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Namibia's Initiative to Combat Corruption and to Promote Ethical Behaviour

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Introduction

I approach the task of reporting on Namibia's efforts to Combat Corruption and to Promote Ethical Behaviour with considerable humility, because Namibia is truly an infant, both in the international community generally, as a country which is in its seventh year of independence, and in the international movement against corruption, to which Namibia is a newcomer. Indeed, it is clear that international conferences of this character were taking place before Namibia was born. In truth, I have come to this conference along with Namibia's Ombudswoman Adv Bience Gawanas and one of my staff members in order to learn as much as possible to enable us to propel the anti-corruption/ethics promotion work in Namibia. Nevertheless, I am honoured to have been asked to report to the conference on the initiative which we have taken in Namibia on this important front.

The Context

Namibia is a country on the south-western coast of Africa north of South Africa and south of Angola with a population of approximately 1.6 million. Namibia gained its independence in 1990 after decades of struggle against South African colonialism and the apartheid system that South Africa had installed in Namibia.

Namibia is a multi-party democracy with a modern progressive constitution Which entrenches fundamental human rights and freedoms, an executive presidency, a bi-cameral parliament and an independent judiciary. It also has such important democratic institutions as the offices of Attorney-General, Prosecutor-General, Auditor-General and Ombudsman (popularly known as Ombudswoman today, in deference to the current office holder).

Independent Namibia inherited a legacy of poverty among the black majority, who are among the poorest in Africa, contrasted with the affluence of the small Mite population. It is plagued by high unemployment, underdevelopment and lack of skills. The majority of Namibia's population lives in rural areas, but there is an increasing trend of urbanisation. Accompanying this trend is an increase in crime and a perceived erosion of tradition values including norms of ethical conduct.

As part of its strategy to develop the nation and to alleviate poverty by creating jobs, the Government places emphasis on developing an environment designed to attract foreign investment particularly in the areas of manufacturing, fishing and mining. This includes the enactment of modern legislation and administrative structures to facilitate commercial and financial activities. Namibia's nation- building strategy also includes efforts to redirect government spending, and in particular to trim and to reform the bloated public service, the largest single employer in the country, which is also a legacy of the colonial past.

Decision to Launch the Anti-Corruption/ Ethics Promotion Initiative

In the seven years since independence, Namibia has established a reputation internationally as a democratic

and clean country. The Government has on numerous occasions expressed its commitment to the promotion of ethical behaviour, transparency and accountability as part of the democratic culture which is being built in Namibia. It has also acknowledged that corruption, or the appearance thereof, in the form of abuse of office for private gain and conflict of interest, misappropriation of public funds, various forms of favouritism, such as nepotism and tribalism, in appointments and in the awarding of tenders and consultancies, if not effectively combated or prevented, can undermine public and investor confidence in the Government and impede national development. Such issues are seen as being relevant not only to the conduct of public officials, but also to the officers and employees of parastatal, private companies and non-governmental organisations, whose reputations and performance are also critical to the integrity of the nation.

Nevertheless, several allegations or actual instances of corruption or fraud in the private and public sectors and of abuse of public office have surfaced in the past several years. Government has responded to the allegations of impropriety in the public sphere by establishing ad hoc commissions or committees of inquiry, criminal investigations and misconduct charges in terms of the Public Service Act, with mixed results. Without analysing the details of each case, it can be said generally that the Government's response has not always met desired standards of transparency and accountability. In some cases, the media and the public were left with the impression that Government either sought to cover up wrongdoing or was not diligent in its efforts to address the problem. On the other hand, there is a stereo-typed belief among Whites and the white-owned newspapers that Africans in general are corrupt and that since Namibia is an African nation, there must be some corruption. Such a perception is seen by the Government as equally harmful to the nation and in need of correction through a process of public education.

Aside from specific instances of alleged wrong-doing, there exists uncertainty within the organs of Government as to what are the appropriate standards of conduct for political office-bearers and public service staff members, particularly as regards permissible private commercial activities. It is also alleged that private companies have appointed senior public servants or family members of political office-bearers to their boards of directors or have granted them free or nominally-priced shares in new companies as a means of securing influence within the Government. Such "gifts" are often accepted in good faith without the consideration of the appearance of propriety that may have been created in some cases. It is acknowledged that if there were clear standards of ethical conduct to guide political office-bearers and public servants, such problems could be minimised or avoided. It is also acknowledged that clear standards are needed in the private, semi-public and NGO sectors.

As stated above, Namibia is, by international standards, a clean and ethical country. The Government is determined not only to maintain its relatively corrupt-free environment, but to develop the means to prevent and combat corruption and to promote ethical conduct on an on-going basis as the nation's economy develops and as Namibia faces the challenge of dealing with some companies who promote corruption as part of their way of doing business.

For these reasons, His Excellency the President, Dr. Sam Nujoma and other Namibian political leaders have spoken out publicly on the need for decisive action and appropriate legislation and administrative measures to promote ethics in government, to punish corrupt officials and to provide clear standards of conduct for political office-bearers and public servants. In addition, Namibia's parliamentarians have attended several inter-parliamentary meetings which focussed on ethical standards and have produced a document entitled "Agenda for Change" which calls for the adoption of a parliamentary code of conduct in Namibia. At the same time, I and members of my staff have participated in conferences and study missions on the promotion of ethics and the combating of corruption.

The Namibian government has learned that the experience of other countries that achieved success in addressing corruption indicates that a comprehensive approach to the problem is required. With this in mind, the Cabinet made an initial assessment of the current situation. Although the several Namibian constitutional offices mentioned above have distinct responsibilities in the prevention of corruption or the investigation of allegations of corruption, it is recognised that a conceptual and organisational framework which could provide cohesion in anti-corruption efforts is lacking. Although the Constitution and a variety of existing measures establish partial standards of public conduct or address public sector corruption at least partially, including several post-independence statutes or administrative measures, they have been enacted or established piecemeal, are not uniform, and in many cases are not well-known or well-understood. In addition, there are neither statutory or recommended voluntary measures in these areas which could provide overall guidance to the private, parastatal and NGO sectors. The Cabinet concluded that the existing measures are not adequate to address corruption vigorously or to promote the goals of integrity, transparency and accountability which are an integral part of Namibia's national development and it therefore decided to launch an anti-corruption/ethics promotion initiative under the leadership of the Rt. Hon. Prime Minister Hage Geingob.

The Ad Hoc Committee on the Promotion of Ethics and the Combating of Corruption and its Technical Committee

On 5 March 1997, the Rt. Hon. Prime Minister officially launched the Ad Hoc Committee on the Promotion of Ethics and the Combating of Corruption. The Ad Hoc Committee is chaired by the Rt. Hon. Prime Minister and includes as members the Ministers of the key ministries in the economic, administration of justice and law enforcement sectors, together with the chair of the National Council and the Speaker of the National Assembly. It shall be assisted in its work by a Technical Committee chaired by the Secretary to Cabinet, with a membership including the Ombudswoman, the Prosecutor-General, the Auditor-General, the registrar of the High and Supreme Courts, the secretaries of the National Council and National Assembly, the permanent secretaries of the ministries. Which are members of the Ad Hoc Committee, the managing directors of all of the parastatals, representatives of the private sector and the non-governmental organisations. The multi-sectoral composition of the Technical Committee was intended to ensure broad consultation, public education and ultimate acceptance of anti-corruption strategies by national consensus. In launching the committees, the Rt Hon. Prime Minister noted the need for a holistic approach with respect to issues of corruption and ethics promotion:

"We know that addressing the problems of corrupt practices, unethical behaviour and accountability require a great deal more than the Ombudsman, the Attorney- General, the Auditor-General or even the Police. Nor do the enactment of codes of conduct help much if we don't have appropriate culture and mechanisms to enforce ethical behaviour".

Success in rooting out corruption and unethical behaviour, and promoting accountability require a multi-pronged approach. If any prong is missing, the effort will not succeed. The requirements include:

1. a suitable political and policy environment
2. a full blown assault on these problems and not focusing on negative sanctions as the only mechanism; and
3. ensuring of adequate funding, public visibility, impartiality and public support, and promoting a culture of ethical behaviour.

Any comprehensive agenda to eliminate corruption and unethical behaviour cuts across a Mole range of issues , and must be addressed as such. Addressing these issues requires:

1. mass education campaigns to foster mass participation and inform people not only on Mat ethical behaviour is, how corrupt practices can be recognised, how these matters can be brought to the attention of the authorities, Who should the people report to, within that period the complainants can expect to be contacted, the extent and cost of corruption and unethical behaviour, etc;
2. promoting a culture of service within the public service and the private sector,
3. promoting professional values with the involvement of the unions and professional associations;
4. promoting sound practices on recruitment, training and management;
5. promoting coalitions of business associations and civil society to expose and fight corruption and
6. ensuring systematic and impartial prosecution of violators.

Enforcement, thus, requires the inculcation of a culture that abhors corrupt practices and it requires politicians, civil service, businessmen and women and other citizens to remain ready to stand up to fight the unethical and corrupt practices."

The Prime Minister called upon the committees to develop comprehensive proposals to be presented to a national Conference on Ethics "to help transform the whole society not just the civil service or public

service, but the Mole society so that corruption and unethical behaviour become unacceptable to all citizens."

Terms of Reference of the Ad Hoc Committee on the Promoting of Ethics and the Combating of Corruption

The following general terms of reference were set by Cabinet for the Ad Hoc Committee:

A. Investigation and punishment of corruption

Whether the existing criminal law and procedures are adequate to successfully prosecute corrupt practices by public officials (political office-bearers, public officers, legislators and judges) and public servants.

Adequacy of training for Police and prosecutors in the investigation and prosecution of Mite-collar crimes.

B. Code of conduct (promotion of ethical behaviour)

Necessity of adoption of code(s) of conduct for public servants and public officials. If so, should there be one code for all three branches of Government, or separate codes? Should a code apply to officials of parastatals? Related issues to be considered are:

1. What measures are needed to prevent conflict of interest on the part of public officials and public servants? In particular, should public disclosure of Personal interests (assets and liabilities) be required, and if so, to what extent and to whom should such a requirement apply?
2. Whether the existing restrictions on employment outside of Government and outside business interests are appropriate/adequate.
3. Should acceptance of gifts or hospitality be regulated?
4. Are restrictions on post-government employment feasible or desirable?
5. Are codes of conduct needed for directors and officials of companies and officials of NGO's?

C. Award of contracts, mineral licences, fishing quotas and grants

Are the laws and procedures for the awarding of tenders, mineral licences and fishing quotas adequate for the prevention of favouritism or the payment of kickbacks?

Are additional measures needed to regulate the granting of consultancies and the payment of consultants' fees?

Adequacy of controls for monitoring the acceptance and use of donor funds.

D. Transparency and accountability

What meetings of Government bodies are, and/or should be open to the public?

Whether existing agencies for the receipt of public complaints are adequate and whether legislation is needed to ensure confidentiality of complaints and to protect whistleblowers from retaliation.

E. Institutions and agencies

The role of the Parliamentary Committee on Public Accounts in investigating the misuse of public funds.

Whether a new office is needed to implement an ethics/anti corruption regime or whether existing structures, such as the Office of the Ombudsman, the Attorney-General and/or the Prosecutor-General should be strengthened, or units added to one or more of the aforesaid offices, to serve that purpose. Measures to be considered include a National Oversight Committee on Transparent and Accountable Government, a specialised investigatory unit and legislation to provide serious charges of corruption on the part of political office-bearers or public officers.

First Steps

At the time of their appointments to the technical committee, many of the members, although willing to serve, questioned whether they have the adequate background to make a significant contribution to the work of the committee. It was therefore decided that the first phase of the work would be devoted to: a) the collection and sharing of information on the background of, and the existing framework of ethics promotion and the combating of corruption in Namibia through the preparation of institutional profiles and b) a two-day seminar at which members would be briefed by international experts on key issues relating to the committee's terms of reference and selected experiences of other countries in addressing the issues.

The purpose of the preparation of the institutional profiles was to enable the Committee to identify and to diagnose problems or potential problems of corruption and to construct as clear a picture as possible of the existing capacity (strengths and weaknesses) of various institutions to address issues of ethics and corruption. Each institution was given a list of questions designed to assist in their institutional self-analysis. Their preliminary recommendations were also solicited as part of their profile.

The profiles were submitted, but in many cases lacked the candour that had been hoped for with respect to existing problems. However, they did provide a vast amount of information concerning the legal framework and the organisation of various institutions, and some constructive recommendations were made Which will help to guide the committee's work.

A two-day successful seminar was conducted outside of Windhoek, attended not only by most of the 35-members of the technical committee, but by several ministers on the Ad Hoc Committee, including the Prime Minister, the Judge-President of the High Court, a senior parliamentarian of the official opposition, the inspector-General of the police and several permanent secretaries Who were not members of the technical committee. Bertrand de Speville, the former Director of the Hong Kong Independent Commission Against Corruption, assisted in planning and facilitating the seminar. The opening session was addressed by the Prime Minister, and the closing by myself. Opening the seminar, the Prime Minister noted that

"We are very fortunate that corruption in Namibia is neither systemic nor endemic. Instances of corruption are fairly isolated and these instances show that, in addition to instances of outright corruption, some irregularities are taking place because there is a lack of sufficient understanding of Mat corruption is and how to recognise it. For that reason, I have said on numerous occasions that red lights are flashing and we need to act now to contain this evil.

However, I am sure that we don't need Herculean efforts to clean the stables by diverting the sea. We are acting to contain this evil before we begin."

In addition to Bertrand de Speville, Who introduced discussions on the various aspects of a successful anti-corruption strategy, we were fortunate to have the participation of two international experts: Hon. Kader Asmal, South Africa's Minister of Water Affairs and chair of the parliamentary Committee on Ethics, who is the architect of the ANC's Code of Conduct and the parliamentary rules regarding declaration and public disclosure of private interests and assets of parliamentarians; and Mr. J. Korwin of the United States Office of Government Ethics. The breadth of the discussions Which took place can be best illustrated by mentioning the topics of some of the papers presented by the Namibian participants: "The Existing Laws Against Corruption: What is Missing", "Tenders and Award of contracts in the Construction Industry"; "The Public Service Disciplinary Procedures: Are they Effective In Keeping the Civil Service Clean; "Should There be a Code of Conduct for Parastatal Employees?"; "Anti Corruption Policy: Enforcement Issues"; "Prevention of Corruption"; "A Namibian NGO Perspective on the Factors Influencing Corruption".

The seminar reached consensus on the broad outlines of an anti-corruption strategy and made several concrete recommendations. A report of the seminar has been drafted for presentation to the Ad Hoc Committee and to Cabinet. The report and the seminar papers, together with the institutional profiles, formed the basis for the current phases of the work.

Syndicate Groups to Formulate Detailed Proposals for Legislative and Administrative Measures and Public Education

The Technical committee has just commenced the actual substantive part of the work of the technical committee, Which is the being done by six syndicate groups composed of members of the committee and additional co-opted members on the following topics: criminality; codes of conduct; procurement; the award of licenses and concessions; Whistle-blowing, freedom of information and open meetings; and agencies or units for the implementation of the anti-corruption strategy. The syndicate groups are chaired by constitutional office-holders, such as the Ombudswoman, the Auditor-General, a judge of the High Court, a managing director of a parastatal or a senior public servant. It is expected that the groups will conduct research in their assigned areas and make detailed proposals for legislation, administrative measures, a public education strategy and the creation of implementing an implementing agency or units, Which will be contained in a National Discussion Paper. Each syndicate group has been given detailed draft terms of reference. The groups are presently organising their work-. They have been asked to identify their research needs, to consider the necessity for study tours and to indicate the time needed to complete part their work.

In order to assist the work of the syndicate groups, it ms decided that this phase should be organised in the form of a project. A senior lawyer from my staff has been assigned the responsibility of project manager on a full-time basis and a staff person has been assigned by the Office of the Prime Minister to assist in the administrative work. Financial and technical support for the seminar and the overall project has been provided by the National Democratic Institute for Democratic Affairs, and we are presently approaching

additional donors for support.

Next Steps

It is hoped that the syndicate groups will be able to complete their work by the end of this year so that the draft National Discussion Paper can be submitted to Cabinet and a National Conference on Ethics can be held in the first quarter of next year. Mobilisation for the conference will include the circulation of the National Discussion Paper, the utilisation of focus groups to test public attitudes on issues of corruption and ethical conduct throughout the country, and the holding of preparatory consultations at regional level.

It is intended that the National Conference should reach consensus on an ethics Promotion/anti-corruption strategy. The proposals adopted by the conference will be submitted to Cabinet for adoption. Thereafter, the work of implementation, which will include the drafting of the legislation, the creation of structures and the training of personnel, will begin. The detailed plan of what is needed in order to implement the strategy will have already been laid out by the submissions of the syndicate groups.

Conclusion

As stated at the beginning, Namibian participants have come to this conference to learn from the experiences of the other countries which have preceded us in this important fight. I am confident that the information which my colleagues and I take from the conference and the contacts which we make will contribute significantly to the successful implementation of our plans.

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