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## THE ROLE OF THE PRIVATE SECTOR IN TACKLING CORRUPTION



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## INTRODUCTION AND BACKGROUND

“Corruption in the private sector takes many forms, among them bribery, undue influence, fraud, money laundering and collusion. Corruption distorts markets and has a negative impact on society as a whole, in both the developing and the developed world. Private sector corruption contributes to environmental damage, health and safety problems, economic instability and human rights violations by diverting scarce resources, both financial and human. Private sector corruption erodes confidence in public institutions and deprives citizens of capital needed for economic growth” (Transparency International, 2017: 1).

Corruption in the private sector is part of the total level of corruption in a country. It is necessary to investigate the level of corruption in Namibia in comparison with other countries. One of the most popular indices used by investors to provide them with an indication of the level of corruption in a country as a decision-making indicator for investment purposes is the Corruption Perception Index of Transparency International (TI) (Coetzee, 2012: 124). The TI Index on corruption and good governance is compiled annually per country. Countries are classified as open economies or closed economies. Countries are rated out of 10 – with 10 being a perfect score, indicating no corruption and perfect good governance. The problem with international indices, however, is that they are simplistic indices and do not perceive and tackle corruption from a holistic or systemic perspective.

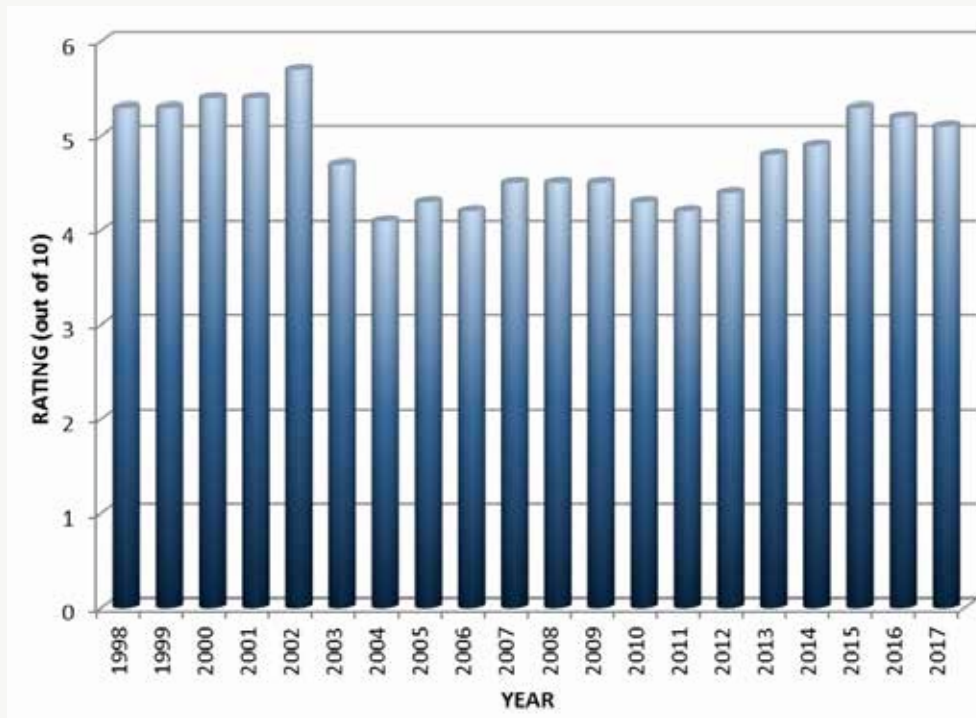
When analysing the TI ratings in Namibia from 1998 up to 2017, the trend was negative; however, what is positive is that since 2004 the ‘darkest year’ with a rating of 4.1 out of 10 – the trend has been positive overall, and it has slowly but surely been rising, with a rating of 5.1 in 2017. Namibia has always been one of the top five least corrupt African countries. However, a rating of mostly below 5 out of 10 since 2004, indicates we are mediocre, not good but not bad, just ‘hanging in there’. The average rating over 18 years is 4.8 and for the last 10 years has been 4.6. This is an indication that Namibia is failing from an international perspective in terms of tackling corruption. From analysing the long-term trend, it can be deduced that there is tolerance of corruption in Namibia that has become part of the culture of engrained corruption that has also ‘infected’ law-enforcement agencies and the private sector. Some pending fraud cases date back to 2008, e.g. Teko Trading case. This case involves a former Public Service Commissioner and her business associates. After several delays in the judicial system, the next court hearing has been rescheduled for May 2018.

Despite the low baseline of the corruption level since 1998, the trend is slowly upwards and shows a slightly positive direction over the long term. As a result of recent changes in the judicial system, expectations are that Namibia can reduce the backlog of 19 452 criminal cases in the magistrates court (Shivute, 2017: 12), based on statistics for 2014. Reducing the backlog (keeping all other variables constant) can have the effect that the private sector could have more trust in the judicial system and initiate legal action when smaller amounts of corporate and business fraud are involved. Due to the increasing level and scale and/or magnitude of corruption in the public sector that contributes to the backlog in court cases and the erosion of private sector confidence in the judicial system, it is highly unlikely that the private sector will in the short to medium term have more trust in the judicial system. The level of a society’s trust in state systems is a proxy for measuring corruption. An increase in the level of mistrust is directly related to an expected increase in the level of corruption. TI ratings are based on assessments of existing surveys and reports and are not supported by in-depth evidence or new surveys. Nevertheless, TI ratings provide some general indication of the corruption situation in a country, but it needs to be combined with in-depth investigation and interviews with key role players. De Klerk (2017) of ISG Risk Services said, “Although Namibia fares fairly well in fighting corruption as perceived by a tick-box international assessment, we are not competitive on a global scale ... The fish rots from the head. I definitely witness a trend in increased corruption. Where Avid Investments



was a huge scandal of N\$30 million 17 years ago, 'billions' now seem to be the order of the day."

#### Annual rating 1998 - 2017



Statistics about corruption in the private sector are not available. What is available is the contribution of the different sectors and the public sector towards the Gross Domestic Product (GDP). The public sector contributes 26.5% to GDP. To mention a few of the sectors: services contribute 65.6%, industry 29%, mining 11.5%, and agriculture 5.5% (CIA World Fact Book, 2017). Since the private sector makes the biggest contribution towards GDP, this sector does have a significant influence, if not the most, in tackling corruption. The private sector includes banks, retail and textile, multinationals, corporates and/or private companies, pharmaceuticals, lawyers, medical doctors and dentists, mining, construction, manufacturing, logistics, tourism, travel and hotel business, farming, small and medium enterprises (SMEs), close corporations, one-person businesses, state-owned enterprises (SOEs) and non-governmental organisations (NGOs), to mention a few.

Because of the contraction of the local economy since the second quarter of 2016 (Institute for Public Policy Research, 2017), it can be deduced that the private sector is feeling relatively insecure about future business prospects. There is insecurity about, for example, the level of government spending, its exposure to foreign debt, ability to repay its debt, its cash flow situation and the credit downgradings by Moody's and Fitch Ratings. Other factors creating insecurity include the implementation of the New Equitable Economic Empowerment Framework (NEEEF) and the Namibia Investment Promotion Act (NIPA), the delayed forthcoming Land Conference, limited transparency about public documents, limited accountability of political and public office bearers, and a long-term increase in the monetary value (magnitude) of corruption cases.

From the discussion so far, it can be deduced that the private sector is experiencing numerous challenges. Corruption and mismanagement of public funds (also a manifestation of corruption) are major underlying challenges. From experience of comparable corruption situations and best practices in Singapore, Hong Kong, the United Kingdom (UK) and the United States of America (USA), which will be elaborated on later



in this paper, it is highly unlikely that the challenge of dealing with corruption will be tackled and 'solved' in the short to medium term of the following five years.

## WHAT IS CORRUPTION?

Corruption is as old as the hills. One facet of corruption can be described as a perception(s), but it is also a social disease, a lifestyle disease. It can also be described as an impact; for example, it impacts on the private sector and the private sector impacts on corruption; a manifestation (e.g. bribery), a condition and/or culture – for example, a culture of entitlement associated with the reaction to colonialism; and as a co-producer/contributor, for example, human activity contributes to climate change (Coetzee, 2012: iii). From the discussion it is evident that corruption is dynamic and has many 'faces' like a chameleon that can adjust its colour and behaviour according to its environment. Corruption can also change its environment; consider, for example, the cliché that 'corruption creates further corruption'.

The dangers of extreme self-interest to the exclusion of all other values implies that everybody works only for himself or herself, hence we will always look at ways to outdo the next person, regardless of the consequences for the competition or prey or society.

But is corruption a relative concept? What is corruption in Russia is not necessarily corruption in the USA. Is corruption a Western concept? The answer to this question is not easy to determine. There are perceptions that corruption is not an African concept, but 'imported' mainly from Europe. Parkhouse (2017) has mentioned that the Far East has a different approach to, and line of thinking about, what constitutes corruption. What is clear is that corruption is situational, or context-based. Determining the origin of the international problem of corruption and who is accountable is comparable to trying to determine the origins of the human capacity to be both 'good and evil'. It certainly cannot solve the problem situation of corruption in Namibia.

The World Bank (WB) defined corruption as "the abuse of public office for private gain". The expanded definition of the WB distinguishes between 'isolated' and 'systemic' corruption (World Bank Report, 1997: 9-10). The WB adjusted its definition slightly to replace 'public office' with 'trusted office'. By implication the role of the private sector is also acknowledged by this modification. However, the WB's adjusted definition still fails to acknowledge the general nature of corruption as being systemic – a concept that suggests dependence on deviant behaviour in public and/or private sector institutions. From a systemic perspective, the WB's definition does not capture the essence of corruption and is inadequate for managing corruption (Coetzee, 2012: 123).

The Anti-Corruption Act, Act No. 8 of 2003, describes corruption in terms of gratification (dealing with, using, holding, receiving, or concealing gratification in relation to any office); corrupt acquisition of private interests by public officers; corruption in relation to tenders; bribery of public officers; corruption of witnesses; bribery of foreign public officials; bribery in relation to auctions; bribery for giving assistance in relation to contracts; corruptly using an office or position for gratification; corruption in relation to sporting events; conspiracies; and fraudulent concealment of office. From the Act it is clear that the description of corruption is inadequate for managing corruption, because the description does not capture the essence of corruption, namely that it is not only a public and/or private 'office' issue, but that it is systemic in nature, in other words it extends to the 'whole' of Namibian society. Given this systemic implication, any strategies to tackle corruption in the private sector must be aligned with strategies in the public and civil sector to be sustainable.

Based on the long-term TI trend of Namibian corruption, where corruption is becoming commonplace in transactions with government and the private sector and not





accidental (isolated corruption as defined by the WB), the most comprehensive and systemic definition known to the author can be defined as “an impairment of integrity, virtue or moral principle; depravity, decay, and/or an inducement to wrong by improper or unlawful means, a departure from the original or from what is pure or correct, and/or an agency or influence that corrupts” (Merriam-Webster Dictionary, 2010). An argument can be made about “a departure from the original or from what is pure or correct”, but whose standards are applicable in determining ‘what is pure and correct’? Nevertheless, the essential attributes of corruption are represented in this definition and will be used in this paper.

## **THE IMPACT OF CORRUPTION ON INVESTMENT AND DEVELOPMENT**

Corruption occurs in all countries, big and small, rich and poor. However, it is in the developing world that the impact of corruption is most destructive. The reason why it is most destructive in developing countries is mainly because corruption impacts most severely on the vulnerable, i.e. the abject poor, uneducated and disabled in developing countries who cannot ‘afford’ corruption compared to people in developed countries with a much higher standard of living and who are much less vulnerable. The Eritrean Ministry of Information used the metaphor of cancer to explain the impact of corruption as “a dangerous cancer that will destroy a healthy culture, pollute the moral and accepted values of the society, undermine the rule of law, decimate the social and economic rights of the majority and retard the production capacity of the people and government. It is the greatest threat to national security” (Klitgaard, 2008: 1). Although the reference of Klitgaard is rather dated, it is still highly applicable.

Other examples of the impact of corruption include fiscal distortions; excessive and unsustainable public spending; reduced foreign direct investment (FDI) and domestic investment; environmental damage; macro-economic instability; increase in the unofficial economy; increase in drug and people trafficking and violence; political favouritism and conflicts of interest; failure of the legislature to convene; ignorance and misgovernment; erosion of legitimacy; erosion of morals, common values and family values; mistrust; loss of faith; and lack of creativity (Coetzee, 2012: 75).

The owner of Essie & Associates, an accounting firm, commented as follows on the question of the impact of corruption on investment in the accounting industry: “Any accountant (and there are many) found guilty of fraud causes distrust in the profession and has a major impact on the work performed by the profession” (Herbst, 2017a). Many accountants are forced by their employers to commit fraud on their behalf. Accountants who commit fraud on behalf of their employers also tend to steal money from their employers. In most such cases, they have evidence against the employer and use that to blackmail employers. Because of this “mutual mistrust, these accountants and business owners just move on with no action taken. These incidents are the silent killers of the profession and one reason why many ‘honest accountants’ leave the profession.” ISG Risk Services is of the view that “we are not competitive on a global scale. So we are limited to African investors, or corrupt international investors who see corruption costs as merely a necessary business expense. This is especially evident in the mining and fishery sectors ... in fact, all sectors where government is the gate keeper” (De Klerk, 2017).

“Due to corruption some companies will rather take investment elsewhere. Corruption is increasing the markup of investment” (Parkhouse, 2017). Corruption is a serious obstruction to national, economic, social and political development, and should be avoided and prevented at all cost. It reduces competition because not all companies might be willing to pay bribes and as a result may not take part in essential bidding. Corruption leads to mismanagement, for example the unaccountable N\$175 million of the SME Bank, and the unaccountable GIPF fraud of N\$660 million, where no one ended up in jail.



Corruption hampers private and public service delivery in Namibia with its remote areas and long travelling distances to deliver services. When there is inadequate development in remote areas and in overcrowded areas such as informal settlements in Windhoek, it leads to a shortage of essential services such as waste removal and this creates insanitary conditions, e.g. in our 'shanty' towns. Several social protests orchestrated by the Affirmative Repositioning group are symptoms of an extreme shortage of affordable urban housing. Recently, the police were called in at Walvis Bay to control about 1 000 parents who demanded access to 85 Grade 1 positions for the 2018 academic year.

Corruption causes environmental damage, e.g. the recent reported illegal cutting and clearing of centuries-old Namibian rosewood and teak trees in the Caprivi Forest and the alleged selling of the trunks by the Ministry of Forestry and officials and businessmen connected to Chinese nationals, e.g. Hou Xuecheng to New Force Logistics, MK Investments and Uuding CC (Grobler, 2017).

Members of the CIF (2017) commented as follows about the impact of corruption on investment. Members are experiencing the impact as 'very negative' and 'devastating'. Some construction companies are not growing. Unemployment is increasing as a result of large-scale corruption in the construction industry. Money that could have been used for providing quality work for the government ends up in the pockets of corrupters and corruptees. Corruption increases the cost for the government to provide services. It contributes to economic instability, disinvestment and closure of SMEs. Private and public sector corruption erodes confidence in public institutions and in foreign and local investors' trust in domestic investment. Corruption leads to unsustainable and unreliable growth of the economy. Corrupt companies are usually less interested in growing the market and more focused on self-enrichment. Because of corruption only a few companies secure tenders and competition is reduced. A few companies are favoured because of their political connections and/or influence, favours and kickbacks. Such favouritism is 'killing' the non-politically connected companies.

Corruption is bad for local value retention. Qualified local contractors often lose out on large capital-intensive projects to Chinese and/or other foreign companies that are created for window dressing, known as 'shelf companies'. The latter companies export their profits to their respective home countries. Chinese construction companies sometimes have a reputation for not paying taxes and some of them tend to be involved in money laundering. Corruption erodes honesty and cripples the industry. Entrepreneurs are scared to invest in expensive machinery and in capacity building of their workforce, because there is no guarantee that their investment would be taken into account in tender evaluation. Some CIF members estimated that corruption accounts for between 2 to 4% of tender/project costs. Because of corruption, investors would rather invest in other less corrupt sectors and/or less corrupt countries.

The focus shifts to the surveying, construction and property industries. On a question how corruption in land surveying is impacting the profession and local investment, Joe Lewis, a Land Surveyor (2017), said, "Namibia's survey profession is rather small and sensitive – a few persons getting all the work can bankrupt the rest of the profession. Some land surveyors (mostly Namibians) are currently struggling to survive, while some others are making really good money". It is clear that corruption in land surveying contributes to reduced competition in the profession and indirectly contributes to higher prices for investors that could make domestic investment opportunities uncompetitive. In researching the construction and property industries, some respondents indicated that some developers have become monopolistic in nature. They flood the market and push down prices. In terms of the wider construction industry with reference not only to building contractors, the maladministration of the government by not paying contractors is having a negative impact on the construction industry and on investment in the industry, including the property market. From this it is clear that corruption manifested as monopolistic behaviour is prevalent in the property industry.

Corruption is destructive for development (Coetzee, 2012: iii) as well as invest-



ment, as illustrated by the examples discussed. Corruption is a departure from systems created to be efficient and effective and to enable development. The purpose of the corrupt person is not to destroy a whole system, but primarily and exclusively to serve their own self-interest and perpetuate the source of their gains. People engaging in corruption become dependent on the benefits of corruption and resist tackling corruption (Coetzee, 2012:179). To put this in a social perspective, corruption is a social pathology (illness) that threatens integrity, virtue and moral principles, impairs good governance, and leads to a distortion of efficient and effective processes in the private and public sector that is destructive for several professions associated with and dependent on investment and development, as well as destructive for investment and development in Namibia at large.

## MONOPOLIES REDUCE COMPETITION

Services are contracted out to the private sector with limited competition in some areas, for example, large capital projects involving the construction of roads and buildings. Such limited competition creates monopolies. These monopolies accommodate their own inefficiencies by passing the costs of their inefficiencies on to their customers. Many of Namibia's 98 State Owned Enterprises (SOEs) are monopolies. Monopolies are conducive to promoting corruption. Reasons that could be a lack of reduced competition contributes to 'negative feedback loops', or 'causal loops'; for example, inefficiencies as a result of limited competition causes 'inflation' and/or increased prices without adding value for customers (waste of resources is a manifestation of corruption). 'Negative feedback loops' means that 'corruption strengthens corruption' (Meadows, 2009: 1-13).

Monopolies and programmes that create public scarcity should be abolished. If monopolies cannot be abolished in a small economy such as Namibia, competition should be created, for instance, by stimulating entrepreneurship and innovation in the public and private sectors. If an increase in external competition is not possible, then an objective and independent regulator should be established before privatisation is embarked upon (Coetzee, 2012: 160; Gildenhuis & Knipe, 2000). However, in Namibia it is general practice to create regulators during and/or after the process of privatisation, e.g. the Namibia Financial Institutions Supervisory Authority (NAMFISA) was created after the deregulation of the financial institutions industry; the Electricity Control Board (ECB) was created during the deregulation of bulk electricity generation and distribution; the Communications Regulatory Authority of Namibia (CRAN) was created during the deregulation of the communications industry.

## CARTELS AND PROTECTIONISM

A cartel can be described as an informal agreement between two or more persons/business people with the purpose of e.g. fixing industry prices and/or regional prices in an industry(ies) or sector(s) for products and services at levels that benefit the price fixers and restrict competition in a way that is harming customers and other competitors not part of the cartel. Cartels are associated with corruption. For example, bid rigging, market division, price fixing and colluding that are all manifestations of corruption by cartels (Coetzee, 2016).

Various industries in Namibia are protected as infant industries, e.g. milk, chicken, pasta and cement. The small number of competitors in each industry creates an environment that favours the forming of cartels. In the beer industry we now have at least two competitors, Namibia Breweries and South African Breweries.

There are cartels in Namibia that harm the economy in various forms and impacts. They raise prices causing overcharging of distributors and customers and reduced profits for suppliers because of the cartels' monopolistic power to leverage suppli-



ers from which they are buying their products. Such overcharging and leverage can contribute to distributors and suppliers not being able to operate profitably, especially if these cartels are their biggest customers. The long-term impact of cartels is that they cause inefficiencies in the economy. Cartels deter investment as indicated by different presenters during the 2016 Annual Conference of the Namibia Competition Commission (NaCC) with the theme 'Cartels and their impact on the economy'. One example of the NaCC's actions is that "Sanlam Namibia together with the Professionals Provident Society Insurance Limited South Africa and Namibia agreed to pay a fine of N\$15 million imposed on them by the Namibian Competition Commission" (Kaira, 2016).

The NaCC should consider adopting a leniency policy to give the first member of a cartel that comes forward and reports the existence of a cartel the opportunity not to be prosecuted. The NaCC also needs to consider adopting a whistle-blowing mechanism to complement the proposed leniency policy to encourage potential whistle-blowers. Such a policy needs to be strengthened with monetary compensation for taking the risk of reporting cartels and all forms of corruption that fall within the mandate of the NaCC. The NaCC needs to adopt a more aggressive approach in using some 'dawn raids' to complement the proposed leniency policy. Overall, deterrence needs to be applied and accompanied by high penalties, a high probability of being caught, prosecuted, being legally and socially sanctioned (scandals and media exposure) and a public awareness programme that educates the public about detecting cartels and their different manifestations.

## CORPORATE GOVERNANCE

Corporate governance is generally the governance of incorporated entities such as public and private companies. Good governance is about the ability to govern an enterprise with integrity. Quality governance applies to all incorporated entities (King, 2006: 1). Principles of quality governance or corporate governance can include the following: sound economic, social and environmental practices; the triple bottom line<sup>1</sup> (sustainable<sup>2</sup>) performance; effective financial accounting<sup>3</sup> and management; integrated risk management processes; systems and processes for effective decision-making; organisational integrity; effective monitoring and controls; independent auditing and verification; accounting and responsibility; and adequate sustainability and transparency (Khoza & Adam, 2005: 32). From these definitions and principles of corporate and good governance it is possible to deduce that good governance includes corporate governance and public sector governance (Coetzee, 2012: 9).

Given the description of corporate governance, it is appropriate to have a look at how corporate governance evolved to understand the current context of Namibian corporate governance and why its principles should apply. The Review of the Cadbury Report of 1992 as prepared by JST (2014) indicated that the report was compiled in the United Kingdom (UK) to prevent corporate collapses such as Enron, Polly Peck and the Maxwell companies. The report focused on four pillars of governance, namely accountability, fairness, transparency and independence. The King Report of 1994 in South Africa, like the Cadbury Report of 1992, included in its Code of Corporate Governance requirements on sustainability and ethical standards. In the UK the Cadbury Report was followed by three more major reports, namely Greenbury (1995), Hampel (1998) and Turnbull (1999). Compliance with the Code of Best Practice was not

<sup>1</sup> There is also a relatively new trend called the triple top line, namely ecology (e.g. company products that place nutrients back into the environment and promote sustainability); followed by economy (profit); and equality (social responsibility).

<sup>2</sup> The essence of sustainability (Visser & Sunter, 2002: 73-76) is that it is a wider view of business performance, beyond profits, revenue growth and shareholder value. The following are also known as the triple bottom line: economic growth, environmental quality and social justice.

<sup>3</sup> Effective financial accounting is not simply about compliance with rules and codes; it is not 'box ticking' exercise. Enron had an audit committee, a compensation committee and a nomination committee. The audit committee was chaired by a chartered accountant. Enron's board had 100 percent attendance (King, as cited by Tricia Bisoux, 2004: 35). However, due to manifestation of corruption known as 'creative accounting' and other forms of corruption, Enron collapsed.





enforced and it remained voluntary. However, many companies complied because they did not want to fall victim to negative impacts resulting from non-compliance.

Since the release of the 1st King Report on corporate governance in 1992, King II and III followed. King IV was released in 2016 and it is applicable for the financial years starting from 1 April 2017. King IV is a revision of King III to bring it up to date with international governance codes and best practice, and to align it to shifts in the approach towards what can be called more 'inclusive' capitalism and to account for specific developments in corporate governance in relation to effective governance bodies, increased compliance requirements, new governance structures (e.g. social and ethics committees), emerging risks and opportunities from new technologies, and new reporting and disclosure requirements, e.g. Integrated Reporting (King IV Summary Guide, 2016: 6). King IV includes a Code with additional separate sector supplements for SMEs, non-private organisations (NPOs), SOEs, municipalities and retirement funds. King IV is voluntary in South Africa and Namibia, unless prescribed by law or stock exchange listing requirements, which is not the case in Namibia. King IV differs from King III in respect of its focus on outcomes-based governance, a requirement to apply and explain (unlike apply or explain as King II), its structure is more succinct and it contains 16 principles applicable to all organisations and a 17th principle applicable to institutional investors (King IV Summary Guide, 2016: 5, 6).

Because of the Companies Act (Act No 28 of 2004) and changes in governance internationally – including the release of King III in South Africa and the introduction of the new South African Companies Act, which differs significantly from the previous Companies Act, as well as King III's reference to sections of the South African Companies Act – the Namibian Stock Exchange (NSX) and Namibian businesses in general could not adopt the King III Code. Therefore, a Namibian Code of Corporate Governance (NamCode) became necessary, (Namibian Stock Exchange, 2014: 3). The NamCode was developed by the Namibian Stock Exchange with support from First National Bank Holdings Namibia for all companies including entities incorporated by statute or in terms of the Companies Act (2004) or registered in terms thereof and any other legislation applicable in Namibia. The NamCode is, like the King Reports, voluntary. It represents a diluted version of King III (Parkhouse, 2017). However, the NamCode is an attempt to improve corporate governance in Namibia and, as a first attempt, it is a positive development.

"Members are not officially informed about the NamCode," according to Parkhouse (2017), the Secretary General of the Namibian Employers Federation (NEF). There is no formal code of ethics for the NEF. Externally, some members have their own codes. "Some years ago an attempt was made to develop a code for the NEF. However, internationally there is no code for the International Employers Association, because it could be too generic", said Parkhouse of the NEF. The NEF has a total of 300 corporate (direct) members, +- 5,500 employers (indirect members) and a total of 10 registered associations. The NEF has an unwritten code that members must comply with all legislation and, if found in default, the Secretariat takes action to rectify the situation and the Board reserves the right to cancel membership, if default is proven and continues. Some retail companies do have their own codes. Such codes are very important for monitoring behaviour, and to mitigate and manage corruption. Self-regulation is often better than legislation (Parkhouse, 2017).

The CEO of the Namibian Institute of Professional Accountants (NIPA), Essie Herbst (2017b), indicated in an interview that the Institute of Professional Accountants has its own code of ethics, that it takes disciplinary action against members if they transgress the code, and council members sign a declaration to disclose conflict of interests. Herbst indicated that "members might be guilty of bribery and gifts to government officials to get work done" and that government officials "ask for small favours in return for work to be completed." De Klerk (2017) said in an interview that "corporate governance enjoys more lip service than actual implementation. Entities do not have sufficient policies to deal with incidents of conflicted interest until it's too late, conflict has arisen and the board is stuck with having to swipe a blow at 'their own'. Even if the



board takes decisive action, a board member gets an 'honourable discharge' with no negative record, and takes corruption and poor governance to the next company."

The focus shifts towards the surveying and property industry. On a question about how the land surveying profession complies with corporate governance, Joe Lewis, Land Surveyor (2017) said that the surveying profession is regulated by the Namibian Council for Professional Land Surveyors, Technical Surveyors, and Survey Technicians (SURCON), in terms of professional acts and regulations. He expressed doubt whether this can be called 'corporate governance', and had never heard of the term 'Nam-Code'. It is clear that the NamCode is unknown to people in the land surveying profession. In an interview with Wilma and Nic Serfontein, owners of One of One Properties (2017) about estate agents' compliance with corporate governance, they indicated that the Namibian Estate Agent Board (NEAB) requires all estate agents to register with the Board in terms of the Estate Agents Act (Act No. 112 of 1976). The NEAB has been established to protect the industry. In terms of the Financial Intelligence Compliance Programme, which is in compliance with the Financial Intelligence Act (FIA) (Act No. 13 of 2012), an estate agent is required to determine the identity of the customer, the origin of the money, etc. Every estate agency must have a compliance officer. A report of compliance must be submitted to the Bank of Namibia every six months. It is concluded that the property industry has its own corporate governance requirements as indicated in legislation, registration of estate agents at the NEAB as well as the FIA compliance programme.

Three corporate governance surveys have been conducted in Namibia, the last two in 2013 and 2016 (Deloitte & Touche Namibia Corporate Governance Survey, 2016: 6). The overall finding was that respondents were moderately familiar with corporate governance reforms. 50% of respondents were from the private sector and 50% from the public sector. The report on the survey indicated that a number of areas needed a major change.

- 56% of respondents indicated that they have not published Black Economic Empowerment (BEE) procurement practices. 50% of those who published BEE procurement practices were SOEs. With the anticipated implementation of NEEEF, businesses will be expected to proactively embrace transformation (Deloitte & Touche Namibia Corporate Governance Survey, 2016: 6).
- 38% of respondents confirmed that the board does not regularly review its mix of skills and experience. 61% respondents acknowledged that they lacked skills on boards pertaining to one or more areas, of which 58% indicated that they need legal skills. Only 17% indicated that they need accounting skills. Because 61% respondents indicated that they lack skills, it can be deduced that respondents most likely do not understand their fiduciary powers. Respondents need training in fiduciary duties such as care, skill, diligence and good faith based on a foundation of intellectual honesty (King, 2006: 29-30, 52-53). Given the overall mediocre to poor financial performance of SOEs, questions posed include: How can the financial performance of SOEs, with board members not realising their limited financial skills, be explained? What other variables are impacting more on financial performance than accounting skills? Could the latter mentioned variable include abuse of power? Could these variables include political influence on SOEs and, if so, to what extent does political influence affect the financial performance of SOEs more than accounting and financial management skills?
- 28% respondents indicated that their boards have signed performance agreements against which to evaluate board members. 58% of respondents do not have performance appraisals. This is an area of serious concern.
- Only 24% of entities indicated that their boards perform an annual independent assessment on the independence of non-executive directors. This is worrying as it indicates undervaluation of the need for and contribution of independent directors and/or a shortage in the number of independent non-executive directors serving on boards.
- Only 31% of entities have formally signed governance agreements with their



main shareholders. As indicated “This is a worrying trend, as accountability of the board to the shareholders is therefore not clearly outlined” (Deloitte & Touche Namibia Corporate Governance Survey, 2016: 12).

- 54% of respondents indicated that the CEO is employed by means of a contract. This is a major improvement on 9% of the 2013 survey. The NamCode prescribes a fixed contract for CEOs as best practice.
- Only 42% indicated that there is a succession plan in place for their CEOs. 36% of respondents have a succession plan in place. 31% of boards of directors do not have overlapping terms. The lack of a succession plan may result “in no prior expertise being retained” (Deloitte & Touche Namibia Corporate Governance Survey, 2016: 17).

Despite major improvements in some areas of corporate governance when comparing the Deloitte & Touche Namibia Corporate Governance Surveys of 2013 and 2016, all areas as discussed need major board improvement by public and private entities, especially SOEs, which seem not to be up to standard in complying with the NamCode. Deloitte & Touche’s Namibia Corporate Governance Surveys should in future include questions to board members about donations, gifts and entertainment offered to them, as well as questions about declaration of interests, the recording of interests at board meetings and the monitoring of declarations by boards. Since the NamCode is based on King III, the Code needs amendment in order to make provision for changes in King IV, e.g. from the ‘apply or explain’ approach to ‘apply and explain’.

To provide an indication of misleading corporate language, in the pharmaceutical and medical sectors the words ‘corruption and fraud’ are not professionally acceptable; instead industry practitioners prefer to talk about ‘waste, inefficiencies and uninformed stakeholders’ (Coetzee, 2015a). In a holistic perspective, corruption is a systemic problem that includes waste, inefficiency and negligence, and should be contextualised as entailing the breaking down of the ‘wholeness’ of a system, contributing to malfunctioning, e.g. through inefficiency. By being overly sophisticated and diplomatic, some industry practitioners do not call a spade a spade and consequently do not define and address the problem for what it really is.

The coinciding absence of the following corporate governance principles can provide an indication that both public and private institutions could be systemically corrupt (Coetzee, 2012: 83-84):

- Sound economic, social and environmental performance; the triple top line that includes ecology (sustainable impact on the environment), economy (profit) and equality (social responsibility);
- Effective financial accounting and management, e.g. maintaining a sustainable growth rate<sup>4</sup> and a healthy cash flow;<sup>5</sup>
- Integrated risk management<sup>6</sup> processes to adapt to changes and to mitigate the impact of high-risk activities;
- Developing systems, processes and controls for effective decision-making, monitoring, evaluation and changing unsuccessful strategies;
- Integrity, for example, accepting liability for institutional negligence; and
- Independent auditing and verification of financial statements.

Managers should be held individually accountable for the implementation of corporate governance principles. With most SOEs not being able to provide audited financial statements, it is clear that corporate governance principles are not accounted for.

Coetzee (2012: 84-85) is of the view that the coinciding absence of the proper exercising of the following fiduciary powers of directors of companies as described by King (2006: 29-30, 52-53) can provide an indication that private institutions could be

<sup>4</sup> For example, a year-on-year profit growth rate that does not place serious constraints on working capital in case of a steep decline in profits, market share or share price.

<sup>5</sup> Another example is to apply Economic Value Added (EVA) principles.

<sup>6</sup> King III requires from companies not only to have audit and risk management committees, but that risk management should be an integrated part of the audit committee (PricewaterhouseCoopers, 2009: 51,73).



systemically corrupt.

- **Good faith:** a director must apply his/her mind and always act in the best interest of the institution. He/she must ensure that there is no conflict between his/her interests and those of the institution. Good faith suggests reliance, trust, integrity and acting in an 'unfettered manner'.
- **Care:** he/she must ensure that the company uses its assets as if they are the assets of his/her own family. Care involves seriousness in dealing with institutional challenges, stewardship<sup>7</sup>, 'transparent communication' and protecting the company's reputation.
- **Skill:** every director must use his/her ability, whatever that ability is, in the best interest of the company he/she represents, e.g. the way that a director evaluates information submitted to the board; and the honest application of a director's mind.
- **Diligence:** a director must do his/her homework; he/she must study information about the industry and the company's relations with stakeholders and ensure that he/she understands it.

The impact of not fulfilling one's fiduciary powers can appear in various manifestations, such as conflict of interests (good faith), lack of accountability (care), incompetence (skill) and negligence (diligence) (Coetzee, 2012: 84).

USA telecommunications company WorldCom did have an audit committee, a remuneration committee, a certified accountant (CA) as chairman of the board and complied with all corporate governance 'box ticking'. Nevertheless, WorldCom was permeated with corruption. WorldCom is an example which demonstrates that 'box ticking' and/or mere compliance with good governance principles without performance is not enough. Integrity-driven commitment to performance is required (Coetzee, 2012: 82).

As reported in several newspapers about the recent closing of the SME Bank, in which at least N\$175 million is unaccountable for, the board of the bank did not fulfil their fiduciary responsibilities. Several board members, including two chairmen, received loans, some using their loans to buy expensive vehicles. It is not clear how highly paid board members can qualify for SME loans without abusing their powers and creating a conflict of interests. The SME Bank case illustrates the low level of adherence to corporate governance principles and application of fiduciary powers of directors amongst SOEs in Namibia. Another example is the missing N\$660 million of the Government Institutions Pension Fund (GIPF). No board member and/or manager has yet been held accountable. Several other examples can be recalled with a similar outcome, e.g. the missing millions of the National Housing Enterprise (NHE), N\$100 million of the Offshore Development Company (ODC), as well as approximately N\$30 million of the Social Security Commission (SSC) and Avid, where most board members allegedly demonstrated no interest in their fiduciary responsibilities.

The private sector needs to create greater awareness of the importance of the fiduciary powers of directors. The non-application of fiduciary powers should be punishable. Fiduciary powers should be included in charters and codes of conduct that directors of institutions and board members sign up to. Compliance with and the outcome of the application of these powers should be reflected in the performance agreements of directors and board members and they should be held accountable for it.

## **MOST COMMON TYPES OF CORRUPTION IN THE PRIVATE SECTOR**

More than forty different manifestations or forms of corruption can be identified (Coetzee, 2012: 93). However, not all of them involve the private sector. The most common forms of corruption in the private sector include bribes, facilitation of payments, conflicts of interest, gifts, hospitality and paying of expenses. All manifestations of corrup-

<sup>7</sup> Garrat (2003: 1-128)





tion where money is involved are also more specifically known as fraud. Facilitation of payments can include under-invoicing, double invoicing and multiple invoicing with the aim of misleading the revenue authority (Anti-Corruption Commission, 2016a&b). Other forms of corruption, especially in tendering, include bid rigging, market division, colluding and kickbacks.

“Nepotism is another big issue of contention in Namibia. The NEF is developing an apprenticeship scheme. We will ensure that there is no risk of nepotism when selecting the candidates for apprenticeship positions” (Parkhouse, 2017). Gifts are the form of possible corruption about which members pose the most questions to the NEF. For example: When is a gift a gift, and not a bribe? Does the size/value determine or provide an indication of whether it is a gift or a bribe? The higher the monetary value of a gift, the bigger the probability that it is given with the intention to bribe or to create reciprocal obligations.

“For every corrupt deal in government, there is a corrupt counterpart in the private sector. De Klerk’s (2017) view is echoed by the CEO of Namibia Manufacturers Association (NMA), Ronnie Varkevisser (2017). Bribes and/or kickbacks are most prevalent. The use of ‘contacts’ which puts a government official in conflicted interest is definitely also prevalent. Namibia is not even close to understanding that gifts and hospitality as ‘perverse incentives’ are morally wrong and unlawful. E.g. every estate agent gets a kickback from banks in Namibia for every transfer of property. Despite the Estate Agents Board having a public legal opinion on forbidding kickbacks, such malpractice is still taking place in the interaction between estate agents, banks and conveyancers. When it comes to perverse incentives, the financial services industry is by far the biggest culprit” (De Klerk, 2017).

The focus shifts to the land surveying and property industry. Lewis (2017), a land surveyor, when asked about the most common forms of corruption in the land surveying profession, said in an interview, “I am not aware of anybody who has ever been prosecuted or even formally charged for corruption in the land surveying industry. However, rumour has it that there is a lot of corruption in the profession. It is often alleged and speculated that certain land surveyors get large tenders from local authorities by providing kickback in return for getting the tenders.” He stated that land surveyors are exposed to bribes and kickbacks. An investigation of the property market revealed that it is well known that public officials request bribes and free lunches from estate agents for residential properties and in return the public officials ensure that the contracts are concluded. Embassy staff influential in the processing of lease agreements are some of the big culprits in offering bribes to estate agents. A number of estate agents are not registered and operate illegally. When estate agents advertise in newspapers, they are required to indicate their name and surname. However, their estate agent registration number is not required. It is recommended that the latter registration number be included in advertisements in order for customers to verify an agent’s legality and protect them from any form of corruption.

Members of the CIF (2017) were asked the following questions in an online survey initiated on behalf of the author by the MD of the CIF, Bärbel Kirchner: ‘Are you aware of any bribery taking place?’ and ‘Can you give examples of bribery that has taken place?’ They responded that tender officials award tenders to companies for a bribe of 2-3% of the contract value. During 2014 a contractor received a tender for executing work for a Regional Council despite being N\$1.2 million more expensive than the closest bid. The owner of the successful company contacted a member of the CIF and asked his company to execute the tender on his behalf for N\$0.5 million more, compared to what the unsuccessful company tendered for. Being N\$1.2 million more expensive enabled the successful tenderer to make N\$ 0.5 million for himself, with N\$0.2 million going to corrupt official(s).

One CIF member said that he knew of an officer in the Ministry of Finance who requests payment to process documents. Without bribes, documents are not processed. Another member’s tender was rejected and the feedback received was that the bid price was too high. A signed copy of the same tender was found, revealing that the



tenderer overcharged the going rate by approximately 65%. Some companies pay municipal officials to execute 'favourable' inspections and 'fast approvals'. One member has been approached by officials of the Ministry of Works and Transport to provide them with some 'cooldrink money'. In return they would channel 'work' his way. The member did not comply with the request and he did not receive any work. It is alleged that officials of the Roads Authority approached consulting engineering companies and offered them assurances that certain contracts would be awarded to them if the companies offer kickbacks.

Consultants inform a CIF member about many projects that were awarded by decision-makers in government that did not comply with technical tender specifications. Front companies pay bribes to public officials. A question that could be asked is: Where in the private sector are bribes not being paid? A Chinese company offered a CIF member money for a prospective tender/project. It was clear to the said member that political connections were influential in awarding this tender and future tenders/projects. Some consulting companies are awarded large contracts without these contracts being advertised or treated as open or public tenders.

A CIF member said his company does not perform work for government. The company applied some time ago to be approved as a contractor. The company was informed that the application was successful. After the approval they received phone calls at least once a month from public officials who wanted to conclude deals if the company would execute work for government. The company did not conclude such deals, as the company informed public officials that they were not interested if there are no official documents available when tenders are invited. Another member said that he thought that companies receiving tenders often offer kickbacks to public officials. For example, the contractor was approached with the bribe: 'To ensure you get a contract, you must give us 5% of the tender value'. This happened a day before the tender was adjudicated by the Tender Board.

'Can you provide examples of gifts offered to contractors?' This question was posed to CIF members (2017). The Tender Board of a Regional Council was promised an all-expenses-paid vacation in Germany under the 'smokescreen' of familiarising themselves with a new sewerage system that the government was implementing. Contractors with farms invite influential decision-makers in tenders for hunting trips. Other manifestations of 'gifts' include overseas trips, bursaries and cash payments.

'Can you give examples of facilitation of payments that have taken place?' This question was posed to CIF members (2017). A local council paid a traffic official the full contract price and spent another N\$85 000 during the following book year to complete the contract with assistance of another contractor. Another CIF member is aware of foreign companies that have paid handsome 'finder's fees' to Namibian decision-makers for introducing them to certain work that did not go on tender and ensured that the work was awarded to them. SOE decision-makers are well known to offer 'finder's fees'.

'Can you give an example of hospitality or expenses paid in return for advantage(s)?' This question was posed to CIF members (2017). One member said that he is aware of international flights for customers, employers and engineers. Recent newspaper articles have reported on instances where a private sector role player paid for accommodation and travel expenses of staff members of the City of Windhoek to perform a team-building exercise. The same party was recently awarded a tender. Some decision-makers' retail accounts for furniture and clothing get paid by contractors. It happened that items of bribery were included in tenders and then paid for by contractors.

'Can you give an example of conflict of interest that has taken place?' This question was posed to CIF members (2017). One member said that his company bid for a project. The tender was awarded to a company that quoted a price that was three times higher than his company's bid. This happened although the latter bid met all requirements and the company does have an appropriate track record of executing the work. A Works Inspector who is a customer representative and/or tender evaluator of the



Ministry of Works and Transport in one of the regions acted as a site agent for building classrooms for a school. He bought building materials and provided funding for the project. Considering the position he was holding in the Ministry, he was supposed to be one of the evaluators who performed the tender evaluation. He has possibly misused his influence to allocate the tender to the company in which he has interests.

Seldom have public procurement officials disclosed their relationships and ownership in businesses they award tenders to. A CIF member (2017) said that he exposed a Regional Councillor a few years ago for conflict of interest. After the incident the CIF member was informally blacklisted by that particular Council. He never received another invitation to perform work for that Council. The Councillor was promoted shortly afterwards by the ruling party to become a Member of Parliament.

Family connections play a role in the awarding of tenders. Critical information is often removed from tender submissions/bids, which invalidates them. Tenders are given to incompetent tenderers at much higher prices 'to give opportunities to all tenderers'. These tenderers approach industry suppliers to provide supplies to them at lower prices than what they quoted in their tender submissions/bids. Some public office holders and public officials have private businesses that perform work for the government. In the case of NamPower's Xaris tender, well-connected politicians have been elbowing one another aside in their bid to be successful.

Manifestations of corruption overlap considerably. Focusing on manifestations does not necessarily shed light on the social harm and/or severity of the impact, the frequency and scope or breadth of corruption's occurrence, unless its impact is quantifiable and measurable, which is rarely the case. Because manifestations overlap, their impacts also overlap. Because of this overlapping of manifestations and their impacts, their mutual exclusiveness cannot be established. Therefore, they are not valid and reliable as indicators of corruption. Measuring the impact of manifestations is very challenging, because 'livelihood', 'quality of life' and 'social harm' cannot easily be quantified in monetary terms without raising debatable ethical questions (Coetzee, 2012: 93). Identifying manifestations of corruption can at most provide an indication of the numerous 'faces' and breadth/scale of corruption and not its impact. Therefore, researching the most common types (manifestations) of corruption any further is of very limited value.

## **THE PRIVATE SECTOR/STATE INTERFACE – WHO IS CORRUPTING WHOM?**

Which came first, the chicken or the egg? The bottom line is that you cannot have one without the other, so the question is self-defeating. Government does of course breed corruption by continuously increasing the size of the bureaucracy, and it does have limited preventative and law enforcement measures. The worst mistake of government is not to act in high-profile cases. This breeds a national value system that sustains corruption, that it is just normal business. A CIF member responded in an online survey (2017) that there cannot be ever any justification for the Chinese taking over our country's major construction industry without serious bribes been paid, and unless you can convince me that our politicians really have the best interest of the country at heart, I will stand by this". This statement implies that one must pay bribes to do business and that a key contributor to corruption is the public and private sector, which initiate, participate in and allow corruption to flourish. This interface of corruption is mutually beneficial and destructive for both sectors. The public and private sector are both equally accountable for the state of corruption in Namibia

Governments create the environment for the private sector to operate in; they create the laws, policies and regulatory restrictions to which the private sector must adhere. Too much interference and/or overregulation, and uncoordinated cross-border and regional government cooperation of the Southern African Development Cooperation (SADC) and the Southern African Customs Union (SACU) impact negatively on the manufacturing business and retailers that depend on imports and exports. For



example, different levels of Value Added Tax (VAT) for different products between Namibia and its border countries, and duplicated border control regulations delay and reduce regional trade. Such delays and resulting increased costs increase the motivation to bribe border officials to 'grease the wheels'. A truck crossing a border post in the SADC region has to complete up to 1,600 forms (Gillson, 2010: 7); there are added delays if scanners are not working and this increases the cost of products to the customer, especially the poor who cannot afford such additional costs. These increased cost added to products make SADC products uncompetitive compared to products imported from other regions, e.g. the European Union (EU). Uncompetitive regional products impact negatively on local businesses in Namibia, especially SMEs that cannot compete with products of multinational corporations (MNCs).

Transparency International (2011) indicated that out of 15 factors regarded as the most problematic for doing business in Namibia, corruption ranks in the 4th position. This ranking of corruption as a destructive factor has not improved since 2011. It takes on average about 66 days to register a new business. In New Zealand a new business can be registered in one day on average (TI, 2011). These figures are still valid for 2017. The number of days taken to register a business is directly related to public bureaucracy, duplication and delays. The more delays, the greater the need for applicants to bribe public officials, the higher the demand for bribes and the higher the cost of bribes.

Namibia has a bloated and inefficient public service with severe challenges of accountability that contribute to bureaucracy and delays. These challenges are most likely some of the reasons why the private sector offers bribes to public officials in order to reduce the waiting period for approving licenses and permits. For example, an investor cannot wait 66 days to register a business in Namibia, because the return on capital on a few million US\$ is negative. Such an investor would rather bribe someone for the approval of the registration of the business, or pursue his business interests in another country.

The Public Procurement Act (Act No 15 of 2015) does have the potential to make corruption easier to conduct compared to the previous Act. For example, one concern is that only tenders amounting N\$3 million and above need to be submitted to the Central Procurement Board for evaluation and approval. In effect, this means that larger tenders might be split up into smaller tenders in order to circumnavigate the Central Procurement Board of Namibia (CPB). On NEEEF the "Government is to some extent and unwittingly creating the environment and/or setting the scene in which corruption can flourish. NEEEF has great potential for stimulating corruption" (Parkhouse, 2017).

Herbst (2017a), owner of accounting firm Essie & Associates, stated in an interview: The reason for corruption between the private sector and the state is "because government lacks transparency and does not set the correct example, i.e. late payments for work done, Value Added Tax (VAT) paid late, incorrect information when requesting good-standing certificates to accompany tender submissions. The general perception that high-ranking officials have money and power makes (most) smaller businesses feel powerless. To compensate and compete for work, they bribe lower ranking officials" She also indicated that "government officials ask for money or treats in return for favours; if not given, work is delayed".

In terms of the surveying and property industry: "Rumour has it that certain land surveyors get tenders from local authorities, in return for kickbacks. In some cases tenders are not even called for. Land surveyors' fees are regulated by law, so it is possible to appoint a land surveyor without requesting tenders. In other cases, tenders are called for, and the person providing the kickback is then (allegedly) informed to provide a lower quote or tender", Lewis (2017). An investigation of the state/private sector interface revealed that some public officials are initiating bribes.

Corruption exists in both the private and the public sectors (CIF member, 2017). Both sectors are equally guilty. Private companies offer bribes to get what they want. Public officials deliberately apply delaying tactics to frustrate companies. Officials request payments to speed up the processing and approval of documents and tenders.





Public officials initiate bribes for personal gain and companies pay bribes for survival and financial gain. Most opportunities for corruption are first identified and triggered by public officials, who in turn seek preferred private sector role players to participate. Public officials have the authority to allow corruption and/or abuse their power. Corrupt companies bribe uniformed officials and these officials blackmail companies to provide incentives in return for securing tenders. Individuals in the public sector are creating the platform for corruption and members of the private sector are making use of the platform for their own benefit. Although both sectors are equally guilty of corruption, it is possible to deduce that the public sector is probably playing a more critical role in corruption than the private sector.

Government should allow a zero tolerance for corruption. Companies should focus on principles and work ethics. Institutional meetings at which ethics are discussed can have a positive impact on institutional ethics. The private sector needs to explore avenues to pressurise government to increase efficiency in the public service (e.g. by withholding funding and donations to the ruling party), to reduce red tape and streamline regional cross-border trade cooperation and integration.

### ***The 'level of temptation'***

Corruption can be a survival strategy for low-paid public servants.<sup>8</sup> This is because the 'levels of temptation' between a public and a private job of comparable qualifications, competencies, training and experience are relatively out of sync (Rose-Ackerman, 1999: 71-75). Public servants create delays and bottlenecks to 'top up their salaries'. Bureaucracy provides the means to extract bribes from customers (Coetzee, 2012: 64).

Corruption in the inefficient public service is fuelling corruption in the private sector. Bribes offered to public servants to a large extent take place because public servants are open to bribery and kickbacks. For example, a former Permanent Secretary, who is currently employed as the CEO of a SOE, is known as 'Mister Ten Percent'. It is well known that he often demands 10% percent of investment projects as a prerequisite for giving his approval for projects to proceed. Several projects that could have rendered positive returns on investment have not been implemented because investors refused to pay sweeteners.

### ***Key institutions and 'hot spots'***

Some institutions are strategic because of their visibility in the public eye, for instance, border control units and institutions issuing permits and licences. Such institutions are also 'hot spots' of corruption. If the gains of corrupt institutions are made visible to the public (e.g. bribes and/or pay-offs), there is some leverage for reducing corruption by means of transforming such corrupt systems. Klitgaard (2010: 18) called the process of transforming strategic leverage points 'picking visible low-hanging fruit'. These are, in terms of this paper, the most 'annoying' organisational units and/or components in the public sector resisting transformation. For example, tax and customs offices; budgeting and accounting offices; procurement (e.g. the Ministry of Works and Transport); tendering – the CPB, especially in the case of increasing tender exemptions, and the evaluation of tenders; social benefit programmes (e.g. pensions – e.g. the Government Institutions Pension Fund (GIPF) fraud; social security – the Social Security Commission (SSC) fraud; and Motor Vehicle Accident fund (MVA). The purpose should be to break the recurring negative loops of the mutually self-serving behaviour of those engaged in networks of reciprocal obligations (Coetzee, 2017a).

Other Namibian 'hot-spots' of administrative and regulatory control units, where one is most likely to find corruption, include the following: quotas and licences (e.g. fishing, transport, imports and exports, prospecting and mining), permits and regulations (e.g. environmental, occupational health and safety, and labour agencies), inspections (e.g. taxation and construction), and subsidies (e.g. infant industry protection, drought and housing). The process of applying for permits and licences needs special mention, because public servants create delays to make such services appear to be

<sup>8</sup> Low wages for trade officials, higher domestic prices and a contracted supply provides the opportunity and motivation for corrupting trade officials (Oviasso, 2000: 9).



scarce (restricted and fixed supply), thereby increasing the demand for the service and inducing applicants to pay higher bribes. These hotspots and/or strategic institutions that co-produce corruption should be dealt with within a relatively short period of 24 months. Based on the experience of Hong Kong, Singapore, the UK and the USA (as previously mentioned in this paper), successful transformation of strategic institutions can create momentum for sustaining the change process and broadening it to the rest of the public sector. According to the Ministry of Finance, the Inland Revenue Office will be transformed into a public agency, most probably an SOE, with improved performance as one of the objectives and in the process 'smoking out those businessmen avoiding tax'.

### ***Public private partnerships***

Public private partnerships (PPPs) in which private interests are advanced by manipulating the public sector can potentially benefit both the corruptor and the corruptee (Tsabalala, 2015). The PPP model has been found to enable the collaboration of politicians and public servants to perpetrate large-scale corruption in the form of large capital-intensive projects that offer lucrative opportunities for corruption. For example, the cost of a bribe can be included with ease in an inflated billion-dollar tender without attracting attention.

The Tender Board lost a court case in which the High Court ruled in March 2016 that a tender allocated to Namibia Rail Construction (NRC) had to be revisited (Mongudhi, 2016: 1-2). The NRC did not meet the tender specifications on several requirements in terms of quality, cost, incomplete tender documents and late submission of test results of their products. The decision of the court had not yet been implemented at the time the article was published in *The Namibian*. Allegedly, senior officials of the Ministry of Works and Transport have been in the process of changing the tender specifications in an attempt to award the tender to NRC. Other tender allocations have also been overruled by the High Court in the past. This case, in which tender specifications are allegedly being changed to suit a specific company, after a court ruling, is an example of corruption having a demoralising effect on people respecting the court (Coetzee, 2017b). The NRC is a joint venture (PPP) between TransNamib Holdings and D&M Rail Construction. TransNamib is a partner in this tender that has tendered to provide railway equipment to be delivered to the customer, also TransNamib. This compromised relationship is an example of conflict of interests and in contravention of both the Competition Act (Act No. 2 of 2003) and the Anti-Corruption Act (Act No. 8 of 2003).

It can be deduced that conflict of interests in PPPs can contribute to corruption if such conflict (a manifestation of corruption that cannot always be avoided) is not mitigated by means of declaration and management of such interests. The Tender Board case can be interpreted as a demonstration of lawlessness and a deterioration of business and investment interest in upholding the judicial system, which is essential for doing business.

## **THE ROLE OF CHARTERS, CODES OF CONDUCT AND INTEGRITY PACTS**

### ***Voluntary compliance – professional bodies, associations and businesses***

"A code of conduct is a good idea to make public servants socially accountable for their behaviour and to create 'moral costs' for corrupt behaviour" (Klitgaard (2010: 23). Companies can apply the same principles for their employees. Similar to the executive head of government who could announce that all public servants need to sign a code of conduct that precludes participation in bribery – accepting as well as offering (Klitgaard, 2010: 31) – the board and/or CEO of a company can do the same. In addition to and in compliance with the NamCode, the business chambers and sectoral bodies should formulate specific codes of conduct for members to enable mandatory com-



pliance with ethical codes aligned with the NamCode, and in doing so raise the level of corporate governance. Members not complying with such charters and codes of conduct should be disincentivised from remaining members.

SMEs represents about 10% of GDP in Namibia, contributing 46% to employment and 21% to households, according to the CEO of the Namibian Institute of Professional Accountants (NIPA) (Herbst, 2017b 13). The business market includes professional services such as accountants, auditors, lawyers, engineers and medical doctors, who belong to professional bodies and have to adhere to professional codes of conduct. In terms of compliance with charters and codes of conduct, these professions are not an issue. The focus is here on those professions that do not have professional bodies and do not comply with codes of conduct.

The NMA has its own Code of Ethics that is in compliance with the NamCode. The Code of Ethics is not as detailed as the NamCode, e.g. it is a five-page document compared to the NamCode, which is a 122-page document. Members contravening the Code will be punished accordingly, according to Ronnie Varkevisser the CEO of NMA (2017).

To get 'manufacturing' status for most manufacturers in Namibia is another objective of the Managing Director (MD) that is in synergy with NMA objectives. The Ministry of Industrialisation, Trade and SME Development (MITSMED) and the Ministry of Finance (MoF) do have separate compliance specifications when inspecting manufacturers in order to decide if they qualify for 'manufacturing' status. Due to technical differences, it is sometimes very difficult and cumbersome for manufacturers to get 'manufacturing' status. Such status is very beneficial to manufacturers and Namibia. For example, if a company qualifies for such status, its company tax rate is reduced from the current 32% to 18% of Gross Revenue for a period of 10 years. This will lead to significant benefits for not only the manufacturing industry, but for the whole economy. Over the long term manufacturing status will align Namibian manufacturers with the International Manufacturers Association' regulations and improve the export ability of Namibian products.

The CEO of NIPA, Herbst (2017b) said that the Institute has charters for each of their sub-committees and Council and strict rules of professional conduct that include ethical principles and the manner in which members must operate toward third parties, the competition, colleagues and customers. NIPA also complies with the Code of Ethics for Professional Accountants of the International Ethics Standards Board for Accountants (IESBA). NIPA is "highly sensitive towards deviations from these Codes of Ethics and rules and such incidents are being investigated by a senior advocate and if there is a basis for disciplinary action, such cases are referred to the disciplinary committee, also chaired by a senior advocate." Herbst (2017a) also commented as owner of the accounting firm Essie & Associates, indicating that her company abides by the code of NIPA and IESBA. The firm follows strict rules of professional conduct to prevent disbarment from the Institute.

Codes of conduct and charters are very important, but codes of conduct are found very seldom in medium to smaller enterprises, and when they are, they are not enforced (De Klerk, 2017). He had previously been employed by a financial services company - "a company which I regarded, under the MD at the time, to be very corrupt. Gifts were flowing freely from group life insurers to consultants, who were supposed to provide independent advice. Even quotes from insurers to pension funds included hidden kickbacks to AFFS. When I confronted the MD, he stated that all gifts were recorded in a register. When I asked that this register be disclosed to the pension funds on whose behalf we act, it was refused. So what is written on paper and practised can be vastly different." It is evident that even in international corporations with headquarters in developed countries with more stringent corporate governance codes and charters (compared to smaller local enterprises), corruption is rife. Compliance with codes of ethics and conduct do not guarantee the absence of corruption.

The focus shifts again to the surveying and property industry. With reference to land surveying, the statutory control body, SURCON, generally does not get involved



in tenders (Lewis, 2017). However, there has been a request from the profession for SURCON to establish a 'tender and fees' subcommittee to investigate the awarding of tenders by local authorities (amongst others), but they do not have the resources and capacity to do this, and it is unlikely to ever happen. Land surveyors have traditionally not tendered for work. This is similar to most other professions such as law and medicine – lawyers and doctors are not allowed to tender, as their fees are regulated by law. Most land surveyors do not like the idea of tendering, as they argue that it lowers prices, professionalism and quality of work (amongst other things). However, a transparent tendering process will go a long way towards rooting out corrupt practices. If the tender process is fair and transparent, this will make it more difficult for land surveyors to get work in return for kickbacks, donations, gifts and free lunches. During an interview with Wilma and Nic Serfontein (2017) of One on One Properties, they indicated that in addition to registering with the NEAB, estate agents must also qualify for a separate compliance certificate from the Financial Intelligence Centre (FIC). At the latest, four months after financial year end, all estate agents must submit their audited financials together with FIC compliance forms to the NEAB. In terms of the FIA, every estate agency must write their own compliance programme for approval by the FIC. The Bank of Namibia is making a database available to estate agents in order to determine the legality of lessees, buyers and sellers. The database is linked to Interpol and a useful measure to reduce money laundering. The database is available at: [www.fic.na](http://www.fic.na) and at: [www.un./sc/suborg/](http://www.un./sc/suborg/).

Professional bodies determine fees that are unaffordable for a substantial part of the population. These bodies draw up regulations, e.g. for lawyers, auditors and engineers, in terms of which these professions are not allowed to advertise their services in newspapers (Dihel, Fernandes & Mattoo, 2010: 5). Advocates are not allowed to operate from their residences, which has the effect of increasing their costs and contributes towards making justice unaffordable for the majority of the population. Such regulations in terms of operations and conduct indirectly allow corruption to remain unpunished, because some customers cannot afford pricy legal advice. Some private sector corruption cases have been pending for years, guilty parties disappear over time, as does evidence and witnesses.

Professional bodies should reconsider their codes of conduct and restrictive regulations in order to create more competition internally in their professions (with reference to legal, accounting, auditing, medical, pharmaceutical and the engineering professions) by allowing members to advertise their services (Dihel, Fernandes & Mattoo, 2010: 7) and not 'colluding' to fix prices by putting caps on minimum amounts their members are not allowed to reduce below when charging customers. Price fixing is corruption and illegal for businesses; however professional bodies are indirectly 'legally' allowed to do this, with the most negative impact on the most vulnerable in society who cannot afford such services.

### ***Anti-corruption networks and integrity pacts***

'Integrity pacts' could be signed between public and private sector institutions to form a partnership to fight corruption (Coetzee, 2012: 103). The institution coordinating such an anti-corruption drive can form 'integrity pacts' (moral agreements of compliance, monitoring and reporting) with stakeholders, such as captains of industry in the private sector, the United Nations (UN) Global Compact, NGOs, community-based organisations (CBOs), tax-payers' associations, employers' associations, trade unions, churches, and sport and cultural organisations to coordinate efforts in an integrated approach (Coetzee, 2012: 165). The forming of anti-corruption 'pacts' is not a new idea and has been done successfully in Australia and several developing countries.

Some CIF members (2017) commented that the ACC is not effective in tackling corruption. They recommend that the ACC should be abolished (which is not in line with international requirements, highly unlikely and not appropriate) or complemented with private agencies that are contracted, depending on their track record, in exposing corruption and their ability to prove that offenders are guilty. Watchdog institutions





such as the ACC and the Office of the Auditor-General (which are not fully empowered with financial and human resources) should be strengthened by the government and the private sector. Such strengthening could enable watchdog institutions to effectively apply legal instruments to execute their mandate.

From the discussion it can be deduced that an anti-corruption network and integrity pacts coordinating the work of the ACC, private investigative units and civil society organisations can play a key role in addressing corruption and sharing resources, information and speeding up the process of bringing offenders to book.

### ***Declaration of interests and managing of conflict of interest***

Namibia does not have any sanctions for failure to disclose information about assets by political and public office bearers and board members (Open Budget Index, 2010). Some SOEs have never published financial statements since their creation and their financials have never been audited. For example, August 26, a government-owned business delivering products and services to the Ministry of Defence, has been in the newspapers several times due to alleged corruption; however, it has neither published financial statements nor issued audited accounts. Financial statements should be published in order for the public to assess the profitability and/or efficiency of public institutions such as SOEs in delivering services. Such statements can go a long way in preventing SOEs from passing on the cost of their inefficiencies to their customers, especially the poor who cannot afford increased prices and/or corrupt payments as explained.

### ***Corruption and lifestyle audits***

One way to reduce corruption in any institution is to execute a corruption audit every six months. The staff should know that it is a regular exercise. The contract between employer and employee must include a statement of consent by the employee to be subject to a corruption audit (King, 2006: 83-84).

A number of questions need to be posed during an audit, including the following:

- Is there a manager who is dominant?
- Does any manager override controls or systems?
- Did any manager's lifestyle change during the previous six months?
- Does any manager work long hours, during weekends and take no leave?
- Has any staff member not taken leave for some time?

It often happens that when a person has created a corrupt system, he or she cannot afford to take leave, because the corrupt system is likely to be discovered by someone during the leave period (Coetzee, 2016). The morale of staff members also needs to be audited. If there is a relatively low level of morale compared to the rest of the industry, it is more likely that corruption is present. Understaffing of a finance department can contribute to corruption. Another issue is that staff need to be rotated to prevent corruption. As far as possible, a staff member processing an item or activity should not be the same staff member approving such item or activity, especially if money is involved. When recruiting personnel, integrity audits should be executed, meaning their references should be followed up, also their credit records at retailers, banks and credit agencies. In terms of an employment contract, the employer should have the right to access the employee's and his or her spouse's bank accounts. Grievance procedures must be in place. Over-socialising with a customer and/or stakeholder can be a red flag. The cliché 'There is no such thing as a free lunch' should be remembered. Cash transactions between staff members can be an indication of wrongdoing. Corruption audits should become an essential part of institutional good governance (King, 2006: 85-87).

Based on best practice examples of anti-corruption agencies of Singapore and Hong Kong, businessmen, politicians and public servants whose lifestyles do not match their remuneration packages and asset portfolios should be legally required to explain how they accumulated such wealth. In Hong Kong in the 1950s potential offenders were considered 'guilty until proven innocent'. However, in Namibia the



opposite principle applies, which can in effect protect the corrupt at the expense of the incorrupt.

### ***Private sector and civil society cooperation***

The private sector organised itself into an informal forum called Business Namibia (BN) and approached the government to redraft the controversial Namibia Investment Promotion Act (NIPA) in 2016/2017. Members that cooperated included corporate entities such as Ohlthaver and List, petroleum companies such as Shell Namibia, mining companies, the Namibia Chamber of Commerce and Industry (NCCI), the (NEF), NIPA, CIF, the NMA and small businesses, to mention a few. Changes to the Act are now expected to be introduced. Business Namibia changed into Enterprise Namibia (EN) in 2017, mandated by the business community to advise government on national challenges affecting business and specific investment, namely: corruption, uncertainty about the outcome about NEEEF and the land ownership. Some influential members of EN and the NCCI have indicated in their individual capacities that corruption is the number one issue on the agendas of both institutions. These issues need to be addressed by government to reduce obstacles such as corruption to influence the business climate positively.

Uncertainty about the future of EN and differences between EN and NCCI have demonstrated that the private sector needs to rethink their current approach. A 'one voice approach' representing the business community may not be realistic. On 5 April 2018 Enterprise Namibia decided that they will continue to represent business associations on specific issues and that they will seek continuous cooperation with the NCCI. Double membership of both organisations is encouraged because NCCI represents individual corporate members and EN represent business associations and not individual companies. An approach is needed that is more effective in influencing government and to hold government accountable for their policy and legislative initiatives that can impact negatively on business. Government's approach towards business is not necessarily always in the most appropriate interest of business.

Various civil society organisations, e.g. Access to Information Namibia (ACTION), the Institute for Public Policy Research (IPPR), Citizens for an Accountable and Transparent Society (CATS), NamRights, the Legal Assistance Centre (LAC), the Namibian Institute for Democracy (NID) and the government-recognised umbrella organisation of non-governmental organisations (NANGOF), need to cooperate to speak as a much more powerful voice to the government about tackling corruption.

A united private sector and civil society can use the Walvis Bay storage facility as a pilot case to approach the government to disclose documents pertaining to the cost escalation from N\$990 million to N\$3.7 billion, and then to a further N\$5.5 billion. According to the government, the increase was the result of the extension of the project to include several storage facilities in addition to the petroleum facility. The second increase in cost to N\$5.5 billion, according to the government, was because of an oversight in not making provision for hedging against the US\$ dollar, the currency agreed in the contract for paying the contractors. Non-hedging is most likely not the only reason for the astronomical cost increase. Civil society can request the private sector to fund an assessment and/or full audit of the Walvis Bay storage facility. Civil society can then approach the Minister of Finance to disclose project documents for such an assessment and/or a full audit. If the Minister refuses to disclose these documents, this could be an indication that corruption has taken place and that political and public office bearers are being protected.

Civil society's proposed cooperation in terms of the Walvis Bay storage facility can be used as an example to tackle other corruption-related cases. Civil society and the private sector need to use the media to mobilise public support for exposing corruption and putting pressure on the government to reform.

Private businesses and the United Nations (UN) Global Compact can be approached to fund private investigative units as part of a national vigilance to prevent and expose corruption. Systemic corruption is not just an ethical or moral issue, but



also a risk management issue, e.g. death threats and dismissals. Financial incentives should be created for whistle-blowers to report corruption (Coetzee, 2012: 163).

The influence of the UN Global Compact office in Namibia and local advertising companies can be used to get public relations and marketing assistance to identify target markets of corruption (Coetzee, 2012: 172), e.g. schools for branding specific awareness and prevention programmes as part of a national anti-corruption campaign.

From several interviews with members of the business community as previously cited and a personal conversation with the Chief Investigator of the ACC (Bekker, 2017) it can be deduced that the business community and probably the public at large, are unaware of protection provided under the provisions of Section 52 (4) of the Anti-Corruption Act (Act No.8 of 2003) that stipulates that "No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act". The implication of Section 52 for the business community is that any person that is aware of corruption and/or have engaged in corruption and shared financially or in kind in e.g. bribery can approach the ACC with complete peace of mind in terms of no prosecution of any kind. The fact that no civil or criminal case can be prosecuted under any Namibian law based on an informer/whistleblower that provides evidence even if they have shared in the spoils of corruption is a great incentive for businessmen to and any other person to report corruption not because it is the moral thing to do, but because they do have protection from prosecution from any kind from the Prosecutor General. Section 52 (4) should be marketed with great vigour to reduce corruption.

From the discussion in this section it can be deduced that positive developments are taking place in the private sector to unite and tackle national issues, of which corruption can soon be included as a priority area. Numerous alternatives are possible in tackling corruption more effectively, e.g. cooperating with civil society and the media in exposing corruption and putting pressure on government to reform systems conducive to corruption.

### ***Reducing monopolies and stimulating competition***

For reasons earlier explained, monopolies and programmes that create public scarcity should be abolished. If monopolies cannot be abolished in a small economy, competition should be created, for instance, by stimulating entrepreneurship and innovation in the private and informal sector; and benchmarking, intrapreneurship and service contracts in the public sector. Intrapreneurship is a concept used to explain the ability of staff members in institutions, including public institutions, to create new ventures, e.g. new programmes (Rwigema and Venter, 2007: 7). Another option for increasing internal competition is benchmarking of 'small' components of public services for comparison with best practices of similar components and/or services in the private sector. For example, the 98 state-owned enterprises, most of which are monopolies, should apply best practices. The UK Civil Service implemented benchmarking and service-level agreements between different public units with reduced cost and increase efficiency during the 1980s. Public institutions should 'evolve' to an increased level of efficiency and service delivery that could eventually enable them to compete with private sector institutions for the tendering of services (Coetzee, 2017c).

## **COOPERATION WITH PUBLIC AND REGULATORY AGENCIES TO PREVENT CORRUPTION**



The central anti-corruption agency, the Anti-Corruption Commission, can cooperate with private institutions, community-based organisations and interest groups that have an interest in reducing corruption. Examples of such interest groups include Access to Information Namibia (ACTION), Citizens for an Accountable and Transparent Society (CATS) and NamRights (formerly the National Society for Human Rights) (Coetzee, 2017d). Businesses can uncover corruption by making use of hidden video cameras (linked to central monitoring control units), confidential exit interviews and electronic surveillance (Klitgaard, 2010: 26).

The surveying profession, either through the Institute of Professional Land Surveyors of Namibia (IPLSN), or through SURCON, has not had any cooperation or contact with the ACC regarding corrupt practices. Some years ago there were newspaper reports about the ACC investigating a case of alleged corruption involving certain local authorities, but nothing has been forthcoming from this investigation. Presumably the case did not hold water and/or there was not any corruption (Lewis, 2017).

The NEF recommended that the ACC “find ways to speed up investigations and subsequent legal action” (Parkhouse, 2017). Parkhouse is representing the NEF on one of the cluster committees of the ACC. Sometimes the NEF is the only private sector representative on the subcommittee. This is an indication that private sector organisations can do much more to get involved in tackling corruption, e.g. in advising the ACC on how to prevent and manage corruption.

‘Citizen oversight boards’ can be created at various levels, e.g. for the police, courts and customs (Klitgaard, 2010: 32) and others. Such oversight bodies should cooperate with the ACC. These oversight bodies can convene with the ACC on a monthly basis where the ACC provide feedback about progress made in terms of awareness and prevention programmes. Citizen oversight boards can cooperate with the ACC in organising such programmes and tailoring them for specific businesses and other target groups.

Some of the reasons for delays in court cases are substandard police investigations and documentation. Incomplete ‘dockets’ are a major reason for thousands of pending court cases. Civil society can assist much more as part of the Auxiliary/Reserve Police to relieve pressure on overworked, understaffed and underpaid policemen. Such initiatives can contribute to more time spent on the proper completion of ‘dockets’ for submission to the Prosecutor General’s Office for reducing the thousands of backlog cases.

Based on the example of several countries, including South Africa, a Court for Small Cases should be created to hear and finalise on short notice criminal and civil cases involving corruption, e.g. criminals stealing moveable assets of tourists. When the property of tourists is stolen (theft is a manifestation of corruption), tourists cannot wait for a court hearing that could take months or years to be scheduled and postponed several times due to incomplete police ‘dockets’. Criminals target tourists because they know it is very unlikely that this could have negative consequences for them. Victims return shortly after their vacations to their own countries with no consequences for the criminals. Non-addressing of corruption in the hospitality and tourism industries impacts negatively on these industries and on investment.

Regulatory efficiency in general is severely lacking in Namibia. De Klerk (2017) said in an interview that “Namibia does not harbour the value of accountability. Industry regulators, [e.g. the Namibian Financial Institutions Supervisory Authority (NAMFISA)] and professional regulators simply do not come to the party when it comes to fighting corruption. This is due to several factors: (a) No political will; (b) lack of resources and capacity; and (c) lack of statutory mandate. Very often all three factors play a role. The Legal Practitioners Disciplinary Committee under the Ministry of Justice could, for instance, for close to 13 years not remove an attorney who stole trust funds, imagine the lack of interest in something like a free lunch to a government official. In the Ministry of Justice [e.g. Masters Office] free food is a condition for being assisted (I heard from several well placed persons).”

Reporting incidents of corruption to the ACC is the right thing to do. The NEF





(2017) in conducting a mini-survey amongst its members frequently came up against the statement “I cannot risk my name or my company being identified and then blacklisted for tenders next year”. This view of NEF members is confirmed by De Klerk (2017), who said “business entities do not stand up against corruption, as corruption most of the time involves government, and businesses fear reprisal from government.” In an interview with the Executive Manager of the Namibia Agricultural Union (NAU), when asked about how the NAU is tackling corruption he responded in line with the NEF and De Klerk by stating: “It might be that there are corrupt practices within the agricultural sector and more specifically in the commercial agricultural sector where bribes might take place, etc. Like in all cases where these kind of practices occur, it might take place in such a way that the NAU cannot with certainty confirm such practices.” In terms of the activities of the NAU, he added, “I am not aware of any such practices although it might happen that individual members are guilty of such practices. The NAU condemns any such practices and will report it to the relevant authorities in order to make sure that the NAU’s reputation is not negatively affected” (Sakkie Coetzee, 2017). From these statements, it is clear that businesses and associations are cautious in speaking up about corruption because of a fear of losing business. Such fears should be addressed first and foremost by government as part of its public accountability towards the private sector to create an environment of mutual trust in order to do business.

In an interview Herbst (2017a) mentioned that “the anti-corruption unit is perceived to be for the elite cases and the police task force is non-existent. The task force staff are not trained in fraud or the applicable legislation and is very unpleasant to work with. We performed work for the United Nations Global Fund after fraud was detected. The fraud case slowed down the project for longer than a year as they could not close the matter. The office and documents were left in total disarray, they did not care that the country lost millions in donor monies that was earmarked for health. They did not care”. De Klerk (2017) confirmed this view: “The ACC is largely seen as a dead duck, and is known to actually victimise the whistle-blower instead of the reported entity or person”. The ACC expects a reporter/whistle-blower to fully investigate a matter and basically provide a complete docket (after which chances are that the Director-General (DG) locks that up forever anyway), he claimed. De Klerk is critical about the value of reporting corruption to the authorities. “Businesses have no faith that a report to the police or the ACC will result in anything other than reprisal from government. Government is the one party to corruption. Do we really think they will take the fighting of corruption seriously, especially at a point where corruption has become systemic in Namibia and South Africa? I always urge people to report corruption”.

Very few people and businesses do report corruption for the reasons mentioned. They fear reprisal and do not have trust that the ACC or even NAMPOL will really do something. De Klerk concluded, “How much trust does the public still have in the ACC?”

## **THE ROLE OF THE PRIVATE SECTOR IN CLEANING UP PUBLIC PROCUREMENT**

Procurement provides opportunities for corruption that are hard to resist. Capital-intensive projects such as harbours, dams and railways are billion-dollar opportunities for making profit. Corruption in the form of bribery occurs when the private sector, particularly in the area of public procurement where dishonest officials collude to inflate tenders (ACC, 2016).

Alleged bribery in evaluating bids (tenders) for constructing the Neckartal dam is an example of how large capital-intensive projects provide lucrative opportunities for corruption. It also demonstrates that where there is an opportunity for corruption, people will most probably exploit it. The bigger the monetary value of the capital



project, the greater the opportunity for a bribe, the more the risk diminishes compared to the potential benefits and the higher the probability of corruption. A critical part of fighting corruption is to reduce such opportunities, in other words, reducing the gap between the demand for exploiting huge moneymaking opportunities and the supply thereof as well as increasing the risks (e.g. getting caught, jailed and dismissed) compared to the potential benefits. For example, large capital-intensive projects with billion-dollar profit margins and a billion reasons for billion-dollar bribes create lucrative benefits that by far exceed the risks mentioned. The larger the capital value of the project, the more a company can afford to offer and pay a bigger bribe, compared to labour-intensive projects such as maintenance of buildings and education (Coetzee, 2015b).

In terms of land surveying, Lewis (2017) said the statutory control body, SURCON, generally does not get involved in public procurement matters. "There has been a request from the profession for SURCON to establish a 'tender and fees' subcommittee to investigate awarding of tenders by local authorities (amongst others), but they do not have the resources and capacity to do this, and it is unlikely to ever happen". From the said mentioned it is clear that the professional body of land surveyors does not accept accountability for cleaning up corruption in public procurement – where its members could be involved in.

The procurement guidelines of the WB compiled for developing countries could be applied. Innovative and effective procurement systems should be developed that use the 'track record' of contractors for evaluating bids/tenders. A well-organised bidding process should be created. In such a process tenders should be advertised widely to increase competition. Standardised products should be purchased, which are generally of a higher quality, more readily available, and cheaper than non-standardised products because of economies of scale and a relatively large customer base. Recurring tenders should be awarded annually and not every second year or every five years. Price-fixing, bid-rigging and market-division can be avoided by drafting and enforcing legislation<sup>9</sup>. No tenders should be written to meet only one supplier's specifications. The executive head of government (the President) could announce what Klitgaard (2010: 32) called some procurement 'sting' operations to deter potential bribers and bribes (Coetzee, 2012: 106). Based on the state of corruption in the procurement and tender systems, such operations are unlikely to be initiated in Namibia in the short to medium term of the following five years.

"Businessmen are not prepared to stand up and be counted, to speak out against or report corruption due to fear of reprisal. Even anonymous contributions may not provide adequate safeguard not to be identified," according to Parkhouse. The CEO of NIPA, Essie Herbst (2017b), said that the Institute is not mandated with the role of cleaning up public procurement. However, members can assist by reporting information about procurement corruption that they obtain via misconduct of customers and when becoming aware of excessive and/or inflated profit margins. Cleaning up public procurement is currently not in the scope of the work being performed by members and they will only perform such tasks if requested by the customer and duly paid for.

Herbst (2017a) also commented as owner of the accounting firm Essie & Associates, indicating that, "We do not perform any work for the government, but could assist if mandated. Some of our clients do work for the government and are guilty of fraud. Detecting and reporting fraud are currently not in the scope of the work being performed by us and clients do not task us with such requests, unless they suspect that employees are committing wrongful actions. To date it was not required to report such behaviour, but rules of the IESBA have changed from 15 July 2017 as part of our code of ethics that we must comply with."

"It is not the responsibility of the private sector to clean up public procurement", as one anonymous CIF member commented (2017). However, if the government does not clean up public procurement, the private sector will have no choice but to get

<sup>9</sup> E.g. the Namibian Competition Act 2 (Republic of Namibia, 2003: 13) and creating a Competition Commission.



involved in doing it. Other CIF members said that there should be a platform to allow whistleblowers to report corruption. There should be incentives for reporting and/or whistleblowing because whistle-blowers are receiving death threats. The private sector should report all corrupt activities, but this will only work if the private sector can report without fear of victimisation. As soon as it becomes clear that a contractor is against corruption, such contractor is victimised and prevented from competing. One contractor said that his company hasn't done any work for the government during the previous three years because of victimisation. Mechanisms such as online tendering can provide options to reduce corruption.

Contractors should be rated based on their experience, quality, safety and reliability. Capital projects that are funded by the government should be publicly accessible on a database. Such accessibility can provide some form of control in preventing the same companies from repeatedly being successful in securing contracts.

There should be more regulation of the industry because existing regulations are not effective in preventing corruption. For example, anybody can create a 'fly-by-night company' and become a contractor in a very short period of time. The cheapest tenders should not necessarily be accepted. Too much power is vested in public decision-makers.

One CIF member (2017) said that greed is driving the tender evaluation process. Central Procurement Board should do proper screening of contractors. Their track records should be publicly accessible and compared before tenders are awarded. Expert personnel with no political connections should decide on evaluation of tenders and not inexperienced and greedy public sector technocrats. To convince the new CPB to make use of experts to advise them when tenders are discussed before awarding such tenders is also one of the objectives of the CEO of NMA, Ronnie Varkevisser (2017). This will enable the CPB to acquire firsthand information from the private sector experts about Namibian companies before the awarding of tenders and it could reduce corruption in the tender process. A CIF member (2017) said that transparent tender procedures and evaluation of tenders are needed. The evaluation of tenders should be open to the public, e.g. broadcast on local television channels, especially the Namibian Broadcasting Corporation (NBC). The CIF and the construction industry have over the years demonstrated their good intentions for the betterment of all parties involved, e.g. labourers, contractors and government. The CIF should be involved in the verification of tenders received for evaluation. Representatives of the Institute of the Namibian Quantity Surveyors (INQS), the Namibia Institute of Architects (NIA) and CIF should have permanent seats on tender evaluation committees and the CPB. Tenders awarded should be audited by an independent body.

The private sector should consider forming informal project-based subcommittees based on expertise. The sector should cooperate with the Ministry of Finance and the newly established CPB and its policy arm to advise these institutions about ways to tackle corruption in procurement and tendering. The private sector needs to report corruption to the CPB and the ACC and advise the Minister of Finance that complaints about tenders, e.g. favouritism, need to be investigated by a dedicated independent institution with no attachment to government (e.g. the ACC's attachment) and/or the CPB.

From the discussion in this section it can be deduced that the private sector needs to position itself to be more influential in cleaning up public procurement because the public sector has neither the capacity nor the political backing to do so.

## THE PRIVATE SECTOR AND POLITICAL FINANCE

Donations of private and public institutions (e.g. SOEs) to political parties create a conflict of interests. When agencies and businesses fund political parties, especially a ruling party which has had very limited competition for decades and which will have limited competition for the foreseeable future, the danger is that there could be an expectation that favours should be returned. Reciprocal obligations can breed corrup-



tion as such a company could likely get a payback in the form of a tender or contract. Several SOEs have made donations to the ruling party in the past. Public companies/agencies are funded by taxpayers' money and need to be objective. A public company/agency should not be allowed to favour one political party. The private sector should monitor donations of private and public companies/agencies in close cooperation with the Electoral Commission and initiate legislation that forbids and penalises public companies/agencies that make donations and political parties accepting donations. Political parties should be legally compelled to return donations to public companies/agencies.

Professional bodies in general do not make donations to political parties. Herbst (2017b), the CEO of NIPA, said that the Institute does not "give any donations or gifts to officials ... The Institute does not have lunches with political parties or government officials". Herbst (2017a) also commented as owner of the accounting firm Essie & Associates: "We give small treats to officials to receive work from them. We do not take them for lunch or any other invitations". It seems that due to voluntary regulation of codes and charters and less political interference that professional bodies do not make donations to political parties compared to some institutions that do make donations, especially those institutions that are politically controlled, e.g. SOEs.

Some members of the CIF (2017) said that anybody has the democratic right to associate or affiliate with the political party of their choice. Donors have hidden agendas such as buying political favours. Donations corrupt political parties. Companies that donate to political parties create expectations and expect returns. Corruption by means of donations is an accepted activity that will continue unless whistle-blowers and/or reporters are incentivised and protected, and culprits are exposed. Donations should be done openly within an approved corporate social responsibility framework to avoid the misuse of donations for personal gain and to expose underhand dealings. Rules should be introduced to control donations and to ensure that donors should not expect political favours in return.

Several CIF members said that the private sector should not be allowed to donate to political parties, as this creates opportunities for individuals with no experience to deprive well-established enterprises of growth. However, because of limited government funding of political parties (according to a formula that benefits the ruling party proportionally more than other parties) and a shortage of funds for campaigning for elections, political parties will most probably always depend on private sector funding and donations.

Based on an initiative of the Electoral Commission and registered political parties, parties must disclose and declare donations. These donations could be made tax deductible. This could increase funding for political parties. Financial statements of political parties should be audited by independent auditors. Transparency should be increased by disclosing information and declaring the interests of politicians and family members on a regular basis (Coetzee, 2012: 98). Both Houses of Parliament adopted the Code of Conduct for Members of Parliament (MPs) in 2015. According to the Code of Conduct, MPs must annually declare and disclose their assets, their business interests and shareholding in companies. MPs must also disclose the same information about their spouses and their dependants. Disclosure has taken place only three times in the history of Namibia's 27 years of independence and democratisation. A substantial number of politicians did not meet the 2015 deadline of asset disclosure. Since politicians are actively involved in the private sector, including their own businesses and have connections with prominent businessmen, it is very necessary that annual disclosure should take place. The Asset Register of both Houses is accessible in the Parliamentary Library. However, nobody is allowed to make copies, meaning restrictive transparency limits journalists from carrying out investigations in order to verify allegations of corruption. On a similar note of restrictive transparency, the Register of Company Registrations of shareholding is a manual system, making it almost impossible to determine politicians' shareholding in companies.

From the discussion it is clear that much can be done to increase transparency





in asset disclosure of MPs and their families. Annual disclosure should be managed by the Speaker/Chairperson of the respective Houses of Parliament. The Register of Assets should be publicly accessible. An independent mechanism not attached to or associated with Parliament should be introduced to monitor and verify the assets of MPs and enable lifestyle audits. Discrepancies should be exposed and followed up. The Register of Company registrations should be transformed in an electronic system so that it is open and accessible for monitoring and verification by civil oversight bodies, journalists and the public at large. Transparency is the mechanism to manage conflict of interests and exposing alleged corruption as an issue for public debate and verification.

## THE PRIVATE SECTOR, GIFTS AND ENTERTAINMENT

Businessmen tend to provide gifts to political and public office bearers either to bribe or influence them to favour the awarding of tenders or approval of licences and permits and/or to sensitise them over time to capitalise on a 'deposit of goodwill' whenever the need arises. The larger the monetary value of a gift, the higher the probability that the intention of the gift giver is to influence the recipient. Gifts such as a Christmas card or an inexpensive pen are not generally associated with an intention to influence or to bribe. However, 'there is no such thing as a free lunch' as the cliché goes, because it creates reciprocal obligations ('I scratch your back and you scratch my back'). Reciprocal obligations can create favouritism and conflict of interests, which are both manifestations of corruption. To monitor entertainment opportunities sponsored by businessmen is almost impossible. Businessmen should refrain from influencing politicians and public office bearers by giving them expensive gifts. Political and public office bearers are supposed to be neutral and objective.

Gifts to politicians and public office bearers should be declared to make the process transparent and such declarations should be stated in a Gifts Register that should be accessible to the public without restrictions. "The most appropriate will be if all gifts are declared, irrelevant of the intention, or value. Or, any gift exceeding a certain value, say N\$250 should be declared. In terms of sport sponsorships, a relevant question is: Is it corruption? The intention also plays a role to decide if a gift is an attempt to corrupt or not" (Parkhouse, 2017). Generally, if a gift is received after a transaction, it is not seen as an attempt to corrupt. However, it is possible that gifts can be given on a regular basis after transactions take place to 'bank' reciprocal obligations over time that contain intentions to influence and corrupt.

If the private sector is serious about tackling corruption in cooperation with the government, the private sector should get its own house in order and refrain from influencing politicians and public office bearers by attempting to bribe by means of expensive gifts, hospitality, entertainment and any form of sweetener. A private sector that refrains from offering bribes and payoffs will be credible and respectable and will have much more negotiating power and influence on the government to reform the corrupt public service. The private sector is too fragmented and diverse in expertise and operations to effectively manage gifts and other forms of corruption under one umbrella of coordinated control. Professional associations, industry and/or business forums should educate and regulate their members, manage their conduct and behaviour and penalise unethical and immoral acts such as offering bribes, kickbacks and influence peddling.

The private sector has the ability and expertise to tackle corruption.

## RECOMMENDATIONS

Only the main recommendations are included here and all other recommendations are detailed under the different sections and/or topics as discussed above.

The private sector and civil society need to unite and use the media to mobilise public support for the disclosing of public documents, for audit assessments and/or full



audits of large-scale corruption cases. Against the background of the dire economic situation, reduced government resources and mediocre commitment to reduce corruption, the private sector needs to initiate civil and criminal cases to investigate corruption and increase public awareness about corruption issues of national importance.

The private sector and civil society need to coordinate in order to form a united front to negotiate with government on alternatives to reduce corruption in the public and private sector interface, e.g. in terms of border control corruption, delays in the approval of licences and permits, corruption in allocation of tenders and large capital intensive projects. In general, it is recommended that the private sector collaborates and synergises its resources to influence the government in terms of advising on legislation, policies and regulations and monitor the implementation of such instruments. A united private sector can put pressure on government to reform 'hot spots' and strategic and/or key institutions to reduce corruption in the public and private sector interface, e.g. procurement, monopolies and cartels.

The business community should encourage their members and the public at large that when people are aware of suspected activities or have benefitted themselves from what could be interpreted as corruption, to make use of the protection of the provisions of Section 52 (4) of the Anti-Corruption Act (Act No.8 of 2003) that stipulates that "No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act".

In terms of corporate governance and compliance with the NamCode, areas of major improvement by the boards of private companies and public entities, e.g. SOEs, have been discussed. The following recommendations are made.

- The private sector creates an awareness programme to market the voluntary implementation of the NamCode. Since the Namibia Stock Exchange and Deloitte & Touche Namibia were the initiators of developing the NamCode, they should take the lead in this process.
- Boards of private companies and public entities should improve their corporate governance and reduce the level, frequency and magnitude, and/or monetary value, of corruption in Namibia.
- Since the NamCode is based on King III, it is recommended that the Code needs amendment in order to make provision for changes in King IV, e.g. from the 'apply or explain' approach to 'apply and explain'.
- Board members should receive training on their fiduciary powers and skills training in areas as discussed. Such training should be measurable in terms of outcomes and board members' performance agreements and appraisal to bring a turnaround in the level of corporate governance in Namibia.
- Deloitte & Touche Namibia Surveys should in future include questions to board members about donations, gifts and entertainment offered to them, as well as questions about declaration of interests, recording of interests at board meetings and monitoring of the execution of such declarations.

Since the public sector neither has the political backing nor the capacity to tackle corruption in the public sector, e.g. in cleaning up public procurement, improving the struggling performance of SOEs (most of which are monopolies with very limited competition), it is recommended that the private sector initiates voluntary regulation of its various and diverse industries to comply with the NamCode to improve corporate social responsibility. If the private sector can get its own house in order in incentivising individuals to refrain from corruption through its associations, e.g. NEF and CIF, it can put pressure on government to reform the public sector. Leverage points include withholding of funding and donations to political parties. If businesses threaten to withhold



their financial support to political parties – as happened in the USA in the 1800s and the UK in the 1900s – the government will have no choice but to reform the public service to be efficient and effective with less bureaucracy and fewer delays. A more efficient public service can reduce the demand for corruption.

An anti-corruption network and integrity pacts should be formed to integrate associations and interest groups with similar operations to tackle corruption. The private sector should assist the ACC in joining its subcommittees to advise on awareness and prevention programmes. The CIF should use its influence to advise tender evaluation committees of the CPB for verification of track records of companies that bid for construction tenders before tenders are awarded.

Oversight bodies consisting of members of the public could cooperate and assist the ACC in their awareness of corruption and prevention programme. Based on the best practice example of Singapore, the private sector should negotiate with government for monthly meetings between the ACC and oversight bodies to report on the ACC's progress, e.g. on the number of cases reported, cases pending, cases referred to the Prosecutor General's Office and cases finalised.

Professional associations such as medical doctors, lawyers, accountants, auditors and engineers should deregulate their respective industries' restrictive operations and legally protected 'price fixing'. Such deregulation can increase competitiveness and lower their professional service costs so that their services are more affordable in Namibia, where a substantial portion, if not the majority, of the population cannot afford their services.

## CONCLUSION

The government is one of the most significant role players in the economy in terms of employment in large capital intensive projects for creating infrastructure, e.g. construction of dams and procurement for providing socio-economic, health and educational services and products. The government is to a large extent creating the environment for initiating and allowing private sector corruption to take place. If political and public office bearers who are responsible for drafting, approving and implementing legislation, policies, regulations and by-laws tolerate accepting bribes, the private sector will most certainly offer bribes in order to increase profits. For example, if public servants would refuse to accept bribes and report them to the appropriate authorities for efficient processing, investigation and prosecution, providing all other variables remain constant, bribery will not take place.

Public servants are tempted to accept bribes, partly because of a culture of ingrained corruption in the public service, as well as a culture of entitlement that could be the consequence of historical imbalances of injustice created by apartheid, colonialism, neo-colonialism and the liberation struggle. Political connections and relatively lower salaries than privately employed people with similar skills and experience, contribute to corruption. Based on a history of unsuccessful ad hoc attempts to reform the public service since independence, it is of limited value for the private sector to wait for reform of the public sector.

With a two-thirds majority in Parliament, the government is very secure in terms of voter support with no emerging competition on the horizon. Because of the government's secure position on the political landscape, it has very limited motivation to initiate public sector reform. Through public sector reform, the ruling party can lose substantial support. A significant number of public officials are direct or indirect beneficiaries of the ruling party through institutionalised patronage, nepotism and favouritism. These public servants have become so dependent on corruption that they will resist any attempts at reform. Politically connected and/or ignorant and incompetent public servants form such a large portion of the employed personnel in the economy that reform will have a severe negative socio-economic impact on them, which will in turn impact negatively on the ruling party.



Based on best practices of sustainable reform in the USA during the 18th century and UK, Hong Kong and Singapore during the 19th century, the private sector should take the initiative and put pressure on politicians to increase efficiency and productivity in the public sector, so that delays and waste are minimised. A more efficient public sector will reduce the costs of the private sector to do business. The private sector should collaborate with civil society in creating and funding public dialogue about issues of national importance. The private sector should use the media much more effectively, especially the social media, e.g. Facebook, to inform, organise and mobilise public support to expose corruption networks.

For the private sector to be credible, respectable and to have leverage on government, it must get its own house in order to voluntarily regulate unethical and immoral behaviour of its members, e.g. not to offer bribes to politicians and public office holders. A diversified private sector should collaborate on common issues and synergies, while strengthening existing institutions. Engaging the public in dialogue is critical to develop citizen awareness and participation in critical issues such as pre-budget participation. Participation and transparency have the potential to reduce maladministration and corruption in the public and private sector interaction with lucrative opportunities for corruption.

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