THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY NAMIBIA

ARTICLE 5

EVALUATION OF ANTI-CORRUPTION POLICIES AND LEGISLATION

NAMIBIA (FOURTEENTH MEETING)

- Internal policies, practices, or requirements to periodically evaluate legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption;

Namibia has evaluated several relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption as set out hereunder:

- Amendment to the Anti-Corruption Act, 2003 (Act No. 8 of 2003) (Action 3.2.1, 3.2.3)
- Extractive and fishing and other living marine resources legislation and subordinate legislation (Action 5.1.1, 5.1.7)
- Standardize regulations and policies for public enterprises; consolidation of the Public Enterprises Governance Act (Action 2.3.1)
- Amendment to the Namibia’s Extradition Act, 1996 (Act No. 11 of 1996) (Action 3.2.8)
- Amendment to the International Cooperation in Criminal Matters Act, 2000 (Act No. 9 of 2000) (Action 3.2.9)
- Amendment of Public Service Staff Rules (Action 3.3.1)
- Amendment of the Electoral Act, 2014 (Act No. 5 of 2014) (Action 1.1.2)
- Promulgation of the Whistleblower Protection Act, 2017 (Act No. 10 of 2017) (Action 3.2.6)
- Promulgation of the Witness Protection Act, 2017 (Act No. 11 of 2017) (Action 3.2.6)
- Access to Information Bill (Action 2.2.1, Action 5.1.3)
- Self-Regulatory Code of Ethics and Conduct for Namibian Print, Broadcast and Online Media (Action 6.2.2)

Namibia’s Extradition Act, 1996 (Act No. 11 of 1996):

This Act has been amended to provide the person sought for extradition with an opportunity to apply for bail. The Amendment Act also make provision for a “sufficiency of evidence certificate” in the sense that foreign authorities seeking extradition of a fugitive in Namibia only have to
provide a certificate stating that they have in their possession sufficient evidence to prosecute the fugitive. This will prevent the fugitive to dwell with merits during the inquiry and has fastened the extradition inquiry proceedings. This means that if the fugitive wants to prove his innocence, he may prove it in the courts of the country seeking extradition and not in Namibia.

Other measures include:

- to provide for the extradition of person from Namibia to any country on the basis of a multilateral agreement to which Namibia is also a party to;
- to make it permissible for Namibian citizens to be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country other than Namibia;
- to provide for a proper method of authentication of documents;
- to provide for appeals to the Supreme Court.


This Act has been amended in respect of the following:

- to provide for a central authority to receive and to make requests for assistance;
- to make provisions for the request for assistance to conform to the domestic laws of the requested State and, where possible, that requests should be executed in accordance with the procedures specified in the request;
- to make provision for non-disclosure of requests for assistance;
- to provide for additional grounds for refusal of requests for assistance;
- to provide procedures for persons detained in Namibia who are wanted as witnesses in the requesting State; and
- to provide for the use of video conferencing technology in rendering assistance to a requesting State.

Amendment of the Public Service Staff Rules made pursuant to the Public Service Act 1995, (Act No. 13 of 1995)
The Public Service Staff Rules have been amended to make provision for the establishment of Integrity Committees in the Public Service (i.e., in Offices, Ministries and Agencies (CMAs)). These Committees deal with issues related to ethics and corruption within the Public Service. There is a specialised Division created within the Office of the Prime Minister to which the Integrity Committees are required to report on a quarterly basis.

To determine the implementation progress, post the National Anti-Corruption Strategy and Action Plan 2016-2019 period, the NACS Secretariat at the Anti-Corruption Commission (ACC) carried out an evaluation exercise for the Strategy. The NACS Steering Committee, cluster members, implementing institutions, and other stakeholders validated the report at a workshop held from 14 to 16 October 2020.

The final National Anti-Corruption Strategy and Action Plan 2016-2019 Evaluation Report findings show that the NACS implementation was commendable. Of the total 75 actions, 70 actions representing 93%, were implemented, while 5 (7%) were not implemented during the period of implementation reviewed. Of the 70 NACS actions implemented, 15 (20%) were completed and recommendations thereof paved the way for developing the country's second National Anti-Corruption Strategy and Action Plan for 2021-2025.

The evaluation report provided several recommendations, such as implementing the proposed revision of the strategic objectives to ensure relevance and inclusion of emerging issues. Most of the actions of the NACS have also been recommended for inclusion in the NACSAP.

The majority of the first Strategy's actions have been included in the second Strategy as revised by implementing institutions. All the Ministries have one or more actions. This Strategy further includes other players and bodies from the private sector, sports and youth fraternities. Furthermore, it includes specific actions for RCs, LAs, the media, civil society, faith-based organisations and the youth.

- Structures or institutions responsible for evaluating relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption;
The Directorate Law Reform and Development Commission

The Directorate is responsible for review, reform and development of the law as its mandate. The Directorate provide secretarial and functional support to the Law Reform and Development Commission (LRDC) who has the mandate to recommend:

- the repeal of outdated and unnecessary laws;
- the consolidation and/or codification of branches of Namibian law;
- the enactment of laws that promotes Human Rights
- the harmonization of customary law and common law with statutory law and the constitution

provide technical advice and assistance to O/M/A/s on their law reform initiatives
undertake research on all branches of law
make the law accessible
conduct public and stakeholders consultations on law reform projects
prepare reports on recommendations made by the LRDC on reform of the law to the Minister of Justice
submit LRDC activity reports to the National Assembly through the Minister of Justice

The Law Reform and Development Commission is an important institution for the strengthening of Namibia institutions for an anchoring role of law and constitutionalism that ensures the affirmation of a democratic culture. This ensuring people centered development and enhance values of social justice. The Law Reform and Development Commission has been part of making law accessible through constructive engagement with civil society institutions such as SADC Lawyers.

- Processes for periodically evaluating relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption;

- The mission of the Commission is to assist and enable the Government to fulfil its institutional mandate to develop and reform the laws of Namibia. In this regard, the Commission’s work
runs on multiple tracks as provided for under Section 6 of the LRDC Act, (Act No 29 of 1991). These include the repeal of obsolete or unnecessary enactments; the consolidation or codification of any branch of the law or the introduction of other measures aimed at making the law more readily accessible; the integration or harmonization of the customary law with the common and statutory law; the facilitation of new or more effective procedures for the administration of the law and dispensing of justice; the enactment of laws to enhance respect for human rights as enshrined in the Namibian Constitution or to ensure compliance with an international legal obligation; and to advise the Minister regarding any matter which the minister may refer to it.

Alongside the above-mentioned objectives, the Commission also seeks to build strong human capacity (the secretariat) to enhance the efficiency of its work and operations, and improve collaboration with other stakeholders in the law-making process to fully realize its objectives.

Since independence, the Commission has assisted various Offices, Ministries, and Agencies (OMAs) as well as other institutions to reform and develop new laws that strengthen their ability and that of the Government to promote good governance and service delivery. Notwithstanding this, the Commission has experienced several challenges in the execution of its mandate. This includes the delays in finalizing its projects within a reasonable period because the Commission is obliged to conduct public consultations in all 14 regions of the country.

The process of law reform involves examining existing laws, as well as advocating and implementing changes in a legal system with the view to strengthen legislative processes. Modern-day democracies are shaped through law reform, and the benefits thereof are important in maintaining a stable political and legal environment. Most importantly, laws need to be reformed to adapt to societal changes while adhering to constitutional norms and principles.

Namibia, like most African countries, inherited its present laws from its colonial master and as such, reforming and repealing obsolete laws from its statute books remains a top priority under the Commission's mandate. Law reform is an in-depth consultation process involving socio-legal research which must quintessentially reflect on the views of the relevant stakeholders and the views of the community at large. Law reform may also involve consolidation of laws, review of laws, and the codification of laws.
Law Reform and Development Commission, therefore, plays a key role in the process of law reform. The Commission is made up of various sectors of the legal fraternity which includes the State (Ministry of Justice), the Law Society of Namibia, the University of Namibia, the Ombudsman, and other members of society with specialized skills or knowledge. This composition of the Commission will ensure that the Commission as a unit will act professionally without favouring sectoral interests.

- Requirements in relation to the frequency of these evaluations.

Information may, in particular, include the following:

- Primary or secondary legislation or administrative acts which provide for establishing structures, processes and responsibilities in the evaluation process;
- Evaluation reports of relevant legal instruments and administrative measures;
- Reports to Parliament and records of public hearings of such reports;
- Relevant audit reports;
- Reports evaluating the involvement of civil society, academia or the private sector;
- Relevant performance reports relating to specific budget related measures;
- Internal and external publications analysing impact of new legislation or measures taken to prevent corruption;
- Legislative reports on the adequacy of anti-corruption laws and administrative measures.

➢ A jurisdiction like Namibia, which is constantly developing, has serious challenges for law reform. There are always a large number of aspects to be included for reform whereas the human and financial resources are limited. The Commission must therefore apply specific criteria to select a limited number of projects for inclusion in its Work Program. The Commission will naturally identify various projects for law reform but will also accept law reform projects referred to it by Government. Requests may also come from other stakeholders, such as the University of Namibia, the Law Society, or from the broader community.
The Law Reform and Development Commission must make decisions to the scope of projects or priorities according to its assessment of some relevant considerations. The three of the most frequently used criteria are:

1. The Importance of the issue
   The present law must be unsatisfactory in a significant way. There must also be a perceived need for law reform, with significant support from many of those affected by the area of law in question.

2. The Availability of Resources
   The project must fit into the available human and financial resources.

3. The Suitability factor
   The questions at issue must be questions of law and not pre-dominantly political or ethical issues, which are beyond those normally or inevitably raised by any question of law reform. There must be a major problem in that specific area of the law. The problem must either affect many people seriously or fewer people very seriously. The field of law in question must be amendable to systematic development through law reform. There must be no alternative to reform the law adequately until such time that the Commission has provided its report.

Developing a Work Program

Section 7(1) of the Law Reform and Development Commission Act provides that –

“...in order to achieve its objects, the Commissions shall from time to time prepare and submit to the Minister for approval, programs in which the various matters which in its opinion require consideration are included in order of priority.”

The term of office for the members of the Commission is three years. A 3-year Work Program must be prepared immediately after the appointment of the Commissioners. This program will run for the duration of the Commission. The Work Program will outline all the projects which are to be dealt with by the Commission during its term of office. All the projects which the
Commission was busy with, but which were not finalized will be carried forward and included in a new Work Program together with such new projects which the Commission approves.

The 3-year Work Program is a broad Program to cover the specific term of any given Commission. Specific activities must be outlined for each year and compiled in an Annual Business Plan. The Annual Business Plan will be a Compilation of Project Plans or Initiation.

Documents for each of the projects

It will outline, in some detail, all the activities that will be conducted for the individual projects. Activities such as Issue Papers, Discussion Papers, Surveys, Workshops, Consultation Meetings, etc. will be scheduled. The Annual Business Plan will further schedule all the regular meetings of the Commission as well as the meetings of the Project Committees in so far as such dates are known or ascertainable.