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BRIEFING PAPER

**AFTER FISHROT: THE URGENT NEED FOR
TRANSPARENCY AND ACCOUNTABILITY**

“

Government ought to be all outside and no inside ... Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety.

- Woodrow Wilson, former US president



Source: pexels.com

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Sunlight is the best disinfectant.

- US Supreme Court Justice Louis Brandeis

Introduction

The Harambee Prosperity Plan II (2021 -25) commits Namibia to subscribe “to the Extractive Industries Transparency Initiative (EITI) and/or review applicable laws governing the extractive industries including Fisheries and Forestry to improve transparency and deepen public trust.”¹

The National Anti-Corruption Strategy and Action Plan (NACSAP) 2021-25 makes various commitments on improving transparency in the fisheries industry including:

- Assess and align current legislation and subordinate legislation with international fishing and other living marine resources industry standards.
- Develop proper mechanisms for the transparent and equitable allocation of fishing and other living marine resources rights and or quotas.
- Fishing and other living marine resources industries to adopt and implement specific anti-corruption and transparency policies and procedures.²

¹ Effective Governance Pillar, Goal 2: Strengthening National Anti-corruption Measures, Activity 1c in the Harambee Prosperity Plan II published by the Office of the President

² Specific Objective 2.7: Prevent corruption and promote transparency in the extractive industries, fishing and other living marine resources in the National Anti-Corruption Strategy and Action Plan (2021-25) published by the Anti-Corruption Commission



The Ministry of Fisheries and Marine Resources (MFMR) is the implementing agency for the NACSAP commitments while the Anti-Corruption Commission is the responsible body for Harambee pledge.

These commitments to reform the fisheries sector follow the Fishrot scandal, which came to light in 2019 but had been in process for at least seven years by then. The scandal, in short, involved the illegal diversion of fishing quotas to an Icelandic fishing company (Samherji) in return for the payment of millions of dollars in bribes. Fishrot received global exposure through the Al Jazeera documentary - *Anatomy of a Bribe*³ - and coordinated media coverage in Iceland and Namibia. Much of the reporting was based on the publication of over 30 000 leaked documents linked to Samherji on the Wikileaks website.⁴

Three years on from these revelations, ten suspects are facing trial in Namibia, including the former Fisheries Minister and the ex-Minister of Justice. In Iceland a long-running investigation headed by a district prosecutor has yet to result in any formal charges being laid against Icelandic suspects.

Over the same three-year period no major holistic reform of the system for awarding fishing rights and quotas has taken place in Namibia.

Fishrot - to a great degree - was enabled by the secrecy in which the Fisheries Ministry operates in Namibia. There are no publicly available lists or registers of the companies that receive rights and quotas or the vessels that are licensed to fish in Namibian waters. There is certainly no attempt to compile and publish anything that resembles a beneficial ownership register for the fishing industry.

The much-criticised Marine Resources Act - which allows the Minister of Fisheries to act with inappropriate discretionary power - remains untouched on the statute books.

And the systems for allocating rights and quotas are still mired in secrecy.

As of late 2022, no serious efforts towards systemic reform have taken place despite the injunctions of the HPP II and NACSAP that steps must be taken to improve transparency by 2025.

To re-emphasise the quotation from Woodrow Wilson at the start of this paper: "Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it a fair presumption that secrecy means impropriety."

Local environmentalist Dr. Chris Brown also summed up the situation in a 2022 blog post: "If government does not start a process of reforming the current governance systems to make them open, transparent and accountable, with all necessary urgency, then one is left with little option but to assume that these weak, opaque governance systems are being deliberately retained to facilitate mismanagement, state capture and corruption."⁵

This paper sets out to look at what Namibia can learn from international experience and global best practices if it is to undertake serious reforms before 2025.

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The Importance Of The Fishing Industry

The northward-flowing Benguela current directly influences the productivity of Namibia's offshore fishing grounds. The cold, nutrient-rich, upwelling waters contribute to high rates of phytoplankton growth. Due to the abundance of plankton and additional nutrients, large shoals of fish follow the current and make South Africa and Namibia coveted fishing grounds

Namibia was ranked as the 11th largest capture fisheries nation in Africa by tonnage in 2020 (334 080 metric tonnes) and the 47th in the world, according to the World Bank.⁶ The last available annual report from MFMR (2019-20) states that fisheries contributed 3.6% to Namibia's Gross Domestic Product (GDP) in 2019, and the sector's contribution averaged at 3.5% between 2015 and 2019.⁷

Further data on the contribution of fisheries to the economy is lacking, but a recent supplement to The Namibian newspaper maintained that fisheries makes up in excess of 20% of the country's total export earnings and accounts for over 15 000 direct jobs.⁸

The level of employment is hard to be sure about as the Namibia Statistics Agency lumps together workers in the agriculture, fisheries and forestry sectors instead of considering fisheries separately (see the 2018 Namibia Labour Force Survey). The last available MFMR annual report of 2019-20 does not feature an employment figure. The most recent MFMR information

3 https://www.youtube.com/watch?v=_FJ1TB0nwHs

4 <https://wikileaks.org/fishrot/>

5 <https://conservationnamibia.com/blog/lessons-from-fishrot.php>

6 <https://data.worldbank.org/indicator/ER.FSH.CAPT.MT>

7 Ministry of Fisheries and Marine Resources Annual Report 2019-20. The last available annual report on the MFMR website is from 2012-13.

8 Spotlight on Fishing Industry Resurgence, 28 April 2022, The Namibian



that can be located indicates 15 171 people were employed in the sector in 2015.⁹ Estimates of how many workers are vessel-based and how many are employed onshore vary between 60 % and 40% either way.

The policy and legislation governing Namibia's sea fisheries resource make provision for the allocation of rights by the Minister of Fisheries and Marine Resources to qualifying companies and individuals for the following range of marine species:

- **Small and large pelagic** (or surface dwelling) fish, primarily pilchard, tuna and tuna-like species albacore, big-eye tuna and swordfish as well as short-fin mako and blue sharks
- **Midwater** fish, primarily horse mackerel and juvenile hake
- **Demersal** fish, primarily hake and monkfish
- **Deep sea** fish, primarily orange roughy
- **Crustaceans**, primarily rock lobster and deep-sea red crab
- **Other resources**, primarily mullets, cape fur seals, guano, and seaweed¹⁰

There is no doubt that the fishing industry provides much of the lifeblood for the coastal communities of Walvis Bay and Lüderitz as well as being crucial for the overall health of the Namibian economy. Fluctuations in the industry and related job numbers have major impacts on the well-being of communities at the coast even if it is difficult to measure such permutations.

However, according to the Guide to the Namibian Economy, the fishing sector's contribution to GDP has suffered a steady decline since the turn of the century when it was above 6%. While it is not within the scope of this paper to assess the economic impact of the Ministry's approach to awarding rights and quotas, securities company Simonis Storm has pointed out in one of its regular updates¹¹ on the economy that the downward trend in net investments is due to the way quota allocations are managed by government. "For example, some industry players have three boats but receive a quota from government which only needs one boat. This follows after quotas have been allocated amongst an increasing number of right holders without an increase in the Total Allowable Catch (TAC). In other words, fishing companies get a smaller slice of a fixed size pie." The securities company says that this could lead to continued lower investment unless government allocates its marine resources in a more effective way.

This would mean removing the myriad of politically-connected and 'front' companies that are essentially what are known as 'paper quota holders'. At the moment, many of these 'paper quota holders' are rights holders who simply sell on their quotas without the need to invest or carry risk.

According to Sherbourne in the Guide to the Namibian Economy, "Some rights holders do little more than sell their rights to others and pocket the money instead of becoming actively involved in the fishing industry." The whole system of allocating quotas has been "widely seen as little more than a 'get rich quick scheme' for the well-connected who sold their rights to those who could do something more productive with them."¹²

Namibia's members of parliament have, over the years, shown little appetite for reforming the fisheries sector to ensure transparency and accountability. This may be because many of them are beneficiaries of the current system - being shareholders and directors in a range of rights holders. The Namibian in 2018 even ran a story headlined 'Fishmonger lawmakers' which listed 20 Swapo MPs who had shares in fishing companies, according to the National Assembly MPs' register of assets and interests. Only three opposition MPs had fishing interests.¹³

Because of the secrecy over who has rights and quotas, it is difficult to pin down these practices. Any opening up of the sector to genuine transparency and accountability would also have to be retrospective - so that light can be shone on these apparently shady practices that have gone on for years.

Rights and Quotas

A **right** means the right to harvest a specific species of fish. Under the current law rights can be granted to companies for 20, 15, 10 or 7 years.

Quotas are portions of Total Allowable Catches (TACs) for species which are allocated to the right holders for fishing seasons. Quotas may vary over time with fluctuations in the TAC depending on resource availability.

⁹ Guide to the Namibian Economy by Robin Sherbourne, IPPR 2022, p. 218

¹⁰ Guide to the Namibian Economy by Robin Sherbourne, IPPR 2022, p.188

¹¹ Simonis Storm Agri-Monthly report, May 2022

¹² Guide to the Namibian Economy by Robin Sherbourne, IPPR 2022, p.191

¹³ Fishmonger lawyers by Shinovene Immanuel and Okeri Ngutjinazo, The Namibian 2 March 2018



Fishrot - A Scandal That Cannot Be Repeated

On the morning of November 13 2019, Namibians woke up to the news of the country's biggest corruption scandal since independence - what has come to be known as Fishrot. Members of the Namibian cabinet in cahoots with prominent businessmen stood accused of receiving millions of dollars in bribes in an elaborate scheme developed in tandem with a prominent Icelandic fishing company - Samherji.

The story broke in Namibia and Iceland via The Namibian newspaper and RUV television - the Icelandic public broadcaster. They based much of their reporting on a trove of leaked Samherji documents and emails which appeared on Wikileaks. In early December Al Jazeera screened their documentary expose on Fishrot called *Anatomy of a Bribe*.

In Namibia, citizens increasingly became enraged by the continuous flow of revelations - shocking details of how the corruption scheme had worked and who had benefited. But while responsibility and culpability are located in Namibia, it is clear that the scandal was rooted more than 10 000 kilometres away in Iceland.

The fact that today we know about so many elements of the scandal is due in large part to a whistleblower, Jóhannes Stefánsson, Samherji's former director of operations in Namibia. The Fishrot saga re-emphasised the vital role played by whistleblowers who shine a light into the dark corners where corruption thrives. It's fair to say that Fishrot would not have reached the stage of criminal prosecutions without Stefánsson's revelations. With the information that was revealed in November 2019, the process of accounting for the wrongs of Fishrot started in earnest. That accountability process is still a long way from being finished, but at least it is underway.

The exposure of the Fishrot scandal is also due to the diligence and commitment of journalists in Namibia, Iceland and several other countries. As a result, the truth has gradually emerged but not without personal costs. Icelandic journalists focusing on Fishrot have found themselves the target of harassment and defamation campaigns. Despite this, they have continued to delve deeper into the Fishrot scandal.

Fishrot is not simply a tale of two countries but has enveloped many jurisdictions. These include but are not limited to Angola, South Africa, Mauritius, the Marshall Islands, United Arab Emirates, Cyprus, the Faroe Islands, Kazakhstan, UK, Germany, and Norway.

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What we have realised through the Fishrot scandal is that corruption is not only about the loss of funds through malfeasance but the distortion and undermining of a country's development as a whole. In a small economy like Namibia's graft has a very high detrimental effect. Corruption linked with impunity among the political elite also sends a message throughout society that wrongdoing can be acceptable, especially if you can get away with it. This is why we need to ensure there is full accountability for Fishrot.

Corruption always takes a human toll and, in this case, it was in job losses, loss of housing, increased indebtedness, family problems, and even suicides. Communities, particularly at Walvis Bay, suffered grievously as a consequence of Fishrot.

We need to see an end to secrecy within the fishing industry - both within the government and in the private sector to make sure there can never be a Fishrot II.



The Marine Resources Act

In 2000 the Marine Resources Act replaced the Sea Fisheries Act of 1992. When it became a law at the end of 2000, the Act was seen as conforming with international guidelines and having the potential to establish an ecologically and economically viable fishing industry based on scientific evidence and a rights-based management system.

While in some respects the Act could be seen as bringing Namibia up to speed in terms of global standards, serious flaws were to be introduced via amendments made in 2015 which expanded the discretionary powers of the Minister of Fisheries giving him even greater control over the allocation of rights and quotas.

The 2015 changes gave the Minister an influential role in deciding on the utilisation of “marine resources to advance any social-economic, cultural or other governmental objectives in the public interest” (Section 3 (3 and 4)). In addition, the insertion of Section 39 (3A), gave the Minister the power to allocate a quota to the National Fishing Corporation (Fishcor) to achieve the objectives set out in Section 3 (3).

In another change the Minister was given the power to unilaterally allocate fishing quotas to the holders of fishing rights (Section 39 (3)). The Minister in the original version of the law already had the power to grant rights for the commercial harvesting of marine resources. (Section 33).

The powers given to the Minister in the Act have no checks and balances, such as oversight by the Marine Resources Advisory Council (which mainly advises on Total Allowable Catches (TACs), fees and levies) or any other body.

The Act only states that when considering an application for a right, the Minister “may have regard to” various factors including whether the applicant is a Namibian, the advancement of the previously disadvantaged, regional development, and the conservation of marine resources, among others (Section 33 (4)). This part of the law offers only the loosest guidelines and it is clear that the Minister can ignore them, just as he can ignore any scientific or environmental advice.

Even before the Fishrot revelations entered the public domain in 2019, it was clear that fishing rights and quotas were often allocated in an arbitrary fashion and in a way that seemed to encourage rights holders to sell on their rights rather than exploit them directly. Factors such as investment, value addition and employment were not applied consistently - with decisions being made according to personal choice by the Minister, obviously opening the way to favouritism and corruption.¹⁴ At the same time, serious players in the industry became disincentivised and investment went down as a result of this capricious handling of national assets.

Soon after news of the Fishrot scandal broke, the new Minister of Fisheries and Marine Resources, Dr. Albert Kawana, spoke of reversing the 2015 amendments.¹⁵ However, since then there has been no news of an amendment bill coming to parliament.

In October 2021, Fisheries Executive Director Annely Haiphene was reported as saying, “Put plainly, the Ministry is under no pressure to amend the Marine Resources Act but has a deadline by which consultations with the industry for its inputs is to be executed.”¹⁶

14 Guide to the Namibian Economy by Robin Sherbourne, IPPR 2022, p.222

15 http://www.xinhuanet.com/english/africa/2020-01/30/c_138742075.htm published on 30 January 2020

16 <https://www.namibian.com.na/6214506/archive-read/No-rush-to-amend-Marine-Resources-Act>



Auctions & Scorecards

Partly in reaction to the Fishrot scandal, since 2020 the government has opted to organise a series of auctions of fishing quotas. The results have been mixed.

The first auction of government-held fishing rights in August 2020 flopped badly when only 1.3% of the N\$628 million in offers were actually paid over to government. Due to poor controls the auction was dominated by speculators who later could not follow through on their bids. The auction had aimed to sell off 60 percent of the Governmental Objective Fish Quota to the highest bidders to raise funds to help Namibia cope with the effects of the COVID-19 pandemic. Previously, the Governmental Objective Quota had been given the national fishing company, Fishcor, until it was clear it had been abused as part of the Fishrot scandal.

The second auction held in April 2021 was better organised and more successful - raising N\$189.9 million for the government from the sale of 15 948 metric tonnes of hake.¹⁷ At the time of the second auction, the Ministers of Finance (Iipumbu Shiimi) and Fisheries (Derek Klazen) said in a joint statement: "Such an outcome confirms auctioning as a good mechanism to facilitate price discovery in the sector and allocate natural resources to the market."

In total, government raised N\$567 million from six Governmental Objective Fish Quota auctions in 2021. Some 86,040 metric tonnes in total were auctioned off.¹⁸

Another Governmental Objective Fish Quota auction in April 2022 for 11 090 tonnes of horse mackerel attracted no bidders at all. This was partly put down to a lack of capacity in the industry and the lateness of auction in the fishing season.¹⁹ The auctions enabled the government to get a sense of the real value of its marine resources. Potentially, auctions are also much more transparent than the highly secretive allocation of quotas which is the default system in the Ministry. But this does depend on how much information government publishes about the auctions, the successful bidders, the quotas and so on. However, the auctions were not universally acclaimed. Some fishing industry players are worried that the auctions to the highest bidder might kill off the domestic fishing industry and called for foreign companies to be banned from bidding.²⁰

While the Governmental Objective Fish Quota auctions cast some light on the operators in the fishing industry, the allocation and trading of other quotas have continued in their usual opaque manner - with no public announcements of who gets what and who is really behind the myriad of obscure company names - many believed to be no more than rent seekers or 'paper quota holders'.

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To stop rights and quotas being allocated on the basis of ministerial whim or more suspect motives, there is clearly a need for statutory guidelines including selection criteria to be written into the law and regulations.

The government has talked of introducing scorecards as key determinants for quota decisions before, even in the days of Bernard Esau as Fisheries Minister.

The criteria to be assessed could include:

- Creation of employment opportunities
- Historical involvement and performance
- Value addition
- Environmental record
- Commitment to transformation (empowerment/Namibianisation)
- Economic viability

Aside from the creation of a credible scorecard, the most important issue is - who decides on the granting of rights and quota allocations?

In their paper, *Managing Fisheries and Corruption in the Pacific Islands Region*, Martin Tsamenyi and Quentin Hanich point out that "fisheries legislation has historically vested exclusive and discretionary power in either a minister of a senior fisheries official to issue licences, a factor identified as one of the major causes of corruption in fisheries decisions."²¹

They argue for the introduction of specific measures including the establishment of committees to make key decisions. The processes most resilient to corruption and ministerial interference are those that mandate committee or board review/endorsement of licensing decisions and remove the Minister from any role in licensing. Corrupting a committee or a board will be much harder than corrupting an individual, they maintain.

¹⁷ <https://www.seafoodsource.com/news/supply-trade/namibia-generates-millions-in-second-government-fish-quota-auction>

¹⁸ IJG Monthly April 2022

¹⁹ <https://www.namibian.com.na/6220444/archive-read/No-interest-shown-in-latest-horse-mackerel-quota-auction>

²⁰ <https://www.namibiansun.com/news/fishing-quota-auction-storm-grows2020-08-14/>

²¹ https://www.researchgate.net/publication/222172831_Managing_fisheries_and_corruption_in_the_Pacific_Islands_region



Tsamenyi and Hanich contend that some Pacific Islands governments have recognised this. For example, Fiji and Papua New Guinea have both introduced sophisticated licensing arrangements that require multiple reviews and checks by committees with greater levels of transparency. The authors also suggest introducing the public disclosure of licensing details and access agreements.

In the Namibian context, these ideas would translate into a public beneficial ownership register of all companies that are rights holders and/or have access to quotas.

Importantly, Tsamenyi and Hanich make another point regarding institutional weaknesses in governments. Declining standards of professionalism and ethical conduct within the public service and a lack of public service training in good governance only serve to exacerbate corruption. This seems particularly relevant to the situation of Namibia's Ministry of Fisheries vis-à-vis the Fishrot scandal. Changing Ministers and Executive Directors is not enough to address the institutional malaise.

The introduction of multi-stakeholder oversight committees has taken root in anti-corruption parlance in the last few years. In terms of fisheries, it has also become clear that such committees should also have an environmental role as well as acting as a check against possible corruption.

Chris Brown in his blog on the Conservation Namibia website²² calls for a Coastal and Marine Sustainability Council to be set up under an independent chairperson, comprising relevant government agencies, private sector, academia, and non-governmental organisations. "This body should oversee the management of the coastal and marine sector, with the necessary authority to obtain timely data and information, and pre-review all critical processes and decisions affecting the sustainability of the ecosystem."

Applying The EITI To Fisheries

The Extractive Industries Transparency Initiative (EITI) is a global standard for the good governance of oil, gas and mineral resources.

The EITI's mission is to promote understanding of natural resource management, strengthen public and corporate governance and accountability, and provide the data to inform policymaking and multi-stakeholder dialogue in the extractive sector.

By becoming a member of the EITI, countries commit to disclosing information along the extractive industry value chain – from how extraction rights are awarded, to how revenues make their way through government, and how they benefit the public. Through participation in the EITI, 55 countries have agreed to a common set of rules governing what has to be disclosed and when – this is called the EITI Standard.

The EITI provides data that can help identify and close channels for corruption – not only in mining, oil and gas but increasingly for the renewables sector including fisheries. In each country that has joined the EITI, a multi-stakeholder group, composed of government, companies and civil society, supports implementation of the EITI Standard.

The EITI Standard says there must be transparency on how licences and contracts are allocated, who the beneficial owners of these licences are, how much is produced, how much is paid, where the revenue is allocated, and its contributions to the economy, including socio-economic development.

If it follows through on its Harambee and NACSAP commitments, Namibia would not be the only country to apply the EITI Standard to fisheries.

In 2015 Mauritania opted to extend the scope of the EITI to its fisheries sector as a result of advocacy by civil society organisations and because of the importance of a sustainable fisheries sector to its economy. Guyana has been using the EITI platform in recent years to report on its forestry and fisheries sectors, as well as mining, oil and gas.

If Namibia were to apply the EITI Standard to its fisheries sector it would mean it would have to disclose the details of rights holders and quota allocations, as well as vessel licensing.

In addition, it would also mean that the government would have to maintain a register of beneficial owners of companies involved in the fishing industry.

Importantly, government would have to reveal the details around revenue collection in the fisheries sector and what happens to these funds. This is another area that is steeped in secrecy. After Fishrot it is time that Namibians have access to all this information which would mean opening up about the fees and levies received, particularly quota fees, the Marine Resources Fund levy, by-catch fees and licence fees.

²² <https://conservationnamibia.com/blog/lessons-from-fishrot.php>



A Portal To Nowhere

The Ministry of Fisheries and Marine Resources' website could be a tremendous resource - a portal for all the crucial information about fisheries in Namibia. Ideally, it could contain all the laws, regulations and policy documents relating to fisheries; A public register on TACs, licences, fishing rights, and quota allocations including beneficial ownership details; and records and data on the state of fish populations plus the latest scientific advice. Ultimately, the website should provide access to digital records which show the process from application to allocation of a quota or right.

As of November 2022, the MFMR website (mfmr.gov.na) falls a long way short of most of the above. There are links to key laws, regulations, and policy statements, although only the Marine Resources Act of 2000 appears (and not its amended 2015 version). The latest ministerial address to appear is from 2017. Two editions of a ministerial newsletter called FisheriesWise were published in 2021 but it then appears to have fizzled out. The latest annual report from the Ministry is dated 2012-13. The IPPR has come across a 2019-20 annual report but it is not on the website. Only the media releases and the procurement sections of the website seem relatively up to date.

8

Beneficial Ownership

According to the EITI, "A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity."

It is important to know the actual individuals who ultimately benefit from extracting a resource. Otherwise, it is easy for people with political connections, or even the individuals who make decisions about allocating natural resources, to unfairly access these resources. To safeguard against corruption, it is therefore important to know the identity of beneficial owners of fishing rights, licences and quotas. The Companies Act of 2004 requires annual returns from companies which include information about shareholders. The form which companies file as part of their return includes a section where they detail information about shareholders/beneficial owners.

However, information about beneficial owners is difficult to access in practice. Companies applying for a fishing right in Namibia do not have to disclose any information relating to beneficial ownership as part of the application process.

Without publicly accessible registers of beneficial owners, it is difficult for the media, watchdogs, and the public at large to provide oversight over the sector and scrutinise suspect deals.

Filing information on beneficial owners increases transparency and supports the integrity of the financial sector and law enforcement efforts. Making the beneficial information registration process easy and inexpensive can promote compliance. Adopting streamlined procedures is therefore important for economies as they implement new transparency policies.



Fisheries Transparency Initiative

The Fisheries Transparency Initiative (FiTI)

The FiTI is a global partnership that seeks to increase transparency and participation for a more sustainable management of marine fisheries. By making fisheries management more transparent and inclusive, the FiTI promotes informed public debates on fisheries policies and supports the long-term contribution of the sector to national economies and the well-being of citizens and businesses that depend on a healthy marine environment. Namibia is not a member of FiTI. As of 2022, only five countries were fully signed up - Cape Verde, Ecuador, Madagascar, São Tomé and Príncipe, and Senegal.

FiTI sets 12 transparency standards for member countries.

1. Public registry of national fisheries laws, regulations and official policy documents
2. Summary of laws and decrees on fisheries tenure arrangements
3. Publication of all foreign fishing access agreements
4. Publication of existing national reports on the state of fish stocks
5. Public online registry of authorised large-scale vessels, as well as information on their payments and recorded catches
6. Information on the small-scale sector, including the numbers of fishers, their catches and financial transfers to the state
7. Information on the post-harvest sector and fish trade
8. Information on law enforcement efforts, including a description of efforts to ensure compliance by fishers and a record of offences in the sector
9. Information on labour standards in the fisheries sector
10. Information on government transfers and fisheries subsidies
11. Information on official development assistance regarding public sector projects related to fisheries and marine conservation
12. Information on the country's status regarding beneficial ownership transparency

9

Key principles for increasing transparency and participation under the FiTI:



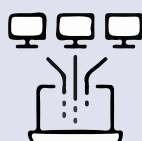
Multi-Stakeholder participation

The FiTI is implemented in countries through National Multi-Stakeholder Groups, consisting of representatives from government, business and organised civil society. These groups work collectively to assess the information in the public domain, make recommendations on how to improve information published by national authorities and jointly approve the publication of FiTI Reports.



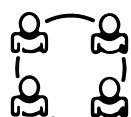
Progressive improvement

Countries are not expected to have complete data for every transparency requirement from the beginning. Instead, public authorities must disclose the information they have, and where important gaps exist, improvements over time must be demonstrated. As such, engaging with the FiTI is not intended to be a burdensome and costly research activity.



Transparency in the public domain

The FiTI emphasises the need for national authorities to develop and strengthen their own systems for collecting and publishing information online in a complete and accessible manner. The FiTI Report is therefore not intended to replace or duplicate existing government information systems.



Public debate

The FiTI offers an important means to raise levels of openness and public access to information which can support countries in maintaining or achieving robust democratic governance and accountability in their fisheries sector.



Conclusion & Recommendations

Three years is too long to wait after a major corruption scandal to initiate reforms. Although Namibia acted commendably to arrest suspects in the wake of the revelations of November 2019, it has moved far too slowly to tackle the institutional and systemic issues which allowed Fishrot to happen.

It is also clear that the level of secrecy within the Ministry of Fisheries may have facilitated other corrupt practices and schemes which have yet to be fully revealed. The system was more than opaque, it was impenetrable to the outside observer - whether in the media or civil society.

It is not therefore surprising that it required a whistleblower - brave and methodical in his actions - to blow open the Fishrot scandal.

The IPPR has since 2020 called for a commission of inquiry into the governance of the fisheries sector. This is still necessary but due to the lack of political will to tackle the full implications of Fishrot over the past three years, the need for meaningful reform and corrective actions has become paramount.

As a consequence, we urge that these actions are taken in the short term:

- The MFMR to publish lists of all rights holders, quota recipients and licence holders inclusive of beneficial ownership details.
- The MFMR to publish details of TACs and summaries of the scientific advice on which they are based.
- The government to follow through on the commitments made in HPP II and NACSAP on aligning laws and practices with the standards of EITI on transparency. This means moving towards open contracting and introducing beneficial ownership registers.
- The government to introduce amendments to the Marine Resources Act that remove the discretionary powers granted to Namibia and institutionalise transparency and accountability practices and procedures.
- The government to immediately address the institutional weaknesses in the MFMR in tandem with the above reform processes to ensure a new level of professionalism and commitment to quality governance is achieved.
- The government to join the Fisheries Transparency Initiative (FiTI) and adhere to its standards and requirements.
- The government to start the implementation of the Access to Information Act immediately, with funds set aside in the 2023/24 budget to set up the necessary structures and staffing complements.
- The government to implement the Whistleblower Protection Act and the Witness Protection Act, with funds set aside in the 2023/24 budget to set up the necessary structures and staffing complements.
- The private sector to commit to supporting fundamental and holistic reforms, including transparency pledges, in the fishing industry rather than seeking to get what short-term gains they can from a dysfunctional system.
- Civil society and the media to ensure they hold the fisheries industry to account and insist on access to information.
- Donors to assist in boosting capacity and expertise within the media and civil society to monitor effectively what can be a complex industry.



Further Reading:

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World Bank Blogs - <https://blogs.worldbank.org/developmenttalk/beneficial-ownership-increasing-transparency-simple-way-entrepreneurs>



Appendix A:

EITI Protocol - The Participation of Civil Society

1. Introduction

The participation of civil society is fundamental to achieving the objectives of EITI, including Principle 4 which states that “public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development”. The active participation of civil society in the EITI process is key to ensure that the transparency created by the EITI leads to greater accountability. A primary motivation for the adoption of the EITI Standard was the desire to produce more relevant, more reliable and more usable information, and better link this information to wider reforms in the governance of the extractive sector or of the management of public accounting and revenue management. Citizens’ ability to work actively to make use of the information generated by the EITI is therefore a critical component of EITI implementation and civil society participation in the EITI.

The participation of civil society in the EITI process is formally assessed at two stages of EITI implementation – during the candidature assessment and during the Validation process. An assessment of civil society participation may also take place on an ad hoc basis in response to specific concerns raised with the Board about the situation in specific implementing countries. This protocol sets out the questions the EITI Board (including Committees) and validators should consider in assessing whether the provisions pertaining to civil society participation (1.3) have been met, as well as the types of evidence to be used in answering those questions. While the provisions relating to civil society participation in the EITI process remain consistent at every stage of EITI implementation, the evidence the EITI Board uses to evaluate the provisions will of necessity vary depending on the circumstances of the country, stage of implementation, and availability of information. It should be noted that the questions posed and the suggested types of evidence set out in 2.1-2.5 below do not constitute provisions, nor is the list exhaustive. However, it provides an assessment framework for the provisions related to civil society.

2. The EITI’s interpretation of the provisions on civil society

For purposes of this protocol, references to ‘civil society representatives’ will include civil society representatives who are substantively involved in the EITI process, including but not limited to members of the multi-stakeholder group.

References to the ‘EITI process’ will include activities related to preparing for EITI sign-up; MSG meetings; CSO constituency side-meetings on EITI, including interactions with MSG representatives; producing EITI Reports; producing materials or conducting analysis on EITI Reports; expressing views related to EITI activities; and expressing views related to natural resource governance.

In assessing the civil society provisions, the Board and validators will apply the following tests:

2.1 Expression

Civil society representatives are able to engage in public debate related to the EITI process and express opinions about the EITI process without restraint, coercion or reprisal.

The EITI Board and validators will consider the extent to which:

- Civil society representatives are able to speak freely in public about the EITI process including for example during MSG meetings, EITI events including for the promulgation of EITI reports, public events, in the media etc.
- Actual practice, including diverse stakeholder views or substantive evidence provided by independent third parties, indicates that self-censorship or self-imposed restriction by civil society representatives has taken place related to the EITI process due to fear of reprisal and whether such barriers have impacted civil society representatives’ dissemination of information and public comment on the EITI process.



2.2 Operation

Civil society representatives are able to operate freely in relation to the EITI process.

The EITI Board and validators will consider the extent to which the legal, regulatory, administrative and actual environment has affected civil society representative's ability to participate in the EITI process. This could for example include:

- The extent to which legal, regulatory or administrative obstacles affecting the ability of civil society representatives to participate in the EITI process. This could include legal or administrative procedures related to the registration of CSOs that have adversely affected their ability to participate in the EITI process; legal or administrative restrictions on access to funding that have prevented CSOs from undertaking work related to the EITI process; legal or administrative issues preventing CSOs from holding meetings related to the EITI process, legal or administrative barriers to the dissemination of information and public comment on the EITI process etc.
- Any evidence suggesting that the fundamental rights of civil society representatives have been restricted in relation to the implementation of the EITI process, such as restrictions on freedom of expression or freedom of movement.

2.3 Association

Civil society representatives are able to communicate and cooperate with each other regarding the EITI process.

The EITI Board and validators will consider the extent to which:

- Civil society MSG representatives may seek and are not restricted from engaging other CSOs that are not part of the MSG, including capturing their input for MSG discussions and communicating outcomes of MSG deliberations.
- Formal or informal communication channels between civil society MSG members and the wider civil society constituency have not been restricted.
- Civil society MSG representatives have not been restricted from engaging in outreach to broader civil society, including related to discussions about MSG representation and the EITI process.

2.4 Engagement

Civil society representatives are able to be fully, actively and effectively engaged in the design, implementation, monitoring and evaluation of the EITI process.

The EITI Board and validators will consider the extent to which:

- Civil society representatives are able to fully contribute and provide input to the EITI process. This could for example include evidence of input and advocacy related to key MSG deliberations on issues such as workplan objectives and activities, the scope of the EITI reporting process, approval of EITI Reports, annual self-assessment of the EITI process through the annual activity reports, validation etc. It could also include evidence that civil society is regularly participating in MSG meetings, MSG working groups and other EITI events, and that the views of CSOs are taken into account and documented in MSG meeting minutes.
- Civil society representatives consider that they have adequate capacity to participate in the EITI. This should include evidence that technical, financial or other capacity constraints affecting civil society have been considered and that plans for addressing such constraints have been agreed upon and/or effectuated including by providing access to capacity building or resources.



2.5 Access to public decision-making

Civil society representatives are able to speak freely on transparency and natural resource governance issues, and ensure that the EITI contributes to public debate.

The EITI Board and validators will consider the extent to which:

- Civil society representatives are able to use the EITI process to promote public debate for example through public events, workshops and conferences organised by or with participation of civil society to inform the public about the EITI process and outcomes.
- Civil society representatives are able to engage in activities and debates about natural resource governance, including for example conducting analysis and advocacy on natural resource issues, use of EITI data, engagement with media outlets, development of tools to communicate the findings of the EITI reports, etc.

2.6 Available documentation

Available documentation from the MSG and CSOs engaged in the EITI process as well as outcomes from direct consultation with relevant stakeholders, including but not limited to members of the MSG, should be taken into account when gathering the above evidence.

For contextual purposes, the EITI Board will review the broader environment in which the EITI operates for example by reference to indicators or other types of assessments relevant to the issues addressed in 2.1-2.5 above.

3. Ad-hoc restrictions on civil society representatives

3.1 Ad hoc allegations or reports of potential or actual restrictions on civil society representatives in EITI implementing countries should in the first instance be discussed and addressed by the multi-stakeholder group, subject to any safety concerns that an impacted party may have regarding directly raising such issues domestically.

3.2 The EITI Board through its Rapid Response Committee may be called to investigate particular cases and address alleged breaches of the EITI Principles and Provisions as appropriate. The EITI Board will consider such requests with regard to the facts of the case, the need to uphold the Principles of the EITI as well as the principle of consistent treatment between countries. In accordance with section 4, Article 8.a), "where the EITI Board is concerned that adherence to the EITI Principles and Provisions is compromised, it may task the International Secretariat with gathering information about the situation and submitting a report to the EITI Board". Where concerns related to the participation of civil society are raised, the EITI Board will as appropriate strive to establish whether there is a direct link to the EITI process, including by (i) documenting the facts of the case; (ii) gathering stakeholders' views; and (iii) applying the test set out in section 2 above.

3.3 Depending on the circumstances of the case including the extent to which it can be established that there is a direct link between the concerns raised and the EITI process, the Board will consider an appropriate response. This could for example include a letter from the Chair or the EITI Board to the government concerned, EITI Board or International Secretariat missions to the country, commissioning independent assessments, issuing Board declarations, agreeing to remedial actions including monitoring of implementation, or calling for a validation of a country's adherence to the provisions concerned. In accordance with section 4, Article 8.a), "where it is manifestly clear that a significant aspect of the EITI Principles and Provisions are not adhered to by an implementing country, the EITI Board will suspend or delist that country. In cases where the Board concludes that the concerns observed do not breach a provision or are not sufficiently linked to the EITI process, it will exercise its discretion as to whether to take any action, placing priority on the need to uphold the Principles of the EITI and to ensure consistent treatment between countries.

About the HSF

Present in more than 60 countries world-wide, the Hanns Seidel Foundation (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. The contents of this publication do not necessarily reflect the views and opinions of the HSF.



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