of the gap between the well-to-do and the poor. Democracy cannot thrive on poverty. Through empowerment and capacity building and with the cooperation of regional and local authorities, decentralisation endeavours to contribute to a healthy social and economic climate that acts as a counterforce to immoral practices such as corruption.

Strict control measures while simultaneously supporting the development of a conducive atmosphere for own initiative and co-partnership, guiding instead of prescribing, are part of the policy to motivate people at regional and local level to take their destiny into their own hands with the assistance of central government. It is the intention of the Ministry of Regional and Local Government and Housing as the initiating, coordinating, supervising, mentoring and monitoring parent body of decentralisation to foster responsibility, supported by a clearly defined set of ethical values and norms. Such a code must set ethical standards based on moral values that can help in the promotion of ethics in society and at workplace. A code of conduct is already in place but it will be strengthened by a code of ethics that is transparent, relevant, realistic, mandatory, monitored and enforceable.

### **A Code of Ethics**

A code of ethics for public administrators and political office bearers at regional and local governance is a necessity and should reflect expectations and commitments.

It is expected that public administrators and political office bearers at regional and local governance level:

- are dedicated to the concepts of effective and democratic regional and local governance and accept that professional governance is essential to the achievement of this objective;
- reaffirm the dignity and worth of the services rendered by the government and maintain a constructive, creative and practical attitude toward

regional and local affairs and a deep sense of social responsibility as elective representatives of the people and as trusted public servants;

- are committed to the highest ideals of honesty, objectivity, professionalism and integrity in all public and personal relationships in order to command respect, trust and confidence of politicians, public administrators and the public at large;
- recognise the underlying principles of good governance through efficient service that can serve the interests of all people equally and best;
- contribute actively and responsibly to the formulation and implementation of government policy at regional and local level;
- put general welfare of the people above party politics and abstain from all partisan political activities that could impair performance;
- continuously improve professional behaviour and competence;
- maintain communication with the recipients of government's endeavours, keep the community informed and deliver courteous service to the public;
- apply humanity, empathy and dignity in all their endeavours;
- are at all times committed to the improvement of the quality and image of public service;
- let equity of treatment prevail;
- are attentive, fair and impartial in the performance of functions;
- do not discriminate and let equality and justice reign;
- adhere to transparency, fairness and impartiality in all recommendations and decisions;
- seek no personal favour;
- act in public interest through public institutions;
- perform their functions efficiently, effectively and with integrity in accordance with laws and administrative policies;
- seek to ensure that public resources are administered in the most effective and efficient manner;
- cannot be engaged in any transaction, acquire any position or function or have any financial and commercial interests that is incompatible with their office, functions and duties or the discharge thereof;
- declare or disclose personal assets and liabilities if so requested;

- do not solicit or receive directly or indirectly any gift or favour that may influence the exercise or their functions, the performance of their duties or their judgement;
- respect confidentiality of documents and information.

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**Prof. Gerhard K.H. Töttemeyer**, Member of Parliament and Deputy Minister of Regional and Local Government and Housing. Born Namibian. Till 2000 Professor in Politics and Public Administration at University of Namibia.. Director of Elections in Namibia, 1992-1998. Studied in South Africa and Germany and has widely published on political, administrative, electoral and educational issues.

# **ALMOST ALL THE INGREDIENTS FOR TROUBLE AHEAD - The economics of corruption: implications for Namibia**

**Robin Sherbourne**

This short paper was commissioned by the Namibia Institute for Democracy as a contribution to the publication *"Ethics and good governance in Namibia"*. It tries to briefly summarise the conclusions economists have reached on the relationship between corruption and economic development. It further attempts to identify what the implications of these conclusions might be for Namibia.

For the purposes of this paper corruption is defined as the abuse of public power for private gain. Corruption takes place in all countries and cultures. Yet attitudes towards corruption, the extent of corruption, and how countries act to deal with corruption appear to vary enormously. Within both the industrialised and developing world, there is a vast range of country experiences from which Namibia can learn.

The paper is divided into two sections. The first outlines the elementary economic ideas that form the framework within which economists think about corruption. The second presents a summary of the empirical literature of the economics of corruption and speculates what the implications of international experiences of corruption might be for Namibia. The paper draws heavily on an excellent summary article by Vito Tanzi<sup>1</sup> of the IMF and also the World Bank's annotated bibliography of empirical studies of governance and development<sup>2</sup>.

## **ECONOMIC THEORIES OF CORRUPTION**

### **People don't always obey the rules...**

The study of economics is based on the view that people are rational utility maximisers, that is to say, people generally act to maximise their own material well-being within the circumstances they find themselves in. When faced with the opportunity of making money illegally, people will make a

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<sup>1</sup> Tanzi, Vito, 1998, "Corruption around the World: Causes, Consequences, Scope and Cures", *IMF Staff Papers*, Vol. 45, No 4 (December 1998), pp. 559-594.

<sup>2</sup> See World Bank website [www.worldbank.org](http://www.worldbank.org)

rational calculation weighing up the costs against the benefits of going ahead and breaking the law. If the chances of getting caught are low, the penalties small and poorly applied, the loss of earnings associated with being caught small, and the potential rewards high then the probability that individuals will break the law increases. However, since enforcing the law also involves costs there is likely to be an optimal level of law-breaking that is not zero.

### **... and policy makers are not saints**

Public choice analysis is the name given to the study of how policy makers make decisions. Traditional approaches to policy analysis assumed that disinterested policy makers designed and implemented policies to promote the public interest. Public choice analysis shows that such analysis is incomplete because the assumption that policy makers are disinterested is unlikely to be true. The underlying principle is that those holding public office - be they politicians or civil servants - are generally as liable to be motivated by self-interest as anyone else. The task of the policy analyst is therefore to design policies which take such behaviour into account to produce beneficial rather than destructive outcomes.

### **Government intervention creates opportunities for unearned profits**

The concept of rent is an important one in economics. Rent is defined as the payment made for a factor of production over and above the minimum payment necessary to keep it in its present use. In perfectly competitive markets no rents are made by any factor because changes in supply bid prices of inputs and labour down to the level just necessary to keep them employed. Thus surpluses above cost, or unearned profits, do not exist.

When a government intervenes in a market by imposing physical quantitative controls, these restrictions give rise to rents in various forms and people often compete for these unearned profits. As the World Bank<sup>3</sup> puts it "any policy that creates an artificial gap between demand and supply creates a profitable opportunity for opportunistic middlemen". Anne Krueger's pioneering study<sup>4</sup> of rent-seeking behaviour in the 1970s gave rise to a considerable economic literature on the subject.

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<sup>3</sup> World Development Report 1997, Chapter 6

<sup>4</sup> Krueger, Anne, 1974, "The Political Economy of the Rent-Seeking Society", *American Economic Review*, Vol. 64 (June), pp. 291-303

These "rent seekers" compete in various ways some of which are perfectly legal – for example by lobbying or providing information. Other methods, however, involve bribery, corruption, smuggling and the underground economy. The resources devoted by rational rent-seekers will depend on the size of the rent available.

The rent seeking activity has no social value. In the attempt to capture the restriction created rents there is an opportunity cost as real resources are devoted to lobbying or other rent-seeking activities that produce no greater supply of the restricted quantity. As rent-seekers engage in activities to receive the favour of government, resources that go into the rent-seeking activities are diverted from other productive activities. Although the rent-seeking activity is rational in terms of self-interest, it is socially wasteful<sup>5</sup>.

In the same way that government policies sometimes restrict the supply of something of value, the limited supply of natural resources can also give rise to rents. Furthermore, since natural resources often require policy interventions if they are to be used efficiently and sustainably, governments generally play a more important role in allocating rights and setting taxes than in other areas of business. This gives rise to greater scope for corruption.

This theoretical framework suggests corruption is especially likely in the following areas of government activity:

- Regulations, authorisations and rights
- Taxation
- Government spending decisions
- Provision of goods and services at below market prices
- Discretionary decisions
- Financing of political parties

Incentives for corrupt behaviour arise whenever public officials have wide discretion and little accountability. Politicians, bureaucrats and judges control access to valuable benefits and can impose costs on private citizens and businesses.

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<sup>5</sup> See "Leading Issues in Economic Development" by Gerald M Meier for more

## THE FINDINGS OF ECONOMIC STUDIES OF CORRUPTION

Corruption is attracting more attention from economists now than ever before.

As Tanzi<sup>6</sup> points out, there seems to be a whole variety of reasons why this is so. The end of the cold war has meant there is less reason to ignore corruption simply because its perpetrators were in the "right" political camp. The collapse of centrally planned economic systems has also allowed greater freedom to investigate corruption in countries where this was not previously possible. The number of countries with democratic governments and free and active media has created an environment in which discussion of corruption is no longer taboo. Globalisation has increased the contact between individuals from countries with little corruption with those from countries where corruption is endemic. Non-governmental organisations such as Transparency International<sup>7</sup> have been playing a growing role in publicising the problems of corruption and in trying to create anti-corruption movements in many countries. The transition to more market-oriented economies has increased the importance of creating investor friendly environments. Donors are asking themselves why decades of development assistance have often yielded such poor results. One of the major conclusions of this soul searching is the poor quality of governance in many recipient countries. The degree of corruption is an important aspect of governance.

Finally, the US has played an important role in bringing other countries into line with its Foreign Corrupt Practices Act of 1978 which many claimed unfairly penalised US exporters by preventing them from legitimately deducting bribes to foreign officials as costs for tax purposes. This resulted in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions signed by the 29 member governments of the Organisation of Economic Cooperation and Development (OECD) in 1997<sup>8</sup>.

The increased attention may also have come about because levels of corruption have risen in recent decades. This may be because the size and role of government in the economy has steadily increased in the course of the twentieth century. The growth of government has brought about a

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<sup>6</sup> See previous footnote

<sup>7</sup> See Transparency International's website [www.transparency.de](http://www.transparency.de)

<sup>8</sup> See "The Supply Side of Global Bribery" by Frank Vogl of Transparency International in the IMF's Finance and Development, June 1998, Vol. 35, No. 2



corresponding rise in the level of taxation and spending as well as an increase in the regulations and controls on economic activities. If not nipped in the bud corruption generates a momentum of its own which can build up in the course of the years. Added to this, the last two decades have witnessed a global wave of liberalising economic reforms which have changed the relationships between public and private agents. In many cases the profit motive has been embraced in situations where the underlying legal and social conditions which have made it such a dynamic force for growth in some countries have not existed. Privatisation is one area of reform which has provided a massive boost to corruption.

For these reasons there now exists a large theoretical and empirical literature from which to draw upon with some interesting conclusions for a country like Namibia. Much of this research is to be found within a broader literature on democracy, governance and development. This paper is based on studies which have concentrated specifically on corruption rather than broader areas such as "institutional efficiency", "credibility", or "policy effectiveness" although these clearly will be influenced partly by levels of corruption.

### **Measuring corruption**

As is often pointed out, if corruption could be measured it could probably be eliminated. As Tanzi<sup>9</sup> makes clear, neither is it clear conceptually what exactly it is desirable to measure – bribes paid, the number of corrupt acts, the degree to which a corrupt act damaged economic performance. This makes it hard for economists to test their theories and carry out quantitative studies.

Useful information is available from the regular news media in the form of articles on instances of corruption. However, quantifying country levels of corruption by quantifying the number of news stories is problematic because the result would depend crucially on the freedom and effectiveness of the media. While a low corruption count could signify low corruption, it could also mean that the media was highly restricted or simply not very good at its job. Further sources of information exist in the form of case studies and investigations but these are often for internal consumption and therefore confidential.

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<sup>9</sup> See previous footnote

To quantify corruption economists have turned to countrywide surveys on corruption produced by NGOs and rating agencies. These include the Global Competitiveness Report by the World Economic Forum in Geneva, the Political and Economic Risk Consultancy in Hong Kong, Transparency International in Berlin, Political Risk Services in Syracuse, Gallup, and the World Bank. Many of these surveys yield country indexes of corruption which reflect subjective perceptions of corruption on the part of international and local business people and others. One striking feature of these indexes, however, is that they are highly correlated with each other. These indexes allow economists to undertake more rigorous quantitative analysis of the economic consequences of corruption using tried and tested econometric techniques.

### **Corruption reduces private investment and economic growth...**

Most theoretical arguments support the view that, by distorting resource allocation and prices, as well as increasing uncertainty and costs, corruption is bad for growth. While theoretical arguments exist which point the other way, these are confined to some pretty specific sets of circumstances.

Empirical evidence based on cross-country comparisons suggests that, far from "greasing the wheels of commerce", corruption causes large, adverse effects on private investment and economic growth<sup>10</sup>. In quantitative terms, one study found that a country that improves its standing on a defined corruption perceptions index of 1 to 10 from 6 to 8 will experience a 4 percentage point increase in its investment rate and a 0.5 percentage point increase in its annual per capita GDP growth rate. The same study found no support for the assertion that corruption might be beneficial in the presence of a slow bureaucracy. The most important channel through which corruption reduces economic growth is by lowering private investment which alone accounted for at least one-third of corruption's negative effects.

The World Bank's 1997 World Development Report<sup>11</sup> contains an entire chapter on restraining arbitrary state action and corruption. Studies carried out for the Report found a clear negative correlation between the level of corruption as perceived by businesspeople and both investment and

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<sup>10</sup> See "Corruption: Causes, Consequences, and Agenda for Further Research", by Paulo Mauro in the March 1998 edition of the IMF's Finance and Development.

<sup>11</sup> "The State in a Changing World", World Development Report 1997, World Bank.

economic growth. For a given level of corruption, countries with more predictable corruption had higher investment rates. However, no matter how high the degree of predictability of corruption in a country, its rate of investment would be significantly higher were there less corruption. Furthermore, the Report also found that corruption was more prevalent in countries with highly distorted policies and that there was a negative correlation between reported levels of corruption and judicial predictability.

### **Corruption reduces foreign investment..**

Many good economic reasons exist why developing countries should try and attract Foreign Direct Investment (FDI). In theory it can be expected that the presence of corruption reduces FDI by raising costs, increasing uncertainty, and risking exposure to negative publicity. At least one study<sup>12</sup> has found that FDI is reduced by host-country corruption levels but this result was sensitive to the corruption indicator used. The predictability of corruption is likely to make a difference too since highly unpredictable corruption has a greater negative impact than when corruption can be viewed as a tax. One study<sup>13</sup> which argued that corruption acts as a tax on foreign investment found that "an increase in the corruption level from that of Singapore to that of Mexico is equivalent to raising the tax rate by over 20 percentage points."

Since Independence Namibia has made strenuous attempts to attract FDI and for good reason. As a small open economy wishing to diversify and industrialise, FDI is of critical importance. While a certain amount of success has been achieved, levels of FDI have not exceeded 5% of GDP and have fallen far short of expectations outside industries based on natural resources. It would be difficult to argue that this is due to corruption since, at this stage, other important explanations appear more plausible. However, if FDI in the form of medium-sized manufacturing operations is to be attracted, it will clearly be important to maintain a corruption-free environment because such firms are likely to be more sensitive to corrupt practices than the larger multinationals. It should also be borne in mind that Namibia is competing for these investments with neighbouring Botswana, a

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<sup>12</sup> Alesina, Alberto and Beatrice Weder, 1999, "Do Corrupt Governments Receive Less Foreign Aid?", *NBER Working Paper No 7108*.

<sup>13</sup> Wei, Shang-Jin, 1997, "How Taxing Is Corruption on International Investors?", *NBER Working Paper No. 6030* reviewed in "A Global War Against Bribery", *The Economist*, January 16<sup>th</sup> - 22<sup>nd</sup> 1999

country that consistently ranks higher in Transparency International's Corruption Perception Index (24<sup>th</sup> compared to 29<sup>th</sup> in 1999)<sup>14</sup>.

### **Corruption often raises public investment but lowers its productivity...**

Economists often favour high capital spending on public investment because they believe it contributes to growth. However, greater expenditure on highly visible investment projects such as roads, airports, power plants, and ports often comes at the expense of less visible but no less vital expenditures on operations and maintenance, health and education. Large projects are more likely to encourage corrupt practices since they involve large sums of money upon which correspondingly large "commissions" may be paid. Furthermore, political discretion in awarding such contracts may also be high since "strategic" considerations are often used to overrule tighter arguments about value for money.

At least one study<sup>15</sup> finds evidence that higher corruption is associated with higher public investment, lower operations and maintenance expenditures and lower quality of public infrastructure. The evidence also shows that corruption increases public investment while reducing its productivity. This paper's conclusion is that economists should be more cautious in their praise of high public investment.

The importance of public investment in infrastructure is well recognised in Namibia and regularly referred to in the debate on the national budget. In 2000/01 the government proposes to spend some N\$1.1bn on capital expenditure, some 13% of total estimated expenditure. Despite the rise in personnel spending since Independence, capital expenditure does not appear to have been unduly squeezed.

Expenditure takes place through a prescribed tender process with decisions taken by a tender board consisting of all permanent secretaries plus two private sector representatives. There appears to have been at least one well-publicised case of tender procedures being circumvented, in the case of government's purchase of approximately 800 Chevrolet vehicles from Barden International in 1998 at the behest of the President.

It is impossible to say whether the quality of government's capital expenditure programme has been influenced detrimentally by corruption.

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<sup>14</sup> See "Namibia Walks a Fine Line on Graft", in *The Namibian* of 27 October 1999.

<sup>15</sup> Tanzi, Vito and Hamid Davoodi, 1997, "Corruption, Public Investment and Growth", IMF Working Paper WP/97/139

The apparent bias in expenditure towards higher profile projects in urban areas and especially Windhoek probably has a variety of causes. Since capital expenditure in Namibia is not generally subject to rigorous cost-benefit analysis and no government-wide discount rate is employed to evaluate projects, the productivity of much of this investment must be questionable. These conditions certainly do not work against corrupt practices. It is possible that the scope for corrupt practices between government and contractors is much reduced in the case of very large projects which require third party external funding, such as regional highways and power stations.

### **Corruption renders aid ineffective...**

A number of studies<sup>16</sup> report a clear link between the effectiveness of foreign aid on the one hand and the institutional efficiency and the quality of economic policies on the other. It is this finding that has prompted donors to move towards supporting programmes designed to promote good governance and away from supporting individual projects. Until recently aid has not been allocated on the basis of the level of corruption prevailing in the recipient country. While it is possible that donors have been able to shield their programmes from the effects of corruption, it is also likely that the incentives for corruption are less than in cases involving commercial projects.

### **Low public sector wages can encourage corruption...**

Many governments increase public sector employment in order to directly reduce unemployment. However, given limited tax and other revenues, a tradeoff exists between the number of public servants that can be employed and the amount they can be paid<sup>17</sup>. This has led to a situation in many countries where public servants earn much less than in comparable private sector jobs. Under these circumstances corruption is likely to thrive, especially if the chances of being caught and disciplined are low. One theoretical counter-argument to this that has been put forward is that, since

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<sup>16</sup> See the World Bank's annotated bibliography of empirical studies of governance and democracy on the World Bank website.

<sup>17</sup> See the World Bank's 1997 World Development Report "The State in a Changing World", p.10.

bribes supplement low wages, corruption actually allows governments to maintain a lower tax burden than it otherwise would and this can favour growth.

Evidence<sup>18</sup> exists to show that corruption is often positively associated with the difference between public and private salaries known as the "rate of temptation". However, relying purely on raising salaries to reduce corruption to acceptable levels will generally be prohibitively expensive. Pay reform will therefore have to be combined with other measures such as strengthening monitoring and law enforcement as well as improving recruitment and promotion mechanisms. There is further evidence<sup>19</sup> that the less recruitment is based on merit the higher the extent of corruption. The World Bank<sup>20</sup> finds that merit-based recruitment and promotion mechanisms that restrain political patronage and create a more impartial public service are also associated with lower levels of corruption.

The debate over corruption and public sector wages takes on particular importance in Namibia where public sector employment has grown dramatically since Independence. Namibia now has one of the highest ratios of civil servants per head of population in the world (approximately 75,000 in central government alone out of a population of around 1.8 million<sup>21</sup>).

A cursory examination of the numbers available suggests that the real value of the average public sector wage does not appear to have fallen since 1990 and this seems to have been achieved as a result of raising the tax burden and squeezing other non-remuneration expenditures. This is not to say, however, that the relative value against private sector wages has not changed. Nor does it mean that the wages of those in the best positions to extract gains from corrupt practices have not fallen in either real or comparative terms. The issue of "compression" in public sector salaries – that is to say reducing inequalities between the highest and lowest paid civil servants – is one that regularly arises in the course of public wage negotiations. Given the extreme inequalities that exist in Namibia as a whole, it is politically difficult for government to raise the salaries of more senior officials despite them being the ones most likely to be involved in the

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<sup>18</sup> Van Rijckeghem, Caroline and Beatrice Weder, 1997, "Corruption and the Rate of Temptation - Do Low Wages in the Civil Service Cause Corruption?" *IMF Working Paper* No 73.

<sup>19</sup> Rauch, James E. and Peter B. Evans, 2000, "Bureaucratic Structure and Economic Performance", *Journal of Public Economics* No. 74 pp.49-71.

<sup>20</sup> See the 1997 World Development Report p. 104.

<sup>21</sup> See Estimate of Revenue and Expenditure for the Financial Year 1 April 2000 - 31 March 2001

most damaging corrupt practices. Furthermore, reducing the relative pay of public sector professionals is likely to give rise to a process of "adverse selection" whereby those most skilled and able end up finding better remunerated positions elsewhere leaving poorer quality workers behind. A more cost-effective and politically acceptable way of raising public sector salaries to discourage corruption may be to follow the example of those countries which have attempted to raise salaries in particularly sensitive areas of government such as customs and tax administration. Realistically, however, the rewards from corrupt practices in some areas may be so great that only impossibly high wage increases are likely to act as a disincentive. This is compounded by the fact that so many public servants in Namibia also have private business interests and that, as a young institution, little "esprit de corps" yet exists. Under these circumstances, preventing corruption will demand the presence of effective monitoring and enforcement mechanisms.

### **While big government requires low levels of corruption...**

It appears plausible that higher taxes provide greater incentives for taxpayers to evade taxes or join the unofficial economy. There is evidence<sup>22</sup> that corruption reduces levels of tax revenue by reducing the effectiveness of tax administration and customs and thus reduces the ability of governments to carry out needed public expenditure. Another study<sup>23</sup> shows that corrupt governments become small governments while only relatively uncorrupt government can sustain high taxes. Those countries that maintain some of the largest public sectors in the world consistently feature among the least corrupt. A further conclusion from other research<sup>24</sup> seems to be that countries with more corruption in Latin America, the OECD, and the former Soviet Bloc tended to have larger unofficial economies.

Measured in terms of the ratio of tax revenue and public expenditure to GDP, Namibia has a high tax burden and a large public sector by international standards. In terms of tax rates corporate tax rates lie at the

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<sup>22</sup> See Tanzi and Davoodi 1997 above

<sup>23</sup> Friedman, Eric, Simon Johnson, Daniel Kaufmann and Pablo Zoido-Lobaton, 1999, "Dodging the Grabbing Hand: The Determinants of Unofficial Activity in 69 Countries" forthcoming in *Journal of Public Economics*.

<sup>24</sup> Johnson, Simon, Daniel Kaufmann and Pablo Zoido-Lobaton, 1998, "Regulatory Discretion and the Unofficial Economy" *American Economic Review* No. 88 pp.387-392.

higher end of the international spectrum although individual, trade, and indirect tax rates are not especially high. International evidence suggests that if Namibia is to maintain its large public sector it will be important to maintain the existing relatively low levels of perceived corruption.

### **Natural resource endowments often cause corruption...**

Intuitively it seems plausible that the more a country is blessed with valuable natural resources, the richer it is likely to be. It is not difficult to think of examples of such countries. Yet at the same time examples abound of countries apparently rich in natural resources languishing in desperate poverty. One ground-breaking study<sup>25</sup> has identified a negative relationship between natural resource abundance and long-run economic growth. Economists have long been aware that resource booms tend to reduce the competitiveness of the non-resource sector – through the so-called Dutch disease mechanism – and policies have been devised to attenuate this tendency. More recent research<sup>26</sup>, however, strongly supports the view that natural resource discoveries create opportunities for rent-seeking behaviour and is an important factor in determining a country's level of corruption. The extent of corruption appears to depend on natural resource abundance, government policies, and the concentration of bureaucratic power.

This has implications for Namibia which has important natural resource endowments such as diamonds, minerals, fish, natural gas and is in the process of searching for oil. Whether these turn out to be a blessing or a curse appears to depend greatly on the ability of government to ensure rents do not lead to widespread corruption but are used wisely for the benefit of the entire nation.

### **But trade discourages corruption...**

Economists have investigated the link between corruption and trade. It seems plausible that corruption in a country would hurt trade since foreigners will prefer not to deal with bribe-seeking customs officials and

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<sup>25</sup> Sachs, J. and A. Warner, 1995, "Natural Resource Abundance and Economic Growth", *NBER Working Paper 5398*

<sup>26</sup> Leite, Carlos and Jens Weidmann, 1999, "Does Mother Nature Corrupt? Natural Resources, Corruption, and Economic Growth", *IMF Working Paper No. 85*.



unreliable bureaucracies. At the same time it is equally likely that countries with little foreign trade in the first place have less to gain by working to curb corruption. In each case there is a negative relationship between the volume of trade and the level of corruption. One recent study<sup>27</sup> provides evidence that countries which have a natural propensity to trade with the rest of the world also have substantially lower levels of corruption.

Namibia has many of the characteristics that make for a high natural propensity to trade: it is a small economy with a large coast, English as the official language, and has abundant natural resources. This natural openness manifests itself in the fact that imports and exports are each worth more than 50% of GDP. The study mentioned above suggests that Namibia's openness could act as a strong disincentive to allowing the spread of corrupt practices.

A trade-related phenomenon discussed widely in the literature on rent-seeking is the misuse of import tariffs and the imposition of import quotas by governments. One of the consequences of belonging to an "undemocratic" Southern African Customs Union (SACU) is that the ability of Namibian business or government to abuse the trade regime is severely curtailed. Trade-related rent-seeking activities are therefore likely to have been minimal in Namibia's case but that could change as SACU is "democratised". However, the tariffisation of import quotas means opportunities arising from physical restrictions are rapidly being eliminated.

### **Interventionist industrial policy encourages corruption...**

Many governments believe they can accelerate industrial development by intervening in the economy through a host of measures including subsidies, taxes, import tariffs, licenses, exchange rates and interest rates. As explained above, such interventions increase the scope for rent-seeking behaviour and corruption. At least one study<sup>28</sup> of 32 countries shows that active industrial policies are indeed associated with higher levels of corruption and this offsets part of the effects of the policies on increasing rates of investment.

Namibia's industrial policy as outlined in the Industrial Policy White Paper of August 1992 is based primarily on an incentives package for manufacturers

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<sup>27</sup> Shang-Jin, Wei, 2000, "Natural Openness and Good Government", NBER Working Paper 7765 reviewed in *The Economist* September 9<sup>th</sup>-15<sup>th</sup> 2000

<sup>28</sup> Ades, Alberto and Rafael di Tella, 1997, "National Champions and Corruption: Some Unpleasant Interventionist Arithmetic", *Economic Journal* Vol. 107 pp.1023-1042.

and the Export Processing Zone scheme. The former comprises mainly of a rather complex system of tax incentives and subsidies while the latter combines generous tax incentives with the relaxation of certain labour laws. While in theory these packages have been designed to limit bureaucratic discretion, in practice a certain amount of discretion is required in distinguishing manufacturers from non-manufacturers and exporters from non-exporters. The limited number of companies that have succeeded in obtaining advantages under these schemes suggest corruption is not yet a major problem. What appears more likely is that the design of the packages is inappropriate. There are good arguments to support the view that a reduction in the general level of corporate tax would be more effective way of promoting growth and this would at the same time eliminate the scope for abuse. Contrary to initial intentions, the scheme has recently been extended to non-manufacturing activities but there is nothing to suggest this has come about through dubious means.

In addition to the provision of tax incentives, government appears to have become increasingly ready to alter tender board rules ostensibly to promote industrialisation. This is legitimate provided the rules are transparent and allow competition but there is a danger that rules are created with the intention of creating opportunities for special interest groups. The further use of the Government Institutions Pension Fund (GIPF) to finance projects also has the potential to promote corruption since the Fund is heavily influenced by politicians.

### **Black economic empowerment initiatives should be implemented carefully...**

Black economic empowerment is a phrase much used in those countries of Southern Africa with settler communities who are perceived to dominate their respective economies. While lacking an exact definition, black economic empowerment generally seeks to accelerate the shift in ownership and management of productive assets towards previously disadvantaged blacks through the use of instruments at the disposal of government such as licences, rights, credit, and tender board procedures. In theory these instruments can be applied in a consistent and transparent manner. In practice this is not always the case. The key to success in the whole process is to maintain incentives to ensure assets are used productively.

In Namibia the situation is often clouded by the fact that those making the rules that promote black economic empowerment are often those benefiting

from them since there are no limitations on the business interests a public servant can have. Furthermore, in a situation where whistle blowers are likely to come from the established business community, there is always the danger that such actions can be written off as the work of disgruntled racists and issues of corruption quickly become issues of race.

### **Namibia – almost all the ingredients for trouble ahead?**

This brief survey of the economics of corruption suggests that, far from greasing the wheels of commerce, the growing consensus amongst the economics profession is that corruption damages a country's economic performance by reducing private investment, distorting public investment, discouraging foreign investment, and reducing the efficiency of the public sector. A further conclusion from the literature is that the causes of corruption in Africa do not differ in any fundamental sense from corruption elsewhere.

Many of the ingredients that have encouraged corrupt practices elsewhere are present in Namibia. If government continues to use public employment to directly reduce unemployment, public sector wages are likely to decline and this can only encourage corruption. Namibia is blessed with abundant natural resources and is searching for more. If corruption is tolerated now the chances are that these natural resources will fail to promote development and a blessing will instead become a curse. Although tax rates are not punitive, the tax burden as a whole is high and the tax regime is in many ways becoming more discretionary. Merit may not play an important part in the hiring of civil servants and positions in the public service have to be ratified by Cabinet from Deputy Director position up. Worryingly, black economic empowerment initiatives are not taking place within a transparent and competitive policy framework. Military expenditure is rising steeply and purchases of military hardware can be expected to increase in line with the Defence White Paper of 1993 and several very big non-military public sector investment projects are in the pipeline. Finally, in Namibia's small society, whistle blowers are likely to face higher costs than in larger more anonymous societies. The high degree of trust shown in Namibia's political leadership and public service<sup>29</sup> by the general public may make it harder to tackle those instances of corruption which do take place.

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<sup>29</sup> See "Public Opinion and the Consolidation of Democracy in Southern Africa: An Initial Review of Key Findings of the Southern African Democracy Barometer" produced by the Southern African Democracy Barometer in July 2000.

Namibia's natural openness and dependence on foreign investment and aid may act as a disincentive to corruption. The civil service is not yet desperately underpaid, tax administration is reasonably efficient, customs payments are determined to a large extent by South Africa, and the media remains relatively free and watchful. As a result Namibia scores well in international corruption ratings.

One issue the economics literature fails to address is whether dominant party economies have higher or lower levels of corruption. In theory there are arguments on both sides. On the one hand the leadership of a party securely in power is not compelled to maintain its position by dispensing favours or turning a blind eye. On the other hand accountability is likely to be weak if a party has an overwhelming majority in parliament and control over the civil service. The conclusion here seems to be that much depends on the leadership's willingness to tolerate corruption and here the signs are not good. The ruling party's commitment on governing with accountability in its 1994 manifesto<sup>30</sup> remain as yet unimplemented. It is hard to believe stamping out corruption is a government priority and its proposed independent corruption commission remains to be established. Yet this is what will have to happen if corruption is not to seriously undermine Namibia's economic future.

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<sup>30</sup> See "Better Opportunities for All NAMibians", SWAPO Election Manifesto 1994.

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# **Code of Conduct for Public Officials**

## **Considering Recommendation no. R (2000) 10**

### **of the Council of Europe**

**Dr. Helmut Kitschenberg,**  
**Judge at the Administrative Court of the Council of Europe**

#### **I. Introduction**

The topic "Ethics and Good Governance" touches on a core issue affecting public life in every democratic state: In order to fulfil its duties orderly vis-à-vis the public, as entrenched in the Constitution and legislation in place, the State must be able to rely on a loyal administration being committed to social well-being as well as law and order.

In line with this objective the public service has to assure two things:

- The correct implementation of the democratic majority vote of the population generally being expressed in legislation and uninhibited by non-factual influences.
- The reliable delivery of public functions and performance to the citizens, being indispensable for a life of freedom and dignity.

These special requirements, as entrenched in the constitution and public service function, are not imposed on the activities of private enterprise. This is why the public service on account of its special tasks - contrary to the private sector - needs a Code of Conduct setting out prevalent duties of public officials.

Lately, the public discussion on the Code of Conduct for public officials has increased. In many countries, but also on international level, the codification of obligations has become an important topic, with the reasons being manifold:

First of all, the changed social structure and sociological transitions of the public service has to be mentioned. In addition, the political changes in Central and Eastern Europe since the nineties do play an important role. Many democratic states were formed in this time all of which need to build a public service being oriented on the above principles. An increasing number of cases of corruption in the public service cannot be concealed in this regard. It is essential that the State takes effective measures against

this phenomenon if it wishes to remain credible in the public eye. This problem has certainly encouraged the debate on a Code of Conduct for public officials.

As a current example to this effect one could mention the Recommendation of the Council of Europe, no. R (2000) 10 regarding the Code of Conduct for Public Officials which was passed after three years of work on 11 May 2000. Since this recommendation is applicable to the 41 member states of the European Council, it can also serve as an example to non-European countries such as African countries. This is why the most important principles of the Code of Conduct passed by the European Council will be presented and commented on in the following passage.

## **II. Brief Portrait of the Council of Europe**

This brief portrait has been included for readers of this article who are not familiar with the numerous international organisations in Europe and their mandates.

The Council of Europe was founded in 1949 by ten (West) European states. The Council of Europe was the first European institution to reach out to countries in Eastern Europe as a result of the political changes of 1989/90, integrating Central and East-European states in the liberal democratic community of states of Europe. Today, the Council of Europe has 41 member states.

The objectives of the Council of Europe can be summarised as follows:

- protecting human rights, pluralistic democracy and the rule of law;
- consolidating Europe's democratic stability (for example through inputs on legislative reform also in the field of public administration);
- finding solutions to Europe's social problems (for example, social minimum norms, environmental protection, combating drug trafficking, data transfer protection);
- promoting awareness on a common cultural identity against the background of European diversity;

These objectives are implemented through the preparation and adoption of international agreements, recommendations and resolutions. Recommendation no. R (2000) 10 of the Committee of Ministers to the Member States on Codes of Conduct for Public Officials is based on the Council of Europe's function to achieve greater unity between its members.



### **III. Public Service Code of Conduct of the Council of Europe**

#### Common considerations

In parallel with the elaboration of a Code of Conduct, a second project was tackled by the Council of Europe and finalised with a recommendation to Member states in February 2000. It is a document of principle on the public service (Recommendation No. R (2000)6 entitled "The Status of Public Officials in Europe"). This report is designed to reflect the principles governing the status, rights and duties, recruitment and training of civil servants and other public officials in European countries. The topics of "Ethics" is only briefly dealt with in the article on duties since one did not wish to pre-empt the Code of Conduct which, for that matter, can be regarded as the *lex specialis*. The author of this article has participated in the elaboration of the Recommendation for the German delegation.

As regards the Code of Conduct, one should state at this point that the combat against corruption in the public service was the true reason for the elaboration of a Code of Conduct in the Council of Europe. This has been expressed in the introduction to the recommendation and argued as follows in the Explanatory Memorandum: "The Council of Europe became strongly interested in the international fight against corruption because of the obvious threat corruption poses to the basic principles this organisation stands for: the rule of law, the stability of democratic institutions, human rights and social economic progress. Corruption is also a subject well-suited for international co-operation: it is a problem shared by most - if not all - member States and it often contains transnational elements".

#### Content

The authors were agreed that codes of conduct should not be limited to addressing the problem of corruption only:

**"They should go further and promote high standards of ethical behaviour. They should state general principles covering lawfulness, diligence, efficiency and thrift, transparency, confidentiality and the handling of classified information, personal responsibility and independent judgement, fair dealing and integrity, and professional training".**

#### General principles of the Code of Conduct

Taking into account the above enumeration, the Code of Conduct contains the following principles which have to be highlighted specifically as examples:

- The public official should carry out his duties in accordance with the law, and with those lawful instructions and ethical standards relating to his/her duties. This general obligation ranks first in the Code of Conduct. It includes the expectation that the public official will be honest, impartial, conscientious, fair and just, act politically neutral, only in the public interest and with courtesy to all with whom he/she has contact.

The public official should act in a politically neutral manner. He/she should not attempt to infringe upon lawful policies, decisions or actions taken by public authorities.

- The public official has to consider social well-being in his/her duties. He/she shall carry out all tasks unselfishly, putting aside personal interest.

Possible conflicts of interest do feature in this context which might cause corruption. These cases are defined in individual cases and the required measures of conduct to be observed by the public official to maintain his/her integrity are clearly stipulated. It is the public official's personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take measures to avoid such conflicts;
- disclose to his supervisor any such conflict as soon as he/she is aware of it;
- comply with any final decision to withdraw from the situation or to divest him/herself of the advantage causing the conflict;

A list of the required measures for the public official's conduct is a specific feature of the Code of Conduct and is also found in other matters of fact, for example, in the reaction to improper offers and the obligation of advisory services and support vis-à-vis superiors. This is to provide the public official with practical instructions for his conduct in concrete cases. This seems to be very helpful with regard to the reconstruction of administrations in Central and Eastern Europe after the political changes of the nineties. It also provides a model solution for administrations in countries outside Europe.

- The public official serves the entire nation and not only one party. This principle creates a counter balance against the wide-spread partiality in law enforcement and discretionary administration, for instance, with regard to recruitment and staff promotion. However, one has to question whether post patronage can be effectively inhibited in practice. In the majority of cases the respective ruling parties are still convinced that successful government work can best be achieved if public officials are interacting with government through party-political ties.

- The permissibility and limits of extra-official political activities are clearly regulated in the Code of Conduct. Like any other citizen, the public official is entitled to political activities, for instance, with parties or trade unions. However, moderation needs to be maintained in such extra-official activities. This obligation exists mainly towards the citizens' confidence in the impartial execution of duties through the public service.
- Incompatible outside interests: The public official should seek his employer's approval to undertake certain activities, positions or functions outside the public service. This requirement is made subject to law because some member states have regulations governing the taking of outside or second jobs. It should be noted that this principle does not prohibit a public official from having a second job outside the public service.
- The acceptance of presents, invitations and other benefits is not allowed. Exceptions are only permissible on official invitations for official reasons and gifts of insignificant value. If in doubt, the superior should be consulted.
- Public and official resources: The public official should ensure that public property, facilities, services and financial resources with which he/she is entrusted are managed and used effectively, efficiently and economically. They should not be used for private purposes except when permission is lawfully given.
- Supervisory accountability: The public official who supervises or manages other public officials should take reasonable steps to prevent corruption by his staff in relation to his office. This measure also engages superiors to inhibit corruption in public administration.

It is worth mentioning the fact that the Code of Conduct is not limited to set out a Code of Conduct for public officials only, but that it also includes duties of the employer vis-à-vis the public official. For example, one regulation deals with the protection of the public official's privacy. The employer is charged with the following duty: "All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in the Code of Conduct are to be kept confidential unless otherwise provided for by law."

This selection taken from the catalogue of the Code of Conduct shows which ethical principles shape the public service. These elements are a prerequisite doing away with the theoretical mandate of good governance but which enable its meaningful practical implementation in the daily interaction between the administration and public, instead.

### Observance of the Code and sanctions

The guaranteed enforcement of stipulated principles and the punishment of breaches are an important aspect for the elaboration of a Code of Conduct. This might seem to be a matter of course, but it does require special regulations. According to Article 28 of the Code the public official has a duty to conduct himself in accordance with the Code and to keep him/herself informed about its provisions. In addition, the article also stipulates that the provisions of the Code should be part of the terms of employment of the public official. In this way, the obligation to adhere to these regulations is being particularly underlined.

Non-observance of the regulations contained in the Code of Conduct by the public official will result in disciplinary measures. In this respect one has renounced to include any possible consequences in the Code since the disciplinary right can be regarded as a *lex specialis*.

In this context it has to be underlined that it is the superior's obligation to ensure that public officials observe the Code and to take or propose appropriate disciplinary action for breaches of it. This regulation corresponds to the practice of many member states of the Council of Europe since the superior is in a position to closely observe his officials in the execution of their duties and therefore in a privileged position to detect any suspicion of misconduct.

### **IV. Final Remark**

Although the Code of Conduct has been passed as a recommendation by the Committee of Ministers of the Council of Europe and therefore no legal obligation exists for member states to take over the regulations into the national service act, the significance of the Recommendation must not be underestimated: The foreign ministers of 41 member states have given their approval and assumed the "moral" obligation to assure its implementation in the national act. It was also the declared intention of governments to commission the elaboration of this document since, in the light of growing complaints of corruption against the public service, a concrete need for action does exist in many countries. The fact that the content of the Recommendation goes beyond the corruption problem and determines a general Code of Conduct for members of the public service, is extremely commendable. It also increases the value of the document as a model for countries outside the member states of the Council of Europe.

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