



## GOVERNANCE CHALLENGES IN THE SOE SECTOR

By Frederico Links and Malakia Haimbodi

### Key aspects of this paper

State-owned enterprises (SOEs) or parastatals play a significant role in service delivery, procurement, infrastructure development and employment in Namibia and as such the performance of the sector can be regarded as an important indicator when assessing the overall health of the country's economy. This is in spite of the fact that it is and has been hard to quantify the economic contribution of the SOE sector, given the burgeoning in the number of SOEs over the last decade or so.

An SOE is generally held to be a company in which government has a controlling shareholding of more than 50 percent. Often government has complete ownership of the company. Government controls the composition of the board of directors. In Namibia the term SOE applies to a confusing array of commercial companies, institutions, education and arts establishments, state-owned media, regulatory authorities, banks, and others.

There is no doubt that the number of SOEs has mushroomed over the years. The Institute for Public Policy Research (IPPR) in previous research reckoned there were 12 in 1990 and over 45 by 2003. Deloitte & Touche Chartered Accountants identified 57 in their report to government in 2001. Schedule 1 of the State-Owned Enterprises Act of 2006 lists 52.

With the ongoing creation of regional electricity distributors and other bodies there are currently over 60 SOEs – some with a monopoly in their particular sector – active on the Namibian economic landscape, and operating within a variety of legislative and policy environments and reporting to a myriad of line ministries.

This burgeoning in the sector and its role in the economy has been summed up as follows by Sherbourne<sup>1</sup>: “The subsequent mushrooming of SOEs has led to the development of a large new sector of the economy which has played an important role in training black Namibian managerial and business talent free from the confines of government salary scales while allowing government to intervene directly in the economy.”

When considering this and with regard to performance, the SOE sector on the whole, and despite there being some consistently good performers, has been plagued by a perception of poor management, non-accountability and generally non-transparent practices, with political interference being an ever present reality. All of these factors in the context of the anti-corruption discourse have made warning lights flash furiously for quite some time now.

Arguably, realising the prevailing perception of the sector could have a negative impact on how the Namibian economy may be viewed by investors – foreign and local alike – the government has since 2000 emphasised the need to transform governance practices in the sector and tighten regulations, as well as attempting to sharpen oversight. However, despite the formulation and promulgation of some legislation and the establishment of a regulator, much of what the state itself has identified as needing to be done remains rhetorical after more than a decade.

Furthermore, while improved governance performance has become the focus of government intervention in the sector, specifically and explicitly insulating, as far as this is practically possible, the sector against corruption still does not appear to be high on the transformational agenda.

Given the paucity of information available about the general performance of SOEs, as well as the uncovered incidences of corruption within various parastatals, it can reasonably be argued that

1 Robin Sherbourne, 2010 – Guide to the Namibian Economy 2010

the SOE sector, like the construction industry, is a high risk and worrisome sector within the state architecture and the national economy.

**In this regard, the following recommendations are made:**

For government, in the form of the Office of the Prime Minister:

- Implement fully long-discussed management performance and control systems in order to prevent irregular conduct and mismanagement and to foster a culture of decision-making and financial accountability;
- Enhance internal transparency through the development and implementation of comprehensive codes of conduct and proactive disclosure of interest and asset procedures for all employee levels within SOEs;
- Create and implement sector-specific employee awareness campaigns highlighting the dangers of corruption;
- Publicly release reports of presidential commissions of inquiry into the affairs and conduct of certain SOEs over the last decade or so;
- Improve law enforcement investigative capabilities and judicial processes in order to expedite and prosecute within a reasonable timeframe cases involving corruption, whether within the SOE sector or others;
- Commit to transparent governance by ensuring SOE financial statements and annual reports are published timeously and in a form accessible to the public;
- In the same vein, conduct regular and comprehensive data and information gathering on the impact, performance and conduct of SOEs and accessibly store, publish and disseminate such data and information.

**For the State-owned Enterprises Governance Council (SOEGC):**

- In collaboration with the Anti-Corruption Commission (ACC), look at ways to counter and minimise corrupt practices within the SOE sector;
- Develop and implement comprehensive codes of ethical conduct within SOEs;
- Research/investigate the occurrence of corruption within the SOE sector in order to gain greater understanding of the causes and effects of graft on the sector;
- Finalise long-standing issues around pay and remuneration of senior managers within the SOE sector;
- Create a database of information dealing with issues affecting the sector and relevant documents and reports about SOEs;
- Lead the line against corruption by proactively and consistently engaging with SOEs on the issue of graft.

**For SOE managers:**

- Commit to fostering a culture of responsible and accountable management internal and external transparency in decision-making and financial conduct;
- Be exemplary in conduct in order to set the tone in ethical behaviour, both internally and externally of the organisation;
- Introduce employee codes of conduct and interest and asset audits and voluntarily and proactively submit to the latter on a regular basis so as to give effect to internal anti-corruption measures.

**For civil society:**

- Demand greater accountability within the SOE sector through requesting access to information concerning SOEs' performance;
- By the same token, call for the introduction of access to information legislation in order to be able to exercise, as taxpayers and citizens, greater oversight over the conduct and performance of SOEs;
- Develop extra-organisational mechanisms and measures to monitor the conduct and affairs of SOEs and engage and interact with SOE senior managers on the issue of graft within the sector and specific organisations.

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## Of common weakness and lax control

Corruption has come to taint, tangibly and perceptually, basically all sectors of the Namibian economy to a greater or lesser degree. While much of this corruption remains unproven and probably mostly unrecorded, there are and have been enough instances and occurrences unearthed and reported to suggest that graft is a widespread phenomenon which by nature and implication considerably impacts on the economic performance of the country and the ability of the state to respond to pressing service delivery demands.

Spearheading the state's service delivery and socio-economic upliftment efforts has primarily been the purpose, preserve and prerogative of the state-owned enterprises (SOE) sector, which at last estimate comprised somewhere between 60 and 70 organisations and institutions, operating in diverse and disparate economic, regulatory and advisory environments across the length and breadth of the country.

Since independence in March 1990, the number of SOEs has grown considerably and by the same token the significance of the sector to the local economy has exponentially increased.

Sherbourne<sup>2</sup> summarises the current situation as follows: "Ten years after Independence three broad trends in Namibia's

parastatal sector had become apparent. First, the number of parastatals had increased dramatically thanks both to the creation of entirely new parastatals (some of which were required as part of the process of building a new state) and to a broad process of “commercialisation” which saw parts of central government become corporations through enabling legislation. Second, the parastatal sector was being used as an important training ground for new black Namibian managers. Positions in this sector became highly sought after, especially since parastatal remuneration packages were not bound by public service constraints (indeed that was one of the major rationales for creating them in the first place). Third, although many of the new parastatals were to be financed by new specially created fees or levies, the magnitude of financial transfers from the national budget to the parastatal sector as a whole increased dramatically as did the magnitude of government guaranteed debt to this sector.”

While these trends were unfolding on the economic landscape, something else came to mark the SOE sector, namely widespread poor and mismanagement. In this regard, Sherbourne<sup>3</sup> also states: “Despite a long series of investigations, reports and recommendations, the track record of most commercial SOEs – on growth, investment, innovation, tax, dividends and job creation – has been poor and focused primarily on the small domestic market.”

What this state of affairs is of course indicative of is an environment suffering from poor and under regulation and lax oversight, which by extension can be argued, creates the perfect climate for corruption.

Consider that for the period 2008-2009, out of 117 separate cases of alleged corruption that were recorded – by referencing articles in various Namibian newspapers – parastatals accounted for 22 percent of the cases, sharing the dubious lead with the private sector<sup>4</sup>.

It is worth noting that these are only reported cases, for with corruption being a secretive activity, not all, probably not even most, cases see the light of day. Describing the nature of corrupt offences, the Namibia Institute for Democracy (NID) reported that conflict of interest, nepotism and favouritism accounted for five percent, four percent and 10 percent respectively. When nepotism is considered together with conflict of interest, these instances accounted for nine percent of reported cases for the 2008-2009 period.

Arguably the most prominent instances of corruption in the SOE sector are those for which presidential commissions of inquiry were instituted over the last decade or so. However, it is hard to assess the scope and nature of these cases of alleged corruption, for the reports of these commissions of inquiry have yet to be made public or brought before the courts for prosecution. Some of the cases were clear instances of conflict of inter-

est involving individuals in senior decision-making positions at particular SOEs.

Commissions of inquiry which were instituted – by former President Sam Nujoma – were the following:

- Commission of Inquiry into the Activities, Affairs, Management and Operations of the Social Security Commission (2002);
- Commission of Inquiry into the Activities, Affairs, Management and Operations of the Roads Authority (2002); and
- the Commission of Inquiry into the Activities, Affairs, Management and Operations of the former Amalgamated Commercial Holdings (Pty) Ltd and the former Development Brigade Corporation (2004).

All of these cases involved considerable amounts of taxpayers’ monies being allegedly nefariously diverted, and subsequently vanishing without trace, into the pockets of politically connected individuals. Concerned citizens and organisations, across the spectrum, have over the years consistently called for the release of the findings of these commissions of inquiry, but so far these calls have been met with near silence from government, the only response being that the reports are with relevant authorities, meaning prosecutorial, for assessment as to whether cases will be brought against those implicated. However, this placatory message has started wearing thin and it can be argued that public goodwill towards government’s anti-corruption efforts has waned considerably as a result of investigative and institutional foot-dragging and stalled judicial processes around these and many similar cases of corruption involving SOEs and others.

## Corruption in the state-owned enterprises sector

When engaged in a discussion of and about corruption, it is firstly necessary, to understand what is being discussed. In this regard, Transparency International (TI) – the leading global anti-corruption NGO – defines corruption as:

*“Corruption involves behaviour on the part of officials in the public sector, whether politicians or civil servants in which they improperly and unlawfully enrich themselves or those close to them, by the misuse of the public power entrusted to them.”*

Using this definition, which is apt for the purposes of this paper, as a departure point when looking at the SOE sector, there are a number of issues – influential or causal depending – to consider if the discussion is at all to be considered meaningful in trying to understand and get to grips with graft in the sector. These issues, and this list is by no means exhaustive, are: Moral

<sup>3</sup> Robin Sherbourne, 2010 – Guide to the Namibian Economy 2010, pg 319

<sup>4</sup> Actual Instances of Corruption 2008-09, Namibia Institute for Democracy

hazard; the ‘revolving door’ phenomenon; political patronage; and a culture of secrecy and poor record keeping.

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## Moral hazard

In economic theory, moral hazard refers to the practice of one party taking a risk or decision for which, should such backfire, another party would bear the cost. Moral hazard has become a defining characteristic of the SOE sector in Namibia, as the taxpayer, through government, is consistently and continuously called upon to bail-out a host of SOEs long plagued by bad decision-making, weak management, poor planning and lax financial controls.

Parastatals such as the Namibian Broadcasting Corporation (NBC), TransNamib Holdings, Air Namibia, Namibia Wildlife Resorts (NWR), the National Petroleum Corporation of Namibia (Namcor), to name just some, have all fallen victim to moral hazard, as inept management teams over the years have steered these organisations to astronomical losses which the state has had to pick up and take responsibility for.

Moral hazard has been the defining characteristic of poor financial management at both the Namibia Wildlife Resorts (NWR) and Namcor, to isolate but two, over the last few years. In fact, at the time of writing former NWR MD Tobie Aupindi, who had overseen a failed turnaround strategy at the tourism parastatal, was in court over an allegation of corrupt activity related to his time in office. And Namcor MD Sam Beukes was let go after a lengthy disciplinary process in 2011 over his inept management of the fuel parastatal which had been brought to the brink of financial collapse. Both Namcor and NWR have been bailed-out by government over the years, while senior executives have been earning millions, and even bonuses, as these SOEs lurched financially from year to year.

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## The ‘revolving door’

This phenomenon is when senior managers, whether in SOEs or the private sector, make their way into senior government decision-making positions – where they can influence the awarding of contracts or the structuring of programmes in such a way that would favour particular interests or companies – or also the continuous recycling of problematic politicians or SOE managers amongst a variety of state departments and agencies. The practice becomes murky when politically connected individuals, with questionable competencies and ethics, controversially keep surfacing at different levels of state.

While the ‘revolving door’ has never been a prominent feature of the Namibian political economy, there are instances

where senior SOE managers have become senior government leaders, even at ministerial level.

It has to be stated that the ‘revolving door’ does not on the face of it imply any nefarious activity, given that accomplished leadership and managerial skills and expertise are highly sought after in both government and the private industry, but merely that the practice could be employed by private sector actors, SOE executives and senior politicians to use their positions to influence state systems and processes in order to benefit specific stakeholders, with a view to personally benefiting – through senior appointments or delayed pay-off of some form or other – at some later stage.

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## Political patronage

A reality of Namibia’s SOE and government appointment processes is that senior management positions have been politicised almost from the start as the ruling Swapo Party has sought to impose itself on state processes. This means that almost high-ranking and influential positions in government and parastatals are occupied by long-standing Swapo Party supporters. The situation is thus that political – and in some cases even personal – affiliation and connectedness have consistently trumped experience, skills and expertise when it has come to the appointment of SOE managing directors or CEOs, as well as Permanent Secretaries, all of which are state management levels which ideally should be populated by technocrats.

Political patronage creates a culture which shields errant performers, even those engaging in corrupt practices, from exposure and censure, as their political ties and history of support could outweigh the need for accountability. Arguably, political considerations could be a reason why the state has been decidedly slow in dealing with the myriad of management issues – some verging on corruption or alleged to be graft – affecting the SOE sector.

In this vein, political protection and interference lower the probability of detection and punishment, thus heightening the risk of corruption taking place. Political considerations in appointments negate the principle of merit and thus the lower the levels of professionalism, the greater the incentives for public and SOE officials to pursue self-serving rather than public-serving ends.

In a recent case<sup>5</sup> from 2011, Finance Minister Saara Kuugongelwa-Amadhila was dragged into the saga surrounding the Road Fund Administration (RFA), when its former CEO, Penda Kiiyala, was implicated in irregular conduct – including unilateral salary increments – and a divisive tussle with the board of the parastatal. Kiiyala was brought up on disciplinary charges

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<sup>5</sup> See *Insight Namibia*, ‘Who’s the boss?’ August 2011, pg. 14

over his management of the SOE, but the Finance Minister intervened in the process and basically brushed aside the recommendations of the board, causing a stand-off between the two sides. It was speculated at the time that the reason she was hesitant to act against Kiiyala was because of a long standing connection. With the situation having reached publicly embarrassing levels of acrimony, Kiiyala eventually resigned, but at the time of writing was suing the RFA board over the allegations made against him.

While corruption remains to be proven in this particular instance, the affair underlines the dangers inherent in political connection and affiliation being the deciding factor in senior appointments in both government and SOEs.

However, it should be emphasised, when it comes to this issue, politics does not only play a role in the appointment of senior managers (CEOs and MDs), but also the recruitment of SOE board members. This situation would appear to considerably restrict or hamper efforts at overhauling the governance of SOEs. Once again, government has expressed exasperation at this state of affairs, but continues to be slow in responding.

## Culture of secrecy and poor record keeping

Closely linked to the issue of political patronage is the issue of a culture of secrecy, which is also characterised by poor record keeping and financial reporting, because SOE senior managers, who because of their political affiliation – and thus performance and accountability do not come into it – arguably enjoy the benefits of an environment marked by altogether lax oversight, do not feel pressed to adhere to financial reporting standards to which private entities have to.

Once again, it would be grossly unfair to tar all parastatals with the same brush, as there are quite a number which have consistently put in admirable performances, reflecting the professionalism of the management teams at the helm. Despite this, it has to be pointed out, in the words of Sherbourne<sup>6</sup>, that “reporting on financial and other performance by Namibia’s SOEs remains as patchy as ever. Reports range from the excellent to the non-existent.”

And he continues: “With important exceptions, annual reports are generally hard to get hold of with only few SOEs bothering to put effort into disseminating printed copies or placing them on their websites (which are generally embarrassingly out of date).”

However, these by no means are the only factors causing or contributing to corruption in the SOE sector, for there are other less visible but probably just as insidious conditions

which contribute to the emergence and prevalence of graft in the parastatals.

## Another ‘culture’ influence?

While one has to be careful of unsubstantiated suppositions and untested perceptions, it is nevertheless necessary to make mention of certain considerations which could be influential in the context of corruption. One of these considerations is of course the impact of traditional cultures, as identity determining, on perceptions of and responses to graft.

In many cultures, particularly in the context of poverty or conflict, allegiance to personal loyalties such as one’s family or ethnic, religious, or socio-economic identity outweighs allegiance to objective rules. After 21 years of independence, Namibia<sup>7</sup> is still battling the twin demons of tribalism and racism, which, it can be argued, to an extent still inform most state socio-economic interventions and weighs on economic decision-making, as well as in part explaining the wide chasms between the haves and the have-nots.

Whilst low legitimacy of government may not apply to Namibia, discordant cultures may contribute to the disregard of formal rules. Similarly, dominance of a political party or ruling elite over political and economic processes, or exclusion of marginalised or poorly organised groups from the same, creates incentives for those disadvantaged by the system to operate outside it and those inside to abuse their near unlimited power.

These considerations suggest anti-corruption efforts should also address attitudes toward corruption. Most generally, such efforts need to raise awareness about the costs of corruption for the country’s political and economic development. This means convincing the public that corruption is an extremely damaging pattern of interaction for society as a whole, and that the collective damages over time outweigh any possible short-term personal benefits.

Along with raising awareness, these efforts need to stimulate demand for reform, helping mobilise citizens and elites to push anti-corruption onto the political agenda. To the extent possible, anti-corruption efforts should also address the underlying structures that create anti-system attitudes, for example, by improving the access of marginalised groups to the political arena. Responses to corruption, therefore, include institutional reforms to limit authority, improve accountability, and change incentives, as well as societal reforms to change attitudes and mobilise political will for sustained<sup>8</sup> anti-corruption interven-

7 Lindsay Dentlinger, (February 24 2004). ‘State-Owned Enterprise in the spotlight’. *The Namibian*.

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tions. Within these two broad categories, the list of potential responses is extensive.

Against the backdrop of these issues, perspectives broadly suggest fighting corruption through the following:

- *Reducing the role of government in economic activities (to limit authority)*

Proponents of this strategy call for divesture by government from businesses wholly or partly owned, also popularly manifesting as privatisation. This however poses a challenge for countries like Namibia which have a history of economic imbalances that may need to be addressed by more active participation in economic affairs by government.

- *Strengthening transparency, oversight, and sanctions (to improve accountability)*

In this regard, the press plays an important role in educating the citizens so that they can actively participate in economic matters and participate in any empowerment initiatives that may be in place.

- *Redesigning terms of employment in public service (to improve incentives)*

A lot of research has gone into remuneration issues for public officials, among them discussions focusing on performance based reward. In other words, the proponents for this remedy advocate for the reward for performance and not activity.

When considering all of these factors, it is not hard to imagine that combined, they could constitute the near perfect mix of circumstances within which corrupt activities and practices can take place and thrive. In fact, examples abound of how these factors could have contributed in one way or another to the numerous cases of corruption and fraudulent activity, as well as the borderline instances, which have been unearthed and reported on within the SOE sector. A trawl of online sources and newspaper archives reveal an astounding number of incidences of graft at Namibian parastatals from the very earliest after independence.

## The State-owned Enterprises Governance Council<sup>9</sup>

This ever growing and more worrisome trend of mismanagement, poor performance and corruption prompted government, around 2000, to investigate measures of improving governance in the sector and in that year accounting firm Deloitte & Touche was commissioned by the state to look into the issue. This process ultimately led to the creation of the State-owned Enterprises

Governance Council (SOEGC), through the coming into force of the State-owned Enterprises Governance Act of 2006.

The Deloitte & Touche report<sup>10</sup> submitted to Cabinet in October 2001 recommended sweeping changes to governance structures at SOEs and called for the establishment of a Central Governance Agency (which actually briefly saw life from 2003 to 2006) situated in the Ministry of Finance and overseen by a State-owned Enterprises Governance Council (SOEGC).

However, despite appointments having been made and monies budgeted and spent, the CGA was completely done away with when the State-owned Enterprises Governance Act of 2006 was passed and signed into force.

This Act establishes the State-owned Enterprises Governance Council as a statutorily constituted Cabinet committee, of which the Prime Minister is the chairperson and the Ministers of Finance and Trade and Industry along with the Attorney General and Director General of the National Planning Commission are members.

According to the Act, the SOEGC's purpose is to come up with a whole host of measures and mechanisms aimed at improving the performance of SOEs and the conduct of senior sectoral managers (See Functions of the Council). The SOEGC was thus broadly welcomed and seen as the state's recognition of and response to the common weakness of the sector, namely near non-existent internal and external oversight mechanisms.

However, despite this widespread endorsement, the SOEGC has failed to assert itself on the SOE sector and has largely become mired in almost stalled disputes over remuneration of SOE heads<sup>11</sup> and boards. The situation as it stands can be succinctly summarised as follows: "Experience to date suggests the SOEGC has made little impact on how SOEs are managed."<sup>12</sup>

In light of all the aforementioned, when considering the widespread management failings in the SOE sector, it would appear that the sector is often afflicted by administrative corruption, which interferes with and undermines the ability of a or any government agency or institution to properly recruit and manage its human resources, make adequate and efficient use of its resources and conduct its business and affairs according to broadly accepted standards of corporate governance.

This would be in line with the understanding of corruption, as stated earlier and as defined by Transparency International (TI). And as already posited, a debatable combination of factors play a determining role in inducing corrupt practices in the Namibian SOE sector, all of which can probably be ascribed to the prevailing political culture in the country. This political culture militates against openness and accountability, broad consultation and constructive criticism, and power and decision-making decentralisa-

<sup>9</sup> Established in accordance with the State-owned Enterprises Governance Act 2006 (Act No.2 of 2006)

<sup>10</sup> 'Report on a Governance Policy Framework for State-owned Enterprises in Namibia' submitted to Cabinet, 25 October 2001.

<sup>11</sup> For more on this see Appendix 2 – Transcript of interview with Prime Minister Nahas Angula, Chair of the SOEGC

<sup>12</sup> Robin Sherbourne, 2010 – Guide to the Namibian Economy 2010, pg. 333

tion, all of which could considerably enable an environment of responsible and good governance within the SOE sector.

## Conclusions and recommendations

The relationship between corruption and corporate governance takes many forms and defining and drawing the dividing line between good and bad governance could be a tricky issue.

On the whole, when it comes to corruption and mismanagement in the SOE sector, and as has been implied and illustrated throughout, the state or government has been decidedly slow in responding to the governance shortcomings and challenges experienced by parastatals, and arguably much of this slowness can be attributed to a legislative and regulatory environment which remains inadequately circumscribed. In a sense this status quo, it could be argued, suggests that the state is an active participant in the undermining – through not urgently and comprehensively tackling – governance at public entities with a mandated and significant public service delivery task, and by extension an

### Functions of the Council<sup>13</sup>

#### 4. (1) Subject to this Act, the functions of the Council are -

- (a) to establish generally accepted common principles of corporate governance and good practice governing State-owned enterprises;
- (b) to develop common policy frameworks for the operations of State-owned enterprises, including policy on issues relating to human resources, assets and finance;
- (c) to determine criteria for the performance measurement and evaluation of State-owned enterprises, and develop appropriate means for monitoring their performance;
- (d) to lay down directives in relation to -
  - (i) governance agreements to be entered into by a portfolio Minister with the board of a State-owned enterprise;
  - (ii) performance agreements to be entered into between a portfolio minister and the individual members of a board of a State-owned enterprise, and between such a board and its chief executive officer and other senior management staff;
  - (iii) the remuneration levels of board members, chief executive officers and other senior management staff of State-owned enterprises; and
  - (iv) benefits for employees of State-owned enterprises generally;
- (e) to make determinations in relation to the number of members to be appointed to the boards of State-owned enterprises and advise the portfolio Ministers on the appointment of such members in accordance with sections 14 and 15;
- (f) to furnish a portfolio Minister with any comments it may wish to make in relation to an annual budget of a State-owned enterprise submitted to that Minister for approval and provided to the Council for its information and comment;
- (g) to facilitate the provision of programmes for the training and development of members of the boards and management staff of State-owned enterprises on corporate governance and efficient management practices;
- (h) to receive and consider for approval submissions made by State-owned enterprises on the annual distribution of profits and the declaration of dividends in terms of section 25;
- (i) to submit to Cabinet for decision any proposed restructuring plan prepared and approved by the Council under Part VI in relation to any State-owned enterprise identified by Cabinet for restructuring; and to perform any other function entrusted to the Council by or under this Act or any other law.

#### (2) The Council may-

- (a) classify State-owned enterprises into the following categories for the purposes of this Act, namely -
  - (i) regulatory enterprises;
  - (ii) service rendering enterprises;
  - (iii) economic and productive enterprises;
  - (iv) general enterprises; and
- (b) in performing its functions under subsection (1), differentiate between the different categories of State-owned enterprises.

<sup>13</sup> In State-owned Enterprises Governance Act 2006 (Act No.2 of 2006)

accomplice in corrupt activities and practices and mismanagement, which in some cases have seeped to the foundations of the Namibian SOE firmament.

In this regard, considering the grave concerns around the performance and health of the SOE sector in general and individual parastatals, the following broad recommendations are made:

**For government, in the form of the Office of the Prime Minister:**

- Implement fully long-discussed management performance and control systems in order to prevent irregular conduct and mismanagement and to foster a culture of decision-making and financial accountability;
- Enhance internal transparency through the development and implementation of comprehensive codes of conduct and proactive disclosure of interest and asset procedures for all employee levels within SOEs;
- Create and implement sector-specific employee awareness campaigns highlighting the dangers of corruption;
- Publicly release reports of presidential commissions of inquiry into the affairs and conduct of certain SOEs over the last decade or so;
- Improve law enforcement investigative capabilities and judicial processes in order to expedite and prosecute within a reasonable timeframe cases involving corruption, whether within the SOE sector or others;
- Commit to transparent governance by ensuring SOE financial statements and annual reports are published timeously and in a form accessible to the public;
- In the same vein, conduct regular and comprehensive data and information gathering on the impact, performance and conduct of SOEs and accessibly store, publish and disseminate such data and information.

**For the State-owned Enterprises Governance Council (SOEGC):**

- In collaboration with the Anti-Corruption Commission (ACC), look at ways to counter and minimise corrupt practices within the SOE sector;
- Develop and implement comprehensive codes of ethical conduct within SOEs;
- Research/investigate the occurrence of corruption within the SOE sector in order to gain greater understanding of the causes and effects of graft on the sector;
- Finalise long-standing issues around pay and remuneration of senior managers within the SOE sector;
- Create a database of information dealing with issues affecting the sector and relevant documents and reports about SOEs;
- Lead the line against corruption by proactively and consistently engaging with SOEs on the issue of graft.

**For SOE managers:**

- Commit to fostering a culture of responsible and accountable management internal and external transparency in decision-making and financial conduct;
- Be exemplary in conduct in order to set the tone in ethical behaviour, both internally and externally of the organisation;
- Introduce employee codes of conduct and interest and asset audits and voluntarily and proactively submit to the latter on a regular basis so as to give effect to internal anti-corruption measures.

**For civil society:**

- Demand greater accountability within the SOE sector through requesting access to information concerning SOEs' performance;
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## APPENDIX 1

### Transcript of interview conducted with Prime Minister Nahas Angula, Chairperson of the State-owned Enterprises Governance Council (SOEGC), on Monday, 17 October 2011.

**IPPR: What progress would you say the SOEGC has made over the years since coming into operation?**

PM: Well, I must say some progress has been done, but not to our satisfaction, really. For example now we have an Act, which regulates the state-owned enterprises, and which also has created this body called the State-owned Enterprises Governance Council and the council is basically an oversight body and it's not really a governance body per say, because each state-owned enterprise has a board and that board is normally supervised by a minister, the so-called portfolio minister. So, the State-owned Enterprises Governance Council is supposed only to give umbrella oversight.

**IPPR: To give guidance?**

PM: Yes, guidance. For example, when it comes to appointing of board members, chief executive officers, determining their salaries, the dividend policy, investment policies. Just to give guidance to them, but for each and every state-owned enterprise a board or council is responsible for the actual governance of the state-owned enterprise, in terms of supervising the management, and you know and so on. We are trying to give that umbrella oversight but we got stuck when it came now to the remuneration policy. You recall that some time ago, last year, we gazetted a remuneration policy, which is supposed to guide the setting of salaries and other benefits for the state-owned enterprises. We developed a three-tier kind of arrangement, whereby depending upon the size of the enterprise, the condition of the services, they are supposed to adhere to this. Now this has become the subject matter, whereby the managers, chief executive officers and their boards, every time are making presentations for their particular institution to be upgraded. So we are stuck now in that matter.

**IPPR: Deliberations are still on-going then?**

PM: Deliberations are still on. You know, we are not really focusing on the substance of what the state-owned enterprises are supposed to be doing in terms of their contribution to the growing of GDP, creation of employment or their investment policies. We are not doing that. Now we are just stuck with the remuneration packages unfortunately. That is when I say we have made some progress, but not sufficient, not enough.

**IPPR: When coming back to the issue of what the council exactly can do, in the Act it says that, the Council has the mandate to develop common policy frameworks for governing the whole sector. In terms of good governance, specifi-**

**cally anti-corruption measures, what can the Council do in terms of that, aside from trying to performance manage senior management? What else is there that the Council can do?**

PM: Well, you know very well that corruption is a form of criminal activity. When people commit crimes they try to make sure that they don't leave traces or their footprints. It is very difficult trying to fight [corruption] when you are just providing an oversight function. The best way to fight corruption is actually to encourage people within a particular system or state-owned enterprise to open up. But if you are just there, up there providing a framework it is very difficult for you to see whether this tender was proper, whether appointments of people there were proper, whether you know what the management is doing is proper. That is supposed to be done by the board actually.

**IPPR: Yes, but still I mean if you have, for instance, a comprehensive code of conduct in place, everybody would be clear about what they are supposed to be doing and not doing. And, I mean, shouldn't something like that then be part of performance measurement, of the regulatory framework?**

PM: That's fine, that's fine. Crimes are committed not because there are no laws in the country.

**IPPR: But there is a component missing?**

PM: The only point you can make is that if a corruption case is reported to the Council, what will you do? It is clear if a corruption case is reported to the Council. The council will call in the Anti-Corruption Commission to investigate, but you don't expect a council to really go beyond looking at things like the audit reports of a particular enterprise. Really, to be inside there to say we are going to supervise how you are going to do your tendering or your employment policies. That is supposed to be done by the board and perhaps the portfolio minister. If they have difficulties then they can call in the Council in that regard, but really the Council is a bit distant from the operation of particular enterprises. That is basically the point I am making, but if an event of suspected corruption is reported, of course Council will take action.

**IPPR: That's reactive. Why not be proactive?**

PM: You mean we should go around smelling, smelling?

**IPPR: No, no, what I mean is if you have your structures in place and you then...**

PM: The code of conducts we are preparing, we are working on those and will gazette them. But I am saying that, when somebody commits a crime, despite the laws, people will still do it.

**IPPR: Exactly, but as far as possible we should be trying to close the avenues, shouldn't we?**

PM: You don't expect the Council to be the police man.

**IPPR: That is the function of the board?**

PM: Yes, that is the function of the board.

**IPPR: So, you say you are busy gazetting the codes of conduct?**

PM: Yes

**IPPR: Is there a time frame that you are looking at?**

PM: Well, we are trying to synchronise with the King Report. We are trying to domesticate King III and we had actual assistance to source expertise for us to domesticate it and once we domesticate it we will gazette it. That will be now the government's framework for the state-owned enterprises. The domestication is just to make sure that those aspects which are not applying to Namibia will not be there, but we have to gazette it to have that quasi-legal standing.

**IPPR: So, still in terms of time frame ...?**

PM: Well, I can't give the exact time frame. It was supposed to have happened yesterday. It's not happening today, maybe tomorrow. Because as I said, we are stuck now with this thing of salary and conditions of service. Every time we meet, people are just arguing to upgrade our state-owned enterprises. We are diverted from the real thing.

**IPPR: In terms of that salary, remuneration issue, have you decided by when you should have resolved this issue?**

PM: No, we have a framework which is gazetted. Now that is where people now, different state-owned enterprises, are trying to seek to be exempted from that, to upgrade. Right now we have about 50 state-owned enterprises and we first of all have to make them part of the schedule to the State-owned Enterprises Governance Council, but we have also to put them in tiers in terms of their levels, so that we can determine the level of remuneration of people working there.

**IPPR: Why I am hammering on this issue of the time frame is because if we consider, in terms of TIPEEG, the SOE sector is identified as the principle jobs driver. The question then becomes shouldn't we be urgently sorting out what ever issues we have with SOEs so that TIPEEG doesn't become mired in suspicions of corruption?**

PM: I understand what you are saying, but you should know that the State-owned Enterprises Governance Council is made up of

ministers who are responsible for their own portfolios. This is just a side event for them. You don't expect them to pay 100% attention to this.

**IPPR: But is that not part of the problem then?**

PM: It is part of the problem. Unless you create a ministry like in South Africa, responsible for state-owned enterprises. If you do that, then fine. Then you have a minister just targeting that, but if you take other people when they have other portfolios, just to organise a meeting and get these people under one roof, and have a quorum, it is not a joke, you know. I mean if you have sessions of parliament being suspended because there is no quorum, so what about a session of the State-owned Enterprises Governance Council, which is just one of those things?

**IPPR: Then what does that say about the whole issue of political will?**

PM: I am not going to say that there is no political will or overloading people with too many things. Of course, if you would create a ministry responsible for state-owned enterprises, people would say that you are bloating the public service, but either way you will still get criticism. If you don't have that then people have to volunteer their time. Then decisions take so long to be made.

**IPPR: Okay, then would you say there is political will?**

PM: Yes, the political will is there. In fact, one of the issues we have to deal with – corruption is important, I am not saying it is not important – is actually to synchronise the investment policies of the state-owned enterprises, so that if NamPower said we are going to invest in the generation of power through hydro something, then government should also invest accordingly to make sure that that hydro power, when it is generated, it will grow the economy. Right now there is no interface between what these state enterprises are doing and what the government is doing.

**IPPR: The enterprises are doing their own thing?**

PM: The enterprises are doing their own thing and for that you are not drawing synergies and making an impact. That's one of the challenges we are trying to address, but as I said we are caught up now in this thing of salaries and other things.

**IPPR: With regard to tendering in the SOE sector, we recently had the situation where there were question marks around how Namport pushed through one company for the port expansion tender that they put out. I'm not saying it's corruption, but question marks have been raised. What role would you say the SOEs Governance Council should play in terms of the tender process within the SOE sector?**

PM: Ideally, the minister concerned, if there is a public outcry, is supposed to brief the Council and allay Council's fears and in so doing create common understanding. But it has not happened. Neither did the minister brief the Cabinet as to what is happen-

ing. So you realise that very much is up to the discretion of the minister to do so. There is no law that says the minister responsible, when there are some questions about tenders, should report through Council. There are many others, for example you have NamPower now and people are trying to get a tender for the construction of the power station. I'm quite sure if somebody loses there will be those kind of reports. Similarly, NamWater for desalination, there are many companies who want to enter into that. If one company loses of course they are going to make noise about it. There is some mechanism of actually making sure that the portfolio minister meets the Council, briefs the Council they is so many mechanism.

**IPPR: Okay, but do you think that the new tender board bill, which would sort of centralise or standardise the tender process, is something that would be helpful to SOEs?**

PM: I suppose every state-owned enterprise has their own tender regulations, perhaps following good practices internationally, so if they want to align themselves to the public tender board I'm not so sure that it will work because the public tender board is very cumbersome. It takes ages to make decisions. Sometimes the requirements are such that you have to go through this long process so that you meet the tender requirements. I'm not quite sure whether the institution which is acting as a company would want to go that route, otherwise they will not make business. They need to make decisions quick. Some of them have gone a bit further by allowing themselves to be like NamPower, to be looked into by these agencies which do the ratings. That is one way of making sure that they comply with certain requirements. To be rated is not a joke. They ask probing questions, and if they discover that there are some unclear things you will get a bad rating or grade. That is the route we should encourage them to go, to be rated by ratings agencies. If you are just required to report, how do you get rated.

**IPPR: Is there something else you would want to say about SOE governance, going forward in terms of the Council itself?**

PM: I said I believe that state-owned enterprises are actually the government arm to kick start the economy if you like. If they make proper investments they can actually make a difference in terms of growing the economy, in terms of providing services and all that, but there must be some synchronisation in terms of policy of investment and so on so that there is interface between the government investment programmes through the national development plan. If you look at south-east Asia, south-east Asia used the state-owned enterprises to grow their economies. That's why you see that even the Chinese companies you see here, many of them belong to the government, you know, so the SOEs could actually make a difference alongside the private sector. I'm not saying that they should replace the private sector, I'm

only saying that if they make proper investments they can make a difference to the economic growth.

**IPPR: According to the example you mentioned of Chinese companies, shouldn't the Council be playing a role in, if SOEs from other countries are doing business here, shouldn't there be some sort of governance element related to them as well that they adhere to, because these are not private companies?**

PM: Well, these people come here through the investment centre or something like that, so there must be some rules as to how they should operate. I can give you an example, for example when the Millennium Challenge Account came here it made a conscious decision that if you are the state-owned enterprise of a foreign government, which is not Namibian, you don't qualify to tender for the projects of the MCA, because in their view you distort the tendering process because you are subsidised by your own government. It's not a fair play. Perhaps regulations along those lines can be made that if you are a state-owned enterprise from another country, for government tender there must be some qualifications so that you don't crowd out the local private company. The Council is only responsible for state-owned enterprises of Namibia. Not for other countries.

**IPPR: Anything else?**

PM: Yes, but as I said corruption really is a very difficult crime to fight. It is normally done in the dark or something like that. What we should be doing is drawing people out.

**IPPR: Yes, but there is nothing at the moment encouraging people to step forward?**

PM: Yes, it's true. That's what we have to look at, how to protect the whistleblower.

**IPPR: I understand the ACC is working on something like that.**

PM: I hope they come up with something.

**IPPR: Could there be jurisdictional issues?**

PM: No, no, no, there is nothing like that. The Anti-Corruption Commission is looking at everybody whether you are a minister, whether you are the head of a state enterprise or even the private sector. If you are corrupting people, they will get you.

**IPPR: Something that we are always asking in terms of the work that we are doing, is this thing of government knows things need to be addressed, but when. That is why I keep hammering on like this on the issue of time frames, because when do we want to address these things? Are we waiting for the next government?**

PM: This is what I am saying, as long as you have a government framework which is based on checks and balances and separa-

tion of powers and all that kind of thing, if you have a dictatorship things will happen immediately, but if you have a democracy you don't do that. You have to allow the due process of law to take its course, but unfortunately it's a tradeoff.

**IPPR: But, for instance, the issues we discussed with relation to the SOEGC, will these things be sorted out before the next election?**

PM: As I said, I wanted to sort it out yesterday. It's a question of capacity. There are those processes we have to follow. If you have to source expertise from outside government you have to go for tender so you have to do tender document preparation, you have to advertise you have to ask for bids, you have to do all sorts of things which are required, you know. As I said if you are a dictator you just decide that this must happen now, full stop. That's why we have these procedures. You must be patient.

**IPPR: I think that's basically it. Thank you very much.**

## APPENDIX 2

### List of SOEs in Namibia:

Enterprise	Establishing Act	Classification
Namibia Water Corporation	Namibian Water Corporation Act 1997	Commercial
Namibia Post and Telecom Holdings	Post and Telecommunications Companies Establishment Act 1992	Commercial
Namibian Ports Authority	Namibian Ports Authority Act 1994	Commercial
Namibia Wildlife Resorts	Namibia Wildlife Resorts Company Act 1998	Commercial
Namibia Airports Company	Airports Company Act 1998	Commercial
TransNamib Holdings	National Transport Services Holding Company Act 1998	Commercial
Roads Contractor Company	Roads Contractor Company Act 1999	Commercial
Namibia Power Corporation		Commercial
Air Namibia		Commercial
August 26 Holdings Company		Commercial
Windhoek Maschinen Fabrik (1998)		Commercial
Namibia Bricks Enterprises		Commercial
Star Protection Services		Commercial
National Fishing Corporation of Namibia	National Fishing Corporation Act 1991	Commercial
Regional Electricity Distributors*	Electricity Act 2000	Commercial
Offshore Development Company*	Export Processing Zone Act 1995	Commercial
Windhoek Country Club and Casino*		Commercial
Meat Corporation of Namibia	Meat Corporation of Namibia Act 2001	Commercial
Namibia Press Agency	Namibia Press Agency Act 1992	Media
Namibian Broadcasting Corporation	Namibian Broadcasting Act 1991	Media
New Era Publication Corporation	New Era Publication Corporation Act 1992	Media
NAMZIM*		Media
Namibia National Reinsurance Corporation	Namibia National Reinsurance Corporation Act 1998	Financial
National Housing Enterprise	National Housing Enterprise Act 1993	Financial
Minerals Development Fund of Namibia	Minerals Development Fund Act 1996	Financial
National Special Risks Association	Second Finance Act 1987	Financial
Agricultural Bank of Namibia	Agricultural Bank of Namibia Act 2003	Financial

Development Bank of Namibia	Development Bank of Namibia Act 2002	Financial
Bank of Namibia*	Bank of Namibia Act 1997	Financial
Security Enterprises and Security Officers Regulation Board	Security Enterprises and Security Officers Act 1998	Regulatory
Diamond Board of Namibia	Diamond Act 1999	Regulatory
Meat Board of Namibia	Meat Industry Act 1981	Regulatory
Karakul Board of South West Africa	Karakul Pelts and Wool Act 1982	Regulatory

\* not included in Schedule 1 of the Act

Adapted from the 'Guide to the Namibian Economy 2010' by Robin Sherbourne

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## 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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## About the IPPR

The Anti-Corruption Research Programme is a project of the Institute for Public Policy Research (IPPR). The IPPR can be contacted at PO Box 6566, Windhoek, Namibia. Tel: +264 61 240514, Fax: +264 61 240516, [info@ippr.org.na](mailto:info@ippr.org.na). The publication is also available as a PDF download from <http://www.ippr.org.na>. The IPPR's mission is to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia. The IPPR was established in the belief that development is best promoted through free and critical debate informed by quality research. The IPPR is a not-for-profit organization governed by a board of directors: Monica Koep (Chairperson), Daniel Motinga, Bill Lindeke, André du Pisani, Robin Sherbourne and Graham Hopwood.