

Public Service Ethics in Africa: The Namibian Initiative

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1. INTRODUCTION

Events such as the 9th International Anti-Corruption Conference are no doubt of immense importance and value in facilitating and promoting international as well as regional co-operation and for stimulating and fostering the exchange of information and experience gained in the fight against corruption and hopefully, the development of continent and regional-specific programmes. Unfortunately, it also bears testimony to the fact that no quick solution and ready set of answers exist which can be universally applied to eradicate corrupt conduct. I do not propose to have such a solution or set of answers. The aim of this presentation is to briefly share with you what is taking place in Namibia and to seek your views and hear about your experiences on drafting implementable anti-corruption legislation and setting up an effective anti-corruption unit.

2. THE NAMIBIAN ANTI-CORRUPTION AND PROMOTION OF ETHICS INITIATIVE

Until recently no agency in Namibia had been tasked with the specific responsibility to deal with corruption. This has now changed. Aware of the negative experiences of other young nations in which widespread corruption took hold and recognising that the means available in Namibia to detect incidents of corruption and gross maladministration and to prevent their recurrence are not adequate, Cabinet resolved to recruit the key institutions of society into a national effort to ensure that Namibia remains free of endemic corruption and to promote integrity in the conduct of public and private sector affairs. To this end Cabinet, in August 1996, launched a national consultative process to elicit opinion and develop proposals for a comprehensive legislative, administrative and public education framework for the promotion of ethical behaviour and the prevention and combating of corruption at all levels of national life. Those of you who attended the Lima conference may recall that the Attorney-General of Namibia, the Honourable Reinhold V. Rukoro, informed the conference about this process. I am now happy to report that the process has been completed. At the outset comprehensive terms of reference were compiled and various committees and syndicate groups tasked with a vast array of very specific duties were set up.

Expert opinions on the elements of a national integrity strategy and certain international best practices were elicited locally as well as from countries such as Ghana, Tanzania, Uganda, Botswana, South Africa and the United States. These experts also assisted in considering the recommendations of the various committees and syndicate groups. Study missions were undertaken to Botswana, Tanzania and Uganda to learn firsthand about their experiences in combating corruption and to visit their specialised anti-corruption agencies. Finally, 10 regional workshops were held

throughout the country involving a broad spectrum of representatives from all levels of the community. This was intended to evoke discussion as to what behaviour is considered by the Namibian people today to be corrupt or unethical, so as to formulate the most appropriate laws and strategies. The process culminated in a National Consultative Conference which took place in Windhoek from 7 to 9 October 1998. The aim of the conference was to provide a forum for developing a strategy that will enhance a culture of integrity, honesty, openness and transparency. The expectation was that the conference would produce a consensus recommendation for a comprehensive multi-sectoral national integrity strategy. This expectation was not left unfulfilled. Amongst others, the following recommendations were formulated:

- That the international definition of corruption be widened to include the private sector and an improved understanding of corruption through public education.
- That a Namibian Chapter of Transparency International be established.
- That a new and comprehensive Anti- Corruption Statute with wide reach, inclusive of the Executive as well as parastatals, boards, trusts, welfare organisations etc. be enacted and that provision also be made for extra-territorial jurisdiction.
- That a mandatory uniform Code of Conduct be introduced. The Code should work in support of specific Professional Codes of Conduct in particular domains, including a Leadership Code such as exists in Uganda. A register of assets should be put in place for both public and private disclosure.
- That the procurement policy be improved to enhance open competition and transparency.
- That there should be public oversight over tender procedures that extend to the post awarding stage as well.
- That an affirmative obligation be placed on Government as well as on other public institutions that operate on taxpayers money to disclose maximum information to citizens. A Freedom of Information Act should be passed and Constitutionally safeguarded.
- That effective mechanisms be established for the protection of the identity of persons who blow the whistle on corrupt practices.
- That existing legislation which governs the granting of licences, permits and concessions be strengthened and that new laws be enacted to ensure greater transparency in this process.
- That an anti-corruption agency or unit be established.

The conference was divided over whether a new agency ought to be established or whether an existing agency should be strengthened, but was unanimous in so far as it felt that the body which is to be established must:

- be independent (free from political patronage);
- be specialised;
- be appropriately resourced (in terms of human and technical capacity);
- be able to receive information and complaints on a confidential basis and thereby protect whistle blowers i.e. operate a whistle blower disclosure hotline;
- have presence in the Regions of the country;
- have both enforcement and investigative powers;

- have its own budget;
- be accountable to parliament.

3. THE OFFICE OF THE PROSECUTOR-GENERAL

As final step in the consultative process the recommendations of the Conference were placed before Cabinet for consideration during March of this year. Cabinet endorsed the recommendations and opted for the capacity of the Office of the Prosecutor-General, an existing agency of Government whose primary Constitutional remit is to prosecute in the name of the Republic of Namibia in criminal proceedings, to be strengthened by creating a special unit within it, charged with the specific responsibility to prevent, investigate and prosecute all corruption cases. This decision by Cabinet must be applauded as it is a clear expression of the commitment and political will required to carry Government's anti-corruption initiative to full fruition. Only by understanding that the Office of the Prosecutor-General is truly independent and not subject to the superintendence or direction of any political functionary, can Cabinet's decision be appreciated fully. In terms of the Namibian Constitution the Attorney-General bears final responsibility for the Office of the Prosecutor-General. This responsibility has been interpreted by the Supreme Court to entail, in addition to a financial responsibility for the Office of the Prosecutor-General, the duty to account to the President, the Executive and the Legislature therefor. In this regard the Prosecutor-General bears only the duty to keep the Attorney-General properly informed. The Court ruled that neither the Attorney-General and even less the Minister of Justice can give instructions to the Prosecutor-General and that no political functionary could take over the powers and functions reserved in the Constitution for the Prosecutor-General. Thus seen it must be clear that the latter's office is truly free from political patronage and that the anti-corruption unit to be created therein will resultantly share this independence.

4. THE WAY FORWARD

The obvious next step in the process is to put the required enforcement and containment measures and institutional framework in place. What is required firstly is to enact the necessary legislation. Unfortunately, funding to facilitate this has not been made available yet. In addition to the envisaged new anti-corruption law, empowering legislation on the Office of the Prosecutor-General will have to be enacted to provide for the broadening of its powers and functions in accordance with the decision of Cabinet. In this regard, it will undoubtedly be of great value to look at similar existing laws in the region and to share the experiences and best practices of other countries, particularly in Africa, to gain a better understanding of what actually works in practice and what not. This will hopefully pave the way for greater harmonisation of corruption legislation in the region which will ultimately work in favour of establishing simplified procedures for transnational co-operation during investigations and prosecutions. In this regard the setting up of a regional data base would be immensely beneficial. The setting up of such a data base containing relevant information is one of the aims of a regional survey UNDP Africa and the UN Department of Economic and Social Affairs is undertaking in Africa. The UN is looking at surveying the state of existing policies and programmes aimed at promoting ethics and combating corruption in the public service in ten African countries. The objective of this project (Project RAF/99/004) is to assist Governments

in Africa, and their development partners, through the collection of information to introduce or improve public sector ethics policies and programmes. The information would also serve as a basis for "benchmarks" of best practices against which individual countries can make improvements.

Corruption, like many other crimes, also has a transnational dimension. To this extent the exchange of information regionally should be conducted on a perpetual basis and continued regional co- operation be attained. In conclusion, it must be clear that any initiative against corruption must include policies which are sustainable over the long term to have any notable and lasting effect. An indispensable and integral part of any such policy is creating greater awareness amongst all members of society about the negative effect of corruption and educating and motivating them towards ethical behaviour and not to tolerate or condone corrupt behaviour by remaining silent but to speak out and report wrong-doers to the appropriate authorities. In addition to putting legal and institutional containment and enforcement measures in place, society needs to be mobilised towards adopting an activist stance on the issue of corruption. In this regard the media plays an essential role as will incentives aimed at rewarding whistle blowers. What ultimately needs to be done is that the unwritten norms and morals of a community or nation must be raised to a level that inspires ethical conduct.

5. LESSONS LEARNED

What follows are but a few aspects that came to the fore during the Namibian process so far which one would be well advised to be mindful of when embarking upon an integrity strategy:

- To be of real significance the process must involve as broad a spectrum of representatives from all spheres of society as possible.
- Clear goals and time limits should be set.
- Government must demonstrate real commitment and political will.
- Private and personal interests must make way for national interests.
- The process must be visible and all progress widely publicised.
- Undue delays must be avoided as it negatively impacts on public perception.
- Work on envisaged legislation should start as early as practically possible and not be regarded as a last or final task.
- The funding required to see the process through to full completion must be secured at an early stage.
- Experiences gained elsewhere must be looked into.
- Ongoing public education must be undertaken.