



THE ACC IN ACTION WHAT DOES THE TRACK RECORD SAY?

By Ellison Tjirera and Graham Hopwood

Key aspects of this paper

Namibia's Anti-Corruption Commission (ACC) was established by the Anti-Corruption Act (No. 8 of 2003). The Act establishes the ACC as an independent and impartial body.

According to the Act, the functions of the Commission, inter alia, are:

- to receive or initiate and investigate allegations of corrupt practices;
- to consult, co-operate and exchange information with appropriate bodies or authorities;
- to take measures for the prevention of corruption in public bodies and private bodies.

The ACC started operating in early 2006. It has no powers of prosecution. Instead the ACC passes on evidence to the Prosecutor General if it believes an act of corruption has taken place.

The ACC has achieved 38 successful prosecutions in its five years of operation. While this seems a relatively low figure for five years' work it must be remembered that the wheels of justice grind very slowly in Namibia. As a result, most of the ACC's cases are either in court or awaiting a decision from the Prosecutor General. Of the 262 cases logged by the ACC as pursuable between 2006 and 2010, 151 are still in court while 14 are with the Prosecutor General. The Prosecutor General has declined to prosecute in 36 cases referred to her by the ACC. This is an indication of a disconnect between the ACC's understanding of the applicability of the Anti-Corruption Act and the understanding held by the Prosecutor General. One indicator of the ACC's development is its growing budget since 2006, with its annual resources increasing each year. In

its year of inception the ACC received N\$6.5 million in funding while in 2010 it attracted N\$36.8 million. The ACC's staff complement has increased over the years and now stands at 49.

Public opinion surveys have indicated that at least until 2008 the ACC enjoyed a wealth of public confidence. Looking ahead, it is vital that the ACC builds on this support and enhances its credibility.

The recommendations of this paper are as follows:

- Since its inception the ACC has received far more reports of alleged corruption than actual pursuable cases that are forwarded to the Prosecutor General. As a result a focused public education programme should be introduced which explains how and on what grounds members of the public should report cases to the ACC.
- Alongside more generalised campaigns, the ACC's public education campaigns should target specific themes that are seen as problematic in Namibia. For example, public procurement, the construction industry, conflict of interest, regional and local governance structures.
- The ACC should produce and make available more data on the type and nature of the corruption cases it investigates. For example, cases should be disaggregated according to which sector they affect - public sector, private sector, State-Owned Enterprises. If possible, further details should also be made available such as the type of business and which ministry or state agency is affected. Finally, the amounts of monies involved in cases should also be made available and aggregated on an annual basis, so that the cost of corruption can be more easily assessed. At present, it is only possible to gain a deeper sense of corruption trends in Namibia from media reports and these often only feature a small proportion of actual cases.
- The ACC should expedite the setting up of its Directorate of Corruption Prevention which should be dedicated to research-

ing systems, procedures and practices that will best enable Namibia to reduce corruption (currently the directorate is merged with that of public education). This will enable the ACC to give effect to its mandate to take measures for the prevention of corruption in public bodies and private bodies. Such a body should have, for example, come up with recommended amendments for the Anti-Corruption Act that would have dealt with the lack of whistle-blower protection. Government should ensure the Directorate is adequately funded through its annual provision to the ACC.

- Both the Director of the ACC and the Prosecutor General have called for specialised courts to be set up to enable the fast-tracking of corruption cases. This could go a long way to improving public confidence in the anti-graft campaign since at the moment many cases appear to be ‘bogged down’ within the court system. The most suitable legal mechanism for this should be the subject of urgent discussions between the ACC, the Prosecutor General, the Ministry of Justice, the Law Reform and Development Commission and other stakeholders.
- That the ACC expand its public education efforts country-wide to improve public knowledge on what constitute corrupt practices.
- The ACC should adopt a communications policy which ensures consistency in the way in which corruption cases are publicised. At present, only occasional press releases are issued on arrests and it is not clear why some cases are publicised and not others. The ACC should release information on all arrests and also publicise information on convictions and sentences (see below). This will boost public confidence in the ACC by ensuring the public can follow the line from initial arrest through to the conclusion of a case.
- The ACC should publish names of those prosecuted and convicted of corrupt practices. This point is cogently illuminated by Quah (2004, p. 4)¹ – “for the public to perceive corruption as a high-risk, low-reward activity, the incumbent government must publicise through the mass media the corrupt practices of civil servants and politicians, as well as private sector officials, and also inform the people of their corresponding punishment, according to law, if they are found guilty. Those found guilty must be punished, regardless of their status or position. If the so-called “big fish” (rich and famous) receive protection and escape prosecution for their

corrupt offenses, the credibility and efficacy of the country’s anti-corruption strategy will be undermined”.

Perceptions of Corruption in Namibia

Probably the best known assessment of corruption levels on a global scale is Transparency International’s Corruption Perceptions Index (CPI) which scores countries on a scale of 0 to 10 with 0 indicating high levels of corruption and 10 indicating low levels. Namibia’s CPI has over the past ten years gone down from 5.4 in 2001 to a low of 4.1 in 2004 and 2006 before rising slightly to 4.5 (2007, 2008, 2009). In 2010 Namibia’s score dropped again to 4.4 (see Table 1). The CPI, which indicates the degree of corruption, is based on a ‘poll of polls’ system whereby a number of surveys and expert assessments such as those made by the African Development Bank, the World Bank and Freedom House contribute to the score.

Following the establishment of the Anti-Corruption Commission in 2006, Namibia’s score improved before dropping again in 2010. However, Namibia’s performance on the CPI still lags behind scores in excess of 5 from 2001 and 2002.

Table 1: Summary of Namibia’s performance on the Transparency International Corruption Perceptions Index

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
TI CPI	5.4	5.7	4.7	4.1	4.3	4.1	4.5	4.5	4.5	4.4
No. of countries	91	102	133	146	159	163	180	180	180	178
Ranking	30	28	41	54	47	55	57	61	56	56

Adapted from Guide to Namibian Economy 2010

Not everyone is happy with the approach taken by Transparency International (TI). It is not always clear why the score goes up or down, while the use of various surveys can lead to a time-lag since surveys are often not released timeously and hence the score could conceivably reflect a situation that is two years old. The Director of the ACC, Paulus Noa, has expressed reservations about the CPI. Noa argued that “the rankings are based on pure perception. There is no single time when an official or representative of the TI ever visited the office of the ACC to obtain hard information on efforts made in the country to fight corruption or at least to verify their source of information”². TI contends that “...corruption – whether frequency or amount – is to a great extent a hidden activity that is difficult to measure. Over time, perceptions have proved to be a reliable estimate of corruption. Measuring scandals, investigations or prosecutions,

¹ Quah, J.S.T. (2004). Best practices for curbing corruption in Asia

² Asino, T. (June 22, 2011). ACC doubts graft rating. *New Era*, p. 5

while offering ‘non-perception’ data, reflect less on the prevalence of corruption in a country and more on other factors, such as freedom of the press or the efficiency of the judicial system”³.

Citizen surveys, as long as they are based on population samples of a reasonable size and spread, are another means of assessing views about corruption ‘on the ground’. The Afrobarometer is a research project that measures public attitudes on economic, political and social matters in sub-Saharan Africa. The results of Round 4 from 2008 show that perceptions of corruption in Namibia are quite high. For example 42 percent of respondents said that “most” or “all” police were involved in corruption. However, the actual experience of corruption was much lower with only 3 percent of respondents saying they had paid a bribe to the police to avoid some kind of penalty.

Business surveys can also provide a useful indicator as to whether corruption is increasing or decreasing. In the World Economic Forum’s Global Competitiveness Report 2011 corruption was rated as the fourth most problematic factor for doing business (up from sixth in 2010) in Namibia after inadequately educated workforce (1), poor work ethic (2) and inefficient government bureaucracy (3).

Most surveys tend to indicate that we have a problem concerning corruption, which while not yet endemic is increasing.

The Namibia Institute for Democracy’s annual Actual Instances of Corruption reports, which tally print media reports on corruption cases, have found that reporting spiked in 2006-07 when 709 articles covered 240 separate cases of corruption, but has declined and levelled off since then (see Table 2).

Table 2: Print media reports on corruption 2006-10

	2006-07	2007-08	2008-09	2009-10
No. of articles	709	458	318	442
No. of cases	240	138	117	125

From Actual Instances of Corruption reports 2006-10

It seems likely that reporting on corruption surged after the formation of the ACC as the media mainstreamed the issue but then reduced in terms of articles and cases cited as the ACC became part of the everyday architecture of the state and corruption stories became more ‘run of the mill’. This trend would appear to be reflected in perceptions of the effectiveness of the ACC, which went through a honeymoon period in terms of public perception, but now faces a tougher time as scepticism about its capacity and willingness to chase down high-profile cases grows (see below).

3 See TI (2010, p. 4). Corruption Perceptions Index 2010

How to measure performance

Apart from perception surveys and assessments, another means of examining the level of corruption is to assess the performance of the institution tasked with tackling corruption in the context of a country’s overall national integrity system. Unfortunately, TI has never conducted one of its National Integrity System Assessments in Namibia. However, Global Integrity did in 2007 assess Namibia’s anti-corruption efforts⁴. The results, based on the responses of a panel of experts, were positive with the ACC scoring 89 of 100 for its effectiveness and 63 for its accessibility. The findings once again reflect the honeymoon period for the ACC and judging from the detailed report the experts appear to have based their comments on what is in the Anti-Corruption Act rather than its implementation (2007 being too early to draw significant inferences on this).

There is some comparable data from the Afrobarometer surveys of 2006 and 2008, which again reflects a growing confidence in the ACC (see table 3). Those adjudging government’s efforts as positive grew from 50 percent in 2006 to 54 percent, while the percentage of those who had a very negative view went down from 22 to 15.

Table 3: How well or badly would you say the current government is fighting corruption?

	2006	2008
Very badly	22%	15%
Fairly badly	26%	26%
Fairly well	32%	38%
Very well	18%	16%
Don’t know	2%	4%

From www.afrobarometer.org

Table 4: Now that it is fully operational, how likely do you think it is that the ACC will be effective in reducing corruption in Namibia?

Not at all likely	7%
Not very likely	20%
Somewhat likely	34%
Very likely	33%
Don’t know	7%

4 See <http://report.globalintegrity.org/Namibia/2007>. Namibia’s overall rating was only 68 due to poor scores on access to information, judicial accountability, whistle-blower protection, and political financing.

Similarly, a direct question on expectations of the ACC in 2008 drew an optimistic response with 77 percent of the sample believing that the ACC would succeed in reducing corruption (see table 4).

Jon S.T Quah, an authoritative voice on anti-corruption strategies in Asia, points to important indicators of an anti-corruption agency's (ACA's) credibility:

1. Consideration of all complaints: Does the public perceive that all complaints, no matter how small, will be considered by the ACA?
2. Public perceptions of the ACA's professionalism: Does the public perceive the ACA to be impartial in its investigations and not abuse its powers? Does the public believe that the ACA will keep corruption reports confidential?
3. Enforcement of the anti-corruption laws: Does the ACA enforce the anti-corruption laws impartially? Does the ACA focus on petty corruption and ignore grand corruption? Are the rich and powerful protected from investigation and prosecution for corruption offences?
4. Public image of the ACA: how is the ACA viewed by the public? Is it seen as an incorruptible agency or as an agency riddled with corruption? How are complaints against ACA officers dealt with?¹

¹ See J. S.T Quah. (2008). *Defying Institutional Failures: Learning from the Experiences of Anti-Corruption Agencies in Four Asian Countries*

The ACC carried out its own 'Urban Corruption Perception Survey' in 2011. The survey dealt with issues such as perception on corruption, reporting corruption, and the institutional image of the ACC. However, the results of the survey were not available at the time of writing. Surprisingly, the ACC was part of the team that conducted the survey with the Polytechnic of Namibia. The practice used by some of the reputable anti-corruption agencies, e.g. Hong Kong's Independent Commission against Corruption (ICAC), is to use independent contractors or research institutes. This is to guard against manipulation of data to reflect a favourable perception, which would undermine the credibility of such efforts.

Only new surveys will indicate if the honeymoon period extended beyond 2008 and unfortunately there is little recent data that can tell us how the ACC is perceived in 2011 (even TI's CPI for 2011 had not appeared by the time of writing). What is clear from the Afrobarometer findings is that even two years after its inception the ACC had a valuable fund of public confidence which it is important not to squander. A failure to fol-

low through on high-profile cases combined with low conviction rates and perpetual delays in the courts can only undermine such high levels of faith.

What does the record say?

Table 5: Proportion of Pursuable Reports by the ACC 2006-09

Years	Total Reports of Alleged Corrupt Practices	Pursuable Reports	Proportion of Pursuable Reports
2008/2009	928	93	10%
2007/2008	900	30	3%
2006/2007	686*	145**	21%

From ACC annual reports 2006-09

*The 686 reports consisted of the following: 85 reports were investigated, but the cases were closed due to a lack of sufficient evidence or because the allegations appeared unfounded. 259 reports were analysed and found to deserve no action by the ACC as appropriate action was already undertaken by relevant authorities. Five reports were consolidated with others containing similar information. 192 reports were still being dealt with at the time of the annual report was released.

**145 reports were referred to other authorities for appropriate action.

The ACC has attributed the increase from 686 to 900 cases between 2006/07 and 2007/08 to the failure of the public to understand the mandate and core functions of the Commission, resulting in reports being lodged with the ACC instead of with other relevant authorities⁵ or not at all if they were deemed insubstantial.

The years 2006/2007 were by far the most challenging period for the ACC, judging from statistics of cases handled. At the time of the 2006/2007 reporting period, no single case was forwarded to the Prosecutor General. Only six (6) of the 192 cases that were still being dealt with were in the process of being finalised for submission to the PG for possible prosecution. Perhaps this was down to the zeal of the populace in bringing 'corruption reports' to a newly created agency.

⁵ Anti-Corruption Commission Annual Report 2008-2009, p. 10. It should be noted that the 2009-2010 Anti-Corruption Commission Annual Report was not available at the time of writing in spite of the fact that Section 16 (1) of the Anti-Corruption Act, Act No. 8 of 2003 clearly stipulates that "[t]he Director must submit to the Prime Minister, not later than 31 March of each year, a report on the activities of the Commission during the previous year"

During the 2007/2008 reporting period, the ACC registered more reports but fewer were deemed pursuable cases. Out of 900 reports received by the ACC, only 30 could be pursued which translates into 3.3% of the total. The crude message arising from such a figure is that the ACC needs to seriously increase its public education work so that members of the public have a much better idea about what constitutes a potentially corrupt act. It is also clear that ACC staff have to spend a great deal of time sifting through cases which are ultimately not regarded as worth prosecuting. Unfortunately, ACC annual reports are not consistent in reporting information. The first annual report indicated that 85 investigations were closed due to a lack of evidence or because the allegations appeared to be unfounded. Some 259 reports were analysed and found to deserve no action by the ACC as appropriate action had been undertaken by relevant authorities. Five reports were consolidated with others containing similar information and 192 reports were still being dealt with at the time of the annual report was released. However, later annual reports did not explain what had happened to the allegations received in any detail. It would be helpful to know why so many cases were apparently dismissed or, if they were referred to another body such as the police or the Ombudsman, the nature and number of these referrals.

In fact, the release of more detailed and disaggregated data on reports and actual cases of corruption is crucial to understanding and advancing efforts to tackle graft. As such, the ACC should look to regularising its release of data and information so that different annual reports are directly comparable. In addition, cases should be disaggregated according to which sector they affect – public sector, private sector, State-Owned Enterprises etc. If possible further details should also be made available such as the type of business and which ministry or state agency is affected. Finally, the amounts of monies involved in cases should also be made available and aggregated on an annual basis, so that the cost of corruption can be more easily assessed

If the trend that the majority of reports forwarded to the ACC are not dealt with continues, public confidence in the ACC may be affected. However, it is encouraging to note that the ACC has identified its ‘general perception’ as one of the strategic issues in need of serious attention: “There is a need to create an attitude of confidence and trust in the eyes of the public towards the commission. It is sometimes the view of the public that the Commission lacks the clout to carry out its duties. In some quarters, the Commission may be even construed as a political instrument for special interest groups or parties”⁶.

At the time of writing the 2009-10 ACC annual report had not been published and as a result the number of cases in that period was not available. However, in a country report made available to the Annual General Meeting of the Southern African Forum against Corruption in November 2011, the ACC noted

that from January to September 2011 it received 317 reports. However, further information on how many of these cases were deemed to be worthy of further investigation was not made clear. The figure of 317 cases over nine months does tend to indicate that the number of reports received has come down by up to a third. Why this is the case remains a moot point. On the one hand it could be that by 2011 public education has resulted in less frivolous or misdirected reports. Alternatively, it could be that less reports of corruption are being made because members of the public have lost confidence in the ACC as an effective anti-corruption agency.

A comparative analysis

A comparison of the ACC track record with one of the most reputable anti-corruption agencies in the world, the Independent Commission Against Corruption (ICAC) of Hong Kong⁷, shows that the ACC has a long way to go.

Table 6: Proportion of Pursuable Reports of the Hong Kong ICAC, 2006–2009

Year	Total Corruption Reports	Pursuable Reports	Proportion of Pursuable Reports
2009	3450	2530	73%
2008	3377	2621	78%
2007	3600	2762	77%
2006	3339	2658	80%

As Table 6 shows, a large proportion (above 70 percent) of the cases forwarded or reported to the ICAC from 2006 to 2009 were pursuable. The latter is a boon for the reputation of the agency, for it signifies that the populace has a relatively adequate knowledge of what constitutes corruption, thus demonstrating the effectiveness of the agency’s public education efforts. However, having a constantly high number of corruption-related reports forwarded to an anti-corruption agency is not a good sign in itself as this could point to shortcomings in terms of prevention. On the flipside of the coin, recording few cases of corruption does not necessarily point to the efficacy on the prevention side. For it could typify an unwillingness concerning the reporting of corrupt practices by the populace for fear of victimisation due to the inadequate or non-existent protection of whistle-blowers. The latter holds true for Namibia as

⁶ ACC Strategic Plan 2010-2014, p. 8

⁷ Hong Kong is a Special Administrative Region of the People’s Republic of China with a population of about 7 million, see http://www.censtatd.gov.hk/hong_kong_statistics/statistics_by_subject/index.jsp

adequate protection of whistle-blowers is yet to be legislated for. The Director of Namibia's ACC, Paulus Noa, has observed that "while the Act contains a section dealing with protection of informers and information, such provision is not broad enough to protect and encourage informants to easily report what they suspect to be corrupt practices"⁸. It goes without saying that the process of addressing this shortcoming in the Act needs to be expedited to give much-needed protection to informers. Lessons can be drawn from Hong Kong and Mauritius for the development of legislation addressing the protection of informers and/or witnesses adequately. In 2000, Hong Kong enacted the Witness Protection Ordinance to give provision for the protection of witnesses and persons associated with witnesses. "The Ordinance:

- (a) Establishes a witness protection programme to provide protection and other assistance to persons whose personal safety or well-being may be at risk as a result of their being witnesses. The programme is implemented, at the Police Force, by the Witness Protection Unit and, at ICAC, by the Witness Protection and Firearms Section.
- (b) Stipulates that the person authorised to make decisions on the management of the programme and the inclusion or removal of witnesses is to be designated in writing by the Police Commissioner and the ICAC Commissioner. That authority lay with the Director of Crime and Security at the Police Force and with the Director of Investigation (Government Sector) at ICAC;
- (c) Defines the criteria for admission to the programme and the grounds for early termination, outlining the obligations of witnesses;
- (d) Authorizes the officer with approval authority to take necessary and reasonable action to protect the safety and welfare of witnesses who have been assessed or are being assessed for admission to the programme, including changing their identity details;
- (e) Establishes an appeals procedure against decisions that disallow inclusion of a witness in the programme, terminate protection or determine that a change of identity would not be among the applicable measures. The appeal is reviewed by a special board having the power to confirm or reverse the original decision. Nothing in the legislation prevents a witness from challenging further a decision of the original authority or the review board by means of judicial review;
- (f) Penalises the disclosure of information about the identity and location of a witness who is or has been a participant in the programme or information that may compromise the security of a witness"⁹.

8 Paulus Noa referred to Anti-Corruption Act, Act No. 8 of 2003, Section 52 in September 2010 at an Anti-Corruption Conference organised by the IPPR in Windhoek during his keynote address. He alluded to the same concern on May 2011 during the launch of IPPR Anti-Corruption Research Programme in Windhoek.

9 United Nations (UN) Office on Drugs and Crime (2008, p. 10)

Similarly, to use an example from the Southern Africa Development Community (SADC) region, Mauritius's Anti-Corruption Act, Act No. 5 of 2002 gives provision to the protection of informers and witnesses in Sections 48 and 49 respectively. Section 49(5) goes to an extent of prescribing a punishment when witnesses are victimised by stipulating that:

"A person who commits an act of victimisation against a person who has made a disclosure under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees (roughly N\$12,900 at current exchange rate) and to imprisonment not exceeding one year"¹⁰.

It is perhaps no coincidence that these countries are doing relatively well in fighting corruption. The 2010 Corruption Perceptions Index (CPI) by Transparency International (TI) ranks Hong Kong 13th with a score of 8.4 and Mauritius is placed 39th with a score of 5.4 worldwide. It is worth noting that Mauritius is ranked 2nd in Sub-Saharan Africa, while Hong Kong is placed 4th in the Asia Pacific region.

Rate of successful convictions

The rate of successful convictions is one way of measuring the effectiveness of an anti-corruption agency's investigations unit. In addition, successful prosecutions can only augment the positive image of an anti-corruption agency. Certainly, those who report cases of corrupt practices to an anti-corruption agency are more likely to develop faith in the system when cases are dealt with speedily and culprits punished accordingly. This is where the issue of time is critical, for the longer cases drag on, confidence in the system is bound to wane.

Table 7: Cases submitted to PG 2006-10

Convictions	38	14%
Acquittals	15	6%
PG declines to prosecute	36	14%
In court awaiting trial	151	58%
Currently with the PG for decision	14	5%
Withdrawn	3	1%
Accused passed away	3	1%
With ACC for completion of further instructions from the PG	2	1%
Total	262	100%

Source: ACC

10 See sub-sections 1, 2 & 6 of Mauritius Anti-Corruption Act, Act No.5 of 2002

Over the past five years, the ACC submitted 262 cases to the Prosecutor General for prosecution of which only 38 have so far resulted in successful conviction. Over the same time period here have been 15 acquittals while the Prosecutor General declined to prosecute in 36 cases. More than half of the total cases (58 percent) are in court awaiting trial, pointing to a backlog of cases yet to be finalised. Table 7 shows a breakdown of what happened to all cases since 2006.

Overall, successful convictions only amount to 14 percent of the total. However, if one removes the cases that are either in court, with the Prosecutor General awaiting a decision or have been sent back to the ACC for further work, the successful convictions rate is somewhat higher. Some 38 convictions were achieved out of 95 cases that were either resolved in court or withdrawn. This produces a conviction rate of 40 percent. The most worrying figure is the high number of cases that are withdrawn by the Prosecutor General (36). There is no clear explanation for this figure. In an interview appended to this paper Paulus Noa indicates that the Prosecutor General sometimes declines to prosecute because cases fall into the category of ‘administrative justice’ and are recommended to be addressed through internal disciplinary measures and not the courts. Overall, the high number of cases being declined by the Prosecutor General is disturbing as it would tend to indicate that the dockets prepared by the ACC are somehow not always professional and/or in keeping with the stipulations of the Anti-Corruption Act.

On the issue of cases pending in court, ACC Director Paulus Noa argues that speedy resolution of cases is an area that needs to be addressed. Acknowledging the fact that courts do not only deal with corruption cases, Noa emphasised that “the purpose of prosecuting and getting an acquittal is to clear a person, it is necessary for a person to know what his or her status is. Convicting a person is also to teach others that corruption does not pay, but sometimes we have cases that are going on for years and years”¹¹.

Noa says that he has in the past recommended dedicated courts for corruption cases. Prosecutor General Martha Ekandjo-Imalwa has said she would like to see corruption cases being fast-tracked¹². It is now up to the relevant authorities to make this happen. In view of the way in which drawn-out cases like the Avid Investment one can end up disillusioning the public, the creation of special corruption courts should be treated as a priority.

In Hong Kong, the authority to prosecute rests with the Secretary for Justice who decides in each case whether or not to proceed based on the investigation findings brought forward by the ICAC. Table 8 below shows the number of persons prosecuted

against the number of cases forwarded with recommendation for prosecution.

Table 8: ICAC1 cases submitted to the Secretary for Justice 2006 – 2010

Year	Convictions	Acquittals	Pending	Total
2010	235	27	131	393
2009	165	22	155	342
2008	192	23	142	357
2007	165	24	164	353
2006	145	14	182	341

¹ ICAC’s annual reports: 2010; 2009; 2008; 2007; & 2006. Accessible at: http://www.icac.org.hk/en/about_icac/p/index.html

Figures in the table above indicate that the majority of cases submitted by the ICAC for prosecution resulted in convictions. In 2010, convictions constituted about 60 percent of all persons prosecuted while the overall number of persons convicted from 2006 to 2010 stands at a little over 50 percent. It is worth noting that the table above shows the number of persons prosecuted, and that one case can record convictions of more than one person.

Why do anti-corruption agencies fail?

To a certain extent, an anti-corruption agency (ACA) influences and shapes corruption perceptions in their respective countries, but why do they sometimes fail to contain corruption effectively? The box below offers some reasons.

Reasons why ACA’s fail

- § Weak political will – vested interests and other pressing concerns overwhelm the leadership
- § Lack of resources – lack of appreciation for the cost-benefits of a “clean” administration and of the fact that an effective agency needs proper funding;
- § Political interference – the Agency is not allowed to do its job independently, least of all to investigate officials at the higher and highest levels of government;
- § Unrealistic expectations – fighting systematic corruption is a long-term exercise;
- § Excessive reliance on enforcement – the

¹¹ See Appendix 1: Interview with Paulus Noa on September 27, 2011

¹² See Hopwood, G. Tackling Corruption: Opinions on the Way Forward in Namibia, p.71.

effective preventive capacities of the agencies are not fostered;

- § Overlooking the elimination of opportunities – relying on enforcement after the event, corruption levels continue unabated;
- § Failure to win the involvement of the community – lack of awareness campaigns;
- § Loss of morale – as people lose confidence in the Agency, its staff lose morale

Source: Bertrand de Speville, cited in Pope (2000, p. 95)

As pointed out earlier, the need for political will does not end with enacting legislation to establish an ACA. After establishment, an ACA should be galvanised by proper funding and political non-interference. ACC Director Paulus Noa argues that the success of ACAs in countries like Singapore owes to the fact that higher offices are leading the fight against corruption seriously. Noa was quick to point out that the Office of the President in Namibia is fully supportive of the ACC, but pleaded with other offices to follow suit¹³. Against the backdrop of Noa's assertion, it could be safely argued that Namibia does fall short in terms of political will. In the context of anti-corruption discourse, political will is defined as "the intent of societal actors to attack the manifestations and causes of corruption in an effort to reduce or eliminate them"¹⁴.

A question of resources

The necessary political will would ensure that an anti-graft campaign does not stop at enacting legislation mandating an anti-corruption agency to carry out its duties. As Quah (2008) puts it: where there is political will, the anti-corruption agency will be provided with the required personnel and budget to carry out its functions. This speaks to another strategic issue identified by the ACC, that is, insufficient funding: "To increase the funding to levels where the Commission can put in place the necessary infrastructure and human resources to enable it to effectively fight corruption"¹⁵.

13 See Appendix 1: Interview with Paulus Noa on September 27, 2011

14 Brinkerhoff, 1999, p. 3.

15 ACC Strategic Plan 2010-14, p. 8.

A cursory look at government's budget allocations over the past six years reveals that the ACC's budget has been on the increase as its staff complement has been expanded. However, it should be borne in mind that this increase needs to be looked at in proportion to the total yearly budget. The latter shows that the ACC's proportion of the total budget has not exceeded 1 percent since 2006. It should be noted that the sharp increase in funding from 2010 to 2011 is largely due to the construction of a new headquarters for the ACC, which accounts for more than half the ACC's total budget of N\$63 406 576. The ACC's staff complement is currently 49 posts of which 47 were filled mid 2011 (see Appendix 2 for a staff organogram).

Table 9: ACC's proportion from the total budget 2006-11

Financial Year	Total Budget1	ACC's Budget	%
2011	36 713 197 341	63 406 576	0.17%
2010	27 574 641 000	36 786 000	0.13%
2009	23 933 341 000	26 983 000	0.11%
2008	21 133 668 000	14 144 000	0.07%
2007	16 625 641 000	11 258 000	0.07%
2006	13 677 120 000	6 579 000	0.05%

Source: National Budget Documents

With regard to political interference, Section 2(1) of the Anti-Corruption Commission Act, Act No. 8 of 2003 provides an antidote by stipulating that "[t]here is established an independent and impartial body known as the Anti-Corruption Commission with such powers, functions and duties as are provided for in this Act or any other law". Hence, theoretically the ACC is an independent entity and should be above political interference. However, despite the ACC's status in law, political interference must be guarded against at all times. Transparency about reports of corruption and case management will help to ensure that cases are not dismissed or forgotten due to political sensitivities.

Weaknesses and misunderstandings

Namibia's Anti-Corruption Act, Act No. 8 of 2003 suffered a potential setback in 2010. In a verdict by Judge Marlene Tommasi of the High Court, the definition of what constitutes a corrupt practice was challenged by defence counsels and led to the acquittal of Nama Goabab and Abraham George on corruption charges. In *S v Goabab and Other*, the accused were charged with contravening Section 43(1), read with Sections 32, 43(2), 43(3), 46 and 49 of the Anti-Corruption Act, Act No.8 of 2003 – Corruptly using office for gratification¹.

In her judgement, Tommasi argued that “given the history of the offence in Namibia and the legality principle, I conclude that the provisions of section 43 (1) should be interpreted strictly. The narrow interpretation thereof can only be that this provision relates to the corruptee and the corresponding provision for the corruptor is contained in section 38 of the Anti-Corruption Act, Act 8 of 2003. It follows that the State needed to prove that gratification was obtained from another person i.e. that the public officer who allows himself to be corrupted (the ‘corruptee’) was required to be corrupted by a corruptor. The evidence adduced does not support the commission of the offence since there was no corruptor”. Judge Tommasi concluded that the State has not succeeded to adduce evidence that the accused committed the offence referred to in the main counts of contravening section 43 (1) of the Anti- Corruption Act, Act 8 of 2003. This led to a not guilty verdict on the main counts on which the accused were charged. Whether this is a weakness in the Act or an over-strict interpretation remains to be seen. The judgement faces an appeal in the Supreme Court. However, any such loophole could be a boon for defence lawyers who could use it to question the correctness of judgements and sentences already handed down as well as delay current cases.

Another case in point which led to the State losing a corruption case involves a professional blunder on the part of the police. An employee at the Ministry of Works and Transport (MWT) in Swakopmund was charged with allegedly using her position to obtain gratification from members of the public by renting out the rooms between 2005 and 2009 of a government house allocated to her, i.e. contravening Section 43(1) of the Anti-Corruption Act, Act No. 8 of 2003. Due to the illegal involvement of the police, all charges were dropped against the MWT's employee. The lawyer representing the accused argued that “the police were not authorised to conduct and execute search warrants in terms of the Anti-Corruption Act, Act No. 8 of 2003, and that the whole search at the house and the arrest were outside the scope of the police as they were not appointed as investigators under the Act and that they were not part of the ACC². In his verdict, the presiding Magistrate stated that it was clear that the police had to be authorised by the ACC, and that the police are not recognised as investigative officers or special investigating officers under the anti-corruption law, as they are not appointed by the ACC Director. Thus, it follows that the whole investigation and search related to the case for which the accused was charged under the Act was not within the powers of the police and therefore ultra vires and illegal³. Clearly, communication between the police and ACC was lacking, with the police failing to understand very basic differences in the mandates of the two law enforcement agencies. Encouragingly, the ACC identified ‘Professional rivalry’ as one of its seventeen (17) strategic issues on which the ACC Strategic Plan 2010-2014 is based. “External professional rivalry can result in organisational paralysis. Initiatives can be frustrated into staleness in the pursuit of self-interest and self-image. Some organisations may feel threatened or feel that their position and influence has been usurped by the Commission and may not have the commitment towards the need to interact and work with the Commission”⁴.

1 See CC 44/2008

2 See Hartman, A. (August 17, 2011). Police officers kill corruption case. *The Namibian*, p. 1

3 op. cit.

4 ACC Strategic Plan 2010-2014, p. 9

Recommendations

The recommendations of this paper are as follows:

- Since its inception the ACC has received far more reports of alleged corruption than actual pursuable cases that are forwarded to the Prosecutor General. As a result a focused public education programme should be introduced which explains how and on what grounds members of the public should report cases to the ACC.
 - Alongside more generalised campaigns, the ACC's public education campaigns should target specific themes that are seen as problematic in Namibia. For example, public procurement, the construction industry, regional and local governance structures, and conflict of interest.
 - The ACC should produce and make available more data on the type and nature of the corruption cases it investigates. For example, cases should be disaggregated according to which sector they affect - public sector, private sector, State-Owned Enterprises. If possible, further details should also be made available such as the type of business and which ministry or state agency is affected. Finally, the amounts of monies involved in cases should also be made available and aggregated on an annual basis, so that the cost of corruption can be more easily assessed. At present, it is only possible to gain a deeper sense of corruption trends in Namibia from media reports and these often only feature a small proportion of actual cases.
 - The ACC should expedite the setting up of its Directorate of Corruption Prevention which should be dedicated to researching systems, procedures and practices that will best enable Namibia to reduce corruption (currently the directorate is merged with that of public education). This will enable the ACC to give effect to its mandate to take measures for the prevention of corruption in public bodies and private bodies. Such a body should have, for example, come up with recommended amendments for the Anti-Corruption Act that would deal with the lack of whistle-blower protection. Government should ensure the Directorate is adequately funded through its annual provision to the ACC.
 - Both the Director of the ACC and the Prosecutor General have called for specialised courts to be set up to enable the fast-tracking of corruption cases. This could go a long way to improving public confidence in the anti-graft campaign since at the moment many cases appear to be 'bogged down' within the court system. The most suitable legal mechanism for this should be the subject of urgent discussions between the ACC, the Prosecutor General, the Ministry of Justice, the Law Reform and Development Commission and other stakeholders.
 - That the ACC expand its public education efforts country-wide to improve public knowledge on what constitute corrupt practices.
- The ACC should adopt a communications policy which ensures consistency in the way in which corruption cases are publicised. At present, only occasional press releases are issued on arrests and it is not clear why some cases are publicised and not others. The ACC should release information on all arrests and also publicise information on convictions and sentences (see below). This will boost public confidence in the ACC by ensuring the public can follow the line from initial arrest through to the conclusion of a case.
 - The ACC should publish names of those prosecuted and convicted of corrupt practices. This point is cogently illuminated by Quah (2004, p. 4)¹⁶ – “for the public to perceive corruption as a high-risk, low-reward activity, the incumbent government must publicise through the mass media the corrupt practices of civil servants and politicians, as well as private sector officials, and also inform the people of their corresponding punishment, according to law, if they are found guilty. Those found guilty must be punished, regardless of their status or position. If the so-called “big fish” (rich and famous) receive protection and escape prosecution for their corrupt offenses, the credibility and efficacy of the country's anti-corruption strategy will be undermined”.

Appendix 1

Interview with Director of the Anti-Corruption Commission – Mr Paulus Noa conducted on September 27 2011. Questions were related to ACC’s Strategic Plan 2010–2014:

1. The ACC has identified that the anti-corruption and related legislative and policy environment is inadequate. Which areas have been found inadequate? What legislative and policy reforms and initiatives is the Commission developing and putting forward to strengthen and expand the areas where inadequacies have been identified?

On the Anti-Corruption Act, I have on several occasions expressed my concern about the inadequacy of the provision relating to the protection of whistle-blowers. There is a provision in the Act, but in my view what is provided for is not adequate. To encourage people to report suspicions of corruption, there is need for fully-fledged legislation on the protection of whistle-blowers. I have gone to the extent of getting copies of models on protection of whistle-blowers from countries such as Zambia, Kenya and Uganda. I also have the South African one, but that one is not quite relevant because it talks about protection of witnesses in general, while here we are talking specifically of whistle-blowers. This is not to say witnesses should not ultimately be protected, but the question of witnesses can be covered under an amendment to the Criminal Procedure Act. Provision can be made as to in which circumstances the Prosecutor General (PG) can make an application to the court for witnesses to be put under certain protection. In some of the legislation I read, there are also incentives provisions – this is where a provision is included in the law to cater for the compensation of a whistle-blower if the information offered led to the recovery of stolen money for example. Such incentive provisions in the legislation may encourage people to come forward. For example the Diamond Act, Act 13 of 1999, has such a provision. It should be noted that such provision does not mean that for every case reported to the commission there would be a reward. There are always specified conditions attached to such provisions.

The other area which is not adequately addressed is the question of conflict of interest. This could be addressed by coming up with a policy but you know what people are doing especially in Namibia when it comes to policies. How many people in this country have respect for policies that have been put in place? This is because there are no strict penalty clauses, that if you contravene then these are the consequences.

2. Please shed more light on the status of legislative initiatives aimed at greater protection of whistle-blowers and other informants and also any progress towards establishing an access to information law?

Most of those issues are now with the Law Reform and Development Commission (LRDC). The Secretary of the LRDC indicated that a bill regarding access to information will be submitted to the Minister of Justice. It should be noted that inasmuch as we want certain laws that relate to our functions to be put in place, other departments, ministries and agencies also have their own laws that they want amended. All these have to go through the LRDC and they already set up their priority list. Access to information is one of their priorities.

On protection of whistle-blowers, I have given copies of various countries’ laws to the LRDC so that they can start working on Namibia’s one. They have to develop a ground document and from there we would start working with them. Many of the countries only started with the establishment of their anti-corruption bills around 2000/2003 after the United Nations Convention against Corruption (UNCAC) came into force, and the question of whistle-blowers was not adequately addressed as required by the Convention. But there is no law which is static; there is no law which is cast in stone. The law is subject to change depending on the demand at that particular given time.

3. With regard to a lack of investigative capacity, what quantifiable impact has this had on the effectiveness of the ACC? And what has the ACC done to date to address this?

The issue of inadequate investigative capacity have been a concern. By this time I wanted to at least have offices in some of the strategic regions, like the one we have in Oshana. Offices are needed in Karas, Erongo, Otjozondjupa, Kavango as well as Kunene. I had discussions with the Public Service Management because we need to restructure to have offices in those regions. The structure needs approval before we proceed. So, the issue of investigating capacity is being taken care of.

4. Related to this, what are the other major institutional capacity issues of concern and what is being done to address these through to 2014?

Another institutional capacity issue which needs to be addressed is that of investigation. There are very few investigative officers. Proper recruitment needs to be done, but this can only happen after the restructuring process is through.

5. The ACC has found that poor governance in external institutions is a major contributory factor in creating avenues for corruption. How is the ACC proposing to combat poor gov-

ernance, and thus minimise corruption, in both government and the State-Owned Enterprise (SOE) sectors?

When we identify loopholes in a particular institution during our investigations, we advise institutions concerned. But the other way through which we want to address the issue of poor governance is by having a directorate that is full-time dedicated to research on systems and laws that are in place. That is supposed to be the Directorate of Corruption Prevention, but that directorate is combined with the Directorate of Public Education which should not to be the case as our strategic approach is based on a three-pronged approach, i.e. investigation, public education and corruption prevention.

Another important element is putting monitoring mechanisms in place in certain institutions, departments, ministries or agencies especially those ministries that are prone to corruption. Anti-corruption units can be established to monitor how affairs are being administered within those respective institutions and if they find or detect major issues that need full scale investigation, they can alert the ACC. Most of corrupt practices in Namibia are perpetrated through maladministration, malpractice and mismanagement. Therefore, having internal monitoring mechanisms in various institutions will go a long way in addressing administrative corruption.

6. Related to this, the ACC's relations with other state agencies and departments have been identified as problematic in the fight against corruption. How does the ACC propose to overcome this situation and what specific legislative and policy initiatives are required and have been introduced?

Some countries have relatively succeeded in fighting corruption. For example, in Singapore, higher offices are seriously leading and also give full support to the efforts of anti-corruption agencies. In Namibia, we have the Office of the President that is fully supportive of the ACC. But we need all other offices and ministries to follow suit. If we employ this collective approach, we will certainly reduce the rate of corruption in Namibia. It is encouraging to note that some Ministers call the ACC to enlighten me about corruption-related matters.

7. Also, what does the ACC propose in order to overcome the considerable challenge of public sector bureaucracy in order to increase the efficacy of the anti-corruption response?

Bureaucracy cannot only be addressed by the ACC; the Public Service itself has to address this issue. One way of addressing this is by coming up with some proper laws, proper regulations, and make sure that people account for what they are doing. For example, what I have observed in some countries that do not have the office of the prime minister – they have got a president then a vice president. In those countries, permanent secretaries submit quarterly reports to the office of the president. In those reports, there should also be a submission on measures that they

have put in place within their respective ministries to curb the occurrence of corruption. In our case – I think you need to find out from the Office of the Prime Minister whether or not we have got the same system whereby permanent secretaries are submitting quarterly reports, but I have not seen that. I think this is one way of addressing issues pertaining to bureaucratic factors that may contribute to corrupt practices. It does not matter how bloated the public service may be, the question is: are those who are part of the public service compliant with the laws and regulations or not? The problem is not really about bureaucracy, it is about whether or not we comply. But then, when we talk about addressing this bureaucratic system, this does not mean that we should do that in order to compromise transparency and accountability. It is very important that government have systems whereby those making decisions in one way or another are accountable.

8. Similarly, professional rivalry (between agencies) has been identified as a major hindrance. How does the ACC propose to overcome this?

We put that (professional rivalry) in our strategic plan just to highlight that some of these things need to be avoided, from our side and from the side of other institutions – because we need to work in harmony. At the end of the day the success of any institution, be it the ACC or any other office, office of the PG, the Police or even ultimately the Courts, depends on the collective efforts of all institutions. We depend on the efforts of the public in putting up the fight against corruption. Without the public we will not know what is happening. We depend on ministries that are reporting to us as to what is happening in their respective institutions. Without them we will not be able to know what is happening there. This professional rivalry was deliberately made part of our strategic plan so that we avoid hostile attitudes towards our colleagues because we need to work together. Most of the time we need the support from the Namibian Police and exchange information for us to succeed in our work. Most of the time we need to refer certain cases that are not necessarily under the mandate of the ACC to the Police. Likewise, the Police refer cases where they think we can do the investigation much better. For example, if you look at the Prevention of Organised Crime Act (POCA), a reference is made to the Police when it comes to enforcement of certain actions. If we investigate something and we identify certain assets which are there and we bring these to the attention of the PG, the PG makes an application and an order is given by the Court that certain property needs to be seized, the Police is needed to be part of the team. It's a matter of working together as a task force. Professional rivalry has got no room if we want to achieve what we want.

9. With regard to the ACC's performance over the past five years of its existence, what have been the standout events in

its formation? And, what have been the major achievements, in terms of case resolution, of the first five years?

We had about 3,256 cases over the past five years. I must say that it is not every case that was reported to us constitutes actual cases of corrupt practice. With the establishment of the ACC and perhaps with the number of investigations that we were doing, the public had confidence in the Commission. As a result they found it necessary to report. Some of the cases reported had nothing to do with the ACC. But we register these cases and make referrals. When we refer a complaint to a particular institution, this institution takes this referral serious and attends to a complaint accordingly. Of course there were cases falling within the mandate of the ACC, and we investigated them. There are those we investigated and satisfied ourselves that there was no substance in the allegation(s), hence we simply had to close; because there is not enough evidence which you can submit to the PG with a recommendation that somebody must be prosecuted. It should be noted that even though theoretically 2006 is the year the Commission started with its work, we had nothing, not even a pen. It was only me and my deputy tasked to put up whatever we thought we could. In government, one post can take up to half a year to be filled. As a result, we only started with actual work mid-2007 and by then we had very few investigation officers, because you recruit them gradually one by one. But nevertheless, we have submitted a total number of 262 cases to the PG during the past five years or so. We have recorded 38 convictions thus far. Unfortunately, there are delays in court. There are 151 cases pending in court, and some of them have been dragging on for a long time. As I said earlier, corruption in this country is mostly perpetrated through administrative means, and I will not fault the PG sometimes when she recommends that a person must go through a disciplinary hearing. But the question is: are they all doing what they are supposed to do? That is the problem. As far as delays are concerned, I appreciate that the courts are dealing with other cases as well. Courts are not only dealing with corruption cases, but the purpose of prosecuting and getting an acquittal is to clear that person, it is necessary for the person to know what his or her status is. Convicting that person is also to teach others that corruption does not pay, but sometimes we have cases that are going on for years and years. Speedy resolution of cases is an area that needs to be addressed in this country.

10. If you were able to assess the credibility of the ACC at this stage in 2011, what would your pronouncement be and why? What has the about-to-be-released 'Urban Corruption Perception Survey 2011' revealed about what the public perceives the ACC?

The credibility of the ACC does not depend on the ACC alone; it also depends on other institutions. Because when you investigate and submit to somebody to take a decision and a decision is taken, then the matter goes to court. If this matter

takes years pending in court, it will have a negative impact on the credibility of the ACC. Some time back, I recommended the establishment of a specialised court to deal with corruption and fraud cases as a way of expediting cases resolution. Perhaps just as a pilot project in some regions, because manpower is also a problem when it comes to either the office of the PG or the courts. When a person who is supposed to give evidence in court is no more [has died] – the case has to be scrapped from the roll, and this will have an impact on the credibility of the law enforcement agencies and the ACC. Or when a witness who should testify was just in the country temporarily and decides to go back to his/her home country – a case falls flat, and this is why speedy case resolution is imperative.

Concerning the 'Urban Corruption Perception Survey 2011' – just in brief because it is not yet officially out: there is a larger section of people interviewed who are saying they do not report cases of corruption because they are afraid of victimisation. This points to the issue of inadequate protection of whistle-blowers I alluded to earlier. There is also a portion of people who say they do not know where to report.

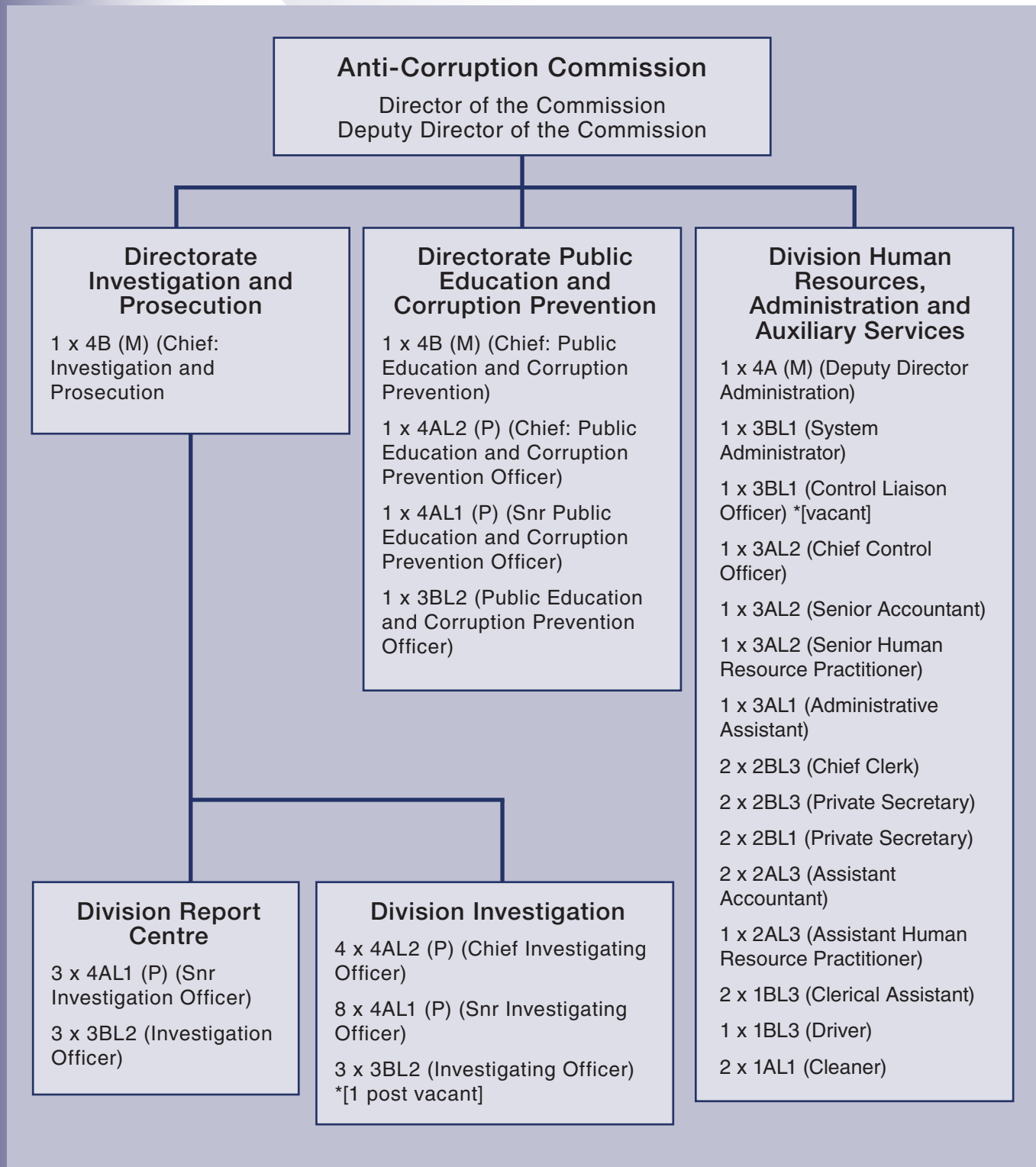
Through this perception survey, we will be able to get some ideas as to how we should address some of the shortcomings. If these shortcomings are addressed and people are persisting with the same perception, it is not the ACC's problem anymore.

People are putting a lot of recognition in perception! I was once with an official from Transparency International (TI) and I enquired where we are going wrong because we want to improve. They always tell you that those things are just perceptions; they collect data from different institutions. Most of the time they look at how your economy is performing; when they see your economy is not doing well they perceive that probably corruption is also worse. People think TI base their results on the number of corruption cases investigated in the country or a number of convictions done by the courts in the country and so on, which is not the case.

Namibia's corruption perception index has been hopping between 4.5 and 4.4, always next to South Africa. These people mostly depend on what they are reading in the media, e.g. the Government Institutions Pension Fund (GIPF) missing N\$600 million. But people need to understand that sometimes when you are getting many reports of alleged corruption it does not necessarily mean that the country is getting worse in corruption. It is something that is supposed to be appreciated, because it could mean that the environment is favourable for people to report. And people will always report anything if they feel that nothing will happen to them. Sometimes people tell the media before they come to the ACC to report, and the media simply reports without getting the nitty-gritty aspects of a case.

Appendix 2

Organisational Structure¹⁷



¹⁷ The extant ACC organisational structure gives provision for a total of 49 staff members including the Director and Deputy Director; (22 in the Directorate of investigation and prosecution, 4 in the Directorate of Public Education and Corruption Prevention, 21 in the Division Human Resources, Administration and Auxiliary Services). There are presently 47 staff members forming the entire ACC, with 2 vacant positions, that of an Investigating Officer (3BL2) and Control Liaison Officer (3BL1).

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About the Authors

Ellison Tjirera re-joined the Institute for Public Policy Research (IPPR) as a Research Associate in 2011 after spending a year as a researcher at the Ministry of Gender Equality and Child Welfare. Before joining government, he was a Research Associate at the IPPR from early 2009. He co-authored the briefing paper *Not Speaking Out: Measuring National Assembly Performance* and later went on to complete research on Gender and Parliament commissioned by the government and UNFPA. While at the IPPR, Tjirera was a participant in the Afrobarometer Summer School (2009) at the University of Cape Town's Centre for Social Science Research and won the 'Best Research Question Prize' with his paper entitled, *Women's Parliamentary Representation and Perception of Women's Empowerment: Is There Any Relationship?* Tjirera is currently an MA (Sociology) student at the University of Namibia

Graham Hopwood has been the Executive Director of the Institute for Public Policy Research (IPPR) since early 2008. He was previously the Manager of the Public Dialogue Centre at the Namibia Institute for Democracy and a freelance researcher and lecturer. Hopwood worked as a journalist and sub-editor at *The Namibian* newspaper from 1992 to 2004. He has published widely on governance issues in Namibia including the popular *Guide to Namibian Politics* (2004, 2006, 2007, 2008) and *Tackling Corruption: Opinions on the Way Forward in Namibia* (NID 2007).

About the Anti-Corruption Research Programme

The IPPR's Anti-Corruption Research Programme will focus on strengthening anti-corruption regulations, procedures and practices.

The Programme will provide a stocktaking of anti-corruption efforts so far, examine policy options for the future and recommend ways in which Namibia can ensure that the anti-corruption campaign retains public confidence and political support and is ultimately successful in reducing corrupt practices in Namibia.

The programme will pursue the following objectives.

1. Produce rigorous, detailed and accessible research on issues that contribute to the strengthening of anti-corruption systems, procedures and practices in Namibia
2. Raise awareness debate among Namibian policymakers, politicians, civil society activists, students, journalists, the business community and interested members of the public about effective anti-corruption strategies and policies that could be deployed in Namibia.
3. Seek to partner with agencies involved in tackling corruption in Namibia, in particular the ACC, other civil society groups active on the issue and policymakers who can play a role in ensuring anti-corruption mechanisms in Namibia are effective.

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