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An analysis of the depth of corruption in Namibia's political system, with reference to the fishing industry scandal known as 'Fishrot'

Johan Coetzee*

Abstract

This article focuses on how corruption is rooted in Namibia's system of political representation with Fishrot as illustration. Those with political and business connections colluded to facilitate thousands of illegal transactions. One of the main reasons for the depth of Namibian corruption is that members of the National Assembly are not accountable to the electorate for their decisions but follow party directives. Another factor contributing to corruption is the excessive power of the executive branch, which overlaps with and dominates the legislature. The executive branch abused its power to amend legislation thus enabling the allocation of a massive quota to the National Fishing Corporation of Namibia. The Icelandic company, Samherji, benefitted from the quota by use of bribery. Fishrot is the epitome of the corruption made possible by a distorted political system and the abuse of legislative power to afford protection against prosecution to those involved in corrupt practices. Obliging Members of Parliament declare their interests is one way to combat corruption. If there is no political will for a state-centric approach, then a citizen-centric approach is necessary to bring about transformation with lasting effects. Based on the history of best practices in Hong Kong and Singapore, it could take up to four decades to transform Namibia from being systemically corrupt to reaching sustainable levels of governance, provided all the comparable variables are similar, which is most probably not the case.

The fish rots from the head

Bob Garrat's book, *The Fish Rots from the Head*,¹ examines how an institution can start to deteriorate as a result of the actions of those in control of it. In November 2019, Jóhannes Stefánsson, the manager of Namibian operations for Samherji, an Icelandic

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¹ Bob Garrat, *The Fish Rots from the Head. The crises in our boardrooms: developing the crucial skills of the competent director*, London, Profile Books, 2003.

fishing company operating off the shores of Namibia, blew the whistle on the company's bribing of the previous Minister of Fisheries to secure 55,000 tons of the horse mackerel quota from 2012-2019. Politically well-connected businessmen used the bribes they received to create several companies and acquire other assets. A number of lawyers had facilitated the flow of illegally gained money through trust accounts and property developments. A television documentary dealing on the subject² revealed that N\$17.5 million had been channelled through a Namibian bank account by a prominent Namibian lawyer, who refused to disclose details of trust accounts to investigators from the Anti-Corruption Commission (ACC), the Legal Society and other bodies. The corruption case briefly described above is commonly known in the mainstream media as the Fishrot scandal.

In July 2015, the Namibian government gazetted a bilateral agreement between Namibia and Angola on the formation of a joint venture company called Namgomar SA Pesca which was to operate primarily in the horse mackerel business. This company was used to facilitate kickbacks of more than N\$103 million.³ These kickbacks continued for years, partly because the details were kept out of local media. Namgomar was allocated such a large fishing quota that it adversely affected Namsov Fishing. Partially, if not mainly, as a result of the involvement of a network of operators, including some Ministry of Labour officials who also had fishing quotas, approximately 700 Namsov fishermen were made redundant. Several complaints about illegal labour practices, e.g. "21-36 hour shifts without rest and sleep", were filed by the legal representatives of the fishermen who had been laid off.⁴ An official in the Ministry of Labour (who also had a fishing quota) diverted the labour dispute to the High Court, even though this court does not have jurisdiction over labour disputes. The fishermen's suit was unsuccessful and the legal process halted.

Four lawyers with strong politically connections have been implicated in Fishrot. One, Maren de Klerk, fled Namibia. These lawyers facilitated not only the transfer of illegal funds, but also tax evasion and money laundering. For example, those implicated in Fishrot allegedly evaded tax amounting to approximately N\$6 billion (although this figure has not been verified). Holding companies were registered in tax havens such as the Marshall Islands, Mauritius and Dubai. The amount of tax evaded is probably substantially more than the bribes of approximately N\$2.5 billion. In an affidavit De Klerk revealed how he was involved and used his trust account to receive money and pay beneficiaries as instructed.⁵ These are only allegations at this stage and have yet to be examined in a court of law. De Klerk acted as paymaster of bribe money received from James Hatuikulipi – the alleged 'brain' behind Fishrot – and other central figures in Fishrot deals. He

² Al Jazeera, *Anatomy of a Bribe*, DSTV Channel 406, 22:30, 1 December 2019.

³ Shinovene Immanuel, "Namsov eyed Angola quota", *The Namibian*, 5 December 2019: 1f.

⁴ B (full name unknown) Handyside, Secretary London & Eastern LE/524 Branch, Letter of Legal Practitioner to the President of Namibia, The Ombudsman, Judge President, Deputy Judge President, Minister of Justice and Labour Commissioner, 1 November 2019, London.

⁵ Shinovene Immanuel, likela Sakeus and Timo Shihepo, "Geingob named Fishrot Boss of Bosses", *The Namibian*, 18 January 2021: 1f.

deposited these funds into the company accounts of people connected to those implicated in the corrupt deals as well as to the ruling party.⁶

Namibian firsts

For the first time, a Namibian corruption case is being investigated in 13 countries,⁷ for example, by Den Norske Bank of Norway (DNB), the United States of America (USA) and Iceland. Furthermore, investigations into bank transactions in connection with the case are also ongoing in Germany, Denmark, United Kingdom, Angola and Dubai. Namibia has sought the extradition of three Samherji employees implicated in the case from Norway.⁸ Three documentaries about Fishrot have been released, although only one has been cited in this paper.⁹ In an unprecedented development in Namibia there were two demonstrations in less than a month in 2020 in which Namibian citizens marched to protest a corruption case, in this instance to the offices of the ACC. Similar protests took place in Iceland. The Namibian protesters voiced their anger at Fishrot and the overall level of corruption in the country. It was the first time that protesters demanded the resignation of the Director General of the ACC. It was also the first time that two ministers resigned simultaneously in response to allegations of corruption. This wave of protest was triggered by an Icelandic whistleblower passing information to WikiLeaks, the most prominent whistleblowing platform globally. Blowing the whistle through WikiLeaks ensured that approximately 30000 documents were saved which might otherwise have been destroyed to cover the tracks of those implicated

The corruption case in the fishing industry, as briefly described, is probably one of the most, if not the most publicised cases in Namibian history. Three groups and/or levels of corrupt operators have been identified and briefly described, and some clarity has been provided on the taxonomy of manifestations (masks) of corruption found. An analysis of Fishrot could provide an indication of the impact of corruption, the opportunity costs and the context of the case in relation to other selected corruption cases. This case could illustrate the depth of corruption in Namibia and the extent to which corruption is rooted in the political system, and show the role and impact of an international company bribing locals. Namibia is vulnerable to corruption, to being exploited by players from developed countries, to being corrupted by the likes of Samherji, and to falling victim to what can probably be described as the incompetence, ignorance and greed of some Namibians.

It is necessary to shift the focus onto how the decisions made by the executive (e.g. the President, cabinet, public sector office-bearers including watchdog agencies), the legislature (e.g. parliamentarians) and members of the business community (e.g. the National Fishing Corporation of Namibia (Fishcor) executives), including members of the

⁶ Sonja Smith, "SA confirms De Klerk's warrant of arrest", *The Namibian*, 3 June 2021: 1f.

⁷ Ibid.

⁸ Ibid.

⁹ Al Jazeera, *Anatomy*.

professional classes (e.g. lawyers, accountants and auditors) have contributed to Fishrot. This paper focuses on decisions made by political and public office-bearers as well as business leaders.

Governance

To make decisions is to govern. Governance is about accountable decision-making ('the buck has to stop with someone'), transparent decisions (information about the decision-making process shared to minimise abuse of power) and sustainable decisions (the wisdom of which is evident in the long-term). Law and order are essential for governance to be sustainable and representative of the will of the people (legitimacy). Decisions should be practical, correctly implemented and monitored. Checks and balances need to be in place to ensure that public office bearers do not make decisions in which they abuse their power and circumvent disclosure requirements without being held liable.¹⁰

The following section focuses on one of the most widely known definitions of the term 'corruption' and seeks to provide clarity about the term and how a lack of accountability, sustainability and transparency can lead to decisions that benefit only a small number of well-connected people

Definitions and descriptions of corruption

"Corruption occurs in all countries, big and small, rich and poor. However, it is in the developing world that the impact of corruption is most destructive".¹¹ The World Bank (WB) defines corruption as "the abuse of public office for private gain".¹² This is one of the most widely used definitions of corruption within the public domain, even though it may be regarded as somewhat dated now. In 2007 the WB still retained the definition originally published in 1997. When read in context the definition acknowledges the complex nature of the phenomenon.¹³ The WB distinguishes between "isolated" and "systemic" corruption.¹⁴ At first reading the 2007 definition seems outdated, because it does not acknowledge the interdependent and interrelated role players in other sectors, such as the private sector and civil society. Thus corruption is not being acknowledged as systemic – a concept that conveys the interdependence of deviant behaviours in public

¹⁰ Johan Coetzee, "Governance, accountability and transparency in the Namibian public sector", in: Charles Keyter, Anton Oliver, Erika Thomas, Erwin Schwella, Johan Coetzee, Sitali Lwendo, Vincent Sazita and Yrika Maritz (eds.): *Namibian Governance. A Public Administration and Management Perspective*, Claremont, Juba, 2018: 92-102 (101f.).

¹¹ Johan Coetzee, *The role of the private sector in tackling corruption*, Briefing Paper, Windhoek, Institute for Public Policy Research, 9 May 2018: 5.

¹² World Bank, *Helping Countries Combat Corruption: The Role of the World Bank. Poverty Reduction and Economic Management*, New York, 1997: 9f.

¹³ World Bank, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*, 2007: 434, <https://openknowledge.worldbank.org/handle/10986/6848>

¹⁴ World Bank, *Helping Countries*: 9f.

and/or private sector institutions. However, this definition is still relevant because it remains the view of the WB. Isolated (or accidental) corruption is described as “rare, consisting of a few acts, it is straightforward (though seldom easy) to detect and punish”.¹⁵ In this case, non-corrupt behaviour is the norm, and public and private sector institutions act with integrity. Both formal (legalised and institutionalised) and informal systems (the social structure that governs how people work together in practice) are strong enough to return the system to a “non-corrupt equilibrium”. The WB’s expanded definition¹⁶ replaced “public office” with “trusted office”. The implication is that *private* ‘office’ is included in the expanded definition, which means that corruption is not just a problem occurring in public institutions, but also a problem in the private sector, often in tandem with the public sector.

The following section focuses on the relation between corruption and integrity to define the systemic nature of corruption.

Corruption as opposed to integrity

Corruption generally represents a breakdown in the integrity of a system such as a person or an institution. The WB’s definitions in the above paragraphs do not focus adequately on the significance of integrity. Integrity implies “honesty, probity, uprightness, moral soundness, moral stature, principle, character, virtue, purity”.¹⁷ Antonyms of integrity are “deceit, venality, corruption”.¹⁸ The Latin for “integrity” is *in-tiger*. Integrity refers to the “quality of the person’s character”.¹⁹ *In-tiger* can therefore be interpreted as implying “wholeness”, which means to regard something as a whole, or holistically, to understand the “togetherness” of its different parts, because this “togetherness” is of much greater value (for example, the sum total of the characteristics of a person) than the individual parts in isolation (for example, individual characteristics of a person). Therefore ‘integrity’ needs to feature as a central (albeit contrary) consideration in any root definition of corruption, because it represents consistency in “actions, values, methods, measures, principles, expectations and outcome”²⁰ – the opposites of corruption, which is a pathology. ‘Holistic’ can be defined as follows: “considering a whole thing or being to be more than a collection of parts”, and in relation to medicine: “treating the whole person

¹⁵ Ibid.

¹⁶ World Bank, *The Many Faces*: 434.

¹⁷ Susan Rose-Ackerman, “The political economy of corruption – causes and consequences”, *Public Policy for the Private Sector*, The World Bank, 1996: 2.

¹⁸ Sandi Shepherd, *Reader’s Digest family word finder. A family guide to English words, their meanings, synonyms and antonyms*, London, Reader’s Digest Associated, 2006: 447.

¹⁹ Edward Zalza, “Integrity”, *Stanford Encyclopedia of Philosophy*, Jul 26, 2021, <https://plato.stanford.edu/entries/integrity/>

²⁰ Ibid.

rather than just the symptoms”.²¹ This corresponds to another definition, which emphasises that holism is a philosophical concept “wat berus op die beginsel dat die geheel meer as die som van die dele is”²² (based on the principle that the whole is more than the sum of its parts). This definition emphasises the inherent characteristic of holism, namely that the whole is of greater significance than the sum of the individual independent parts. This seems to be a most appropriate insight for the purposes of this study. Holism is also prevalent in the most precise and the most appropriate core definitions of a system, such as the one that described a system as “a whole defined by one or more functions, that consists of two or more essential parts” which satisfy the following conditions:

- Each of these parts can affect the behaviour or properties of the whole;
- None of these parts has an independent effect on the whole;
- The way an essential part affects the whole depends on what other parts are doing; and
- Every possible subset of the essential parts can affect the behaviour or properties of the whole but none can do so independently of the others.²³

Within the context of corruption understood as a system with interdependent and inter-related parts, the phenomenon of corruption itself can be defined as a systemic “impairment of integrity, virtue or moral principle; depravity, decay, and/or an inducement to wrong by improper or unlawful means, a departure from the original or from what is pure or correct, and/or an agency or influence that corrupts”.²⁴ Scholars may argue about “what is pure or correct” (i.e. what is true to its original or most appropriate purpose), but the essence of the definition is clear. Corruption in effect entails a waste of resources that have been diverted from their intended purpose (maladministration and mismanagement are inherent features). Based on the definition of corruption as something systemic which is diametrically opposed to the principles of integrity, corruption in this paper includes theft, looting and fraud. Events at the Small Medium Enterprise (SME) Bank provide a good example. A number of managers and board members mismanaged or possibly misappropriated millions of dollars of the bank’s resources, according to the newspaper article titled “‘Pay back the money’...SME Bank liquidators gun for Kapofi, Ndishishi and Simataa”.²⁵ According to the article mentions six former SME Bank board members, including the Cabinet Secretary (executing decisions of the executive), George Simataa (most recent Chairman of the Bank), Frans Kapofi, Minister of Home Affairs, Immigration, Safety and Security at the time, previously Chairman of the Bank and a member of the Cabinet and executive, and Andrew Ndishishi, former Executive Director of

²¹ Albert Hornby, *Oxford Advanced Learner’s Dictionary. International student’s edition*, Oxford. Oxford University Press, 2005.

²² Francois Odendal, *HAT. Verklarende Handwoordeboek van die Afrikaanse taal*, Johannesburg, Perskor Boekery, 1985: 401.

²³ Russel Ackoff, “A Systemic View of Transformational Leadership”, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.177.5929&rep=rep1&type=pdf>

²⁴ Merriam-Webster Dictionary, “Corruption”, <http://www.merriam-webster.com/dictionary/corruption>

²⁵ Sonja Smith and Shinovene Immanuel, “‘Pay back the money’...SME Bank liquidators gun for Kapofi, Ndishishi and Simataa”, *The Namibian*, 21 January 2021: 1f.

several ministries and currently of the Namibian Institute of Public Administration and Management, have been sued by the bank's liquidators to recover the money.²⁶ Although unverified by credible sources, the probability that the SME Bank money was embezzled is increasing as more information enters the public domain but has yet to be proven in court. With this understanding of corruption as a systemic phenomenon to be addressed in holistic terms, it is now appropriate to focus on Namibian legislation pertaining to corruption.

The Namibian Anti-Corruption Act²⁷ describes several forms of corruption such as dealing with, using, holding, receiving or concealing gratification in relation to any office, the illicit acquisition of private interests by public officers, malpractice in relation to tenders, bribery of public officers, and the influencing of witnesses. Corruption also includes bribery of foreign public officials; bribery in relation to auctions; bribery for assistance in drawing up contracts; misusing an office or position for gratification; malpractice in relation to sporting events; conspiracies; and fraudulent concealment of office. The list of corrupt activities as described in the Act is inadequate for understanding and combating corruption. The description does not capture the essence of corruption, namely that it is not only a public and/or private 'office' issue, but rather that it is systemic in nature; in other words, pervasive in the 'whole' of (Namibian) society.²⁸ Thus, while the description of corruption as defined in law applies in court, it is inadequate for an understanding and contextualisation of how corruption – and specifically Fishrot – is rooted in the governance systems of Namibia. Corruption as described in this section cannot be fully encompassed by a legal description and/or definition.

The following section focuses on how public institutions (critical in the executive system) are being abused by leaders who are implicated, either by allegations, perceptions and/or evidence of corruption.

Compromised leaders and weak institutions

Namibia's past – i.e. the periods of colonialism, *Apartheid* and the liberation struggle – means Namibians have extremely limited experience of sustainable governance.²⁹ Since Independence a corporatized liberation economy has emerged.³⁰ The entrenched greed of some of the politically connected and the business elite implicated in Fishrot, for example, shocked Namibians. Since WikiLeaks published documents about Fishrot, not

²⁶ Ibid.

²⁷ Republic of Namibia, *Anti-Corruption Act, Nr. 8 of 2003*, Windhoek, Government Gazette, 2003.

²⁸ Johan Coetzee, "Speaking truth to power: Whistleblower challenges and options. A Namibian perspective", *Journal of Namibian Studies*, 27, 2020: 91-107.

²⁹ Johan Coetzee, *Systemic corruption and corrective change management strategies: A study of the co-producers of systemic corruption and its negative impact on socio-economic development*, unpublished PhD dissertation, Stellenbosch, University of Stellenbosch, 2012: 137.

³⁰ André du Pisani, "The Coming Crises of Democratic Legitimacy in Namibia", *The Namibian*, 13 August 2019: 7.

only have two ministers resigned, but also the financial manager and Chief Executive Officer (CEO) of Investec (who doubled as chairman of the Fishcor board).

A former Attorney General, Albert Kawana, who was the Acting Minister of Fisheries after Fishrot became public, has been appointed by the President to investigate the Ministry. Yet it would have been more appropriate if an independent commission had been appointed, headed by a senior judge. It is not appropriate to appoint a minister to investigate fellow cabinet members. Ministers report to the President who appoints them. Several names which featured prominently in the Liquid Fuels case in 1999 are also found in Fishrot, e.g. Shangala, the former Minister of Justice as well as the former Acting Minister of Fisheries (Kawana). The ACC cleared them of corruption at the time. Allegations of corruption in the allocation of fishing quotas had been investigated by the ACC during 2014 and those implicated were cleared. This triggered a public outcry and contributed to a perception that had been developing over time that the ACC did not investigate the 'big fish', particularly those with political and business connections. However, in 2019 the Fishrot case caused an unprecedented wave of public anger.

Nelius Becker, former Chief Investigator of the ACC, left the institution during 2019. Becker has now been transferred to the Forensic Department of the Namibian Police from his former position at the ACC, where he was tasked to work on Fishrot. As he was the most experienced and capable investigator at the ACC there are questions about the motivation behind his transfer.

Both the ACC and the Prosecutor General (PG) have questionable track records when it comes to investigating and prosecuting cases of corruption among 'the big tigers'. The Director General of the ACC allegedly delayed the prosecution of several cases. The Prosecutor General (PG) repeatedly delayed bringing the Fishrot case before the courts. Neither the ACC nor the PG has the manpower and the competencies to examine the evidence which amounts to some 30000 documents. For example, the case against Jack Huang, a Chinese national with a substantial criminal record, who was involved in the export of Namibian rosewood for years, stalled in courts several times because of issues with warrants for his arrest issued by the ACC and Namibian Police.

Hierarchy of fishy operators

From the research on corruption cases in Namibia since 1998 it is possible to identify three groups of corrupt operators. The first are the mega operators (also known as 'sharks' in the local media in reporting on Fishrot) that operate in several industries such as fishing (allocation of fishing quotas without transparent criteria) and diamonds (e.g. Namdia, a state-owned diamond trading enterprise that sold diamonds below market value to outside clients without disclosing their identities) while there was the Namibia Liquid Fuels case in the energy sector. A former AG and former Minister of Justice, Sacky Shangala, have been implicated in both Namibia Liquid Fuels and Fishrot, and are currently in jail and awaiting trial in the Fischobar case.

Apart from the two previously mentioned cases, the name of the former Minister of Justice, Sacky Shangala, has also been mentioned in connection with several corruption cases across a number of industries over the years. These include the N\$40 million paid for legal advice on the Herero genocide case to British lawyers, based on claims received which seemed to indicate that they had 'worked' 24 hours a day non-stop for weeks, and the Kora Awards case of allegedly N\$23 million. The mega operators have been instrumental in initiating legislative changes and putting systems in place to institutionalise corruption; they include Shangala, the Minister of Fisheries and Marine Resources, Bernhardt Esau, and the former Acting Minister of Fisheries, Albert Kawana (a former AG and a former Minister of Justice), who were instrumental in amending the Marina Resources Act³¹ to increase the quota to Fishcor, as will be explained in the sections titled 'Party and political representative systems' and 'Executive discretion' of this paper.

The second group of operators is the professionally qualified elite. These professionals include prominent lawyers implicated in the abuse of trust accounts, e.g. Simandje, Amoono and De Klerk;³² Certified Accountants and auditors, e.g. Stier Vente Associates, an audit firm implicated in the "Fishrot thievery";³³ and Namibian investment companies such as IIG Securities, Pointbreak and Investec Asset Management Namibia.³⁴ The professional elite have made it possible for bribery money to be channelled into money laundering schemes in the form of property developments and to facilitate the buying of shares in companies connected to those implicated in Fishrot. It is difficult for banks to detect money laundered via these trust accounts and such operations compromise banking institutions. Banks generally do not question payments made into such trust accounts.

A third group that can be identified (though doing so can be contentious) is made up of the 'daisy chain' operators, the smaller pieces in the corruption puzzle who are, in drug dealer terms, the 'runners'. They make connections at a much lower level than the mega operators and mostly follow instructions from the mega operators. These 'runners' include public officials in offices/ministries/agencies, and private people who carry out the smaller tasks.

Criticism of the media

In his first media statement after Fishrot became public information in mid-November 2019 the President declared that corruption was not systemic. He praised the two ministers implicated for their patriotism and loyalty to the Namibian nation after they resigned. Such praise (which might also be seen as gratitude) could be an indication of

³¹ Republic of Namibia, *Marine Resources Act, No. 27 of 2000*, Windhoek, Government Gazette, 2000.

³² Al Jazeera, *Anatomy*.

³³ Staff Editor, "Audit firm 'knew' of Fishrot thievery", *Namibian Sun*, 19 January 2021: 1f.

³⁴ Shinovene Immanuel, Lazarus Amukeshe and Werner Menges, "Fishrot firms paid N\$93m to investment entities", *The Namibian*, 22 July 2020: 1f.

the limited political commitment to combating corruption. But it could also be a pointer towards deeply rooted corruption in the party-political system.

Fishrot is demonstrative of the critical role of all media platforms, and specifically social media, in reporting on corruption cases. The pivotal role of the media has not gone down well with the President Geingob and the former Minister of Trade and Industry, Tjekero Tweya, or with the former Minister of Information and Communication, Stanley Simaata, who all often criticised the media during the period 2018-2020. A freelance journalist with the state-owned Namibia Press Agency (NAMPA) who participated in a panel discussion on Fishrot on One Africa TV had his contract of employment terminated. The official explanation was that the journalist participated without the official consent of NAMPA. This incident is probably an illustration of the political sensitivity at government level to Fishrot. There is also a perception that the state-owned Namibian Broadcasting Corporation (NBC) should have broadcast the Al Jazeera documentary *Anatomy of a Bribe* in line with its mandate to inform the nation about national issues. The failure to broadcast can be interpreted as a deliberate attempt to withhold of information. It could also be an indication, albeit indirect, of a desire to protect the politically well-connected players implicated in Fishrot.

It is now appropriate and timely to focus on the way that Namibia's party and political representation systems enabled Fishrot.

Party and political representative systems

To elect the members of the National Assembly (NA), registered voters vote for party political representatives. These representatives are solely determined by the political party. Voters have no say in determining the representatives who can be voted for and/or their priority order on a ballot paper. By implication, these party representatives are not directly accountable to the voters – they are accountable to the political party. Those party representatives who are elected to the NA based on a quota (single transferable vote system) represent all voters across the country and no one voter and/or constituency in particular. Members of the NA are therefore not accountable to the electorate for their decisions, but follow party directives. This electoral system thus lends itself to the facilitation of corruption. A major step towards reducing corruption levels would be to oblige NA and National Council (NC) members to declare their interests to and have their assets monitored by an independent organ. Former Defence Minister, Peter Vilho, was forced to resign in 2021 when he was unable or unwilling to explain the provenance of N\$4 million on his trust account in Hong Kong.³⁵ Another example of compromised executive power is a former Minister of Education, Katrina Hanse-Himarwa, who, in 2019, became the first Minister to be found guilty and convicted of abusing her power (i.e. of corruption).

³⁵ Mathias Haufiku, "Offshore family ties that bind", *The Namibian*, 6 April 2021: 1f.

It is highly probable that party political interests and the power of the ruling party have led to the abuse of formal governance processes such as drafting and amending legislation. Some cabinet members misled the legislature (Parliament and specifically the National Assembly where they double as members) and/or have been aware of and may have benefitted indirectly from the Samherji bribes. The ruling party, SWAPO, allegedly received N\$150 million from Samherji for the 2019 national elections.³⁶

The role of the executive in the judiciary (e.g. the role of the former Minister of Justice) was critical in amending the Marine Resources Act³⁷ to facilitate the awarding of increased powers to the Minister of Fisheries and Marine Resources to allocate fish quotas at his discretion without adequate checks and balances. Fishrot can be seen as an illustration of government abusing its majority power in the legislature and its exclusive power in the executive to facilitate corruption. At the end of 2019 the President appointed a former Minister of Justice and a former Attorney General, Albert Kawana, Acting Minister of Fisheries. He was tasked with improving the processes for the allocation of quotas in the fishing industry. In early 2020 and early 2021 the allocation of fishing quotas was carried out by the then Acting Minister of Fisheries, Kawana (appointed on 21 March 2020 as Minister of Fisheries), based on the same dubious and opaque criteria that facilitated Fishrot. The application of the same criteria used in the allocation of quotas that enabled the Fishrot scandal raises questions about the commitment and ability of government to deal decisively with corruption in the fishing sector. Yet the Marine Resources Act³⁸ remains unchanged.

Executive discretion

This section focuses on the power of the President and cabinet. The President appoints the cabinet. He is supposed to consult them, but does not have to follow their advice. Cabinet members are first and foremost accountable to the President. They are also members of the NA.³⁹ Approximately half of National Assembly members (depending on the changing size of Cabinet) consist of cabinet members and deputy ministers. With the ruling party having a majority in the NA, this means effectively that the executive dominates the legislature.

The amendment of the Marine Resources Act⁴⁰ made provision for ministerial discretionary powers, which paved the way for the allocation of a fishing quota to the state-owned company, Fishcor. This SOE was instrumental in facilitating a quota for Samherji in exchange for millions in bribes to management and board members.

³⁶ Al Jazeera, *Anatomy*.

³⁷ Republic of Namibia, *Marine*.

³⁸ Ibid.

³⁹ Joseph Diescho, "Are some people more Namibian than others", *Namibian Politics and Administration in Perspective*, 2, 2015: 66-67.

⁴⁰ Republic of Namibia, *Marine*.

The urgency with which the Marine Resources Act⁴¹ was amended over a period of a few months contrasts starkly with extensive delays in finalising and implementing other legislation that is long overdue. For example, draft legislation on access to information was first initiated a few years after independence by the Office of the Prime Minister. In 2013 the author of this article became one of the founding members of Access to Information Namibia (ACTION), an organisation with the goal of raising public awareness of the need for the said legislation. There has been some public consultation on the draft bill and it is due for tabling in the National Assembly in 2021/22, some 30 years after it was first mooted. Another example is the Whistleblower Protection Act⁴² promulgated more than three years ago, though not yet operational. In March 2021 the government indicated that there was no money available for its implementation. Whistleblowing is becoming an increasing common international practice and social media are putting pressure on governments to protect whistleblowers. However, to date whistleblowers have not enjoyed real protection anywhere in the world. For example, Julian Assange of WikiLeaks, probably the whistleblower with the greatest impact in history, published 391,832⁴³ war documents on the killing of thousands of Iraqi civilians by US soldiers. Assange is still in custody in the UK could be sentenced to a 175-year jail term in the USA. Access to information enables validation of sources of information and increased transparency and is vital for sustainable good governance. Fishrot and its international implications demonstrate the impact of whistleblowing and the need to activate the Whistleblowing Protection Act⁴⁴ to protect and incentivise whistleblowers. Fishrot has also re-emphasised the urgent need for transparency and access to information. There seems to be no shortage of urgency when it comes to enacting legislation that can in effect facilitate corruption, but not much commitment to drafting and finalising legislation that would increase transparency and foster sustainable governance. In view of the long overdue Access to Information Bill and the implementation of the Whistleblower Protection Act,⁴⁵ the commitment of government and the ruling party to passing legislation that is crucial in the fight against corruption is in doubt.

It is worth mentioning that of the more than 11 reports on Presidential Commissions of Inquiry into corruption cases, not one has been made available to the public.⁴⁶ These reports include inquiries into: the Police (1990); misuse of government properties (1992); procedures and practices applied in the allocation and utilisation of fishing rights (1993); resistance by certain members of the Caprivan community to the appointment of senior public servants in education (1993); labour-related matters affecting agricultural and domestic

⁴¹ Ibid.

⁴² Republic of Namibia, *Whistleblower Protection Act, Nr. 10 of 2017*, Windhoek, Government Gazette, 2017.

⁴³ A former link, retrieved 31 October 2010, is no longer available: WikiLeaks, *Iraq War Logs: Largest Military leak in History*, <http://www.scoop.co.nz/stories/W01010/S00347/iraq-war-logs-largest-military-leak-in-history.htm>

⁴⁴ Republic of Namibia, *Whistleblower*.

⁴⁵ Ibid.

⁴⁶ Coetzee, *Systemic corruption*: 144.

employees (1995); regulatory practices of the Directorate of Civil Aviation in the Ministry of Works, Transport and Communication (1997); Education, Culture and Training (1999); TransNamib (2001); the Social Security Commission (2002); the Roads Authority, the Road Fund Administration and Development Brigade Corporation (2003); and the Government Institutions Pension Fund (2005).⁴⁷ This list is not complete. Were prominent political office-bearers implicated in these reports? If they were not, then why have the reports not been released to demonstrate that the ruling party behaved correctly? Could this secrecy be an indication that corruption is rooted in the Namibian party-political system?

It was a whistleblower from outside Namibia, Jóhannes Stefánsson, who exposed the Samherji bribes in Fishrot. Stefánsson himself was involved in facilitating those bribes and himself and he collected evidence diligently over many years collaborating with people he could trust to ensure that the 'beans could not have been spilled prematurely'. The way Stefánsson controlled the process is an example of minimising the possibility of evidence being destroyed and characteristic of best-practice whistleblowing. He resigned in 2014 from Samherji and started to work with the Icelandic Government, WikiLeaks and the *Namibian*. Stefánsson exposed more corruption than any watchdog or whistleblower in Namibia since independence and some of the questions that have arisen from it include: Should Namibia reward whistleblowers to encourage public reporting? Will rewarding whistleblowers provide better value for money than conventional watchdogs (e.g. the ACC, Ombudsman and Auditor General) that are not independent from government? Why does Namibia not encourage and protect whistleblowers and reward them with at least 25 percent of the proceeds recovered from corrupt deals (based on USA best-practice legislation).⁴⁸

From this discussion it can be deduced that the ministerial power of the two ministers who resigned, Esau and Shangala, had been used to amend the Marine Resources Act in a way that allowed the Minister of Fisheries, Esau, to award a massive quota to Fishcor, which in turn sold the quota to Samherji.⁴⁹ It was illegal for Fishcor to sell their quota to a foreign fishing company. The implementation of legislation, which is of critical importance in the fight against corruption, has been delayed by the government. Several reports on inquiries into corruption have not been released to the public. A culture of limited transparency and limited state intervention in terms of preventing corruption is an indication that corruption is probably deeply rooted in the party-political and executive system. Furthermore, one cannot exclude the possibility that as a result of conflicts of interests, cabinet members who are also members of the NA may abuse their legislative powers in making and executing of cabinet and parliamentary decisions.

The focus now shifts from a government that creates the environment and loopholes in legislation for capitalising on corruption to business practices in this context.

⁴⁷ Coetzee, "Speaking truth".

⁴⁸ See United States of America, *False Claims Act*.

⁴⁹ Republic of Namibia, *Marine*.

Compromised private sector

Namibian corporations have undertaken hardly any coherent and constructive action to leverage government to reduce corruption. There have been attempts in this direction, but they were ineffective. Enterprise Namibia (EN), an alternative forum to the only government recognised business forum, the Namibia Chamber of Commerce and Industry (NCCI), has been ineffective in addressing national policy gaps due to 'tender-preneurial' influence and compromised leadership⁵⁰ (at the NCCI - represented on EN before it was dismantled).

The role of the private sector was discussed in a comprehensive report commissioned by the Institute of Public Policy Research (IPPR).⁵¹ In this report the author explained at great length the reasons why the private sector as a major financier of political parties is in a prime position to leverage government to fight corruption. Without adequate private sector donations parties cannot fund political campaigns. It is not uncommon for close relations to prevail between businessmen and influential politicians. Such connections can make them interdependent, interrelated and compromised. Being thus compromised, the private sector cannot be expected to offer leadership in leveraging government to combat corruption.

The silence of the private sector before and in the aftermath of Fishrot raises a number of questions: Is making profit for the private sector more important than resisting the temptation to be bribed by public sector officials and/or *vice versa*? Why does the private sector not put sufficient pressure on government to improve systems and processes of procurement, tendering and projects to prevent, monitor and control corruption more effectively? Do the principles of accountability and the actions to combat corruption also apply to the four major Namibian banks? All major banks have been found guilty of corruption in South Africa and have paid financial penalties. Three Namibian banks are organisationally linked with South African banks. What would the impact be if all banks and big businesses openly take a definite stance against corruption? Internationally, a major auditing companies have been found guilty of fraud, a manifestation of corruption. Will the local auditing companies that audited the books of Fishcor and failed report fraudulent transactions also be prosecuted for fraud? With reference to corruption in general in Namibia as discussed earlier in this paper: Will the professional and qualified elite, for example, contracting engineers, architects, auditors and lawyers, be held liable for their transgressions? They are the ones in a position to facilitate, disguise and sign off corrupt deals.

Prima facie evidence

The discussion of the figures below is based on *prima bona facie* evidence from the biggest corruption cases in monetary terms in Namibia as published in several local

⁵⁰ Coetzee, *The role*.

⁵¹ Ibid.

newspapers. Although they may seem to be based on hearsay, these are the only figures available and can provide at least an approximate indication of the magnitude of corruption. Approximately N\$2.5 billion was laundered in Fishrot. Other examples of mega corruption (reported in local newspapers) where the figures listed are only approximations include: Government Institutional Pension Fund (GIPF) corruption (N\$4.5 billion allocated to politicians and businessmen and unaccounted for), Neckartal dam (planned costs of N\$900 million eventually cost N\$3.5 billion), Walvis Bay Petroleum facility (post-tender inflated to more than N\$3 billion from a planned N\$950 million), and SME Bank (N\$270 million most probably looted). As stated earlier, looting is one manifestation of corruption. Further cases included: Overseas Development Corporation (ODC) (N\$100 million unaccounted for), Namibia Liquid Fuels as mentioned earlier (N\$40 million unaccounted for), National Defence Force (NDF) (N\$200 million unaccounted for) and National Intelligence (NI) farms bought without Treasury approval, not within the NDF (N\$100 million) mandate, and AVID (N\$30 million unaccounted for), to mention only a few.

Within the context of these examples of alleged corruption, Fishrot is illustrative of mega corruption among ruling party politicians and businessmen. Of those politicians, some cabinet members such as the two ministers who resigned, were instrumental in Fishrot. The legislature also played a critical role. For example, the former Minister of Fisheries and Marine Resources, Esau, illegally allocated a quota to Fishcor. This Minister lost a court case pertaining to irregularities regarding the latter. However, with the approval of Parliament, the Minister amended the Marine Resources Act⁵² to legalise the discretionary allocation of a massive quota to Fishcor with minimum checks and balances. It later emerged that the judiciary had been put under to amend the legislation by the executive authority. The previous Minister of Justice, Shangala, instructed the re-drafting of the Marine Resources Act⁵³ that was amended and approved by Parliament. Shangala, the Minister who allegedly took a share of the bribe money paid to Samherji, resigned and is one of those in custody.

An analysis of Fishrot indicates that the three branches of government – the executive, legislature and the judiciary – have probably all been compromised by well-connected individuals colluding across these branches. Based on the content of this article, one can assume that Fishrot is probably an example of a Namibian state penetrated by organised crime. As Fishrot also involved money laundering one can view Namibia as an example of a state captured by elites. Once private interests have become institutionalised, and legalised as in Fishrot, it is extremely difficult to eradicate corruption by legal processes, because the legislative, executive and judicial processes have been subverted.⁵⁴ Private interests can distort and abuse state institutions, as in the case of Fishcor. It is common in democracies that private interests try to influence formal processes such as the passing of legislation. If the two ministers. Sackey Shangala and Bernhardt Esau had only

⁵² Republic of Namibia, *Marine*.

⁵³ *Ibid*.

⁵⁴ Anne Lugon-Moulin, Understanding State Capture”, *Freedom from Fear Magazine*, 6, 2010: 38-39, UNICRI, http://f3magazine.unicri.it/wp-content/uploads/F3_06.pdf

benefitted indirectly, one could ask if that was truly corruption. However, based on the earlier systemic definition and discussion of corruption, the two ministers would still have been compromised even if they had only benefited indirectly. In terms of the systemic definition previously discussed, an undeclared conflict of interests constitutes corruption. When private interests (e.g. in the case of the two ministers who resigned and are now in custody) motivate the manipulation of formal procedures (e.g. legislation and national policies) and government bureaucracy (e.g. amending legislation), state capture can manifest as another form of corruption.

Masks of corruption

The various manifestations of corruption, also known as types or masks of corruption, cannot provide much insight into the impact and magnitude of corruption. There are areas where the various forms overlap. However, manifestations can provide an indication of the sophistication and breadth or scope of corruption. For example, fraud is a sophisticated form of siphoning or embezzling money that might involve only one person and tends to be more associated with white collar rather than blue collar workers. Bribery is the most common manifestation of corruption that always involves at least two persons and/or parties.⁵⁵

Several manifestations of corruption can be identified in Fishrot: bribery (Samherji); abuse of power (Minister of Fisheries, Fishcor board and CEO); kickbacks (Namgomar SA Pesca was used to pay kickbacks – a partial payback for enabling a corrupt deal – of allegedly more than N\$103 million to mega operators and their cronies). Other manifestations include money laundering (illegal money 'legalised' via bank accounts, trust accounts and property acquired); tax evasion (estimated at N\$6 billion in offshore accounts in e.g. Marshall Islands); collusion (Samherji gained an unfair advantage due to the enormous quota allocation for horse mackerel to Fishcor).

Simandje and Amoono, lawyers implicated in facilitating money laundering denied that their trust account was used for such purposes – a claim which will be tested in court. These lawyers probably misrepresented the truth. Misrepresentation is a manifestation of corruption. The Director General of the ACC said that no member of the Namibian public came forward with information to assist the ACC with its investigation into Fishrot.⁵⁶ If the ACC's assertion that the public did not contribute information is correct, it is indicative of a sense of indifference among the public when it comes to corruption among the ruling elite, and it is not a surprise that the whistleblower in the Fishrot case was not Namibian. Those who know the corrupt dealings of those in custody (and more are expected to be implicated) and do not come forward to report it are guilty of complicity in corruption.

⁵⁵ Coetzee, *Systemic corruption*: 106.

⁵⁶ Ronel Rademeyer, "ACC se NOA kap na land se 'leunstoel-kritici'", *Die Republikein*, 5 December 2019: 2.

Having knowledge of corrupt dealings and withholding this information is a manifestation of corruption and a crime in terms of the said legislation.⁵⁷

Opportunity costs

The behaviour of the corrupt in Namibia demonstrates contempt for those Namibians who lack basic necessities such as clean water, decent housing and sanitation facilities. How many schools and health facilities could have been upgraded with the money lost to corrupt practices? How houses could have been built for those without decent housing?

Developing countries cannot 'afford' corruption but their governments are very vulnerable to bribery. The impact of corruption is disastrous for Namibians. Corruption cases such as Fishrot also have an impact on the credit rating of Namibia. With the N\$6 billion revenue lost due to tax evasion as a consequence of Fishrot, 30,000 container houses valued at N\$200,000 each could have been built. With an estimated population of 2.5 million and an abundance of natural resources, it is possible for all Namibians to enjoy a decent standard of living.

Findings, best practices and recommendations

Findings

As seen in this paper, one of the main factors, if not indeed the main factor in corruption in Namibia, is the Namibian NA members' lack of accountability to the electorate for their decisions. Being answerable primarily to the party, they follow party directives. What aggravates the situation is that the legislature is dominated by the executive. Introducing a compulsory annual declaration of interests by Members of Parliament (MPs) would be a major step towards reducing corrupt behaviours. Monitoring and auditing of asset declarations by an independent citizens' group would help to enforce it and would go some way to ensuring the accuracy of such declarations and reducing incidences of 'hidden' assets. The responsibility for legislating the penalties and enforcing them should also lie with the body overseeing the whole process.

Namibia cannot change overnight from being systemically corrupt to reducing corruption to a level at which the damage to the state is negligible. However, the current generation can lay the foundation for change over the longer term. Most Namibians need to be involved in re-engineering Namibia's executive, legislative and judicial systems to make them less prone to abuse by politicians in particular. Fishrot can be the tipping point to turn Namibia away from an insecure future. But it could also be the beginning of a worsening of systemic corruption, not excluding state capture. In the latter case revealing, stopping and reversing it would take process involving years of investigations and court cases, and result in a further outflows of investment because those in control of the state,

⁵⁷ Republic of Namibia, *Anti-Corruption*.

the government and party politics have institutionalised their power.⁵⁸ If Fishrot is not dealt with in a decisive and accountable manner, then Namibia's future looks bleak. To succeed in the fight against corruption there must be a high degree of civil awareness of what is expected of public servants and a willingness among citizens to demand accountability from government. Namibia needs to legalise public access to information and enforce it as a public right and not as a privilege. Corruption is not only a moral issue, but also a major financial risk to employees and their families. Much more recognition must be given to whistleblowers and they should be rewarded for exposing corruption and compensated for the risks they take in so doing.

Best practices

There is a real prospect that the Fishrot case can trigger change for the better, but only with political commitment and/or private sector support. However, with the President not accepting that Namibia is systemically corrupt,⁵⁹ the prevailing silence of the private sector and the unwillingness of the professional elite to resist bribes, one of the most appropriate options to initiate public debate and measure perceptions is citizen activism.⁶⁰ Citizens should demand an increase in and improvement of checks and balances in all systems, especially party political, parliamentary representation and the executive, to reduce corruption. The Constitution should be amended to prevent the executive sitting in the NA, thus eliminating one source of conflicts of interest and ending the dual accountability discussed earlier. One way of ensuring sustainable governance is by means of private sector-driven development projects in which government is a minority shareholder.

Turnarounds in drastically reducing corruption in Singapore and Hong Kong commenced during the 1950s, in the United Kingdom in the beginning of the 19th century and in the USA during the late 18th century. This shift from being systemically corrupt to reducing corruption to a level at which it is the exception rather than the rule, took approximately four decades.⁶¹ Examples of such common denominators might be political commitment, a relatively small private sector in relation to the public sector, prosecution of the corrupt – 'frying the big fish' - and sustaining the momentum for reform and transformation, etc. None of these drivers are known to be present in Namibia.⁶² However, Fishrot is a political scandal that could trigger reform and/or transformation if most voters demand change. Based on the number of critical drivers and/or common denominators of the best-practice cases indicated above, sustainable change in Namibia from being systemically corrupt to reducing corruption to levels at which the state can function effectively for all citizens. The

⁵⁸ Du Pisani, "The Coming Crisis": 7

⁵⁹ Sakeus Ikela and Shinovene Immanuel, "Geingob tears into Fishrot critics... tells outspoken ministers to resign", *The Namibian*, 11 December 2019, p. 2.

⁶⁰ Coetzee, *Systemic corruption*: 167f.

⁶¹ Ibid.: 162, 169, 174.

⁶² Johan Coetzee, "Comparative best practices to manage corruption", *Journal for Studies in Humanities and Social Sciences*, 5 (2), 2016: 98-107.

chances of Namibia becoming the least corrupt country in Africa within the next five years can be estimated as being approximately between ten and thirty percent (though this is open to contestation).

Checks and balances

Other checks and balances needed in the executive and legislature are outlined below. The horse mackerel quota should be declared invalid and re-allocated. To provide some form of political credibility and, in effect, executive credibility, the two ministers implicated should be expelled from the ruling party. To increase public trust in legislative representatives, the President should remove from the National Assembly all MPs of the ruling party found guilty of criminal behaviour and corruption. Katrina Hanse-Himarwa, former Minister of Education, for example, should not have been allowed to continue to serve in a parliamentary committee after her conviction for corruption. The same is true for Paulus Kapia, previously a deputy minister and convicted in the AVID corruption case, and Tobi Aupindi, previous CEO of Namibia Wildlife Resorts, also convicted of corruption. To provide some credibility to what the current President declared as the Year of Reckoning (2019) and the Year of Accountability (2020) – both very much in the past now – it would be appropriate for the President to release the reports of the more than eleven Presidential Commissions of Inquiry into Corruption to the public. Mechanisms should be put in place so that monopoly powers can be kept in check by parliamentary and civil society. For example, the PG's monopoly on prosecution, including the monopoly of the Director General of the ACC to investigate corruption and to submit reports to the PG for prosecution, should be curbed. Monopolies create scarcity and stimulate abuse of power.

To institutionalise checks and balances in the extraction industries, the President should create a public beneficial ownership register for extractive industries, e.g. fisheries, mining, oil and gas.⁶³ Such a register would lead to greater transparency in the awarding of prospecting licences for extraction and beneficiation of natural resources and public scrutiny of the process.

Synthesis

The discussion in this paper leads to the conclusion that the main factor facilitating corruption in Namibia is the fact that members of the NA are not accountable to the electorate for their decisions, but rather follow party directives. The fact that the legislature is dominated by the executive aggravates the situation. Compelling MPs to declare their interests would be a major step towards reducing corruption. Best-practices case studies have been briefly alluded to, and several checks and balances have been put forward.

⁶³ Jemima Beukes, "Opposition take aim at Shangala's laws", *Namibian Sun*, 26 November 2019: 2.

Concluding remarks

The trial of the accused in Fishrot is due to commence sometime in 2021 or 2022, depending on the development of the Covid19 pandemic. Allegations have yet to be corroborated. The longer it takes to bring the case to court, the more evidence can and will most probably go astray. As the investigation by Nampol and the Office of the Prosecutor General continues, it has become increasingly evident that Fishrot involved a network of people in and with connections to the ruling party and was facilitated by a professional elite. Among these players are members of the business community, including lawyers and auditors, as well as other professionals. These players probably participated in a billion-dollar scheme driven by greed and personal enrichment, entailing the abuse of power by prominent public office-bearers entrusted by the public to act with integrity in the national interest, i.e. the anti-thesis of corrupt behaviour was expected of them. However, the public office-bearers implicated in Fishrot betrayed that trust and lacked integrity. Fishrot is most likely a symptom of a much bigger disease, namely systemic corruption, as posited in this paper.

The Fishrot case spans many borders and is being investigated in several countries. That a developed country intervened in the affairs of an African country and paid bribes to do so is not uncommon. Developed countries can 'afford' corruption. They are not vulnerable and have very small numbers of people living in abject poverty. Based on the quantifiable impact of Fishrot in terms of houses and schools that could have been built and employment that could have been created, one can assume that, starting in colonial times, corruption has played a major role in preventing the majority of the population of Namibia achieving a decent standard of living. Creating public awareness of the opportunity cost of cases such as Fishrot would most probably stimulate civil society to demand accountability from government and the private sector.

The outcome of the Fishrot case can be positive, provided the most critical drivers and/or common denominators of change based on best-practice case studies are managed. Such drivers are not limited to what has been briefly mentioned in this article. They also include Namibia requesting international forensic assistance and financial support in investigating Fishrot. One of the most influential drivers, if not the most influential, is a nation-wide political commitment to reduce corruption, 'frying the big fish' e.g. corrupt ministers. Voters should demand change; the Fishrot case should not be heard in camera and witnesses should not be threatened or intimidated.

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