

impact of 'ulingilingi' on development: a comparative developmental perspective 2018

johan j coetzee



“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary...A dependence on the people is no doubt the primary control on government; but experience has taught mankind the necessity of auxiliary precautions.”

thabo mbeki
judicial symposium johannesburg

corruption map

problem situation & objective

systems methodology

indices & trend analysis

concepts

impact

conclusions & recommendations

corruption situation

concept, condition, manifestation, co-producer & impact
self-supporting & self-righteous behaviour
systemically bonded in social processes
'cross-cutting issue'



why is 'ulingilingi' important?

biggest impact vulnerable/poor cannot afford 'ombili'

about life and death

poor & uneducated loose hope of future

homicides murder intimidation victimisation depression

discrimination deprivation fundamentalism war & genocide

nexus with organised crime women & children trafficking

Namibia/world worse place for our children

national reconciliation & nation building opportunity

issue of inspiration motivation & hope

methodology

systems methodology – soft systems (Checkland)

integrated stakeholder approach (Ackoff) &

idealised design (Ackoff & Gharajedaghi) 5

dimensional design of development

16 international indices & 4 African funded studies

trend analysis

cases & examples as reflections of reality

corruption observed



organised crime

- international mafias Italian, Indian, Israeli, Russian & Triad (Chinese) are attracted to **protective culture** of corruption RSA provides **'safe haven'** for mafias to operate with political and police protection
- former head of SAP & chief of interpol, jackie selebi, received millions of SA Rands from drug boss, Glen Agliotti to ignore drug deals **in exchange for** police protection, making organised **criminal actions immune from detection & punishment**

organised crime

- when such 'corrupt relationship' exists between formal & legitimate institutional leaders & organised crime leaders, organised crime penetrates political power of the state & creates 'a penetrated state', threatening, 'national/public security'
- penetrated state suffers from symptoms of systemic corruption & impact extend to high levels of illegal imports, theft, violence, murder, making a penetrated state extremely difficult to rule
- have you heard of dark web and silk road?

impact of perceptions

- what is of importance in all corruption cases is not whether factual correctness of reported perceptions is indeed the truth, *but the perception that it exists in society*
- where there is no evidence for the validation of perceptions, the problem is that, *if such perceptions are not fully and without doubt cleared, i.e. media & courts, it creates a culture in which people doubt integrity and morality of leaders*

perceptions & cultures of corruption

- a culture in which people **doubt the integrity and morality of leaders** is in itself a co-producer to corruption
- gossip is indication of breakdown of **moral fibre & trust** of society
- limited trust in society encourages forming of cliques and/or pacts who create their own **cultures of self-righteousness** within which they justify corruption

impact of leadership



namibian perceptions

afro-barometer survey 2013 executed in 35 African countries 95% confidence level & +-3% error

decline in perceptions of govt. handling govt.

corruption from positive to negative

perceptions of corruption exceeds experience of

bribery by far

Anti-Corruption Commission (ACC) perceived as

neutral by majority

barely half of respondents think ACC targets all

offenders without favouring anyone

afro-barometer survey

good governance survey 2013 executed in 35 African countries

namibia rated 6th out of 52 countries

public service category with largest deterioration since
2009 & lowest rating

2nd largest deterioration is?

acc survey

namibian perception survey 2012

- >50% respondents perceived corruption in country as very high
- most corrupt grment institution is GIPF 37.7%, 2nd SSCommision 9.4%
- most corrupt ministry is finance 11.6%, 2nd home affairs 9.9%
- most prevalent corruption schemes are asset misappropriation, procurement & tender fraud
- 64% feel their business are not adequately protected against corruption

nid study

namibian institute of democracy (NID) 2010

of 18 legislations, only 1 was reviewed in committees, indicating public is not consulted sufficiently on executive policy

when questioned on whether elected officials listen to public's concerns, **majority** respondents indicated **they are never or only sometimes listened to**. This reinforces the perception that **elected officials are more accountable & loyal to executive than to citizens**

Legal action in GIPF fiasco unlikely

■ Andreas Thomas

PEOPLE responsible for allegedly looting the GIPF pension fund through loans from the failed Development Capital Portfolio (DCP) could still face civil law suits, experts say.

However, the question is whether those in a position to take action will ever muster the political will to sue the supposed culprits.

Although both legal experts and commentators agree that there are legal grounds for prosecution in the GIPF investment saga, they also seem to concur that no criminal charges would stand in court.

Experts said that both the GIPF trustees and the lenders who did not repay their loans could face prosecution under the Companies Act of 1973.

The authorities successfully used the same Act to bring the principals in the Avid/Social Security Commission NS30 million corruption case to book.

There is a 'sanction' clause in the law that makes provision for penalties in offences committed under "the transgression of the fiduciary powers of directors".

Kajitara Kanguechi, Director of the law firm, Hengari, Kanguechi & Kavendjii Inc said GIPF matter



Johan Coetzee

could be dealt with under Sections 424, 416 and 417 of the Companies Act.

Section 424 deals with the legal responsibility of directors and others for fraudulent conduct of business.

Kanguechi explained that directors of the companies could be held liable for the debts if "it could be proved that they knew that they were trading recklessly or if fraud could be established on their part - that indeed they intended to defraud the GIPF, then they could be held liable under Section 424".

He further explained that, "there are mechanisms in the Companies

Act that if the courts could "pierce the corporate veil" then the directors can personally be held liable for the debt of the company".

Piercing the corporate veil describes a legal decision to treat the rights or duties of the company and its directors as different entities.

According to Kanguechi Section 416 made provisions that parliament or somebody must institute a commission of enquiry.

In addition, Section 417, which deals with summoning and examination of individuals concerning the affairs of the company, Kanguechi said the liquidators of the company "can write a letter to the Master of the High Court for people to be examined as to the affairs of the company.

"They will be summoned to explain what they did with the money. If the liquidators are of the opinion that fraud was committed, they will send the report to the Prosecutor General. And it is up to the Prosecutor General to prosecute or not".

The Head of Department of Public Management at the Polytechnic of Namibia, Johan Coetzee, says that "The Companies Act is very clear about the fact that they have a case to answer and they can still be held liable for what happened at

GIPF".

Coetzee is an expert in the field of systematic corruption.

He was adamant that there was corruption at play in the DCP matter, and that there were clear legal grounds for prosecution.

"I am 99.9 percent sure that corruption played a big part, but it is not possible to prosecute now, it is too late.

"Who can take the case up for prosecution, it is too late now. Who in civil society is prepared to take up the challenge and the risks involved, including financing the court process? Who can afford to do it?" Coetzee asked.

He said since the provisions in the Companies Act are very seldom applied in Namibia, "that is not going to happen now with the GIPF case".

The summary of a report prepared by former Namibia Financial Supervisory Authority (Namfisa) CEO Rainer Ritter for the Prime Minister made a number of serious allegations.

"Many of the deals in the DCP came from those close to the trustees and that promoters approached trustees directly to get preliminary approval, and the trustees could have instructed the investment advisor to make the deals happen,"

the report said.

The Anti-Corruption Commission (ACC) Director Paulus Noa acknowledged at a recent Anti-Corruption Conference that someone could mount a civil case in the GIPF matter under the Companies Act.

The conference, organised by the Institute for Public Policy Research (IPPR) with the support of the Harms Seidel Foundation (HSF), aimed at discussing appropriate strategies to combat and prevent corruption.

Yet, despite the existence of grounds for prosecution, the anti-corruption body or the Prosecutor General could not institute criminal charges in the DCP matter, because it happened before the ACC came into existence.

The GIPF disbursed the DCP loans between 1999 and 2005, while parliament only promulgated the ACC Act in 2003 and public awareness and the investigation of corrupt practices only started in mid-2007.

Noa told the conference that failure to translate political will into political support for the anti-corruption agency was the main impediment to fighting corruption. "There must be a clear commit-

ment of the political leadership to combat corruption and to take decisive action against corruption. It must be a collective commitment by all those in political leadership," Noa said.

Kanguechi could however not support the ACC director's call for legislation to specifically deal with conflict of interests.

He emphasised the Namibian Common Law contains a provision that deals with conflict of interests.

He adds that, "Whether there is need for a legislation to specifically codify conflict of interests, ACC will still have a problem.

"The GIPF matter was coming for the past 10 years and if you bring in a new legislation today it will be pointless, unless ACC is given power to apply the law retrospectively. In absence of such legislation, we can only rely on the Common Law".

Coetzee said he is not enthusiastic about the call for a Presidential Commission of Inquiry into the matter because the Government has never released the findings of previous presidential inquiries.

"They can't be released. It would be political suicide. You cannot expect people to do that if they and the people they support benefit

from the same corrupt system. The findings will never be released, it will not happen," he said.

While 21 companies benefited from the NS650 million from DCP, the GIPF recently announced that it will take legal action against only one of the beneficiaries, Namibin Chicken Investment.

The DCP granted the company a loan of NS8.4 million between 2001 and 2003, but it only managed to repay NS300,000.

"You know why they will prosecute Namibia Chicken Investment? Because they are among the later recipients and those people there are not politically connected, while other companies have people who are politically connected," Coetzee said.

He warned that what happened at GIPF is just the tip of the iceberg as more is to come.

"It is part of a whole web of dealings that is becoming stronger and stronger, but this type of things is going to come out.

"The moment you become part of the web, there is no way out for you. You are tied and later on, as the web tightens you have fewer options to come out in the open and you find yourself in a cocoon.

"That is the problem with the most politicians; they are all in

a cocoon that is why they close ranks and protect each other," Coetzee said.

He said the incidents at the GIPF and Avid raise questions about the Black Economic Empowerment policy. "It is the same people that get the deals; they squander the money and come back for another BEE deal. Is this not a disgrace for the poor people of this country? And on the other hand the Government does not want to support the basic income grant," Coetzee charged.



He said he welcomed plans by workers to demand that President Pohamba acts against corruption.

However, Coetzee said that given the upcoming Regional and Local Government elections, the President might act against the GIPF trustees just to score political points. "If the President removes the GIPF Board, then it will be mainly because he is concerned about the fortunes of the party or himself and not because of his concern about corruption.

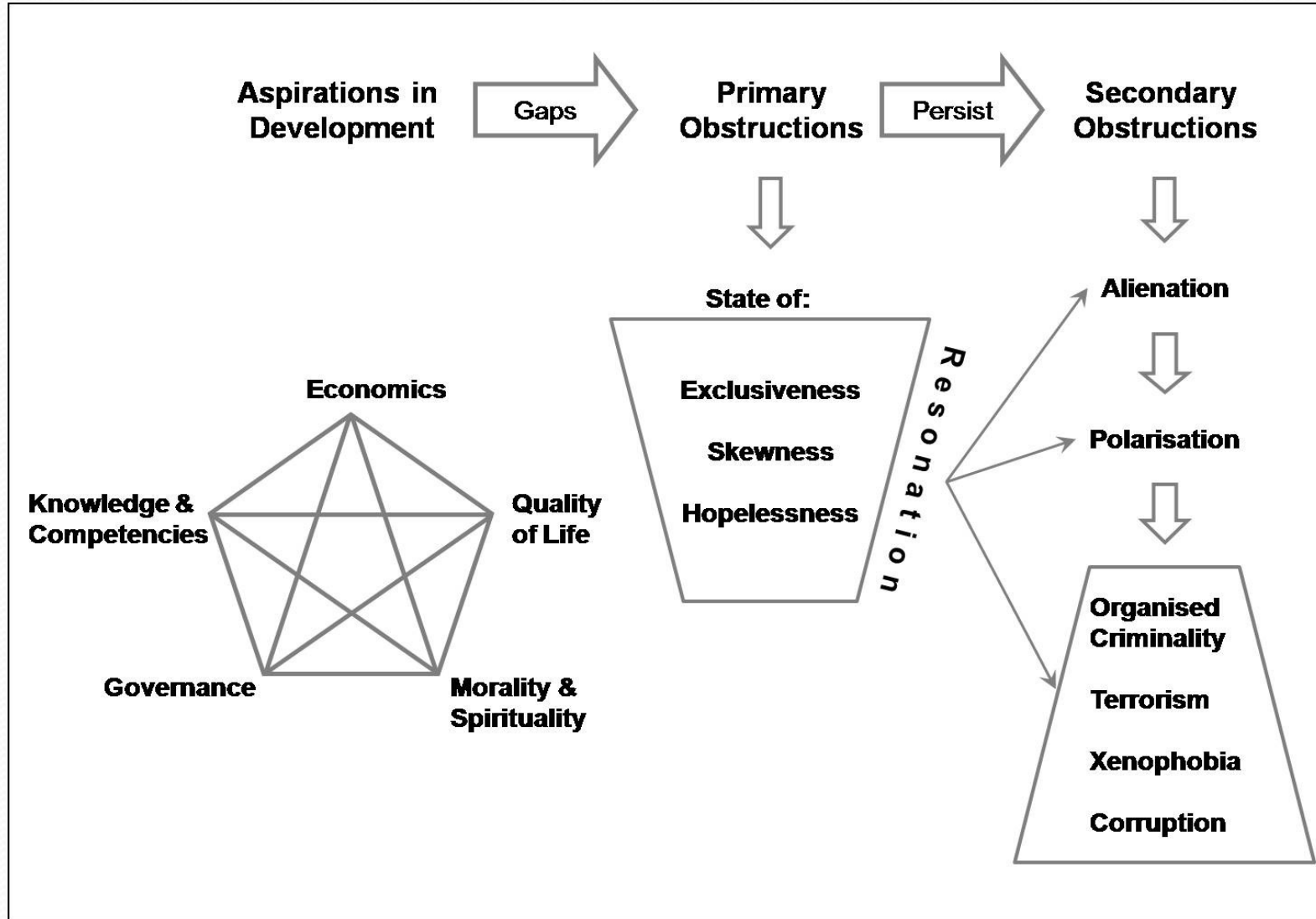
"His poor record on acting against corruption clearly exposes his weak political will, 'go with the bus, and do not stand in front of the bus' must be his motto," Coetzee said. - athomas@observer.com.na

afro-barometer survey

namibian perceptions of corruption

	2003 (%)	2005/6 (%)	2008 (%)
Office of President	15	22	17
Parliament	-	27	20
Local Councillors	-	29	26
Nat. Gov. Officials	30	35	 50
Local Gov. Officials	-	34	26
Police	37	44	42
Tax Officials	-	37	 39
Judiciary	22	32	17

How do corruption 'develop'?



Ackoff-Gharajedaghi 5-Dimensional Design		Primary or First- Order-Obstructions Emergent I Properties			Second-Order-Obstructions Emergent II or Properties of the Whole
Dimensions of Social Systems	Expected Yield	State of Scarcity Absolute Exclusion	State of Maldistribution Relative Exclusion	State of Insecurity Total Exclusion	Corruption, Terrorism,*Xenophobia and *Organised Criminality
Economic	Goods/ Services *Wealth (plenty)	Poverty Inefficiency	Disparity Exploitation	Fear of deprivation Instability	
Scientific	Information Knowledge Understanding (truth)	Ignorance *Incapability Incompetence Rolelessness	Elitism/ Illiteracy *Populism Lack of communi- cation	Obsolescence	
Political	Influence (Participation) *Recognition (liberty)	Impotency *Ineffectualness Powerlessness	Centralisation Autocracy *Minority *Majority	Illegitimacy	
Ethical/ Moral/ *Spiritual	Peace (good) *Fairness *Consciousness *Fulfilment	Normlessness *Nihilism *Disconnection/ *Detachment	Conflict Discrimination *Conflicting values	Fanaticism	
Aesthetic	Sense of belonging *Innovation *Inspiration Excitement (beauty)	*Isolationism Meaninglessness Hopelessness Boredom	Lack of shared image of desired future Selfishness/ Selflessness	Fear of loss of identity and individuality/ Fear of loneliness and isolation	

Alienation

Polarisation

Note: Between brackets (): Ackoff, as cited by Gharajedaghi. The author’s own additions are indicated by an *



**trend analyses - comparative characteristics of
developing countries (Namibia & Kenya) &
developed countries (Norway) based on 16
indices of perception studies**

General	Norway	Namibia	Kenya
Demography:			
Populations, total both sexes, 2011/2 (thousands) ^a	4,924.8	2,324.0	41,609.7
Population, urban, 2011/2 (% of population) ^a	79.8	38.6	22.5
Human development, 2011/2 (rank out of 187 & score) ^a	1 (0.943)	120 (0.625)	143 (0.509)
Stage of economic development (factor driven, efficiency driven, innovation driven) ^c	Innovation	Efficiency	Factor
Corruption Perceptions Index (CPI), 2011 (rank out of 183 & score, 0=highly corrupt, 10=very clean, most countries < 5) ^b	9 (9.0)	57 (4.4)	154 (2.2)
Most problematic factors for doing business: Corruption (from 15 factors, rank & % of total responses) ^c	14 (0.3)	4 (11.2)	1 (21.2)
Diversion of public funds to companies, individuals or groups: (due to corruption, 7=never occurs) ^c	5.9	3.7	2.6
Global competitiveness, 2011/2 (rank out of 142 & score, 7=highest) ^c	16 (5.2)	83 (4.0)	102 (3.6)
Time required to start a business (number of days) ^c	7	66	33
Health:			
Malaria incidence (cases per 100,000 population) ^c	Not endemic	1,698.5	31,027.8
HIV prevalence 2009 (% of adults aged 15-49 years & rank) ^a	0.1 (21)	13.1 (136)	6.3 (132)
Judicial independence (1=heavily influenced, 7= entirely independent) ^c	6.3	4.9	2.9

Economic subsystem			
Income:			
GDP per capita US\$; GDP (PPP) as share (%) of world total, 2010 ^c	84,444 (0.35)	5,652 (0.02)	809 (0.09)
GNI per capita PPP, 2009 (current international \$) ^d	54,880	6,350	1,570
Inequality:			
Income Gini coefficient (out of 1, the higher, the more skewed)	0.258 ^c	0.600 ^l	0.477 ^c
Loss due to inequality in income, 2011/2 (%) ^a	10.6	68.3	36.0
Loss due to inequality in education, 2011/2 (%) ^a	2.2	27.8	30.7
Loss due to inequality in life expectancy, 2011/2 (%) ^a	3.7	21.1	34.1
Development outcomes:			
Improved water source, 2008 (% of population with access) ^d	100	92	59
Index of Economic Freedom, 2011 (free, mostly free, moderately free, mostly unfree, repressed) ^c	Moderately free	Moderately free	Mostly unfree
Macroeconomic environment (rank and score; out of 7=highest) ^c	4 (6.4)	63 (4.9)	117 (4.0)
Efficient markets:			
Goods & market efficiency, labour & financial (rank) ^c	31-18-5	71-57-36	80- 37-26
Infrastructure (rank & score, out of 7=efficient by international standards) ^c	35 (4.9)	58 (4.2)	103 (3.1)

Scientific / Knowledge / Technology subsystem	Norway	Namibia	Kenya
Education:			
Public expenditure on education, 2011/2 (% of GDP) ^a	6.8	6.4	7.0
Expected years of schooling, 2011/2 (of children under 7 years) ^a	17.3	11.6	11.0
Mean years of schooling, 2011/2 (of adults over 25) (years) ^a	12.6	7.4	7.0
Education Index, 2011/2 (expected and mean years of schooling) ^a	0.985	0.617	0.582
Combined gross enrolment in education 2011/2 (both sexes, %) ^a	96.9	71.2	66.7
Higher education & training:			
Rank & score (7=highest) ^c	15 (5.5)	113 (3.2)	94 (3.7)
Extent of staff training (1=hardly any, 7=to great extent) ^c	5.4	4.2	4.0
Quality of management schools (1=poor, 7=among best in world) ^c	5.0	3.1	4.6
Quality of scientific research institutions (rank & score, 1=very poor, 7=the best in their field internationally) ^c	28 (4.7)	83 (3.4)	53 (4.0)
University industry collaboration (rank & score, 7=extensively) ^c	22 (4.8)	78 (3.5)	49 (3.9)
Technological readiness (rank & score, 7=highest) ^c	7 (6.1)	99 (3.3)	98 (3.3)

Political subsystem			
Democracy, 2011 (rank out of 167 & score, all countries: full democracy, 15%; flawed democracy, 31.7%; hybrid regime, 22.2%; authoritarian regime, 31.%) ^j	1 (9.80) Full	68 (6.24) Flawed	103 (4.71) Hybrid regime
Political environment, voting and the political process:			
Electoral process and participation, 2010 (0=lowest, 10=highest) ^j	10.00	5.25	3.92
Functioning of government, 2010 (0=lowest, 10=highest) ^j	9.64	5.36	4.29
Public trust of politicians (7=highest) ^c	5.7	3.7	2.0
Freedom in the world, 2010 (political rights and civil liberties) (free, partly free, not free) ^h	Free	Free	Partly free
Worldwide Press Freedom Index, 2011 (good situation, satisfactory situation, noticeable problems, difficult situation, very serious situation) ⁱ	Good situation	Good situation	Noticeable problems

Ethical / Moral / Spiritual subsystem			
Civil liberties and engagement:			
Civil liberties, 2010 (0=lowest, 10=highest) ^j	10.00	8.24	5.29
% who voiced opinion to public officials, 2008 (% of total) ^k	31.0	23.0	23.0
Transparency of government policymaking (7=highest) ^c	5.2	4.4	3.8
Access to information:			
Open Budget Country Score, 2010 (0=lowest, 100=highest) ^f	83	53	49
Exemptions to disclose (0=lowest, 5=highest) ^g	3.3	1.7	1.7
Sanctions for failure to disclose, 2010 ^g (unweighted average: 0=No, 1=Yes)	0.3	0.0	0.0
Reliability of police services (7=highest) ^c	6.0	4.6	3.2
Extent of cost on business by organised crime (7=not at all) ^c	6.4	5.3	3.8
Ethical behaviour of companies (7=highest) ^c	6.3	4.4	3.4
Efficacy of corporate boards (7=highest) ^c	5.5	4.8	4.3
Strength of auditing & reporting standards (7=highest) ^c	6.0	4.7	3.7
Level of peacefulness, 2012 (the lower the score the more peaceful) ^a	1.480	1.804	2.252

Aesthetic / Innovation subsystem	Norway	Namibia	Kenya
Sustainable well-being:			
(well-being x life expectancy)/ecological footprint ^m	(7.6x81.1)/4.8	(4.9x62.5)/2.0	(4.3x57.1)/0.9
Rank (out of 151 countries) 2012 ^m	29	96	98
Health and gender:			
Live expectancy at birth, 2011/2 (years) ^a & 2008 (years) ^d	81.8 (81)	62.5 (61)	57.1 (54)
Under-five mortality rate, 2011/2 (per 1,000 live births) ^a	3	48	84
Adolescent fertility rate, 2011/2 (births/1,000 women aged 15-19) ^a	9.0	74.4	100.2
Maternal mortality rate, 2011/2 (deaths of women/100,000 live births) ^a	7	180	530
Slum annual growth rate % & slum population 2005 (thousands) ^o	Not applicable	2.9 (239)	5.9 (9,620)
Proportion of urban population living in slum area 2007 (%) ^p	Not applicable	33.6	54.8
Distribution of households by shelter deprivation (all slum types) 2005 (%) ^p	Not applicable	33.9	54.8
Distribution of households by type of residence (area with 25% or less slum households, and area with 75+% of slum households) 2000-2005 (%) ^p	Not applicable	74.6 (2.5)	44.6 (11.6)
Capacity for innovation (rank & score; 1=licensing/ imitating foreign companies; 7=formal research & pioneering new products & processes) ^c	17 (4.5)	102 (2.6)	47 (3.3)

perception indices

- ^a United Nations Development Programme (UNDP), (2011);
- ^b Transparency International (2011); ^c World Economic Forum (2011);
- ^d World Development Indicators (2008);
- ^e Wall Street Journal & Heritage Foundation (2012);
- ^f Open Budget Index (2010); ^g Public Accountability Mechanisms (2010);
- ^h Freedom House (2012); ⁱ Reporters Without Borders (2012);
- ^j Economic Intelligence Unit (2012);
- ^k Gallup (2008); ^l Sims & Koep (2012: 141);
- ^m Happy Planet Index (2012);
- ⁿ Institute for Economics and Peace (2012);
- ^o UN-HABITAT (2007); and ^p UN-HABITAT (2011)

perception indices deductions

16 internal indices correlate positively with 2 african funded afro-barometer surveys & mo-ibrahim index
namibian anti-corruption survey & namibian institute for democracy can interpreted as additional explanation for mentioned correlations – gaps not always comparable
possible to conclude that due to correlation as indicated & additional explanation of trends, findings can be considered as reasonably reliable and valid

why is corruption a bigger issue in developing than developed countries?

Developing

can't afford corruption mega negative impact on poor/vulnerable

large in size as % of total economy

live & death e.g. Zimbabwe & Somalia

Developed

can afford corruption very few poor/vulnerable

small in size as % of total economy

uncomfortable e.g. USA

as a dimension of social systems why is “governance” relevant in corruption?

central component of governance is **decision-making**, the process of **decision making** & process by which **decisions** are implemented or not implemented

it is the process through which a group of people make **decisions**

"the art of steering societies and organizations“, thus steering, making **larger decisions** about both direction and roles

Network governance

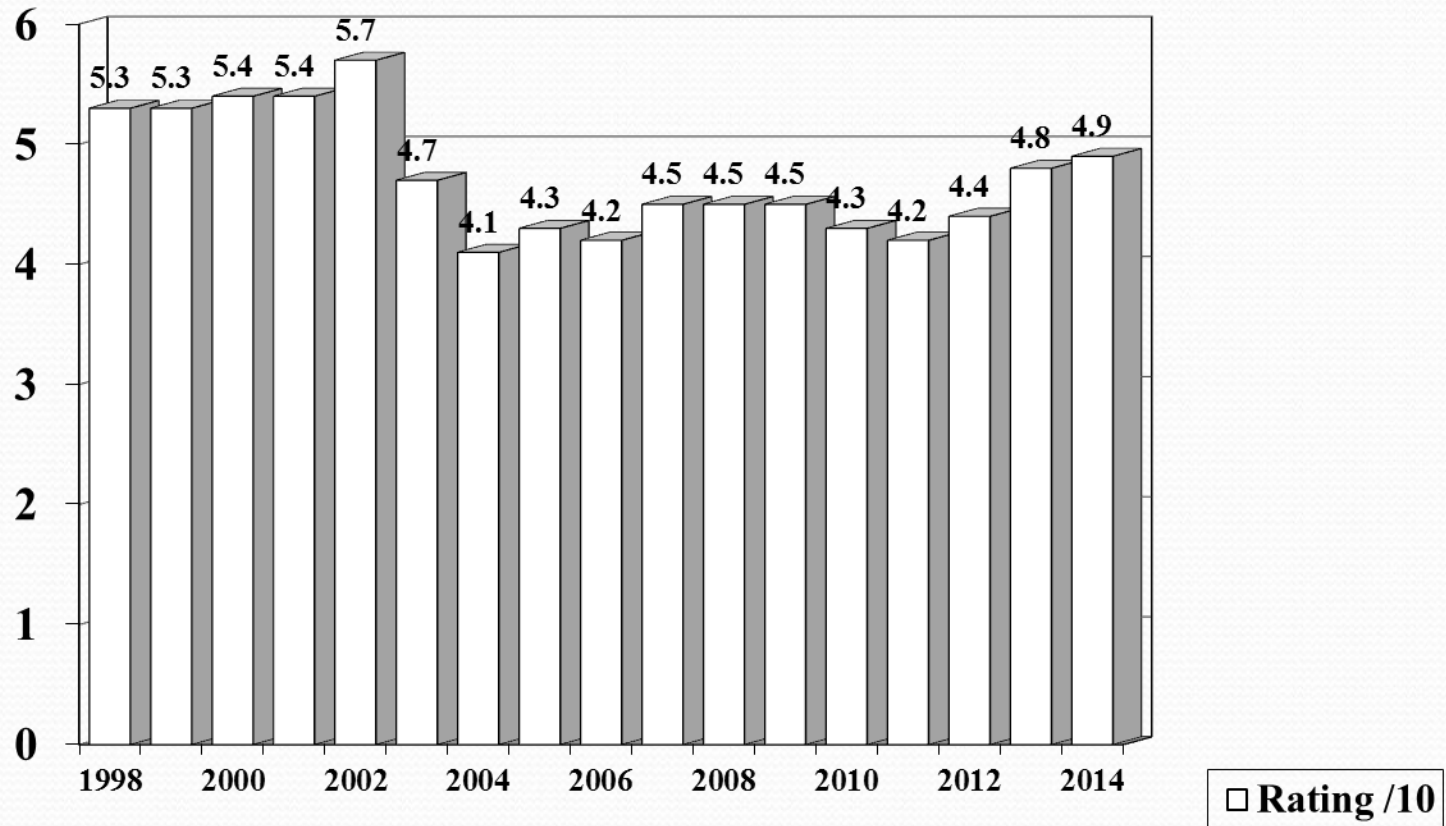
good governance indicators

indicators are often used to measure how “good” a country’s governance is
aid and other investments are often contingent on a country’s performance on
these kinds of indicators:

1. voice and accountability
2. political instability and violence
3. government effectiveness
4. regulatory quality
5. rule of law
6. control of corruption

source: transparency international

namibian good governance & corruption transparency international (TI)





namibian good governance & corruption ratings transparency international

average previous 17 years - 4.7 - 1998-2014

average previous 10 years - 4.5 - 2004-2014

conclusions & recommendations

- neither colonialism/imperialism/apartheid nor liberation struggles/neo-colonialism prepared African countries for good governance
- a vacuum for power developed
- corruption a complex set of problem situations - unanalysable
- corruption - systemic & trans-disciplinary challenge
- development perspective needed for breaking cycle of corruption
- **good governance** no ultimate solution but can reduce corruption
- **moral & transformational leaders most important driver of change**
- **2nd driver social activism place pressure on top to reform**
- not address symptoms, e.g. increased policing only
- consider impact of anti-corruption strategies on whole system

conclusions & recommendations

- removing obstructions to development
- highest leverage least input - reform revenue/police/tender board/ finance/public works
- increase costs & risks - scandals/jobs/reputation/friends
- police protection for victimisation/intimidation/murder
- financial rewards for losing employment/friends/stigma **because**
- corruption = ethical + economic + political + knowledge/ technological + motivational challenge & **our' & your'** challenge
- **top down - moral & transformational SADC leadership whom are committed to reduce corruption** – examples Tate Kulus Mohathma Ghandi Nelson Mandela & Jose Mujica of Urugua

limitations

- corruption as a systemic & complex set of problem situations
 - depressing if focus only on impact
 - how to measure social harm?
- perception studies
 - not methodological based
 - subjective 'developed' country views
 - why Norway & Kenya were chosen as outliers?
- systems methodology
 - can be overwhelming & time consuming & solutions too complex
- alternative approaches
 - historical & physiological

- *There is **no crime**, there is **no dodge**, there is **no trick**, there is **no swindle**, there is **not a vice** that does not live by secrecy. Get these things **in the open**, describe them, attack them, ridicule them in the press, and sooner or later **public opinion** will sweep them away.*

John Pulitzer

**all that is necessary for the triumph of evil is for
good men to do nothing**

edmund burke

