



## ASSET DISCLOSURE IN NAMIBIA: THE NEED FOR REFORM AND ENFORCEMENT

By Ellison Tjirera

### Key aspects of this paper

Namibia's approach to the disclosure of assets and interests on the part of officials wielding considerable power across the various branches of the State could be described as *laissez faire*. The main characteristic of the current system is a blatant non-adherence to requirements for regular disclosure (where such a requirement exists), lack of measures to deal with non-adherence, and the absence of disclosure requirements in some sectors. In addition, there is a lack of overall management and oversight of disclosure processes.

Across the three branches of the state, it is only in the legislature where asset and interest disclosure forms are required to be filed. The executive and the judiciary are not required by any law to file disclosure forms. Similarly, no disclosure requirement or assets register exists for senior public servants. In light of this worrisome state of affairs, the following recommendations are made:

- Amend the Powers, Privileges and Immunities of Parliament Act, Act No. 17 of 1996 – with the view to spelling out the intervals at which parliamentary disclosures must take place. Importantly, sanctions for non-compliance must be clearly stipulated in the Act. In tandem with such reform, the Code of Conduct for Members of Parliament should be fully adopted and made legally binding in order to further emphasise the intervals at which MPs must declare their interests as well as penalties for contravening the Code.
- Establish a new body to deal with the interests of MPs while removing such a responsibility from the Committee of Privileges. This new body could be constituted along the lines of

the Registrar<sup>1</sup> of Members' Interests in South Africa. Members constituting the new body should not be drawn from parliament. The failure of the Committee of Privileges in the National Assembly could be attributed to the fact that the members in charge of this committee are themselves not up to scratch with their declarations. Hence they would not have strong grounds for asking other MPs to submit their declaration forms. The new body would check the veracity of declarations.

- Amend the Public Service Act, Act 13 of 1996 – to make it compulsory for management cadre to declare their assets and interests annually. A commission could be created in the Office of the Prime Minister to administer the register of interests for senior public servants.
- Introduce an assets and interests register for Supreme and High Court judges with the view to guarding against potential conflicts of interest in the adjudication process.
- The public portions of registers of interests and assets should be accessible to the public, e.g. by being put online and in libraries that are accessible to the public.

### Background

Perhaps the most neglected strand as far as the 'crusade' against corruption in Namibia is concerned is the scant attention given to the role of asset and interest disclosures in the overarching architecture for fighting corruption. This state of affairs seems to permeate all organs of the State including the public service.

<sup>1</sup> In Namibia, the Registrar of Members' Interests is provided for in the Code of Conduct for Members of Parliament, thus making the adoption of the Code even more necessary. Rule 8(1) of the Code states that the Secretary of the National Assembly will be the Registrar of Members' Interests.

Asset and interest disclosures are essential in enhancing transparency and in dealing with potential Conflicts of Interest (COI). At the senior management level of the public service, a register of assets and interests is absent<sup>2</sup>. The existing Register of Members' Interests, the National Assembly's assets register, has only ever appeared twice (in 2003 and 2009) with some MPs inexplicably missing from the 2009 edition.

## Basis for disclosure

According to a joint publication of the World Bank and the United Nations Office on Drugs and Crime (UNODC):

“The requirement that public officials declare their income and assets is intended to help deter the use of public office for private gain, whether financial or through other benefit to self, family, or associates. Income and asset disclosure (IAD) systems can help reduce the incidence of conflicts of interest in the exercise of official duties and assist in the detection and prosecution of illicit enrichment by public officials. Effective IAD systems, thus, can be an important element of broader anticorruption regimes and can contribute to building a climate of integrity in public service, as defined as follows by the United Nations Convention against Corruption (UNCAC)<sup>3</sup>:

“As a general principle, public bodies . . . need to create a climate where the public service provision is transparent and impartial, where it is known that the offering and acceptance of gifts and hospitality is not encouraged and where personal or other interests should not appear to influence official actions and decisions<sup>4</sup>.”

It is in this light that disclosure of interests is an essential element in building and enhancing trust in public bodies. According to the OECD<sup>5</sup>, as one of the tools in the fight against corruption, asset declarations cannot deliver alone – especially in emerging democracies where corruption can be widespread and law enforcement weak. Nonetheless, a well designed and operational system of asset declarations can go a long way in strengthening the overall anti-corruption and integrity system of a country<sup>6</sup>. Before individual countries embark upon making use of asset declarations in their overarching anti-corruption strategy, the

main purpose(s) should be identified. The OECD suggests that the main aims of asset declarations may include the following:

- “to increase transparency and the trust of citizens in public administration, by disclosing information about assets of politicians and civil servants that shows they have nothing to hide;
- to help heads of public institutions prevent conflicts of interest among their employees and to resolve such situations when they arise, in order to promote integrity within their institutions;
- to monitor wealth variations of individual politicians and civil servants in order to dissuade them from misconduct and protect them from false accusations, and to help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence<sup>7</sup>.”

### Box 1. The advantages of income and asset disclosure

“More and more governments are requiring senior officials to disclose their income and assets. The traditional reason for requiring elected and appointed officials to disclose their income and assets is to curb corruption. For example, a significant and unexplained increase in an employee’s wealth may be a sign of bribe taking or other illicit conduct. More broadly, when officials’ finances are open to public inspection, rumours about their corrupt dealings are quickly put to rest. Indeed, income and asset disclosure’s most important function may well be to bolster citizen confidence in those who govern them.

A real advantage to building an anti-corruption enforcement strategy around income and asset disclosure is that it lessens the threat to civil liberties and abuse of enforcement tools that can result from an aggressive campaign to root out bribery. Bribery is a difficult crime to prove, and police and prosecutors often must turn to wiretapping, eavesdropping, undercover operations, and other techniques that can be abused. The filing of a false declaration provides a much easier case to make”.

Source: World Bank (2006)

## What is happening?

For an evidence based assessment of the state of affairs with regard to Conflict of Interest (COI) vis-à-vis Interests and Assets Declaration – it is imperative to identify current practices across various sectors. The World Bank & UNODC observe that “a

2 In May 2011, it was reported in *The Namibian* that a draft law forcing officials who hold public office to declare their interests, as well as those of their relatives, will be presented to the Minister of Justice Pendukeni Iivula-Ithana in 18 months’ time (10 months have passed so far). The article quoted Tousy Namiseb, chief of law reform at the Law Reform and Development Commission (LRDC). See [http://www.namibian.com.na/index.php?id=28&tx\\_ttnews%5Btt\\_news%5D=82243&no\\_cache=1](http://www.namibian.com.na/index.php?id=28&tx_ttnews%5Btt_news%5D=82243&no_cache=1)

3 World Bank & UNODC (2012), p. 7).

4 UNODC and UNICRI (2009), p. 25, as cited in World Bank & UNODC (2012).

5 OECD, (2011).

6 Ibid.

7 Ibid., p. 12.

conflict of interest exists when a public official is in a position to exploit his or her official capacity for personal benefit, or for the benefit of other private parties, but has not necessarily done so”<sup>8</sup>. Therefore, “the identification of a potential conflict of interest is not an indicator of improper conduct, but rather a warning of its possibility”<sup>9</sup>. Even though the World Bank & UNODC’s submission captures the gist of what COI entails, it appears narrow as it presupposes that COI is limited to public office. A broader definition exists. The Anti-Corruption Plain Language Guide refers to COI as “a situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests”<sup>10</sup>.

## The Executive

The Presidency is among the branches of the state not compelled in one way or another to disclose assets and interests, with the judiciary<sup>11</sup> being another. As it is, there is no way of knowing what the President owns. Having a legal requirement in place compelling the president to file an interest and asset disclosure form will set an example for other branches of the state. Relatedly, one of the benefits of asset and wealth disclosure is that it demonstrates the leadership’s commitment to fight corruption and helps the public to hold the government accountable<sup>12</sup>.

In neighbouring South Africa, the Executive Members Ethics Act, Act No. 82 of 1998 governs integrity issues of which declaration of assets and interests by MPs is but one. Cabinet members and deputy ministers submit their disclosure forms to the Registrar of Members’ Interests in the Office of the Presidency on an annual basis.

Further afield, when George W. Bush was the President of the United States, it was public knowledge that he owned a ranch in Texas<sup>13</sup>. It was also an open secret that he owned a basketball team, Texas Rangers. In terms of US Ethics in Government Act of 1978 as amended, the President is among members of the Executive branch who are required to file public reports of their finances as well as other interests outside the government with

the Director of Office of Ethics in Government. The US Office of Government Ethics is the statutory body established to provide “overall direction, oversight, and accountability of Executive Branch policies designed to prevent and resolve conflicts of interest”<sup>14</sup>.

## Namibian Parliament

In early 2011, the IPPR raised the issue of the Register of Members’ Interests in the National Assembly<sup>15</sup>. The situation remains worrisome. Since Namibia’s independence in 1990, the NA has managed to produce its Register of Members’ Interests only twice. After the first disclosure in 2003, six years elapsed before another assets and interests disclosure was produced. The 2009 Register is particularly thin on detail with some notable MPs from both sides of the House missing – after they apparently failed to submit their declaration forms. There are MPs who provide detailed information about their interests and assets, which is commendable. However, it is disconcerting that 13 MPs did not submit disclosure forms – such was the case with the 2009 Register of Members’ Interests. Moreover, there have been instances in the past that were potential conflicts of interest but were seemingly ignored. It is common cause that the publication of MPs’ interests in advance will go a long way in avoiding potential conflict of interests. This is what Chêne calls the ‘preventive function’ of asset and wealth disclosure, i.e. anticipating potential conflicts of interest before misconduct occurs<sup>16</sup>. The latter becomes particularly important during parliamentary deliberations, for some MPs could contribute to debates in which they have vested interests – this carries the danger of clouded judgement.

A major problem hindering the effective use of assets and interests disclosure in both houses of parliament seems to lie with the inadequacy of the law concerned, i.e. the Powers, Privileges and Immunities of Parliament Act, No 17 of 1996. The Act falls short of spelling out the frequency at which MPs should declare their interests even though it empowers the Committee of Privileges to issue directives providing for the form and frequency of disclosures<sup>17</sup>. Therefore, it could be argued that MPs have not contravened any law by not regularly declaring their assets and interests. Despite this state of affairs, there exists a Code of Conduct for Members of Parliament which deals with conflict of interest risks. Alas, the Code is not yet adopted by the National Assembly and as such it is routinely ignored. Rule 9(3) of the

8 World Bank & UNODC (2012, p. 12). Public office, private interests.

9 Op. cit.

10 Transparency International (TI). (2009, p. 11)

11 Determining up to which level in the judiciary one should go in terms of disclosure is a different kettle of fish. However, Supreme and High Court judges are an important constituency. Henderson et al. (2003, p. 11) raise some important questions in a checklist dealing with key transparency issues and indicators to promote judicial independence and accountability: are there rules requiring judges to disclose their assets? Are disclosure obligations made by Constitution, law, or judiciary decision?

12 Chêne (2008).

13 [http://pfds.opensecrets.org/N00008072\\_2007.pdf](http://pfds.opensecrets.org/N00008072_2007.pdf)

14 <http://www.oge.gov/About/Mission-and-Responsibilities/Mission---Responsibilities/>

15 IPPR (2011a).

16 Chêne (2008).

17 See Section 12 of the Act.

Code posits that “(...) the first disclosure must be made within 30 days of the opening of a new Parliament”. On the interval at which disclosures must take place, Rule 9(4) states that “after the first disclosure, members must annually disclose particulars of their registrable interests on or before 30 April each year, unless the Committee decides otherwise”. Penalties for contravening the Code are spelled out under Rule 17. Provisions in the Code suggest that it is a better tool to fight conflict of interest than the principal Act, Act No. 17 of 1996. Section 22 of the Act which deals with disclosure of interest bears witness to its inadequacy even though the problem lies with enforcement in the main:

### **Disclosure of interest<sup>18</sup>**

22. (1) *A member shall not in Parliament take part in any proceedings in which such member has any interest, whether direct or indirect, which precludes him or her from performing his or her functions as a member in a fair; unbiased and proper manner.*

(2) *If at any stage during the proceedings in Parliament it appears that a member has or may have an interest which may cause a conflict of interests to arise on his or her part, that member shall forthwith fully disclose the nature of his or her interest.*

(3) *A disclosure contemplated in subsection (2) shall be recorded in the journals of the House or the minutes of the committee concerned, as the case may be.*

(4) *Subsection (1) shall not apply to any deliberations or vote on any matter concerning the remuneration or allowances or other benefits to be received by members in their capacity as members.*

(5) *In the event that a member fails to comply with subsection (2), the House may, after investigation and recommendation by the Committee of Privileges in terms of section 12, take such disciplinary action against such member as it may deem appropriate in accordance with its Standing Rules and Orders.*

Potential transgression: It is on record<sup>19</sup> that DTA MP Philemon Moongo moved a motion to amend the Liquor Act (No. 6 of 2008) ‘so that small disadvantaged business people can easily obtain licences’. Moongo is a businessman with interests in the liquor retail sector. A question comes to mind: was the motion moved with the sole intention of addressing the plight of disadvantaged business people in the liquor industry? Or, was it personally motivated? The fact of the matter is that he was not asked to recuse himself and neither did he take it upon himself that the situation warranted a recusal. In view of this, it rings true that “in a number of countries, public officials (and politicians)

regularly, and in some cases openly, flout conflict of interest laws. Not only are laws ignored, but little if any effort is made to enforce them”<sup>20</sup>.

Another problem apart from the inadequacy of the law, relates to the absence of a clear pronouncement that MPs cannot fail to file their declaration forms and get away with it. It has now become a rule rather than an exception that the National Assembly’s Register of Members’ Interests is published once in a blue moon. Once its published, some MPs do not submit their forms yet nothing is done as a corrective measure against this trend. However, it is encouraging to note that the National Council did reprimand its MPs for failing to disclose financial and business interests back in 2006. The National Council’s Committee of Privileges reportedly summoned six of its MPs to explain why they had not submitted their declaration forms<sup>21</sup>. “While no further action was taken, at least the MPs concerned were named and shamed in public”<sup>22</sup>. But perhaps the naming and shaming alone is not enough. To this end, the Croatian law on preventing conflict of interest is worth looking at:

“(1) Within 30 days from the day they begin to exercise their office, officials shall provide a report with data on their property, permanent or expected income, and the property of their spouse and children, with the balance as of that day, and shall provide a report upon the end of exercise of their office, and upon the expiration of the year in which in the course of the exercise of the office a major change occurred.

(2) Officials shall in the report from paragraph 1 of this Article submit the data on monetary savings if it exceeds the net one year amount of an official’s income.

(3) An official shall not receive his salary prior to the fulfilment of the obligations under paragraph 1 of this Article...”<sup>23</sup>.

The implementation of the Act on the Prevention of Conflict of Interest in the Exercise of Public Office is steered by the Commission for Conflict of Interest. This Commission is composed of eleven members who elect a president among them. “Six members of the Commission are from among the ranks of members of the Croatian Parliament, while the other five members are from among the ranks of distinguished public persons”<sup>24</sup>.

As Rossi et al<sup>25</sup> argue “each disclosure system has its own particular features. But the analysis of 137 jurisdictions currently requiring disclosure led to the identification of four main aspects

18 Act No. 17 of 1996: Section 22.

19 See Hansard, Vol. 91; 2006 (in particular, see proceedings of the National Assembly for June 13, 2006).

20 Organisation for Security and Co-operation in Europe (OSCE) (2003, p. 29)

21 See *Insight Namibia* (February 2009). Corruption Tracker.

22 Ibid.

23 As cited in OSCE (2003, p. 39)

24 Croatian Parliament. <http://www.sabor.hr/Default.aspx?sec=2724>

25 Rossi, Pop, Clementucci & Sawaqed (2012, p. 19).

of the disclosure process that can be found across the board and are meaningful for compliance (...) –

- *Legal requirement to disclose.* The laws generally specify which public officials are obligated to file disclosures, the frequency with which they must do so, the agencies involved in managing disclosures, the penalties for non-compliance, and the like
- *Implementation.* The bodies needed to manage disclosures are created, and they start enforcing disclosure requirements. This generally begins with the concerned public officials completing and submitting their disclosure forms to the corresponding agency or body
- *Management of disclosures.* An agency, body, or commission receives the forms and may check that they have been correctly completed, issue a certificate of compliance, publish compliance information, and, in some cases, grant public access to all or part of the content of the disclosures
- *Verification of the content of disclosures.* The same agency (or another one designated for this purpose) may verify the accuracy of the information in the disclosures<sup>26</sup>.

The existing disclosure of interests regime in Namibia seems to suggest that there are serious problems with the aforementioned main aspects of the disclosure process to ensure meaningful compliance. The lacklustre approach which defines the declaration of assets in the National Assembly indicates that the Committee of Privileges is largely a toothless entity. The National Council, it should be pointed out, has a quite different record and while its Register may contain weaknesses it is at least produced on time with MPs facing sanction if they fail to submit their forms.

Reed contends that “giving implementation responsibilities to a parliamentary committee raises the risk that proceedings relating to violations of ethical standards will become politicised or perceived as politically motivated”<sup>26</sup>. The establishment of permanent and professional senior staff in the legislature responsible for ethics issues is an advisable approach in implementing parliamentary integrity framework<sup>27</sup>. Countries following this approach include Canada (Conflict of Interest and Ethics Commissioner), Australia (Integrity Commissioner), UK (Parliamentary Commissioner for Standards), just to mention a few.

### Box 2. Publicly available?

In practice, it has been difficult to access the Registers kept by the National Assembly and National Council. They are kept in officials’ offices and special permission has to be sought to look at them, while one is also not allowed to photocopy extracts. There appears to be no good reason for this. The public portions of registers should be placed on the parliament website and in the parliamentary libraries.

26 Reed, Q. (2008, p. 21).

27 Ibid.

## Register of Members’ Interests in the Parliament

Of the two chambers constituting the Namibian Parliament, it is the National Council (also known as the House of Review) that compiles its Register of Members’ Interests with vigour and seriousness. Although it is not possible to check the completeness and veracity of what members of the National Council disclose, what is apparent is the consistent frequency of disclosures. Seemingly, the fact that the National Assembly is yet to adopt its Code of Conduct for Members partly explains its lackadaisical approach to disclosure of assets and interests.

Table 1. Register of Members’ Interests 2006 - 2011

National Assembly		National Council	
2011	Not published	2011	Published
2010	Not published	2010	Published
2009	Published (but incomplete)	2009	Published
2008	Not published	2008	Published
2007	Not published	2007	Published
2006	Not published	2006	Published

Since adopting its Code of Conduct on 10 October 2005, the National Council has regularly published the Register of its Members’ Interests. The main concern with the National Council Register is the frequent occurrence of the phrase ‘nothing to disclose’ indicating that many MPs have few assets, bank accounts, properties etc. Again, it is clear that for the Register to gain credibility there needs to be an oversight body able to check the accuracy of entries.

The Chairperson of the Committee on Privileges in the National Council, Asser Kapere, attributes the compliance in declaration of assets and interests by MPs in the National Council to the seriousness the Committee attaches to the Register of Members’ Interests (as stated in an interview with the IPPR on August 13 2012). Importantly, the Committee take action when transgressions or non-compliance occur. The reprimanding of three MPs who failed to declare their interests on time by the Committee back in 2006 seems to have yielded the desired results – for no late submission of declaration forms by MPs in the National Council have been recorded since.

The following questions and answers outline the responses from the National Assembly and National Council to a series of questions submitted by the IPPR in June and July 2012 con-

cerning the Registers of Members' Interests and the work of the Committees on Privileges. The National Assembly responses were sent by the Secretary of the National Assembly, Jakes Jacobs, while the National Council's came from Chairperson Asser Kapere.

1. In terms of Section 12(a) (i) & (ii) of the Powers, Privileges and Immunities of Parliament Act, Act No. 17 of 1996 – the Committee on Privileges is empowered (subject to approval of the House) to issue directives for financial or business disclosures and the frequency at which such disclosures take place. What directives in this regard has the Committee issued and what has been decided about the frequency of disclosures?

National Assembly	National Council
<i>"The directives are contained in the Declaration Form that the Members are required to complete on an annual basis".</i>	<i>"Article 74(3) of the Namibian Constitution provides that the National Council shall in its rules of procedure make provision for disclosure of financial or business affairs of its members. Such provision is made in Clause 9(4) of the National Council Code of Conduct which stipulates that "after the first disclosure, members must annually disclose particulars of their registrable interests on or before 30 April each year, unless the Committee decides otherwise".</i>

2. Have the directives and the decisions on frequency of disclosures set by the Committee been complied with?

National Assembly	National Council
<i>"Yes in the past it has been complied with. However, the National Assembly through the Committee on Privileges is in the process of revising the Declaration Form to streamline the information provided by the Members in order to expedite the process of declaration".</i>	<i>"Yes. National Council Members of Parliament submit disclosures of Interest annually on the dates determined by the Privileges Committee".</i>

3. What measures are in place to deal with non-compliance and have any MPs ever faced sanctions for not complying?

National Assembly	National Council
<i>"The code of conduct [author's note: not yet adopted] and the Standing Rules and Orders set out what actions may be taken in the event of non-compliance. No Member of Parliament has so far faced sanctions for non-compliance".</i>	<i>"Rule 119(2) of the Standing Rules and Orders of the National Council specifies that the Council shall have the power to impose penalties for non-compliance by Members of Parliament, the penalty can be a reprimand; payment of fine; forfeiture of allowances, as may be specified by the Council; a suspension for seven days, on repetition for fourteen days and on third repetition for twenty days".</i>

4. As for debates in the NA/NC, have there been instances where MPs recused themselves from proceedings because they had vested interests in items before the House? (If yes, are there any records to confirm this?)

National Assembly	National Council
<i>"No, there was no such instance".</i>	<i>"No recusals have been made thus far".</i>

5. Similarly, have there been instances where the Committee on Privileges advised MPs to recuse themselves because of any potential conflicts of interest? (If yes, any records to confirm this?)

National Assembly	National Council
<i>"No, the Committee on Privileges never had to request recusal".</i>	<i>No request for recusals by the Committee.</i>

6. Is the current Register of Members' Interests playing an effective role in preventing conflicts of interest occurring to the satisfaction of the Committee?

National Assembly	National Council
<i>"Yes currently effective. Parliament is however revising the entire rules, including the Standing Rules and Orders as part of that holistic exercise. It may be necessary for the House to also consider reviewing the declaration of members' interests to facilitate an efficient performance by Members and the House in the conduct of the business of Parliament".</i>	<i>"Yes, however, there is no actual method of measuring its effectiveness".</i>

7. Is any oversight exercised by parliament to check on the accuracy and completeness of information filed by MPs?

National Assembly	National Council
<i>"The questionnaire (declaration form) contains a declaration of accuracy of the contents and in the absence of any complaint in terms of Section 12 of the Powers, Privileges and Immunities of Parliament Act, Parliament does not do specific oversight on the information".</i>	<i>"No, the National Council Code of Conduct does not make it obligatory for the Committee to check the information provided by the Members of Parliament; however, any person may lay a complaint in writing to the Committee for alleged breach of the Code (...) whereon the Committee on Privileges will investigate such complaint".</i>

8. What challenges does the Committee on Privileges face as regards the compilation and publication of the Register of Members' Interests? What reforms would you like to see take place in terms of law, regulation and practice?

National Assembly	National Council
<i>"(...) the National Assembly through the Committee on Privileges is in the process of Prevising the Declaration form to streamline the information provided by the Members in order to expedite the process of declaration".</i>	<i>"Registers of Members' Interest are currently compiled and filed in a satisfactory practice".</i>

## Cases of concern involving NA MPs

Article 42 of the Namibian Constitution deals with outside employment of Cabinet members, and it stipulates that:

- (1) "During their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in activities inconsistent with their positions as Ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests.
- (2) No members of the Cabinet shall use their positions as such or use information entrusted to them confidentially as members of the Cabinet, directly or indirectly to enrich themselves".

Article 60 of the Constitution deals with the duties, privileges and immunities of National Assembly MPs, requiring that they maintain the dignity of the House in their activities outside and regard themselves as servants of the people.

## Box 3. Declaration on Parliamentary Openness

Still in its draft form, the Declaration on Parliamentary Openness is an initiative of the Open Parliament Organisation. It is a call to national parliaments by civil society parliamentary monitoring organizations (PMOs) for an increased commitment to openness and to citizen engagement in parliamentary work which draws on a variety of background documents endorsed by the international parliamentary community. Being a party to a declaration does not automatically translate into honouring the pledges made. However, a declaration can indeed play a role of a 'constant reminder' of issues to be addressed. Hopefully, Namibia will become a party to this declaration – for there are areas highlighted that warrant attention with regard to issues of openness of the Namibian Parliament. For example, and with relevance to what this paper seeks to address, *Section III* pledges on matters such as:

- **"Disclosing Assets and Ensuring the Integrity of Members:** Parliament shall make available sufficient information to allow citizens to make judgments regarding the integrity and probity of individual members of parliament, including information on members' asset disclosures, non-parliamentary income, including interest, dividends and in-kind benefits.
- **"Disclosing Information on Conflicts of Interest and Ethical Conduct:** Parliament shall disclose information necessary to protect against actual or perceived conflicts of interest and ethical violations, including relevant information about members' interactions with lobbyists and pressure groups. Parliament shall also make public information available on the final results of any judicial or parliamentary investigations into charges of unethical behaviour, conflicts of interest or corruption".

A number of cases involving MPs seem to suggest a variance between conduct and the stipulations of the supreme law of the land.

### (a) Doubling as a referee and a player?

#### David Namwandi, Deputy Minister of Education

Until his appointment to serve as a deputy minister of education in 2010, David Namwandi was the Vice Chancellor of the privately-owned International University of Management (IUM).

The issue: the Deputy Minister of Education still has links to the institution he founded. The students, who are IUM's customers, are largely funded through the Government-administered students financial assistance fund. This fund resorts under the Ministry of Education. David Namwandi might not be involved directly or indirectly in the allocation of students loans/grants, but the situation gravitates towards the perception of a potential conflict of interest. Moreover, there is no way of knowing whether or not he disclosed his interests as no register exists for members who were sworn in for the 2010–2015 Parliament. Could it be argued that it does not matter whether or not he disclosed his interests in the IUM as this is public knowledge? In any case, any suspicion would be removed if a working system for declaring interests was in place.

## (b) Lobby privately and approve publicly?

### Albert Kawana

#### Minister of Presidential Affairs

In 2010, it was reported in the *Windhoek Observer* that the Minister of Presidential affairs who doubles as the Government's Attorney General (principal legal advisor) delivered a proposal letter on behalf of Erumbi Energy – a consortium vying to supply 50 percent of Namibia's fuel as a replacement for National Petroleum Corporation of Namibia's (NAMCOR's) present partner, multinational Glencore. "Kawana, (...) a Cabinet member denied any conflict of interest despite the fact that he had pushed for favourable consideration of the proposed consortium, a business venture that will have to receive Cabinet approval"<sup>1</sup>. How does this border on conflict of interest? Should Erumbi Energy have clinched the deal for supplying Namibia's fuel needs, Kawana would have been part of those approving a deal he 'master-minded'. This constitutes a potential if not an outright conflict of interest. Does he have interests in Erumbi Energy? This cannot be said with any certainty – for there exists no Register of Members' Interests for 2010 to verify what he declared. Again in this case, a proper system of declaring interests would have helped to dispel any clouds of suspicion.

<sup>1</sup> *Windhoek Observer*. (September 17, 2010). 'Kawana masterminds Erumbi moves'

## (c) Blurring the lines

### Hage Geingob

#### Minister of Trade and Industry

In February 2012, a number of local dailies carried a story concerning payment made to the Minister of Trade and Industry, Hage Geingob, through his consultancy firm, HG Consultancy. The payment from UraMin, a mining company, took place when Geingob was a backbencher in the National Assembly in 2006-2007<sup>1</sup>. Geingob denied any wrongdoing because he had declared his consultancy firm in the Register of Members' Interests. However, the Register of Members' Interests was not published at the time due to the failure of the Committee on Privileges to ensure an annual register was prepared. A functioning system could have helped to clarify the matter much earlier.

<sup>1</sup> See Duddy, J. (February 09, 2012). 'Geingob kicks back'. *The Namibian*.

## Public Service

The public service is one of the problem areas as far as COI is concerned. Perhaps the problem is more pronounced at senior management level, i.e. permanent secretaries. Currently, no mandatory interests and assets disclosure requirement exist for permanent secretaries. As members of the National Tender

Board, permanent secretaries wield enormous power over public procurement, yet little if not nothing is known about their interests and assets. Section 6 of the Tender Board Act No. 16 of 1996 deals with COI in a somewhat sloppy fashion and as experience has shown it does not work. In 2011, the IPPR<sup>28</sup> recommended that a legally enforceable register of interests and assets be introduced for officials dealing with procurement. Importantly, this register should be regularly audited and periodically updated.

With regards to managing COI (or lack thereof), the Public Service Act No. 13 of 1995 is at best laissez-faire. Section 17 prohibits remunerative work by staff members unless permission is granted by the permanent secretary concerned or by the Prime Minister. The Act falls short of creating a system whereby interests' disclosure is an enforceable rule governing the conduct of civil servants, especially those in senior positions. Alas, what exists is a passive expectation that civil servants will declare interests of their own volition. Inevitably, many would have a propensity to be reluctant in declaring their interests – if by so doing they would forfeit their interests, material or otherwise. Therefore, systems that enforce declarations must be created.

## Box 4. Best practice

### "Who owns what"? Database

An archetype of making information readily accessible, the Information Portal on Corruption in Africa (IPOC) hosts a database of politicians' assets and interests in South Africa at all levels of government. A cursory look at disclosures of the President and the Minister of Human Settlements comprehensively shows directorships, shares, partnerships, gifts, sponsorships and outside employment.

"Who owns what"? Database is an initiative of the Institute for Security Studies Corruption and Governance Programme.

[http://www.ipocafrika.org/index.php?option=com\\_coii&view=coiadvancedsearch&Itemid=105](http://www.ipocafrika.org/index.php?option=com_coii&view=coiadvancedsearch&Itemid=105)

## Remunerative work outside public service

Period of reporting	Permission granted
1 April 2010 – 31 March 2011	23
1 April 2009 – 31 March 2010	115
1 April 2007 – 31 March 2008	219

A brief look at the number of permissions for remunerative work outside the public service that have been granted indicates a



## Should judges be exempt?

South Africa has a law requiring judges to disclose their registrable interests on an annual basis. The Judicial Service Commission Amendment Act, Act No. 20 of 2008 provides for the disclosure of judges' financial and other interests. Similarly, judges in the US are among 'persons required to file' their interests in terms of Ethics in Government Act of 1978. Chief Justice John Roberts of the US Supreme Court's financial filings are accessible on the website of Centre for Responsive Politics.

Judges' Disclosure Requirement(s) in South Africa  
Disclosure of registrable interests

13. (1) The Minister, acting in consultation with the Chief Justice, must appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests.

(2) The Registrar must open and keep a register, called the Register of Judges' Registrable Interests, and must—

(a) record in the Register particulars of Judges' registrable interests;

(b) amend any entries in the Register when necessary; and  
(c) perform the other duties in connection with the Register as required in terms of this Act.

(3) Every judge must disclose to the Registrar, in the prescribed form, particulars of all his or her registrable interests and those of his or her immediate family members.

(4) The first disclosure in terms of subsection (3) must be within 60 days of a date fixed by the President by proclamation, and thereafter annually and in such instances as prescribed.

(5) The Minister, acting in consultation with the Chief Justice, must make regulations regarding the content and management of the Register referred to in subsection (2), which regulations must at least prescribe –

(a) the format of the Register;

(b) the kinds of interests of judges and their immediate family members that are regarded as registrable interests;

(c) the manner and the instances in which, and the time limits within which, registrable interests must be disclosed to the Registrar;

(d) a confidential and a public part of the Register and the interests to be recorded in those parts respectively;

(e) the recording, in the public part of the register, of all registrable interests derived from the application of section 11;

(f) a procedure providing for public access to the public part of the Register and a procedure for providing access to, and maintaining confidentiality of, the confidential part of the Register; and

(g) the lodging of a complaint in terms of section 14(1) by the Registrar, in the event of –

(i) failure to register any registrable interest by any judge, including any failure to register any such interest within a prescribed time limit; or

(ii) disclosure of false or misleading information by any judge.

## Reference

Government of the Republic of South Africa. (2008). Judicial Service Commission Amendment Act No. 20 of 2008. Gazette No. 31540, Vol. 520. Cape Town: South Africa. Retrieved from: <http://www.info.gov.za/view/DownloadFileAction?id=91284> On August 21, 2012.

nose-dive. The public sector remains by far the largest employer in Namibia. As of March 2011, the public service accounted for a staggering 90 929<sup>29</sup> filled posts. In light of the foregoing, it follows that the number of permissions granted does not present an accurate picture. There are various reasons that could explain the decreasing number of permissions granted including that the Public Service Commission (PSC) either declines most of the applications or few applications are received.

## Responsibility under international and regional instruments

Namibia signed and ratified the United Nations Convention Against Corruption (UNCAC) on December 09, 2003 and August 03, 2004<sup>30</sup> respectively. The Convention became operational on December 14, 2005<sup>31</sup>. Signing and ratifying conventions and/or protocols come with the responsibility of honouring the ideals espoused. Through putting in practice what is required by conventions, signatories give meaning to what could otherwise be mere paper commitments. Like other States Parties, Namibia has a responsibility to put systems in place within the spirit expressed in the preamble of the UNCAC – that “[t]he States Parties to this Convention, convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law, have amongst others agreed that:

“Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest”<sup>32</sup>.

It is apparent that the issue of COI is given adequate recognition in this convention. For Article 8(5) relatedly states that “[e]ach State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials”<sup>33</sup>. Similarly, the African Union (AU) Convention on Preventing and Combating Corruption stipulates that “in order to combat corruption and related offences in the public service, State Parties commit themselves to:

29 This figure is an aggregate of civilian and non-civilian workers in the public service. See Public Service Commission (2011). Annual Report 1 April 2010 – 31 March 2011.

30 <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

31 <http://www.unodc.org/unodc/en/treaties/CAC/>

32 See Article 7(4) of the UNCAC

33 UNCAC, Article 8 – Codes of conduct for public officials (pg. 11 – 12).

“Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service”<sup>34</sup>.

Namibia ratified this Convention in 2004. Moreover, the SADC Protocol Against Corruption is a regional instrument Namibia signed in 2001 with other SADC member countries. Article 4 of the Protocol deals with the standard of conduct for the correct, honourable and proper fulfillment of public functions but does not directly deal with the declaration of assets. This protocol has proven hard to implement. In terms of Article 11 of the Protocol dealing with institutional arrangements for implementation:

- “1. A Committee consisting of State Parties is hereby established to oversee the implementation of this Protocol.
2. Each State Party shall report to the Committee within one year of becoming a Party, on the progress made in the implementation of this Protocol. Thereafter, each State Party shall report to the Committee every two years.
3. The Committee shall, inter-alia, be responsible for the following:
  - a) Gathering and disseminating information amongst State Parties;
  - b) Organising training programmes as and when appropriate;
  - c) Evaluating programmes to be put in place and a programme of co-operation for the implementation of this Protocol; and
  - d) Providing any other related assistance to State Parties as and when appropriate;
  - e) Reporting to Council on a regular basis on the progress made by each State Party in complying with the provisions of this Protocol”<sup>35</sup>.

To date, the Committee provided for under Article 11 is yet to be formed. The absence of this Committee explains the difficulty in implementing the Protocol. It was in view of this state of affairs that Paulus Noa, Director of Namibia’s Anti-Corruption Commission (ACC), stressed that “it serves little purpose if SADC authorities adopt Protocols, yet these Protocols find no full implementation”<sup>36</sup>.

## Conclusion and recommendations

Namibia’s approach to the disclosure of assets and interests on the part of officials wielding considerable power across the various branches of the State could at best be described as *laissez faire*. The main characteristic of the current system is a blatant

34 See AU Convention on Preventing and Combating Corruption, Article 7(1) – Fight Against Corruption and Related Offences in the Public Service.

35 See SADC Protocol Against Corruption, p. 7.

36 <http://www.accnamibia.org/index.php?module=News&func=display&sid=42>

## A question of recusal

### Ndeutala Angolo-Amutenya, State House

This particular incidence accentuates the importance of having a system of declaring assets and interests for senior government officials in place. In 2009, the Vice Chairperson of the University of Namibia (Unam) Council who is also a permanent secretary in the Presidency was embroiled in a tender controversy. A potential conflict of interest surfaced after it came to light that a consortium, Hanganeni Emona, in which Angolo-Amutenya is a shareholder, was awarded an N\$80 million tender to construct new student accommodation at Unam<sup>1</sup>. Reportedly, Angolo-Amutenya declared her interest and recused herself from the deliberations on awarding the tender. How is this tantamount to a conflict of interest? In this case was the recusal enough to avoid a conflict of interest? From her position on the Unam Council did Angolo-Amutenya have inside information about this tender that other prospective bidders would not have had access to?

The whole saga did not end with the issue of recusal. Hanganeni Emona has to date only managed to build platforms for the buildings and the project has been stalled until new investors can be brought on board<sup>2</sup>. Schulz-Herzenberg & Vickerman<sup>3</sup> aptly observe that “(...) when public officials are distracted from their jobs and the greater public interest, and corrupted by their private interests, resources are diverted away from service delivery, with the poorest and most marginalised citizens bearing the consequences”.

1 See Schier, T. (March 10, 2009). ‘Unam Council member in tender debacle’. *The Namibian*.

2 See Smith, J. (January 25, 2012). ‘Contractor fails Unam’. *The Namibian*

3 Schulz-Herzenberg, C., Vickerman, R. (2009, *ISS Paper 192*).

non-adherence to requirements for regular disclosure (where such a requirement exists), lack of measures to deal with non-adherence, and the absence of disclosure requirements in some sectors. In addition, there is a lack of overall management and oversight of disclosure processes.

Across the three branches of the state, it is only in the legislature where asset and interest disclosure forms are required to be filed. The executive and the judiciary are not required by any law to file disclosure forms. Similarly, no disclosure requirement or assets register exists for senior public servants. In light of this worrisome state of affairs, the following recommendations are made:

- Amend the Powers, Privileges and Immunities of Parliament Act, Act No. 17 of 1996 – with the view to spelling out the intervals at which parliamentary disclosures must take place. Importantly, sanctions for non-compliance must be

clearly stipulated in the Act. In tandem with such reform, the Code of Conduct for Members of Parliament should be fully adopted and made legally binding in order to further emphasise the intervals at which MPs must declare their interests as well as penalties for contravening the Code

- Establish a new body to deal with the interests of MPs while removing such a responsibility from the Committee of Privileges. This new body could be constituted along the lines of the Registrar of Members' Interests in South Africa. Members constituting the new body should not be drawn from parliament. The failure of the Committee of Privileges in the National Assembly could be attributed to the fact that the members in charge of this committee are themselves not up to scratch with their declarations. Hence they would not have strong grounds for asking other MPs to submit their declaration forms. The new body would check the veracity of declarations.
- Amend the Public Service Act, Act 13 of 1996 – to make it compulsory for management cadre to declare their assets and interests annually. A commission could be created in the Office of the Prime Minister to administer the register of interests for senior public servants.
- Introduce an assets and interests register for Supreme and High Court judges with the view to guarding against potential conflicts of interest in the adjudication process.
- The public portions of registers of interests and assets should be accessible to the public, e.g. by being put online and in libraries that are accessible to the public.

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## APPENDIX A:

# National Council Code of Conduct and Disclosure of the Financial and Business Interests of the Members of the National Council – 10 October 2005

## Chapter 1: Definitions

**1. All words in this Code which have been defined in the Standing Rules and Orders shall bear the same meaning and, unless the context indicates otherwise,**

“The Act” means the Powers, Privileges and Immunities of parliament Act, Act No. 17 of 1996.

“Committee” means the Standing Committee on Privileges;

“dependent” means any person who is wholly or mainly dependent on the Member of financial or material support;

“dependent child” means an unmarried son, daughter, stepson or stepdaughter, by blood or law, under the age 21 years who is wholly or mainly dependent on the Member for financial or material support, and includes a dependent child as here defined, who is older than 21 years still attending an educational institution and is wholly or mainly financially or materially supported by the Member;

“equity value of a sole ownership” means the nett value of the sole ownership expressed as the difference between its assets and liabilities, and includes the profit that the sole ownership generates annually, its market value and the number of shares, if any, it holds in another business enterprise;

“financial interest” means the percentage value of a Member’s interest in a business enterprise, and includes loans made to and dividends received from such business enterprise;

“nominal value of shares” means the value at which the shares were acquired;

“pension” excludes a pension received or receivable from the Government of the Republic of Namibia;

“permanent companion” means a person who is publicly acknowledged by a Member as that Member’s permanent companion or partner; or who is publicly perceived to be that Member’s permanent companion or partner;

“Register” means the Register of Members’ Interests referred to in clause 9 (2);

“Registrar” means the Secretary of the National Council;

“remuneration” excludes the income a Member receives by virtue of membership of the House or Ministerial Office;

“spouse” means a Member’s marriage mate, irrespective of whether the parties were married formally (church, magistrate’s court etc) or traditionally.

## Chapter 2: Application of the Code

- (1) This Code forms part of the Rules of the Council as contemplated in article 74 of the Namibian Constitution,
- (2) The code is applicable to:
  - (a) All members of the Council, and
  - (b) Spouses, permanent companions, dependent children and other dependents of members of the Council, to the extent that the member is aware of their registrable interests.

## Chapter 3: Personal Conduct

**3. A Member must:**

- (1) act in good faith at all times and not misuse or abuse the powers, rights and privileges granted by the Constitution and the Rules, conventions and practices of the Council;
- (2) act in the interests of the Namibian people and the Council;
- (3) uphold the law and act in conformity with the Rules, conventions and practices of the Council;
- (4) be accessible to the people in order to serve and to represent their interests conscientiously;
- (5) avoid any behaviour that may compromise his/her standing in the public arena, such as criminal behaviour, sexual harassment, insolvency, dishonesty etc.;
- (6) strive for national unity and reconciliation in the presentation of any issue before the House and take decisions in terms of the public interest;

- (7) not misrepresent any facts to the House or to committees;
- (8) conduct all hearings in a fair, honest and transparent manner;
- (9) disclose to the Registrar their financial interests;
- (10) report to the Committee on Privileges any unethical behaviour of another Member or Members; and
- (11) promote and support the afore-mentioned principles by leadership and example and to maintain and strengthen the public's trust and confidence in the integrity of the Parliament and its members in conducting public business.

## Chapter 4: Conflict of Interest

- (1) A Member is responsible for preventing conflicts of interest and must arrange his or her private affairs to prevent such conflicts of interest from arising;
- (2) A Member whose material, personal or financial interests give rise to a conflict with the public interest must take all reasonable steps to resolve that conflict in the public interest;
- (3) (a) A conflict of interest exists where a Member participates in or makes a decision in the execution of his or her duties when he or she knows or should know that it –
  - (i) will improperly or dishonestly further his or her material, personal or financial interest or another person's financial interest directly or indirectly, or
  - (ii) may improperly influence his or her conduct when discharging his responsibilities.
 (b) A conflict of interest does not exist where a member or other person benefits only as a member of the general public or as a member of a broad class of persons.
- (4) (a) Where a possible conflict of interest arises, the Member concerned must inform the Presiding Officer, or any other person may so inform the Presiding Officer, and the Member must then either withdraw from the discussions and voting on the matter, or apply for condonation from the House or the Committee, as the case may be, on the grounds that such interest does not in any way conflict with the matter being discussed or voted upon.
 (b) If the matter concerns a registrable interest that is recorded in the confidential part of the Register, the Member must withdraw from the deliberations or voting if the member does not want to disclose the interest.

## Chapter 5: Interests to be Disclosed

### Registrable Interests

The following kinds of financial interests must be registered:

- (1) Shares and other financial interests in companies and other corporate entities;
- (2) Directorships, partnerships and board memberships and any remuneration received;
- (3) Sole ownerships;
- (4) Remunerated employment outside of Parliament;
- (5) Liabilities exceeding N\$ 20 000;
- (6) Immovable property;
- (7) Accounts with financial institutions exceeding N\$ 20 000;
- (8) Travel and travel discounts;
- (9) Gifts, services and hospitality;
- (10) Sponsorships;
- (11) Consultancies;
- (12) Pensions;
- (13) Any other benefit of a material nature; and
- (14) Details of all financial interests of a Member's spouse, permanent companion, dependent child or other dependents to the extent that the member is aware of those financial interests.

### Details of Registrable Interests

6. The following details must be furnished for all registrable interests:
  - (1) Shares and other financial interests in companies and other corporate entities:
    - (a) the name of the company or other corporate entity;
    - (b) the number, nature and nominal value of shares of any type in any public or private company; and
    - (c) the nature and value of any other financial interests held in any other corporate entity.
  - (2) Directorships, partnerships, and board memberships:
    - (a) the name, and type of business activity of the corporate entity, partnership or organization, and the date acquired; and
    - (b) the size and value of any financial interest or the amount of any remuneration received.
  - (3) Sole ownerships:
    - (a) the name, and type of business activity of the sole ownership;
    - (b) the date acquired; and
    - (c) the equity value of the sole ownership.
  - (4) Remunerated employment outside of Parliament:
    - (a) the type of employment; and
    - (b) the name, and type of business activity of the employer, and the amount of remuneration received for such employment.
  - (5) Liabilities exceeding N\$ 20 000:
    - (a) the type of liability, amount and interest rate;
    - (b) the name of the individual or entity indebted to;
    - (c) the date that the loan or liability was obtained; and
    - (d) the term of the loan or liability.

- (6) Immovable Property:
  - (a) a description of the property;
  - (b) the location of the property; and
  - (c) the nature and value of the interest in the property.
- (7) Accounts exceeding N\$ 20 000 held with Financial Institutions:
  - (a) the type of account;
  - (b) the name and location of institution; and
  - (c) amount.
- (8) Travel and travel discounts:
  - (a) the date of travel and destination;
  - (b) the duration of stay;
  - (c) the value of travel and stay (including any discounts received); and the name of the sponsor and amount paid by the sponsor.
- (9) Gifts and hospitality (including services and discounts):
  - (a) the description, value and source of any gift or hospitality over N\$ 1000; and
  - (b) the description and value of gifts or hospitality having a cumulative value over N\$1000 received from a single source during the report period.
- (10) Sponsorships:
  - (a) the source and description of direct financial sponsorship and assistance from non-party sources; and
  - (b) the value of the sponsorship or assistance.
- (11) Consultancies:
  - (a) the nature of the consultancy of any kind;
  - (b) the name and type of business activity of the client concerned; and
  - (c) the amount of remuneration and any other benefits received for the consultancy.
- (12) Pensions:
  - (a) the source and type of pension; and
  - (b) the value of the pension.
- (13) Any other benefit of a material nature:
  - (a) the nature of the benefit;
  - (b) the source of the benefit; and
  - (c) the value of the benefit.
- (14) All financial interests, of which the Member is aware, of his or her spouse, dependent child, dependent or permanent companion (1) – (3) all the financial details that a Member must disclose in respect of clauses (1) to (13) above.

## Chapter 6: Administration of the Code

### Standing Committee on Privileges

#### Functions and Powers of the Committee

7. For the purposes of this Code, the Committee on Privileges is empowered to:

- (1) adopt such codes of conduct for all Members, in conformity with their constitutional rights, duties, privileges and immunities,
- (2) implement the Code by adopting a standard format for the disclosure of interests and the reporting requirements in regard to such disclosure
- (3) enforce and administer the Code, and
- (4) perform such other functions as may be determined in the Code and in the Rules of the Council.

### Registrar of Members' Interests

8. (1) The Secretary of the Council will be the Registrar of Members' Interests.
- (2) The Registrar may designate staff assigned to the Committee to assist - him or her in the execution of his or her duties.
- (3) The Registrar must:
  - (a) open and keep a Register for the purposes of this Code, called the Register of Members Interests,
  - (b) record in the Register particulars of Members' registrable interests provided to him or her by Members,
  - (c) amend any entry in the Register when necessary,
  - (d) present the register to the Privileges Committee on an annual basis,
  - (e) perform any other duties in connection with the implementation and administration of this code as required by the Committee, and
  - (f) perform the functions of office in accordance with the directions of the Committee.

### Disclosure of Members' Interests

9. (1) All Members of the Council upon being sworn in as members, must disclose their interest as contained in this code by signing the prescribed declaration and are obliged to adopt the principles of the code.
- (2) A member must disclose to the Registrar, on the form prescribed for this purpose by the Committee, the details of all registrable interests as stipulated in clause 6.
- (3) Subject to sub-clause 1, the first disclosure must be made within 30 days of the opening of a new Council.
- (4) After the first disclosure, members must annually disclose particulars of their registrable interests on or before 30 April each year, unless the Committee decides otherwise.
- (5) Members must, during the reporting period, disclose any change in their registrable interests within 60 days thereof.
- (6) If a member has no registrable interests a "nil return" must be furnished.
- (7) All members must, within 90 days of the approval of this Code by the House, disclose their registrable interests on the form prescribed for this purpose by the Committee.

### **The Register of Members' Interests**

10. The Register must:

- (1) have a confidential and a public part;
- (2) contain the information regarding the members registrable interests as determined by the Code, and
- (3) be in format approved by the Committee.

### **Confidential Part of the Register**

11. (1) The Registrar must record the following in the confidential part of the Register:

- (a) The value of financial interests in a private or public company or a close corporation or in any other business entities;
  - (b) The amount of any remuneration for any directorship, partnership or any other board membership;
  - (c) The equity value of a sole ownership;
  - (d) The amount of any remuneration for any employment outside Parliament;
  - (e) The type of liability, amount and interest rate, and the term of the loan or liability;
  - (f) The value of the interest in immovable property and the location and value of private residences;
  - (g) The amount of an account with a Financial Institution;
  - (h) The details of foreign travel only when the nature of the travel or visit requires those details to be confidential;
  - (i) The amount of any remuneration for a consultancy;
  - (j) The value of a pension, and
  - (k) The financial interests of a Member's spouse, permanent companion, dependent child or other dependent to the extent that the member is aware of those financial interests.
- (2) Where any doubt exists as to whether any financial interests must be disclosed, the Member concerned must act in good faith.
- (3) Notwithstanding sub-clause (1), the Committee may, on good cause shown, instruct the Registrar to record any other details of a Member's registrable interests in the confidential part of the register.
- (4) Only a Committee Member, the Registrar and the staff assigned to the Committee have access to the confidential part of the Register.
- (5) No person who has access to the confidential part of the Register may disclose particulars of an entry in the confidential part to anyone other than the Member concerned or another person who has access thereto, except when a competent Court orders him or her to do so.
- (6) A committee Member who contravenes sub-clause (5)

(b) is ineligible to continue as a Committee Member.

- (7) The Registrar or a staff member who contravenes sub-clause (5) is subject to disciplinary action applicable to parliamentary staff, including dismissal.

### **Public Part of the Register**

12. (1) The Registrar must record all registrable interests in the public part of the Register, except for the details that will be recorded in the confidential part of the Register.

- (2) Any person has access to the public part of the Register on a working day during office hours.
- (3) The Registrar must publish the public part of the Register within 60 days of the date set for annual disclosure in a manner determined by the committee.

## **Chapter 7: Breach and Enforcement of the Code**

### **Breach of the Code**

13. A Member breaches this Code if he or she-

- (1) contravenes or fails to comply with a provision of this Code,
- (2) negligently, recklessly or intentionally provides the Registrar with incorrect or misleading information, when disclosing registrable interests.

### **Complaints Procedure**

14. (1) The Committee may receive a complaint from any person alleging a breach of the Code by any Member or Members.

- (2) (a) A complaint must be in writing.  
(b) A complaint must be factual and must describe in detail the alleged breach of the Code.
- (3) A Member may file a complaint directly or may forward a complaint received from any person to the Committee.
- (4) Frivolous, vexatious or offensive complaints will be rejected.

### **Investigations by the Committee**

15. (1) The Committee may of its own accord investigate an alleged breach of this Code by a Member.  
(2) The Committee, when carrying out any investigations, must act in accordance with the procedures contained in the Act and the Rules of the Council.

### **Findings**

16. (1) At the conclusion of its investigation, the Committee must make a finding, supported by evidence, on the alleged breach of this Code.  
(2) The Committee must provide reasons for its finding.

- (3) A Member may be found guilty of a breach only if there is sufficient evidence supporting such finding.

### Penalties

17. Where the Committee has found that a member has breached a provision of this Code, it must recommend the imposition of one or more of the penalties provided for in the Rules of the Council.

### Report to the House

18. (1) Within 7 days after making a finding, the Committee must submit a report to the House on its finding and

recommended penalties, if any, within 7 days after making a finding, if the House is then in ordinary session, if it is not in ordinary session, within 7 days after the commencement of its next ordinary session.

- (2) The House must discuss the Committee's report and take such disciplinary action against the Member as it deems appropriate, in accordance with the penalties provided for in the Rules of the Council.
- (3) The Chairperson must act on the decision of the House without delay.

## About the Author

**Ellison Tjirera** joined the IPPR in early 2011, after spending a year as a Researcher at the Ministry of Gender Equality and Child Welfare. He had previously been a Research Associate at the IPPR in 2009. He co-authored the IPPR 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 the Perception of Women's Empowerment: Is There Any Relationship?* Tjirera is currently an MA (Sociology) student at the University of Namibia. For the IPPR's Anti-Corruption Research Programme he has specialised in researching codes of ethical conduct, conflict of interest, public procurement and governance at the sub-national level.

## About the IPPR

The Institute for Public Policy Research (IPPR) is a not-for-profit organisation with a mission to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia. The IPPR has been established in the belief that development is best promoted through free and critical debate informed by quality research.

This paper has been produced with the intention of serving as a briefing document for future discussions and consultation on policy and legal reform by the Law Reform and Development Commission (LRDC). The views expressed in this paper are not necessarily those of the LRDC.

## 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 and 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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**Directors: M M C Koep, D Motinga, W Lindeke, N Nghipondoka-Robiati, A du Pisani, R C D Sherbourne, G Hopwood (ex-officio)**