

GLOBAL INTEGRITY

*AN INVESTIGATIVE REPORT TRACKING CORRUPTION, OPENNESS AND
ACCOUNTABILITY IN 25 COUNTRIES*

NAMIBIA

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INTEGRITY SCORECARD

Overall, Namibia ranks 20th out of 25 countries on the Public Integrity Index, falling into the weak tier. Namibia scores in the strong tier (80-90) for Category 5, in the weak tier (60-70) for Categories 1, 3 and 6, and in the very weak tier (below 60) for Category 4.

1. **Civil Society, Public Information and Media**, Weak, ranking 18th
2. **Electoral and Political Processes**, Very weak, ranking 23rd
3. **Branches of Government**, Weak, ranking 14th
4. **Administration and Civil Service**, Very weak, ranking 18th
5. **Oversight and Regulatory Mechanisms**, Strong, ranking 8th
6. **Anti-Corruption Mechanisms and Rule of Law**, Weak, ranking 19th

Category - 1:	Civil Society, Public Information and Media	70	Weak
I-1	<u>Civil Society Organizations</u>	100	Very Strong
I-2	<u>Access to Information Law</u>	22	Very Weak
I-3	<u>Freedom of the Media</u>	88	Strong
Category - 2:	Electoral and Political Processes	58	Very Weak
II-1	<u>National Elections</u>	85	Strong
II-2	<u>Election Monitoring Agency</u>	85	Strong
II-3	<u>Political Party Finances</u>	3	Very Weak
Category - 3:	Branches of Government	67	Weak
III-1	<u>Executive</u>	61	Weak
III-2	<u>Legislature</u>	79	Moderate
III-3	<u>Judiciary</u>	60	Very Weak
Category - 4:	Administration and Civil Service	49	Very Weak
IV-1	<u>Civil Service Regulations</u>	66	Weak
IV-2	<u>Whistle-blowing Measures</u>	63	Weak
IV-3	<u>Procurement</u>	66	Weak
IV-4	<u>Privatization</u>	0	Very Weak
Category - 5:	Oversight and Regulatory Mechanisms	89	Strong
V-1	<u>National Ombudsman</u>	97	Very Strong
V-2	<u>Supreme Audit Institution</u>	84	Strong
V-3	<u>Taxes and Customs</u>	86	Strong
V-4	<u>Financial Sector Regulation</u>	87	Strong
Category - 6:	Anti-Corruption Mechanisms and Rule of Law	62	Weak
VI-1	<u>Anti-Corruption Law</u>	50	Very Weak
VI-2	<u>Anti-Corruption Agency</u>	37	Very Weak
VI-3	<u>Rule of Law and Access to Justice</u>	81	Strong
VI-4	<u>Law Enforcement</u>	78	Moderate

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INTEGRITY ASSESSMENT

By Christiaan Keulder

Civil Society, Public Information and Media

Namibia is commonly viewed as one of the countries in Africa with an environment conducive to media freedom. The worst media restrictions have been isolated incidents, where the government or a large company has canceled advertisements in a few newspapers for the papers supposedly being too critical. Recently, two journalists on assignment in the north of the country for *Die Republikein*, the *Afrikaans* daily newspaper, were detained for four hours by armed Special Field Force (SFF) members and their vehicle was confiscated. The SFF members were unable to provide a concrete reason for detaining the journalists and filing charges against them, which ranged from entering a prohibited border area to driving an unlicensed vehicle, which quickly changed to trying to falsely pass themselves off as reporters working for one of the state-owned newspapers. Meanwhile, the confiscated vehicle was safely returned, and the National Society for Human Rights has released a statement asking the inspector general of the police to lay charges against the SFF members.

The president appointed himself as Minister of Information and Broadcasting for a period last year. Some believe it was an attempt to gain more control over the media, but no serious problems were experienced during his period in this office. In October 2002, the president instructed the Namibia Broadcasting Corporation to reconsider screening movies that do not contribute to the upbringing of the country's youth and to focus instead on locally made programs and documentaries on Namibia's wildlife and environment. But when a popular American soap opera was not screened in its usual daily slot, the public outcry was so great that it was promptly resumed the next day.

There are more than 500 civil society organizations active in Namibia. Their activities range from legal assistance and voter education to economic research and

AIDS advocacy. Trade unions are especially instrumental in promoting workers' rights and creating links between the public and government. A number of CSOs do not balk at criticizing the government. While no serious action has been taken against them, the government has occasionally denounced these organizations as unpatriotic.

Freedom of speech is protected in the Constitution, which supports the high level of media freedom experienced in the country. However, there is currently no specific law that grants citizens the right to free information. A bill is reportedly being drafted. As far as obtaining government documents like passports or identity documents, a nationwide survey conducted during 2002 (the Afrobarometer survey) found that 60.4 percent of the 1,200 respondents believe it is difficult to obtain an ID document, 37.4 percent think it is easy. Approximately 9 percent had paid a bribe to obtain a government document (the responses ranged from once or twice, a few times to often; fewer than 1 percent of the respondents often had to pay bribes to get hold of government documents). One consequence of not having easy access to ID documents is that one of every three Namibians registered in 1999 were registered by means of sworn statements. Overall, it is younger Namibians and citizens in rural areas who have the most serious problems accessing formal means of identification.

The costs involved in obtaining a television or commercial radio license are quite high; not many individuals can raise that much capital and the costs associated with the necessary equipment. However, the cost of a community radio station is approximately one-tenth that of a commercial radio license.

During the past year, no civil society activists were imprisoned, physically harmed, or killed. That is also true of journalists investigating cases of corruption. Furthermore, during the past 12 months no insult or libel laws have been invoked against any media entity, nor have they been used to close a media entity, seize the

assets of any media entity, or imprison members of the media.

Electoral and Political Processes

The Constitution protects the right of all citizens over 18 to be able to vote. While the percentage of eligible voters who register for elections is generally not extremely low, voter turnout usually amounts to only a fraction of those entitled to vote. Negotiations surrounding a proposed constitutional amendment to hold regional and local elections concurrently (which would shorten the terms in office of local councilors) have led to several postponements of regional and local elections. Presidential and National Assembly elections, on the other hand, have thus far been held according to constitutionally prescribed schedules.

Citizens are able to form political parties, provided they are able to provide a list of 500 registered voters and pay 5,000 Namibian dollars. At the moment, more than two-thirds of Namibian citizens support the ruling party, and it seems that this situation is quite stable. The opposition, despite attempts at creating coalitions, is fragmented. The National Unity Democratic Organisation (NUDO), a party with mainly Herero supporters, has distanced itself from the Democratic Turnhalle Alliance, with which it worked closely. Rumors are circulating about secret meetings held between the leaders of NUDO and the secretary general of the ruling party concerning the recognition of traditional leaders. NUDO has also applied for status as an independent party.

Female representation has not yet reached the level where at least a third of all members of Parliament are women. The minister of finance, a high-profile and traditionally male position, is currently occupied by a woman. At the local level, parties are obliged to employ "zebra" lists that contain a 50/50 split between male and female candidates in alternating positions. A nationwide survey including 2,000 respon-

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dents, conducted by a Namibian research company, found that around 70 percent of the respondents felt that more women should be in positions of power. Furthermore, the respondents felt that men are better suited to dealing with defense issues, while women should focus on children's rights. Apart from these, the public does not have any other gender preferences when it comes to policy, and it was found that men and women are equally involved in, and willing to stand for, politics. However, the real issue in this regard is not necessarily public opinion, but political will and opportunities.

The Electoral Commission is quite active in the country. Last year, an Elections Support Consortium was created as a joint project between the Electoral Commission of Namibia, the Namibia Institute for Democracy, and the Legal Assistance Centre. The aim is to stimulate democratic participation through civic and voter education and advocacy campaigns.

The regulations concerning political party finances are quite insubstantial. Almost two years ago, the *Namibian* published an article stating that the auditor general was approaching government lawyers at that stage for advice on how to compel political parties to report on the funds they have received from government. According to the auditor general, a "technical hitch" had prevented him from forcing political parties to account for the finances they had received from government since 1997. Almost no progress has been made in this area since. There is also no specific body in place to monitor how political parties spend their allocated funds. All this points to a substantial gap in legislation concerning this issue.

Branches of Government

There is a clear constitutional separation of powers between the executive, the legislature, and the judiciary. In practice, this is compromised by a further constitutional clause which states that all members of the executive are to be appointed from the legislature. Currently more than half the voting members of the National Assembly are also members of the executive.

Citizens are allowed to sue the government for infringement of their civil rights, and the judiciary is legally authorized to review the actions of the executive. Thus far, there has never been an incident where the judiciary has had to sanction or impeach either the head of state or any ministerial-level official, none of whom are immune from prosecution. However, this excludes criminal and civil offenses relating to the functions of the head of state while in office, and for ministers, anything said in Parliament while exercising their right to freedom of speech or anything done under the authority of Parliament.

The head of state is not required to file an asset-disclosure form, while members of Parliament are. This process, however, has not been able to come to fruition. Although the Code of Conduct for members of Parliament states that they are required to disclose all assets to the Standing Committee on Powers and Privileges, there has been some delay as members found the required forms too complicated to fill out. This register, when completed, can only be made public with permission from the Standing Committee. Members of the legislature are required to declare a variety of items to the Standing Committee on Powers and Privileges within 30 days of taking the oath, under the terms of Article 55 of the Namibian Constitution. These include all gifts and hospitality received in excess of 1,000 Namibian dollars, all interests in any business enterprise or corporate body, all profits earned from membership in any private company, and any interest in immovable property, among others.

The legislature has the authority to approve the budget and can make adjustments throughout the financial year if it deems these necessary. The budgetary process is not extremely transparent. In the drafting stage, only ministers are involved, and while the public is allowed to attend budget deliberations it is not allowed to participate and can only provide input if subpoenaed by a Standing Committee. However, the public is able to access itemized budget allocations after the budget has been completed and approved.

The judiciary system is generally free from political interference. High Court judges may not be removed from office

unless the Judicial Service Commission finds sufficient evidence of mental incapacity or gross misconduct. The commission is also responsible for advising the president on any High Court or Supreme Court appointments. Namibia does not currently have a judicial ombudsman or equivalent agency.

Taking legal action is beyond the financial means of most Namibians. In an effort to increase efficiency, courts are by and large mostly situated in larger towns or areas with higher population densities.

Administration and Civil Service

The Public Service Act 13 of 1995 governs the independence of public service and contains requirements on the appointment of public service officials. Only the qualifications, experience, level of training, relative merit, efficiency, and suitability of applicants should be taken into account when making appointments. Job descriptions for civil servants are the responsibility of the various ministries in which they are employed. Although corruption is defined as misconduct within the Public Service Act and is punishable by either a fine or dismissal, depending on the severity of the incident, individuals convicted of such a crime are not prohibited from entering public service again. The Public Service Act also states that civil servants are required to place all their time at the disposal of the state and that they are not allowed to enter into any form of remunerative employment in the private sector. However, depending on the position of the civil servant, either the Public Service Commission or the prime minister can give permission for a civil servant to undertake additional employment while in the employ of the public service.

There is no clause in the Public Service Act 13 of 1995 which provides regulations concerning conflicts of interest and gifts and hospitality for civil servants. However, the Charter for the Public Service in Africa, adopted in 2001 at

the Third Biennial Pan African Conference for Ministers of Civil Service, in Windhoek, does contain some regulations concerning these matters. Public servants are required to declare all assets and conflicts of interest, but there is yet no body to monitor the disclosures. According to the Public Service Commission, accounting officers of the various ministries are currently responsible for handling this matter.

In a body of employees as large as the public service, corruption can become a large problem. The *Namibian* published an article in 2003 accusing the Namibian government of lacking the drive to root out corruption. That same year, the Office of the Ombudsman launched a National Integrity Promotion Program (NIPP) in order to combat corruption. The NIPP is aimed at promoting and protecting human rights, ensuring a fair and effective administration, combating corrupt practices, and protecting the environment and natural resources of the country. The main goal of the program is the prevention and minimization of corruption by raising public awareness of the causes, effects, and costs of corruption on development, human rights, and service delivery.

Specific objectives include strengthening the capacity of the Office of the Ombudsman to promote integrity in Namibia and to investigate incidences of corrupt practices and fraud in the public sector. Also proposed are public service delivery surveys to assess public perceptions of the extent to which Namibian institutions and organizations are open, transparent, efficient, and accountable. Partners in the program include the Namibia Institute for Democracy, the Namibian Chapter of Transparency International, and the Namibia Association of Local Authority Officers. The program is scheduled to run for a year and is funded by the United States Agency for International Development.

Civil servants who make the effort to report corrupt practices are protected from recrimination and such actions are usually anonymous. However, there is no internal mechanism to allow civil servants to report corruption—the normal route is to make complaints to the Public Service Commission.

Tendering processes in Namibia seem to be quite transparent. All major procurements require competitive bidding. However, no specific law prohibits sole sourcing, although the decision makers have to state and record their reasons and there is also no law which prevents companies convicted of corrupt practices (with specific referral to tendering processes) from participating in future bids. The reality is that these companies are blacklisted and are usually excluded from future bids in practice. During 2001, the state's tendering process for the distribution of pensions received a lot of publicity when the case was taken to the High Court. Various irregularities were discovered, including that the government did not advertise the tender in the *Government Gazette* as required by law and that a senior official in the office of the prime minister tried to manipulate the awarding of the state pension delivery contract that would pocket his company around 11 million Namibian dollars without doing any work. In another case, the tender for the Public Service Employee Medical Aid Scheme was called off because of a "perceived bias" of a consultant, while others alleged it was to provide a bidder with connections to the ruling party more time to improve its bid.

Privatization is not a concrete strategy in Namibia. Thus far, privatization efforts have mostly taken the form of outsourcing and commercialization, and the government does not envision selling off state-owned assets to private-sector bidders in the near future. The 2000-2001 budget speech cited the creation of the Roads Authority (responsible for maintaining the country's 45,000-km road network) as part of an approach to stimulate the Namibian economy. During 2001, unions were upset at the exorbitantly high salaries that the directors of this authority would be receiving. The Roads Authority has since then been subject to a comprehensive probe into alleged fraud. State companies and parastatals remain a source of concern. In 2002, a Presidential Commission of Inquiry was appointed to investigate the Social Security Commission in what turned out to be perhaps the biggest corruption case since independence.

Oversight and Regulatory Mechanisms

Namibia has an active Ombudsman. Earlier this year a National Integrity Promotion Program was launched in order to bolster efforts in combating corruption. Citizens can access the annual and other reports of the Ombudsman—either in hardcopy from the office or from the Ombudsman's well-developed Web site. The powers of the Ombudsman include being able to subpoena any person to appear or to provide any document relevant to an investigation. Furthermore, it also has the authority to prosecute any person who disregards such a subpoena before a competent court. The Ombudsman is also allowed to enter any building or premises (excluding private homes), have access to books or other documents, and seize anything. The most recent statistics show that from 1997 to 1999, 3,166 complaints were received by this office.

The auditor general is not a member of the public service. This person is appointed for a period of five years, but is eligible for reappointment. Mechanisms that protect the auditor general's independence include special procedures for his or her removal, a fixed tenure, immunity from others in the execution of his duties and independence from framework plans. The agency has a full-time staff, although not very large, but it can contract external auditors and consultants through the Public Service Commission. The requirements are that annual reports be presented to the ministers as soon as practicable after the end of the financial year, though not later than the end of the following financial year. At the moment, however, reports are approximately three years late—the most recent one presented is for the 1999-2000 financial year. The powers of the auditor general are limited. When fraud or corruption is detected, the case is reported to the police, which confiscates all relevant records. It also does not have the power to force government-investi-

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gating agencies to conduct investigations; it can only request them to do so.

The Directorate of Inland Revenue, under the Ministry of Finance, handles taxation in Namibia. There are now approximately 340 civil servants handling the revenue affairs of more than 200,000 registered taxpayers. The legal department of the Inland Revenue service is especially active in distributing information on taxation.

The Namibia Financial Institutions Supervisory Authority was created in 2001. It is responsible for monitoring provident and investment institutions and regulates the Namibian Stock Exchange. All publicly listed companies are audited according to generally accepted accounting practices and are required to publish annual accounts that are freely available to the public.

Business licenses in Namibia are not restricted only to domestic enterprises. Foreign enterprises are required to register under another clause of the Companies Act of 1973 and have to appoint a local agent and local auditor.

Anti-Corruption Mechanisms and Rule of Law

The Anti-Corruption Bill drafted in 2003 (it was signed by the president and gazetted into law in August) is comprehensive and part of government's strategy to strengthen its efforts in combating corruption. Direct, indirect, and attempted corruption are all illegal under this new piece of legislation, along with offering or receiving a bribe, using public resources for private gain and conspiring to commit a crime. The establishment of the Anti-Corruption Commission, the body that will be responsible for enforcing and monitoring the implementation of anti-corruption legislation, will only be fully operational in 2004, once a new national budget has been passed. The commission is intended to be an autonomous, impartial agency that has the power to instigate investigations and to arrest, seize, search, and summon.

The Constitution states that no person is to be detained for longer than 48 hours without appearing before a magistrate. Because courts are only situated in larger

towns or areas with a higher population density, some persons arrested in outlying areas are kept for a longer period of time until they can be brought before a court. An employee of the Legal Assistance Centre says that criminal cases are continuously postponed as investigations continue and new evidence is collected. The reality is that some persons can spend up to 18 months in jail awaiting trial, even for petty crimes.

The Constitution protects individual property rights and holds that the state shall not expropriate any property without proper compensation. This has been the norm in Namibia with regards to the government's land reform program. Very recently, the Namibia Farm Workers' Union threatened to let workers settle on farms from which they had been dismissed. The government strongly advised them against this course of action, stating that such actions could reverse the progress made by the state land redistribution program and threatening the deployment of the police and Special Field Forces if the union went ahead with its plan of occupying 15 white-owned farms.

New recruits for the police service undergo training at the Police College, while members of the Police Force and Defence Force receive additional training relating to human rights matters. In rural areas, it does seem that the police lack adequate resources for effective policing. *The Namibian* reported in 2001 that the police station in Oshakati, which is the biggest in the north, has only two vehicles to serve an area which includes approximately 136,000 residents. The following March, the newspaper ran another article indicating that vehicle shortages are also affecting the efficiency of policing in the capital. Around 40 investigators have to share a single vehicle at the Windhoek Central Police Station. In 2003, the governor of the Erongo region requested the deployment of the Special Field Force in the popular seaside destination, Swakopmund, in an effort to curb crimes affecting tourists. After their first week in town, no additional such crimes were reported. The SFF members were offered accommodation in the town hall and donations were requested for food.

CORRUPTION NOTEBOOK

By Gwen Lister

The politics of patronage on the part of the ruling party, South West Africa People's Organization (SWAPO), play a dominant role in setting the scene for the spread of corruption and nepotism in Namibia. In addition, the strong possibility that President Sam Nujoma will seek a fourth term in office, when the Constitution provided for only two, may only serve to further entrench cronyism and a culture of entitlement.

When Namibia gained its independence from apartheid South African rule on March 20, 1990, it ushered in an era of democratization with a progressive Constitution hailed in all parts of the world as one of the first of its kind in Africa.

The majority of Namibians saw SWAPO "as the harbinger of freedom and independence," which was undeniably true in the main, given a solid commitment to democracy and a Constitution which incorporates a Bill of Rights.

Among the positive changes brought about by independence from colonial rule: "Namibia is indeed a free and sovereign state," says political analyst Joe Diescho. "Namibians are masters of their own fate and have the space to exercise the power to make policy. Citizens have constitutional protection they have never had before. People are equal before the law ... *The Namibian* judiciary is independent and the media is protected against the encroaching powers of the state."

But SWAPO, the movement that brought liberation to Namibia and was elected to power in independence elections in 1989, has not changed, Diescho adds. The leadership of the ruling party "owes their political loyalty to [President] Sam Nujoma, who appoints, directs, controls, rewards and punishes them like puppets on a string," he says.

These politics of patronage put in place by an autocratic presidency, continues Diescho, have resulted in the political leadership being caught up in the old games of liberation politics which render the public space a terrain of exclusion. "The political leadership awards buddies for si-

lence and loyalty and does not recognize merit and skills," he adds.

Little has changed in Namibia since Diescho voiced his criticisms in 1999, and SWAPO has further consolidated its majority to make Namibia a country dominated by one party.

Political analyst Henning Melber, who has described the growing authoritarianism of President Nujoma, points to the constitutional amendment passed in 1998 to allow Nujoma to stand for a third term of office—along with an increase in intolerance of critical opinions, a tendency to question the decisions of the judiciary, hate speech, gay-bashing and xenophobia—as an indication of the fragility of Namibia's democracy.

Loyalty to Namibia is equated with loyalty to the policies of the ruling party, especially to Nujoma—a situation that does not make for a transparent and accountable environment. Criticism, even in a country guaranteeing freedom of speech and the press, is considered tantamount to treason.

Ruling party officials, including the president, continue to pay lip service to tackling the problems of corruption, nepotism, cronyism and mismanagement, but little gets done. It is clearly low on the list of government priorities.

During the opening of Parliament in 1997, Nujoma said that development can only take place "if the leadership of this country provides the necessary guidance and commits itself to the principles of responsibility, transparency, honesty and accountability." Yet the media document rising incidents of corruption and mismanagement on an almost daily basis. The most recent are reports about the building of a massive new State House complex to house the president at a price tag of at least 468 million Namibian dollars. The government has not been forthcoming in releasing information about the project, which remains clouded with secrecy for "security" reasons.

And only at the conclusion of a speech in 2001, for example, did former Prime Minister Hage Geingob mention the need to "focus on building our institutions and

legislative instruments that promote human rights, liberal democracy, a strong civil society, transparency and anti-corruption initiatives."

Geingob, himself an initiator (however lukewarm) of the need for anti-corruption legislation in Namibia, in the same year in Parliament finally acceded to opposition party demands to remove an exemption for the president from a proposed anti-corruption bill.

So while top government officials, including both the president and the prime minister, make their occasional anti-corruption statements, the media generate numerous reports on various irregularities and mismanagement in the government and parastatal sectors.

Media reporting on corruption does not go unpunished. The international organization Reporters Without Borders, which monitors the status of press freedom, notes a late-2001 government advertising and subscription ban of *The Namibian* as punishment for that newspaper's continued criticism of government corruption. The organization quoted Nujoma, speaking at the United Nations Educational, Scientific and Cultural Organization (UNESCO) 10th annual press freedom day on May 3, 2001, saying that he had nothing good to say about the media.

Namibia's former attorney general, speaking at the 8th International Anti-Corruption Conference, said that by international standards Namibia was a "clean and ethical country," and he outlined what he called the government's determination to not only maintain the relatively corrupt-free environment, but to develop the means to prevent and combat corruption and promote ethical conduct.

That was largely wishful thinking on his part. Subsequent government actions to fight corruption were wishy-washy at best, and continual media coverage showed increased nepotism and graft at almost all levels of government. So much so, in fact, that

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in 1997 former Prime Minister Hage Geingob launched the ad hoc committee on the Promotion of Ethics and the Combatting of Corruption. This effort finally resulted in the promulgation of an Act of Parliament, in August 2003, providing for an Anti-Corruption Commission. The Anti-Corruption Commission is set to be established after the passage of the 2004-2005 national budget in April 2004.

Geingob said at the time: "We know that addressing the problems of corrupt practices, unethical behavior and accountability require a great deal more than the Ombudsman, the Attorney General, the Auditor General or even the police. Nor does the enactment of codes help much if we don't have appropriate culture and mechanisms to enforce such behavior." (11)

Namibia was also singled out at a risk assessment workshop for government officials as lacking parliamentary determination to root out corruption, citing both lawmakers' rejection of draft legislation for setting up an independent and impartial anti-corruption commission and also delaying the drawing up of an assets register for MPs, ostensibly because of the complexity of filling out forms.

The resistance by MPs and ministers to this attempt at transparency has been evident in the delays in compiling the assets register.

In a report in *The Namibian* in October 2003, the MPs' asset register faced another setback when the incumbent Prime Minister Theo-Ben Gurirab reportedly wrote to the speaker of Parliament to say that ministers were reluctant to fill out the forms because they felt they were already required to disclose their interests to the president.

There are many examples of corruption and mismanagement, which are mirrored at the local and town council level and non-governmental community, largely, many feel, because a strong anti-corruption example is not set by political leadership.

Namibia's land redistribution policies have also come under fire because they are benefiting the political elite. In August, *The Namibian* reported that the Agricultural Bank's recipients of affirmative action loans "read like a who's who of the politi-

cal elite," dominated by ruling party figures and heads of state-owned companies.

The opposition Congress of Democrats issued a list of 26 well-known loan recipients and slammed the state's land reform programs—including the subsidized loan scheme—as "self-enrichment for ministers, SWAPO and government officials, their families and other cronies."

The leader of the opposition, Ben Ulenga, likened land reform in Namibia to Zimbabwe, where those close to President Robert Mugabe "are at the head of the queue to grab," he said.

Namibia's former auditor general, Dr. Fanuel Tjingaete, warned in 1997 that "corruption not only eats up the fruits of economic and development initiatives, but also makes democratic institutions and other government structures weaker and inefficient. Corruption breeds corruption and society as a whole becomes victim to it. Corruption," he added, "has therefore a direct bearing on good governance, democracy and national advancement."

Namibia's Constitution tasks the ombudsman with investigating "vigorously" alleged or suspected corruption and the misappropriation of public monies by officials. But the former ombudsman, Bience Gawanas, herself acknowledges that she has not succeeded in the task after nearly seven years in office. Asked to list her successes, she could only cite the commitment of her staff members and the number of public complaints her office had received, largely about employment-related issues. But she admitted that she had never initiated an investigation on corruption.

Controversy has constantly dogged the implementation of the Anti-Corruption Bill, with some critics maintaining that this should be a separate, independent body and others claiming the Office of the Ombudsman should be enlarged to include this component to avoid costs of duplication. Added to this has been a debate in Parliament and in the public arena to define corruption.

The result is that some 14 years after independence, Namibia does not have an institution committed to initiating, investigating and bringing to justice the culprits in probes against graft.

On the other hand, Namibia has fortunately not yet become a country where

visitors have to bribe their way through the airport. But headlines in the independent media, often criticized but seldom if ever discredited, contain a constant litany of reports about corruption, nepotism and mismanagement, showing that corruption at levels of national, regional and local government, as well as parastatals, has become endemic.

In a briefing paper examining public perceptions on corruption in Namibia, the non-profit Institute for Public Policy Research argues that public perceptions are worthy of investigation. Half the respondents in the survey believed that at least some people from all agencies throughout the country were involved in corrupt activities. Government officials (40 percent) and police (36 percent) were regarded as the most corrupt. Those with access to newspapers, especially independent newspapers, perceive the levels of corruption to be higher than those accessing news through radio and television, which in Namibia are largely government-owned.

Interestingly, the August 2003 survey found that the Office of the President was perceived to be the cleanest institution—a perception probably fuelled, at least in part, by personal regard for the president himself, rather than the performance of his office. Yet against this background, the near-secret construction of a new State House goes ahead, while equipment in Namibia's major hospital is either faulty or broken, the supplies of water and electricity often uncertain.

Such perceptions will guide people's notions about whether or not the civil service is driven by greed and personal gain, and they will act accordingly. The negative impression can lead to institutionalized corruption and a breakdown of public integrity, which in turn would undermine the effectiveness of public institutions. Perceptions change, and while this viewpoint cannot yet be described as representing the feelings of the majority, there is little doubt that change is happening and more people are mak-

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ing the link between poverty and corruption.

The State House project—for a president still undecided about whether to change the Constitution for a second time so that he might run for a fourth term of office—has unleashed a volley of public criticism across the political spectrum, something which would have been unheard of a decade ago.

The actual definition of corrupt practices remains unresolved. Although most people know the difference between right and wrong, actual perceptions of corruption rest in proven instances of “bribes, gifts or favors” to government officials, rather than looking at the wider definition that would include nepotism and favoritism.

It can be said that independence has brought positive change in the lives of Namibians. Many rural areas that formerly lacked electricity and water now have such essentials. Namibia is a country largely at peace, free of colonial rule and has a Bill of Rights enforceable by the courts. Yet the Constitution is just a piece of paper that the government does not hesitate to change.

Poverty and unemployment persist, and people still have to make the connection between deteriorating health facilities, meager pension payouts and inadequate education on the one hand, and, on the other, government’s lavish expenditures on a new State House, monuments to fallen heroes and acquisition of farms for top office-bearers. No one knows whether Namibians as a whole will make the connection before it is too late and corruption spirals out of control.

CORRUPTION TIMELINE

November 1989 – Namibia’s 11-month transition to independence is complete when the South West Africa People’s Organization (SWAPO) party wins U.N.-supervised elections for the Namibian Constituent Assembly.

March 1990 – Namibia officially becomes independent from South Africa. SWAPO leader Sam Nujoma becomes president, the Constitution comes into effect, and the Constituent Assembly becomes the National Assembly.

July 1990 – The Office of the Ombudsman is established as an independent, autonomous office charged with investigating allegations of violations of fundamental rights and freedoms or abuses of power by government officials.

June 1991 – The government launches a program of redistributing Namibia’s arable farmland, almost half of which is owned by a few thousand white farmers. The program is based on the principle of “willing-buyer willing-seller,” which means land owners are not forced to sell, but if they do the government has the right of first refusal.

March 1992 – The Labor Act is passed to address inequalities in the country’s employment and income levels. The act also prohibits discrimination and harassment in the workplace.

August 1992 – The Regional Councils Act and Local Authorities Act become law, repealing most of the discriminatory legislation and decrees enacted during Namibia’s pre-independence, apartheid days, establishing statutory bodies that did not exist before independence and reforming those already in existence.

December 1992 – Newly established regional councils and local officials are chosen in the country’s first post-independence elections.

January 1995 – The Wage and Salary Commission is set up to conduct a review

of the pay structure of the public service to improve efficiency and eliminate discrimination. In December, the commission’s recommendations are approved by the Cabinet, and committees are established to oversee implementation of the committee’s recommendations.

August 1996 – The Cabinet establishes an ad hoc inter-ministerial committee to develop a program to combat governmental corruption. The prime minister launches the committee in March 1997.

June 1997 – Following several anti-government demonstrations, President Nujoma announces a ban on all demonstrations not authorized by the police. Following a legal challenge, the government agrees not to enforce the law on which the ban is based, but does not repeal it.

September 1998 – The Affirmative Action (Employment) Act is put into effect, outlining measures designed to promote equality in the workplace.

October 1998 – The government launches an attack against separatist rebels in the northeastern Caprivi region of the country after discovering a rebel training camp. The rebels, known as the Caprivi Liberation Army, are believed to be supported by the National Union for the Total Independence of Angola (UNITA) movement in Angola, which fought against Namibian independence in the 1970s and 1980s. Thousands of Caprivi residents, claiming persecution by government forces, flee to neighboring Botswana, which grants them asylum.

December 1998 – The National Assembly passes a constitutional amendment allowing President Nujoma to seek a third term in office.

July 1999 – The ruling SWAPO party criticizes a proposal to establish a South African-style truth commission to investigate crimes committed by South African security forces and Namibians during the country’s liberation struggle. Two years

earlier, the government spurned a request by the South African Truth and Reconciliation Commission to hold hearings on human rights abuses committed and “disappearances” during that period of Namibia’s history.

August 1999 – The government declares a state of emergency in Caprivi after the Caprivi Liberation Army launches attacks on government installations in Katima Mulilo. The state of emergency allows government forces to detain people indefinitely without visitors or the right to appear before a court. *The Namibian* National Society for Human Rights reports that hundreds have been arrested and subjected to various forms of torture. Defense Minister Erkki Nghimtina admits that security forces committed human rights violations in the arrest and detention of suspected rebels but insists that most of the violations occurred only in the first few days immediately following the attacks. Nghimtina promises to discipline security force members who mistreat detainees. Former opposition MP Geoffrey Mwilima is severely beaten by security forces during the fighting.

September 2000 – Home Affairs Minister Jerry Ekandjo tells police to “eliminate” gays and lesbians “from the face of Namibia.”

October 2000 – An amendment to the Legal Aid Act, which provides legal assistance to civil or criminal litigants unable to pay for a lawyer, removes courts’ power to order the provision of a legal aid attorney.

March 2001 – The government announces it will stop advertising in Namibia’s only daily newspaper, the *Namibian*, because of the paper’s perceived anti-government bias.

March 2001 – While speaking at the University of Namibia, President Nujoma declares gays and lesbians a

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“national threat” and calls for their arrest and deportation.

January 2002 – After an almost nine-month investigation, the Office of the Ombudsman reports instances of graft and favoritism occurring at the Social Security Commission, the government body in charge of administering social insurance and social assistance programs. The investigation uncovers instances of nepotism, conflicts of interest, and gross abuse of commission funds and traveling allowances.

February 2002 – The upper house of Parliament rejects draft legislation to establish an independent anti-corruption commission, opting instead to assign the commission’s duties to the Office of the Ombudsman.

May 2002 – Members of both the private and state-owned media adopt a code of ethics, appoint a new media ombudsman, and create a media-monitoring project focusing on issues of bias.

August 2002 – In what many view as an attempt to tighten his grip on the country’s media, President Nujoma takes control of the Information and Broadcasting Ministry to, as he claims, address technical problems at the state-run Namibian Broadcasting Corporation (NBC).

September 2002 – President Nujoma orders NBC to stop broadcasting programs that portray the country in a negative light or that have a negative influence on children.

February 2003 – The Office of the Ombudsman heralds the launch of the National Integrity Promotion Program, a program funded by the U.S. Agency for International Development (USAID) that will promote and sponsor anti-corruption initiatives throughout the country.

April 2003 – The National Assembly passes the Magistrates Act in an effort to increase the impartiality and independence of the judiciary. The act creates a new Magistrates Commission, which is responsible for overseeing the appoint-

ment and functioning of magistrates and other presiding officials of the lower courts.

October 2003 – The trial of 122 defendants accused of treason-related crimes during the 1999 Caprivi uprising resumes after a delay of more than a year. Twelve defendants have died in custody since August 1999. The trial is ongoing.

November 2003 – A presidential commission begins holding public hearings into allegations of kickbacks and other irregularities at the Roads Authority and Road Fund Administration, agencies that collect taxes from motor vehicle owners to administer and maintain Namibia’s roads. In April, the chief executive officer of the Roads Authority prevented auditors from scrutinizing his office’s books after employees came forward with allegations of misconduct.

November 2003 – The National Assembly releases the country’s first assets register for lawmakers. Officials disclose information regarding salaries, pensions, shares of stock, company directorships or ownership interests, debts, real property holdings, and bank accounts, as well as travel discounts, gifts, sponsorships, and other fringe benefits.

Namibia: Civil Society, Public Information and Media

Sub-Category: I-1/Civil Society Organizations

	Indicators	Scores
1	In law, do citizens have a right to form civil society organizations (CSOs)?	1.00
2	Can citizens organize into trade unions?	1.00
3	In practice, do CSOs actively engage in public advocacy campaigns?	1.00
4	Are citizens able to form CSOs?	1.00
5	Are civil society activists safe when working on corruption issues?	1.00

Indicator and sub-Indicator Details

1 In law, do citizens have a right to form civil society organizations (CSOs)?

Score: yes/1.00



Comments: The number of CSOs increased substantially after independence in 1990 when the legislation that prevented many grass roots organizations from registering was removed.

References: Article 21 (1) (f) of the 1990 Constitution

Peer Review Comments: Forming a nonprofit organization (a Section 21), which is the legal basis for any CSO, is a relatively straight-forward and inexpensive affair. Though some, like the LAC and the more overtly political National Society for Human Rights (NSHR), have ruffled government feathers and earned themselves some official opprobrium, no one has ever been victimized for belonging to or advocating the views of any CSO.

2 Can citizens organize into trade unions?

- 2a: *In law, citizens have a right to organize into trade unions.*

Score: yes/1.00



Comments: Yes, in law, citizens have a right to organize into trade unions.

References: Article 95 (c) of the 1990 Constitution

- 2b: *In practice, citizens are able to organize into trade unions.*

Score: almost always/1.00



Comments: Several new trade unions were registered after Independence.

References:

3 In practice, do CSOs actively engage in public advocacy campaigns?

Score: almost always/1.00



Comments: Barring capacity and resource problems, CSOs are generally quite active. Most recently, for example, the Legal Assistance Centre has been quite instrumental in fighting the construction of the hydroelectric power plant in the Epupa region and the human rights violations that occurred during the secessionist uprisings in the Caprivi region.

References: Tonchi, Victor L. 2002, Civil Society and Democracy in Namibia. Development Policy Management Forum: Addis Abeba

4 Are citizens able to form CSOs?

- 4a: *In practice, the government does not create barriers to the organization of new CSOs.*

Score: almost always/1.00



Comments: There are around 500 civil society organizations active in Namibia.

References: Tonchi, Victor L. 2002, Civil Society and Democracy in Namibia. Development Policy Management Forum: Addis Abeba

- 4b: *In practice, citizens can obtain any necessary license to form a CSO within a reasonable time period.*

Score: < 1 month/1.00



Comments: At the moment, the government is still developing a protocol for the registration of CSOs. A meeting was held in September 2003 when a draft GRN Civil Society Policy was developed. This draft will be circulated and shortly thereafter regional consultations and a national workshop will be held. In the meantime, CSOs can register with the Ministry of Trade and Industry under Section 21 of the Companies Act. However, in an unusual move, the Namibia Non-Government Organization Forum (NANGOF) has been trying (unsuccessfully) since 2000 to register with the Ministry of Welfare and Social Services as a welfare organization (as opposed to a Section 21 company).

References: Interview with Daphne de Klerk, Namibia Non-Government Organization Forum (NANGOF)

- 4c: In practice, citizens can obtain any necessary license to form a CSO at a reasonable cost.

Score: almost always/1.00



Comments: At the moment, the government is still developing a protocol for the registration of CSOs. A meeting was held in September 2003 when a draft GRN Civil Society Policy was developed. This draft will be circulated and shortly thereafter regional consultations and a national workshop will be held. In the meantime, CSOs can register with the Ministry of Trade and Industry under Section 21 of the Companies Act. However, in an unusual move, the Namibia Non-Government Organization Forum (NANGOF) has been trying (unsuccessfully) since 2000 to register with the Ministry of Welfare and Social Services as a welfare organization (as opposed to a Section 21 company).

References: Interview with Daphne de Klerk, Namibia Non-Government Organization Forum (NANGOF)

- 4d: In practice, in the past year, no existing CSO has been banned by the government for non-violent advocacy.

Score: yes/1.00



Comments: There was some tension between the Legal Assistance Centre (LAC) and the government for their actions regarding the above-mentioned issues (the government denouncing them for being unpatriotic), but they have not been banned nor have their activities been restricted. During the previous round of elections NANGOF reported on what could be seen as intimidation of some of the opposition political parties' members and were denounced by the ruling party as being supporters of the parties they were standing up for, while NANGOF is an apolitical, independent organization. Generally, the strategy of accusing CSOs of "unpatriotic" behavior has not led to government actions against these organizations.

References: Tonchi, Victor L. 2002, Civil Society and Democracy in Namibia.; and Namibia Non-Government Organization Forum

5 Are civil society activists safe when working on corruption issues?

- 5a: In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

Score: yes/1.00



Comments: A number of CSOs, mostly notably the Namibia Institute of Democracy (NiD), have set up joint projects with government agencies to implement public integrity projects and programs.

References: NiD, MSI and NALAO, n.d., Strengthening Integrity Systems at Local Authority Level, Background Information to grant program for Namibian NGOs and CSOs, NiD: Windhoek

- 5b: In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

Score: yes/1.00



Comments: A number of CSOs, mostly notably the Namibia Institute of Democracy (NiD), have set up joint projects with government agencies to implement public integrity projects and programs.

References: NiD, MSI and NALAO, n.d., Strengthening Integrity Systems at Local Authority Level, Background Information to grant program for Namibian NGOs and CSOs, NiD: Windhoek

- 5c: In practice, in the past year, no civil society activists working on corruption issues have been killed.

Score: yes/1.00



Comments: A number of CSOs, mostly notably the Namibia Institute of Democracy (NiD), have set up joint projects with government agencies to implement public integrity projects and programs.

References: NiD, MSI and NALAO, n.d., Strengthening Integrity Systems at Local Authority Level, Background Information to grant program for Namibian NGOs and CSOs, NiD: Windhoek

Namibia: Civil Society, Public Information and Media

Sub-Category: I-2/Access to Information Law

	Indicators	Scores
6	In law do citizens have a right of access to information?	0.00
7	In practice, is the right of access to information effective?	

Indicator and sub-Indicator Details

6 In law do citizens have a right of access to information?

- 6a: *In law, do citizens have a right of access information and basic government records?*

Score: no/0.00



Comments: In March 1999, under the theme "Cabinet's Anti-Corruption and Promotion of Ethics Initiative," the cabinet instructed the Office of the Attorney General and the Office of the Prime Minister to draft a Freedom of Information Bill. To date, that process has not yet been completed.

References: Correspondence from M. Shivute, Ministry of Information and Broadcasting

Peer Review Comments: The idea of a Freedom of Information Act has been mooted at least since 1994, when the then Minister of Information and Broadcasting Ben Amadhila undertook to draft such legislation. In the interim period, nothing has happened; Amadhila retired from his position to take up farming and a full-time position as Whip for SWAPO. The FIA was passed on to the Office of the Prime Minister and the Attorney-General, but has failed to get beyond this point. It seems unlikely that it will see the light of day under present dispensation. [Comment 2]: Birth certificates can be delivered within one week. Passports take about two weeks and ID cards up to 36 months. If the person has had a birth certificate before and asks for a re-issue, it costs R12; otherwise it is free of charge.

- 6b: *In law, do citizens have a right of appeal if access to a basic government record is denied?*

Score: no/0.00



Comments: In March 1999, under the theme "Cabinet's Anti-Corruption and Promotion of Ethics Initiative," the cabinet instructed the Office of the Attorney General and the Office of the Prime Minister to draft a Freedom of Information Bill. To this date, that process has not yet been completed.

References: Correspondence from M. Shivute, Ministry of Information and Broadcasting

7 In practice, is the right of access to information effective?

Score: Composite value, See commentary

Comments: This indicator is a composite of access to information scores in all sectors of government. Based on those measures, this country scored a 43 out of a best possible score of 100.

References:

Namibia: Civil Society, Public Information and Media

Sub-Category: I-3/Freedom of the Media

	Indicators	Scores
8	In law, is freedom of the media guaranteed?	1.00
9	In law, is freedom of speech guaranteed?	1.00
10	Are citizens able to form media entities?	0.81
11	Is the media able to report on corruption?	0.58
12	Are journalists safe when investigating corruption?	1.00

Indicator and sub-Indicator Details

8 In law, is freedom of the media guaranteed?

Score: yes/1.00



Comments: Yes, in law, freedom of the media is guaranteed.

References: Article 21 (1) (a) of the 1990 Constitution

Peer Review Comments: Several organizations are active monitors of corruption and report on corruption in the media. Examples are the Media Institute of Southern Africa, Transparency International and the Institute for Public Policy Research.

9 In law, is freedom of speech guaranteed?

Score: yes/1.00



Comments: Yes, in law, freedom of speech is guaranteed.

References: Article 21 (1) (a) of the 1990 Constitution

Peer Review Comments: Without protection for individuals in the civil service who blow the whistle on corruption, freedom of expression for them remains a somewhat empty letter. Yes, the media reports on corruption, but the culture of fear (of losing your job and of recriminations in workplace) makes it difficult to substantiate allegations of corruption.

10 Are citizens able to form media entities?

- 10a: *In practice, the government does not create barriers to forming a media entity.*

Score: almost always/1.00



Comments: In practice, the government almost always does not create barriers to forming a media entity.

References: Interview with Jan Kruger, Namibia Communications Commission

- 10b: *In law, where a license is necessary, there is an appeal mechanism if a license is denied or revoked.*

Score: yes/1.00



Comments: There is no law regulating this as such, but a complaint can be lodged first with the Ministry of Information and Broadcasting and after this the appeal can be taken to the High Court.

References: Interview with Jan Kruger, Namibia Communications Commission

- 10c: *In practice, where necessary, citizens can obtain a media license within a reasonable time period.*

Score: < 3 months/0.75



Comments: An application for a media broadcasting license has to be approved for by the Board of the Communications Commission. It is then published in the Government Gazette after which a period of 14 days is allowed for anyone to lodge an objection. The average period is about two months.

References: Interview with Jan Kruger, Namibia Communications Commission

- 10d: *In practice, where necessary, citizens can obtain a media license at a reasonable cost.*

Score: sometimes/0.50



Comments: The application cost for any type of license is N\$660, which is not refundable. Once the license has been granted, the cost for a television license is approximately N\$70,000, around N\$20,000 for a commercial radio license, and approximately N\$2,000 for a community radio license.

References: Interview with Jan Kruger, Namibia Communications Commission

Peer Review Comments: In the context of a developing country like Namibia, a license fee of N\$70,000 or N\$20,000 can be considered as quite excessive and a barrier to the overwhelming majority of citizens.

11 Is the media able to report on corruption?

- 11a: *In law, it is legal to report accurate news even if it damages the reputation of a public figure?*

Score: no/0.00



Comments: There is no such law that deals with the media specifically. Most cases of "insult" will be dealt with under civil law.

References: Interview with Wilma Deetlefs, Ministry of Information and Broadcasting

- 11b: *In practice, the government does not encourage self-censorship of corruption-related stories.*

Score: often/0.75



Comments: In some cases civil servants fear losing their jobs. Much has also been said about a perceived "culture of fear" that promotes self-censorship. The extent to which this really exists is yet to be assessed.

The media is free to report on corruption issues, but it is uncertain to what extent self-censorship exists within the press.

References:

Peer Review Comments: Certain media outlets and even individual journalists can be labeled unpatriotic, and there may be some level of self-censorship among journalists, according to some sources (U.S. State Department). In the main, there is a free and lively press in Namibia. [Comment 2]: Media coverage of corruption cases is frequent. Senior members of the ruling party and the government often accuse the media of being "unpatriotic" but in the past year no insult laws have been invoked against the media. The uneasy relationship that exists between the government and a local daily newspaper, The Namibian, culminated in the government banning all government agencies from advertising in the newspaper. No media entities have been closed by government. Aside from the ban against government agencies advertising in the Namibian newspaper (which does have some financial implications) no media agencies had any assets seized by the government.

- 11c: In practice, there is no prior restraint on publishing corruption-related stories.

Score: almost always/1.00



Comments: During 2003, quite a few stories have been published regarding possible corrupt activities in which government officials have been involved, ranging from a braai organized by the chairman of the National Council to irregularities within the Social Security Commission and government officials in the north of the country taking bribes to allocate land earmarked for resettlement. From March 2002 to February 2003 some 250 stories on corruption were covered by the Namibian media.

References: "The Namibian" newspaper (several editions); "Die Republikein" (several Editions); MISA, 2003, Media Monitoring Project: Annual Report, MISA: Windhoek

12 Are journalists safe when investigating corruption?

- 12a: In practice, in the past year, no journalists investigating corruption have been imprisoned.

Score: yes/1.00



Comments: The Media Institute of Southern Africa (MISA) produces an annual report on the state of the media in Southern Africa. In this report MISA lists 10 types of offences against the media as well as victories scored by the media. The types of offences against the media include: killed, beaten, bombed, detained, sentenced, threatened, expelled, censored, legislation against the media and "other." Victories include such as events as: journalists being released from detention unconditionally, the media winning or avoiding civil litigation and gagging orders overturned by courts. In the state of the media report for 2002, MISA listed no detention or sentencing of any journalist in Namibia.

References: MISA, 2002, "So this is democracy? An Annual Report of the Media Institute of Southern Africa, MISA: Windhoek"

- 12b: In practice, in the past year, no journalists investigating corruption have been physically harmed.

Score: yes/1.00



Comments: In the state of the media report for 2002, MISA reported that no journalist has been beaten in Namibia or been expelled.

References: MISA, 2002, "So this is democracy? An Annual Report of the Media Institute of Southern Africa, MISA: Windhoek"

- 12c: In practice, in the past year, no journalists investigating corruption have been killed.

Score: yes/1.00



Comments: In the state of the media report for 2002, MISA reported that no journalist has been killed in Namibia.






References: MISA, 2002, "So this is democracy? An Annual Report of the Media Institute of Southern Africa, MISA: Windhoek"

Namibia: Electoral and Political Processes

Sub-Category: II-1/National Elections

	Indicators	Scores
13	In law, is universal and equal adult suffrage guaranteed to all citizens?	1.00
14	Can all citizens exercise their right to vote freely and fairly?	1.00
15	Do citizens participate in the political process?	0.55

Indicator and sub-Indicator Details

13	In law, is universal and equal adult suffrage guaranteed to all citizens?
	<p>Score: yes/1.00 </p> <p>Comments: In law, universal and equal adult suffrage is guaranteed to all citizens. References: Article 28 (2) (a) and Article 17 (2) of the 1990 Constitution</p>
14	Can all citizens exercise their right to vote freely and fairly?
	<p>- 14a: In practice, all adult citizens can vote.</p> <p>Score: almost always/1.00 </p> <p>Comments: All adult citizens are allowed to vote, but past experience has shown that voter turnout for local and regional elections is low. For national and presidential elections it is much higher and close to international standards. References: Institute for Public Policy Research, Political Research Unit</p> <p>- 14b: In practice, ballots are secret or equivalently protected.</p> <p>Score: almost always/1.00 </p> <p>Comments: In practice, ballots are almost always secret or equivalently protected. References: Institute for Public Policy Research, Political Research Unit</p> <p>- 14c: In practice, elections are held according to a regular schedule.</p> <p>Score: almost always/1.00 </p> <p>Comments: During 2003 some elections in Namibia were postponed due to problems with the re-registration process and some legal reforms to allow regional and local elections to take place at the same time. References: Directorate of Elections</p>
15	Do citizens participate in the political process?
	<p>- 15a: In practice, all citizens have a right to form political parties.</p> <p>Score: almost always/1.00 </p> <p>Comments: Prospective parties applying for registration must submit a list of 500 names of registered voters as well as N\$5,000 with its constitution and application form. The prospective party must have a principle objective. The contesting of elections and the commission must be satisfied that the party's objectives do not endanger the state, peace, order or public welfare and that they party does not exclude people from membership on basis of sex, race, color, ethnic origin, religion, creed or socioeconomic status. All citizens are allowed to run for public office, although traditional leaders, once elected into office have to forfeit their positions as traditional leaders, either permanently or until such time as their period in elected office expires. Presidential candidates must be older than 35 years and independent candidates must have the support of at least 300 registered voters in each of at least ten of the 13 regions. Independent candidates must submit a N\$5,000 deposit; the deposit required for political parties is double than amount. Candidates for National Assembly elections must be older than 21 years, registered as voters and a member of the political party that nominates them. Independent candidates are not allowed due to the closed-list PR system used for National Assembly elections. Other restrictions that apply to such candidates are: criminal records that involve imprisonment of more than 12 months within the previous ten years; being unrepentant insolvents; paid public servants or members of other elected government institutions. Regional council candidates must be: registered voters, residents in the constituency in which</p>

they are nominated or intending to become residents within three months of election and being nominated by a political party. Independent candidates should submit proof of support of at least 100 registered voters in their constituency. Such candidates are also not allowed to be members of any other elected government body. Local Authority candidates must be citizens, registered voters and residents of the local authority area. For each nominated candidate, the nominating agency must present a deposit of N\$100.
References: Article 21 (1) (e) and Article 17 (1) of the 1990 Constitution; EISA, 1999, A Handbook of Namibian Electoral Laws and Regulations, EISA: Johannesburg

- 15b: In practice, all citizens have a right to run for public office.

Score: almost always/1.00



Comments: Limitations are set out in Article 17 (3) of the 1990 Constitution

References: Article 17 (2) of the 1990 Constitution

Peer Review Comments: A "traditionalist" culture still dominates. There is a mentality that the chief should not be replaced or his replacement not even be discussed while he is alive (as this might indicate that someone wishes him dead). Similarly, with Nujoma's system of personal patronage, whereby political appointees are loyal to him, at the expense of loyalty to the party or the country, there is little chance of independent-thinking candidates coming to the fore. Unless this trend is curbed, democracy may find itself in trouble eventually.

- 15c: In practice, at least 30 percent of national legislators are women.

Score: no/0.00



Comments: Two of the 26 members of the National Council and 21 of the 72 voting members of the National Assembly are women.

References: List of Members of the 3rd National Assembly and the 2nd National Council found at <http://www.parliament.gov.na>

Peer Review Comments: The percentage of women in the National Assembly is 29.1 percent; 18 of 72 were elected in 1999 election and three have since been added as other MPs have left.

- 15d: In practice, the ruling political party controls less than 2/3 of seats in the legislature.

Score: no/0.00



Comments: 55 of the 78 (72 voting seats and six non-voting nominated) seats in the National Assembly and 21 of the 26 seats in the National Council belong to the ruling party.

References: List of Members of the 3rd National Assembly and the 2nd National Council found at <http://www.parliament.gov.na>

- 15e: In practice, during the most recent election, political parties received media coverage roughly proportional to their popular support.

Score: often/0.75



Comments: This has not been accurately measured in Namibia. In some instances the divide between the ruling party and the government became blurred when government leaders received coverage for national projects while wearing ruling party insignia.

References:

Namibia: Electoral and Political Processes

Sub-Category: II-2/Election Monitoring Agency

	Indicators	Scores
16	In law, is there an election monitoring agency?	1.00
17	Is the election monitoring agency effective?	0.70

Indicator and sub-Indicator Details

16 In law, is there an election monitoring agency?

Score: yes/1.00



Comments: The Electoral Commission of Namibia conducts elections. There is no permanent election monitoring agency. In the past, various groups monitored Namibian elections. These included a Southern

African Development Community (SADC), Parliamentary Form Group, local NGOs and international observers.

References: EISA, 1999, "A Handbook of Namibian Electoral Laws and Regulations," EISA: Johannesburg

17 Is the election monitoring agency effective?

- 17a: In law, the agency is protected from political interference.

Score: yes/1.00



Comments: Although the Electoral Commission is independent from other government agencies and reports to Parliament, it remains a Public Service Agency. The president has the power to appoint commissioners upon recommendations from an independent selection committee. He has the power to reject recommendations. The president also appoints the Director of Elections from two recommendations submitted by the Electoral Commission. In the past civil servants were used extensively during the election period.

References:

- 17b: In practice, agency appointments are made that support the independence of the agency.

Score: sometimes/0.50



Comments: It recruits Commissioners by means of public applications. A selection committee consisting of a member of the Supreme or High Court nominated by the Chief Justice, a lawyer nominated by the Law Society of Namibia and a member of the Office of the Ombudsman, nominated by the Ombudsman, forward recommendations to the president who appoints the commissioners. Meetings at which interviews take place are open to the public and the qualifications and criteria for appointment are determined by the Standing Committee on Privileges of Parliament. Registered voters may submit written objections to any application and may be called to address the meeting when the interviews take place. Commissioners are essentially unpaid volunteers.

References:

Peer Review Comments: Its biggest weakness is that it is appointed by the president, whose wide powers dominate the political landscape. Thus far, this power has been wielded with some sensitivity, but given a tendency towards increasing authoritarianism by Nujoma, it gives reason for concern. [Comment 2]: I am not persuaded that, in practice, appointments (especially at senior levels, i.e. director of elections) are made in a way which supports the independence of the agency. Suffice to say that all three directors appointed since independence are all either known supporters, or very loyal members of the ruling party. Given the current political atmosphere within the ruling party, there is no way that in the foreseeable future a director of elections can be drawn from the ranks of either opposition politics or that a truly independent person can be appointed to this post.

- 17c: In practice, the agency has a professional, full-time staff.

Score: almost always/1.00



Comments: Between elections the Electoral Commission maintains skeleton staff. Numbers increase significantly during the election periods.

References: EISA, 1999, "A Handbook of Namibian Electoral Laws and Regulations," EISA: Johannesburg

- 17d: In practice, the agency makes reports to the legislature following an election cycle.

Score: almost always/1.00



Comments: The Electoral Commission presents its annual reports to the speaker of the National Assembly who has to present the report to the house within 14 days of receiving it.

References: EISA, 1999, "A Handbook of Namibian Electoral Laws and Regulations," EISA: Johannesburg

- 17e: In practice, when necessary, the agency imposes penalties on offenders.

Score: almost never/0.00



Comments: The Electoral Commission has no powers to impose penalties. All charges are investigated by the police and cases are tried by the appropriate court of law.

References: Electoral Act 24 of 1992

Namibia: Electoral and Political Processes

Sub-Category: II-3/Political Party Finances

	Indicators	Scores
18	Are there regulations governing political party finances?	0.00
19	Are the regulations governing political party finances effective?	0.08
20	Can citizens access the financial records of political parties?	0.00

Indicator and sub-Indicator Details

18 Are there regulations governing political party finances?

- 18a: *In law, there are regulations governing private contributions to political parties.*

Score: no/0.00



Comments: Funds allocated for political parties each year are shared on a proportional basis depending on the number of votes which the party received in the last Elections. (A Parliamentary Guide for Members of the National Assembly, Chapter 6).

References: The Electoral Processes Information Collection joint project between the International Foundation for Election Systems, the United Nations Development Program and the International Institute for Democracy and Electoral Assistance. Homepage: [http://epic.at.org/countryResults\\$NA+PC](http://epic.at.org/countryResults$NA+PC)

Peer Review Comments: However, no political party is allowed to receive funding from any donors outside the borders of the country unless such funding is disclosed to the director of elections, and also disclosed in at least two newspapers. Failure to disclose will lead to cancellation of registration and/or a fine.

- 18b: *In law, there are limits on individual donations to candidates and political parties.*

Score: no/0.00



Comments: All foreign contributions to political parties have to be disclosed to the public.

References: The Electoral Processes Information Collection joint Project between the International Foundation for Election Systems, the United Nations Development Program and the International Institute for Democracy and Electoral Assistance. Homepage: [http://epic.at.org/countryResults\\$NA+PC](http://epic.at.org/countryResults$NA+PC)

- 18c: *In law, there are limits on corporate donations to candidates and political parties.*

Score: no/0.00



Comments: However, no political party is allowed to receive funding from any donors outside the borders of the country without public disclosure.

References: The Electoral Processes Information Collection joint Project between the International Foundation for Election Systems, the United Nations Development Program and the International Institute for Democracy and Electoral Assistance. Homepage: [http://epic.at.org/countryResults\\$NA+PC](http://epic.at.org/countryResults$NA+PC)

Peer Review Comments: Influence buying is a major concern; with highly lucrative tenders being awarded by key members of the ruling party at cabinet level. Making a timely and generous donation often leads to success in business. This trend has been especially prevalent in the fishing industry, its huge profits are directly related to the sizes of quotas allocated to them by the cabinet each year.

- 18d: *In law, there are limits on total party expenditure.*

Score: no/0.00



Comments: All foreign contributions to political parties have to be disclosed to the public.

References: The Electoral Processes Information Collection joint Project between the International Foundation for Election Systems, the United Nations Development Program and the International Institute for Democracy and Electoral Assistance. Homepage: [http://epic.at.org/countryResults\\$NA+PC](http://epic.at.org/countryResults$NA+PC)

19 Are the regulations governing political party finances effective?

- 19a: *In practice, when necessary, an agency monitoring political party finances independently initiates investigations.*

Score: almost never/0.00



Comments: Other than Parliament, there is currently no independent agency regulating party finances.
References: Electoral Act 24 of 1992, Article 46; "A Parliamentary Guide for Members of the National Assembly."

- 19b: *In practice, when necessary, an agency monitoring political party finances imposes penalties on offenders.*

Score: rarely/0.25



Comments: Other than Parliament, there is currently no independent agency regulating party finances. Courts of law will try cases where the requirements for declaring foreign funding have been contravened.
References: Electoral Act 24 of 1992, Article 46; "A Parliamentary Guide for Members of the National Assembly."

- 19c: *In practice, contributions to political parties are audited.*

Score: almost never/0.00



Comments: Since there is no law, parties do not usually undertake such audits.
References:

20 Can citizens access the financial records of political parties?

- 20a: *In law, citizens can access the financial records of political parties.*

Score: no/0.00



Comments: Although parties are supposed to present funding reports to Parliament, there is no law that allows the public access to party financial records.
References:

- 20b: *In practice, citizens can access the financial records of political parties within a reasonable time period.*

Score: > 1 year/0.00



Comments: No such law exists so in practice citizens cannot get access to party financial reports.
References: Electoral Act 24 of 1992, Article 46; "A Parliamentary Guide for Members of the National Assembly"

- 20c: *In practice, citizens can access the financial records of political parties at a reasonable cost.*

Score: almost never/0.00



Comments: No such law exists so in practice citizens cannot get access to party financial reports.
References: Electoral Act 24 of 1992, Article 46; "A Parliamentary Guide for Members of the National Assembly"

Namibia: Branches of Government

Sub-Category: III-1/Executive

	Indicators	Scores
21	In law, can citizens sue the government for infringement of their civil rights?	1.00
22	Can members of the executive be held accountable for their actions?	1.00
23	Is the executive leadership subject to prosecution?	0.50
24	Are there regulations governing conflicts of interest by the executive branch?	0.67
25	Can citizens access the asset disclosure records of the head of state?	0.00
26	In practice, is the ruling party distinct from the state?	0.50

Indicator and sub-Indicator Details

21 In law, can citizens sue the government for infringement of their civil rights?

Score: yes/1.00



Comments: It is not uncommon for citizens to take government to court.

References: Constitution of the Republic of Namibia of 1990, Article 25(2)

22 Can members of the executive be held accountable for their actions?

- 22a: *In practice, members of the executive give reasons for their policy decisions.*

Score: almost always/1.00



Comments: Reasons are given through cabinet briefs, media conferences and parliamentary debates.

References: Institute for Public Policy Research, Political Research Unit

Peer Review Comments: Members of the executive only give reasons when they want to, and only to the extent that it is politically expedient for them to do so. Because of this, misleading Parliament is not frowned upon as a serious infringement and has, to date, not been sanctioned by Parliament, although it occurs from time to time.

- 22b: *In law, the judiciary can review the actions of the executive.*

Score: yes/1.00



Comments: Citizens can seek legal action against government if and when they feel government actions are unjust. The public also has the option to lodge complaints against civil servants with the Office of the Ombudsman.

References: Article 91 (a) and (b) of the 1990 Constitution

- 22c: *In practice, when necessary, the judiciary reviews the actions of the executive.*

Score: almost always/1.00



Comments: In practice, when necessary, the judiciary reviews the actions of the executive.

References:

23 Is the executive leadership subject to prosecution?

- 23a: *In law, the head of state is not immune from prosecution.*

Score: no/0.00



Comments: The president cannot be charged with criminal and civil offences relating to his/her functions while in office.

References: Article 31 of the 1990 Constitution

- 23b: *In law, ministerial-level officials are not immune from prosecution.*

Score: yes/1.00



Comments: Ministerial-level officials are immune from legal proceedings caused by anything done or said in Parliament or acts done under authority of the Parliament.

References: Powers, Privileges and Immunities of Parliament Act, 1996, Part I, Section 2, Section 4 and Section 5

Peer Review Comments: Apart from protection for things said or done in Parliament, ministers have no general (legal) immunity for violations of the criminal or civil law. This has never happened in Namibia.

24 Are there regulations governing conflicts of interest by the executive branch?

- 24a: *In law, the head of state is required to file an asset disclosure form.*

Score: no/0.00



Comments: In law, the head of state is not required to file an asset disclosure form.

References:

- 24b: *In law, ministerial-level officials are required to file an asset disclosure form.*

Score: yes/1.00



Comments: Ministers are bound by a cabinet decision to disclose their assets, and also by law as members of the legislature. The Standing Committee on Privileges has the exclusive power to authorize disclosure of information contained in the asset register.

References: Codes of Conduct for Members of Parliament; Powers, Privileges and Immunities of Parliament Act of 1996 - Art. 12(a)i,ii

- 24c: *In law, there are regulations concerning gifts and hospitality for the executive.*

Score: yes/1.00



Comments: All gifts and hospitality exceeding N\$1,000.00 must be declared.

References:

25 Can citizens access the asset disclosure records of the head of state?

- 25a: *In law, citizens can access the asset disclosure records of the head of state.*

Score: no/0.00



Comments: No such law exists.

References:

- 25b: *In practice, citizens can access the asset disclosure records of the head of state within a reasonable time period.*

Score: > 1 year/0.00



Comments: Not applicable.

References:

- 25c: *In practice, citizens can access the asset disclosure records of the head of state at a reasonable cost.*

Score: almost never/0.00



Comments: Not applicable.

References:

26 In practice, is the ruling party distinct from the state?

Score: sometimes/0.50



Comments: The line between state and party is blurred, and more so during election times. During the 1999 National Assembly and presidential election campaign, for example, President Nujoma opened several state-funded projects wearing the SWAPO party insignia. Some sources also mentioned instances when government vehicles were used in support of the ruling party's campaign.

References: Soiri I, 2002, "Swapo Wins, Apathy Rules: The Namibian 1998 Local Authority Elections," in Cowen M & L Laakso, 2002, "Multi-party Elections in Africa," James Curry: London; Lombardt I, 2000, Civil Society Election Monitoring Project, in The Human Rights Observer, Vol. 2, 2000 at http://www.afronet.org.za/theobserver/Vol2_namibia2.htm






Peer Review Comments: The blurring of line between party and state is increasing. During 2002 there were calls by ruling party leaders for only loyal Namibians (read: SWAPO members) to get government jobs. There was general outcry against this call by the SWAPO Youth League. [Comment 2]: The ruling party sees no difference between itself and the government; in fact, official SWAPO policy at this stage states that top government positions are only to be awarded to party loyalists.

Namibia: Branches of Government

Sub-Category: III-2/Legislature

	Indicators	Scores
27	Can members of the legislature be held accountable for their actions?	1.00
28	In law, are members of the legislature subject to prosecution?	0.00
29	Are there regulations governing conflict of interest by members of the legislature?	1.00
30	Can citizens access the asset disclosure records of members of the legislature?	1.00
31	Can citizens access legislative processes and documents?	1.00
32	Does the legislature have control of the budget?	0.63
33	Can citizens access the national budgetary process?	0.67
34	In law, is there a separate legislative committee which provides oversight of public funds?	1.00
35	Is the legislative committee overseeing the expenditure of public funds effective?	0.81

Indicator and sub-Indicator Details

27	<p>Can members of the legislature be held accountable for their actions?</p> <p><i>- 27a: In law, the judiciary can review the actions of the legislature.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Yes, in law, the judiciary can review the actions of the legislature. References: Article 91 (g) of the 1990 Constitution</p> <p><i>- 27b: In practice, when necessary, the judiciary reviews the actions of the legislature.</i></p> <p>Score: almost always/1.00 </p> <p>Comments: Unfair legislation has been referred back to Parliament by the High and Supreme courts. References:</p>
28	<p>In law, are members of the legislature subject to prosecution?</p> <p>Score: no/0.00 </p> <p>Comments: Members are immune from criminal and civil charges for duties performed as members of Parliament while in office. References: Powers, Privileges and Immunities of Parliament Act of 1996; Part 1 Section 2</p>
29	<p>Are there regulations governing conflict of interest by members of the legislature?</p> <p><i>- 29a: In law, members of the legislature are required to file an asset disclosure form.</i></p> <p>Score: yes/1.00 </p> <p>Comments: It is not a separate act as such, but the directives for disclosure of financial and personal interests are set out in the code of conduct for members of Parliament, which is overseen by the Standing Committee on Privileges. References: Section 12 (a) of the Powers, Privileges and Immunities of Parliament Act, 1996</p> <p><i>- 29b: In law, there are regulations concerning gifts and hospitality for members of the legislature.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Members of Parliament must disclose all gifts and hospitality received exceeding the value of N\$1000 within 30 workdays after they have taken the oath set out in Article 55 of the Namibian Constitution. References: Code of Conduct for Members of Parliament</p>
30	<p>Can citizens access the asset disclosure records of members of the legislature?</p> <p><i>- 30a: In law, citizens can access the asset disclosure records of members of the legislature.</i></p>

Score: yes/1.00



Comments: The Code of Conduct for Members of Parliament state that these registers shall be public. However, the Standing Committee on Privileges states that it has the sole authority to grant permission to disclose any of this information.

References:

Peer Review Comments: Citizens can only (with permission) access the "public" part of the disclosure record and not the more newsworthy "private" part of the record.

- 30b: In practice, citizens can access these records within a reasonable time period.

Score: < 1 month/1.00



Comments: Public access is regulated by the Standing Committee on Privileges. Access could be denied or granted depending on the nature and content of the request. Thus, it is difficult to attach a time frame to a request.

References: Code of Conduct for Members of Parliament

- 30c: In practice, citizens can access these records at a reasonable cost.

Score: almost always/1.00



Comments: Citizens would not have to pay to get access to the records.

References:

31 Can citizens access legislative processes and documents?

- 31a: In law, citizens can access records of legislative processes and documents.

Score: yes/1.00



Comments: Yes, in law, citizens can access records of legislative processes and documents.

References: Article 61 of the Namibian Constitution

- 31b: In practice, citizens can access these records within a reasonable time period.

Score: < 1 month/1.00



Comments: The records are available from government printers.

References: National Assembly

- 31c: In practice, citizens can access these records at a reasonable cost.

Score: almost always/1.00



Comments: Citizens can almost always access these records at a reasonable cost.

References: National Assembly

32 Does the legislature have control of the budget?

- 32a: In law, the legislature can amend the budget.

Score: yes/1.00



Comments: Yes, in law, the legislature is allowed to amend the budget.

References: Article 63 (2) (a) and Article 126 (2) of the 1990 Constitution

- 32b: In practice, significant public expenditures require legislative approval.

Score: rarely/0.25



Comments: Usually only ex post facto; therefore, Parliament is reduced to a rubber stamp.

References:

33 Can citizens access the national budgetary process?

- 33a: In practice, the national budgetary process is conducted in a transparent manner in the debating stage.

Score: often/0.75



Comments: The public is allowed to visit Parliament when budget deliberations are in session, but are not allowed to participate.

References: Interview with Robin Sherbourne, IPPR Economic Policy Program

- 33b: In practice, citizens provide input at budget hearings.

Score: rarely/0.25



Comments: The public can provide input at budget hearings when subpoenaed by a specific standing committee.

References: Interview with Robin Sherbourne, IPPR Economic Policy Program

Peer Review Comments: In practice, no budget hearings are held at all. The only hearings are conducted by the Public Accounts Committee, which does subpoena public servants to explain their actions, e.g. overspending.

- 33c: *In practice, citizens can access itemized budget allocations.*

Score: almost always/1.00



Comments: Citizens can almost always access itemized budget allocations.

References: Interview with Robin Sherbourne, IPPR Economic Policy Program

34 In law, is there a separate legislative committee which provides oversight of public funds?

Score: yes/1.00



Comments: Yes, there is the Public Accounts Committee.

References: Interview with Robin Sherbourne, IPPR Economic Policy Program

35 Is the legislative committee overseeing the expenditure of public funds effective?

- 35a: *In practice, department heads regularly submit reports to this committee.*

Score: often/0.75



Comments: These reports are reflected or included in the auditor general's report.

References: Interview with Robin Sherbourne, IPPR Economic Policy Programme

- 35b: *In practice, a member of an opposition party presides over this committee.*

Score: almost always/1.00



Comments: At the moment, the chairman of the Public Accounts Committee is Johan De Waal who is a member of the Democratic Turnhalle Alliance (DTA).

References: Interview with Robin Sherbourne, IPPR Economic Policy Programme

- 35c: *In practice, this committee is protected from political interference.*

Score: often/0.75



Comments: Parties nominate members to this (and other committees) in proportion to their seats in Parliament. Only parties themselves have the power to discharge and replace committee members.

References: Interview with Robin Sherbourne, IPPR Economic Policy Programme

- 35d: *In practice, when necessary, this committee initiates independent investigations into financial irregularities.*

Score: often/0.75



Comments: According to the State Finances Act, the Standing Committee on Public Finances can request Parliament take action against financial irregularities based on their discussions of the Auditor-General's reports. Although, such actions must be approved by Parliament. In June 2001 the Standing Committee on Public Finances tabled a report stating that a cabinet decision to close a parastatal, the Development Brigade Corporation, was illegal because it required an act of Parliament to do so.

References: Interview with Robin Sherbourne, IPPR Economic Policy Programme; "The Namibian," Tuesday, June 14, 2001; The State Finances Act of 1991.

Namibia: Branches of Government

Sub-Category: III-3/Judiciary

	Indicators	Scores
36	In law, is the independence of the judiciary guaranteed?	1.00
37	Is the appointment process for high court judges effective?	1.00
38	Can members of the judiciary be held accountable for their actions?	0.33

39	Can citizens access the judicial system?	0.25
40	In law, is there a program to protect witnesses in corruption cases?	0.00
41	Are judges safe when adjudicating corruption cases?	1.00

Indicator and sub-Indicator Details

36 In law, is the independence of the judiciary guaranteed?

Score: yes/1.00



Comments: Article 78 (2) of the 1990 Constitution states that the court shall be independent and subject only to the Constitution and the law.

References: Article 78 (2) of the 1990 Constitution

Peer Review Comments: Regardless of what the judiciary does, the decision to prosecute or not prosecute is far more central to administrative and general justice, especially as exorbitant legal costs leave the poor to fend for themselves. The position of the prosecutor general has become highly politicized with the retirement of previous Prosecutor General Hans Heyman, with critics charging that the current incumbent is not suitably qualified and simply was a political appointee. Several veteran deputy prosecutor generals had applied, including one who had been acting in this position for more than a year. Certainly the decision to appoint a black female, from the lower ranks of the court and without any of the experience of the more senior deputy prosecutor generals would seem overtly political. There is an Office of the Ombudsman (Article 89 of the Constitution), with a limited budget and staff. It, however, lacks any real prosecutorial powers, because it relies on the Office of the Prosecutor General in this regard. Hence, the position of the prosecutor general becomes critical, especially when seen against the background of exorbitant fees charged by private legal practitioners. An urgent application before the High Court would cost at least N\$60,000 (equal to one and a half year's average annual salary). The legal profession is in demand, court dockets are over-flowing and legal justice is very slow in coming to the poorer part of the population.

37 Is the appointment process for high court judges effective?

- 37a: *In practice, there is a transparent procedure for selecting high court judges.*

Score: almost always/1.00



Comments: The president appoints high court judges on the recommendation of a Judicial Service Commission. In the past, appointments were relatively uncontroversial and generally accepted in political and legal circles.

References: Article 80(1) of the 1990 Constitution

- 37b: *In practice, there are certain professional criteria required for the selection of high court judges.*

Score: almost always/1.00



Comments: Recommendations are made by the Judicial Service Commission and presidential appointments.

References: Article 80(1) of the 1990 Constitution

- 37c: *In law, there is a confirmation process for high court judges (i.e. conducted by the legislature or an independent body).*

Score: yes/1.00



Comments: The president presides over the confirmation process during which judges take a constitutional oath.

References: Article 82(1) of the Namibian Constitution

- 37d: *In law, high court judges are protected from removal without relevant justification.*

Score: yes/1.00



Comments: Judges may only be removed on recommendation of the Judicial Service Commission on the grounds of mental incapacity or gross misconduct.

References: Article 84 (1), (2) and (3) of the 1990 Constitution

- 37e: *In practice, high court judges are protected from political interference.*

Score: almost always/1.00



Comments: Up to now, calls by members of the ruling party to dismiss "unsympathetic" judges and

replace them with "sympathetic" ones have borne no fruit.

References: Institute for Public Policy Research, Political Research Unit

38 Can members of the judiciary be held accountable for their actions?

- 38a: *In law, members of the judiciary are obliged to give reasons for their decisions.*

Score: yes/1.00



Comments: They have to make pronouncements when they adjudicate a case.

References:

- 38b: *In practice, members of the judiciary give reasons for their decisions.*

Score: almost always/1.00



Comments: Judges and magistrates comment and explain extensively when judgments are delivered. The judgments and explanations are formally recorded and published and hence, publicly available. These records have formed the basis of much research into the legal history and jurisprudence of Namibia.

References: Bukurura S, 2002, "Essays on Constitutionalism and the Administration of Justice in Namibia 1990-2002," Out of Africa Publishers: Windhoek; Hintz M (et. al), 2000, "The Constitution at Work: Ten Years of Namibian Nationhood," University of Namibia: Windhoek.

- 38c: *In law, there is an ombudsman (or equivalent agency) for the judicial system.*

Score: no/0.00



Comments: There is no such agency.

References:

- 38d: *In law, the judicial ombudsman (or equivalent agency) is protected from political interference.*

Score: almost never/0.00



Comments: There is no such agency.

References:

- 38e: *In practice, when necessary, the judicial ombudsman (or equivalent agency) initiates investigations.*

Score: almost never/0.00



Comments: There is no such agency.

References:

- 38f: *In practice, when necessary, the judicial ombudsman (or equivalent agency) imposes penalties on offenders.*

Score: almost never/0.00



Comments: There is no such agency.

References:

39 Can citizens access the judicial system?

- 39a: *In practice, citizens earning the median yearly income can afford to bring a legal suit.*

Score: rarely/0.25



Comments: Costs involved are too high for all of the poorer people and most of the people who earn the median yearly income.

References: Interview with Mr. C Daniels, Legal Assistance Centre

- 39b: *In practice, a typical small retail business can afford to bring a legal suit.*

Score: almost never/0.00



Comments: Costs involved are too high for all of the poorer people and most of the people who earn the median yearly income.

References: Interview with Mr. C Daniels, Legal Assistance Centre

- 39c: *In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.*

Score: rarely/0.25



Comments: Only in the more serious cases. More than three-quarters of the defendants in criminal cases do not have any legal representation.

References: Interview with Mr. C Daniels, Legal Assistance Centre

- 39d: *In practice, all citizens have access to a court of law, regardless of geographic location.*

Score: sometimes/0.50



Comments: Courts are located in more densely populated areas where the need is higher. Having a court in an area where very few crimes are committed would be a waste of resources.

References: Interview with Mr. C Daniels, Legal Assistance Centre

40 In law, is there a program to protect witnesses in corruption cases?

Score: no/0.00



Comments: There is no such law.

References: Interview with Mr. C Daniels, Legal Assistance Centre

41 Are judges safe when adjudicating corruption cases?

- 41a: *In practice, in the last year, no high court judges have been physically harmed because of adjudicating corruption cases.*

Score: yes/1.00



Comments: Yes, in the last year, no high court judges have been physically harmed because of adjudicating corruption cases.

References: Institute for Public Policy Research, Democracy and Governance Unit

- 41b: *In practice, in the last year, no high court judges have been killed because of adjudicating corruption cases.*

Score: yes/1.00



Comments: Yes, in the last year, no high court judges have been killed because of adjudicating corruption cases.







References: Institute for Public Policy Research, Democracy and Governance Unit

Namibia: Administration and Civil Service

Sub-Category: IV-1/Civil Service Regulations

	Indicators	Scores
42	Are there national regulations for the civil service?	0.83
43	Is the law governing the administration and civil service effective?	0.66
44	In law, are there conflict of interest regulations for senior civil servants?	1.00
45	Can citizens access the asset disclosure records of senior civil servants?	0.17

Indicator and sub-Indicator Details

42	Are there national regulations for the civil service?
	<p>- 42a: In law, there are regulations requiring an impartial and independent civil service.</p> <p>Score: yes/1.00 </p> <p>Comments: Yes, in law, there are regulations requiring an impartial and independent civil service. References: Public Service Act 13 of 1995 Part 1, Section 2</p> <hr/> <p>- 42b: In law, there are regulations to prevent nepotism within the civil service.</p> <p>Score: yes/1.00 </p> <p>Comments: The law makes it clear that only the qualifications of experience, level of training, relative merit, efficiency and suitability of applicants shall be taken into account. References: Public Service Act 13 of 1995 Part 1, Section 18(3)</p> <hr/> <p>- 42c: In law, there are regulations to prevent cronyism/patronage within the civil service.</p> <p>Score: yes/1.00 </p> <p>Comments: The law makes it clear that only the qualifications of experience, level of training, relative merit, efficiency and suitability of applicants shall be taken into account. References: Public Service Act 13 of 1995 Part 1, Section 18(3)</p> <hr/> <p>- 42d: In law, civil servants convicted of corruption are prohibited from future government employment.</p> <p>Score: no/0.00 </p> <p>Comments: Convicted offenders might be dismissed, but the Act does not prevent future employment in government. Corruption is defined as misconduct punishable by fine or loss of employment. References: Public Service Act 13 of 1995 Part 3, Section 25(l), Section 26 (12a)</p> <hr/> <p>- 42e: In law, there are restrictions for senior public servants entering positions in the private sector.</p> <p>Score: yes/1.00 </p> <p>Comments: No staff member is allowed to do remunerative work outside her employment in the public service, but the Public Service Commission could grant permission for outside employment provided that they are convinced that it would not interfere with the staff member's existing duties. References: Public Service Act 13 of 1995 Part 2, Section 17(1&2)</p> <hr/> <p>- 42f: In law, there are regulations and registers concerning gifts and hospitality for senior civil servants?</p> <p>Score: yes/1.00 </p> <p>Comments: In law, there are regulations and registers concerning gifts and hospitality for senior civil servants. References: Interview with Mr. Kavijene, Public Service Commission; Charter for the Public Service In Africa, Adopted the 3rd Bi-annual Pan African Conference of Ministers of Civil Service, In Windhoek, Feb. 2001 - Article 23.</p>
43	Is the law governing the administration and civil service effective?

- 43a: In practice, civil servants are protected from political interference.

Score: often/0.75



Comments: In practice, civil servants are often protected from political interference.

References: Interview with Mr. Kavijene, Public Service Commission

Peer Review Comments: The government and the ruling party have ample opportunity to interfere with civil servants, e.g. being directed as to which tender to approve despite of the demerits thereof.

- 43b: In practice, civil servants are appointed according to professional criteria.

Score: almost always/1.00



Comments: In practice, civil servants are almost always appointed according to professional criteria.

References: Interview with Mr. Kavijene, Public Service Commission

- 43c: In practice, civil servants are not employed based on nepotism.

Score: sometimes/0.50



Comments: In practice, civil servants are sometimes not employed based on nepotism.

References: Interview with Mr. Kavijene, Public Service Commission

- 43d: In practice, civil servants are not employed based on cronyism/patronage.

Score: often/0.75



Comments: It is problematic to find adequate proof about whether this is or is not done. There are, however, perceptions among some segments of the population that ethnic and/or tribal patronage forms the basis for civil service recruitment. The correlation between perception and reality is uncertain, however.

References: Interview with Mr. Kavijene, Public Service Commission; Keulder C, 2002, "Perceptions of Human Rights and Rights-Related Issues among Namibian Youth: Results from Focus Group Discussions," IPPR Research Report No. 3: Windhoek

- 43e: In practice, civil servants have clear job descriptions.

Score: often/0.75



Comments: It depends on the various ministries.

References: Interview with Mr. Kavijene, Public Service Commission

- 43f: In practice, in the past year, the government has paid civil servants on time.

Score: almost always/1.00



Comments: The government has never forfeited on payments to civil servants.

References: Interview with Mr. Kavijene, Public Service Commission

- 43g: In practice, civil servants convicted of corruption are prohibited from future government employment.

Score: almost never/0.00



Comments: There is no legal provision to prevent convicted civil servants from seeking further employment in the civil service after they have served their sentences.

References: Interview with Mr. Kavijene, Public Service Commission

- 43h: In practice, restrictions on private sector employment for senior public officials are enforced.

Score: sometimes/0.50



Comments: Civil servants are required to declare any other employment.

References: Interview with Mr. Kavijene, Public Service Commission

44 In law, are there conflict of interest regulations for senior civil servants?

Score: yes/1.00



Comments: Yes, in law, there are conflict of interest regulations for senior civil servants.

References: Interview with Mr. Kavijene, Public Service Commission; Charter for the Public Service In Africa, Adopted the 3rd Bi-annual Pan African Conference of Ministers of Civil Service, In Windhoek, Feb. 2001 - Article 24.

45 Can citizens access the asset disclosure records of senior civil servants?

- 45a: In law, citizens can access the asset disclosure records of senior civil servants.

Score: no/0.00

Positive  Negative

Comments: There is no specific law, however, public service employees have nothing to hide and where these records are in place, the public has the right to access them.

References: Interview with Mr. Kavijene, Public Service Commission

Peer Review Comments: In the absence of a law specifically/expressly entitling citizens to access disclosure records of senior civil servants, I am almost certain that "privacy" arguments will be raised to refuse access.

- 45b: In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

Score: < 1 year/0.25

Positive  Negative

Comments: It is up to the Permanent Secretary of the various ministries to grant access to these records.

References: Interview with Mr. Kavijene, Public Service Commission

Peer Review Comments: Senior civil servants, ministers included, seldom or ever disclose their private interests in any public way. A great many of them own assets outside of keeping with their known income. A number of them own large farms and the president owns several. But these are usually disguised via shareholdings in trusts or fronts. The rule has been that no civil servant may engage in a private business venture related to his or her job without written permission from the permanent secretary of that ministry. In practice, where such private interests have been uncovered, it is only certain provisions of the Companies Act of 1973 (relating to disclosure of shareholders' interest, and related sections that obliges auditing firms to disclose such information) that allow a private individual to access such records.

- 45c: In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

Score: rarely/0.25

Positive  Negative

Comments: It is up to the Permanent Secretary of the various ministries to grant access to these records.

References: Interview with Mr. Kavijene, Public Service Commission

Namibia: Administration and Civil Service

Sub-Category: IV-2/Whistle-blowing Measures

	Indicators	Scores
46	Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?	0.25
47	Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?	1.00

Indicator and sub-Indicator Details

46 Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

- 46a: In law, civil servants who report corruption are protected from recrimination or other negative consequences.

Score: no/0.00

Positive  Negative

Comments: No, but this will come into effect once the new bill becomes a law.

References: Anti-Corruption Bill 2003, Chapter 4, Section 52

Peer Review Comments: It is very difficult for any individual to blow the whistle on corruption. While they are supposed to be protected under the new law, in practice such people have found themselves sidelined and marginalized, and often find themselves moved from their previous position. Moreover, the lack of an access to information type of legislation, which has been promised since at least 1995, makes it difficult to investigate such allegations. Failing to substantiate such allegations will lead to libel suits; even where enough evidence had been presented. For example, in the case of a former fisheries minister who owned shares in one group that had its quota allocations handsomely increased, the attitude is still that it is economic affirmative action rather than corruption. The concept of "conflict of interest" is still very blurred in the collective mind of the ruling party.

- 46b: In practice, civil servants who report corruption are protected from recrimination or other

negative consequences.

Score: sometimes/0.50



Comments: Complaints are usually received in the form of anonymous letters.

References: Interview with Mr. Kavijtjene, Public Service Commission

- 46c: In law, private sector employees who report corruption are protected from recrimination or other negative consequences.

Score: no/0.00



Comments: No, but this will come into effect once the new bill becomes a law.

References: Anti-Corruption Bill, 2003, Chapter 4, Section 52

- 46d: In practice, private sector employees who report corruption are protected from recrimination or other negative consequences.

Score: sometimes/0.50



Comments: Complaints are usually received in the form of anonymous letters.

References: Interview with Mr. Kavijtjene, Public Service Commission

47 Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

- 47a: In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

Score: almost always/1.00



Comments: Currently the Public Service Commission acts in this capacity. Once established, the Anti-Corruption Commission will have full-time professional staff.

References: Interview with Mr. Kavijtjene, Public Service Commission

- 47b: In practice, the internal reporting mechanism for public sector corruption receives regular funding.

Score: almost always/1.00



Comments: Once established the Anti-Corruption Commission will receive regular funding.

References: Interview with Mr. Kavijtjene, Public Service Commission

- 47c: In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Score: < 1 month/1.00



Comments: Currently the Public Service Commission acts in this capacity.

References: Interview with Mr. Kavijtjene, Public Service Commission

- 47d: In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Score: almost always/1.00



Comments: Currently the Public Service Commission acts in this capacity.

References: Interview with Mr. Kavijtjene, Public Service Commission

Namibia: Administration and Civil Service

Sub-Category: IV-3/Procurement

	Indicators	Scores
48	Is the public procurement process effective?	0.53
49	Can citizens access the public procurement process?	0.80

Indicator and sub-Indicator Details

48	Is the public procurement process effective?
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- 48a: In law, there are conflict of interest regulations for public procurement officials.

Score: yes/1.00



Comments: Yes, there are conflict of interest regulations for public procurement officials.

References: Tender Board of Namibia Act, 1996, Section 6

- 48b: In practice, the conflict of interest regulations for public procurement officials are enforced.

Score: often/0.75



Comments: In practice, the conflict of interest regulations for public procurement officials are often enforced.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 48c: In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

Score: no/0.00



Comments: Members of the Tender Board who have an interest in or stand to benefit from the allocation of a tender have to disclose their interests to the Tender Board. Failure to do so carries a penalty of up to N\$500,000 or a jail sentence not exceeding 10 years. However, no enforcement mechanism exists.

References: Tender Board of Namibia Act, 1996, Art. 6

Peer Review Comments: Contracting ministries often write tender specifications in such a manner that it would only suit one or two companies; while there is nothing per se wrong with it (for example when they want a specific system that is only supplied by one or two companies), the scope for abuse of such practice is large. Weakness in law enforcement often also leads to people getting away with bid rigging. The business community is so small that businessmen know in advance who else could also enter the bidding for a specific tender. This is often allegedly the case with food supply contracts for boarding schools and drought/emergency food aid contracts. Last year, the government spent N\$127 million on distributing such food aid, while a previous contractor, who had run the program successfully for several years prior to that, had bid N\$32 million for the same job.

- 48d: In law, all major procurements require competitive bidding.

Score: yes/1.00



Comments: All major procurements require competitive bidding.

References: Tender Board of Namibia Act, 1996, Section 11

Peer Review Comments: The military is exempt; whether by law or practice is not clear.

- 48e: In law, strict formal requirements limit the extent of sole sourcing.

Score: no/0.00



Comments: The Tender Board can decide not to invite tenders on a specific procurement transaction, but reasons for not doing so shall be kept on record.

References: Tender Board of Namibia Act, 1996, Section 17

- 48f: In law, unsuccessful bidders can instigate an official review of procurement decisions.

Score: no/0.00



Comments: There is no such law.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 48g: In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Score: yes/1.00



Comments: Yes, by filing an application for judicial review by the high court.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 48h: In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in procurement bids.

Score: no/0.00



Comments: There is no such law.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 48i: In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Score: almost always/1.00



Comments: Guilty companies are blacklisted.

References: Interview with Leonie du Toit, Tender Board of Namibia

49 Can citizens access the public procurement process?

- 49a: *In law, citizens can access public procurement regulations.*

Score: yes/1.00



Comments: Yes, in law, citizens can access public procurement regulations.

References: Tender Board of Namibia Act, 1996, Section 15, Subsection (7)

- 49b: *In practice, citizens can access public procurement regulations within a reasonable time period.*

Score: < 1 month/1.00



Comments: Any person who wants to tender for a government contract can access the necessary regulations from the Tender Board's offices.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 49c: *In practice, citizens can access public procurement regulations at a reasonable cost.*

Score: almost always/1.00



Comments: In practice, citizens can almost always access public procurement regulations at a reasonable cost.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 49d: *In practice, major public procurements are widely advertised.*

Score: almost never/0.00



Comments: Successful bidders are notified privately, but the public or competitors can inquire about the outcome.

References: Interview with Leonie du Toit, Tender Board of Namibia

- 49e: *In practice, citizens can access the results of major public procurement bids.*

Score: almost always/1.00



Comments: In practice, citizens can almost always access the results of major public procurement bids.

References: Interview with Leonie du Toit, Tender Board of Namibia

Peer Review Comments: It is difficult for the public to access major procurement contracts if they do not even know that such contracts have been called for. Contracting ministries often write tender specifications up in such a manner that it would only suit one or two companies; while there is nothing per se wrong with it (when they for example want a specific system that is only supplied by one or two companies), the scope for abuse of such practice is large.

Namibia: Administration and Civil Service

Sub-Category: IV-4/Privatization

	Indicators	Scores
50	Is the privatization process effective?	0.00
51	Can citizens access the terms and conditions of privatization bids?	0.00

Indicator and sub-Indicator Details

50 Is the privatization process effective?

- 50a: *In law, all businesses are eligible to compete for privatized state assets.*

Score: no/0.00



Comments: Up to the present, privatization efforts in Namibia have taken the form of commercialization

and contracting out. The government does not envision the sale of state assets or utilities in the near future.

References: South African Labour Bulletin, Vol. 26 (1), 2002; Institute for Public Policy Research, Economic Research Unit

Peer Review Comments: With SWAPO's socialist history and labor union roots, privatization is an anathema. Commercialization, on the other hand, has proven to be quite popular in some ways. Services like communications (telephone and cellular services) have provided lucrative investment opportunities for the well-connected. It also allowed for extension of the party patronage system.

- 50b: In law, there are conflict of interest regulations for government officials involved in privatization.

Score: no/0.00



Comments: Up to the present, privatization efforts in Namibia have taken the form of commercialization and contracting out. The government does not envision the sale of state assets or utilities in the near future.

References: South African Labour Bulletin, Vol. 26 (1), 2002; Institute for Public Policy Research, Economic Research Unit

- 50c: In practice, conflict of interest regulations for government officials involved in privatization are enforced.

Score: no/0.00



Comments: Up to the present, privatization efforts in Namibia have taken the form of commercialization and contracting out. The government does not envision the sale of state assets or utilities in the near future.

References: South African Labour Bulletin, Vol. 26 (1), 2002; Institute for Public Policy Research, Economic Research Unit

51 Can citizens access the terms and conditions of privatization bids?

- 51a: In law, citizens can access the terms and conditions of privatization bids.

Score: no/0.00



Comments: Up to the present, privatization efforts in Namibia have taken the form of commercialization and contracting out. The government does not envision the sale of state assets or utilities in the near future.

References: South African Labour Bulletin, Vol. 26 (1), 2002; Institute for Public Policy Research, Economic Research Unit

- 51b: In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

Score: > 1 year/0.00



Comments: Up to the present, privatization efforts in Namibia have taken the form of commercialization and contracting out. The government does not envision the sale of state assets or utilities in the near future.

References: South African Labour Bulletin, Vol. 26 (1), 2002; Institute for Public Policy Research, Economic Research Unit

- 51c: In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

Score: almost never/0.00



Comments: Up to the present, privatization efforts in Namibia have taken the form of commercialization and contracting out. The government does not envision the sale of state assets or utilities in the near future.

References: South African Labour Bulletin, Vol. 26 (1), 2002; Institute for Public Policy Research, Economic Research Unit

Namibia: Oversight and Regulatory Mechanisms

Sub-Category: V-1/National Ombudsman

	Indicators	Scores
52	In law, is there a national ombudsman, public protector or equivalent agency covering the entire public sector?	1.00
53	Is the national ombudsman effective?	0.92
54	Can citizens access the reports of the ombudsman?	1.00

Indicator and sub-Indicator Details

52 In law, is there a national ombudsman, public protector or equivalent agency covering the entire public sector?

Score: yes/1.00



Comments: Replacing Adv. Bience Gawanas, Judge Simpson Mtambanengwe has been appointed as acting ombudsman until March 2004.

References: Article 89 (1) of the 1990 Constitution; "The Namibian, " 29 Sept. 2003

Peer Review Comments: The question arises why, if there is a constitutionally protected Office of the Ombudsman, all public enquiries into alleged corruption have invariably been performed by various Presidential Commissions of Enquiry. Currently, there is one underway into the workings of the Roads Authority, and before that, the Social Security Commission. There have been nearly half-a-dozen since independence, each with its own restrictive set of references, which normally limits political fall-out. If the same funding for said Commissions of Enquiry had been allocated to the Ombudsman, they would not be so woefully under-staffed. It is indicative of increasing centralization of power in the office of the president, which operates by means of patronage. Clearly, a powerful and proactive ombudsman is not in the ruling party's interest.

53 Is the national ombudsman effective?

- 53a: *In law, the ombudsman is protected from political interference.*

Score: yes/1.00



Comments: Yes, in law, the ombudsman is protected from political influence. This does not mean that the institution is not vulnerable to political interference though.

References: Article 89 (2) and (3) of the 1990 Constitution

- 53b: *In practice, the ombudsman is protected from political interference.*

Score: often/0.75



Comments: Its institutional autonomy is compromised by its dependence on government for staff and finances. The Office of the Ombudsman is also administratively and logistically linked to the Ministry of Justice.

References:

- 53c: *In practice, the ombudsman is protected from removal without relevant justification.*

Score: almost always/1.00



Comments: The ombudsman can only be removed from office upon recommendation of the Public Service Commission on the basis of mental incapacity or gross misconduct.

References: Article 94(1)(2) of the Namibian Constitution

- 53d: *In practice, the agency has a professional, full-time staff.*

Score: often/0.75



Comments: The staff component is small and that impacts on the number of cases taken for investigation.

References:

- 53e: *In practice, agency appointments support the independence of the agency.*

Score: often/0.75



Comments: The Office of the Ombudsman may acquire civil service staff or independent consultants or full-time staff from outside the civil service. The most serious staff constraint is not so much the fact that they are drawn from the civil service, but that the office is seriously understaffed.

References: Ombudsman Act of 1990; Bukurura S, 2002, "Essays on Constitutionalism and the Administration of Justice in Namibia 1990-2002," Out of Africa Publishers: Windhoek

- 53f: In practice, the agency receives regular funding.

Score: almost always/1.00



Comments: In practice, the agency almost always receives regular funding.

References: Ombudsman Act of 1990

- 53g: In practice, the agency makes regular reports to the legislature.

Score: almost always/1.00



Comments: The ombudsman makes annual reports to Parliament and also special reports, should the need arise. These reports not only contain a breakdown of the agency's financial position, but also list its activities and successes. The previous incumbent also submitted a five-year development plan for the institution.

References: Bukurura S, 2002, "Essays on Constitutionalism and the Administration of Justice in Namibia 1990-2002," Out of Africa Publishers: Windhoek

- 53h: In practice, the government acts on the findings of the agency.

Score: almost always/1.00



Comments: Relations with the government appear to be good but delays occur. Failure of government agencies to act upon the recommendations of the ombudsman is reported as is required by law in the report tabled before Parliament.

References: Gawanas B, 2002, Office of the Ombudsman: 1990-2000 in Hintz O (et. al), "The Constitution at Work: Ten Years of Namibian Nationhood," University of Namibia: Windhoek

- 53i: In practice, the agency acts on citizen complaints within a reasonable time period.

Score: < 1 month/1.00



Comments: Some 3,166 complaints were received by the Office of the Ombudsman between 1997 and 1999. Of these, 757 were enquiries and 1,319 cases required investigation. The remaining cases did not fall under the jurisdiction of the office. Responsiveness is seen as a key element to attract support for the institution, but money and staff shortages invariably delay the speed of investigations.

References: Gawanas B, 2002, Office of the Ombudsman: 1990-2000 in Hintz O (et.al), "The Constitution at Work: Ten Years of Namibian Nationhood," University of Namibia: Windhoek; Bukurura S, 2002, "Essays on Constitutionalism and the Administration of Justice in Namibia" 1990-2002, Out of Africa Publishers: Windhoek

54 Can citizens access the reports of the ombudsman?

- 54a: In law, citizens can access reports of the ombudsman.

Score: yes/1.00



Comments: In law, citizens can access reports of the ombudsman.

References:

- 54b: In practice, citizens can access the reports of the ombudsman within a reasonable time period.

Score: < 1 month/1.00



Comments: Annual reports and special reports are available on the Web site of the ombudsman and also in hard copy at the offices of the ombudsman.

References: <http://www.ombudsman.org.na>

- 54c: In practice, citizens can access the reports of the ombudsman at a reasonable cost.

Score: almost always/1.00



Comments: Reports are available free of charge.







References:

Namibia: Oversight and Regulatory Mechanisms

Sub-Category: V-2/Supreme Audit Institution

	Indicators	Scores
55	In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?	1.00
56	Is the supreme audit institution effective?	0.86
57	Can citizens access reports of the supreme audit institution?	0.67

Indicator and sub-Indicator Details

55	In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?
	<p>Score: yes/1.00 </p> <p>Comments: Yes, it is the Audit General (currently Junias Etuna Kandjeke). References: Article 127 (1) of the 1990 Constitution; "The Namibian," 16 Dec. 2003 Peer Review Comments: At present, audits are three years late. In the majority of local authorities, financial mayhem has ruled for the past two years, with many of them defaulting on critical payments, like that for electricity and water from the parastatal bulk suppliers. The original legislation did perhaps not envisage that the sheer volume of matters deemed worthy of investigation would be so large.</p>
56	Is the supreme audit institution effective?
	<p>- 56a: In law, the supreme audit institution is protected from political interference.</p> <p>Score: yes/1.00 </p> <p>Comments: According to the Constitution, the auditor general is not a member of the public service. He is appointed by Parliament upon the recommendation of the president and there is no age restriction. Other mechanisms that ensure political independence include special procedures for removal, fixed tenure, and immunity from others in the execution of his duties and independence from framework plans. References: Article 127 (1) of the 1990 Constitution</p> <p>- 56b: In practice, the head of the agency is protected from removal without relevant justification.</p> <p>Score: almost always/1.00 </p> <p>Comments: Two-thirds of the vote in Parliament is required to dismiss the auditor general. Reasons could include gross misconduct, mental incapacity or prolonged illness. References: Article 127 (4) of the 1990 Constitution</p> <p>- 56c: In practice, the agency has a professional, full-time staff.</p> <p>Score: almost always/1.00 </p> <p>Comments: Although the auditor general has a permanent staff, the staff is small. The agency can, however, hire external auditors and/or consultants through the Public Service Commission. References: Office of the Auditor General: Namibia, http://www.noa.gov.uk/intosai/edp/mandates_nov2002/writeups/namibia</p> <p>- 56d: In practice, agency appointments support the independence of the agency.</p> <p>Score: almost always/1.00 </p> <p>Comments: All recruitment is done by the Public Service Commission on recommendation of the state audit Institution. References: Office of the Auditor General: Namibia, http://www.noa.gov.uk/intosai/edp/mandates_nov2002/writeups/namibia</p> <p>- 56e: In practice, the agency receives regular funding.</p> <p>Score: almost always/1.00 </p> <p>Comments: After participating in the budget hearings, the Office of the Auditor General is allocated a share of the national budget each year.</p>

- 56f: In practice, the agency makes regular reports to the legislature.

Score: sometimes/0.50



Comments: All accounts are presented to the minister(s) as soon as possible after the end of the financial year, but not later than the end of the following financial year. The minister must table the reports in the National Assembly within 30 days of receipt, if the Assembly is in session. If the Assembly is not in session, reports have to be tabled within 14 days of its commencement. If the minister fails to do so, the AG will forward copies to the Speaker of the Assembly. In practice these prescriptions are adhered to, but reports are currently three years late. The most recent report is for the 1999/2000 financial year.

References: State Finance Act 1991 Article 27(1,4,5); Interview with Robin Sherbourne, IPPR Economic Policy Program

- 56g: In practice, the government acts on the findings of the agency.

Score: sometimes/0.50



Comments: The powers of the AG are limited. Where fraud is detected, the case is reported to the police who confiscate records. It does not have the power to force the government investigating agencies to perform investigations, but can only request them to do so. It also does not have the power to take punitive action or impose surcharges.

References: State Finance Act 1991 Article 27(1,4,5); Interview with Robin Sherbourne, IPPR Economic Policy Program

57 Can citizens access reports of the supreme audit institution?

- 57a: In law, citizens can access reports of the agency.

Score: yes/1.00



Comments: Yes, once these reports are tabled in Parliament.

References:

- 57b: In practice, citizens can access the agency reports within a reasonable time period.

Score: > 1 year/0.00



Comments: Only reports that have been tabled in Parliament are available. The latest report dates back three years.

References: Interview with Robin Sherbourne, IPPR Economic Policy Program

- 57c: In practice, citizens can access the agency reports at a reasonable cost.

Score: almost always/1.00



Comments: Reports are available at a nominal cost.

References: Office of the Auditor General

Namibia: Oversight and Regulatory Mechanisms

Sub-Category: V-3/Taxes and Customs

	Indicators	Scores
58	In law, is there a national tax collection agency?	1.00
59	Is the tax collection agency effective?	0.92
60	In practice, are tax laws enforced uniformly and without discrimination?	0.50
61	In law, is there a national customs and excise agency?	1.00
62	Is the customs and excise agency effective?	1.00
63	In practice, are customs and excise laws enforced uniformly and without discrimination?	0.75

Indicator and sub-Indicator Details

58 In law, is there a national tax collection agency?

Score: yes/1.00

Positive



Negative

Comments: Yes, there is the Department Inland Revenue in the Ministry of Finance.**References:** Income Tax Act 24 of 1981**Peer Review Comments:** Regarding tax disputes, there is no specific agency within or outside of the Ministry of Finance other than the special court that resolves tax disputes. Normal legal procedures are thus used to resolve disputes. Tax payers can lodge an objection within 90 days of receipt of notice of assessment. If the objection is not handled to their satisfaction, Article 73 of the Income Tax Act states that a special court can be constituted to hear the dispute.**59 Is the tax collection agency effective?****- 59a: In practice, the tax collection agency has a professional, full-time staff.**

Score: often/0.75

Positive



Negative

Comments: It is staffed as an integrated department of the Ministry of Finance. The general feeling is that the department is understaffed. Currently 340 officials deal with the returns of some 180,000 individual tax payers, 200,000 sole proprietors, 14,000 individuals registered for VAT and 20,000 companies.**References:** Mr. Jack Le Roux, Department of Inland Revenue; Interview with Mr. Mihe Gaomab, Bank of Namibia.**- 59b: In practice, the agency receives regular funding.**

Score: almost always/1.00

Positive



Negative

Comments: It receives its annual budget allocation as part of the Ministry of Finance.**References:** Mr. Jack Le Roux, Department of Inland Revenue; Interview with Mr. Mihe Gaomab, Bank of Namibia.**- 59c: In practice, the agency makes regular reports to the legislature.**

Score: almost always/1.00

Positive



Negative

Comments: It does not report to Parliament independently but as part of the Ministry of Finance.**References:** Mr. Jack Le Roux, Department of Inland Revenue; Interview with Mr. Mihe Gaomab, Bank of Namibia.**60 In practice, are tax laws enforced uniformly and without discrimination?**

Score: sometimes/0.50

Positive



Negative

Comments: In practice, tax laws are often enforced uniformly and without discrimination.**References:** Mr. Jack Le Roux, Department of Inland Revenue; Interview with Mr. Mihe Gaomab, Bank of Namibia.**Peer Review Comments:** The Department is understaffed and, as a result, probably open to abuse by over-worked and under-paid front counter officials collaborating with individuals to understate tax liabilities.**61 In law, is there a national customs and excise agency?**

Score: yes/1.00

Positive



Negative

Comments: The Customs and Excise Agency is a department within the Ministry of Finance.**References:** Customs and Excise Act 20 of 1998; Interview with Mr. Titus, Department of Customs and Excise; Interview with Mr. Mihe Gaomab, Bank of Namibia.**Peer Review Comments:** Although there is no special agency handling disputes within the Ministry of Finance, legal recourse is available through the courts.**62 Is the customs and excise agency effective?****- 62a: In practice, the customs and excise agency has a professional, full-time staff.**

Score: almost always/1.00

Positive



Negative

Comments: It is staffed as a department in the Ministry of Finance.**References:** Interview with Mr. Titus, Department of Customs and Excise; Interview with Mr. Mihe Gaomab, Bank of Namibia.**- 62b: In practice, the agency receives regular funding.**

Score: almost always/1.00

Positive



Negative

Comments: It is allocated a share of the National Budget as part of the Ministry of Finance.**References:** Interview with Mr. Titus, Department of Customs and Excise; Interview with Mr. Mihe

Gaomab, Bank of Namibia.

- 62c: *In practice, the agency makes regular reports to the legislature.*

Score: almost always/1.00



Comments: It does not report independently from the Ministry of Finance.

References: Interview with Mr. Titus, Department of Customs and Excise; Interview with Mr. Mihe Gaomab, Bank of Namibia.

63 In practice, are customs and excise laws enforced uniformly and without discrimination?

Score: often/0.75



Comments: In practice, customs and excise laws are often enforced uniformly and without discrimination.

References: Interview with Mr. Titus, Department of Customs and Excise; Interview with Mr. Mihe Gaomab, Bank of Namibia.

Peer Review Comments: The current system relies on the integrity of customs officials, who are living in isolated little places like Ariamsvlei, Noordoewer, etc. Unless such officials are regularly rotated, corruption can arise, such as turning a blind eye to an obviously understated cargo manifesto, etc.

Namibia: Oversight and Regulatory Mechanisms

Sub-Category: V-4/Financial Sector Regulation

	Indicators	Scores
64	In law, is there a central bank?	1.00
65	In practice, is the central bank independent of the executive?	0.50
66	In law, is there a financial regulatory agency overseeing publicly listed companies?	1.00
67	Is the financial regulatory agency effective?	0.90
68	Can citizens access the financial records of publicly listed companies?	0.83
69	Are business licenses available to all citizens?	1.00

Indicator and sub-Indicator Details

64 In law, is there a central bank?

Score: yes/1.00



Comments: Yes, there is the Bank of Namibia.

References: Article 128 (1) of the 1990 Constitution

Peer Review Comments: All policy decisions of the Central Bank are withheld from the public domain until the bank has cleared it for public consumption. Not all policy decisions are cleared for public consumption and sometimes only some aspects of a specific policy are cleared.

65 In practice, is the central bank independent of the executive?

Score: sometimes/0.50



Comments: The Ministry of Finance is responsible for all policy decisions

References: Interview with Mr. Mihe Gaomab, Bank of Namibia.

Peer Review Comments: The bank is secretive, and beholden to the Ministry of Finance, and hence, political influence. My feeling is that it is generally clean, but that the bank is too shielded from public accountability to call transparent.

66 In law, is there a financial regulatory agency overseeing publicly listed companies?

Score: yes/1.00



Comments: The Namibia Financial Institutions Supervisory Authority (NAMFISA) established in 2001 regulates among others the Namibia Stock Exchange. The Stock Exchange oversees publicly listed companies.

References: <http://www.namfisa.com.na>

67 Is the financial regulatory agency effective?

- 67a: *In law, the financial regulatory agency is protected from political interference.*

Score: yes/1.00



Comments: Like the Bank of Namibia, NAMFISA is autonomous in its daily operations but subject to the Ministry of Finance for policy decisions.

References: Interview with Mr. Mihe Gaomab, Bank of Namibia; Robin Shebourne, Institute for Public Policy Research, Economic Policy Unit

- 67b: In practice, the agency has a professional, full-time staff.

Score: almost always/1.00



Comments: In practice, the agency almost always has a professional, full-time staff.

References: <http://www.namfisa.com.na>

- 67c: In practice, the agency receives regular funding.

Score: almost always/1.00



Comments: NAMFISA received government funding during the set-up phase. Ultimately, it will be financially independent from government and sustained by levy charges.

References: <http://www.namfisa.com.na>

- 67d: In practice, when necessary, the financial regulatory agency independently initiates investigations.

Score: almost always/1.00



Comments: It has investigated micro lenders, for example.

References: <http://www.namfisa.com.na>

- 67e: In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

Score: sometimes/0.50



Comments: By law it could.

References: <http://www.namfisa.com.na>

68 Can citizens access the financial records of publicly listed companies?

- 68a: In law, citizens can access the financial records of publicly listed companies.

Score: yes/1.00



Comments: Yes, citizens can access the records by means of published annual reports.

References: E-mail correspondence with Marc Backhaus, Information Officer of the Namibian Stock Exchange

- 68b: In practice, the financial records of publicly listed companies are regularly updated.

Score: almost always/1.00



Comments: Publicly listed companies are required to update their financial records annually.

References: Correspondence with Mr. M Backhaus, Namibian Stock Exchange; Interview with Mr. Mihe Gaomab, Bank of Namibia.

- 68c: In practice, the financial records of publicly listed companies are audited according to international accounting standards.

Score: almost always/1.00



Comments: Financial records of publicly listed companies are almost always audited according to GAAP.

References: Correspondence with Mr. M Backhaus, Namibian Stock Exchange

- 68d: In practice, citizens can access the records of disciplinary decisions involving publicly-listed companies.

Score: almost never/0.00



Comments: The Namibia Financial Institution Supervisory Authority Act, n. 3 of 2001, places prohibitions on the information that can be disclosed to the public. While information supplied by the public in terms of irregularities or other complaints are kept entirely confidential and taken seriously, NAMFISA is not allowed to disclose what they are doing with that information or what actions are being taken.

References: <http://www.namfisa.com.na>

Peer Review Comments: Non-disclosure of information regarding irregularities is a serious weakness. If there are crooks in the financial sector, the public deserves to know about it immediately.

- 68e: In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

Score: < 1 month/1.00



Comments: Once published, citizens can access these records almost immediately.

References: Robin Shebourne, Institute for Public Policy Research, Economic Policy Unit

- 68f: In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

Score: almost always/1.00



Comments: Citizens can almost always access the financial records of publicly listed companies at a reasonable cost.

References: Robin Sherbourne, Institute for Public Policy Research, Economic Policy Unit

69 Are business licenses available to all citizens?

- 69a: In law, business licenses are not restricted to domestically-owned enterprises.

Score: yes/1.00



Comments: Foreign enterprises are required to appoint a local agent, as well as a local auditor, and to maintain statutory records in Namibia. If kept outside Namibia, returns sufficient for the preparation and audit of the annual financial statements must be sent to Namibia.

References: Companies Act 61 of 1973, Section 322

- 69b: In law, a complaint mechanism exists if a business license request is denied.

Score: yes/1.00



Comments: Yes, in law, a complaint mechanism exists if a business license request is denied.

References: Companies Act 63 of 1973

- 69c: In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

Score: < 1 month/1.00



Comments: Citizens can obtain any necessary business license within less than one month.

References: Directorate of Internal Trade, Division Registration of Companies

Peer Review Comments: The Registrar of Companies is charged with the responsibility of enforcing the Companies Act, as well as the appropriate legislation under the Closed Corporations Act. However, apart from being totally under-staffed, they also do not have the means to check on veracity of applications; if, for example, the applicant has a criminal record (which would bar him from becoming a director of any company), they would not know about it (and in reality, do not).

- 69d: In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

Score: almost always/1.00



Comments: For a small import business, the cost of the forms would be N\$10 and the required revenue stamps would cost N\$30.








References: Directorate of Internal Trade, Division Registration of Companies

Namibia: Anti-Corruption Mechanisms and Rule of Law

Sub-Category: VI -1/Anti-Corruption Law

	Indicators	Scores
70	In law, is there legislation criminalizing corruption?	1.00
71	In practice, are anti-corruption laws enforced?	0.00

Indicator and sub-Indicator Details

70	In law, is there legislation criminalizing corruption?
	<p>- 70a: <i>In law, attempted corruption is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Namibia's Anti-Corruption Bill became an Act on Aug. 4, 2003. The Proposed Anti-Corruption Commission will only be established in the new financial year, i.e. March or April 2004. References: Anti-Corruption Bill, 2003, Chapter 4, Section 46</p>
	<p>- 70b: <i>In law, extortion is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Namibia's Anti-Corruption Bill became an Act on Aug. 4, 2003. The Proposed Anti-Corruption Commission will only be established in the new financial year, i.e. March or April 2004. References: Anti-Corruption Bill, 2003, Chapter 4, Section 46</p>
	<p>- 70c: <i>In law, offering a bribe (i.e. active corruption) is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Namibia's Anti-Corruption Bill became an Act on Aug. 4, 2003. The Proposed Anti-Corruption Commission will only be established in the new financial year, i.e. March or April 2004. References: Anti-Corruption Act, 2003, Chapter 4, Section 38</p>
	<p>- 70d: <i>In law, receiving a bribe (i.e. passive corruption) is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Namibia's Anti-Corruption Bill became an Act on Aug. 4, 2003. The Proposed Anti-Corruption Commission will only be established in the new financial year, i.e. March or April 2004. References: Anti-Corruption Act, 2003, Chapter 4, Section 38</p>
	<p>- 70e: <i>In law, bribing a foreign official while in domestic territory is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Namibia's Anti-Corruption Bill became an Act on Aug. 4, 2003. The Proposed Anti-Corruption Commission will only be established in the new financial year, i.e. March or April 2004. References: Anti-Corruption Act, 2003, Chapter 4, Section 40</p>
	<p>- 70f: <i>In law, using public resources for private gain is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: Namibia's Anti-Corruption Bill became an Act on Aug. 4, 2003. The Proposed Anti-Corruption Commission will only be established in the new financial year, i.e. March or April 2004. References: Anti-Corruption Act, 2003, Chapter 4, Section 38</p>
	<p>- 70g: <i>In law, using confidential state information for private gain is illegal.</i></p> <p>Score: yes/1.00 </p> <p>Comments: This is also covered by Tender Board and Regional and Local Authorities legislation.</p>

References: Interview with C. Daniels, Legal Assistance Centre

- 70h: *In law, money laundering is illegal.*

Score: yes/1.00



Comments: Not as such, but someone found guilty of money laundering could be charged for other crimes, i.e., profits procured through criminal activities.

References: Interview with C. Daniels, Legal Assistance Centre

- 70i: *In law, conspiracy to commit a crime (i.e. organized crime) is illegal.*

Score: yes/1.00



Comments: It is covered by common law. More detailed legislation to deal with this specific issue is currently being drafted.

References: Interview with C. Daniels, Legal Assistance Centre

71 In practice, are anti-corruption laws enforced?

Score: almost never/0.00



Comments: The Anti-Corruption Act was only implemented in 2003 and thus it will take some time before it will be possible to determine whether or not the legislation is being enforced.

References: Institute for Public Policy Research, Political Research Unit

Peer Review Comments: The bromide test is going to be the Anti-Corruption Commission and its effectiveness.

Namibia: Anti-Corruption Mechanisms and Rule of Law

Sub-Category: V1-2/Anti-Corruption Agency

	Indicators	Scores
72	In law, is there an agency (or group of agencies) with a legal mandate to address corruption?	1.00
73	Is the main anti-corruption agency effective?	0.11
74	Can citizens access the main anti-corruption agency?	0.00

Indicator and sub-Indicator Details

72 In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Score: yes/1.00



Comments: The Anti-Corruption Commission is to be established once the Anti-Corruption Law becomes a bill, probably by March or April 2004. Until the Anti-Corruption Commission comes into place, the Office of the Ombudsman and the Office of the Auditor-General serve in this function. One of the activities of the Ombudsman includes the National Integrity Promotion Program. The president can also establish special commissions of investigation to deal with specific cases.

References: Anti-Corruption Bill, 2003, Chapter 2, Section 2

73 Is the main anti-corruption agency effective?

- 73a: *In law, the agency is protected from political interference.*

Score: yes/1.00



Comments: The director and deputy director will be appointed by Parliament, but its complete autonomy might be undermined (although it is not clear yet) by the fact that it will be a public service agency.

References: Anti-Corruption Bill, 2003, Chapter 2, Section 2

- 73b: *In practice, the agency is protected from political interference.*

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004. However, the Anti-Corruption Bill Chapter 2 (2) states that an independent and impartial body known as the Anti-Corruption Commission will be established. However, the Anti-Corruption Bill also states that the Anti-Corruption Commission is an agency in the service of the public service as provided for in the Public Service Act No 13 of 1995. And, the service conditions of the director and deputy director are determined by the president with the confirmation of the National Assembly (Anti-Corruption Bill 2003, Chapter 2 (7)).

References:

Peer Review Comments: Responses are skewed by the fact that agency not yet established.

- 73c: In practice, the head of the agency is protected from removal without relevant justification.

Score: almost never/0.00



Comments: Chapter 2 (9) of the Anti-Corruption Bill states: should the question of the termination of the director of the Anti-Corruption Commission arise, the president must notify the chief justice who, after consultation with the Judicial Service Commission must within 30 days appoint a board to inquire into the matter and submit a report and recommendations to the president. It furthermore states that the appointment of the director may be terminated if he or she has failed to comply with a condition of his or her appointment, is unable to perform the functions of his or her office by reason of mental or physical infirmity, fails to perform efficiently the duties of his or her office, or has been guilty of misconduct.

References:

- 73d: In practice, appointments to the agency are based on professional criteria.

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004. However, chapter 2 (4) of the Anti-Corruption Bill states that the National Assembly appoints the director and deputy director of the Anti-Corruption Commission upon recommendation of the president. Such a person should be of good character and high integrity who also possesses knowledge or experience relevant to the functions of the commission. Chapter 2 (5) of the Anti-Corruption Bill disqualifies the following persons for appointment as director or deputy director of the Anti-Corruption Commission: persons who are not Namibian citizens, anyone who is member of the National Assembly or National Council, members of local authority or regional councils, unrepentant insolvents or any persons who have been convicted of, among others, fraud, theft, forgery, perjury or any other offence for which a sentence of imprisonment without the option of a fine has been imposed, excluding offences of political nature committed before the date of Namibia's independence. Furthermore, such a person may not be a paid employee of any business, take part in the management of the affairs of any political party or engage in the day-to-day management of any business. Other employees of this commission will be appointed according to the requirements included in the Public Service Act No. 13 of 1995.

References:

- 73e: In practice, the agency has a professional, full-time staff.

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004, however, the commission will consist of a director, a deputy director as well as other staff members which include investigating officers and special investigators appointed on a temporary basis.

References:

- 73f: In practice, the agency receives regular funding.

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004, however, no mention is made of funding arrangements in the Act itself, but the Anti-Corruption Commission will be funded by the government.

References:

- 73g: In practice, the agency makes regular reports to the legislature.

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004.

References:

- 73h: In practice, the agency has sufficient powers to carry out its mandate.

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004, however Chapter 3 (22 – 31)

of the Anti-Corruption Bill states that the commission will have the powers to enter and search under or without a warrant, to obtain information concerning assets, investigate accounts at financial institutions and arrest. However, prosecution is left to the prosecutor general.

References:

- 73i: *In practice, when necessary, the agency independently initiates investigations.*

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004.

References:

74 Can citizens access the main anti-corruption agency?

- 74a: *In practice, the main anti-corruption agency acts on complaints within a reasonable time period.*

Score: > 1 year/0.00



Comments: This agency will only be fully functional by March or April 2004.

References:

- 74b: *In practice, citizens complain to the agency without fear of reprimand.*

Score: almost never/0.00



Comments: This agency will only be fully functional by March or April 2004, so it is not possible to provide an answer.

References:

Namibia: Anti-Corruption Mechanisms and Rule of Law

Sub-Category: VI -3/Rule of Law and Access to Justice

	Indicators	Scores
75	In practice, does the criminal justice process function according to the rule of law?	0.75
76	In law, is there a general right of appeal?	1.00
77	Are citizens protected from detention without trial?	0.50
78	Are individual economic rights guaranteed?	1.00

Indicator and sub-Indicator Details

75 In practice, does the criminal justice process function according to the rule of law?

Score: often/0.75



Comments: The criminal justice process is prescribed by a number of rights contained in the Namibian Constitution. These deal with the right to a fair trial, protection against arbitrary arrest and detention, the presumption that suspects are innocent until proven guilty, right to legal aid and adequate facilities to prepare a defense, and the right to a speedy trial.

References: Interview with C Daniels Legal Assistance Centre; The Constitution of the Republic of Namibia of 1990.

Peer Review Comments: Thus far the rule of law has remained intact, at least in the spirit if not the letter of the law. However, the court rolls, especially the High Court, which must hear cases in financial disputes exceeding R20,000, are extremely full and a matter can take up to two years to be heard.

76 In law, is there a general right of appeal?

Score: yes/1.00



Comments: In law, there is a general right of appeal.

References: Chapter 9 of the Namibian Constitution

77 Are citizens protected from detention without trial?

- 77a: *In practice, the government does not detain anyone without charging them for more than 48 hours.*

Score: often/0.75



Comments: Persons who are arrested in outlying areas might have to be transported to another area where there is a court, but these are exceptions. In the larger towns, persons are generally not detained for more than 48 hours.

References: Interview with C Daniels, Legal Assistance Centre

- 77b: *In practice, the government does not detain anyone accused of petty theft for longer than two weeks without a resolution in a court trial.*

Score: rarely/0.25



Comments: Cases are regularly postponed and in some cases a person can spend up to 18 months awaiting trial, even for petty crimes.

References: Interview with C Daniels, Legal Assistance Centre

78 Are individual economic rights guaranteed?

- 78a: *In law, individual property rights are protected*

Score: yes/1.00



Comments: Yes, in law, individual property rights are protected.

References: Article 16 (1) of the 1990 Constitution

- 78b: *In practice, individual property rights are protected.*

Score: almost always/1.00



Comments: Namibia has not had Zimbabwe style land invasions, although recently a trade union threatened to do so. The police, government and the ruling party (SWAPO) all opposed these threats.

References: "The Namibian" newspaper; "Die Republikein," "The New Era" newspaper (various editions week of 3-8 November 2003)

Peer Review Comments: While there has been some public clamoring not to respect private property rights, these have been respected so far by government.

- 78c: *In practice, the government does not expropriate property without appropriate compensation.*

Score: almost always/1.00



Comments: The government purchased private farmland for resettlement according to the willing-buyer-willing-seller clause contained in the constitution.

References: Article 16(2) of the Namibian Constitution

Peer Review Comments: Property rights to date have been respected though there is concern about a repeat of Zimbabwe's land grabbing. For the most part it is felt that the present government understands the importance of the commercial agriculture sector to the economy and will not sanction land invasions.

- 78d: *In practice, legal contracts are honored.*

Score: almost always/1.00



Comments: The government generally honored its legal contracts.

References:

Namibia: Anti-Corruption Mechanisms and Rule of Law

Sub-Category: VI-4/Law Enforcement

	Indicators	Scores
79	Is the law enforcement agency (i.e. the police) effective?	0.75
80	Can law enforcement officials be held accountable for their actions?	0.81

Indicator and sub-Indicator Details

79 Is the law enforcement agency (i.e. the police) effective?

- 79a: *In practice, appointments to the law enforcement agency are made according to professional criteria.*

Score: almost always/1.00



Comments: New recruits undergo training at the police college. Members of the police force as well as defense force do receive additional training on matters relating to human rights.

References: Legal Assistance Centre - www.lac.org.na

- 79b: *In practice, the agency has a budget sufficient to carry out its mandate.*

Score: sometimes/0.50



Comments: In the past, the police have complained that, especially in rural areas, they have insufficient resources for effective policing.

References:

Peer Review Comments: Practical policing suffers from a lack of management and resources. For example, the police nearly always lack vehicles to go to scenes of crimes.

- 79c: *In practice, the agency is protected from political interference.*

Score: often/0.75



Comments: The inspector general of the Namibian police force is appointed by the president and its budget is part of the overall budget of the Ministry of Home Affairs.

References: The Police Act of 1990

Peer Review Comments: In the day-to-day operations, the police force is quite autonomous, but the inspector general, as head of the police force, is accountable to the minister of home affairs for command, superintendence and control of the police force. The inspector general is appointed by the president.

80 Can law enforcement officials be held accountable for their actions?

- 80a: *In practice, there is an independent mechanism for citizen complaints about police action.*

Score: sometimes/0.50



Comments: The inspector general of police and the ombudsman both have the authority to hear and act upon complaints about the police force, but there is no specific agency that deals with the police only.

References: 1990 Constitution of Namibia, Article 116, Section 2 and The Ombudsman Act of 1990

- 80b: *In law, there is an agency to investigate and prosecute corruption committed by law enforcement officials.*

Score: yes/1.00



Comments: Yes, there are the ombudsman and the proposed Anti-Corruption Agency.

References: Ombudsman Act of 1990; Anti-Corruption Bill, 2003

- 80c: *In law, law enforcement officials are not immune from prosecution.*

Score: yes/1.00



Comments: Over time, a number of law enforcement officials have been brought to court successfully.

References: Article 116 (2) of the 1990 Constitution

- 80d: *In practice, law enforcement officials are not immune from prosecution.*

Score: often/0.75



Comments: Over time, a number of law enforcement officials have been brought to court successfully.

References:

Namibia: Country Facts

Land	Facts
Land area (sq km)	823,290
Population	Facts
Adult illiteracy rate (% of people ages 15 and above)	17.35
Life expectancy at birth (years)	44.33
Infant mortality rate (per 1,000 live births)	55
Population growth (annual %)	1.72
Population	1.79 million
Ethnic breakdown	Black, 87%; white, 6%; mixed race, 7%.
Religious breakdown	Predominantly Christian; also indigenous beliefs
Languages	English (official), Afrikaans, German, various indigenous languages
Murder rate (per 100,000)	26.32
Political	Facts
Capital city	Windhoek
Character of government	A multi-party republic since 1990.
Current president/prime minister	Sam Nujoma
Executive branch description	An executive president is selected by popular vote for a maximum of two five-year terms.
Legislative branch description	The bicameral legislature consists of a National Assembly elected by proportional representation for a five-year term and a largely advisory National Council consisting of two members from each geographic region who are elected by regional councils for six-year terms.
Judicial branch description	An independent judiciary is mandated to interpret an unamendable bill of rights.
Percentage of women in legislature	26
Economics	Facts
Aid (% of central government expenditures)	12.31
Aid per capita (US\$)	60.87
Net foreign direct investment (current US\$)	98.40 million
GDP growth (annual %)	2.75
GDP per capita (constant 1995 US\$)	2382.9
Consumer prices inflation (annual %)	9.54
Military expenditure (% of central government expenditure)	9.13
Military expenditure (% of GDP)	2.8
Tax revenue (% of GDP)	29.91
Exchange rate to US\$1 (as of January,	7.07

2004)	
Currency	Namibian dollar
Public spending on education (% of GDP)	8.01
Public health expenditure (% of GDP)	4.21
Main exports	Diamonds, copper, gold, zinc, lead, uranium, livestock
Unemployment (% of total labor force)	19.5
Information/Technology	Facts
<i>Radio:</i>	
Radio broadcast stations	8
Radios (per 1,000 people)	141
<i>Telephone:</i>	
Telephone mainlines (per 1,000 people)	66
Mobile phones (per 1,000 people)	56
<i>Television:</i>	
Television sets (per 1,000 people)	38
Television broadcast stations	2
<i>Other Media:</i>	
Daily newspapers (published at least four times a week) in circulation per 1,000 people	19
Internet users	45,000