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Namibian Governance Report 2015 - 2020

Systems, Processes and Institutions



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Source Insight Namibia

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1. HARAMBEE GOVERNANCE – The Namibian House

When President Geingob came into office he entered on the promise of delivering prosperity through addressing some of the longstanding and deep-rooted socio-economic qualms of Namibia. At that stage the tone was upbeat and the image was one of a new broom having come to clean house.

In his inaugural Cabinet meeting in April 2015, Geingob said:¹

“In Namibia, and in some parts of Africa, there is a negative culture which has ingrained itself in the behaviour of few officials who are content with just sitting in their offices and being content with mediocrity and unproductivity. Obviously if we want to win the war on poverty we ... need a 100% committed executive and civil service. We must all be people who are action and results orientated. We must all be people who make things happen.”

On the topic of corruption, Geingob said:

“Furthermore, there must not be any conflict of interest in Government. The days of being a Government official and trying to be a businessman or businesswoman should come to an end. In these instances, one area usually suffers and most often it is the official work that lags behind.”

“This is why as political officials, we declare our interests in order to ensure that as public officials and stewards of the public trust, we should continue to put the public's interest before our own.”

These words were followed up with actions, for shortly after this speech Geingob and the First Lady publicly declared their assets and interests.

¹ <http://insightnamibiainmagazine.blogspot.com/2015/04/statement-by-h-e-dr-hage-geingob.html>



In his maiden state of the nation (SONA) address, also in April 2015, President Geingob once again emphasised the notion of the 'Namibian house' in the context of good governance, stating:²

"In Namibia, we are not foolish. Wise builders have built our Namibian house on rock. Other aspects of the strong foundation of the Namibian House, Honourable Speaker, Honourable Chairperson, includes peace and stability, respect for the rule of law, and good governance. According to Transparency International, Namibia has remained one of the least corrupt countries in the world. It is important for public officials, to take note that corruption, in any form, whether it is a kickback, commission or any other benefit in the regular execution of duty is unacceptable. Private sector should also take note that by paying a bribe, it perpetuates and entrenches the very corruption it laments," stated Geingob on the topic.

"As a rules-based nation, we must capacitate and allow our institutions such as the Anti-Corruption Commission, the Namibian Police and our Courts to investigate and prosecute cases of corruption without fear or favour. The Anti-Corruption Commission and the courts are only able to successfully prosecute cases of corruption if they have sufficient evidence. In this regard, I urge service providers to the Government, or any user of Government service to ensure that if he or she is asked for a bribe by a civil servant, not to oblige. Instead, please inform the Anti-corruption Commission and provide them with the necessary evidence. Corruption requires a corrupter and a corruptee. Business-people that pay bribes and the civil servants who solicit or receive bribes are engaged in an evil which undermines our development and weakens the fibre of our society."

Despite the early positive rhetoric, reports of state sector mismanagement, waste and corruption have continued to surface regularly in public over the years since early 2015. Geingob's first five years in office were unfortunately to a large extent defined by the Fishrot corruption scandal that emerged in November 2019.

This report sets out to assess the governance record of President Geingob's first five years in office with reference to two themes that he has proclaimed as core to his intentions to promote good governance:

- The installing of "robust governance architecture"; and
- Improving systems, processes and institutions.

In summary, the paper makes the following observations:

On installing "robust governance architecture":

- The National Anti-Corruption Strategy and Action Plan (2016 – 2019), which was supposed to deliver much of the strengthened or new governance architecture on the anti-corruption landscape had only completed 15 out of 75 actions by 2020;
- Both the Whistleblower Protection Act (No. 10 of 2017) and the Witness Protection Act (No. 11 of 2017), which were passed in late 2017, remained unimplemented by the end of the first Geingob administration term;
- Despite repeatedly stating over the years that an access to information bill would be tabled in parliament and a law passed in his first term, by the end of the term no bill had made it to parliament;

² <http://insightnamibiainmagazine.blogspot.com/2015/04/maiden-state-of-nation-address-2015-by.html>



- Indications are that assets and interest declaration or disclosure systems do not function effectively within the state sector. Namibia does not have a comprehensive, standalone law dealing with assets and interests disclosure and conflicts of interest by political office-bearers or senior civil servants. Rather such measures are scattered across various laws and regulatory mechanisms, the implementation and enforcement of which remained highly questionable;
- Despite the enabling law (Electoral Act of 2014) having been passed, an entire five-year electoral cycle period – April 2015 to March 2020 – passed before regulations were fully implemented to enable transparency around political party funding and finances.

On improving systems, processes and institutions:

- The Anti-Corruption Commission (ACC) is the tip of Namibia's anti-corruption spear, but over the five years from 2015 the law enforcement agency has faced significant challenges, especially of a reputational kind;
- The Office of the Prosecutor General (PG) plays a critical role in Namibia's anti-corruption fight, but the PG's office has also become an increasingly problematic institution;
- The Namibian courts system is in a decades-long struggle to clear backlogs and bottlenecks that have become a threat to the entire criminal justice system as judicial authorities have failed to get to grips with the issues undermining the efficient functioning of the courts.



2. INTRODUCTION:

"Good governance is my forte," Namibian President Hage Geingob said on a panel at the African, Caribbean and Pacific (ACP) Group of States Summit, held at Nairobi, Kenya, from 9-10 December 2019.³

Geingob said this as the dust refused to settle in the wake of the National Assembly and presidential elections of 27 November 2019, which saw his own support fall from roughly 87% in 2014 to about 56% in 2019.

Just a few days before his ACP Summit statements, Geingob presided over his last Cabinet meeting of calendar year 2019, on 6 December 2019.

In the days before the elections, news broke of the Fishrot corruption scandal, which implicated two members of Geingob's Cabinet and other prominent figures with ties to the ruling Swapo Party.

The Fishrot scandal, which was still unfolding at the time of writing, laid bare how governance systems, processes and institutions in the management of Namibia's fisheries and marine resources sector had allegedly been corrupted to the benefit of a few politically-connected individuals, including implicating the ruling party in having been a beneficiary in the apparent long-running corrupt scheme.

Geingob got the 6 December 2019 Cabinet meeting underway by delivering a statement in which he denied that the Namibian state was characterised by systemic or endemic corruption, pointing to the fact that at his town hall meetings across the country in mid-2019, the issue of corruption had only come up twice.

The Namibian president stated:

"This is why I believe that corruption is not systemic in Namibia, but perceptions have been created that Namibia is a corrupt society. Nevertheless, we admit that although corruption is not systemic in Namibia, the actions of a few corrupt officials have tainted the name of our country. It is therefore important for public service officials to emphasize that corruption in any form, e.g. kickbacks, or percentage commission for the amount of contracts, is unacceptable."

Geingob continued:

"We are aware of the current corruption storm in the fishing sector which has coincided with the build up to the presidential and National Assembly elections. We have seen the anger of the people, especially those who have had their livelihoods destroyed as a result of corrupt practices. Anybody would be angry and this has been a wake-up call for us to re-double our efforts to promote greater accountability and transparency across all sectors of government."

³ <https://www.nbc.na/news/without-sound-governance-economic-transformation-difficult-achieve-geingob.27396>



And he ended off by stating:

"As a law-abiding society, we believe in processes, systems and institutions and for this reason, we will allow those implicated to be tried under due process of the law."

The issue of the effectiveness of "processes, systems and institutions" has become an important consideration in the area of good governance in the state sector.

2.1 Why focus on corruption?

As already indicated, Hage Geingob came into the Namibian presidency on the back of a resoundingly strong mandate following the November 2014 Presidential and National Assembly elections. In the run-up to those elections he had preached a message of unity, evoking the image of the 'Namibian house'. His message resonated with most Namibians, as he secured 87% of the vote in the presidential election of that year.

From the start of his presidential first term, in March 2015, Geingob pledged to fight the ills plaguing Namibian society by focusing on eradicating poverty and inequality, through improved state sector governance and government service delivery. Part of this pledge was to re-engineer the government to be more transparent and accountable, to adopt a zero tolerance for corruption, and to strengthen systems, processes and institutions.

Geingob, in a statement read on his behalf by Prime Minister Saara Kuugongelwa-Amadhila, articulated the connection between corruption and state service delivery in the keynote address at the opening of the National Anti-Corruption Conference, held under the theme 'Building an Honest Namibia: People, Integrity and Action', in Windhoek in late June 2015, when he stated:⁴

"The perception of corruption, real or unreal in many societies has eroded citizens' trust in the ability of their governments to deliver essential services to them. We have a duty to demonstrate political commitment to promote transparency and deliver what we promise to the electorate during election campaigns. The Namibian people have given overwhelming mandate to the ruling political party, SWAPO, and to myself, the President of the Republic of Namibia. The people want and deserve a dignified livelihood. They want jobs, better housing and good nutrition. During my swearing in as the 3rd President of the Republic of Namibia, I made an undertaking that our first priority will be to tackle poverty and concomitant inequality – meaning that government's priority is to address inequality, poverty and hunger that afflict the majority of our people."

"In order to accomplish this vision and expectations of our people, a range of positive interventions need to be introduced. Appropriate strategies including anti-corruption strategies must be adopted to reverse the tide of mismanagement, malfunction, and corruption. The intervention programs demand all stakeholders to put hands together to promote the integrity system. In this way, appropriate policies will be speedily implemented. We must tackle poverty and inequality with a sense of urgency, yet in a positive manner. Corruption is inimical to sustained economic progress."

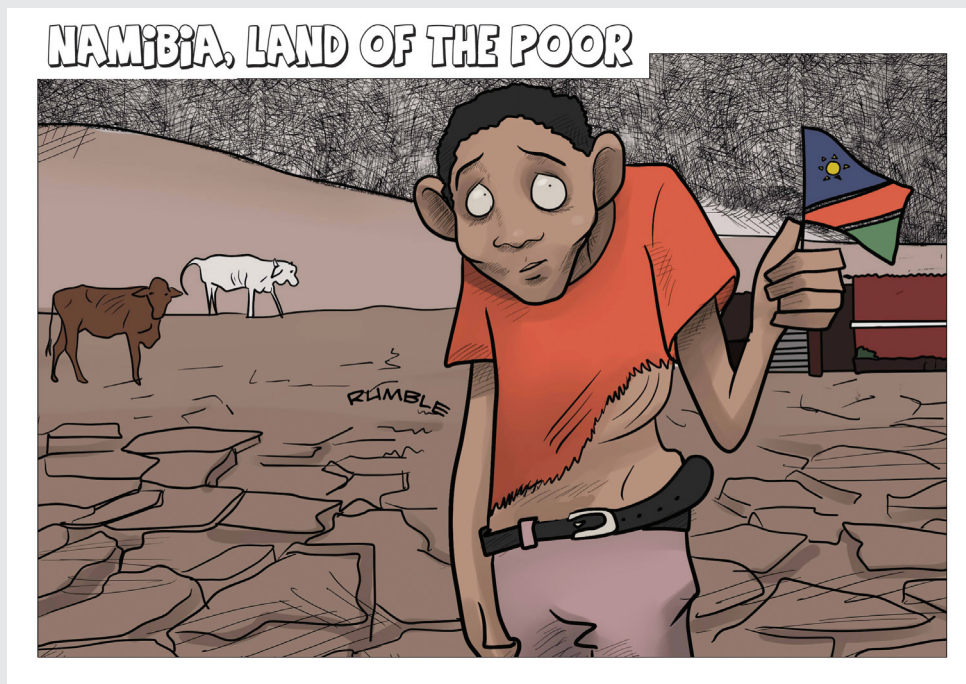
⁴ <https://drive.google.com/file/d/1VKZT016Wr4tI3Ey6sWmcc6OdhDYGX32/view?usp=sharing>

The Namibian president himself reiterated this connection between corruption and state performance when he delivered the keynote speech at the opening of the 6th Annual General Meeting and Conference of the Heads of Anti-Corruption Agencies in Commonwealth Africa, at Swakopmund in early May 2016, when he stated:⁵

"Systemic corruption increases the daily cost of living and negatively impacts on service delivery in many ways, including misplaced spending priorities and inflated costs. Another way of looking at it, is when quality input goods in the construction process get substituted for lower quality goods which shortens the life span of infrastructure, and therefore inflates maintenance costs. Such corrupt practices also have negative macro-economic consequences. One such well documented consequence is capital flight, that in turn, puts strain on the balance of payment positions of our countries. It is estimated that billions of US dollars, that could have been used to develop our countries, leaves the continent due to corrupt practices."

Aside from these prominent platforms, and many others over the five-year period, President Geingob extensively spoke on the topic of corruption in every one of his five state of the nation speeches from 2015 to 2019 (see Corruption in SONA).

The point of extracting and highlighting corruption as a prominent theme during the first term of the Geingob administration is because this was a theme brought to prominence in the context of governance from the outset by Geingob himself. And, secondly, it is undoubtedly the case that by the end – March 2020 – of the first Geingob administration period, both the president and the Namibian government at large, as well as the ruling party, had become indelibly tainted by the corruption at the highest levels of state exemplified by the Fishrot corruption saga and other resolved and ongoing corruption-related scandals.



Source Insight Namibia

⁵ <https://bit.ly/2U9Vm4U>



It is important to note that the period in question (2015/16 – 2019/20) was also a period of significant economic deterioration for Namibia, marked by slowing economic growth, a prolonged devastating drought, diminishing investment, eroding livelihoods, stubbornly high unemployment, entrenching poverty – all of which appear to have been profoundly worsened by the COVID-19 pandemic that struck in 2020 and that has reportedly crushed significant parts of the Namibian economy that were already on their knees following years of all-round decline.

It is against this backdrop that this report assesses to what extent the claims made by the president over the five years concerning his administration's professed commitment and actions to strengthening the fight against corruption are borne out. The president's claims have been assessed against the themes or areas that he himself has repeatedly touted as the evidence of state and political commitment in fighting and eradicating corruption in the Namibian public sector.

These themes or areas are the following:

- The installing of "robust governance architecture"; and
- Improving systems, processes and institutions.

To reiterate, this inaugural Namibia Governance Report spotlights the gaps and challenges in the Namibian state's anti-corruption efforts during the first term of the Geingob administration – starting April 2015 and ending March 2020.

The purpose is to provide an overview of the state of public sector governance in the context of corruption, and against the backdrop of the Namibian president's stated commitment to good governance. Practical and do-able recommendations are made in the appendix to this report which outlines IPPR's previous suggestions regarding tackling corruption more effectively.



Corruption in SONA (2015 – 2019)

Since 2015, the topic of corruption has featured prominently in the state of the nation speeches of President Hage Geingob, as corruption within his administration remained a hot-button topic throughout his first term.

The Year of Planning (2015)

"Another strong foundation of our Namibian House is good Governance. It was therefore no surprise that our former President, Hifikepunye Pohamba, received the Mo Ibrahim Award for African leadership. Congratulations once again Comrade President. According to Transparency International, Namibia has remained one of the least corrupt countries in the world. It is important for public officials, to take note that corruption, in any form, whether it is a kickback, commission or any other benefit in the regular execution of duty is unacceptable. Private sector should also take note that by paying a bribe, it perpetuates and entrenches the very corruption it laments. As a rules-based Nation, we must capacitate and allow our institutions such the Anti-Corruption Commission, the Namibian Police and our Courts to investigate and prosecute cases of corruption without fear or favour."

The Year of Implementation (2016)

The word 'corruption' was not mentioned once in the 2016 State of the Nation speech, but reference was made to various corruption-related topics.

"You will recall that during my Independence Day Statement, I mentioned that "there are some – a very small but vocal minority – who use every opportunity to create the impression that nothing positive is happening in Namibia, and that Government's spending priorities are misplaced". This negative narrative is not supported by the empirical evidence and our national statistics which paint a picture of a responsible, transparent Government which respects the rights of its citizens and is making developmental inroads in its governance and macro- economic architecture. That is why our international ratings on Governance and Transparency continue to improve upwards."

"I promised, despite there being no legal obligation to do so, that I would publicly declare my assets and health records. I delivered on that promise."

"I directed that the practice of asset declarations cascade to Members of Parliament and the entire civil service. Both houses of our Parliament have delivered on this important action. Moreover, the Right-Honourable Prime Minister has ensured that all civil servants, Permanent Secretaries included, have submitted their declaration forms which are being scrutinized by the Office of the Prime Minister. Regulations under the Public Service Act were also amended to make the declaration of financial interests compulsory."

The Year of Rededication (2017)

"Light has a sanitizing effect on everything it touches and our drive for accountability is to ensure that shared prosperity happens in the bright light of accountability, and not in the dark shadows of corruption."

"We continue to tackle cases of perceived and alleged corruption, head on. Concrete actions taken to demonstrate the resolve of Government to fight corruption include: Cancellation of the N\$7 billion Hosea Kutako International Airport upgrading tender; Lodging an investigation into the National Oil Storage Facility to contain increasing costs; Action taken against the SME Bank; Investigations into tax evasion and money laundering: The Ministry of Finance initiated an investigation into alleged tax evasion, where a "friend" of the President is implicated; Ongoing cases of alleged corruption: When we ask people to report cases of corruption, the classic cases such as the Avid Social Security Case, Offshore Development Company and Development Capital Portfolio of the GIPF are mentioned. Recently, the KORA Music Awards case has been added."





"All these cases have been investigated or are in the hands of the Courts. Corruption and complicity to corruption would be when Government closes its eyes or looks the other way. However, we have taken bold actions, as demonstrated. This means the proverbial 'bull' that is corruption is being taken by the 'horns'."

The Year of Reckoning (2018)

"Effective governance is the condition sine qua non for socio-economic development. It is for this reason I declared an all-out war against poverty, inequalities and corruption upon assuming Office. As a matter of fact, corruption is enemy Number 1 in our war against poverty. It diverts scarce resources intended for development. To fight corruption requires a robust Governance Architecture, underpinned by the principles of Accountability and Transparency. It should come as no surprise that this year 2018 is "The Year of Reckoning".

There is however a worrying and persisting perception, mostly propagated by media, that government is not doing enough to curb corruption, despite numerous cases where decisive action has been taken to demonstrate political will. In 2017, 60 cases have been investigated and handed over to the Prosecutor General by the Anti-Corruption Commission, with recommendation to prosecute. Where there are flaws in institutional processes and systems, we have adopted additional mechanisms to identify loopholes and facilitate the reporting of irregularities."

"In line with our commitment to reckon, I further demonstrated resolve to address perceived and alleged corruption by requesting Ministers to respond to accusations levelled against them, upon commencement of the 2018 Executive year. This should not be understood to mean the concerned Ministers are guilty of corrupt activity. The purpose of my intervention was to provide a platform to respond."

"If we are to win the war against corruption, we have a shared obligation to blow the whistle. In this regard members of the public are requested to report cases of corruption. The Whistleblowers Protection and Witness Protection Acts were passed in September 2017 to strengthen our legal instruments. The implementation mechanism for this legislation is not yet operational. However, this should not deter the public from submitting reports of corruption to relevant authorities. Contrary to the widespread perception of corrupt officials, substantiated reports have not been forthcoming."

The Year of Accountability (2019)

"Namibia's ranking on Transparency International improved from number 6 in 2016, to number 4 in Africa, in 2018. The implementation of the National Anti-Corruption Strategy and Action Plan, and the declaration of income and assets by Public Office Bearers, Parliamentarians and Management Cadre are some of the key initiatives that could have contributed positively to our ranking."

"When we declared all-out war against poverty and inequalities, we also declared war against corruption. Bold steps have been taken to fight corruption, during the period under review."

"In 2018 I issued letters to a number of Cabinet Ministers following reports of maladministration and alleged corruption. This was done to provide fair opportunity for those concerned to give their side of the story. Based on the responses, letters were referred to the Anti-Corruption Commission for determination, whether further investigation was warranted."

"In all instances and contrary to demands to "see the Big Fish caught", a due legal process must be followed and permitted to run its course. In line with the Third Wave leadership approach, where there are no arbitrary actions, I believe that credible processes, systems and institutions must be upheld."

"Furthermore, the confidential process of lifestyle audits, which started in 2017/18, to determine possible tax evasion, money laundering and illicit proceeds, was broadened during the reporting period."

"Furthermore, the Anti-Corruption Commission investigated 701 cases in 2018, of which 156 have been referred to the Prosecutor General, with recommendation to prosecute. 49 of these have been finalized."

3 . WHERE'S THE “ROBUST GOVERNANCE ARCHITECTURE”?

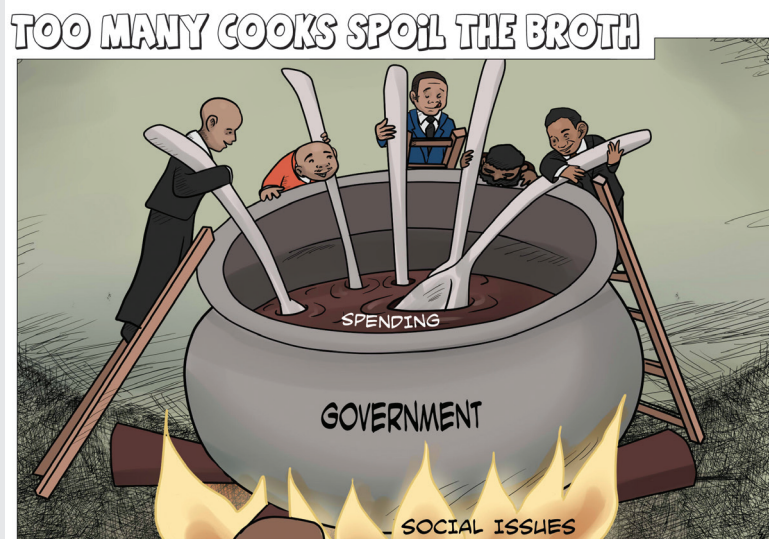
In many speeches, notably the state of the nation speeches, President Geingob has repeatedly referred to the need for “robust governance architecture” in the context of the fight against corruption in the state. Judging by what is referred to by the president in such speeches, this “robust governance architecture” points to the creation, improvement and/or implementation of laws, regulations and/or strategies that speak to combating corruption and other mal-administrative practices in government.

In this regard it should be noted that during the period preceding and into the first year of the first term of the Geingob administration, from 2010 to the end of 2015, Namibia was under review by the United Nations Office on Drugs and Crime (UNODC) in terms of its compliance with chapters three and four of the UN Convention Against Corruption (UNCAC). This process came to an end following a UNODC review team country visit in April 2015 – the very month that the Geingob administration took office – and the compilation of a country review report that was released at the end of that year.

The country review report identified many gaps and challenges in Namibia’s anti-corruption governance architecture and made recommendations towards assisting the country to strengthen such frameworks by aligning them with the UNCAC provisions. The areas highlighted and proposed remedies contained in the report were what could be labelled as bricks for refitting Namibia’s existing anti-corruption frameworks into “robust governance architecture”.

Some of the proposals in the 2015 UNODC Country Review Report of the Republic of Namibia⁶, as well as others that also fall among Namibia’s commitments under UNCAC but did not form part of the review, were included in Namibia’s National Anti-Corruption Strategy and Action Plan (2016 – 2019), which was meant to be the guiding document for improving or constructing this “robust governance architecture” on the anti-corruption landscape.

As will become clear, ensuring a ‘robust governance architecture’ over the years from 2015 through early 2020 delivered a mixed bag of results. The purpose of spotlighting some of the issues that follow is to underscore that legal proposals that could have already had an immense impact on the anti-corruption landscape have suffered from slow drafting to under-implementation, and even no implementation, from 2015 through 2019 into 2020.



Source Insight Namibia

⁶ <https://uncaccoalition.org/files/Cycle1-Country-Report-Namibia.pdf>



3.1 National Anti-Corruption Strategy (NACS) and Action Plan (2016 – 2019)⁷

The National Anti-Corruption Strategy and Action Plan (2016 – 2019) precedes the Geingob administration, having been initiated in the last years of the second term of former President Hifikepunye Pohamba. The drafting of the strategy – which was also an UNCAC commitment – started in 2013 and was only completed around late 2015, early 2016, with the aim having been to implement it as from the start of the 2016/17 financial year, which commenced on 1 April 2016.

However, the strategy was delayed and only approved by the Geingob Cabinet in August 2016 and implementation only commenced in early 2017, almost a year late. Because of this, the strategy period ran until end of March 2020, a full year after it had initially been scheduled to end.

The Geingob administration's signature Harambee Prosperity Plan (HPP) also explicitly committed the administration to implementing the NACS within the plan's operational period of 2016 to 2020.⁸

The NACS was supposed to address many of the legislative and regulatory aspects identified as gaps in the 2015 UNODC Country Review Report – including amending the Anti-Corruption Act of 2008 to incorporate provisions on embezzlement in the private sector and the bribing of foreign officials. Also, according to UNCAC, Namibia had to create and implement legislation related to illicit enrichment⁹, but this was not included in the strategy. The strategy also called for other laws to be amended to speak to efforts to combat corruption (see 'NACS and laws').

The NACS contained 75 actions under six strategic objective pillars. According to the Evaluation Report of NACs published on October 14 2020, out of the 75 actions 15 (or 20 percent) were completed while 6 were not implemented at all. The remaining 54 were in various stages of implementation.

One of the issues that influenced the slow or under-implementation of the NACS appears to have been a lack of buy-in or involvement from various stakeholders, including civil society, for as a 2017 IPPR briefing paper on the implementation challenges of the NACS noted: "Any comprehensive strategy requires cooperation from all sorts of institutions and actors, ranging from citizens to private and public institutions. However, there are serious concerns about whether these other actors will carry out the tasks they are supposed to. Many were not involved in the process of drafting the document, and therefore have little 'buy-in' from the get-go."¹⁰

⁷ <https://acc.gov.na/documents/31390/31536/National-Anti-Corruption-Strategy-and-Action-Plan-2016-2019.pdf/fe2ddc71-da48-e9b3-66df-ed942947701f>

⁸ <https://op.gov.na/documents/84084/572904/HPP+Report+2019/66c2eef8-3b23-45be-bc2c-5e728699057e>

⁹ https://ippr.org.na/wp-content/uploads/2017/07/IPPR_IllicitEnrichment.pdf

¹⁰ https://ippr.org.na/wpcontent/uploads/2017/05/IPPR_AntiCorruption2017_WEB.pdf



NACS and laws

The National Anti-Corruption Strategy and Action Plan (2016 – 2019) called for various law changes or introductions in order to improve the anti-corruption legal armaments. By the end of March 2019, according to the NACS annual report for the 2018/19 financial year, 10 laws or legal instruments were in various stages of amendment and/or enactment, or being addressed, while three had been completed. These laws and legal instruments were:

- Amendment to the Anti-Corruption Act, 2003 (Act No. 8 of 2003) (Action 3.2.1, 3.2.3);
- Extractive and fishing and other living marine resources legislation and subordinate legislation (Action 5.1.1, 5.1.7);
- Regulations and policies for Public Enterprises; Consolidation of the Public Enterprises Governance Act (Action 2.3.1);
- Amendment to Namibia's Extradition Act, 1996 (Act No. 11 of 1996) (Action 3.2.8);
- Amendment to the International Cooperation in Criminal Matters Act, 2000 (Act No. 9 of 2000) (Action 3.2.9);
- Amendment of Public Service Staff Rules (Action 3.3.1) – this activity is completed;
- Amendment of Electoral Act, 2014 (Act No. 5 of 2014) (Action 1.1.2);
- Whistleblower Protection, 2017 (Act No. 10 of 2017) and Witness Protection, 2017 (Act No. 11 of 2017) (Action 3.2.6) were passed by Parliament – this activity is completed;
- Access to Information legislation (Action 2.2.1, Action 5.1.3);
- Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and On-line Media (Action 6.2.2) – this activity is completed.

Source: National Anti-Corruption Strategy Annual Report 2018 – 2019¹¹

3.2 The Whistleblower Protection Act and the Witness Protection Act

Both the Whistleblower Protection Act (No. 10 of 2017) and the Witness Protection Act (No. 11 of 2017) were passed in 2017, following a period of extensive engagement between various stakeholders and the government legal drafters. The enactment and implementation of both laws were also part of the actions contained in the NACS.

Since the passing of these two laws in September 2017, President Geingob has cited their introduction as evidence of political will and his government's commitment to fighting corruption. However, while these laws have been passed, they have not been operationalised.

The fact that these laws remain unimplemented has not stopped the state president from repeatedly referring to them as successes in his government's anti-corruption efforts.

In his 2018 State of the Nation speech, the president stated:

"If we are to win the war against corruption, we have a shared obligation to blow the whistle. In this regard members of the public are requested to report cases of corruption. The Whistle Blowers Protection and Witness Protection Acts were passed in September 2017 to strengthen our legal instruments. The implementation mechanism for this legislation is not yet operational."

¹¹ https://drive.google.com/file/d/1XV_AbhPgY3rh6t2BfKfdy05PwYMUGv8/view?usp=sharing



And in his 2019 State of the Nation speech he said:

"In a recent media report, the Anti-Corruption Commission Director General, stated that citizens remain reluctant to report cases of alleged or perceived corruption, due to the fear of retribution. This is despite the enabling legislative framework, including the Whistle Blower and Witness Protection Acts. The fight against corruption requires a zero-tolerance stance and concerted efforts from all of us, including the Fourth Estate."

This last statement from the 2019 SONA made it sound as if the whistleblower and witness protection laws were actually in force, despite there being no clear indication from the Geingob government as to when these laws would be implemented.

The excuse of not having the resources to operationalise the two laws has been used by the government since 2017, and this excuse was once again extended in late September 2020 in the National Assembly by Justice Minister Yvonne Dausab, who indicated that due to budgetary constraints, the two laws would only be partially operationalised in 2021, almost four years after having been passed.¹²

3.3 Access to information

President Geingob is fond of sharing his governance equation: Transparency + accountability = trust. However, despite his repeated claims of improved transparency and accountability under his administration, and despite ensuring access to government information having been written into his first Harambee Prosperity Plan (HPP) (see 'ATI in NACS and Harambee'), real government transparency remained largely out of reach by the time his first presidential term ended in March 2020.

In this regard, getting an access to information (ATI) law passed also formed part of the actions in the NACS that officially came to an end in March 2020.

The President has been at the forefront of moves within the government to formalise access to information in law, having initiated talks about access to information and the need for an anti-corruption agency back in 1998.

Over most of the more than two decades since such discussions began there had hardly been any movement regarding drafting and passing such a law, until mid-2016, when representatives from government, led by the Ministry of Information and Communication Technology (MICT), and civil society, under the umbrella of the Access to Information in Namibia (ACTION) Coalition, sat down in Windhoek and came up with an ATI draft bill, using the African Union (AU) model law on access to information as a guide.

Despite this positive development and the HPP commitment to ensuring a more transparent government, progress has been halting. At the end of 2017 the IPPR published a study, titled 'Access Denied', which surveyed a wide range of state departments and entities, private sector operators and civil society organisations, that found that about 80% of state departments and entities were unresponsive to basic information requests from the public.¹³

¹² [https://www.namibian.com.na/205043/archive-read/Whistleblower-laws-to-cost-N\\$160m-per-year](https://www.namibian.com.na/205043/archive-read/Whistleblower-laws-to-cost-N$160m-per-year)

¹³ https://ippr.org.na/wp-content/uploads/2017/12/AccessDenied_WEB01122017.pdf



Despite this state of affairs, the President continued to claim improvement in government transparency.

And then, in his 2019 SONA, President Geingob said:

"We recognize that access to information is a critical component of the electorate's ability to hold elected leaders to account. To that end, the anticipated Access to Information Bill will be tabled in Parliament during 2019."

"Namibia has embraced the Information Age, which brings with it online media and round-the-clock breaking news, bringing information to the fingertips of the masses and making it easier for Government to account to all Namibians. We are a responsive Government and are leveraging this "New Normal" to enhance public access to information."

However, despite these words, the ATI bill did not make it to parliament in 2019, but only in mid-2020, after the president again stated that an ATI bill would be submitted to parliament in his 2020 SONA.

ATI in NACS and Harambee

Under strategic objective 2 (Preventing corruption in government offices, ministries, agencies and public enterprises), the National Anti-Corruption Strategy and Action Plan (2016 – 2019), has as specific objective 2.2 the following: "Increasing institutional transparency by increasing the availability of public data made available by public authorities." The action taken would be: "Access to Information legislation will be introduced to ensure access to public information and transparency of decision-making processes to further provide for relevant action to protect information."

The Harambee Prosperity Plan (HPP) recognised transparency as a critical ingredient of development. Under "Accountability and Transparency" in Chapter 3 (Effective governance and service delivery), it stated: "Access to Public Information: To ensure that our citizens have access to relevant Government information, the MICT will develop a Plan for aligning the functions of the Public Relations and Liaison Officers to their core functions of information dissemination before end of June 2016. In addition, permissible access to information by the public must also be included in the Plan."

3.4 Assets, interests and liabilities disclosure

Assets and income disclosure mechanisms have been among the issues that have surfaced to prominence over the period under discussion, as questions around his assets, interests and associates have surrounded the Namibian president himself since long before he came into office in 2015 and have followed him ever since.

In his first SONA, in April 2015, Geingob indicated that he would publicly disclose his assets and interests, stating:

"A key requirement in preventing undue benefits accruing to Public Officials is preventing conflicts of interest and the disclosure of assets. The law does not require the President to disclose his personal assets. However, managing conflict of interest is a matter which requires political will. Therefore, I feel obliged to publicly declare my personal assets."



"To this extent, I have engaged PriceWaterHouseCoopers Tax and Advisory Services (PWC) to assist me with an independent assessment of my assets. PWC will also assist me to prepare a financial disclosure report which I will disclose to the public in the second week of May 2015. For the sake of consistency, the First Lady will also disclose her personal assets, despite there being no legal requirement for her to do so. In the same vein of transparency, I will also release my medical health reports for public scrutiny. These disclosures will be made in line with the belief that transparency starts at the top. I am deeply convinced that accountability, transparency and inclusive leadership are "conditio sine quo non" for sustained socio-economic development and the improvement of the lives of all our people."

Shortly after this announcement, Geingob did make a public disclosure of his interests and assets, and the much-praised gesture looked like a harbinger for a more substantive assets and interests disclosure regulatory mechanism to be introduced at the highest levels of state and government. Alas, it turned out to be a once-off event, followed only by then finance minister Calle Schlettwein with a public declaration of his assets and interests in mid-2016, but no one else in the Geingob Cabinet. The public declaration of assets and interests by the state president has not been repeated since - although the President in 2020 did say he would repeat the process. In the meantime, Schlettwein did declare his assets for a second time.

The introduction and enforcement of a comprehensive assets and interests declaration framework and mechanism for politicians and public servants forms part of Namibia's commitments under UNCAC, and the National Anti-Corruption Strategy and Action Plan (2016 – 2019) did contain an action related to implementing such a system state-wide. The Harambee Prosperity Plan (HPP) also included a provision calling for "annual declaration of assets and income by Public Office Bearers and Civil Servants".

On this score, the National Anti-Corruption Strategy Annual Report 2018 – 2019, that was released in late 2019, reported:

"The declaration of interest by staff members in the Public Service (under OPM) is currently being facilitated via a manual paper-based system. A request has been directed to the UN for technical experts to assist OPM with the development of a standardized system for the declaration of interest in the Public Service of Namibia. OPM is still waiting for the response from the UN. In the interim, the facilitation of getting the declaration of interest is ongoing, O/M/As were requested via Public Service Management Circular No. 9 of 2018 to submit the declaration forms and analysis reports to OPM, Department of Public Service Management (DPSM) before 30 June 2018. The preliminary report has been finalized. The Department is currently busy analyzing the declaration of interest forms and analysis reports received from O/M/As and Regional Councils. Furthermore, an overall Public Service Report is being prepared for submission to the Secretary to Cabinet."



In terms of declarations by politicians, according to the **Powers, Privileges and Immunities of Parliament Act of 1996**, parliamentarians are supposed to declare their assets and interest on an annual basis, but this process has historically been poorly managed.

A late 2016 IPPR report on the handling of the register of members' assets and interests by the National Assembly secretariat described the situation as follows:¹⁴

"The National Assembly is notoriously noncompliant with this requirement, declaring in 2003, again in 2009, and then never again. Even in 2009, thirteen members simply did not declare their assets, without any consequence. Upon entering office, President Geingob promised the public that Parliament would finally declare their assets again. The process seems to be moving along, though the National Assembly has missed every deadline along the way. Parliament finally discussed a draft code of conduct in early October 2015, and MPs were supposed to disclose by November 30. This never occurred, and by the next year, the deadline moved to May or June. The declarations had still not been published by the end of July 2016."

The situation – late reporting, not declaring, impunity – described in this 2016 report has continued through 2019/20, for in July 2020 it was reported that members of the National Assembly continued to make a "mockery" of the declaration system, with the report stating:¹⁵

"A review of the latest asset register of 2019/20 shows a trend of many politicians having nothing to declare, not participating in the exercise and in some instances, under-declaring."

This is a clear indication that assets and interest declaration or disclosure systems continue to be broken and fragmented within the state sector.

3.5 Political party finances and funding

Political party finances and the regulation thereof have also been historically murky areas and the situation remained opaque throughout the first Geingob administration period.

The National Anti-Corruption Strategy and Action Plan (2016 – 2019) also contained an action that spoke to ensuring the implementation by the Electoral Commission of Namibia (ECN) of transparency and accountability mechanisms around political party finances and funding provided for in the Electoral Act of 2014.

In this regard, the National Anti-Corruption Strategy Annual Report 2018 – 2019, stated of progress made:

"ECN is in continuous consultation with all political parties regarding compliance with the provisions of Chapter 4 of the Electoral Act, especially with the Secretary Generals and Authorised Representatives of respective parties registered with ECN. The ECN also reported that most political parties with seats in parliament had submitted audited financial reports from the 2014/2015, 2015/16 and 2016/17 financial years."

¹⁴ [https://ippr.org.na/wp-content/uploads/2016/08/BP2_Declarations%20\(1\)%20\(2\).pdf](https://ippr.org.na/wp-content/uploads/2016/08/BP2_Declarations%20(1)%20(2).pdf)

¹⁵ <https://neweralive.na/posts/mps-make-mockery-of-asset-declaration>



However, an entire five-year electoral cycle period – April 2015 to March 2020 – passed before regulations were implemented to enable transparency around political party funding and finances.

The period from April 2015 through March 2020 was defined by the following:

- A lack of regulation/under-regulation characterised the Namibian political party finance environment;
- ECN failed to produce regulations that would have strengthened political finance rules and compliance with the law;
- This contributed to a political party finance space marked by a culture of non-compliance;

When questioned for an IPPR report¹⁶ – released in November 2019 – about the lack of regulation or under-regulation of political party finances during a period when unprecedented amounts of taxpayer/state funds – running into hundreds of millions of Namibia dollars – flowed to political parties with representation in parliament, the ECN stated:

"In terms of the Electoral Act, "prescribe" means prescribed by way of regulations. Both sections 139 and section 141 of the said Act refer to a "prescribed form" as well as a "prescribed amount". In order to facilitate this, the Electoral Commission held a workshop and several consultative meetings with political parties to enable the parties to agree on this "prescribed amount" as referred to in section 141.

"This was agreed upon during this year [2019] and a draft of the regulations is currently with the Directorate: Legislative Drafting in the Ministry of Justice and will only be gazetted after it has been approved and certified by them. Therefore, sections 139 and 141 are not currently in operation. Since the Act provides that the Commission will determine when it will come into operation, the Commission will consider the issue once the Regulations are gazetted."

The regulations in question were only gazetted in November 2019, shortly before the 27 November 2019 presidential and National Assembly elections.

Against this backdrop, the November 2019 IPPR paper concluded:

"That enforcement of legal provisions is spotty at best and that compliance by political parties comes across as erratic does not bode well for the integrity of a system and its processes, which are meant to safeguard the spending of public funds on political parties, and by extension, the maintenance of Namibian democracy. It can be reasonably concluded that many political parties appear not to have taken an earnest interest in complying with the Electoral Act of 2014. Neither, it appears, has the ECN been robust and transparent in terms of their enforcement responsibility."

¹⁶ <https://ippr.org.na/wp-content/uploads/2019/11/Political-Finance-web.pdf>



4. STATE OF SYSTEMS, PROCESSES AND INSTITUTIONS

President Geingob has repeatedly referred to the importance of well-functioning systems, processes and institutions in the context of good governance and anti-corruption.

In light of this, it has to be questioned to what extent the frontline systems, processes and institutions have performed or underperformed over the period under discussion.

The Geingob administration had been in office for over six months when the 2015 UNODC Country Review Report of the Republic of Namibia, which assessed Namibia's implementation of large sections of the United Nations Convention Against Corruption (UNCAC), was finalised and released. The report painted a picture of a criminal justice system perennially plagued by under-capacity and under-resourcing, processes in various stages of dysfunction and institutions that were crippling weak.

The UNODC review found the following:

"Namibia would require capacity-building and training for its law enforcement personnel, in particular staff in the Anti-Corruption Commission, the Namibian Police, Prosecutor General's office, Financial Intelligence Centre in the Bank of Namibia, the Customs and Excise Department and immigration officials on the full implementation of the Financial Intelligence Act and Anti-Corruption Act, including handling and investigating corruption cases, depriving offenders of the proceeds of corruption, and sensitising staff to international best practices. Specifically, the Namibian police force indicated that it requires technical assistance in the specialist training of detectives in the following fields of investigation: money-laundering, cybercrime, tracing proceeds of unlawful activities, and tax evasion investigations."

In other words, the UNODC review found that significant sections of Namibia's criminal justice system were ill-prepared and under-equipped to confront and combat increasingly difficult to detect corrupt practices and activities.

While the law enforcement and prosecutorial service were said to be so hamstrung by their myriad shortcomings, for its part, in early 2015 when the Geingob administration took office, the Namibian courts system was clogged and backlogged, and was itself a major bottleneck in the quest to deal with corrupt matters expeditiously.

The National Anti-Corruption Strategy and Action Plan (2016 – 2019) was supposed to address some of these issues, but to what extent actions that spoke to transforming the criminal justice system have been implemented and targets achieved will probably only become clear some time in 2021, after a final UNODC review has been completed. Even so, it can be reasonably concluded that the criminal justice system has become a significant point of concern on the Namibian anti-corruption landscape.

4.1 Anti-Corruption Commission (ACC)

The Anti-Corruption Commission (ACC) is the tip of Namibia's anti-corruption spear, but over the five years from 2015 the law enforcement agency has faced significant challenges.

Over the intervening years from 2015 through March 2020, the ACC, and especially its Director General Paulus Noa had become a lightning rod for criticism over the commission's handling of a number of alleged corruption-related matters. The criticisms of Noa came to a head in December 2019, in the wake of the Fishrot corruption revelations of November 2019, when a large demonstration of concerned Namibians marched to the ACC head office in Windhoek to demand the immediate resignation of Noa. This was the culmination of a stormy five years for the ACC, during which it seems certain the commission suffered immense damage to its reputation.

Added to that, over the years Paulus Noa has perennially complained of under-funding and under-resourcing, a concern which was once again spotlighted when the 2020/21 budget came around and the government faced questions over suspicions of deliberately underfunding the commission, which threatened to halt a number of high-profile investigations as a result.¹⁷

¹⁷ <https://www.namibian.com.na/201750/archive-read/Government-starves-ACC>



However, it was Paulus Noa himself who attracted a lot of scrutiny during the first Geingob administration period.

In early 2015, just as the new government was set to be sworn in, Paulus Noa was accused of going soft on ruling party senior leaders set to go into parliament and who faced corruption allegations, and even of blocking investigations or closing cases before they could be finalised.¹⁸

In 2016 the same accusations were levelled against the ACC Director General again – this time following an alleged corruption investigation into a Namibia Defence Force (NDF) general that was reportedly closed prematurely by Noa, a move which appears to have caused much anger and unhappiness within the ranks of the ACC.¹⁹

In 2017 Noa became embroiled in an affair involving scandal-plagued and now corruption-accused former justice minister Sakeus Shanghala over the irregular payment of millions of Namibia dollars to UK-based lawyers for consulting services supposedly rendered to the Namibian government around reparations sought from the German government for the 1904-1908 genocide.

A report of the matter stated:²⁰

"Noa has gained a reputation for closing investigations in which senior political and government figures are implicated."

The closing of the investigation was met with criticism from within the Geingob administration, notably from then finance minister Calle Schlettwein, who reportedly stated the following in an official letter to Noa in response to his closing of the investigation:²¹

"You will recall that it was treasury that raised the flag, stating that the cost of the legal advice sourced by the Office of the Attorney General and rendered by a group of British lawyers was not budgeted for during the financial year they [were] sourced."

"Secondly, the services were not sourced in compliance with the public procurement procedures. Thirdly, they appeared overpriced."

"You may recall that we submitted relevant documentation substantiating these suspicions to your good office".

In 2019, the ACC Director General was again in the news on numerous occasions, notably over recurring accusations that he was blocking or closing investigations of prominent individuals. In 2019, the ACC also lost senior investigators, who were reported to have left the commission partly over Noa's leadership and handling of corruption investigations.²²

These reputational issues are no light matter and have undoubtedly influenced how the public has come to view the commission, as well as compounding institutional capacity issues as outlined by the UNODC review report of 2015.

4.3 Office of the Prosecutor General

The Office of the Prosecutor General plays a critical role in Namibia's anti-corruption fight, but this government department has also become an increasingly problematic institution.

This was illustrated by the collapse and dismissal of the state's case in the corruption trial of the Teko Trio in September 2019, which was marked by prosecutorial mishandling and ineptitude.²³ The Teko Trio case was a high profile corruption case emanating from 2009 in which three people stood trial in connection with the sale of scanners to the Ministry of Finance over a decade ago.

18 <https://www.namibian.com.na/133570/archive-read/Kafula-begs-for-ACC-probe>

19 <https://www.namibian.com.na/155118/archive-read/Noa-blocks-generals-arrest>

20 <https://www.namibian.com.na/169984/archive-read/Noa-stops-genocide-fees-probe>

21 <https://www.namibian.com.na/170326/archive-read/Schlettwein-attacks-Noa-over-genocide-probe>

22 <https://www.namibian.com.na/190082/archive-read/Noas-ark-in-stormy-waters>

23 <https://newera.live.na/posts/teko-trio-headed-for-acquittal-state-concedes-14-of-18-charges-were-unproven>



Prosecutor General Martha Imalwa has long been criticised for the way she has been handling especially corruption cases, and in August 2019 she hit back at critics who have accused her over the years of sitting too long on case files, stating that she never took longer than a year to decide whether to prosecute a case.²⁴ There are examples which indicate this is not the case.

President Hage Geingob has repeatedly pointed to his 2015 cancellation of a N\$7 billion tender to upgrade the Hosea Kutako International Airport as an example of his readiness to act against corruption. Despite the tender being cancelled – no corruption cases have ensued. According to the ACC, the Prosecutor General has been sitting on corruption case files in the matter for three years without having taken a decision to prosecute or not.

This emerged in response to a question about the status of any corruption cases opened around the Hosea Kutako International Airport cancelled upgrade tender, with the ACC Director General indicating the following in July 2020:

“Since 2016, The Anti-Corruption Commission (ACC) investigated multiple allegations of corrupt practices against the board and officials of NAC, which involves millions of Namibian Dollars. The initial allegations mainly involved awarding of multiple tenders to certain preferred company/companies at alleged inflated prices without following normal tender procedures as prescribed by the Procurement Act, 2015 (Act No. 15 of 2015).”

“The matter you referred to whereby the H.E. President Hage Geingob, had to stop a corrupt tender for the upgrading of the HKIA, was adjudicated in the High Court and Supreme Court of law. Entirely, halting of this tender has a bearing on the corrupt allegations investigated by the Anti-Corruption Commission. Accordingly, multiple files have been forwarded to the Office of the Prosecutor-General in November 2017. Therefore, ACC awaits for the PG’s decision on the matter.”

The issue of under-capacity in the Office of the Prosecutor General has also been mentioned as a challenge over the years. Back in mid-2015, at the National Anti-Corruption Conference (NACC), Imalwa had raised the issue in a presentation she made at the conference, and the UNODC review report issued at the end of that year also pointed to limited capacity in the Office of the Prosecutor General as a challenge for the country’s corruption efforts.

4.4 The courts

The Namibian courts system is in a decades-long struggle to clear backlogs and bottlenecks that have become a threat to the entire criminal justice system as judicial authorities have failed to get to grips with the issues undermining the efficient functioning of the courts.

Long, drawn out trials and multiple postponements, judgements reserved for long periods and cases languishing on court rolls for years without moving forward have continued to characterise the judicial system – from lower to higher courts – over the period from early 2015 to early 2020.

The passing and implementation of the Judiciary Act (No. 11 of 2015) was supposed to have led to improved management of the courts, but has been slow to deliver, as backlogs continue to plague the system.

In 2016, Namibia briefly experimented with the introduction of an anti-corruption court, to try and fast-track the prosecution of corruption cases, but the initiative ultimately faltered under bureaucratic and jurisdictional confusion and the emergence of the same bottlenecks and backlogs that affected the delivery of justice in other courts.

In September 2016, Chief Justice Peter Shivute stated that the Namibian justice system was ill-equipped to deal with complex organised crime and corruption cases.²⁵

²⁴ <https://www.namibian.com.na/192151/archive-read/Why-Martha-Imalwa-%C3%A2%E2%82%AC%E2%80%9C-PG-responds-to-critics>

²⁵ <https://neweralive.na/posts/legal-system-unprepared-organised-crime-chief-justice>



In 2017 a Criminal Justice Task Force was created to look into how to address the issues undermining the optimal functioning of the justice system.

This task force was supposed to look into the following issues, towards finding solutions:

"1. Legislative reform that could ease the challenges faced by the criminal justice sector specifically pertaining the administration of justice for all; 2. Efficiency and Effectiveness with all aspects of criminal justice, be it at the courts, in prison, police holding cells etc.; 3. Improved Discipline in the performance of duties of court officials and law enforcement officers; 4. Improved access to justice and access to information within the justice system."

In early 2018, the Office of the Judiciary admitted that it was struggling to overcome the challenges in the system, listing a range of factors crippling efforts to re-engineer a more efficient justice delivery system. These constraining factors were:²⁶

- insufficient number of courtrooms
- an unresponsive case management system
- shortage of digital court recording equipment
- flawed police investigations
- shortage of judicial officers, prosecutors and administrative support personnel.

In December 2018, the Chief Justice once again expressed concern at the state of justice delivery and called on sector stakeholders to recognise their responsibility in what was happening, stating:²⁷

"We all know there are delays in finalising cases but would not individually or as an institutional collective accept responsibility for it. Delay is usually someone else's problem. For us in the judiciary, it is the police and the prosecution. For the prosecution, it is the courts and the police and it goes on and on. People from other countries and international institutions had to come under various mandates to tell us we have a problem. A problem we ourselves know exists."

By the end of the first term of the Geingob administration, these issues were still affecting the justice system.

Conclusions on the state of the criminal justice sector from 'Creaking under its own weight'²⁸

In December 2018 the IPPR published and launched a briefing paper titled 'Creaking under its own weight: How backlogs, bottlenecks and capacity constraints undermine the criminal justice system's contribution to Namibian anti-corruption efforts', which looked at the challenges and dysfunctions within the criminal justice system in the context of Namibia's corruption fight. The paper concluded:

- Despite claims to the contrary, bottlenecks and backlogs continue to plague and undermine the delivery of justice and fuels negative perceptions of the rule of law and the criminal justice sector in Namibia;
- While judicial authorities have instituted measures to improve justice delivery they are still struggling to come to grips with system-wide institutional weaknesses;
- There can be no doubt that the shortcomings within the courts system are contributing to negative perceptions of the state's and specifically the criminal justice system's handling of especially corruption cases;
- On top of that, there appears to be widespread negative perceptions of the ethics of judicial officials;
- Such negative perceptions have cast a cloud of distrust over the judicial system and fuel perceptions of widespread corruption within judicial processes and the courts of law;
- In response, the judiciary has instituted ethical codes of conduct in line with the Bangalore Principles of Judicial Conduct in order to enhance ethical conduct and counter negative perceptions;

²⁶ <https://neweralive.na/posts/judiciary-prioritizes-clearing-criminal-cases>

²⁷ <https://southerntimesafrica.com/site/news/namibias-chief-justice-not-impressed-with-judiciary-performance>

²⁸ https://ippr.org.na/wp-content/uploads/2018/12/IPPR_JUSTICE_web_new.pdf



- Even so, it appears not much is being done to create awareness within public about the judicial codes of conduct of the judiciary.
- Institutional and capacity weaknesses and deficits within law enforcement and prosecutorial agencies and authorities are also significantly contributing to inefficiencies throughout the Namibian criminal justice system;
- Namibian law enforcement and prosecutorial agencies are struggling to overcome entrenched skills and capacity shortcomings and do not appear to have made significant headway in this regard over the years, while corrupt practices have become more complex and sophisticated, both legally and technically.

Case study – The (broken) public procurement system

The Namibian government is the single biggest purchaser and contracting authority in the Namibian economy, thus public procurement has an outsized impact on the national economy.

By the time Hage Geingob became president of Namibia, the public procurement system had effectively been irreparably broken and the state was in need of a new system. This new system came about when the Public Procurement Act (No. 15 of 2015) was passed halfway through the Geingob administration's first year in office and implemented as from April 2017.

When the first Geingob administration term came to a close in March 2020, the new public procurement system had become a reflection of the old Tender Board system, marked by a culture of non-compliance with the law throughout the state, alleged corruption in the new institutional framework and widespread misuse and abuse of emergency procurement methods, all of which undermined the transparency, accountability and integrity inducing provisions of the Public Procurement Act.

At the end of Geingob's first term, the public procurement system, just three years into existence, was beset by a range of issues:

- Significant non-compliance with sections of the law;
- Under capacitated Procurement Policy Unit;
- Under capacitated Central Procurement Board of Namibia;
- General lack of procurement expertise and capacity at organisation level throughout the state;
- Generally weak oversight of procurement processes at organisational and central government levels;
- Unclear and confusing legal provisions in the law;
- Delays in crafting and implementing regulations;
- Widespread non-compliance on production and publishing of annual and individual procurement plans;
- Large-scale lack of accountability for mismanaging or maladministering procurement processes;
- Significant lack of understanding and misapplication of the law;
- Corruption in procurement processes, transactions and contracts;
- Lapses in integrity;
- Some entities still do not have the required internal organisational procurement structures in place;
- Absence of a public procurement performance assessment mechanism;
- Absence of consolidated public procurement data;
- Slow and non-compliance with ministerial directives and requests;
- Delays in processing procurement approvals and procurement bids;
- Absence of key bidding documents and standard contracts;
- General lack of transparency throughout the public procurement system, especially concerning exemptions and emergency procurement transactions.

Source: *Procurement Tracker Namibia*, Issue No. 8 ²⁹

²⁹ <https://ippr.org.na/wp-content/uploads/2019/10/PTN-8-web.pdf>



5. CONCLUSION

Namibian President Hage Geingob during his first term in office – April 2015 to March 2020 – regularly proclaimed his credentials on good governance. Despite such proclamations, critical governance systems, processes and institutions are either not in place or are not functioning optimally or appropriately.

To illustrate, halfway through his first term, in December 2017, President Geingob publicly stated that “[g]oing forward, provisions of the new Public Procurement Act, Whistleblowers Act and the Witness Protection Act, will be fully enforced as part of our fight against corruption”³⁰. This simply did not happen, as the Public Procurement Act has not been fully enforced since April 2017, while neither the Whistleblower Protection Act nor the Witness Protection Act had been operationalised by late 2020 – halfway through the first year of his second term in office.

The causes for this are myriad, but it has to be noted that a lot of the dysfunctions stem from a lack of decisive and timely action or intervention and an unresponsive or slow-moving bureaucratic system.

With the Fishrot corruption revelations of November 2019 having continued to leave a sour taste in many, if not most, Namibians’ mouths through 2020, the shortcomings of state anti-corruption efforts have attracted fierce public scrutiny, and the responses from government have often been underwhelming.

President Geingob still has time and opportunity to make full use of his second term to install the sorts of “robust governance architecture” and efficient “systems, processes and institutions” that would truly speak to a commitment to zero tolerance for corruption and by doing so could set himself apart as a true anti-corruption champion.

Actions that can be taken in the short-to-medium term were outlined in an IPPR media release to mark International Anti-Corruption Day in 2019. Although there is much to do, the IPPR release suggested eight actions that could be taken to demonstrate that the necessary political will exists to tackle corruption. These actions are outlined in Appendix A (following) with a brief update on where progress has been made.

³⁰ <https://www.un.int/namibia/news/talking-points-he-president-dr-hage-g-geingob-year-end-press-conference>



APPENDIX A:

IPPR MEDIA RELEASE:

International Anti-Corruption Day: Call for Action

December 9 2019

On 31 October 2003, the United Nations General Assembly designated December 9 as International Anti-Corruption Day to raise awareness of corruption and of the role of the United Nations Convention against Corruption in combating and preventing it.

In Namibia, it's time to stop thinking of corruption as "just a way of life" for those who want to get rich quick at the expense of the development of the nation and to **start saying "NO"** to this crime. Namibians should refuse to participate in any activities that are not legal and transparent. It's time to enforce **zero-tolerance** practices towards corruption.

The IPPR concurs with Yury Fedotov, the Executive Director of the United Nations Office on Drugs and Crime (UNODC), who stated in his message for International Anti-Corruption Day 2019: "We cannot afford to let corruption threaten our future. Standing united against corruption, we are standing up for justice, protecting the rule of law and increasing the chances that prosperity in our societies can be enjoyed by all."

In view of President Geingob's stated "zero tolerance for corruption", the IPPR would like to suggest the follow actions that can be taken by the President in concert with the Cabinet and the relevant Swapo party bodies. Several of these actions will strengthen the "processes, systems and institutions" that the President often refers to:

1. Remove all those convicted of corruption from the Swapo party list.
2. Institute an official inquiry into the allocation of fishing quotas and rights headed by a judge
3. Make public all the Ministers' declarations of interests and assets (at the moment they are made privately to the President).
4. Implement the Whistleblower Protection Act which was passed more than two years ago but never operationalized
5. Commit to establishing a public beneficial ownership register for all extractive industries (mining, oil, gas, and fisheries)
6. Commit Namibia to joining the Extractive Industries Transparency Initiative (EITI), the global standard for good governance of oil, gas and mineral resources.
7. Ensure a world-class, state of the art Access to Information (ATI) law is introduced in parliament in the near future.



8. Publicly declare your assets and interests once more - as you commendably did in 2015. Much more can be done to fight corruption but these are eight steps that would demonstrate commitment rather than buck-passing.

#breakthechain

#unitedagainstcorruption

Update, September 2020:

On International Anti-Corruption Day last year the IPPR listed eight practical actions that President Hage Geingob and his Cabinet could take to demonstrate there is political will to tackle corruption. The first recommended action was - 'Remove all those convicted of corruption from the Swapo party list'. Now the party is discussing action in this area but we will likely have to wait until the next congress for the party constitution to be changed. Consequently, a least one Swapo MP with a corruption conviction remains in parliament.

Out of the remaining seven recommended actions there has been progress in two of them - an Access to Information bill has been introduced in parliament and the President has said he will declare his assets for a second time (although this has not happened as yet).

But despite increasing indications that the public is losing trust in government's ability to tackle corruption, inaction remains the order of the day. For example, we are still waiting for funds to explicitly be allocated for the setting up of the Office of Whistleblower Protection over three years after the enabling law was passed. Thus far, there has only been talk of setting up a skeleton staff to move things forward in the 2020/21 budget year.

Despite clear evidence of the need for root-and-branch reform, no official inquiry has been set up to investigate the allocation of fishing quotas and rights with the aim of establishing a corruption-proof system. Instead we have had a rushed auction of fisheries quotas which may have been the right decision in principle but which was not planned properly.

Only Agriculture and Lands Minister Calle Schlettwein has publicly declared his assets. Our call for ministers' assets to be made public as part of a systemised and mandatory approach to asset declaration has fallen on deaf ears. At the same time, the system of asset declaration for MPs within parliament is only haphazardly enforced and remains unfit for purpose.

Angola recently signed up to the Extractive Industries Transparency Initiative (EITI), but Namibia remains apparently uninterested in supporting the global standard for good governance of oil, gas and mineral resources.

In the evaluation of the National Anti-Corruption Strategy & Action Plan 2016-2019 published by the ACC, the Ministry of Mines was reported to be dismissive of the call to comply with EITI standards citing "financial implications" and the conditions that come with signing to such standards. Hardly, a convincing excuse. By joining EITI Namibia would be making a clear demonstration of its commitment to the good governance of its natural resources.

All of these suggestions are in keeping with President Geingob's often stated commitment to "strengthening processes, systems and institutions" and the 'Accountability Plus Transparency Equals Trust' mantra.



ABOUT THE AUTHOR

Frederico Links has been an IPPR Research Associate since 2009. He has focussed on a range of governance issues including elections, party political finance, empowerment policies, internet governance, cybersecurity and public procurement. He has previously worked as a journalist for a number of Namibian publications. He is the current Chairperson of the ACTION Coalition which campaigns for greater access to information in Namibia.

About the Hanns Seidel Foundation (HSF)

Present in more than 60 countries world-wide, the Hanns Seidel Foundation Namibia (HSF) is a German non-profit organisation promoting democracy, good governance and the rule of law across the African continent. Cooperating with its Namibian partners, such as IPPR, HSF also seeks to contribute to sustainable development by strengthening peace, human security and environmental protection.

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The Institute for Public Policy Research was established in 2001 is a not-for-profit organisation with a mission to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia.

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