



# INTERNATIONAL ANTI-CORRUPTION CONFERENCE (IACC)

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## 8th INTERNATIONAL ANTI-CORRUPTION CONFERENCE

### The Papers

#### **Fighting Corruption: The Namibian Experience and the Role of the Office of the Ombudsman**

[Lima Declaration](#)

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Chapter 10 of the Constitution of Namibia (Act 1 of 1990) provides for the setting up of the Ombudsman institution. Article 89 provides that the Ombudsman shall be independent and subject only to the Constitution and the law. The independence of the Office is further guaranteed by the constitutional requirement that no member of the Cabinet or legislature or any other person shall interfere with the Ombudsman in the exercise of his/her functions. The Ombudsman is appointed by the President on recommendation of the Judicial Service Commission in terms of the Constitution and reports annually to Parliament and submits special reports as and when necessary. The Ombudsman Act (Act 7 of 1990) further defines the powers, duties and functions of the Ombudsman and provides for related matters.

The Office has a constitutional and statutory duty to receive complaints arising from maladministration, human rights violations, and corruption by officials. Complaints may be brought by aggrieved individuals or entities or can be referred to it by government or parliament. Officials are defined in the Constitution as any elected or appointed official or employee of any organ of central or local government, any official of a para-statal enterprise owned or managed or controlled by the State, or in which the State or Government has a substantial interest, or any officer of the defence force, the police force or the prison service.

The Ombudsman has the power to investigate and to take appropriate action to remedy the alleged wrongs complained about. To enable the Ombudsman to perform these functions effectively, Section 4 of the Act gives the following special powers to the Ombudsman:

- a. to issue subpoenas
- b. to question any person
- c. to require any person to co-operate with the Ombudsman and to disclose any information relevant to the investigation
- d. to enter any buildings or premises
- e. to seize anything
- f. to have access to any documents
- g. to bring proceedings in a court to secure the termination of the offending action or conduct.

Furthermore, it is a criminal offence to obstruct the Ombudsman's work and a person can be liable on conviction to a fine not exceeding N\$2000 or to imprisonment not exceeding 12 months or both.

The Constitution and the Ombudsman Act empowers the Ombudsman to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps, including reports to the Prosecutor General and the Auditor General pursuant thereto. This jurisdiction is limited to the public sector. The Office of the Ombudsman has not dealt with many complaints concerning corruption. This may be due to the following:

1. Corruption is not practised openly and its exposure depends on the willingness of people to expose those who are involved in corrupt practices. I believe that when people are motivated to perform and are rewarded for good performance that one can expect that they will be willing to expose anyone who undermines the performance of the Organisation.
2. This in turns depends on the extent to which the confidentiality of the complainant can be assured and how to protect

such individuals from being victimised. There is no statutory protection for whistleblowers and my task as a member of the Technical Committee on Promotion of Ethics and Combating of Corruption set up by the Government to propose a comprehensive anti-corruption/ethics framework including the drafting of a law that would give statutory protection to whistleblowers. The Office treats all complaints as confidential and anyone who seeks to influence or intimidate a person who has brought a matter to the Office are subject to a penalty.

3. The Office was also not very visible and accessible because few people knew about its existence and functions. To remedy this situation, the Office has embarked on an outreach program to raise awareness on the role and functions of the Office, what to complain about and how to complain. It is imperative that people must also know that they can complain to the Office and that their complaints will be treated confidentially. The Office is situated in the capital city with no regional offices. Therefore, we need to visit the regions and bring the Office closer to the most vulnerable people who live in the rural areas.
4. Although we have a free and vigilant media which report cases of corruption, our Office cannot become involved as there is no express power to initiate investigations unless a complaint reach the Office. Although nothing expressly forbids the Office to start an investigation, we are in the process of amending the Ombudsman Act to expressly provide for own motion investigations.
5. Human and financial resources as well as a very wide remit in terms of functions was a major factor in this Office not being able to concentrate solely on corruption. To alleviate the problems experience with resources, we have now installed computers with donor assistance and a computer programmer from Ombudsman Ontario assisted us in installing a caseload management system, which will ease the work of the staff members and help us in creating a database. We also hope to recruit more staff including investigators.

In order to develop effective strategies for the combating of corruption, the local environment must be taken into account. This will involve looking at the role of the press, the police, the law makers, the judiciary, the Office of the Ombudsman, the society and the role of government in order to involve them in creating an environment where corrupt practices become totally unacceptable.

In Namibia, we have a number of oversight bodies such as the Office of the Ombudsman, the Auditor General, the police, the Parliament which are dealing with corruption in one way or the other. This has led to duplication of efforts, problems of coordination, competing for scarce resources and confusion to the public, as they do not often know which body to approach with a complaint.

A lack of a clear strategic approach in combating corruption has been a serious oversight on our part. Therefore, corruption has not been debated as a public concern and therefore no clarity as to what action or practices amount to corruption and how it affects the social, political and economic development of our society. The media has been at the forefront of exposing corruption but it has not always led to proper investigation on the part of government or offenders being punished. The government has set up various commissions of inquiry to investigate cases of alleged corruption and the question remains whether these commissions were effective in achieving their objectives.

Existing criminal laws are inadequate and outdated and there are problems with enforcement. Allegations of corrupt practices in the police force and subsequent conviction or dismissals of some police officers have created distrust of the police amongst the people.

Generally, all agencies suffer from a lack of adequate resources.

It is argued that maladministration breeds corruption and that the complaints received by the Office of the Ombudsman are symptomatic of something which has gone wrong in the administration which leaves the door open to corrupt practices.

The institution of the Ombudsman, in its role to oversee administrative fairness and legality, is mostly involve in creating a climate which makes it harder for corruption to take root and flourish by doing the following:

1. Promotion of good governance based on efficiency, transparency, effectiveness and accountability.  
I concur with the approach adopted by our institutions that even though we investigate individual complaints, it is incumbent upon us not only to seek a remedy for individual grievances but also to point out deficiencies in the procedures and systems that need improvement. Transparency International points out the need for a reform process that should be forward looking or system oriented rather than retrospective and focussed on punishing past offenders. Maladministration is caused by officials who are either not motivated, inadequately trained or by deliberate action to serve the purpose of camouflaging corrupt practices. Effectiveness and efficiency in administration are enhanced through good management systems, proper performance appraisal systems, individual accountability and monitoring. Reward for good performance will not only serve as motivation to perform better but also to expose anyone that undermines the performance of the Organisation through corrupt practices.

In promoting transparency in all aspects of public administration, corrupt practices can be easily checked. Therefore it is essential that citizens must have a legal right to obtain information in respect of all areas of public service working. An area of concern to me is the extensive discretionary powers given to management or officials. In the exercise of these

powers, it is not always clear on what basis a decision has been reached as no reasons are at times given for decisions. It leaves much room for corrupt practices as such an official cannot be challenged or held accountable. The need for narrowing the ambit of such discretion is necessary in particular in areas such as the issuing of licenses, tenders, granting of passports as well as a Freedom of Information Act. However, I am also mindful of the fact that bureaucratic rules and regulations had the effect of delays with the result that people have to pay to get "quick fixes".

## 2. The creation of an ethical climate

The creation of an ethical climate is essential and this can be achieved through the introduction of a statutory code of conduct for public officials. The code must set out minimum standards of behaviour expected from officials in so far as they must ensure to achieve a higher level of integrity. These standards must be vigorously implemented and officials who do not live up to them to be adequately dealt with. Such a code however is only effective if it is properly managed and controlled. One way of holding officials individually accountable and to show that such behaviour will not be tolerated is to enforce discipline through a criminal sanction or disciplinary action where allegations of corruption or improper behaviour are sustained.

## 3. The promotion of a human rights culture

Education is the key in any efforts in combating corruption. By respecting human rights and freedoms, we will create values of honesty and respect for rules and procedures. Our Constitution provides for administrative justice in that it enjoins administrative bodies and officials to act fairly and reasonably and comply with the requirements imposed on them and affords aggrieved citizens the right to seek redress before a competent court or tribunal. Thus where a person has been subject to the impact of maladministration or has suffered violations of human rights, such a person must know that they have a right to complain and hold officials accountable for their actions. People can only complain if they know what their rights are and what behaviour to expect from officials. They must also be aware that there are institutions such as the Ombudsman where they can bring their complaints. Officials must be made aware that their actions can be scrutinised by independent bodies such as the institution of the Ombudsman. This calls for a proactive role on our part to educate and raise awareness about these issues and to place them squarely in the context of good governance and human rights protection.

I believe that abuse of power, unfair, discourteous or other improper conduct by officials are not only affecting the rights of citizens but are also an indication of the deterioration of ethical standards.

## 4. Encouraging the strengthening of checks and balances

As pointed out earlier, the proliferation of watchdog bodies has been a concern as it leads to duplication, competition for scarce resources, etc. There may be an argument not to have a single entity dealing with corruption as it is a multifaceted problem but coordination and cooperation need to be encouraged. Clear lines must be drawn in terms of jurisdiction and functions. In the case of the Office of the Ombudsman of Namibia, we can only investigate corruption and make appropriate recommendations to the Auditor General or the Prosecutor General for enforcement or action. The Office does not have enforcement powers and rely on other agencies such as the Prosecutor General or government ministries to take action. Where complaints sustained by the Office are not acted upon, serious doubt is cast on the credibility and effectiveness of our office.

Since lack of resources puts a considerable constraint on the effective functioning of oversight bodies, these institutions must be placed in a position to carry out their mandate effectively and efficiently.

The Namibian Government has shown its commitment to combating corruption by the creation of an ad hoc Ministerial Committee assisted by a Technical Committee on the Promotion of Ethics and Combating of Corruption in March 1997 for the purpose of developing legislative and administrative proposals for a comprehensive ethics/anti-corruption regime in Namibia. The Office of the Ombudsman is a member of the Technical Committee.

At a seminar organised by the Technical Committee in June this year, the following key issues were addressed:

1. What it takes to fight corruption - it is necessary to have political will, commitment of adequate resources and ongoing public education and community involvement in the creation of an ethical climate.
2. Review of the adequacy of existing laws relating to corruption.
3. Reduction of crimes of corruption not only through punishment of offenders but also through proactive initiatives to detect and prevent criminal activity.
4. Review of codes of conduct for the public, parastatal and private sector because at present there is no comprehensive statutory code of conduct for public officials.
5. Declaration of interest and assets.
6. Review of fairness and transparency in tender and contracting procedures.

7. Review of disciplinary procedures in the public service as laid down in the Public Service Act of 1995.
8. Promotion of open and accountable government - open meetings, freedom of information, etc.
9. Encouragement of whistleblowing and the statutory protection of whistleblowers.
10. The problem of sexual harassment as an ethical issue.
11. The establishment of an independent anti corruption agency or the strengthening of existing agencies including the Office of the Ombudsman.

The Committee agreed that the strategy to be adopted must be based on prevention, detection and enforcement and this could be carried out by either one agency or several agencies. If corruption is to be seen as a major threat to our democratic values and economic well being, it must be an issue that everyone must take seriously. As far as the Office of the Ombudsman is concerned, we have committed ourselves to fighting corruption by working out new strategies and approaches and to increase the capacity in terms of recruiting competent and committed staff, training of staff and financial and technological resources. I have no doubt that my Office will play a pivotal role in combating corruption. I am eagerly awaiting the outcome of the work of the Technical Committee, as it will assist us in clearly identifying our remit and to provide us with a comprehensive institutional and legislative framework for the twin objects of promoting ethics and combating corruption.

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