

**THE ANTI-CORRUPTION MECHANISMS IN  
THE ANTI-CORRUPTION ACT NO. 8 OF 2003**

**A research paper submitted in partial fulfillment of the  
requirements for the degree of Master of Public Policy  
and Administration**

**of**

**The University of Namibia  
Faculty of Economics and Management Science  
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**April 2005**

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**Abstract**

The crux of the research problem is to postulate a discourse that the anti-corruption mechanisms as stipulated in the Anti-Corruption Act (Act No. 8 of 2003) are not adequate enough to combat corruption. The main objective of the paper is to examine these mechanisms in order to support the above argument. The other objectives are to draw lessons from previous anti-corruption institutional and legal framework and other best practices. To strengthen the argument, literature review was done on the types of corruption, causes of corruption, effects of corruption and the key elements of a successful anti-corruption strategy. A planning, monitoring and evaluation model, developed for the World Conservation Union, was used to provide a theoretical framework for the implementation of the anti-corruption mechanisms in Namibia. The research findings that were arrived at support the research problem as postulated above, i.e. that these mechanisms are not adequate to combat corruption. The conclusions drawn from these findings are that although these mechanisms seem to be strong on the investigation of corruption and the protection of whistleblowers, for the most part, they seem to be thin on some key issues, like the level of seniority of the Director and powers to prosecute. The key recommendations of the paper are that firstly, there is a need to come up with a comprehensive anti corruption strategy that is underpinned by investigation, prevention, public education and institution building and secondly, that the anti-corruption programme should be implemented on the basis of the planning, monitoring and evaluation model referred to above and that the legislation process should be one of the activities of the programme.

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## **Acknowledgement**

Many people have helped me throughout the process of the completion of this study. In the first place, I would like to thank my two supervisors Dr Becky R.K. Ndjoze-Ojo at UNAM and Dr Joop de Wit at ISS for their valuable guidance. Without their guidance and support this paper could not have been completed in this shape. I am, in particular deeply indebted to Dr Ndjoze-Ojo who really went out of her way to guide me throughout, sentence by sentence and word by word, at one point she had to get out of her sick bed to assist me.

My thanks also go to the Office of the Prime Minister for having made my studies possible by providing me with both the sponsorship and the time to complete this thesis. I also want to give my sincere gratitude to Nyoko Muvangua who helped me enormously with typesetting and formatting. .

Last, but not the least I would like to thank my dear wife, Antoo for the unwavering support she offered me throughout my study. My thanks also go to all my children, especially the two youngest ones Polly and Wiggy who allowed me to sacrifice our usual precious time together in favour of my studies.

**Dedication**

First and foremost I dedicate this thesis to my heavenly Father, through His beloved Son Jesus Christ the source of all creation and wisdom. Secondly I would also like to dedicate it to the memory of my beloved late mother Elizabeth Inaamueze Kavarure-Tjandero, a philosopher in her own right, who taught me to embrace justice as a virtue as I was growing up at Okei village, in Omaheke Region.

## **Declarations**

1. This document is a true reflection of my own research and has not been submitted for a degree in any other institutions of higher learning.
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# Chapter One

## Introduction and Background

### 1. 1 Background

Since the attainment of independence in 1990, the need to combat corruption has been a top priority on the agenda of the Namibian Government. Towards this end, and with the view of having wide acceptance of the policy framework, the government set in motion an extensive consultative process with key stakeholders in all the thirteen Political Regions on possible anti – corruption measures.

The Offices of the Prime Minister and the Attorney General spearheaded this process, which came to be known as the National Integrity Initiative (NII). All these efforts culminated into the National Consultative Conference on Combating Corruption and the Promotion of Ethics, which took place in Windhoek from 7<sup>th</sup> to 9<sup>th</sup> October 1998. The Conference's recommendations were tabled in Cabinet in November 1998 by the then Prime Minister, Mr. Hage Geingob.

After some four years of groundwork, the Anti – Corruption Act (No. 8 of 2003) was eventually enacted in 2003. The development of the anti-corruption policy process in Namibia should be understood against this background.

### 1. 2 Research Problem

The Anti-Corruption Act (Act No. 8 of 2003) has gone a step further than the previous legal and institutional framework in introducing new anti-corruption mechanisms, however, these mechanisms do not seem to be adequate and comprehensive enough to address corruption problems in the country. In addition, the following observations are made:

- The mechanisms in the Anti-Corruption Act are inadequate in that they lack a clearly stated strategy to ensure effective improvement on what has been done under the previous legal and institutional arrangements in the area of corruption;

- The Act does not provide for an oversight body to monitor and supervise the work of the Anti-Corruption Commission;
- In terms of the Act, the Commission can only prosecute under “delegated authority” from the Prosecutor-General and this may render its work impotent because of possible delays (Anti-Corruption Act No. 8 2003:18);
- The most serious handicap lies in the fact that the head of the unit will be at the level of a Director and he/she will not have a high enough profile to handle corruption cases involving powerful figures in society (Anti-Corruption Act No.8 2003:2).

Based on these observations, we submit that both the application of the Act and the work of the Commission may be hamstrung. These factors constitute the research problem, and this study, as a result, sets out to examine these mechanisms in order to determine whether they constitute any improvement on previous ones or whether additional mechanisms supported by a clearly stated strategy should be introduced.

### 1.3 Objectives of the Paper

The objectives of this study therefore are to:

- Examine, in general, the mechanisms as provided for within the institutional/structural arrangement of the Anti-Corruption Commission and as stipulated in the Anti-Corruption Act;
- Examine the effectiveness of the strategies, institutions and legal framework pre-Anti-Corruption Act (Act No. 8 of 2003).
- To draw lessons from past anti-corruption strategies in Namibia and from international best practices and on the basis of that, to propose an ideal strategy; and
- Make recommendations on the improvement of the institutional performance of the Anti-Corruption Commission.

#### **1.4 Research Question**

The main research question is: What are the new mechanisms introduced under the Anti-Corruption Act (Act No. 8 of 2003) to constitute an improvement on previous ones? Further, the study aims at exploring the following sub-research questions:

- What has been the role of the pre-Anti Corruption Act institutions and strategies in the fight against corruption and what lessons can be learnt from these?
- What lessons can be learnt from best practices in the SADC Region and other parts of the world?

#### **1.5 Justification of the Paper**

Firstly, it is important to note that the author was involved in the initiation and evolution of the policy framework in question and finds aspects of the anti-corruption mechanisms inadequate and not comprehensive enough.

Secondly, the study enriches academic research in the area of corruption in Namibia. A lot might have been written on the subject of corruption in Namibia from a variety of angles. However, the unique contribution of this particular research is that it tries to examine the policy environment that has shaped the anti-corruption initiative, taking historical and political factors as well as the international context into consideration.

#### **1.6 Research Methodology**

The main part of the research topic lends itself to a qualitative research methodology, but in some cases where graphs and tables are required, some quantitative data were used. The data were collected mainly from the ISS library, UNAM library, the Offices of the Prime Minister and the Ombudsman, newspaper articles, the Internet, donor and NGO documents as well as other sources. Therefore, the study aims at answering the research question by relying mainly on the study of and analysis of secondary data. In addition, a survey to test the adequacy of the anti-corruption mechanisms as provided for in the Anti Corruption Act (Act No. 8 of 2003) was conducted on a selected sample population through a research questionnaire. It is

imperative to support this paper with empirical research. A questionnaire was administered to respondents representing government institutions and civil society organisations. An example of the research questionnaire is in Annexure A. The three government respondents were a legal officer from the Namibian Police, an official from State House and a senior official from the Office of the Ombudsman. The three respondents from civil society were the Secretary-General of Transparency International Information Secretariat (Namibian Chapter), the Political Secretary of Workers International (Namibian Section) and a Senior Researcher at NEPRU.

### **1. 7 Limitations of the Study**

The research is limited in a number of ways. The first main limitation is the fact that the Anti – Corruption was enacted only last year (2003), and the Commission has not yet been set up. It is difficult to analyse a policy instrument on the basis of normative assumptions only.

The second is that the policy has not yet been implemented, and as such, it does not lend itself to empirical interrogation. That is why the study is confined to looking at the anti-corruption measures as stipulated in the Act, which will then be gauged against international best practices and normative constructions.

The third limitation is the fact that the author was involved in the development of the Anti – Corruption Policy Framework and this may blur his objectivity as far as the critical analyses of the mechanisms are concerned. In the same vein, the position that the researcher occupies in government (Cabinet Secretariat in the Office of the Prime Minister), obliges him to impose “self – censorship” on what aspects of the topic to write on, and what aspects to omit.

The fourth limitation is that although corruption does exist in the private sector, this study mainly draws examples from the public service with which the author is more familiar. In the final analysis, the limited time at the disposal of the researcher would not allow him to do justice to the topic in its entirety. Nonetheless, it is hoped that the

study will still serve as a springboard to further interrogation of anti-corruption mechanisms as stipulated in the Anti-Corruption Act (Act No. 8 of 2003).

### Literature Review and Theoretical Foundations

The Chapter reviews empirical research on corruption, its conceptualization, and its measurement. Furthermore, it discusses the extent and impact of corruption, especially public sector corruption. The chapter also sets out the theoretical framework in handling the Chapter. The theoretical framework of corruption and its measurement strategy.

#### 2.1. Literature Review

##### 2.1.1. Public Corruption and Corruption Concepts

Public corruption is a complex phenomenon that is difficult to define. It is a multi-dimensional and multi-faceted concept that encompasses a wide range of activities and behaviors. It is a social and economic phenomenon that is characterized by the abuse of public power for private gain. Public corruption is a global phenomenon that is found in all countries and at all levels of government. It is a major obstacle to the development of countries and the well-being of their citizens. Public corruption is a complex phenomenon that is difficult to define. It is a multi-dimensional and multi-faceted concept that encompasses a wide range of activities and behaviors. It is a social and economic phenomenon that is characterized by the abuse of public power for private gain. Public corruption is a global phenomenon that is found in all countries and at all levels of government. It is a major obstacle to the development of countries and the well-being of their citizens.

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## Chapter Two

### Literature Review and Theoretical Framework

This Chapter reviews relevant literature on key concepts such as corruption, petty corruption and grand corruption and presents the theoretical and conceptual frameworks. Furthermore, it examines the causes and effects of corruption, especially public service corruption in developing countries, with particular reference to Namibia. The Chapter also examines some elements of a successful anti – corruption strategy.

#### 2. 1. Literature Review

##### 2. 1. 1. Petty Corruption and Grand Corruption

Petty corruption is corruption practiced on a small scale. It normally involves offering relatively small sums of money (bribes) *to gain preferential access to public services or to overcome bureaucratic procedures* (NIPP: 2003). Petty corruption is often found at immigration and passport control offices, schools, revenue authorities, issuing of passports and identity documents and customs and police roadblocks. Petty corruption, which is the most common form of corruption, is usually “free lance” *in that individual officials or small groups of them try to take advantage of their monopoly powers to generate bribes* (Klitgaard 1996: 20).

Grand corruption, on the other hand, usually involves large sums of money, and is found at the institutional level (NIPP 2003). Grand corruption is usually systemic in the sense that corruption is imbedded in the whole system. *Systemic corruption generates economic costs by distorting incentives; political costs by undermining institutions; and social costs by redistributing wealth and power to the undeserving* (Klitgaard 1996:2).

## 2. 1. 2 Corruption

According to Chabal (1999:96), *the study of corruption is beset with analytical and practical difficulties. In the first instance, it is almost impossible to agree on a workable definition of the phenomenon. It is very difficult to observe the phenomenon empirically in a scientifically meaningful way.*

Drawing from the neo classical economic theory, Klitgaard (1988) holds that *corruption becomes prevalent when those who control state resources, which are sometimes scarce, have monopoly over the recipients of such resources or services.* The functionalists look at corruption in terms of the actual “function” that it plays in socio-economic development. The functionalists argue that bloated, inequitable, static bureaucracy blocks socio-economic development. Therefore, corruption sets up a crude kind of “economic efficiency”. *By cutting the red tape, it improves the quality and responsiveness of the public service* (Gould 1980:469). Unfortunately, the advocates of this theory forget that private gains obtained through corruption cannot be assumed to result in investments that benefit the public at large. Another way of looking at corruption is from the moralists’ point of view. The latter regard corruption as an “immoral, unethical” phenomenon. Corruption in this view is seen *as deviation from moral standards of society resulting in loss of respect for, and confidence in duly constituted authority* (Gould 1980:468). The problem with this approach is that, by ignoring systemic causes, it treats corruption as an individual problem rather than a societal phenomenon. In the African context, this author ascribes to Chabal’s “weak state or soft state theory” that holds that corruption tends to be more evident and more harmful in weak states or soft entities where there is little meaningful institutionalisation. In Africa there seems to be reluctance to respect and uphold the rule of law, which is fundamental to the existence of the modern state, in favour of an informal way of conducting government business. In other words those who seek political support need to promote these informal networks of patronage if they are to succeed as ‘representatives’ of their various constituencies. It therefore follows that empirically as well as analytically, corruption is, according

to Chabal and Daloz (1999:99-100), one key aspect of the “instrumentalization of disorder”.

Following the same line of reasoning, some analysts of administrative corruption argue that it is the outgrowth of lineage-loyal cultural norms and behavioural patterns prevalent in the Third World in general and Africa in particular. *These norms and patterns are assumed to be in conflict with “modern” impersonal bureaucratic values* (Gould 1980:473). In other words, *there is a lack of the rule of law and administrative predictability which should be characterized by policies and regulations developed and implemented according to a regular process which is institutionalised* (Klitgaard 1998:21).

Simply put, in some African countries, the ruling elite has been thriving on the absence of the rule of law, and corruption has been fundamental to that.

Against the above background, we can conclude that there is no single, universally accepted definition of corruption. Broadly speaking, corruption can also include social, political, or ideological remuneration (International Encyclopaedia of Public Policy and Administration 1998:545). The general definition of corruption developed by the National Integrity Promotion Programme (NIPP) is as follows: *[Corruption involves behaviour on the part of persons in which they improperly enrich themselves or those close to them through misusing the power entrusted to them, i.e. misusing public power for personal gain (NIPP: 2003). Corruption can also be defined as the private use of public money or funds.]*

Apart from the surveys done by the National Democratic Institute for International Affairs (NDI) on behalf of the Government in 1998 and on the Public Perceptions on Corruption in Namibia conducted by the Institute of Public Policy and Research (IPPR) through their Briefing Paper No. 19 of 2003, and piecemeal research on corruption here and there, not much has been written about the nature and extent of corruption in independent Namibia. Kavitjene (2001) is one of the few people who have written on this subject matter. For his Masters Degree in Public Policy and Administration, Kavitjene wrote on corruption in the Namibian bureaucracy by using

the case study of the Department of Civic Affairs in the Ministry of Home Affairs dealing with the issuance of citizenship, passport and residence permits. Kavijtjene (2001) found that poor budgetary controls and disregard for regulations and directives were the main causes of irregularities in the Department

### 2. 1. 3 The Main Causes of Corruption

The causes of corruption vary from society to society and can be attributed to a number of factors; however, the existence of opportunity is one of the greatest causes of corruption. The causes of corruption can be divided into four main categories, i.e. social causes, economic causes, organisational causes and institutional causes. Corruption will thrive where: leaders in key positions do not lead by example and they only pay lip service to the fight against corruption and when access to basic social services such as placement in schools and medical services is limited for the large number of people. When there is a great inequality in the distribution of wealth and income, and income is low considering the standard of living, corruption is likely to manifest itself. Some of the organisational causes that can contribute to corruption are: outdated and inadequate policies and procedures, excessive discretion, insufficient supervision, insufficient publicity of the institutions' aims and procedures and insufficient deterrents (NIPP: 2003).

It must be borne in mind that the lack of transparency and accountability leads to mismanagement and misuse of public funds because of insufficient checks and balances. Governments sometimes lack political will to deal firmly with the problem of corruption. Leaders get involved in corruption as a way of enriching themselves or may turn a blind eye to corrupt practices because they know that, sooner or later, they may be engaged in corruption as well. At the same time, the political leadership can undermine the efforts of anti-corruption agencies either through intimidation or simply by not providing them with the required funding or by not giving them the necessary moral support. When the *existing legal and institutional frameworks are faced with a lot of inadequacies, such as insufficient power to enforce the laws,*

*insufficient funding, insufficient manpower or a lack of autonomy, they are not able to function effectively (NIPP: 2003).*

#### **2.1.4 The Impact of Corruption on Development and Stability**

Corruption has far-reaching effects and in some countries, corruption has been the main cause of political uprisings, coups and economic decline. The main effects of corruption can be summarised as follows: corruption enriches a few at the expense of fellow citizens, it perpetuates human suffering through escalating poverty levels, it undermines the quality and quantity of public services, it leads to reduced confidence, trust and respect in the public service, it corrodes economic development and contributes to huge national debt that may become impossible to service, when bribes are paid to prevent law enforcement, respect for the Rule of Law is undermined and ultimately lost; and it increases the cost of administration, as the public has to pay more to access public services (NIPP:2003).

Corruption exists in <sup>most, if not</sup> all countries. However, as Klitgaard (1996:2) has observed, corruption tends to be more damaging to poor countries, where it can undermine property rights: the rule of law; incentives to invest and when that happens, economic and political development is crippled. In the developing countries, one of the chief causes of corruption is due to poverty and low, inequitable pay scales. Pay scales throughout Africa have remained poorly structured since colonial times and failed to keep pace with inflation. The prevailing wage scale fails to provide the average civil servant with the means to feed, house, and clothe his/her family and as a result he/she is required to turn to other means – typically involving corruption – for survival's sake.

A lot has been written about the causes of corruption in Africa. However, the main causes of administrative corruption include the nature of the postcolonial state, poverty, cultural factors, the nature of the bureaucratic decision-making system in place and the role of foreign players (Gould 1980:471).

Some organizational factors, which are said to be contributing to corruption in developing countries, are *the slowness of the policy process and the poor control and accountability systems* (Gould 1980:473). Foreign actors often contribute directly or indirectly to corruption because, more often than not, they are more interested in making "a quick buck" than in good governance. Sometimes these actors would promote corruption by deliberate design as long as they get things done expeditiously.

Klitgaard (1988:23) holds that there are generally three types of consequences of corruption in developing states. Corruption produces negative consequences of economic, political, and administrative nature. These consequences, both individually and collectively, categorically impair the process of development in Africa. He goes on to argue that when it comes to the economic consequences, corruption increases the cost of doing business to African governments. In some African countries, corrupt politicians support investment projects not because they are viable, but on the opportunity for bribes and kickbacks these projects present.

The second type of consequence of corruption in Africa relates to political development and stability. When corruption becomes part of the status quo, its maintenance requires repressive measures against the real or perceived critics of the regime in power. In fact corruption also affects political stability in Africa because it leads to violence and frequent regime changes. During the past decades, corruption was most frequently cited reason for the military takeovers of governments in Africa. When political development and stability are undermined then the process of national development is also undermined. There can be no effective long-term planning under such circumstances and the democratic system of government becomes threatened.

The final type of consequence stemming from corruption in Africa pertains to administrative development. Corruption hinders administrative development and performance in developing states partly due to its institutional spill over effects throughout the whole system (Hope as cited in Klitgaard 1988:27).

### 2. 1. 5 Anti-Corruption Strategy

An anti-corruption strategy can be referred to as a set of measures that is underpinned by, at least four basic elements, i.e. *prevention, investigation, public education and institution building* (cf Klitgaard 1988 and Pope in Stapenhurst and Kpundeh 1999). In other words, such a strategy focuses on systems and procedures rather than merely on corrupt individuals. At the same time, the systems, procedures and processes providing the framework within which the anti-corruption strategy is implemented, can be said to constitute the anti-corruption mechanisms.

*Combating corruption should not be regarded as an end in itself, but rather, it is instrumental to the broader goal of more effective, fair and efficient government, which in turn is associated with greater economic development* (Pope in Stapenhursts and Kpundeh 1999:97). In other words, corruption should not be studied as an isolated phenomenon, but rather in the broader context of its impact on national development.

The development of a coherent, overall, holistic strategy involves a clear commitment by political leaders to combat corruption wherever it appears. Leaders must be prepared to declare their personal assets and interests and the salaries of the politicians and civil servants must not lack too far behind those of their counterparts in the private sector, both to reduce the need for corruption and to ensure that the best people are available to serve the state. A strong partnership needs to be developed between government and civil society, including the private sector, professional, religious organisations etc.

Virtually every writer on anti-corruption measures agrees that prevention is the most cost-effective tactic. To this end, simplifying and enforcing government procedures and regulations will not only reduce the need for people to resort to bribery but will also ease the conduct of business in general. A key preventive measure is to reduce the number of steps required to gain government approvals and payment for goods supplied. There is a need to clean up and update government payrolls to eliminate "ghost workers" and prevent their re-appearance. Users of government services should have access to information about the availability of such services in a

transparent way. The rotation of civil servants, especially in corruption-prone functions, should be introduced so that those doing business with government cannot predict the officials with whom they may be dealing. Another key element to consider is the regular rotation of key staff so as to lessen the risk of developing unhealthy relationships between individual staff and the public they serve. Proper supervision mechanisms and complaint procedures should be set up and strengthened to empower both the supervisors and the subordinates in their respective roles. It is important to create an open, genuinely competitive, and transparent system of public procurement. The public should be polled periodically on corruption-related issues, not only to enable them to have a say on such issues, but also as a way of keeping the political leadership in line (Pope in Stapenhurst and Kpundeh 1999:99-100).

As part of independent enforcement mechanisms, investigators and prosecutors must have adequate powers to perform their professional duties in an independent and transparent manner. The protection of whistle-blowers should be given top priority in order to encourage them to come forward with information. Corrupt firms and individuals should be blacklisted so that it can become more difficult for them to do business. Extradition arrangements must be put in place to bring to book corrupt individuals who have fled the countries where corruption has taken place. Most importantly, legal steps must be taken to enable the assets of the corrupt to be seized and forfeited, whether these are inside or outside the country. All the institutions that are, in one way or another, involved in the prevention and combating of corruption should be truly autonomous and have adequate staff and other resources. On top of that, sound public management and financial systems must be put in place. *Legislative mechanisms for accountability should be developed, which should include the role of the public accounts committee and the public access to legislative proceedings* (Pope in Stapenhurst and Kpundeh 1999:101-103).

A number of developing countries have responded in different ways to the problem of corruption, with different degrees of success. Since the early 1990s a number of African countries have developed anti-corruption strategies, mainly due to pressure from the Western donor countries, and from the World Bank and the IMF. These

initiatives included the creation of anti-corruption agencies, public inquiries, inspector-general systems, legal and quasi-legal trials, complaints procedures, and public awareness campaigns (Doig 1995; Heidenheimer, LeVine and Johnston 1989 as cited in Chisanda 2003:17).

Although many agencies in developing countries designed strategies, based on the famous Independent Commission Against Corruption (ICAC) model of Hong Kong, several anti-corruption agencies have not performed up to citizens' expectations (Chisanda 2003:17).

It is imperative that we try to consider a policy framework in which we can cast our research problem. To this end, a hybrid of three Planning Monitoring and Evaluation models, namely logical framework approach (LFA); the German ZOPP (a close derivative of LFA of which the acronym stands for the German equivalent of objective oriented project planning); and the Results Based Management (RBM) which is mainly used by the Americans and Canadians, is briefly considered below (Woodwill 2000:2).

#### **2.1.6 Approaches to Planning, Monitoring and Evaluation (PM&E)**

There are three main approaches to PM&E which are used by the major donor agencies i.e. logical framework approach (LFA), the German ZOPP (the acronym stands for the German equivalent of objective oriented project planning) and the Results Based Management (RBM), which is mainly used by the Canadians and Americans (Woodhil 2000:2).

The underlying principles of PM&E, regardless of the approach, are: to develop *programmes and projects based on a thorough understanding of the situation in which an intervention is planned; to involve stakeholders in a participatory process of programme or project design and evaluation; to develop a set of clear logical objectives that can realistically be achieved within a particular timeframe and within*

*an allocated budget and which will make a significant and sustained contribution to a higher level development objective; to make explicit the cause and effect (means and end) relationships and external factors that underpin the programme or project and which must hold true if planned activities are going to lead to desired results and impacts; and to establish a monitoring and evaluation system, including indicators, which will show if the objectives have been achieved and provide information to support effective management and learning (Woodhill 200:2).*

PM&E starts with a programme/project cycle, which emphasises the importance of starting with, detailed scanning, situation analysis and design stages. The programme/project cycle also stresses the need for constant planning, acting, monitoring and evaluation, in other words learning during implementation. An important element in PM&E is the project logic, which implies that there is a situation that a group of stakeholders wish to improve, i.e. the reasons for a programme or project. Understanding of the situation then leads to a programme or project plan which in turn includes: the goal or a summary of what in the long term the programme or project is contributing towards in terms of impact; the purpose or a summary statement of overall what the programme or project should achieve given the timeframe and resources (overall outcome); a set of results or the main things that must be achieved for the programme or project to realise its purpose (outputs and outcomes); a set of activities or what must be actually done for the results to be realised; and a set of inputs or the resources required for the activities to be undertaken. The programme or project is then implemented according to this plan. At the same time, *any programme or project needs to have an objective hierarchy that stipulates how low level activities contribute to higher level objectives and how this will eventually lead to the achievement of the overall purpose or goal of a project or programme (Woodhill 200:6-7).* As Des Gasper has observed the hierarchy of objectives is *the heart of the exercise, with the other elements trying to operationalise and rationalise it (Des Gasper 200:2).*

## 2.2 Theoretical Framework

Chabal and Klitgaard's approach that corruption takes place in almost all the countries. However, it tends to be more evident and damaging to poor countries, where it undermines political stability and economic development, is fully supported as a theoretical framework. When political and economic stability are undermined, then the process of national development is arrested. Corruption is therefore more than a political, economic or moral problem; it is a national development problem.

Against the above assertion, the fight against corruption requires a comprehensive, multi-pronged strategy underpinned by three key elements: prevention, investigation and public education. A successful anti-corruption strategy should be underpinned by: efficiency in public sector management based on properly defined systems and processes, meritocracy and effective bureaucratic governance; legislative oversight; political accountability, respect for the rule of law, transparency and civic participation (cf Gould 1980, Klitgaard 1988 and Pope in Stapenhurst and Kpundeh 1999).

In order to give a synopsis of the main issues that were discussed under literature review above, it is imperative that we capsule those into a table that provides a summary of the main causes and effects of corruption, particularly within the African context, as well as the key elements of a successful anti-corruption strategy. A summary of the causes and effects of corruption as well as the main elements of a successful anti-corruption strategy will help us to put our research problem into the right perspective.

**Table 1** shows the major causes and effects of corruption, mostly in developing countries, as well as the elements of a successful anti corruption strategy. (These causes and effects as well as the elements of a successful anti-corruption strategy are not necessarily arranged in a corresponding manner).

Major Causes of Corruption	Effects of Corruption	Elements of a Successful Anti-Corruption Strategy
<p>Lack of respect for the Rule of Law.</p> <p>Lack of transparency.</p> <p>Poverty and low pay scales.</p> <p>Slowness of the bureaucratic process.</p> <p>Poor control and accountability systems.</p> <p>The nature of the post-colonial state (never properly instituted).</p> <p>Cultural factors (e.g. patronage and extended family obligations).</p>	<p>Escalating poverty levels.</p> <p>Quality and quantity of public services undermined.</p> <p>Loss of trust in public institutions.</p> <p>Corrodes economic development.</p> <p>Respect for Rule of Law is lost.</p> <p>Cost of public Administration increases.</p> <p>Political instability.</p>	<p>Adequate pay for civil servants.</p> <p>Simplified bureaucratic procedures and regulations.</p> <p>An independent Agency, which is well resourced.</p> <p>Political Commitment.</p> <p>Political Pluralism.</p> <p>Press Freedom.</p> <p>Civil Society involvement.</p> <p>Independent enforcement mechanisms.</p> <p>Protection of whistle-blowers.</p> <p>Transparency and Accountability.</p> <p>Sound financial management systems.</p> <p>Public Education.</p>

The Planning, Monitoring and Evaluating model discussed under literature review above can be used as a tool to model the development of an anti-corruption programme for Namibia. Such a programme should be based on the understanding of the corruption situation on the ground and what the anti-corruption programme seeks to change or the so-called intervention logic. A programme cycle must be put in

place with all the key elements such as monitoring and evaluation and the development of a plan or strategy that includes the goal of the programme, the purpose, timeframe, resources, outputs and outcomes, activities, inputs and an objective hierarchy.

### **2.3 Comparative Analysis**

In attempting to look for a viable anti-corruption strategy for Namibia, it is important to draw from best practices both within the SADC Region and internationally. In this regard, we have selected the Botswana, South African and Hong Kong case studies. South Africa and Botswana are two SADC countries with a lot of similarities with Namibia. According to the 2004 Transparency International Global Corruption Perception Index, Botswana, with a score of six (6) points (out of a possible perfect 10) and on the 31<sup>st</sup> position internationally, occupies the first position on the African continent and South Africa shares the 44<sup>th</sup> position with Kuwait internationally and has a score of 4.6, thus occupying the second position (after Botswana) in Africa. According to the same index, Namibia and Mauritius at the joint 54<sup>th</sup> position internationally with a score of 4.1 are perceived to be the fourth least corrupt African countries. Namibia has dropped one position from being the third least corrupt country in Africa, according to the same index in 2003 (South Africa 2004). The Independent Commission Against Corruption (ICAC) in Hong Kong has been celebrated for years as a success story and an example of international best practice.

#### **2.3.1. The Case of Botswana**

Botswana's reputation for good government was severely dented during the early 1990s by a succession of scandals involving powerful political figures. These scandals strengthened the general perception that rapid economic expansion had brought about new and expanding opportunities for fraud, bribery and misappropriation at all levels of the public service (Good as cited by Doig and Theobald 2000 :119).

### The Corruption and Economic Crime Act, 1994

Against the above background of what amounted to moral panic, the Corruption and Economic Crime Act (CEC) was promulgated in 1994. The principal objectives of the Act are *to provide for the establishment of a Directorate on Corruption and Economic Crime (DCEC), to make comprehensive provision for the prevention of corruption and confer powers on the Directorate to investigate suspected cases of corruption and economic crime and matters connected or incidental thereto.* (DCEC Annual Report 1997:8).

The DCEC was modelled on Hong Kong's Independent Commission Against Corruption (ICAC). Despite the fundamental differences between the two agencies, mainly due to the fact that the DCEC also deals with economic crimes, the DCEC adopted the ICAC basic 'three pronged *strategy*' of *investigation, prosecution and corruption prevention and education* (Briscoe and Hermans 2001:93). The basic structure of the DCEC consists of a director, a deputy director and five assistant directors. The latter group oversees respectively: prosecutions and training; intelligence and technical support; administration and financial investigations; and corruption prevention and public education (Doig and Theobald 200:119).

### Organization and Activities

The Directorate comprises five branches, each headed by a Deputy or Assistant Director, as follows: an Investigations Branch; a Prosecutions and Training Branch; an Intelligence and Technical Support Branch; a Corruption Prevention and Public Education Branch; and an Administration and Financial Investigation Branch (Briscoe and Hermans 2001:93). The most common criticism of the Directorate's performance is about the magnitude of the offences investigated and prosecuted. The DCEC is often accused of failing to catch the 'big fish', meaning that major acts of corruption are simply not pursued. An analysis of the cases of alleged corruption or fraud which the Directorate has prosecuted does reveal that a very high percentage of all such cases involve relatively minor offences, such as falsification of credentials or travel claims, false statements or invoices, failure to declare personal interests, obtaining money on false pretences or unauthorized use of Government property. The vast majority of these cases involve relatively junior public officials and small

amounts of money (Briscoe and Hermans 2000:102). Although the DCEC cannot be held responsible for the performance of the judiciary, the absence of a single substantial penalty in any proven case of corruption tends to enforce the public perception that the DCEC is indeed not catching the 'big fish'.

### 2. 3. 2 The South African Experience

The background to the South African experience show that commitment to good governance, and thus anti-corruption, was and still is one of the priorities of the democratic South Africa and its Government since 1994. The Government of South Africa has undertaken a number of important and far-reaching anti-corruption measures. These range from the adoption of the comprehensive framework for initiatives to combat and prevent corruption in the public service (known as the Public Service Anti-Corruption Strategy), through to the promulgation of a rather comprehensive anti-corruption related legislative framework and the development of investigating and prosecuting anti-corruption capacities, to efforts to develop partnerships with business and civil society (Republic of South Africa 2003).

During 1997, the Government initiated a national anti-corruption campaign. This campaign progressed to a National Anti-Corruption Summit in April 1999 at which all sectors of society (public and private) committed themselves to establishing sectoral anti-corruption strategies. The purpose of the Summit was to discuss the importance of eliminating corruption in both the public and private sectors; to *develop recommendations to improve investigation and prosecution procedures; to implement effective and coordinated anti-corruption strategies; to review legislation; to enhance business's role in the fight against corruption* (Republic of South Africa 1999). The Resolutions, which were adopted at the Summit, relate to combating corruption, preventing corruption, building integrity and raising awareness.

The National anti-Corruption Forum (NACF) was launched in 2001 based on the recommendation of the National Anti-Corruption Summit and it calls for sectoral strategies. The NACF includes representatives from the government, business and

civil society, with ten members drawn from each of the three sectors (Republic of South Africa 2003).

In South Africa, as far as anti-corruption structures are concerned, it was found that there is no single agency of which the sole mandate is to prevent and combat corruption. The anti-corruption functions are spread across a number of government units. For example, the investigation and prosecution of corruption is intrinsic to the functions of the South African Police Services (SAPS), the Directorate for special Operations (DSO) and the National Prosecuting Authority (NPA). The strengthening of employee integrity, financial management and the quality of administration within the public service, *which are central to the prevention and detection of corruption, are part of the core business of the Department of Public Service and Administration (DPSA)*, the National Treasury, the Public Service Commission, the Public Protector and the Auditor General (Republic of South Africa 2003).

There are thus a number of anti-corruption structures and there is a need to clarify their mandates in terms of the legislative framework. Court procedural problems are, however, being experienced resulting in a lot of delays and efforts are being made to address these. One way of addressing this problem is the setting up of Special Commercial Courts and Prosecuting Units of which two pilot sites have been established in Pretoria and Johannesburg respectively, and which have proven to be relatively successful.

Before the Corruption Act (No 94 of 1992) was promulgated, corruption was and/or corruption related offences were prosecuted in terms of the Prevention of Corruption Act 6 of 1958 (Republic of South Africa 2003). The enactment of the Prevention and Combating of Corrupt Activities Act (Act 12 of 2004) was meant to be an improvement on the previous two pieces of legislation.

The anti-corruption area is still underdeveloped in South Africa because, inter alia, the legislative component was only finalized last year and the co-ordination among the various anti-corruption agencies only started about two years ago. The debate on

a dedicated and centralized agency versus a devolved but coordinated anti-corruption mandate seems to still be raging on, although the latter is still under implementation (Republic of South Africa 2003).

At the same time, despite the creation of the National Forum against Corruption, the area of partnership with business and civil society needs further and effective development. This is particularly so when it comes to public anti-corruption education (Republic of South Africa 2003).

### **2. 2. 3 The Hong Kong Model**

As Moran (2000: 99) argues, the factors behind the success of corruption control in Hong Kong and the Independent Commission Against Corruption (ICAC) are historical, structural, social, political, legal and economic. Due to the required briefness of this paper, all these other factors will not be reviewed in detail here.

According to Moran (2000), the corruption control regime in Hong Kong is composed of the relevant legislation and specific bodies charged with enforcing these laws. Although the anti-corruption work is identified with the ICAC, the impetus to reform had already begun in the early 1970s, fuelled by the expansion of the narcotics trade, increasing levels of drug addiction, extensive police corruption, and the political context of increasing anti-colonial political sentiment (McCoy as cited by Moran in Doig and Theobald 2000:99).

It was in response to the above mentioned that the ICAC was established in February 1974. Since its inception, the Commission has been committed to fighting corruption with the three-pronged approach of investigation, prevention and education or community relations (Moran in Doig and Theobald 2000:100).

The ICAC is given special legal powers and functions to bring the corrupt to book in terms of three specific laws: the Independent Commission Against Corruption

Ordinance; the Prevention of Bribery Ordinance; and the Elections (Corrupt and Illegal Conduct) Ordinance (Hong Kong Government 2004).

According to its Mission Statement, the ICAC is committed to fighting corruption through effective law enforcement, education and prevention to help keep Hong Kong fair, just, stable and prosperous. The three-pronged approach is embodied in the Commission's three Departments of Operations, Corruption Prevention and Community Relations (Moran in Doig and Theobald 2000:119).

The extensive investigative powers enjoyed by the ICAC dictates that an equally elaborative system of checks and balances be in place to prevent abuse. Key elements of the checks and balances system are the: Chief Executive / Executive Council; Legislative Council; Separate Powers of Prosecution; Judicial Supervision; Advisory Committees; Internal Monitoring and Staff Integrity; ICAC Complaints Committee; and the Media (Hong Kong Government 2004)

The ICAC counts on public reports to fight corruption. Complaints from members of the public provide an important source of information for the ICAC to uncover corruption offences. Members of the public may lodge a complaint or make an enquiry in person, by phone (24 – hour service) and by mail. Elaborate safeguards are built into the procedures of handling complaints and to ensure that all information provided by the complainants is treated in strict confidence so as to protect them (Hong Kong Government 2004).

It is beyond the scope of this paper to give a detailed audit of the ICAC's performance. However, the ICAC model in Hong Kong is acclaimed globally as one of the best. The strong points and weaknesses of the three case studies are given in **Table 2** below. Namibia can draw important lessons from this.

Country Study	Case	Strong Points	Weaknesses
Botswana		<p>Agency located in Office of the President and therefore has high profile.</p>	<p>Location in Office of President may compromise autonomy.</p> <p>Has failed to produce a high profile case.</p> <p>Referring cases to the Office of Prosecutor-General causes delays.</p>
South Africa		<p>Public Service Anti-Corruption Strategy in place and all sectors to develop own strategies.</p> <p>Special Commercial Courts in place, on pilot basis, to handle corruption cases.</p> <p>A comprehensive country assessment reports on corruption based on baseline data in place.</p>	<p>Too many government structures involved and their relationships not well defined.</p> <p>Partnership with civil society needs further development.</p>
Hong Kong		<p>Independence of the unit seems to be beyond questioning.</p> <p>Agency has performance standards. An elaborate committee systems to provide for checks and balances in place. Internal investigation and monitoring unit in place.</p> <p>Provision for accountability and control.</p>	<p>According to available statistics reported cases of corruption do not seem to have decreased over the years (it is not known whether this is due to increase in corruption or increase in awareness).</p>

## **Chapter 3**

### **The Factors that have shaped the Anti-Corruption Policy in Namibia**

Arguably, numerous factors shaped the anti-corruption policy in Namibia. These include the international context, the United Nations Convention against Corruption, the SADC Protocol Against Corruption and the African Union Convention on Preventing and Combating Corruption and the national context.

The anti-corruption policy initiative, in general, and the Anti-Corruption Act (Act No. 8 of 2003) specifically, should also be understood within the context of other international and regional anti-corruption policy instruments. These are, for example, the United Nations Convention against Corruption, the African Union Convention on Preventing and Combating Corruption, and the SADC Protocol Against Corruption. All three international policy instruments have been ratified by the Namibian Parliament and thus place some obligations on the Namibian Government in the area of corruption prevention.

#### **3.1 The International Context**

##### **3.1.1 Political Pluralism and Market Mechanism**

After the collapse of the Soviet Union and the end of communist rule in Eastern Europe, issues of democratic pluralism, good governance and market mechanism have gained international consensus as policy norms. The debate is now more about how to apply these norms in different socio-cultural contexts.

The wave of democratisation hit the African continent in the 1990s, with different international cooperating organizations and the western donor nations putting pressure on a number of African countries to open up at both the political and economic levels. In other words, issues of good governance were high on the western-driven cooperation agenda.

To this end, various internal control methods such as hierarchical control, internal audits, codes of ethics and external controls such as courts, parliament, media, ombudsmen etc. were being used to enforce accountability in the reform programmes being implemented in many Sub-Saharan African (SAS) countries (Adamolekun 1999:168).

However, only modest results have been achieved, notably by countries like Botswana, Namibia, South Africa and Mauritius, which are ranked as some of the least corrupt countries on the African continent, on the Corruption Perception Index of Transparency International, as noted earlier on.

The anti-corruption policy initiative in Namibia, although it was homebred and locally driven, was to a certain extent influenced by this global demonstration effect and should therefore be understood within that historical milieu. It is therefore, imperative that this specific policy initiative should be analyzed within this specific historical time and space. Time, because this was the time, as noted above, when issues of democracy and good governance have gained international consensus, and space because Namibia as an entity within the African space, gained independence during that specific historical, and historic epoch.

### **3.1. 2 The United Nations Convention Against Corruption**

According to the UN Guide for Anti-Corruption Policies (2003:120), in October 2003 after almost two years of negotiations, Member States of the United Nations finalized the text of a new international treaty, the United Nations Convention against Corruption. The United Nations General Assembly adopted the Convention in the same year and from 9 to 11 December 2003 it was open for signature by Member States.

According to Article 1, which deals with Statement of Purpose, *the purposes of this Convention are to: promote and strengthen measures that prevent and combat corruption more efficiently and effectively; promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in assets recovery; promote integrity, accountability and proper management of public affairs and public property* (UN Convention Against Corruption as cited in the Compendium of International Legal Instruments on Corruption 2003:9).

Developing countries like Namibia can thus benefit from “international cooperation” and “technical assistance” as provided for under Article 1 (b) of the Convention as stated above.

Furthermore, Article 6 of the Convention calls for the creation, by each State Party, of independent anti-corruption bodies, or their strengthening where they are already in existence (UN Convention Against Corruption as cited in the Compendium of International Legal Instruments on Corruption 2003:10).

Article 6 does not only provide for the creation of independent anti-corruption bodies, but it also goes further to call upon States Parties to assist each other in the development and implementation of anti-corruption measures. This is again, significant for developing countries like Namibia, which can benefit from such cooperation. A further significant development was the inclusion of a specific chapter of the treaty dealing with the recovery of assets, *a major concern for countries which are pursuing the assets of former leaders and senior officials accused or found to have engaged in corruption* (UN Guide for Anti-Corruption Policies 2003:121).

### 3. 1. 3 The SADC Protocol Against Corruption

During the mid 1990's, there were dedicated efforts by Governments of SADC Member States to proactively address the important issue of corruption in unison, in view of the threat that this worldwide scourge could erode the economic gains achieved through regional integration. To this end, in 1998, 1999 and 2000 respectively, three regional consultative "roundtables" were convened by a regional NGO, the Human Rights Trust of Southern Africa (SAHRIT), as mandated by the former SADC Legal Sector. The primary focus of the roundtables was on ethics and governance (SADC Regional Anti-Corruption Programme 2004:2).

In order to take the Ethics and Anti-Corruption Programme forward, which had since 1998 been implemented by SAHRIT, and the Southern African Forum Against Corruption (SAFAC) was set up in 2000. Although the majority of its members are anti-corruption institutions within the region, Member States that do not have such bodies have been co-opted to participate through the representation of their governments ( SADC Regional Anti-Corruption Programme 2003:3). After some years of groundwork by the officials through SAFAC, on 14 August 2001 at a Summit held in Blantyre (Malawi), the SADC Heads of State and Government or duly authorized representatives, adopted and signed the SADC Protocol Against Corruption.

Article 2 stipulates that the purposes of the Protocol are *to: promote and strengthen the development, by each of the States Parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector; promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sectors; and foster the development and harmonization of policies and domestic legislation of the States Parties relating to the prevention, detection, punishment and eradication of corruption in the public and private sectors* (The SADC Protocol Against Corruption 2001).

Importantly, in terms of article 7 of the Protocol, 'States Parties undertake, to the extent possible, to develop and harmonize their policies and domestic legislation for the attainment of the purpose of this Protocol.' At the same time, Article 10 of the Protocol obliges State Parties to, inter alia, provide each other with the widest measure of mutual technical cooperation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption (The SADC Protocol Against Corruption 2001).

At its meeting on 14 – 15 June 2002, in Gaborone (Botswana), the SADC Council of Ministers directed the Secretariat to develop a Regional Anti-Corruption Programme. The purpose of the Programme would be to implement the provisions of the Protocol over a five-year period (2005 – 2010) (SADC Regional Anti-Corruption Programme 2004:5).

### **3. 1. 4 The African Union Convention on Preventing and Combating Corruption**

The African Union's Ministerial Conference held in Addis Ababa on 18 – 19 September 2002 approved the Draft African Convention on Preventing and Combating Corruption. This convention contains provisions that should guarantee access to information and the participation of civil society and the media in the monitoring process. Also noteworthy is an article, which seeks to ban the use of funds acquired through illicit and corrupt practices to finance political parties; and an article, which requires state parties to adopt legislative measures to facilitate the repatriation of the proceeds of corruption (UN Compendium of International Legal Instruments on Corruption 2003:30).

According to article 2, the objectives of the Convention are *to: promote and strengthen the development in Africa by each State Party, of mechanisms required to prevent, detect, punish and eradicate corruption and related offences in the public and private sectors; Promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa; coordinate and harmonize the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent promote socio-*

*economic development by removing obstacles to the enjoyment of economic, social and cultural rights as well as civil and political rights; Establish the necessary conditions to foster transparency and accountability in the management of public affairs* (African Union Convention on Preventing and Combating Corruption 2003:4).

It is also interesting to note that, under Article fifteen (15) and sixteen (16) respectively, the Convention makes provision for the extradition of persons charged with or convicted of offences of corruption as well as the confiscation and seizure of the proceeds of corruption (African Union Convention on Preventing and Combating Corruption 2003: 13). The Convention also calls for the creation and strengthening of independent national anti-corruption authorities as well as for cooperation and mutual legal assistance among State Parties (African Union Convention on Preventing and Combating Corruption 2003:16).

To create room for some checks and balances, article 22 makes provision for the setting up of an Advisory Board on Corruption which shall comprise eleven (11) members elected by the Executive Council from among a list of experts of the highest integrity, impartiality, and recognized competence in matters relating to preventing and combating corruption and related offences, proposed by the State Parties (African Union Convention on Preventing and Combating Corruption 2003:19).

### **3. 2 The National Context**

The political set-up and the Public Service Reforms are some of the internal factors that shaped the anti-corruption policy process in Namibia. The political dispensation on Namibia is underpinned by a liberal Constitution, which, inter alia, provides for democratic governance based on the rule of law and the separation of powers between the Legislative, Executive and the Judiciary. This then provides for proper checks and balances between the three branches of the State.

An immense number of people in leadership positions spent many years in exile, mainly in other parts of Africa, during the days of the liberation struggle and there seems to be a genuine desire to want to see Namibia improve on what is regarded as Africa's dismal performance both at the political and economic levels. This is also a factor that has influenced the development of the anti-corruption policy process in Namibia.

The media, especially the independent press have, together with some civil society players, been very vocal on corruption issues and this has been very crucial in the prevention and exposure of corruption whenever it occurs. At the same time, the Government has put in hand a series of Public Service Reform Initiatives since the 1990s, which were, to a certain extent, influenced by the so-called good governance paradigm. These reform initiatives are, for example, the Public Service Charter, the Performance and Effectiveness Management Programme (PEMP) etc. The Public Service Reform Initiatives in Namibia, including the anti-corruption initiative, are fundamentally based on the maxim of putting the citizens first by fostering a public service culture of professionalism, transparency and accountability. The anti-corruption policy initiative should therefore be seen as a policy issue area within the broad policy space of good governance.

It was this dialectical interplay between these internal imperatives as primary factors and the international secondary factors, alluded to above, which shaped the anti-corruption policy process in Namibia.

## Chapter 4

### Corruption Trends in Namibia

This chapter looks at corruption trends in Namibia, starting with a brief analysis of the pre-independence era and ending with the post-independence period.

#### 4.1 The Pre-Independence Era

Corruption was prevalent in the Namibian bureaucracy prior to independence with no due regard to the principle of bureaucratic meritocracy in the recruitment process (Kavitjene 2001: 9). Nepotism, favouritism, patronage, influence peddling and the plundering of national resources by those in authority evidenced grand corruption.

Professor Kadar Asmal speaking at the Namibian National Integrity Conference in October 1998 argued that: *corruption reached its pinnacle under the apartheid state, in which access to education, to water, to justice, to employment, indeed to the rights of citizenship, were granted according to the colour of one's skin, curliness of one's hair, and one's place of birth. He went on to suggest that "...apartheid was in itself, merely the greatest act of corruption where it had, for many, become a way of life; where for many corrupt interactions were considered normal – even praiseworthy* (National Discussion Paper 1998:8).

The issue of one's colour was not only a determining factor when it came to the recruitment and promotion in the public service, but also the awarding of business licenses. The awarding of tenders was done, almost exclusively, at the expense of the black majority.

It must be borne in mind that apartheid not only divided black and white but also black and black. It was thus very common for the authorities to plant informers among students in the then white-run back secondary schools, within the ranks of

workers or in the liberation movement. The aim was to neutralize black political activism in all these political fronts. The informers would, in turn, be rewarded in different ways e.g. easy access to South African black universities in the case of students, promotion and monetary rewards in the case of the workers etc. It is important to note that the Apartheid state and the white-dominated private sector worked hand in glove to promote this type of corruption. For example, once blacklisted by the state security system, then it would be difficult, if not impossible, to get employment even in the private sector. On the other hand, once you were known to be a "collaborator", then all the doors would be open for you.

#### **4. 2 The Post-Independence Era**

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. On the other hand, there is a view held by some black Namibians that because they were denied opportunities to amass wealth in the past, they now need to find ways to get rich quick. As a result, some of those who are in a 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 required procedures (National Discussion Paper 1998:11). In the same vein, Constitutional requirements for a balanced structured public service is exploited by some as a license for patronage, nepotism and favouritism in the recruitment of friends and family members. Accusations, *whether justified or not, abound of the dominance of certain ethnic groups in the state institutions* (Kavitjene 2001:12).

The economic disempowerment of the vast majority of the population during the apartheid era gave rise to attitudes of disrespect for property of the oppressive state machinery and its representatives, so that the theft of public property was often viewed as a form of resistance or as a means of redistribution of public property to its rightful owners. Unfortunately, this culture has been carried over into the post-

independent era. There is not a proper appreciation of the fact that public resources are now held by the State for the collective benefit of the people and whistle-blowers may even be labelled as "collaborators" just like in the days of apartheid.

Another factor that contributes to corruption in Namibia is the slow pace of investigation and judicial administration with respect to reported cases of corruption. The failure of organs of the State to act promptly and effectively against allegations of corruption creates the impression that there is little to fear, and by implication, that it is acceptable to engage in corrupt practices (National Discussion Paper 1998:12). This state of affairs discourages those who want to report cases of corruption.

In May 2004, NEPRU conducted a National Integrity Survey for the Office of the Ombudsman which, inter alia, shows how the respondents rate the government's desire to fight corruption, the change in the level of corruption and the extent to which corruption is a problem in Namibia today. The survey made use of two different approaches to gather information, a quantitative survey of clients of the Ministry of Home Affairs and clients of health services, and a quantitative survey targeting grade 12 pupils at schools. The ratings used were average ratings that can vary between (-2) and 2, with (-2) giving the worst and (2) the best rating. Responses in 2003 aggregated to a score of -0.90 indicating the average perception that the government had no desire to fight corruption. In 2004 responses improved to 0.07, thus only to a level indicating that the government was more or less indifferent to fighting corruption (National Integrity Survey 2004:15).

The percentage of people who had experienced corruption rose from 24.17% in 2004 to 31.22% in 2004 and the percentage of people who knew someone who had experienced corruption rose from 33.95% to 45% over the same period (National Integrity Survey 2004:17). However, this does not necessarily mean that corruption is on the increase in Namibia. The increased numbers could be a result of increased awareness and understanding of what corruption is. Due to the awareness campaign conducted by the Office of the Ombudsman, the NDI and other grass-root

organizations more people will be able to identify corruption. The increase might therefore, stem from the increased awareness rather than increased corruption.

Of those that reported experiencing corruption in 2004, nearly 40% could define corruption, up from 27% in 2003. More than 42% of respondents who reported that someone they knew had experienced corruption correctly defined corruption, up from 38% in 2003 (National Integrity Survey 2004:20). Awareness of corruption seems to be increasing, but the fact that still 60% of those that claimed to have experienced corruption do not fully understand what corruption is leaves a lot to be desired.

According to a survey conducted by the Institute for Public Policy Research (IPPR) in 2003 on perceptions of corruption, some 48% of the respondents viewed the current Government to be less corrupt than the South African colonial administration. Some 23% felt that the two are about the same, whilst a substantial number (25%) felt that the current Government is more corrupt than the colonial administration (IPPR Briefing Paper No. 19 2003:7). On the other hand, according to a survey done by the National Democratic Institute for International Affairs (NDI) with 269 participants at ten regional workshops in 1998, over 50% of the respondents indicated that there was either "more corruption" or "much more corruption" now while about 20% felt that there was less corruption today as compared to the colonial period (NDI 1998). The main difference between these two sets of findings can be attributed to the fact that the NID survey was done with a selected population who were mainly elite, whereas the IPPR survey was based on random sampling.

A survey on corruption perceptions based on the opinions of a selected elite group is likely to produce more critical findings than the one based on random sampling of a heterogeneous population.

Respondents at the 1998 ten NDI-sponsored workshops were also provided with a list of ten issues currently being discussed in Namibia: land distribution, health care, national reconciliation, violent/property crime, education, corruption, national defence, water resources, unemployment and affirmative action (the option for other was also provided). It is interesting to note that most respondents chose corruption as the fifth most important issue facing the country, after land distribution, education, unemployment and health care – in that order (NDI 1998).

If one takes into account the fact that 60% of the respondents who have claimed to have experience corruption in the national integrity survey could not define corruption, and that there was more public awareness because of the office of the ombudsman awareness campaign, it is difficult to conclude that corruption is on the increase in Namibia. There is no doubt that corruption is regarded as an important policy issue by the public, if the 1998 OPM survey is anything to go by.

A number of corruption cases have rocked the nation since the attainment of independence in 1990. A good number of these cases are at different stages of completion by the various Presidential Commissions Inquiry, and in some of the cases the internal disciplinary hearings might have been completed, while the criminal charges are still pending with the courts. Most of these cases are therefore still sub judice to warrant any detailed discussion at this stage. For example, gross mismanagement at the Social Security Commission in which huge amount of money was involved led to the dismissal of the then Chief Executive Officer in 2003 and criminal charges are still pending against her and all those involved.

Perhaps the most well known case, and which was long concluded, is the so-called Single Quarters Scam, which took place between 1992 and 1996. The Chief Executive of the National Housing Enterprise, the Parastatal charged with the responsibility of supervising the construction work on behalf of Government, conspired with the Director of Housing in the Ministry of Regional; Local Government and Housing, who was the supervisor of the project, to defraud the government. The latter wrongfully certified that building surveys were done when in

fact this was not the case. This was done with the complicity of the two companies, i.e. Huisen Consultants and Gemada Construction.

The Chief Executive of the National Housing Enterprise authorised the unlawful payment of money to the construction companies, which in turn paid some of the money directly into his account and that of the Director of Housing. As a result of this, the government paid close to N\$13 million for work not done and materials not purchased (Kunaka et al 2002:25-26).

All the persons involved in this scam were arrested and their bank accounts frozen. The Chief Executive of the National Housing Enterprise and the Director of Housing were suspended from their posts pending further investigation. All concerned, i.e. the Chief Executive of the National Housing Enterprise, the Director of Housing and the manager of Alba Construction were arrested, tried and imprisoned and made to serve sentences ranging from three to seven years (Kunaka et al 2002:26).

## **Chapter 5**

### **The Institutional and Legal Framework**

This Chapter looks at the institutional and legal framework that has been dealing with corruption before the passing of the Anti-Corruption Act (No.8 of 2003). This will help to give a justification whether there is a need for a new act and a new anticorruption or not.

#### **5.1 The Institutional Framework**

There are a number of institutions that deal with corruption in different ways in Namibia. Due to lack of space all these institutions will not be discussed in a detailed manner here.

There are two units within the Namibian Police (NAMPOL) with experience in investigating corruption, even though neither is specifically tasked with investigating corruption. These are the Commercial Crime Investigating Unit (CCIU), and the Special Branch. Both units are based at the Namibian Police headquarters in Windhoek. The Commercial Crime Investigating Unit is divided into three sub-units, namely the Commercial Fraud Unit, the Fraud Syndicate Unit, and the General Fraud Unit. The CCIU can only launch an investigation once a complaint has been lodged with it. The Special Branch focuses on gathering information on serious and organized crime (National Integrity Survey 2004:6)

Article 88 of the Constitution confers on the Prosecutor-General the sole power to prosecute in the name of the Republic of Namibia (The Constitution of the Republic of Namibia 1990:47). A staff of 18 State Advocates at the High Court and Supreme Court assists him and approximately 61 prosecutors assigned to magistrates courts throughout the country. However, prosecutors lack specialized training and the Office suffers from the persistent drain of experienced prosecutors, due to inadequate remuneration (National Discussion Paper 1998:54).

Article 87 of the Constitution charges the Attorney General with the functions and duties, among others, to express 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 Constitution of the Republic of Namibia 1990:47). Through its advice to the President, Prime Minister, Cabinet and Ministers Agency or agencies on a daily basis, the Office of the Attorney General plays an important preventive role by ensuring that the Government conducts business in a lawful, fair, and non-arbitrary manner (National Discussion Paper 1998:55). Lawyers from the Office are assigned to conduct investigations into government malpractices, to chair commissions of inquiry or act as investigating officers in complex public service disciplinary proceedings.

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 Offices/Ministries/Agencies, of local and regional authorities, of Parastatals and statutory bodies (The Constitution of the Republic of Namibia 1990:62). 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. Although the Auditor-General does not have the duty of detecting fraud or corruption, the Office 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 (National Discussion Paper 1998:56).

The Prime Minister has the overall responsibility of directing the Public Service, as provided for in the Public Service Act (Act 13 of 1995). However, there is no unit in the Office of the Prime Minister that advises public servants on issues relating to conflict of interests.

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 the 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 in the case of suspected irregularities in the administration of personnel policies (Public Service Commission Act as cited in the National Discussion Document 1998:54).

The Parliamentary Select Committee on Public Accounts has the responsibility to examine and report on the financial statements of Government ministries and agencies, local authorities, statutory institutions and bodies and all other accounts lay before the National Assembly. This Committee mainly relies on the reports of the Auditor-General to carry out its functions. The reports of the Committee normally contain recommendations aimed at improving financial control and obtaining better utilization of State resources. Two constraints on the effectiveness of the Committee seem to be the fact that components of the Executive Branch do not make it a practice to respond to the Committee's recommendations and the Committee lacks adequate staff to follow up to ascertain whether its recommendations have been complied with or not (National Discussion Paper 1998: 56).

Standing Committees on Privileges have been established in the National Assembly and the National Council pursuant to the Powers, Privileges and Immunities of Parliament Act (Act 17 of 1996). They have powers to require Members to disclose their financial or business affairs and to publish such information, to require Members to submit a return of their assets and liabilities; and to investigate alleged breaches by Members of the obligation to disclose conflicts of interests as required in terms of section 22 of the aforesaid Act. The Act also empowers the House to take appropriate disciplinary action in respect of a breach after receiving a report and recommendation from the Committee (National Discussion Paper 1998:56). The

effectiveness of this Committee is still to be evaluated in a scientific and independent way.

The Commissions Act (Act 8 of 1947) empowers the President to appoint Commissions of Inquiry on an ad hoc basis to investigate matters of public concern. Presidential commissions have powers in terms of the Act to summons witnesses and to require the production of books and documents. Commissions' hearings are public, but there is no requirement that the Commission reports to the President be made public (National Discussion Paper 1998:57). A number of Presidential Commissions of Inquiry have been set up over the last few years to investigate alleged instances of irregularities and/or mismanagement in respect of a number of Parastatals organizations e.g. the Social Security Commission, the Roads Authority, the Roads Fund Administration, TransNamib, Air Namibia and of late the Development Brigade Corporation etc. It is beyond the scope of this paper to discuss the findings of these Commissions of Inquiry.

The Office of the Ombudsman is established in terms of the 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 (Constitution of the Republic of Namibia 1990:48).

The Ombudsman does not have law enforcement powers and normally fulfils his/her functions through making recommendations to Government ministries or agencies, thus relying more on persuasion and negotiation rather than coercion. 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 (National Discussion Paper 1998: 55).

In February 2003, the Office of the Ombudsman launched the National Integrity Promotion Programme (NIPP). The National Democratic Institute (NID) supported the programme implementation, which ended in June 2004, which was also a co-implementing partner of NIPP, as part of the NIPP a national Multi-media Awareness Campaign was carried out (National Integrity Survey 2004:1). The multi-media materials were in the form of posters, flyers and newspaper inserts, and in addition to that, TV talk shows and radio programmes dealing with corruption were also conducted. A number of awareness seminars were also held for Government ministries under this programme.

Parts of the 2004 National Integrity Survey questionnaire referred to earlier on, addressed the impact of the anti-corruption awareness campaigns. The percentage of respondents that reported being aware of anti-corruption campaigns increased from 15% in 2003 to 25% in 2004 (National Integrity Survey 2004:29). This is a substantive increase thus confirming the impact the efforts of the National Integrity Programme had.

## **5.2 The Pre-Anti Corruption Act Legal Framework**

### **5.2.1 Corruption and the Constitution**

The Namibian Constitution contains several provisions, which concern corruption. Article 42 deals with conflicts of interest on the part of Cabinet members stating: *that during their tenure of office as members of the 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.* and that *no members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as such members of the Cabinet, directly or indirectly to enrich themselves* (Constitution of the Republic of Namibia 1990:28). Article 60(1) (b) states that members of the National Assembly shall *regard themselves as servants of the people of Namibia and desist from any conduct by which they seek improperly to enrich themselves or alienate themselves from the people* (Constitution of the Republic of Namibia 1990:35).

However, the handicap lies in the fact that no sanctions are provided for the failure to observe these prohibitions.

## **5. 2. 2 Statutory Offences dealing with Corruption**

### Prevention of Corruption Ordinance (Ordinance No. 2 of 1928)

Namibia's Prevention of Corruption Ordinance (Ordinance No. 2 of 1928) which later was amended by the Prevention of Corruption Amendment Act (Act No. 21 of 1985) was the only statute in force, which was aimed specifically at corruption. Both pieces of legislation were repealed through section 54 of the Anti-Corruption Act (Act No. 8 of 2003). Apart from the fact that this statute was infrequently used, it also had a number of serious shortcomings. For example, the statute focused on bribery and failed to cover other forms of corruption. That statute was also silent on the question of extraterritorial jurisdiction (Report of the Technical Committee on the Promotion of Ethics and Combating of Corruption 1997:39). These were some of the shortcomings of that Ordinance.

### Other Statutes dealing with Bribery

There are a number of other statutes dealing with bribery; however, given the limitation of space only a few of those will be dealt with. Section 17 of the Regional Councils Act 22 of 1992 makes it an offence for a member of a regional council "to accept any commission, remuneration or reward from any person other than the regional council for or in connection with the performance or non-performance of his or her powers, duties and functions.

Section 25(1) (l) of the Public Service Act 13 of 1995 states that it constitutes misconduct for any member of the public service "to accept or demand in respect of the performance of his or her duties any commission, fee or reward, pecuniary or otherwise, to which he or she is not entitled by virtue of his or her office", or to fail to report forthwith to the permanent secretary concerned the offer of any such commission, fee or reward. Such misconduct is not a criminal offence in terms of this Act, but rather grounds for disciplinary action (Public Service Act 13 of 1995).

The regulations issued in terms of the Tender Board of Namibia Act 16 of 1996 specify certain remedies in cases where a tenderer has been involved in bribery with respect to a tender, or where a contractor has been involved in bribery with respect to the conclusion of an agreement. The Board is given the authority to withdraw acceptance of the tender or to cancel the agreement and recover any losses suffered (Regulation 13, Government Gazette 1403 of 12 September 1996 as cited in the Report of the Technical Committee on the Promotion of Ethics and Combating of Corruption 1997: 41-5).

There are also a host of pieces of legislation that deal with corruption-related issues e.g. corruption by means of threats, corruption by means of fraud or deception, improper use of information, evasion of tax and duties, self-dealing and conflicts of interest etc. (Report of the Technical Committee on the Promotion of Ethics and Combating of Corruption 1997:41-5).

Elements of this institutional and legal framework are piecemeal and disjoint to constitute a coherent anti-corruption strategy. To crown it all, no serious studies seem to have been done how these different efforts can supplement each other in the prevention and combating of corruption. If the recent spate of Presidential Commissions of Enquiry into the management of different public entities is anything to go by, then it can be concluded that the previous anti-corruption institutional and legal framework has not been very successful.

## **Chapter 6**

### **The Evolution of the Anti-Corruption Policy Initiative**

This Chapter looks at the evolution of the anti-corruption policy initiative in Namibia. In achieving this goal, events leading to the 1998 National Integrity Conference will be briefly looked at. However, most importantly, the anti-corruption mechanisms provided for in the Anti-Corruption Act (No. 8 of 20030) will be critically analyzed for these constitute the research problem postulated in this paper.

#### **6.1 The 1998 National Integrity Conference**

In August 1996, Cabinet adopted the recommendations of the then Attorney General that a national consultative process be initiated to develop proposals for a comprehensive legislative, administrative and public education framework for the promotion of ethical behaviour and the prevention and combating of corruption in all sectors of the Namibian society. Cabinet decided that the consultation process should culminate in a National Consultative Conference on integrity, with the expectation that the conference would produce a consensus recommendation for a comprehensive multi-sectoral National Integrity Strategy (National Discussion Paper 1998:1).

In order to set the process in motion, in March 1997, the then Prime Minister launched the Ad Hoc Cabinet Committee on the Promotion of Ethics and the Combating of Corruption under his chairmanship. The Ad Hoc Committee was also composed of the Speaker of the National Assembly, the Chairman of the National Council and Ministers from the key economic ministries and from the administration of justice. At the same time, a Technical Committee under the chairmanship of Mr. Isack Kaulenge, the then Secretary to Cabinet, and which comprising of representatives of the public sector, public service unions, the private sector and non-governmental organizations was set up to assist the Ad Hoc Committee (National Discussion Paper 1998:2).

The terms of reference set by Cabinet to guide the Ad Hoc Committee and the Technical Committee covered the following broad areas: investigation and punishment of corruption; codes of conduct for public servants and public officials; awards of contracts, mineral licenses, fishing quotas and grants; transparency and accountability; and institutions and agencies (National Discussion Paper 1998:3-4). A detailed coverage of these terms of reference is in Annexure B.

The Technical Committee was charged with the responsibility of researching and analyzing the issues covered by the Terms of Reference and guiding the consultation and public education process. The principal objectives of its work were: to raise awareness about the need to promote ethical behaviour and to prevent and combat corruption in all sectors of society; to bring increasing number of people and institutions, at national and regional levels, into the consultative process; and to assist in the development of recommendations for the various components of the National Integrity Strategy (National Discussion Paper: 4).

The Technical Committee organized ten Regional Workshops to take the plans, ideas and a draft National Discussion Paper to the people and to encourage them to become involved and take part. The National Discussion Paper was going to be the blueprint for the National Integrity Conference. This key document underpinned by inputs from six Syndicate Groups, i.e. on Understanding Corruption and Unethical Conduct; Role of Civil Society in the Fight Against Corruption; Criminal Law; Codes of Ethical Conduct; Procurement; Freedom of Information and Whistle blowing; Granting of Licences and Implementing the National Integrity

Strategy (whether the functions should be carried out by existing agencies or whether a new unit had to be created) (National Discussion Paper 1998:5).

Members of the Technical Committee also took trips to Botswana, Uganda and Tanzania to look at the anti-corruption units in those three countries. In addition to that, in order to raise public awareness, an intensive media campaign was launched during the months leading to the 1998 conference.

The National Consultative Conference on the Promotion of Ethics and Combating of Corruption took place in Windhoek from 7 – 9 October 1998 and was attended by some 364 delegates including international resource persons who are experts in the area of corruption (Categories of Participants at the National Integrity Conference 1998:4).

The Conference came up with some recommendations mainly based on the inputs from the six Syndicate Groups, referred to earlier, and which in turn formed the basis of the National Discussion Paper. However, the two key recommendations were the enactment of a new and comprehensive Anti-Corruption Statute and whether the anti-corruption strategy should be implemented by existing institutions or whether a new unit should be set up (National Integrity Conference Report 1998: 11). Cabinet later endorsed both the enactment of the enabling legislation and the creation of a new anti-corruption unit.

## **6. 2 The Anti-Corruption Act (No. 8 of 2003)**

Five years after the 1998 National Integrity Conference, the Anti-Corruption Act (No. 8 of 2003) was eventually enacted in 2003. The Act has basically four main chapters dealing with the appointment of the Anti-Corruption Commission; Investigation of Corrupt Practices; Corrupt Practices and Penalties; and General Provisions. For the purpose of this paper, only the critical elements of the anti-corruption mechanisms as provided for in the Act are highlighted after which a critical analysis, based on some empirical research, is provided in the conclusions. The most important aspects of the anti-corruption mechanisms are provided for under the functions of the Anti-Corruption Commission.

### 6. 2. 1 The Anti-Corruption Commission

The Act makes provision for the establishment of an independent and impartial Anti-Corruption Commission. The Commission consists of a Director, a Deputy Director and other staff (Anti-Corruption Act 2003:2).

The Public Service Act (Act No. 13 of 1995) applies to the Commission, the Director, the Deputy Director and the other staff members of the Commission, except to the extent as provided otherwise by this Act or is inconsistent with this Act (Act No. 8 of 2003:4).

The functions of the Commission are *to: receive or initiate and investigate allegations of corrupt practices; consider whether an investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action; consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorized to conduct inquiries or investigations in relation to corrupt practices; assemble evidence obtained in the course of its functions and to furnish - any appropriate authority contemplated in paragraph ; or to the prosecuting authority or any other authority of another country, upon a formal request; evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority; investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body; take measures for the prevention of corruption in public bodies and private bodies, including measures for –examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures that may be prone or conducive to corrupt practices; advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are*

*necessary to reduce the likelihood of the occurrence of corrupt practices; educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences; enlisting and fostering public confidence and support in combating corruption in order to: disseminate information to the public about the functions of the Commission; and do anything else that the Commission is required or authorized to do under this Act or any other law or which is necessary or expedient to do for achieving the purpose of this Act (Act No. 8 2003:4–5).*

Based on these functions, the Commission seems to enjoy a relative degree of powers to be able to carry out its functions effectively.

### **6.2.2 Other Anti-Corruption Mechanisms Provided for in the Act**

According to Chapter 2 (4) of Act No. 8 of 2003, both the Director and the Deputy Director will be appointed by the National Assembly upon nomination by the President (Act No. 8 of 2003:5). This seems to provide for enough checks and balances in the system. In terms of Chapter 3 (17) and (20), respectively, the Commission can both investigate corruption on the basis of a complaint from a member of the public and on its own accord (Act No.8 of 2003:9-10). This goes a long way to enable the Commission to carry out investigation alleged cases of corruption. The same Chapter also empowers investigators to enter and search premises with or without a warrant depending on the nature of the case and the type of premises. In the same vein, the same Chapter under 28 (1) gives powers of arrest to the officers of the unit in cases where there is enough ground to suspect corruption (Act No. 8 of 2003).

Chapter 3 (30) 1 also empowers the Prime Minister to make regulations prescribing a code of conduct for office-bearers and all public sector officials as well as obliging them to declare their assets (Act No. 8 of 2003:16-17). Chapter 4 gives a list of a range of all possible corrupt practices as well as providing a maximum penalty, which is *a fine not exceeding N\$500 000 or to imprisonment not exceeding 25 years, or to both such fine and such imprisonment* (Act No. 8 of 2003:26). Under Chapter 5,

which deals with General Provisions, there is an important provision under (52) which provides for the protection of informers or whistle-blowers (Act. No. 8 of 2003).

### Conclusions and Recommendations

#### 3.1. Findings from Domestic Stakeholders' Analysis

The provision in the research questionnaire asking for the recommendations of the 1998 National Integrity Commission and the anti-corruption measures set provided for in the Anti-Corruption Act No. 8 of 2003 is included in the Framework of the Anti-Corruption Commission and the government involvement of the Director. All the respondents, except the NACIPAC, legal officer, the 1998 National Commission, although all these government institutions were approached at their conferences. Therefore all the respondents did not know much about the recommendations of the 1998 Commission. The legal representative from the government institution thought that the anti-corruption measures provided for in the Act are generally working, especially through the more transparency from the civil society organisations, however, all that these institutions did not recommend is enough. Only two out of the six respondents did not have the Anti-Corruption Commission and the Director do not agree through working, in terms of the various provisions in the Act, in that way they suggest measures effectively. Two of the respondents felt that both the Commission and the Director have worked, which may not prove, and whether in particular would be best given the full power to handle. The respondents were divided in half on this, saying that the anti-corruption measures with regulatory, administrative, and the other were strong but they were not implemented enough. Therefore, one needs to give more authority that is recommended to be a lack of understanding of the importance of the full power of the anti-corruption measures.

#### 3.2. Conclusions

The paper has identified a number of key issues that are highlighted as Chief of the Commission and the anti-corruption measures which will be in the Anti-Corruption Act No. 8 of 2003. The findings and recommendations provide a useful perspective on the current situation and provide a useful background of the measures.

## Chapter Seven

### Conclusions and Recommendations

#### 7.1. Findings from Research Questionnaire Analysis

The questions in the research questionnaire centre on the recommendations of the 1998 National Integrity Conference and the anti-corruption mechanisms provided for in the Anti-Corruption Act (No. 8 of 2003) as articulated in the functions of the Anti-Corruption Commission and the appointment procedures of the Director. All the respondents, except the NAMPOL legal officer, did not attend the 1998 Conference, although all three government institutions were represented at that conference. Therefore all the respondents did not know much about the recommendations of the 1998 Conference. The three respondents from the government institutions thought that the anti-corruption mechanisms provided for in the Act are, generally speaking, comprehensive enough. The three respondents from the civil society organizations, however, felt that those mechanisms are not comprehensive enough. Only two out of the six respondents felt that both the Anti-Corruption Commission and the Director do not enjoy enough autonomy, in terms of the relevant provisions in the Act, to carry out their respective functions effectively. Four of the respondents felt that both the Commission and the Director have enough autonomy and powers, but whether in practice these would be put to good use will remain to be seen. The respondents were divided in half, with three saying that the anti corruption mechanisms were somehow comprehensive enough and the other three saying that they were not comprehensive enough. However, one needs to take into accounts that there seemed to be a lack of understanding of the provisions of the Act, on the part of most of the respondents.

#### 7.2 Conclusions

This paper has attempted to answer the Research Problem postulated in Chapter One, namely that the anti-corruption mechanisms as provided for in the Anti-Corruption Act (No.8 of 2003) are not adequate and comprehensive enough to combat corruption in Namibia. In order to provide a solid background to the research,

literature review has been conducted in Chapter Two. Key concepts such as corruption, petty corruption, grand corruption and anti-corruption strategy have been discussed under literature review. The impact of corruption on national development and stability has also been addressed under this sub-heading. All this has then provided the theoretical framework for the research. Different strategy formulation and implementation models have also been analysed under this theoretical framework.

Chapter Two, looked at three case studies covering Botswana, South Africa and Hong Kong as examples of best practices both within the SADC Region and beyond. Chapter Three focused on the international and internal factors that have shaped the development of the anti-corruption policy process in Namibia. Chapter Four analysed corruption trends in Namibia, while Chapter Five scrutinized the pre Anti-Corruption Act institutional and legal framework to combat corruption. Chapter Six dealt with the evolution of the anti-corruption policy in Namibia and this final chapter draws some conclusions and gives recommendations.

Considering the major causes of corruption in developing countries that were pointed out earlier, we submit that Namibia is prone to corruption for a number of reasons. As a newly independent state, Namibia falls in the category of a so-called weak state or soft entity with under-developed institutions, weak public service and financial management systems, the lack of human resources capacity and no proper professional culture in the civil service. Allegations fly high and thick that political party loyalty, rather than meritocracy, is considered a key factor in the recruitment and promotion of civil servants. The public service wages, although very high by African standards, are not comparable to those in the private sector. The increase on the number of Presidential Commissions of Enquiry into the affairs of a good number of parastatal organisations over the last two years leaves a lot to be desired. At the same time, it is not clear why, one year after the Anti-Corruption Act No. 8 of 2003 was enacted, the authorities keep on appointing one commission of enquiry after another if the Act makes provision for the setting up of an independent Anti-Corruption Commission. The setting up of the Anti-Corruption Commission and the

appointment of its Director are yet to take place and this does not go down well with the general public. It is worth noting that Namibia's position on the Corruption Perception Index of Transparency International has dropped from the second least corrupt country in Africa in 2002, to the third and fourth position in 2003 and 2004 respectively.

As we argued throughout this paper, the anti-corruption mechanisms as provided for in the Anti-Corruption Act (No. 8 of 2003) are not adequate and comprehensive enough to combat corruption in Namibia. The inadequacy of these mechanisms can be considered in a three-dimensional fashion, i.e. those mechanisms that are provided for in the Act but are considered not to be adequate enough, those mechanisms that should have been provided for in the Act but are absent and those that can only be accommodated in a strategy, in that logical order. In the first place, the fact that the Commission, in terms of Chapter 3 (31) of the Act, can only prosecute under delegated authority from the Office of the Prosecutor-General can cause delays in the process of bringing corruption cases to court (Act No. 8 of 2003). This, as we pointed out earlier on, is borne out by the Botswana case study.

Secondly, the fact that the head of the unit will be at the level of a Director can present some practical problems in the sense that he/she may not feel confident enough to tackle high-level corruption. Thirdly, the absence of an oversight body to oversee the work of the Commission as well as a broad network of a committee system to provide for some controls will rob the Commission of much needed checks and balances. The celebrated ICAC in Hong Kong, referred to in our case study above, probably owes much of its success to these types of checks and balances. Fourthly, the Act should have made provision for lifestyle audit, i.e. if someone's lifestyle is disproportionate to his/her known income then there must be a need for proper explanation. Fifthly, the role of civil society in the prevention of corruption, although this is perhaps difficult to legislate, still needs to be clearly spelled out, perhaps in the strategy. It is debatable whether it was correct for the Act to have been passed without first having a strategy in place, which is informed by scientific

research on the nature and extent of corruption in the country. In South Africa, for example, they started with the need for strategies (for the public service, private sector and civil society) before the Act was enacted.

According to our analysis of some of the provisions of the Act and based on comparative analysis of the three case studies, we conclude that these mechanisms are not comprehensive and adequate enough to address corruption in the country. This problem can be stated in three-dimensional way i.e. those mechanisms that are provided for in the Act but which are not comprehensive enough e.g. the level of the Head of the Unit; mechanisms which should have been provided for in the Act but which are not e.g. the role of an oversight body and lifestyle audit; and mechanisms that can only be accommodated in strategy e.g. the role of civil society in corruption prevention.

The mechanisms in the Act seem to be comprehensive on the investigation of corrupt practices and to some extent, the protection of whistle blowers. However, they are thin on prevention and public education, except for a brief reference under the function of the commission. It is understandable that corruption prevention and public education cannot be fully addressed in an act, but this confirms our argument that we should have started with a strategy before coming up with legislation. Against this background, these mechanisms do not seem to be comprehensive enough to combat corruption in Namibia.

The activities that led to the holding of the 1998 National Integrity Conference were organised into a project led by a team composed of members from the Offices of the Prime Minister and the Attorney General. After the Conference Report was submitted in Cabinet, the project was deemed to have come to an end and the team was dissolved. We submit that Government should have developed a broad anti-corruption policy framework or programme along the lines of the monitoring and evaluation models discussed above. In other words it should be a programme based on situation analysis and programme logic, i.e. the reason for the anti-corruption policy intervention. The understanding of the situation should then lead to a

programme plan or anti-corruption strategy that encompasses a clear goal, purpose, a set of results, a set of activities and a set of inputs. The enactment of the Anti-Corruption Act should have been one of the activities within the broad anti-corruption programme. Different stakeholders were involved in the development of the anti-corruption policy initiative at least up to the holding of the 1998 Conference. After the conference the momentum of a learning organisation culture was lost and as a result, a good number of the recommendations from the Conference fell between the stools because they could not be taken up in the Act. The anti-corruption programme should then have been implemented according to a plan or strategy involving a process of inputs being used to undertake activities that should lead to actual results. The actual results should lead to a set of impacts that will improve the original situation, in this case the reduction of corruption that is believed to be on the increase.

### **7.3 Recommendations**

The respondents from civil society organizations made interesting recommendations that warrant consideration. They indicated that there was a need to do more as far as the fight against corruption is concerned. For instance, more needs to be done to bring corruption to light; proper prosecution procedures for corruption cases need to be put in place; punishment for corruption crimes need to be severe; the Commission needs to investigate discrepancies in the Auditor-General's reports and act accordingly; the public needs to be educated to raise public awareness about corruption and to appreciate state assets; the public must be involved in the prevention of corruption; and there is a need to put mechanisms in place to monitor service delivery of Offices/Ministries/Agencies.

However, in an attempt to address the problems identified throughout this paper, the following recommendations are made. In order to speed up the prosecution of corruption cases special commercial courts and prosecuting units should be set up, perhaps starting with pilot projects, to handle corruption cases. Mechanisms should be put in place to empower the Director of the Commission to handle high profile corruption cases. It is imperative that provision be made for the creation of an oversight body to supervise the work of the Commission, either through a

Parliamentary Committee or a body composed of eminent citizens. There is an urgent need for the Act to provide for lifestyle audit, i.e. if one's lifestyle is disproportionate to one's known income then there is a need to do some explanation as to how the wealth has been acquired. As part of corruption prevention, the role of civil society and the media should be clearly defined and encouraged. The role of political commitment, at the highest level, to fight corruption is a fundamental ingredient and cannot be overstressed.

Mechanisms for punishing those outside the country's jurisdiction should be developed. Extradition arrangements should be made so that corrupt officials who flee will be returned by court order from countries of refuge. Legal measures should be taken to enable the assets of the corrupt to be seized and forfeited, whether these are inside or outside the country. The UN Convention Against Corruption, the SADC Protocol Against Corruption as well as the African Union Convention on Preventing and Combat Corruption to which Namibia is a signatory and a party have provisions that cover most of these type of incidences. A thorough study of the above three international anti-corruption policy instruments needs to be done so that Namibia can draw maximum benefits as far as the development of her own strategy is concerned.

It is equally crucial to educate the citizens not only about corruption, but also about their rights to services, as well as their duty to report corrupt practices. This is what the government has been trying to do through the Public Service Charter and its nine principles. Capacity for regular polling of public opinions on corruption and other related concerns should also be developed as part of the comprehensive anti-corruption strategy. As far as institution building is concerned, the Anti-Corruption Commission and all the relevant institutions must be granted real autonomy in their operations and should have well-trained and adequate staff as well as enough financial and other resources at their disposal. Internal financial management systems and other control mechanisms must be reviewed to ensure their adequacy and effectiveness.

As Chidanda (2003:20) has observed in his research on Zambia, neither political pluralism, nor economic liberalization was able to reduce corruption automatically as many Zambians had hoped after the 1991 multi party elections and economic reforms.

However, combined with institutional reform, capacity building, a sound resource base and above all political commitment, the above two elements can provide the foundation upon which a successful anti-corruption strategy can be developed. Such a strategy should be based on scientific research on the extent and nature of corruption in the country. In other words statistics and other relevant facts on concluded corruption-related court cases, public service disciplinary hearings, the people involved as well as all the costs incurred in such cases should provide the required baseline for such a strategy.

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**Annexure A**

Questionnaire for identifying the adequacy of the anti-corruption mechanisms as provided for in the Anti-Corruption Act (Act No. 8 of 2003)

**Personal Details**

Institution

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Name of Interviewee

.....  
.....  
.....

Current Position

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**Structured Interview Questions**

**A. General**

1. Were you or your organization involved in the 1998 National Integrity Conference which was organized by the Office of the Prime Minister?

If yes, briefly explain your role and that of your organization.

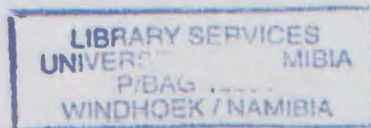
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**B. Objective of the National Integrity Conference (1998)**

2. In your view what was the underlying objective of the 1998 National Integrity Conference?

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3. (a) Are you aware of any of the recommendations of the conference? Yes/No



(b) If the answer is yes, then in your view, what were the main recommendations of the Conference?

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4. What is your understanding of the anti-corruption measures/mechanisms as provided for in the Anti-Corruption Act (Act No. 8 of 2003)?

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5. In your opinion, are the anti-corruption measures in the Act reflective of the 1998 Conference's recommendations?

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6. (a) Are these anti-corruption mechanisms, in your opinion, comprehensive enough to combat corruption in Namibia?

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(b) If, in your opinion, the anti-corruption measures provided for in the Anti-Corruption Act (Act No. 8 of 2003) are not comprehensive enough, what steps need to be taken to improve on them? Suggest at least two.

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7. (a) Are you familiar with the provisions regarding the appointment of the Director of the Anti-Corruption Commission?

Yes/No

(b) If the answer is yes, do you think that (the appointment procedures) will enable the Director to act independently?

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8. (a) Are you aware of any of the functions of the Commission?

Yes/No



## **Annexure B**

**The Terms of Reference set by Cabinet to guide the Ad Hoc Cabinet Committee and the Technical Committee were as follows:**

### **A. Investigation and Punishment of Corruption**

Whether the existing criminal laws and procedures are adequate to successfully prosecute corrupt practices by public officials (political office-bearers, public officers, legislators and judges) and public servants.

Adequacy of training for police and prosecutors in the investigation and prosecution of white-collar crimes.

### **B. Code of Conduct (Promotion of Ethical Behaviour)**

Necessity of adoption of code(s) of conduct for public servants and public officials. If so, should there be one code for all three branches of Government, or separate codes? Should a code apply to officials of Parastatals? Related issues to be considered are:

- i) What measures are needed to prevent conflict of interest on the part of public officials and public servants? In particular, should public disclosure of personal interests (assets and liabilities) be required, and if so, to what extent and to whom should such a requirement apply?
- ii) Whether the existing restrictions on employment outside of government and outside business interests are appropriate/adequate?
- iii) Should acceptance of gifts or hospitality be regulated?
- iv) Are restrictions on post-government employment feasible or desirable?

Are codes of conduct needed for directors and officials of companies and officials of NGO?

### C. Awards of Contracts, Mineral Licenses, Fishing Quotas and Grants

Are the laws and procedures for the awarding of tenders, mineral licenses and fishing quotas adequate for the prevention of favouritism or the payment of kickbacks?

Are additional measures needed to regulate the granting of consultancies and the payment of consultants' fees?

Adequacy of controls for monitoring the acceptance of donor funds.

### D. Transparency and Accountability

What meetings of Government bodies are, and should be open to the public?

Whether existing agencies for the receipt of public complaints are adequate and whether legislation is needed to ensure confidentiality of complaints and to protect whistleblowers from retaliation.

### E. Institutions and Agencies

The role of the Parliamentary Committee on Public Accounts in investigating the misuse of public funds.

Whether a new office is needed to implement an ethics/anti-corruption regime or whether existing structures, such as the Office of the Ombudsman, the Attorney-General and/or the Prosecutor-General should be strengthened, or units added to one or more of the aforesaid Offices, to serve the purpose. Measures to be considered include a National Oversight Committee on Transparent and Accountable Government, a specialized anti-corruption unit and legislation to provide serious charges of corruption on the part of political office-bearers or public officers (National Discussion Document 1998: 3).

