

1 September 2023

English only

Implementation Review Group
Resumed fourteenth session
Vienna, 4–8 September 2023
Agenda item 4
State of implementation of the United Nations
Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

Contents

	<i>Page</i>
II. Executive summary	2
Namibia	2



II. Executive summary

Namibia

1. Introduction: overview of the legal and institutional framework of Namibia in the context of implementation of the United Nations Convention against Corruption

Namibia signed the United Nations Convention against Corruption on 9 December 2003 and its Parliament ratified the Convention on 27 April 2004.

The implementation by Namibia of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was issued on 2 October 2015 ([CAC/COSP/IRG/I/4/1/Add.26](#)).

Namibia follows a monist approach in that international law does not need to be translated into national law and, consequently, international treaties can be applied directly following an act of ratification. According to article 144 of the Constitution, the general rules of public international law and international agreements binding upon Namibia under the Constitution form part of the law of Namibia, unless otherwise provided for by the Constitution or an act of Parliament. Namibia is a common law State, its legal system being based on Roman-Dutch and English law.

The national legal framework for combating corruption includes the following key texts: the Anti-Corruption Act; the Whistle-blower Protection Act; the Witness Protection Act; the Public Service Act; the Public Procurement Act; the Prevention of Organised Crime Act; the State Finance Act; the Financial Intelligence Act; the Financial Institutions Supervisory Authority Act; and the International Co-operation in Criminal Matters Act.

Entities with mandates relevant to the prevention and countering of corruption include the Prime Minister's Office, the National Assembly, the Anti-Corruption Commission (ACC), the Office of the Prosecutor General, the Ministry of Justice, the Office of the Auditor General, the Namibian Police Force, the Public Service Commission and the Financial Intelligence Centre (FIC).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

In 2021, Namibia adopted the National Anti-Corruption Strategy and Action Plan 2021–2025 (NACSAPII), which builds on the implementation and evaluation of the National Anti-Corruption Strategy and Action Plan 2016–2019 and is based on lessons learned and recommendations made by the implementing authorities. The National Anti-Corruption Steering Committee is in charge of overseeing the implementation of the Strategy. The Committee is divided into four clusters and its secretariat is housed within ACC. Under the first Strategy and Action Plan (2016–2019), ACC conducted a campaign to raise awareness among regional and local authorities and published a number of anti-corruption materials. At the time of the country visit, a new awareness-raising campaign based on the National Anti-Corruption Strategy and Action Plan 2021–2025 was planned.

Namibia continuously carries out corruption risk assessments in public and private institutions to detect corruption vulnerabilities and provide for mitigation strategies. Furthermore, integrity committees are established in public institutions whose performance is periodically reviewed by ACC.

ACC was established by the Anti-Corruption Act of 2003, as amended, and is in charge of taking measures to prevent corruption, including public awareness-raising and the dissemination of information on the risks of corruption (sect. 3(f)). ACC also

acts as secretariat of the National Anti-Corruption Steering Committee and has developed guidelines and other anti-corruption teaching material.

Section 2(1) of the Act establishes that ACC is an independent and impartial body. The Act also provides that the Director General and the Deputy Director General are appointed by the National Assembly on the basis of a nomination by the President (sect. 4). They are appointed on a full-time basis for a period of five years and may be reappointed upon expiry of their term of office (section 7(1)). However, the latest appointments were made through a renewal process. Section 9 provides for a removal process which has never been implemented. The budget of the Commission is established through the Appropriation Act, as in the case of other government bodies. Section 16 of the Anti-Corruption Act provides that the Director General must submit annual reports on the activities of the Commission to the Prime Minister, who in turn submits them to the National Assembly.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

There is no centralized process in place for the recruitment of public officials. Recruitment is based on advertisements in daily newspapers and consists of a series of tests and interviews conducted by the Institute for Public Administration Management. The Institute is also in charge of training as may be necessary to qualify individuals for appointment, promotion or transfer. Ethics-related training is also available. There are no special procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption, or for the rotation of such individuals. However, the Public Service Commission may advise the President and the Government on the appointment of suitable persons to specific categories of employment in the public service. At the time of the country visit, Namibia was in the process of reviewing Public Service Staff Rule B.II on the recruitment process, including with regard to a system of rotation in some public services.

Conviction of an offence is not among the grounds for disqualification from candidature for and election to public office. Only members of the National Assembly who have been sentenced to a term of imprisonment of 12 years or more are disqualified.

Section 154 of the Electoral Act provides that the National Assembly must allocate funds to political parties on the basis of the principle of proportional representation and as determined by the Minister of Finance. Private contributions to political parties are regulated by section 4 of Regulation No. 357 of 2019 on the financing of political parties, but those provisions are not systematically enforced.

The Public Service Act prohibits public servants from undertaking without prior approval private work related to the field of operations of the office, ministry or agency in which they are employed, and from using public property to promote private interests (sect. 25(1)). Additionally, the Act provides that a staff member is liable to disciplinary action if she or he fails to disclose that a member of his or her household undertakes such private work. Regulation 11 of the Public Service Act Regulations prohibits conflicts of interest and provides for the declaration by staff members of their interests. However, the provision is limited to declarations of self-employment and any connection with a business operation for private purposes. The Regulation establishes that in such cases, the public servants in question are obliged to submit to the permanent secretary of the relevant office, ministry or agency a declaration of interest within five days of assuming duty. The Regulation also establishes the obligation to obtain formal approval prior to engaging in self-employment or business operations for private purposes. Additional restrictions on the use of government resources apply. Conflicts of interest must be reported by heads of offices, ministries and agencies, after verification, to the Office of the Prime Minister for a final determination; however, the system of verification and management of such conflicts is not implemented effectively, and guidance and oversight are lacking. Regulation 16

prohibits public servants from accepting any gifts or benefits, except courtesy and trivial gifts, without the necessary approval; however, no detailed rules on gifts have been elaborated.

Namibia is a State party to the African Charter on values and principles of public service and administration and has adopted the Namibian Public Service Charter and General Principles. The Charter is incorporated in each institution through customer service charters that are audited on annual basis by the Directorate of Performance improvement in the Office of the Prime Minister. The Public Service Act provides for disciplinary actions for breaches of the provisions of the Act, its regulation or the staff rules.

Regulation 19 of the Public Service Act Regulations establishes the obligation of a staff member who becomes aware of any wrongdoing or maladministration to report such conduct to his or her supervisor, who in turn must report it to the appropriate authority. In 2017, Namibia adopted the Whistle-blower Protection Act, which provides for the establishment of reporting channels and the protection of reporting persons; however, the Act has not yet been implemented. Public servants are obliged to report corrupt transactions to supervisors and the ACC (section 48 of the Anti-Corruption Act) and may also report their concerns to the integrity committees or the Office of the Ombudsman.

Namibia has adopted a set of rules and guidelines on ethical judicial conduct in Namibia, applicable to the superior courts (the High Court and the Supreme Court), and a code of conduct for magistrates as part of the Magistrates Act. However, Namibia does not provide ethics or anti-corruption training to members of the judiciary or prosecution services. It has not adopted a dedicated code of conduct applicable to the prosecution service.

Public procurement and management of public finances (art. 9)

The public procurement system is regulated by the Public Procurement Act, the Public Procurement Regulations and the Public Procurement Guidelines. The Procurement Policy Unit is mandated to monitor compliance and report on the performance of the public procurement system in Namibia. It is also responsible for awareness-raising, capacity-building, and training of relevant procurement stakeholders. The Unit may also conduct investigations and institute performance audits (sect. 7(2) of the Public Procurement Act). Where non-compliance with procurement rules is discovered, the Prime Minister may refer the matter, providing recommendations, to the appointing authority for appropriate action or refer any matter of non-compliance to the Police, ACC or any other competent authority for investigation (sect. 7(4) of the Act).

The country's procurement framework does not establish open bidding as the default procurement procedure. However, the Public Procurement Regulations establish thresholds for the value of the contract above which the Public Procurement Board is in charge of conducting the bidding process on behalf of the public entity in question.

Invitations to bid must be published for a minimum of 30 days in at least two daily newspapers circulated widely in Namibia (regulations 4A and 35 of the Public Procurement Regulations). Neither the Act nor the Regulations regulate the type of technical specifications that should be included in the invitation to bid. At the time of the country visit, Namibia had not established an e-procurement system.

Winning bidders are selected by a recruitment committee in accordance with regulations 4A and 4B of the Public Procurement Regulations. A supplier or bidder that wishes to lodge an application for review can apply to the review panel within seven days of notification of the decision. The review panel may take any appropriate action if the procurement rules have not been respected, including suspension and debarment (sect. 47 of the Public Procurement Act).

Sections 66 and 76 of the Public Procurement Act require all persons involved in any step of the procurement process to declare any potential conflict of interest.

Non-compliance with this obligation is a criminal offence punishable by a fine and/or imprisonment for a maximum of 10 years.

The State budget adopted by the Parliament (art. 32, para. 2, of the Constitution) is based on the estimates of expenditures and revenues presented by the Minister of Finance, which are in turn based on the audit reports provided by the Auditor General (sect. 5 of the State Finance Act). Civil society organizations may participate in the process of adoption by the Parliament.

Article 127 of the Constitution provides that State revenues and expenditures are audited by the Auditor General. The Auditor General is appointed by the President on the recommendation of the Public Service Commission and with the approval of the National Assembly for a maximum period of five years. According to sections 26 and 27 of the State Finance Act, the Auditor General is in charge of examining and auditing the accounts and registers of public entities and transmitting the results of its investigations to the Minister of Finance.

The Ombudsman is responsible for, inter alia, investigating cases of maladministration by public authorities at the national and local levels (Ombudsman Act, art. 3).

Public reporting; participation of society (arts. 10 and 13)

At the time of the country visit, the Access to Information Bill was pending before the National Assembly and was expected to be passed before the end of 2022. The Bill provides for the right to access information and for the establishment of an Information Commissioner in charge of promoting and protecting the right of access to information in Namibia and monitoring implementation. The bill also requires public entities to produce, keep, organize and manage information in such a way as to facilitate access by the public, and to proactively publish certain information. While providing for the facilitation of access to information, the bill does not provide for a simplified procedure, such as a one-stop shop.

Section 3 of the Anti-Corruption Act provides for cooperation between ACC and civil society, which has been actively involved in collaborative projects of national importance since the Commission's inception. In addition, civil society organizations were actively involved in the development of the National Anti-Corruption Strategy and Action Plan. The new Strategy has strengthened the role of civil society as a key element of its implementation. Civil society is represented on the National Anti-Corruption Steering Committee by the Civic +264 organization, whose mission is to promote the sharing of information among civil society organizations in Namibia. During the country visit, the authorities indicated that the future anti-corruption act would be more inclusive of groups outside the public sector.

While article 21 of the Constitution enshrines the fundamental right of freedom of expression, Namibia has not yet adopted a law on the freedom of the press or the right to seek and communicate information.

ACC is mandated to receive information about the commission of corruption offences (sect. 18 of the Anti-Corruption Act). ACC has established dedicated internal reporting channels and procedural complaint handling mechanisms and complainants reporting corrupt practices can do so anonymously, in which case their identity cannot be revealed. Challenges in implementing the Whistle-blower Protection Act of 2017 were reported.

Private sector (art. 12)

The Companies Act establishes the principles of integrity and transparency of financial and accounting records. Namibia has also adopted a number of laws, including laws to prevent and combat money-laundering, that involve the private sector and establish certain integrity and transparency standards. In addition, Namibia has developed the Namibian Corporate Governance Code, which sets out optional corporate governance and internal audit principles for companies.

While basic corporate information is collected by the companies registrar, there are no mechanisms to ensure adequate transparency of legal persons and arrangements.

Section 258 of the Companies Act establishes as a criminal offence the intentional concealment, destruction, mutilation, falsification or making of any false entry in any book, register, document, financial record or financial statement of any company. However, this provision does not seem to proscribe off-the-books accounts.

There are no targeted integrity pacts, focused programmes or joint initiatives to engage the private sector in concerted corruption prevention efforts.

Namibia has not demonstrated the existence of a specific provision in tax law disallowing the tax deductibility of expenses that constitute bribes.

Measures to prevent money-laundering (art. 14)

The legal regime of Namibia for the prevention of money-laundering consists mainly of the Financial Intelligence Act, the Prevention of Organised Crime Act, subsidiary regulations and relevant guidance notes, circulars and directives issued by FIC.

The Financial Intelligence Act establishes preventive measures and reporting obligations for financial institutions, non-bank financial institutions and a range of designated non-financial businesses and professions, including natural or legal persons that provide electronic services for the transmission of money or value (collectively referred to as “accountable institutions” as defined in schedule 1 of the Financial Intelligence Act). Other reporting persons (including persons dealing in motor vehicles or second-hand goods, gambling houses and bookmakers, short-term insurance providers and persons trading in jewellery, antiques or art), notaries and other value transfer service providers, such as virtual asset service providers, are not covered.¹ Supervisory bodies are listed in schedule 4 of the Financial Intelligence Act (currently only the Namibia Financial Institutions Supervisory Authority exercises this function) and FIC is responsible for all other sectors. However, the national risk assessment identified resource constraints, inadequate capacity and the possible lack of independence of the financial intelligence unit as challenges, together with limitations in the administration of sanctions (including the limited ability of the Namibia Financial Institutions Supervisory Authority to administer sanctions independently from FIC). Risk-based supervision is an ongoing process.

Pursuant to the Financial Intelligence Act, all accountable institutions are subject to customer due diligence requirements (part 4), which include taking reasonable steps to establish and verify the identity of beneficial owners (sect. 21) and record-keeping measures (sects. 26–29). All businesses and accountable and reporting institutions are obliged to report suspicious transactions (sect. 33). Accountable and reporting institutions must designate compliance officers in charge of internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions (sect. 39).

Authorities such as FIC, ACC and the Police are authorized to cooperate and share information at the national and international levels pursuant to the legislation governing their respective activities (sect. 9 of the Financial Intelligence Act, sect. 3 of the Anti-Corruption Act and sect. 43 of the Police Act). The Anti-Money-Laundering Council oversees policy formulation and coordination. FIC, according to section 9 of the Financial Intelligence Act, is tasked with coordinating anti-money-laundering activities and the activities of supervisory bodies. Authorities have entered into bilateral cooperation agreements with counterparts globally, including in Southern African Development Community member States. Additionally, FIC is a member of the Egmont Group of Financial Intelligence Units. The Namibian Police Force is a member of the Southern African Regional Police Chiefs Cooperation Organization,

¹ Motor vehicle dealers are considered vulnerable to a medium-level risk of money-laundering, while vulnerability in the legal practitioners’ sector is rated as medium-high. For virtual asset service providers, FIC Directives Nos. 1 and 2 of 2021 have been issued and some providers had been registered at the time of the country visit.

the International Criminal Police Organization (INTERPOL) and the Asset Recovery Inter-Agency Network for Southern Africa.

Persons entering or leaving Namibia must declare cash or bearer negotiable instruments exceeding the threshold of 100,000 Namibian dollars (N\$) as determined by FIC to a customs and excise officer (sects. 36 and 37 of the Financial Intelligence Act and sect. 14 of the Customs and Excise Act). Such declarations should be made using the official declaration forms available for that purpose upon entry and exit. Failure to declare or the declaration of false information is an offence under the Customs and Excise Act and the Financial Intelligence Act, punishable by a fine not exceeding N\$ 100 million or imprisonment for up to 30 years, or both (sect. 36 of the Financial Intelligence Act). Any cash or items not declared or falsely declared are liable to seizure and forfeiture (sects. 36 and 37 of the Financial Intelligence Act and sects. 90, 91, 93, 96 and 97 of the Customs and Excise Act). Customs authorities have the power to stop or detain currency and bearer negotiable instruments that are suspected of being connected with an offence or of being proceeds of crime (sects. 14 and 98 of the Customs Act and sects. 36 and 37 of the Financial Intelligence Act).

Section 34 of the Financial Intelligence Act and regulation 32 of the Financial Intelligence Act Regulations require accountable and reporting institutions to include prescribed originator information in electronic transfers above a value of N\$ 100,000 where reasonably possible, or to request such information from the originator institution. In the case of electronic transfers with incomplete originator information, the accountable or reporting institution must verify the missing information before it carries out any related instructions, or file a suspicious transaction report. Ordering institutions are not prohibited from carrying out electronic transfers that do not comply with the specified requirements. Electronic transfers are treated as transactions subject to the record-keeping requirements of sections 26 and 27 of the Financial Intelligence Act. The requirements are partially in line with the Convention, given the established threshold amount and the “feasibility exception” (financial institutions must only comply with the requirements “where reasonably possible”).

In 2012, Namibia conducted a national risk assessment, which was updated in 2021 and which serves as a basis for the risk-based approach that the country has adopted. Also in 2012, Namibia adopted a national strategy on combating money-laundering and the financing of terrorism.

The country’s framework for combating money-laundering was evaluated in 2007 on the basis of the Financial Action Task Force recommendations, and its post-evaluation progress report was finalized in 2017. A further evaluation was under way at the time of the country visit.

2.2. Successes and good practices

- Civil society organizations were actively involved in the development of national anti-corruption strategy (art. 5).
- Integrity committees whose performance is periodically reviewed by ACC have been established in public institutions (art. 5).
- Annual audits of customer service charters are conducted by the Directorate of Performance Improvement in the Office of the Prime Minister (art. 8, para. 2).
- FIC has rendered technical assistance and shared information on its operations with Eastern and Southern Africa Anti-Money Laundering Group member States where financial intelligence units have recently been or are in the process of being established (art. 14).
- The national risk assessment offers a comprehensive assessment of the legal and institutional framework for countering money-laundering, including identified risks and threats, and provides recommendations (art. 14).

2.3. Challenges in implementation

It is recommended that Namibia:

- Endeavour to conduct a nationwide campaign to raise awareness of NACSAPII (art. 5, para. 1).
- Continue to strengthen training, capacity-building and the provision of resources for public authorities and officials in order to prevent, detect and mitigate risks of corruption and mismanagement of public funds (art. 5, para. 2).
- Grant ACC the necessary structural and functional independence to enable it to carry out its functions effectively and free from undue influence, in particular by considering the introduction of non-renewable terms of office of the Commission's Director General and Deputy Director General to strengthen the guarantees of independence (art. 6, para. 2).
- Endeavour to adopt a more centralized system for the recruitment of public officials and to strengthen the system of selection and training of individuals for positions considered especially vulnerable to corruption and, where appropriate, the rotation of such individuals (art. 7, para. 1).
- Consider providing for the disqualification of candidates for election to public office who have been convicted of offences established in accordance with the Convention (art. 7, para. 2).
- Consider taking appropriate measures to ensure that regulations governing private contributions to political parties and candidates for elected office are adequately enforced (art. 7, para. 3).
- Consider establishing reporting channels within public-sector institutions to facilitate the reporting by public officials of acts of corruption, and also consider implementing the Whistle-blower Protection Act of 2017 to provide reporting officials with adequate protection (art. 8, para. 4).
- Endeavour to establish measures and systems requiring public officials to submit declarations to the appropriate authorities with regard to investments, assets and substantial gifts or benefits in connection with which a potential conflict of interest may arise, including by extending the reporting obligation beyond declarations of self-employment and connections with business operations; establish effective systems for the verification and management of conflicts of interest, including the necessary guidance and oversight; and consider drawing up and implementing rules on the acceptance and reporting of gifts (art. 8, para. 5).
- Ensure that the public procurement body that is mandated to oversee and monitor procurement processes has the necessary resources and capacity to adequately perform its mandate; and endeavour to continue efforts to establish an e-procurement system (art. 9, para. 1).
- Ensure that invitations to tender are published as widely as possible, including by considering establishing the open bidding procedure as the default tendering procedure (art. 9, para. 1 (a)).
- Regulate invitations to tender in terms of technical specifications to avoid the tailoring of invitations according to the choice of specific products or companies (art. 9, para. 1 (b)).
- Ensure that judicial review is always available as a means of appeal in matters of public procurement (art. 9, para. 1 (d)).
- Adopt the Access to Information Bill and ensure its appropriate implementation (art. 10 (a)).
- Simplify the procedure for access to information by considering, for instance, the establishment of a one-stop shop (art. 10 (b)).

- Consider conducting and publishing an assessment of corruption risks in its public administration (art. 10(c)).
- Take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary and prosecution services, including by providing dedicated ethics and anti-corruption training; consider adopting a specialized code or codes of conduct applicable to the prosecution services (art. 11).
- Take appropriate measures to enhance the prevention of corruption involving the private sector, including by adopting business ethics and business integrity standards and engaging the private sector in corruption prevention efforts, for example, through integrity pacts, focused programmes or joint initiatives (art. 12, paras. 1 and 2).
- Adopt measures to enhance transparency among private entities, including measures regarding the identity of legal and natural persons involved in the establishment and management of such entities (art. 12, para. 2 (c)).
- Ensure that the establishment of off-the-books accounts and the making of off-the-books transactions are prohibited (art. 12, para. 3).
- Ensure that the tax deductibility of expenses that constitute bribes is disallowed (art. 12, para. 4).
- Take appropriate measures to foster the active participation of civil society in raising awareness of corruption and, in particular, to ensure that the freedom to seek, receive, publish and disseminate information concerning corruption is respected, promoted and protected (art. 13, para. 1, and art. 13, para. (1)(d)).
- Provide appropriate protection to reporting persons in line with the Whistle-blower Protection Act (art. 13, para. 2).
- (a) Continue to monitor the vulnerability to money-laundering of sectors exempt from prudential and supervisory control – such as virtual asset service providers and reporting persons, including notaries, as outlined in the national risk assessment – so as to ensure that those particularly susceptible to money-laundering are covered by anti-money-laundering requirements, in particular customer due diligence and record-keeping, and continue to carry out sectoral risk assessments; (b) strengthen the supervisory and sanctions regime for accountable institutions, including through risk-based supervision and the application of proportionate and dissuasive sanctions, and by ensuring that supervisors can impose effective sanctions for non-compliance; (c) continue to address resource and capacity constraints faced by supervisors and limitations in FIC capacity to gather and process intelligence (art. 14, para. 1).
- Amend section 34 of the Financial Intelligence Act and regulation 32 of the Financial Intelligence Act Regulations to ensure compliance with the requirements of the Convention regarding electronic transfers (art. 14, para. 3).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Support and capacity-building in order to develop corruption prevention tools and strengthen peer learning and information exchange (arts. 5 and 6).
- Support in implementing the Whistle-blower Protection Act of 2017 and in establishing the necessary reporting channels and providing adequate protection so as to facilitate reporting by public officials and in the private sector (art. 8, para. 4; art. 12; and art. 13, para. 2).
- Capacity-building for the Office of the Prosecutor General and support for research and data gathering by ACC and the Police (art. 11).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The International Co-operation in Criminal Matters Act provides the legal basis for the recognition and enforcement of foreign confiscation orders and for the return of property through international cooperation.

Namibia does not require a treaty in order to provide assistance in asset recovery, and can provide such assistance by designation/proclamation, on the basis of reciprocity and on the basis of the Convention.

Namibia has established an asset forfeiture unit as part of the Office of the Prosecutor General. The unit is tasked with handling asset forfeiture cases, including cases involving forfeiture based on foreign requests. Seized proceeds are transferred to a criminal assets recovery fund and used to fund crime prevention activities.

Namibia has not refused any requests for asset recovery to date. There have been no concluded cases in which assets have been returned to a requesting State.

Namibian authorities, including FIC, ACC and the Police, can afford cooperation and exchange information spontaneously or upon request, including on the basis of bilateral and multilateral agreements and platforms, such as the Southern African Regional Police Chiefs Cooperation Organization, INTERPOL and the Asset Recovery Inter-Agency Network for Southern Africa.

Namibia is party to several agreements containing provisions on asset recovery through international cooperation.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The Financial Intelligence Act and the Financial Intelligence Act Regulations do not specifically prescribe enhanced due diligence requirements in respect of politically exposed persons. However, such persons have been classified as high-risk clients in FIC directives and guidance notes. As specified in the guidance notes, both domestic and foreign politically exposed persons are covered, including their family members and close associates; however, it is unclear whether sanctions can be applied for violations of the guidance notes, as a result of which there is some uncertainty in terms of enforceability. As noted in the national risk assessment, the absence of a list of politically exposed persons (which would support monitoring mechanisms) effectively hinders the detection and reporting of unusual and suspicious transactions. Politically exposed persons are high-risk clients and the national risk assessment recommended that more should be done to help supervised entities to identify such persons.

Beneficial ownership information is available in the national platform for company identification and registration (BIPA). The system could be strengthened by ensuring that accurate and current information is available.

Through its website and guidelines and the national risk assessment findings, FIC can notify financial institutions of higher-risk customers or transactions either on the basis of information from a foreign source or on its own initiative.

Accountable and reporting institutions must keep information and documents relating to customer due diligence measures for at least five years after the termination of the customer relationship or transaction in question, or longer if so requested by the competent authorities, and must comply with the related record-keeping requirements of the Financial Intelligence Act (sects. 26–30) and its implementing regulations.

Pursuant to the Banking Institutions Act, only licensed banks operate in Namibia and no shell banks are permitted. Section 25 of the Financial Intelligence Act requires

financial institutions to identify and verify the identification of respondent institutions with which they conduct correspondent banking relationships and, in the case of a payable-through account, to ensure that the respondent institution has verified its customer's identity, has implemented mechanisms for ongoing monitoring with respect to its clients and is capable of providing relevant identifying information on request. The prohibition against correspondent relationships with shell banks is detailed in FIC Guidance Note No. 2 of 2009.

As noted in the national risk assessment and confirmed by the authorities, the only area of government that is subject to specific legal provisions regarding asset declarations is Parliament. However, there is no system of effective oversight, verification or analysis of reported information for the purposes of preventing conflicts of interest or detecting illicit enrichment, nor are declarations made available transparently through online or other electronic means. In order to improve the asset declaration system, it has been recommended that the scope of the system be expanded to include the President, the Vice-President, the judiciary, the Electoral Commission, the central procurement body, political parties, State-owned enterprises and persons charged with administering natural resources, so as to avoid conflicts of interest, promote transparency and prevent illicit enrichment.

Public officials are not required to report an interest in or authority over a foreign account.

FIC is responsible for collecting, receiving and analysing reports of suspicious transactions and activity, for cooperating with investigative and prosecution authorities, and for supervising, monitoring and enforcing compliance with the Financial Intelligence Act (sect. 9).

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

While there is no specific legal provision authorizing foreign States to file civil suits in the domestic courts, there is no limitation in this regard. All sections of the Prevention of Organised Crime Act and Criminal Procedure Act apply equally to foreign and national persons (natural and legal, including entities of a foreign State), who have the same rights as natural persons to file civil claims in domestic courts, including in confiscation proceedings. See, for example, *Prosecutor General v. Moses Pasana Uanjanda Kamunbumba and Mckma and Lenga Trading CC*, which involved the question of the legal standing of a foreign person with regard to participation in civil forfeiture proceedings in Namibia. Additionally, foreign persons can file civil claims in criminal confiscation proceedings directly or on application to the Prosecutor General (section 300 of the Criminal Procedure Act).

Section 300 of the Criminal Procedure Act establishes a clear rule regarding compensation where an offence has caused damage to or loss of property. According to that provision, the court may, where a person (including an entity of a foreign State) is convicted of the offence and on application by the injured person or a prosecutor, award the injured person compensation for such damage or loss (up to N\$ 20,000 in the case of the regional courts and up to N\$ 5,000 in the case of magistrate's courts). See also *State v. Mungonena (102/2015) [2016] NAHCNLD 28 (8 April 2016)*. Sections 44 and 45 of the Prevention of Organised Crime Act establish a similar rule on compensation for damage that encompasses civil claims and provide that such compensation may be paid from confiscated proceeds.

Any person who has an interest in property which is subject to a preservation order may oppose the issuance of a forfeiture order or apply for exclusion of his or her interest from the scope of such an order, provided that that person gives prior notice of his or her intention to do so (sect. 59 of the Prevention of Organised Crime Act). The measure applies to proceeds of any unlawful activity (sect. 61) and can be used by any bona fide natural or legal person who acquired the interest legally and for a

consideration (sect. 63). Two case examples were provided in which foreign nationals had opposed the issuance of a property forfeiture order.

Sections 20 and 21 of the International Co-operation in Criminal Matters Act provide for the registration and enforcement of foreign confiscation orders subject to the grounds for recognition set out in section 20(1). Such a decision requires the approval of the Minister of Justice (sect. 20), who has broad discretion to grant or refuse requests. Namibia has also adopted provisions on the recognition of foreign civil judgments.

Requests are received by the Central Authority, which is the Permanent Secretary of the Ministry of Justice, and filed with the court upon approval by the Minister (sect. 20 of the International Co-operation in Criminal Matters Act). According to section 20 (2), the Central Authority should lodge the foreign order with the court, although in practice orders are filed by the Prosecutor General.

Namibian authorities can order the confiscation of property of foreign origin on the basis of provisions governing confiscation and forfeiture that cover proceeds of crime and unlawful activities (chaps. 5 and 6 of the Prevention of Organised Crime Act).

Chapter 6 of the Prevention of Organised Crime Act deals with non-conviction-based asset forfeiture. Together with section 41 of that Act, these provisions allow the Namibian authorities to provide assistance in response to requests for cooperation made on the basis of non-conviction-based proceedings, in accordance with the International Co-operation in Criminal Matters Act.

Sections 24–26 of the International Co-operation in Criminal Matters Act provide for the registration and enforcement of foreign restraint orders. In addition, domestically, the authorities are able to take a range of provisional measures under the Prevention of Organised Crime Act for seizing and freezing property, such as restraint orders (sect. 25), anti-disposal orders (sect. 33), preservation orders (sect. 51) and seizure (sect. 54). However, the International Co-operation in Criminal Matters Act is limited to the enforcement of foreign restraint orders issued by the courts or tribunals of foreign States. There is no provision allowing for the restraint of property on the basis of a request, in the absence of a foreign restraint order.

Namibia has adopted provisions on the preservation of property pursuant to a court order (sects. 51–55 of the Prevention of Organised Crime Act).

There are no formal content requirements for mutual legal assistance requests.

The law does not specify grounds for refusal (including in cases involving property of a de minimis value) or provide for consultations before provisional measures are lifted.

Basic measures are in place to protect bona fide third parties (sect. 65 of the Prevention of Organised Crime Act and sect. 327 of the Criminal Procedure Act).

Return and disposal of assets (art. 57)

Sections 67 and 68 of the Prevention of Organised Crime Act, together with section 21 of the International Co-operation in Criminal Matters Act, provide a basis for the authorities to dispose of confiscated property, including by return to its prior legitimate owners, and to return confiscated property to a requesting State. These measures are subject to an order for the protection of the interests of bona fide third parties in forfeited property, as provided for in section 65(8) of the Prevention of Organised Crime Act (sect. 68(1) of the Act).

In accordance with section 21(3) of the International Co-operation in Criminal Matters Act, the Central Authority must, subject to any agreement or arrangement with a requesting State, pay to that requesting State any amount recovered pursuant to a foreign confiscation order, less all expenses.

Namibia has not entered into any asset-sharing agreements or arrangements to date.

3.2. Successes and good practices

- An asset forfeiture unit tasked with handling asset forfeiture cases has been established as part of the Office of the Prosecutor General (art. 51).
- A criminal asset recovery fund has been established and recovered assets are used to fund crime prevention activities (art. 51).
- Namibian authorities have successfully applied the Convention in international cooperation cases (art. 51).

3.3. Challenges in implementation

It is recommended that Namibia:

- Continue to invest in the capacity of the financial intelligence unit to improve the unit's intelligence gathering and processing, and in the capacity and resources of financial crime investigators and prosecutors (arts. 51 and 58).
- Continue strengthening measures to help supervised entities to identify politically exposed persons, including through the adoption of a list of such persons, as recommended in the national risk assessment, in order to enhance the effectiveness of the detection and reporting of suspicious transactions, and through amendment of the Financial Intelligence Act and its implementing regulations as necessary to ensure that the rules regarding politically exposed persons provide adequate guidance and are legally binding (art. 52, para. 1).
- Strengthen measures to enable access to accurate and up-to-date beneficial ownership information by enhancing the national platform for company identification and registration (the BIPA platform) (art. 52, para. 1).
- Continue to enhance the asset declaration system by expanding its scope to include the President, Vice-President, members of the judiciary, the Electoral Commission, the central procurement body, political parties, State-owned enterprises and persons charged with administering natural resources, consider the use of electronic filing systems, and establish appropriate verification and oversight mechanisms, so as to enhance effectiveness and controls with respect to conflicts of interest and illicit enrichment (art. 52, para. 5). Namibia might also consider requiring the disclosure of foreign financial accounts or any signature or other authority over such accounts (art. 52, para. 6).
- Amend the International Co-operation in Criminal Matters Act to specify the role of the Prosecutor General in transmitting requests for the enforcement of foreign confiscation orders to the courts and to clarify the role of the Minister of Justice in approving decisions to enforce such orders, with a view to ensuring that requests are expeditiously handled and there is no discretionary application of procedural requirements (art. 54, para. (1) (a), and art. 55, para. 1 (b)).
- Clarify the rules on restraint of property to ensure that the authorities can take a range of measures to freeze and seize property on the basis of a foreign request for mutual legal assistance, including in the absence of a judgment handed down by a foreign court (for example, on the basis of an order issued by a foreign competent authority or prosecutor) (art. 54, para. 2 (a), and art. 55, para. 2) and in the absence of a foreign freezing or seizure order (art. 54, para. 2 (b)).
- Consider adopting and publishing regulations or guidelines concerning its procedural requirements for incoming mutual legal assistance requests (art. 55, para. 3).
- Adopt a clear legal provision specifying the grounds for refusal of mutual legal assistance requests (art. 55, para. 7).
- Consider adopting measures providing for consultations before provisional measures are lifted (art. 55, para. 8).
- Regulate the matter of costs in line with the Convention (art. 57, para. 4).