



BUILDING INTEGRITY: CORRUPTION AND THE CONSTRUCTION INDUSTRY

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Key aspects of this paper

A considerable proportion of the state's annual spending goes towards capital projects with arguably the bulk going towards infrastructure development and upgrading projects. This is not just the case in Namibia, but across both the developed and developing world. However, in developing countries such as Namibia, the construction sector plays a significant economic role and a great many people, especially the un- and semi-skilled, rely on the sector for employment and livelihoods.

Because of the amounts of money flowing into and through the sector, it follows that the construction industry is vulnerable to corrupt and unethical practices. Since the public sector is by far the biggest spender on construction, corruption has become a considerable concern in the awarding of state infrastructure development contracts over the years.

This is not to say that corruption is rife in the Namibian construction sector, especially in relation to government contracts, for there is little evidence to suggest that such is the case despite speculation. However, the potential for corruption is considerable given the vastness of the sums of money involved and the scale of the projects undertaken. In this regard, a number of construction projects and tender awards have raised eyebrows and set warning bells clanging in recent times. It is clear that the opaqueness of the current public procurement system in Namibia makes construction contracting particularly vulnerable to suspect and corrupt practices.

With the introduction by government of the Targeted Intervention Programme for Employment and Economic Growth (TIPEEG), in early 2011, the spectre of corruption is hovering

over public sector construction projects – which constitute the bulk of TIPEEG job creation initiatives to 2014.

It is necessary for the state to overhaul the way it awards construction contracts in order to remove the clouds of suspicion and stop any rot before it sets in. For widespread corruption in the construction sector could seriously harm the economic prospects of the country and society.

The following broad recommendations are made:

1) With regard to government procurement processes, that:

- All project information, including the awarding decisions, be made accessible to the public, preferably on a specific website;
- Pre-contract disclosure mechanisms – on the part of both officials and contractors – be introduced in order to ensure fairness and transparency in public procurement processes;
- Tender rules and procedures be respected and adhered to by the Tender Board and all relevant procurement officials;
- Labour, social security and affirmative action laws and compliance stipulations be respected and enforced at both Tender Board and project levels;
- Regular project audits be conducted to ensure the integrity of major public works. Such audits should be both technical and financial. The Auditor-General should be proactively involved in conducting audits of major public procurement contracts;
- Anti-corruption policies and awareness-raising campaigns, specifically aimed at public works officials and contractors, be implemented and conducted;

- Comprehensive codes of conduct for public procurement officials and contractors alike be developed and implemented, and made publicly available.

2) With specific regard to enforcement of labour and social security laws and regulations, that:

- The Employment Equity Commission (EEC) and the Social Security Commission (SSC) should proactively ensure that all workers at construction companies bidding for public works are appropriately registered. The EEC should ensure construction companies with 25 or more workers have an Affirmative Action Compliance Certificate to comply with Namibian law and tender regulations. The EEC and SSC should work together with the offices of the Labour Commissioner and possibly the Ombudsman to ensure that an effective inspectorate to monitor and investigate such matters is created.
- The Labour Commissioner should regularly undertake inspections on construction companies to ensure that they comply with the labour legislation that governs the building sector, such as the minimum wage, health and safety, and pension requirements that are mandatory for all construction companies to adhere to.
- The formation of joint ventures between Namibian companies and large foreign construction companies that undertake major construction projects in Namibia should be encouraged in order to capacitate local construction companies.

3) With regard to public works contractors, that:

- They commit to anti-corruption measures through contractual mechanisms;
- They implement internal anti-corruption rules and mechanisms; and
- Post up anti-corruption rules and policies at all project sites;
- They provide anti-corruption training to staff dealing with procurement and public sector officials;
- They actively play a role in ensuring the integrity of the construction industry by reporting corrupt practices to relevant authorities, without fear of disadvantaging their businesses and interests.

4) With regard to construction projects falling under the Targeted Intervention Programme for Employment and Economic Growth (TIPEEG)

- That such procurement contracts go through a proper procurement process rather than being decided by a small in-house government committee. That if speed is of the essence then alternative procurement procedures be considered including a fast-track approach which would be rigorous and transparent but quicker than normal.

5) With regard to general construction contracting practices, that:

- Anti-corruption commitments become a standard feature of construction, and related services, contracts;
- Relevant government departments, construction industry representatives and individual contractors collaborate in implementing and monitoring anti-corruption measures in the sector;
- Transparency and accountability, through tangible commitments to open governance and access to information, be given force through appropriate legislation;
- Finally, the Anti-Corruption Commission (ACC) become involved, in an advisory capacity, in assisting both the state and private sector in coming up with an appropriate integrity system for the construction sector.

6) With regard to civil society, that:

- Civil society organisations commit to expenditure tracking projects which will measure the efficacy of public works projects in promoting development and reducing unemployment, but also monitor public works contracting from an integrity standpoint. With this in mind it is suggested that civil society should develop Public Spending Tracking Surveys to ensure budgeted funds are spent properly and Service Delivery Surveys to ensure that projects are completed according to specifications. The relationship does not have to be adversarial. Civil society organisations can partner government agencies to ensure transparency and reduce corruption. Communities and grassroots organisations can become involved by issuing report cards on public works that are implemented in their areas. The private sector should also be involved in creating multi-sector partnerships to tackle corruption.

Construction – An industry at risk

The Namibian construction industry has since independence in 1990 become an increasingly important economic sector, both in terms of investment and employment, as the country has experienced an increase in investment in fixed assets in terms of both the state and private sectors.

From about 2006 to 2008 the industry experienced a boom, with the value of construction and building works climbing from just over N\$5 billion in 2006 to almost N\$7 billion in 2008. Of the 2008 estimate, almost N\$3 billion accounted for infrastructure building works. In 2008 the construction industry's share of Gross Domestic Product (GDP) hovered around the four percent mark, up from about two percent in 1990¹.

According to the 2008 Namibia Labour Force Survey (released in late 2010), 23,316 adults were employed in the con-

¹ *Guide to the Namibian Economy 2010*, pg 221

struction sector². This was 7 percent of the total employed workforce. Most of those employed in the sector are either unskilled or semiskilled. Despite a cross-industry agreement that workers should be registered with the Social Security Commission only 5,627 workers were reported to be registered according to the 2008 survey. As an indication of the volatility of employment in the construction industry, the 2008 labour force survey found that 12.2 percent of unemployed persons were previously employed in the sector, exceeded only by employment in private households (18.9 percent) and repair of motor vehicles/wholesale and retail trade (23.5 percent). Such statistics also tend to indicate that in troubled economic times, public investment in construction work could provide a living for thousands of workers who have had experience on building sites but who are currently unemployed.

It is not surprising then that under government's Targeted Intervention Programme for Employment and Economic Growth (TIPEEG), which runs through the Medium Term Expenditure Framework (MTEF) cycle from 2011 to 2014, the construction sector is expected to generate many thousands of jobs through state expenditure on labour-intensive infrastructure and building works in an attempt to stimulate large-scale job creation and relieve widespread poverty³. It is too early to tell whether this ambitious job creation scheme will meet its targets. What TIPEEG does underline is the significance of the state to the sustainability of the construction sector, for the "sheer size of the public sector in Namibia's economy means the industry relies heavily on central, regional and local government as well as parastatal contracts for much of its work"⁴.

Given this state of affairs, the actions of the state have become key to how the sector is perceived. In the context of corruption, this relates to procurement practices involving public works. And this is precisely where things have become decidedly murky over the last decade or so.

This situation – of state dominance of the construction sector – is compounded by a public sector governance culture that does not appear to place a premium on accountability and transparency, which by all accounts has contributed to a pervasive atmosphere discouraging aggrieved construction firms from publicly voicing concerns or airing evidence of corrupt practices in the industry for fear of losing out on future state contracts.

The situation is aptly summed up by Sherbourne⁵, who states: "The combination of expensive contracts and the lack of public scrutiny and accountability make construction industries breeding grounds for corruption in many countries." Namibia would appear to be one of those countries where a string of borderline practices seem to suggest that corruption could be a very real problem.

Even so, it has to be stressed that corruption in the sector is unquantifiable. The situation, however, can be discussed through incidences which have come to light or been exposed over the years, involving public sector procurement officials, parastatal functionaries and private contractors. On the strength of these examples it is possible to suggest that corruption represents a very real danger in the construction sector.

The Namibian construction sector is highly vulnerable to corruption not least because of Namibia's dysfunctional public procurement policies (as outlined in other research papers in this series). The risks are magnified by TIPEEG which will bypass the existing national Tender Board and instead see contracts allotted by a TIPEEG Implementation Committee (TIC) which consists of the Permanent Secretary of the National Planning Commission as chairperson, the Permanent Secretary in the Office of the Prime Minister, the Permanent Secretary of the Ministry of Labour, the Under Secretary of State Accounts in the Ministry of Finance, and a senior official from the office of the Attorney General⁶. In view of calls in this paper for the procure-

In the Philippines, civil society organisations have become partners with government agencies in order to reduce corruption in public works as well as to ensure transparency. One example of this is the Concerned Citizens of Abra for Good Governance (CCAGG), an NGO watchdog based in the province of Abra. CCAGG monitors public projects implementation extensively. They have documented numerous instances of corruption in public projects such as ghost projects and incomplete works. CCAGG organises and trains communities in monitoring their infrastructure construction projects and has conducted a participatory audit (in conjunction with the UNDP and Philippine Commission on Audit). Here residents themselves assessed the actual benefits derived from the public expenditures. Procurement Watch, another NGO in the Philippines, specialises in building systems of transparency and accountability into government contracting and procurement practices. Procurement Watch conducts diagnostic exercises on procurements managed by government agencies it works in partnership with.

2 *Namibia Labour Force Survey 2008*, Table 5.2b, pg 53. Of these 23,316 workers 2,052 were female and 21,264 were male while 16,388 were based in urban areas and 6,928 in rural areas.

3 *The Targeted Intervention Programme for Employment and Economic Growth 2011* document indicates that in the up to 2014 some 33,000 direct and indirect jobs opportunities will be created through the building of low-cost housing and improved sanitation infrastructure alone (pg. 14). An astonishing 82,000 jobs are expected to be created through other public works under TIPEEG (see Chart 2: TIPEEG job impact (2011/12 to 2013/14) on page 7 of the TIPEEG document.

4 *Guide to the Namibian Economy 2010*, pg 221

5 *Guide to the Namibian Economy 2010*, pg 226

6 See TIPEEG document, pg 19.

The Construction Industries Federation (CIF)

The Construction Industries Federation (CIF) is a membership-based representative body for construction and related firms in the construction industry. According to the organisation, more than half of construction companies in Namibia are members of the CIF, which was founded in 1952 under the name Master Builders Association, and registered in 1993 as the CIF.

The CIF serves as the national voice of Namibia's construction industry¹. The CIF has a membership base of 143, which are divided into three categories, namely Contracting Members, Small and Medium Enterprises (SMEs), and Trade or Affiliated members².

The contracting members number 90 and are the construction firms involved in the bidding for actual physical work. The SMEs are also involved in the tendering process and physical work, like the contracting members, and they number 26. The Trade and Affiliated members are 17 and 9, respectively, and they subscribe to the CIF because they are related to the construction sector in that they cater to and supply the construction firms with building materials and related products. Thus, these are not construction companies. Examples of trade and affiliated members are M.Pupkewitz & Sons (Pty) Ltd, Neo Paints Factory (Pty) Ltd and The Namibian Procurement Fund.

Out of the 143 companies which are members of the CIF, there are only two Chinese companies registered as members, namely Guanxi International Construction Engineering and Jiangsu Zhengtai Construction Group, which are both contracting members.

According to Malte Beierdörffer of the CIF, the membership (at least since 2006) has increased considerably as SMEs in particular have joined up and on average the membership increase represents growth of between eight and 10 percent per annum, which translates to about one company signing up every month, regardless of the type of membership category.

1 <http://cifnamibia.com/>
2 op. cit.

ment process to be broadened, opened up to scrutiny and split into stages that would deter manipulation by a strong individual or cabal, the size of the TIC and its huge level of responsibility is indeed worrisome.

The situation calls for concerted and rigorous expenditure tracking which would follow TIPEEG projects through from contracting to implementation to completion to ensure that projects were indeed underway and creating jobs and that they were being managed in a transparent, fair and accountable manner.

Corruption in construction: How does it occur?

According to the Global Infrastructure Anti-Corruption Centre (GIACC)⁷ of Transparency International (TI), corruption around infrastructure and construction projects occurs at different stages or phases in the procurement/bidding and actual contract performance processes. These levels are as follows:

- in the identification of the project;
- in the financing of the project;
- during the planning and design phases;
- during the pre-qualification and tendering phases;
- during the project execution phase;
- during the operation and maintenance phase.

According to GIACC, corruption in construction is broadly defined as including the following: “Bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence and money laundering.”

Against this backdrop and in order to explain the points listed above, the ensuing section will be a summary discussion of the issues as raised and addressed on the GIACC website. The discussion will be interspersed with relevant examples from Namibia to illustrate the dangers posed, even if the examples do not themselves amount to proven corrupt practice.

Corruption in the identification of the project

This happens when relevant government officials with an approval and oversight responsibility have a direct or indirect stake in the actual construction project. This can take the form of the official(s) commissioning the project with the express purpose of profiteering from it, or inflating costs at the initiating stage, or manipulating approval processes so that they or their associates are set to benefit once the project gets off the ground.

Arguably, the most recent and clear case of government officials hijacking a construction project in this way for personal gain is the saga of sanitation projects in the north of Namibia.

In early April 2010, after the pilot phase of a government toilet-building scheme, allegations of corruption and misman-

7 http://www.giacentre.org/how_corruption_occurs.php

Corruption during the planning and design phases

Corruption in the planning and design phases can occur when government officials and prospective contractors manipulate or exaggerate certain features of project plans or designs in order to inflate costs, thereby increasing profit margins. It can also take the form of bribery of officials to let through substandard or even ostentatious plans and designs which would push up costs, once again swelling profits, from which the government official/s would skim off the top.

Probably the closest local example that can be used to illustrate the dangers in this regard is a State House landscaping contract from 2004.

In that year, the Ministry of Works awarded a N\$90 million landscaping contract to a private company, Oryx Development Group, for the new State House, which was still under construction at the time. From what can be gathered from reports, the project plans, and thus the costs, were allegedly exaggerated and that at some stage government realised this and wanted out of the contract. The contract with Oryx Development Group was eventually cancelled in late 2008. In the meantime, then Works Ministry Under Secretary Ben Kathindi had become the subject of an Anti-Corruption Commission (ACC) investigation into the landscaping contract. Kathindi eventually resigned from his post. The ACC cleared Kathindi of corruption and said his conduct – making payments to Oryx and awarding the contract by side-stepping tender process – had amounted to no more than administrative negligence. In the wake of the cancellation of the landscaping contract, the company took government to court. At the time of writing the case had not been resolved.

The northern toilets saga sketched earlier can also be used as an example in this regard as the officials implicated in that case also had a say in the design and location of the toilets and allegedly inflated costs, as illustrated, in order to profiteer off the scheme.

Corruption during the pre-qualification and tendering phases

GIACC lists the following examples of how corruption can occur during the pre-qualification and tendering phases of a project:

- “A bidder which is properly qualified may be rejected at pre-qualification stage as a result of a bribe paid to a representative of the project owner or consulting engineer by another bidder. The reasons given for rejection would be artificial. Alternatively, no reasons may be given. The rejection of several potential winners could result in the favoured bidder being given an unfair advantage at tender stage.

- Confidential details may be leaked by a representative of the project owner or consulting engineer to the favoured bidder in return for a bribe, thereby giving it an unfair advantage.
- The tenders received by the project owner may be opened privately (not at a public opening). In this case, only those present at the opening would be aware of the bidders' prices and other critical tender components. This secrecy would enable, for example, a representative of the project owner, in return for a bribe, to provide confidential information to the favoured bidder. The bidder could then amend its tender (for example by dropping its price) so as to secure a winning position. The tenders could then be publicised, and the favoured bidder announced as the winner.
- A tenderer may pay a bribe to a government official, in return for which the official ensures that the bribing tenderer wins the contract: For example:
 - o The official may ensure that the results of the tender are kept secret, so that no-one knows that the bribing tenderer was not the most competitive. Or
 - o The official may manipulate the tender evaluation (for example, the points given on the technical evaluation) with the result that the bribing tenderer wins. Or
 - o The official may ensure that there is no competitive tender. The official may announce false reasons for a direct award to the tenderer to be made (e.g. special technology possessed only by the tenderer, emergency, or national security).
- A tenderer may make a donation to the ruling political party, in return for which a party official ensures that the tenderer wins a contract, or obtains preferential treatment.
- A government official may secretly own, or be a director of, a tenderer, and may wrongly make a decision in favour of the tenderer (either as a result of deliberate corruption, or because the conflict of interest affects his impartial judgment).
- The tender process may be corrupted by international pressure. For example, during an allegedly competitive tender process, the government of a developed country may influence the government of a developing country to make sure that a company from the developed country is awarded a project, even if it is not the cheapest or best option. Such pressure can take many forms, including the offer of aid, arms deals or agreements to support a government's application to join an international organisation. Great lengths are taken to conceal this pressure in some cases. In other cases, it is remarkably overt.”¹¹

In this regard, and especially concerning a government official being a director and opening themselves up to conflict of interest and possible corrupt practices, a recent case involves the project to construct student accommodation at the University of Namibia (Unam) Windhoek campus.

11 http://www.giacentre.org/how_corruption_occurs.php

In early 2009 a Unam procurement panel controversially awarded an N\$80 million contract for the construction of student accommodation, consisting of 500 new rooms, at the Windhoek campus, as well as 200 rooms at the Oshakati campus in a later phase, to a company in which Unam Council Vice Chairperson Dr Ndeutala Angolo-Amutenya held a stake. The company awarded the contract was Hanganeni Emona, in which Angolo-Amutenya and two other influential and high ranking government officials hold a 51 percent stake, through their ownership of Hanganeni Investment Holdings, with South African construction firm Academia Cape holding the other 49 percent.

Apart from serving as Unam Council Vice Chairperson, Dr Ndeutala Angolo-Amutenya is also the Permanent Secretary in the Office of the President.

In the wake of the contract being awarded, the Unam Council officials who had served on the procurement panel were publicly criticised, by no less than Prime Minister Nahas Angula, for awarding the contract to a company in which such a senior Unam office-bearer held a considerable stake. Angolo-Amutenya herself dismissed allegations of conflict of interest with the excuse that she had recused herself from any discussions around the project contracting processes. Despite this, the cloud of suspicion around this particular project has never dissipated and it was recently reported that the project had stalled due to financing issues.¹²

Corruption during the project execution phase

Corruption during this phase involves everything from paying or soliciting bribes and submitting fraudulent invoices – for sub-standard and/or non-existent work – to issuing false payment certificates and quality and standards permits, as well as dishonestly withholding payment or portions thereof. Also, causing project delays or deadline over-runs, in order to inflate costs or milk the system for as long as possible, are also considered acts of corruption during this phase. The most relevant case to flag in this regard is the construction of the new State House in Windhoek.

Construction of the new State House commenced in 2002 with the project expected and proclaimed to cost just more than N\$200 million. By the time the State House was completed and inaugurated in 2008 the construction cost had mushroomed to about N\$1 billion. Apart from the construction contract not being put out to tender locally, but instead awarded to a North Korean firm, with some Chinese funding of about N\$55 million attached, the spending on the project was shrouded in secrecy, with national security proffered as the overriding consideration. The inscrutability still surrounding the costs of the State House

project continues to mire the endeavour in a fog of suspicion which refuses to subside.

On the face of it, the astronomical cost over-run would and should be enough reason to launch a corruption investigation into this particular construction project, regardless of the national security arguments. If it should ever happen, it would be interesting to see what the outcome would be.

It should be noted that government has used Chinese companies for some of its most prestigious projects including the Supreme Court building and several new ministerial buildings.

Corruption during the operation and maintenance phase

As with corruption during the other phases, paying or soliciting bribes in the awarding of maintenance and operations contracts is the major concern during this phase. Also, inflating maintenance and operational costs and installing or delivering faulty and sub-standard devices and services constitutes acts of corruption, as well as dishonestly monopolising maintenance and operations contracts, as monopolies can set prices as they see fit.

An example of alleged corruption during the operation and maintenance phase from recent times involved a contract for the upgrading of water infrastructure and the installation and maintenance of water meters at urban centres around the country by a dodgy private company at a cost of millions of Namibia dollars to the state.

In 2002 government, through the Ministry of Local and Regional Government and Housing, contracted Nossob River Systems (Pty) Ltd to install and maintain water meters in households at towns around the country, with the contract valued at N\$35 million over five years¹³. However, it soon became apparent, after more than 8,000 meters had already been installed, that the water meters, manufactured by a South African supplier, were defective. By then the state had already paid out about N\$32 million to Nossob River Systems (Pty) Ltd. The state subsequently cancelled the contract with the company, but in the wake of this, during the investigation of the affair in 2005, it emerged that Nossob River Systems (Pty) Ltd was long since no more than a paper company and that it had no offices or even a functional telephone connection. In late 2005, government announced plans to institute litigation to get back about N\$11 million of the N\$32 million paid out to Nossob River Systems (Pty) Ltd up till then. It is unclear what happened to the case after this point as no mention is made of it ever having been resolved in news reports scoured through at the time of writing.

¹² Tileni Mongudhi, 'N\$80 million hostel deal turns sour', *Insight Namibia*, September 2011.

¹³ See 'Water deal down the drain', *The Namibian*, November 1 2005

The Chinese puzzle

Chinese construction companies arrived on the Namibian construction landscape shortly after independence in 1990 and since then their influence and market share has grown to the point that, in the absence of industry research, it is estimated by industry insiders that by 2010 Chinese firms accounted for between 60 and 70 percent of government construction and building works.

However, over the years, since about the turn of the century, local contractors have accused Chinese firms of continuously engaging in anti-competitive practices, such as flouting labour laws, in order to undercut local companies when it came to the bidding for government jobs. Although there is plenty of anecdotal evidence available to point an accusing finger at Chinese firms, as well as government, it is hard to find clear-cut evidence to back-up these claims, which do amount to allegations of illegal and corrupt practices. No Chinese firm appears to ever have been found guilty, by a competent court, of having transgressed such regulations.

According to Dobler, Chinese involvement in African infrastructure projects often starts through the Chinese government offering soft loans or grants for public works¹⁴. Linking development assistance to trade and investment has of course been practised by many countries, not least the West (although at least since 2005 such practices have been actively discouraged by the Paris Accord on Aid Effectiveness and other agreements). Such projects in Namibia got underway in the mid to late 1990s when China Jiangsu International Namibia Ltd. was responsible for the construction of the Supreme Court in Windhoek (1994–97), the new police and prison training college in the same city (1996–97) and the new magistrate's court in Katutura (1997–99). The China Beijing Corporation for International Economic Co-operation built 102 houses in Katima Mulilo in 1999, funded through an interest-free Chinese government loan. The private Chinese firm New Era Investment was responsible for many public projects, including the new town council building in Helao Nafidi Town, inaugurated in April 2006 by President Pohamba¹⁵.

In 2002, the Chinese state donated N\$55 million for the new State House project on the outskirts of Windhoek. Although the main contractor was a North Korean firm (Mansudae Overseas Group), Chinese companies were also involved in the State House project.

By obtaining such major public projects Chinese companies have come to dominate the construction sector, pushing Namibian and South African companies to the margins. There is an ongoing, if subdued, debate over whether the Chinese success is down to pricing, quality work and speed of completion or whether it is due more to historical and current political ties

between Windhoek and Beijing and possibly nefarious influences within the public procurement processes.

For Sherbourne¹⁶, the situation is clear: “Chinese companies now regularly win key public and private sector contracts despite ample evidence that they regularly and knowingly flout Namibian labour and social security laws. The fact that this appears to be sanctioned by government has led to an enormous amount of controversy and accusations of corruption. The bad feeling on the part of the local industry and local workforce this has given rise to shows no sign of diminishing.”

As briefly mentioned earlier, the construction industry umbrella body, the Construction Industries Federation (CIF), estimates that in 2009 alone, 60 to 70 percent of tenders for large construction projects were awarded to Chinese construction companies¹⁷.

To illustrate, since 2008, China Jiangsu International has been awarded government tenders for the upgrading of the Ongwediva hatchery, construction of the regional offices in the Caprivi Region, alterations and additions to the Katima Mulilo State Hospital (phase 3) and the building of the Namibian Institute of Public Administration and Management (NIPAM). Another Chinese company, Jiangsu Zhengtai Construction Group, was awarded tenders to upgrade the Khorixas District Hospital (phase 4), renovations to the Namibian Supreme Court, construction of a primary health care clinic, staff flats at Ekamba in the Oshana Region, construction of Omuntele Secondary School in the Oshikoto Region and the building of Oshakati State Hospital (phase 5), including the TB-ward and the clinic¹⁸.

Also, phase 4 of the Oshakati State Hospital was completed by another Chinese company, Jiangzi International Namibia. The same company was awarded the tender for the Okakarara Hospital (phase 5).

In October 2010 China Henan International Corporation Group (CHICO) was awarded the tender for the completion of phase two of the Karibib/Okahandja road, of which phase one was completed by a local company. The Chinese company had tendered approximately N\$40 million lower than other competitors, winning on the back of a bid of N\$116 million (the bids of local companies ranging from a low of N\$154 million by Namibia Construction (NC) to a high of N\$192 million by Raubex). This award once again raised another perennial suspicion, namely that Chinese firms are subsidised by the Chinese government, which allows them to come in low on tenders. Yet again, this is something which has never been proven in Namibia and is denied by the Chinese representative interviewed for this paper. However, there is still a widely held perception that such companies are

14 Dobler, Gregor. 2006. 'Old ties or new shackles: China in Namibia' in *Transitions in Namibia: Which Changes and for Whom?* Uppsala: Nordic-Africa Institute, Pg. 101.

15 Ibid.

16 In *Guide to the Namibian Economy 2010*, Construction, pg 219.

17 Estimates by Malte Beierdörffer, CIF's Senior Technical Advisor (personal communication with authors). See also the *Namibian Sun*, 14 January 2011, Jan Poolman, 'Chinese builders taking over'.

18 *Namibian Sun*, 12 January 2011, Jan Poolman, 'Chinese outfits wipe out Namibian builders'.

subsidized. Quoting Bosshard, Coetzee and Niikondo¹⁹ argue that “Chinese international construction companies receive support from government and China’s export credit and guarantee agencies – in particular the China Export-Import Bank and Sino-sure, (Bosshard 2006:1).”

These are just some of the big state construction jobs awarded to Chinese companies over the last few years, and in the context of corruption, there does appear to be considerable cause for concern when considering the conduct of Chinese companies and the Namibian state. In fact, over the years, the Namibian government has been accused of being a willing party to undermining its own laws, by looking the other way, in order not to displease a long time friend and increasingly important economic and trade partner, China, by coming down on the activities of especially Chinese construction firms. In effect, the Namibian state stands accused of being a party to corruption. And it was exactly this that two Namibian construction companies tried to prove in court.

In 2007 the tender to construct the new head office of the Ministry of Lands and Resettlement was awarded to a Chinese firm, China Nanjing, at a cost of N\$75 million²⁰. Two local construction companies which had also tendered for the job, Namibia Construction and Murray & Roberts, decided to challenge the tender award in court, alleging that China Nanjing did not meet or adhere to labour and social security requirements. Aside from China Nanjing, the other respondents in the case were the chairperson of the Tender Board and the Ministry of Works. Although documentation shows that China Nanjing did not adhere to the gazetted minimum wage structure and agreed conditions of employment, which are specified as basic requirements in order to obtain government building jobs, as well as making social security contributions, the local companies eventually lost the case and by then the building at the centre of the litigation had almost been completed.

In addition, the Affirmative Action Act requires every company in Namibia with more than 25 employees to submit annual reports to the Employment Equity Commissioner to show how they implement affirmative action. Some Chinese companies have reportedly avoided the stipulations of the Act by subcontracting smaller Chinese companies with fewer than 25 employees.

Documents filed in the case of the Ministry of Lands building showed that the Employment Equity Commission had exempted the Chinese company from affirmative action measures as the company had claimed it had less than 25 employees.

The consultant architect on the Ministry of Lands project, Kerry McNamara, disqualified China Nanjing which eventually won the tender on the grounds that it did not meet affirmative action requirements since at the time it was known to have 78 employees working on building an office for the United Nations in Windhoek.

In terms of Section 42 of the Labour Act, no state tender may be awarded to any construction company that did not include an Affirmative Action Compliance Certificate together with their tender. McNamara’s advice that China Nanjing was not compliant with affirmative action law and the Labour Act was ignored by the Tender Board.

By under-reporting or failing to report the true number of local workers to the Social Security Commission and not following regulations on minimum wages and payments to the industry-wide pension fund, McNamara estimated that Chinese companies were siphoning between 20 and 35 per cent of any state contract’s value out of Namibia.

With wage-related costs accounting for almost 50 percent of costs in the construction industry, Chinese companies are alleged to often pay less than a third of the minimum wage. Construction is one of only three sectors – agriculture and private security being the others – which have a legislated minimum wage structure, which companies have to adhere to, as well as contributing to the Namibia Building Workers Pension Fund (NBWPF), both of which have to be met in order to qualify for government construction jobs.

However, Labour Resource and Research Institute (LaRRI) researchers found in 2009 that²¹: “Our own fieldwork confirmed that hourly wages of N\$3 were the norm for Namibian workers at Chinese construction companies who were supposed to pay a minimum wage of N\$8.44. Our field work also revealed that these workers did not receive the benefits that are stipulated in the collective agreement for the industry.”

There have also been reports of construction companies failing to meet the required occupational health and safety standards and conditions of employment in Namibia. In one case labour inspectors temporarily stopped work at a Chinese construction site at Rundu due to health and safety concerns²². In March 2011 workers employed at Chinese firm New Era Investments went on strike and took to the streets to demand better working conditions. According to the Metal and Allied Namibian Workers Union (MANWU), New Era Investments was not complying with labour laws and that the workers’ demands were based on the provisions of the Labour Act²³. Specifically, New Era Investments was accused of paying salaries below the minimum wage

19 Coetzee, J. and Niikondo, A. (2008). *Perceptions on the Impact of Chinese Businesses in Namibia: A Case Study of the Retail and Construction in Windhoek*. pg.2.

20 *Namibia Economist*, 3 April 2009, ‘Chinese get flack in Larri report’ and *The Namibian*, 1 July 2008, ‘Major Chinese building firms not AA compliant’

21 In *Chinese Investments in Namibia – A Labour Perspective*, under ‘Economic impact of Chinese investments, pg 18

22 See August 14 2008, ‘Construction work at Chinese company at Rundu stopped’. *The Namibian*

23 See Nico Smit. (March 29 2011) ‘Construction workers stand up to Chinese firm’. *The Namibian*

and refusing to deduct union membership dues from wages. The company only agreed to pay compulsory amounts such as to the Social Security Commission and the Namibia Building Workers Pension Fund after the strike ended.²⁴

As already alluded to, what has become hard to fathom is government's inability or unwillingness to do anything about the situation, and this casts a pall of doubt over recent pronouncements about stimulating, protecting and encouraging local business and participation, not just in construction. Perhaps it is necessary to view goings-on, pertaining to Chinese involvement, in the construction sector against other considerations. For instance, according to Transparency International's 2008 Bribe Payers Index²⁵, Chinese firms are especially likely to use bribes to win contracts and Chinese construction firms are amongst the most corruption prone in the world when it comes to bidding for construction and building works.

Corruption – self-reinforcing and self-destructive

As illustrated, corruption can occur at different levels of the procurement process and actual work phases and in the end can not only harm the sector, but also negatively affect the broader economy, as well as compromising the safety of people residing in or doing business from premises in which corrupt practices could have played out.

The causes of corruption in the sector point to a laxity in monitoring and enforcement of adherence to various stipulated specifications, such as compliance with standards and labour and other laws.

In this regard, the State seems to be complicit in undermining the integrity of not only its own projects, being as it is the largest player in the construction sector, but also institutions related and relevant to the industry.

The danger is that if things are allowed to continue developing as they have been over the last decade or so, the industry could lose all credibility and investment, both local and international, would be scared off.

With construction earmarked for a leading role in job creation initiatives over the next few years, it has become high time to clean up the sector and to demonstrably attempt to be stamping out corruption in such an economically crucial industry.

The following recommendations are made:

1) With regard to government procurement processes, that:

- All project information, including the awarding decisions, be made accessible to the public, preferably on a specific website;

²⁴ See Nico Smit. (March 9 2011) 'Builders fed up with Chinese firms'. *The Namibian* and Nico Smit. (March 30 2011) 'Chinese firm bows to workers' pressure'. *The Namibian*

²⁵ http://www.transparency.org/policy_research/surveys_indices/bpi

- Pre-contract disclosure mechanisms – on the part of both officials and contractors – be introduced in order to ensure fairness and transparency in public procurement processes;
- Tender rules and procedures be respected and adhered to by the Tender Board and all relevant procurement officials;
- Labour, social security and affirmative action laws and compliance stipulations be respected and enforced at both Tender Board and project levels;
- Regular project audits be conducted to ensure the integrity of major public works. Such audits should be both technical and financial. The Auditor-General should be proactively involved in conducting audits of major public procurement contracts;
- Anti-corruption policies and awareness-raising campaigns, specifically aimed at public works officials and contractors, be implemented and conducted;
- Comprehensive codes of conduct for public procurement officials and contractors alike be developed and implemented, and made publicly available.

2) With specific regard to enforcement of labour and social security laws and regulations, that:

- The Employment Equity Commission (EEC) and the Social Security Commission (SSC) should proactively ensure that all workers at construction companies bidding for public works are appropriately registered. The EEC should ensure construction companies with 25 or more workers have an Affirmative Action Compliance Certificate to comply with Namibian law and tender regulations. The EEC and SSC should work together with the offices of the Labour Commissioner and possibly the Ombudsman to ensure that an effective inspectorate to monitor and investigate such matters is created.
- The Labour Commissioner should regularly undertake inspections on construction companies to ensure that they comply with the labour legislation that governs the building sector, such as the minimum wage, health and safety, and pension requirements that are mandatory for all construction companies to adhere to.
- The formation of joint ventures between Namibian companies and large foreign construction companies that undertake major construction projects in Namibia should be encouraged in order to capacitate local construction companies.

3) With regard to public works contractors, that:

- They commit to anti-corruption measures through contractual mechanisms;
- They implement internal anti-corruption rules and mechanisms; and
- Post up anti-corruption rules and policies at all project sites;

Construction tender awards for 2011 (March – July)

The extract below from public construction tenders granted over a three-month period in 2011 indicates that the widely-held perception that Chinese companies obtain upwards of 70 percent of public works contracts holds some weight. Out of 11 projects, eight went to Chinese companies:

Tender Number	Description	Awarded to	Date
F1/15 – 3/2010	Construction of new Council of Traditional Leaders Head Office on erf 1177 and erf 1178, Windhoek	China Jiangxi International	March 25 2011
F1/10/1 – 29/2010	Construction of the Outapi Crafts Centre in Omusati Regional – Ministry of Gender Equality and Child Welfare	Zhen Jiang No. 8	March 11 2011
F1/10/1 – 35/2010	Construction of the Oshakati Hospital Phase 5, Stage 5, Ward 54 and Ward 55 in the Oshana Region for the Ministry of Health and Social Services: Ministry of Works and Transport.	China Jiangxi International	March 11 2011
F1/10/1 – 48/2010	Construction of new Head Office for the Anti-Corruption Commission at Windhoek in the Khomas Region.	China Jiangsu International Namibia	March 11 2011
F1/10/1 – 38/2010	Construction of new staff houses at Tsumkwe in the Otjozondjupa Region for the Ministry of Justice: Ministry of works and Transport.	L.P.A. Shilongo cc	March 11 2011
F1/10/1 – 39/2010	Construction and upgrading of Mangetti Dunes PHC clinic and staff accommodation in the Otjozondjupa Region for the Ministry of Health and Social Services: Ministry of Works and Transport.	Kandjumbi Construction and Plumbing cc	March 11 2011
F1/10/1 – 40/2010	Construction of Onawa Senior Secondary School Phase 1 in the Omusati Region: Ministry of Education.	Qingdao Construction cc	February 25 2011
F1/10/1 – 50/2010	Construction of the New Airwing Base (Phase 3) situated in Karibib, in the Erongo Region for the Ministry of Defence.	New Era	March 11 2011
F1/10/1 – 51/2010	New Head Office of the Auditor General in Windhoek, Khomas Region: Ministry of Works and Transport	China Jiangsu International	February 25 2011
F/10/1-23/2011	Construction of a new magistrate's court and staff housing at Otjinene in the Omaheke Region for the Ministry of Justice: Ministry of Works and Transport	Qingdao Construction (Namibia)	July 15 2011
F1/10/1-41/2011	Renovation and upgrading of Nehale Senior Secondary School in the Oshikoto Region for the Ministry of Education: Ministry of Works and Transport	Eino Vilho Construction	July 22 2011

- They provide anti-corruption training to staff dealing with procurement and public sector officials;
- They actively play a role in ensuring the integrity of the construction industry by reporting corrupt practices to relevant authorities, without fear of disadvantaging their businesses and interests.

4) With regard to construction projects falling under the Targeted Intervention Programme for Employment and Economic Growth (TIPEEG)

- That such procurement contracts go through a proper procurement process rather than being decided by a small in-house government committee. That if speed is of the essence then alternative procurement procedures be considered including a fast-track approach which would be rigorous and transparent but quicker than normal.

5) With regard to general construction contracting practices, that:

- Anti-corruption commitments become a standard feature of construction, and related services, contracts;
- Relevant government departments, construction industry representatives and individual contractors collaborate in implementing and monitoring anti-corruption measures in the sector;
- Transparency and accountability, through tangible commitments to open governance and access to information, be given force through appropriate legislation;
- Finally, the Anti-Corruption Commission (ACC) become involved, in an advisory capacity, in assisting both the state and private sector in coming up with an appropriate integrity system for the construction sector.

6) With regard to civil society, that:

- NGOs and Civil Society Organisations commit to expenditure tracking projects which will measure the efficacy of public works projects in promoting development and reducing unemployment, but also monitor public works contracting from an integrity standpoint. With this in mind it is suggested that civil society should develop Public Spending Tracking Surveys to ensure budgeted funds are spent properly and Service Delivery Surveys to ensure that projects are completed according to specifications. The relationship does not have to be adversarial. Civil society organisations can partner government agencies to ensure transparency and reduce corruption. Communities and grassroots organisations can become involved by issuing report cards on public works that are implemented in their areas.

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Appendix 1:

Laws, policies and agreements

Apart from the requirement that a valid tender price complies with the terms and conditions of the government tender inquiry document, the laws identified below must be respected and adhered to by all construction company operating in Namibia.

1. The Labour Act: Act 11 of 2007

Under chapter 4 of the Labour Act No.11 of 2007, which deals with matters pertaining to Health, Safety and Welfare of Employees, section 39 makes provision for employer duties to employees which are as follows:

- (1) "Every employer or person in charge of premises where employees are employed must, without charge to the employees –
 - (a) Provide a working environment that -
 - (i) is safe;
 - (ii) is without risk to the health of employees; and
 - (iii) has adequate facilities and arrangements for the welfare of employees;
 - (b) Provide and maintain plant, machinery and systems of work, and work processes, that are safe and without risk to the health of employees;
 - (c) Provide and maintain safe entry and exit from places of work;
 - (d) Provide employees with adequate personal protective clothing and equipment if reasonably necessary;
 - (e) Provide employees with the necessary information and training to work safely and without a risk to their health;
 - (f) Ensure that the use, handling, storage or transport of articles or substances is safe and without risk to the health of employees;
 - (g) Ensure that employees are given the necessary instructions and supervision to work safely and without a risk to their health;
 - (h) Ensure that the organisation of work, including hours of work and mealtimes, do not adversely affect the safety or health of employees; and
 - (i) Take any other prescribed steps to ensure the safety, health and welfare of employees at work.
- (2) Every employer must report to a labour inspector in the prescribed manner, whenever -
 - (a) There is an accident at any place where the employer's employees work; or
 - (b) A prescribed disease is contracted at any such place"²⁶.

Section 70(1) to (4) and Section 71(1) to (8) of the Labour Act of 2007, which deal with collective agreements, are significant because the provisions are binding on every employer and employee in the Namibian construction industry.

These clauses prescribe the following:

(Legal effect of collective agreements)

Section 70 (1) "A collective agreement binds -

- (a) The parties to the agreement;
- (b) The members of any registered trade union that is a party to the agreement;
- (c) The members of any registered employers' organisation that is a party to the agreement;
- (d) The employees in the recognised bargaining unit, if a trade union that is a party to the agreement has been recognised as an exclusive bargaining agent in terms of section 64; and
- (e) Any other employees, employers, registered trade unions or registered employers' organisations to whom the agreement has been extended in terms of section 71.

(2) A collective agreement binds for the whole period of the agreement every person bound in terms of subsection (1) (b) and (c) who was a member at the time it became binding or who becomes a member after it became binding, irrespective of whether or not that person continues to be a member of the registered trade union or registered employers' organisation for the duration of the agreement.

(3) Subject to subsection (4), the provisions of a collective agreement relating to the terms and conditions of employment vary every contract of employment between an employee and an employer who are both bound by the agreement and are deemed to have incorporated into the contract of employment.

(4) Unless the agreement expressly states otherwise, a collective agreement does not preclude the conclusion of a contract of employment that contains terms and conditions more favourable than those contained in the agreement, provided that the employer enters into the said contract in good faith and without impairing or undermining collective bargaining or the status of the registered trade union involved.

Extension of collective agreements to non-parties

Section 71 (1) Despite section 1, for the purposes of this section, 'collective agreement' means an agreement between an employer or a registered employers' organisation and a registered trade union that is recognised by that employer or employers' organisation in terms of section 64.

(2) The parties to a collective agreement may ask the Minister, in the prescribed form, to extend that agreement to employers and employees -

- (a) Who are not members of the parties to the agreement; and
- (b) Who are in the industry to which such agreement relates.

(3) The Minister must -

- (a) Publish a request made in terms of subsection (2) in the Gazette; and
- (b) Invite objections to the request within a period specified in the Gazette, which period must not exceed 30 days as from the date of publication of the request in the Gazette;
- (c) Serve copies of any objection received in terms of paragraph (b) on the parties to the agreement; and
- (d) Invite responses to those objections within a period, which must not extend more than 14 days as from the date of invitation.

(4) The Minister must not extend a collective agreement unless -

- (a) The Minister has considered any objection or response received in terms of subsection (3); and
- (b) The Minister is satisfied that -
 - (i) The agreement is not in conflict with the Namibian Constitution or any law;
 - (ii) The agreement is not, on the whole, less favourable than the terms and conditions of employment that applied to employees immediately before the conclusion of the agreement;
 - (iii) The agreement provides for an arbitration procedure to resolve disputes about its interpretation, application and enforcement; and
 - (iv) The request to extend the agreement complies with this section.

(5) If that agreement meets all the requirements set out in subsection (4), the Minister must extend that collective agreement for a fixed period to the parties contemplated in subsection (2), by publishing a notice to that effect in the Gazette.

(6) After a notice contemplated in subsection (5) has been published, the Minister may, at the request of the parties to the collective agreement, publish a further notice in the Gazette -

- (a) Extending the period specified in the earlier notice by a further period determined by the Minister;
- (b) If the period specified in the earlier notice has expired, declaring a new date from which, and a further period during which, the provisions of the earlier notice will be effective; or
- (c) Cancelling all or part of the notice published in terms of subsection (5).

(7) Subsections (2) to (5), read with the necessary changes, apply in respect of the publication of any notice in terms of subsection (6)(a) or (b).

(8) In addition to publishing any information in the Gazette as contemplated in this section, the Minister must, where appropriate, publish the information through other available means, with a view to ensuring that the intended recipients of the information receive the information²⁷.

2. Collective Agreement

In terms of Government Notice no. 129, Government Gazette no. 4271 of 01 June 2009, the Collective Agreement provides the legally agreed and legally enforced employment conditions in the building and construction industry. The Collective Agreement is entered into between the Construction Industries Federation of Namibia (CIF) and the Metal and Allied Namibian Workers Union (MANWU), and extended to all employers and employees in the construction industry.

In accordance to the collective agreement, there are legally agreed compulsory benefits to employees that should be adhered to by employers in the construction industry which include:

- Minimum wages²⁸
- Living-away allowance
- Safety standards (in accordance to the Labour Act 11 of 2007)
- Service allowance
- Shop steward training courses
- Leave pay
- Pension Fund
- Namibia Building Workers Pension Fund (NBWPF) or an in-house pension fund approved by NAMFISA (Namibian Financial Institutions Supervisory Authority)
- Minimum protective clothing

“With regard to living-away allowances, it is calculated at twelve percent (12%) of the employee’s hourly wage for the entire duration of this agreement. The Service allowance will be paid to every employee equal to 120 (one hundred and twenty) hours of his/her wage and will be paid as part of the December remuneration - payable either at the end of that month for an employee not going on leave during December, or in the case of an employee going on leave in December, on the last working day before commencement of his/her annual leave. This allowance will be calculated pro-rata to the portion of the year that the employee was in service during that specific year. Should the service of an employee be terminated before the end of the year, a pro-rata payment will similarly be due”²⁹.

With regard to minimum protective clothing, it has been agreed upon that an employee be issued with 2 free overalls per year, 1 hard hat (as determined in compliance of Government Notice No 156 of 1997: “Regulations relating to health and safety of employees at work”), gum boots that would be supplied free for defined areas but to be returned to the employer after the relevant activity. Other minimum protective clothing includes a pair of safety boots that must be issued free every two years, unless worn out within that particular period³⁰.

3. Social Security Act: Act no. 34 of 1994

Construction companies are obliged by this Act to make contributions towards the compulsory benefits of employees pertaining to the following:

- Clause 29: Maternity leave
- Clause 30: Sick leave
Disability pension
- Clause 31: Death Benefit Fund
- Clause 37(4)(a): Training schemes and employment schemes for employees

²⁷ See Labour Act 11 of 2007, Section 70 and 71

²⁸ See Declaration of extension of collective agreement: Construction Industry. June 01 2009, page 3 and 4 for minimum wages per category

²⁹ See Declaration of extension of collective agreement: Construction Industry. June 01 2009

³⁰ op. cit

4. Affirmative Action (Employment) Act: Act no. 29 of 1998

A relevant employer is defined as any employer employing more than 25 employees required to register with the Employment Equity Commissioner; a registered relevant employer is required to submit an Affirmative Action Report, which, when approved, entitles an employer to be granted a valid Affirmative Action Compliance Certificate.

This certificate must be renewed annually upon the EEC approval of the relevant contractors' compliance and successes with its own programme of affirmative action training and social requirements

Clause 42(1) of the Affirmative Action (Employment) Act: Act 29 of 1998 states that -

“No

(a) contract shall be entered into by or on behalf of the State and any relevant employer; or

(b) Guarantee, loan, licence, permit, grant, or concession, including the right to the reconnaissance or prospecting for, or to mine, any mineral, shall be given, made, issued, granted or awarded to any relevant employer by or on behalf of the State, unless the relevant employer concerned is in possession of a valid affirmative action compliance certificate”.

This particular law makes it clear that the state cannot enter into a contract for service with a relevant employer that is not in possession of a valid and current Affirmative Action Compliance Certificate.

Appendix 2:

Interview with Namibia Employers Federation (NEF) Secretary-General, Tim Parkhouse. June, 24, 2011:

IPPR: What is your assessment of corruption in the construction industry and how widespread would you say it is?

TP: I think it is probably wrong to use the term corruption. What is of concern to us is the fact that there is bias in favour of, and I will be very blunt, Chinese companies.

Let me put it this way, the government has been spending a lot of money recently on infrastructure and to try and create employment, and to try to keep capital, money moving in circles, and obviously Namibia does have a limitation on the number of construction companies available with capacity to do the work.

But far too many, far too many of these government infrastructure contracts have been given to the Far East companies and that means that the profits are leaving Namibia, whereas if they were given to Namibian companies, the profits would stay here.

If they were given to a South African company, also the profits would leave, but the Chinese do not obey the minimum wage, which has been agreed to in the construction industry.

I have actually seen one of the pay sheets from a building site of a Chinese construction company, and it was probably around two years ago that I saw that, and I speak under correction, but I do not think not one, not even the highest paid met the minimum wage for the construction industry. That is point number one.

Number two is that they bring in all sorts of artisans to do the work. The office that is being built for the Founding Father on Robert Mugabe Avenue, I passed there earlier this year, and there was a plasterer, a Chinese plasterer working. There was a Chinese person mixing the concrete for the plasterer. Why?

We have got Namibians who can do these jobs. We have got hundreds of them, thousands of them. If you go past Pupkewitz Megabuild any day of the week, you will see Namibians standing there with their tile-cutting equipment, their paint brushes, pleading for work, and a few minutes later you go past a building site like that and you see Chinese doing the work. And that is when I see red.

These are our concerns, the lack of employment of local people and the lack of keeping to the agreed minimum wages.

If you look across the road here (Wernhil Shopping Mall), the extension of Wernhil, look at the quality of the protective clothing of those people. Do look at the guys working on scaffolding, they have got safety belts on, they have got helmets on.

Go past the Chinese construction site, and you would not see it. These are the things we get upset about, but I do not believe it is real corruption as such, but for some reason or another there is bias in favour of giving these construction jobs to the people

from the Far East. As I say, if it was a South African company the profits would leave the country as well, but our experiences have been, and I have done a lot of construction over the years, South African companies look after their people the same way Namibian companies do.

IPPR: What are the factors contributing to this bias in awarding tenders and major capital projects to foreign construction firms and Chinese construction firms in particular?

TP: I believe and cannot say specifically, because I have never been involved or I have never seen the tender documents, but I believe the Chinese come in much, much cheaper than Namibian or South African companies.

But if you are cutting your salary bill by 20 percent then you can tender low and who supports these Chinese companies? We do not know? There are stories about who supports them behind the scenes. We do not know.

But the main reason for this is plainly and simply that the bottom line for the construction job is coming in well below Namibian tenders and I know, I am told by a Namibian company, that they do not bother to tender for government tenders anymore, they say it is a waste of time. They concentrate on the private sector where you do not have the same problems. So that is the only factor that I can say.

IPPR: Why are these Chinese construction firms able to cut down on costs?

TP: Well as I said, number one, if you cut down on the salary bill, if you are paying way below the agreed wage, agreed between the Construction Industries Federation (CIF) and the Metal and Allied Namibian Workers Union (MANWU), and your salary bill on a construction site is a very, very heavy part of your overall cost. If you cut down on that, if you drop below the minimum wage then, yes, you can come in very cheap.

IPPR: What can the different stakeholders do to counter or mitigate the effects of these developments?

TP: One, we would like to see a change, and I will use that word, with the Tender Board. How is it, and why is it, that the Tender Board issues the tenders to these people?

Number two, the compliance with our labour legislation, we would like to see more visits from labour inspectors to construction sites and they can go to Namibian construction sites too, they do not have to concentrate on the Chinese, but we know that is where the biggest problem lies.

The labour inspectors should go there and say ‘right, you do not have the protective clothing as required by law, you are not paying the minimum wage as required by law, and you stop work or you comply, or we give you a week or whatever to comply’.

The Labour Commissioner visited a site in Rundu and they stopped work on that site for a week. I think until they got that Chinese company to comply with the minimum regulations.

I had a meeting with a construction firm here, it was also last year, on the grounds of a lack of protective equipment and the Ministry of Labour sent an inspector and stopped work on the site for a day, until the workers were given the correct protective equipment.

But we need more work. Number one, why does the Tender Board give these contracts to the Chinese? Do they consider the benefits or profits staying in the country? Do they consider the benefits of paying our people properly? How and why do these Chinese companies get permits to bring in ordinary artisans?

And one of our Namibian companies challenged the Tender Board over a building here in town and the whole legal process took so long. The building was completed before the court case was finished. So it did not come to anything, but the CIF will be able to tell you more on that one.

Appendix 3:

Interview with Namibia Chamber of Commerce and Industry (NCCI) Chief Executive Officer, Tarah Shaanika. July 19, 2011

IPPR: What is your assessment of corruption in the construction industry and how widespread would you say it is?

TS: Well, I think corruption is there, there is no doubt about the presence of corruption in the industry, but surely it is not that widespread. We have corruption both in the private and public sectors.

IPPR: What are the factors contributing to corruption in the construction sector?

TS: Probably certain loopholes in the procurement policies and procedures of both public and private companies that could create an appetite for corruption.

IPPR: What can the different stakeholders do to counter corruption in the sector?

TS: I think one way of combating corruption in the sector is most probably to make the systems a bit tighter so that we do not have one person having too much power in terms of approving procurement. You need to go through different stages in the procurement process to reduce the risks.

IPPR: Is the Tender Board an effective and efficient entity in handling capital projects?

TS: Well, I think they are not as effective as one would like to see because on many occasions the composition of the Tender Board creates problems. It's permanent secretaries from all the ministries and agencies and offices in government. In many cases these are the same people who are chairing ministerial tender committees.

IPPR: So this creates a conflict of interest?

TS: It creates a conflict of interest. When the PS wants a particular company, it's easy for him or her to get it through. So there are no checks and balances within the system.

IPPR: So you would probably want to see a change in the composition of the Tender Board?

TS: The composition of the Tender Board, yes.

IPPR: What is it that you would probably like to see to constitute the composition of the tender board?

TS: One element which is missing is the representatives of other stakeholders such as the private sector. I would want to see at least two representatives of the private sector on the Tender

Board, and one would like to see perhaps also people with independent minds.

IPPR: What are industry bodies such as yours doing to combat corruption particularly in sectors like the construction sector?

TS: Well, the best thing we can do is really to speak out against corruption. The other thing that we should be doing is to encourage members of the chamber for example to desist from corrupt practices, but also to increase awareness of the consequences of corruption within the private sector, among public officials and so on, but also to encourage people who see corrupt practices to report those incidences.

IPPR: Most government capital projects go to Chinese contractors. Why do you think this is?

TS: I think the issue is the competitiveness of the Chinese. Whether it's fair or unfair? I don't know. But the Chinese tend to be very competitive in terms of price. I cannot say in terms of quality, but surely they always have competitive prices. The other one is delivery. They also deliver fast. But we have also observed a lot of corrupt practices involved in the awarding of tenders to Chinese. They seem to be quite good at bribing public officials, and they get documents easily, they get tenders easily and in Namibia it has become very difficult to get a tender without having inside information. There should be somebody assisting you from within, which is very dangerous. It shows that corruption is increasing.

IPPR: So one can conclude that our own officials are also guilty?

TS: Yes, we have ourselves to blame, and they are not bribed by Chinese only, they are bribed also by Namibian entrepreneurs and others. It's very shocking.

IPPR: What can be done to counter or mitigate corruption in the construction sector?

TS: Well, I don't think we need a lot or more legislation. I think what we probably need to change is the way we do things, especially in the area of procurement. There must be checks and balances. Some officials have simply too much power in their ministries to influence tenders without somebody questioning them. And when companies realise that this one has more power to push a project, they bribe that person.

Appendix 4:

Interview with the Counsellor for Economic and Commercial of the Embassy of the People's Republic of China in the Republic of Namibia, Liu Runing (translated by the Attaché for Economic and Commercial Affairs Li Zhen).

IPPR: How many state-owned and privately-owned Chinese construction companies are there in Namibia at present and how many are registered as Namibia companies?

By now there are actually seven Chinese state-owned construction companies doing business here in Namibia and nine individual (private) construction companies in Namibia, so in all there are 16 Chinese companies

IPPR: Can you give us their names?

We have the detailed information about all the state-owned construction companies, but the private companies we have little information about. But you know we have the Chinese Chamber [of business] here. They have more detailed information about the private companies ... from the level of working relations, we are closer to state-owned companies.

IPPR: Do you know the value of government contracts granted to Chinese construction companies in the last few years?

Unfortunately we do not have such kind of statistics. The Namibian Tender Board would be in a better position to answer that question.

IPPR: How many Namibians are employed by Chinese construction companies, and how many Chinese are employed at the moment (2011)?

We only know detailed information on the state-owned companies and based on rough statistics, the Chinese construction companies now have 450 Chinese employees and they employ more than 2,600 local Namibian workers. Of the 450 Chinese workers, most of them are in management or they are technicians.

IPPR: Do you have a rough estimate of how many Chinese employees are labourers or unskilled workers?

We do not have such statistics, but we know most of the workers are technicians/artisans and not doing the normal labour work.

IPPR: So the only unskilled employees who work for Chinese construction companies are Namibians?

Yes, I think they also employ some skilled Namibians also. Some Chinese companies also pay a lot to employ some local Namibian workers in management levels.

IPPR: Can you give us a percentage of how many Namibian workers are in management?

We do not have such specific data but we know examples like China Henan International group who employ some locals at management level and in the human resources department. Another example is Jiangxi International Group and I know when we were at their offices in Windhoek were they employ a local as a secretary.

IPPR: Chinese firms are often successful when it comes to being awarded major construction projects in Namibia. Could you explain the reasons for this?

For the past years, Chinese construction companies have always committed themselves to win-win economic cooperation between the two countries, especially on quality. That is the biggest reason I think why they get so many projects. In detail, I think it is for the following four reasons as well. Firstly, Chinese construction companies have high-level management skills and rich engineering experiences and they have already completed many big projects successfully not only in Namibia but also in many other foreign countries all over the world. Secondly, the quality of the projects completed by Chinese construction companies is excellent and gets a favourable reception from owners of the project. Thirdly, Chinese companies are very efficient and their projects are completed in a shorter periods. They complete projects faster than other companies. Fourthly, Chinese construction companies are very honest and their degree of good standing is the key reason for their success in Namibia. Regardless whether it is in the private or public sector, they all think that Chinese companies do the job well and fast.

IPPR: You mentioned win-win situation, could you explain what you mean by this?

The cooperation between China and Namibia is a win-win relationship because when Chinese companies come into Namibia to do business they bring along a high level of technology and also create a lot of job opportunities for the local people and do some training and uplift living standards.

IPPR: What has been achieved in terms of Chinese construction companies transferring technology and skill to locals?

We do not have such detailed statistics, but we have examples. Most of the construction companies have their own training systems by giving local workers personal teachers to show them how to do the job. For example Jiangsu International send their workers to formal training centres.

IPPR: It has become evident that Chinese construction companies complete work for lower prices than local companies. Is this due to the generous backing of the Chinese government in the form of subsidies?

The main reason is that Chinese companies have their own management skills. They can manage their workers and the process of the project very scientifically and strictly so they can reduce the cost. This is very much related to their rich experiences in the construction market. This is the main reason they can make the price lower. All of the Chinese construction companies here in Namibia are doing business independently without any form of financial aid from the Chinese government. Therefore, the Chinese companies are competing equally with local construction companies.

IPPR: So one can conclude that Chinese construction companies do not receive any form of subsidy from the Chinese government?

On behalf of the Chinese government here in Namibia, we can say yes.

IPPR: What are the major constraints facing Chinese construction companies in Namibia?

At present, there are four major challenges. Firstly, the price of the building materials is going higher and higher and the competition in the construction market is much more severe. Not only for the Chinese construction companies, but for every construction company in the industry. Secondly, the laws protecting workers in Namibia are too harsh. The third is obtaining work permits for the Chinese workers is too difficult. Lastly, some print media do not treat Chinese construction companies equally and mostly carry one-sided and untrue reports. That is why ordinary people always see the bad side of Chinese construction companies. They judge from newspapers. We do have some good examples but we do not see newspapers reporting on the positive aspects of Chinese construction companies.

IPPR: You said that the price of building materials is increasing. Many people here assume that most Chinese construction companies import material from China cheaply.

As we know, most of the building materials used by Chinese construction companies here in Namibia are bought locally [in Namibia], because the type of material to be used on projects is decided by the designers. And as far as the Tender Board is concerned at present, when they award a tender to a company, they also make recommendations and regulations that materials should be bought locally or otherwise.

IPPR: You said that workers are over protected in the Namibian construction industry. What changes would you want to see in this regard?

We receive those views/opinions from the Chinese construction companies because the policies grant the local workers a lot of powers – they should be paid a minimum wage and they can strike, but the policies do not grant employers a lot of powers. There is no balance between protection granted to employees and employers.

IPPR: As far as the minimum wage is concerned, what are the opinions of the Chinese construction companies? Is it too high or too low?

The problem is not whether the minimum wage is high or low. The emphasis here is that the minimum wage at times does not match the workload or workers' productivity.

For the record, I want to emphasise one point that the views that the minimum wage and the labour requirements are too harsh are those of the Chinese construction companies. Chinese construction companies believe that the minimum wage should match the workload and workers do not or cannot complete the amount of work they are required to do then they should not be paid according to the minimum wage. But right now Chinese companies are trying to have talks with the labour organisations to deepen mutual understanding in order to solve the problem.

From our knowledge, most of the Chinese construction companies here in Namibia do comply with the minimum wage and other legal requirements. In fact at present, they pay all workers strictly according to the minimum wage. Chinese construction companies are able to bid lower because of their high management skills and rich engineering experience which enable them to control the costs at a very low level. Another reason is that, the Chinese managers employed by Chinese construction companies are paid lower than any other managers in the local construction companies.

About the Authors

Frederico Links has been a Research Associate with the Institute for Public Policy Research (IPPR) since 2009, working primarily on governance and democracy-related issues. In 2010 he researched and wrote the IPPR briefing paper *Corruption Prevention: Strengthening Systems, Procedures and Practices*. In 2010 Links was the IPPR's Research Coordinator for the Crinis Namibia Research Programme – a Transparency International (TI) backed project researching political party funding financing in Namibia. The Namibian section of the study, authored by Links, was published in late 2010. In 2009 Links researched and wrote articles for the IPPR's Election Watch newsletter.

His previous published work includes *We Write What We Like: The Role of Independent Print Media and Independent Reporting in Namibia* (Namibia Institute for Democracy 2006) and *Parliamentary Reporters' Handbook* (Namibia Institute for Democracy 2006).

Since 2004 Links has worked as a journalist and sub-editor for a number media outlets including Insight Namibia magazine, Reuters news agency, *The Namibian* newspaper, *Informanté*, and Katutura Community Radio. From 2009 to 2010 Links researched and wrote Insight Namibia's monthly Corruption Tracker bulletin. He has won Namibia Media Awards for his sports journalism (2005), tourism reporting (2006) and articles on education (2006). He holds a National Diploma in Journalism and Communication Technology (2007) from the Polytechnic of Namibia.

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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.

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. 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 (ex officio).