



UNODC

United Nations Office on Drugs and Crime

Country Review Report of the Republic of Namibia

Review by Ethiopia and Canada of the implementation by Namibia of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter referred to as UNCAC or the Convention) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Republic of Namibia (hereinafter, Namibia) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Namibia, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Ethiopia, Canada and Namibia, by means of telephone conferences and e-mail exchanges and involving Mr. Paulus Noa and Ms. Gladice Pickering from Namibia, Mr. Wedo Atto Yatto and Mr. Billen Girmay Gidey from Ethiopia, and Mr. Paul Saint-Denis from Canada. The staff members of the secretariat were Ms. Tanja Santucci and Mr. Tim Steele.
6. A country visit, agreed to by Namibia, was conducted in Windhoek from 20 to 22 April 2015. During the on-site visit, meetings were held with the Prime Minister, Speaker of the National Assembly, Namibian Anti-Corruption Commission (ACC), Office of the Prosecutor-General, Ministry of Justice, Commissioner Police, Public Service Commission, Financial Intelligence Centre (FIC) and the judiciary. Meetings were also held with representatives of civil society and the private sector.

III. Executive summary

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 Convention on 9 December 2003 (C.N.1422.2003.TREATIES-34) and it was ratified by Parliament on 27

April 2004. Namibia deposited its instrument of ratification with the Secretary-General on 3 August 2004 C.N.793.2004.TREATIES-17).

Article 144 of the Constitution states that “[u]nless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.” 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.

Namibia is a common law State; the basis of the legal system is Roman-Dutch and English law. Common law offences can be altered or abolished by statute. The Constitution is the supreme law of the country. The criminal judicial system is an accusatorial one where the State has to prove all cases beyond reasonable doubt. No jury system applies within the Namibian legal system and the presiding officer(s) in each court determines the verdict. The Namibian criminal law is not entirely codified and the Criminal Procedure Act (CPA) prescribes the process to be followed in criminal cases. Common law offences still form a great part of the criminal justice system.

Key institutions in the fight against corruption include: the Prime Minister’s Office, National Assembly, Namibian Anti-Corruption Commission (ACC), Office of the Prosecutor-General, Ministry of Justice, Namibian Police Force (Nampol), Public Service Commission, Financial Intelligence Centre (FIC) and the judiciary.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

The definition of “public officer” in the Anti-Corruption Act 2003 (ACA), section 32 does not cover unpaid persons or other persons performing public functions or providing a public service (in accordance with UNCAC article 2). There is also some uncertainty whether all categories of persons holding legislative, administrative or judicial offices are covered.

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Namibia has criminalized the bribery (active and passive) of public officials. The ACA prohibits the bribery of public officers, bribery in relation to auctions and bribery for giving assistance in relation to contracts (sections 33, 34, 38, 41, 42, 44 (1)(b) and the common law offence of bribery). Acts of indirect bribery and third party beneficiaries are not covered in respect of all bribery offences under ACA.

Section 40, ACA criminalizes the active bribery of foreign public officials and officials or agent of public international organizations. However, third party beneficiaries are not covered. Namibia is considering relevant amendments to explicitly criminalize passive transnational bribery.

Namibia has adopted measures to partially criminalize trading in influence (sections 35(1)-(3), 42, 33, 34, 38(b), ACA).

Namibia has criminalized bribery in the private sector (sections 33, 34, 35(1)-(3), 42, 44(1), 37, ACA).

Money-laundering, concealment (arts. 23 and 24)

Money-laundering is criminalized, principally in sections 4-6, Prevention of Organised Crime Act (POCA), section 1 (1), Financial Intelligence Act 2012 (FIA) and section 45, ACA. Participatory acts, including inducing, inciting, commanding, conspiring and attempt are covered (section 46, ACA and the inchoate offence of aiding and abetting under the common law). Namibia follows an “all crimes” approach to determining predicate offences, which include activities committed both within and outside Namibia; self-laundering is not precluded (sections 4-6, POCA, section 50, ACA).

Concealment is criminalized (section 45 (1) and 47, ACA; sections 4 and 5, POCA).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Namibia has partially criminalized embezzlement, misappropriation or other diversion of property by public officials through common law offences of theft and fraud.

The ACA criminalizes the abuse of functions by public officials (section 43, Corruptly using office or position for gratification).

Namibia has not criminalized illicit enrichment, but is considering adopting a relevant offence. Namibia has adopted measures to compel the disclosure of information concerning assets.

Namibia applies the common law offences of breach of fiduciary duty and fraud to deal with embezzlement of property in the private sector

Obstruction of justice (art. 25)

Namibia has partially criminalized obstruction of justice to induce false testimony or to interfere in the giving of testimony or the production of evidence (sections 39 and 47, ACA).

Interference with justice or law enforcement officials is covered under the broad aspects of assaulting, resisting or obstructing officers (section 29, ACA). Other relevant provisions include section 47, ACA, section 89(3), POCA, sections 50(3), 53(5), 61(4) and 63, FIA, section 42(1)(i), CPA, and section 28, Magistrates Act 2003.

Liability of legal persons (art. 26)

Namibian law provides for criminal, civil and administrative liability of legal persons, which is established irrespective of the liability of the natural persons involved. The Namibian legal framework allows for the imposition of criminal and non-criminal sanctions, including monetary sanctions, against legal persons. Civil and administrative penalties for corporations are contained in the Companies Act, 2004 and the Close Corporation Act, 1998.

Participation and attempt (art. 27)

Sections 46, ACA, 5 POCA and 286-287, CPA, as well as the inchoate offence of aiding and abetting, cover participation and attempts to commit offences. The mere preparation of an offence, outside the acts of aiding and abetting, is not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The applicable penalties for corruption-related offences are determined on the basis of the gravity of the crime. All corruption-related offences are sanctioned with various years of imprisonment.

Apart from the President of the country, who cannot be charged criminally for any act or omission during his tenure of office (Article 31, Constitution), no public officials, as defined in the UNCAC, are afforded any criminal immunities.

The Prosecutor-General has the discretion to decide whether to proceed with a prosecution or to withdraw it, subject to the provisions of the Constitution (Article 88(2)). Section 4 CPA sets out the Prosecutor-General's powers to withdraw charges before the accused has pleaded, and to stop proceedings thereafter. A prosecution can only be stopped with the written consent of the Prosecutor-General or any other authorised person. There are no prosecution guidelines, but the Prosecutor General's office has issued and circulated to prosecutors guidelines setting out the charges in corruption cases. In the last 2-3 years, there have only been four cases of decisions not to prosecute, which did not involve corruption matters, and no complaints were filed against such decisions.

Sections 62, 63 and 65, CPA regulate conditions for bail to ensure the presence of the defendant at subsequent criminal proceedings.

Section 97, Prison Services Act 1998 and sections 106 and 110, Correctional Services Act of 2012 regulate early release and parole.

Disciplinary measures, including the possibility of dismissal, suspension and reassignment of accused persons, may be taken on the basis of disciplinary procedures, which may run in parallel to the criminal process (section 26, Public Service Act 1995 (PSA)).

Convicted persons are disqualified from becoming members of the National Assembly (article 47, Constitution) and from the Public Service (sections 26(12) and 26(18), PSA). The disqualification from serving in a State-owned enterprise (SOE) based on a prior conviction is addressed in the relevant legislation of each SOE.

Rehabilitation and welfare services are available to all prisoners, even prior to their release (sections 321 and 322(1), CPA; section 275, Prison Services Act).

Limited measures to protect cooperating defendants are in place (sections 48, 52, 54(4), ACA; 9(1), POCA; 45, FIA). There are no statutory provisions dealing with the mitigation of punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence, although cooperation may be taken into account during sentencing. Immunity from prosecution may be afforded and has been given to cooperators in criminal matters (but not in corruption cases to-date). Namibian authorities indicated that a plea bargaining system could allow the prosecution to more speedily and effectively dispose of cases.

Protection of witnesses and reporting persons (arts. 32 and 33)

Section 52, ACA provides limited protections for informers and information (witnesses and whistleblowers). Limited protection measures for witnesses and reporting persons are also contained in sections 54(4), ACA; 45 and 50, FIA; 175 and 208, CPA; and 98, POCA. A draft Witness and Whistleblower Protection Bill has been approved by Cabinet, and Namibia reported that it will use the

Convention as basis for agreements with other States in implementing this legislation once passed. Namibia does not have a witness protection programme and faces self-reported challenges in this area.

While the protection of victims is not addressed, the CPA allows for the views and concerns of victims to be presented and considered during criminal proceedings (sections 305, 326).

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Namibia provides for conviction- and value-based confiscation of proceeds of crime and instrumentalities used, but not destined for use, in offences (sections 18, 20, 32, 37 POCA). An Asset Forfeit Unit established in the Office of the Prosecutor-General handles asset forfeiture through civil litigation. Instrumentalities of crime are subject to limited confiscation measures in relation only to serious offences enumerated in Schedule 1, POCA. Various provisions, primarily in POCA, ACA, CPA and FIA, address the identification, tracing, freezing or seizure of proceeds and instruments by relevant authorities; the same laws also address the administration of frozen, seized or confiscated property by competent authorities. Provisions to overcome bank secrecy are found in POCA (section 9(5)), FIA (sections 44(1), 3(g)), ACA (sections 26, 27)), CPA (sections 20, 21)), as well as the Banking Institutions Act. The law establishes evidentiary presumptions in confiscation matters (sections 22, 36 POCA, 26 ACA).

Provisions in CPA, FIA and the Banking Institutions Act 1998 enable information pertaining to bank records to be disclosed for investigative purposes. ACC routinely issues summons for bank records under section 26 ACA and obtains relevant records. Such information is also regularly obtained by the FIC.

Statute of limitations; criminal record (arts. 29 and 41)

The period of limitations for corruption-related offences is twenty years from the date the offence was committed (section 18, CPA).

There is no legislative basis for judicial authorities to take into account previous foreign (as opposed to domestic) convictions.

Jurisdiction (art. 42)

Namibia has established jurisdiction over offences committed in its territory (sections 64, FIA; 50(1) ACA; 8, POCA), but not for all offences on board of vessels or airplanes.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The consequences of corruption are addressed in sections 36(16), FIA and 13, Tender Board Regulations 1996.

Compensation for damages may be obtained (sections 32(3), 39, POCA, 326(1), CPA). Moreover, as a matter of practice damages are claimed through the mechanisms of the civil procedural laws.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Sections 2 and 3, ACA establish the ACC as an agency within the Public Service and provide for a measure of independence of the Commission in the appointment of the Director and Staff. The ACC has its own budget (N\$48,581,000 during 2013/14), which is allocated by the Ministry of

Finance. Staff training is conducted at the instance of the Director of the ACC as required; details were provided during the country visit.

Other relevant institutions include the Organized Crime and Criminal Intelligence Unit (specialized money-laundering unit) within the Police, a specialized prosecution unit within Office of the Prosecutor General for extradition and mutual legal assistance, and the FIC in the Bank of Namibia.

Cooperation between national authorities is ensured primarily through inter-agency memoranda of agreements. Relevant provisions are found in sections 31, 48, 3, ACA; 56, FIA; 88, POCA; 64 (4), Banking Institutions Act 1998. Institutions also cooperate through staff exchanges, sharing of resources, skills and capacity, operational synergies and information exchange. There is no general duty to cooperate by public officials and members of the public (sections Section 21(5) and 48 ACA).

Namibia's FIC responds to requests for information from law enforcement agencies and foreign financial intelligence units and receives and analyzes suspicious transaction and activity reports (STRs/SARs) from accountable institutions, reporting institutions and others. The ACC conducts seminars and workshops for the private sector on how to report corruption incidents. Banks and financial institutions cooperate regularly with the FIC and ACC. Relevant laws include sections 9(1), POCA; 33, 45, 50, FIA; 17(1), Financial Intelligence Regulations 2009.

Measures to encourage the reporting of corruption incidents (including anonymously) have been established (sections 48(2), ACA; 204, CPA). The ACC has a 24-hour toll-free telephone hotline and also accepts reports by email, fax, telephone, in writing, in person and orally. Civil society and non-governmental organizations are active partners of government and the ACC when it comes to the collection of information, raising awareness and educational programmes. Police informants are rewarded financially to provide information and cooperation in criminal matters, and rewards are publicly announced in the media.

2.2. Successes and good practices

In general, the following are highlights of the successful experiences and good practices in the implementation of Chapter III of the Convention:

- Namibia is commended for the extensive effort and commitment, including at the highest level of government, to the preparation and facilitation of the review process, in particular the knowledge by relevant official of the Convention and their apparent receptiveness to implementing the review results.*
- Effective coordination mechanisms among national authorities (for example, through the work of the FIC), including high-level support for the implementation of the Convention and the anti-corruption agenda.*

2.3. Challenges in implementation

To further enhance existing anti-corruption measures it is recommended that Namibia:

- Amend its legislation to adopt a definition of "public official" in line with UNCAC (art. 2).*

- *Amend its legislation to cover acts of indirect bribery and third party beneficiaries for all bribery offences under ACA (art. 15).*
- *Cover third party beneficiaries in its (active) transnational bribery offence (art. 16(1)). The reviewers welcome indications that Namibia is considering explicitly criminalizing passive transnational bribery.*
- *Adopt measures to criminalize embezzlement, misappropriation or other diversion of property by public officials (art. 17).*
- *Consider, in the context of its ongoing reforms, adopting measures to more fully criminalize trading in influence (art. 18).*
- *Consider criminalizing illicit enrichment in light of Constitutional principles and existing disclosure requirements (art. 20).*
- *The reviewers welcome indications by Namibia that it endeavours to adopt measures to criminalize embezzlement of property in the private sector (art. 22).*
- *Amend its legislation to bring it more closely in line with article 25(a).*
- *Consider whether the sanctions applicable to legal persons are sufficiently effective and dissuasive or should be enhanced in context of ongoing legal reforms (art. 26).*
- *Consider providing for an interruption or suspension of the period of limitations when criminal proceedings are filed (art. 29).*
- *Clarify provisions for the direct confiscation of proceeds and especially instruments in POCA, and ensure that instruments (including instruments destined for use in offences) are subject to freezing, seizing and confiscation to the full extent (art. 31).*
- *Take steps towards the swift adoption of the Witness and Whistleblower Protection Bill, to cover witnesses, experts, victims and also cooperating defendants, and incorporate physical protection and evidentiary measures in line with UNCAC (arts. 32, 33, 37).*
- *Take steps to enhance the independence of the ACC and continue to invest in training and recruitment of skilled investigative and other staff of the relevant law enforcement agencies, including the Anti-Corruption Commission, the prosecution service and the police (art. 36).*
- *Continue to consider establishing a specialization in the judiciary on corruption-related matters, to address the backlog of cases and delays in the administration of justice. Moreover, further training and capacity building on corruption cases for investigators, prosecutors and members of the judiciary is recommended (art. 36).*
- *Although not required under the Convention, consider adopting a relevant framework on plea bargaining in the context of ongoing legal reforms (art. 37).*
- *Consider adopting, in the context of ongoing legal reforms and sections 21(5) and 48 ACA, a general duty to cooperate by public officials and members of the public (art. 38).*
- *Consider adopting a legislative basis for the judicial authorities to take into account previous foreign convictions (art. 41).*

- Establish jurisdiction for all offences committed on board of vessels or airplanes (art. 42(1)(b)) and in cases where extradition of nationals is refused (art. 42(3)). Also consider establishing jurisdiction in cases of passive personality (art. 42(2)(a)) and offences against the State (art. 42(2)(d)).

2.4 Technical assistance needs identified to improve implementation of the Convention

- Summary of good practices/lessons learned (arts. 16, 20, 21, 30, 31, 32, 33, 36, 37, 39)
- Model legislation, agreements or arrangements (arts. 20, 22, 32, 33, 37)
- Legislative drafting/legal advice (arts. 20, 21, 22, 30, 31, 32, 33, 36, 37, 39)
- Development of an action plan for implementation (arts. 31, 32, 33, 36, 37)
- Capacity-building programmes (art. 31, 32, 33, 37, 39)
- On-site assistance by an anti-corruption expert (arts. 16, 20, 21, 30, 32, 33, 36, 39).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition, transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45, 47)

The primary legislation governing extradition is the Extradition Act 1996 (EA). Extradition is rendered on the basis of an agreement or by designation/proclamation of countries. The extradition to designated countries or on the grounds of reciprocity does not require a treaty basis. Namibia has not applied this Convention as the legal basis for extradition in respect to offences under the Convention, although it could do so in principle. Three extradition treaties have been signed (China, Angola, Zimbabwe). Extradition arrangements are also facilitated through the SADC and African Union frameworks, the Joint Permanent Commissions (used inter alia to discuss conclusion of bilateral treaties for extradition and mutual legal assistance) as well as the Commonwealth (London) Scheme on Extradition.

Dual criminality is a requirement for extradition, which may be effected for offences punishable by a minimum of one year imprisonment under the laws of both the requesting and requested countries (section 3(1), EA). This covers offences established under the Convention. Namibia takes a conduct-based approach in considering whether dual criminality is satisfied rather than considering the strict terminology of offences (section 3(2)(b), EA). Extradition is limited to the extent that not all offences under the Convention are criminalized.

The conditions and grounds for refusal are found in the extradition treaties and sections 3(1) and 5, EA. One such ground for refusal is that the conviction was obtained in the absence of the defendant, which has presented challenges in practice.

Expedited and simplified extradition arrangements are in place under the London Scheme. However, in practice the burden of proof (beyond a reasonable doubt) for extradition impedes incoming and outgoing requests (Hans-Jurgen Gunther Koch v. The State, SA 13/2005, 29.11.2006). Amendments to the EA were being considered that would ease evidentiary requirements while safeguarding due process rights, as well as the promulgation of timelines or procedures to expedite extradition matters.

*Namibia can and does extradite its citizens. However, extradition of nationals may also be refused in the discretion of the Minister of Justice. The *aut dedere aut judicare* obligation is partially established (section 6, EA). Although in most cases the extradition of Namibian citizens was reportedly authorized, there have been no prosecutions in lieu of extradition to-date. Although extradition, sought for purposes of enforcing a sentence, would not be refused on the basis of nationality, this is not specified in the legislation.*

Fair treatment guarantees enshrined in the Constitution and domestic legislation (principally, articles 6-8, 11, 12(1)(a) Constitution; sections 11(6)-(7), 13, 17(1), 20, EA) have been invoked in extradition cases (Mwilima & Others v. Government of the Republic of Namibia & Others 2001 NR 307 (HC)).

Namibia consults with requesting States as a matter of practice before extradition is refused.

There have been no reported incoming requests in corruption cases to-date. In 2014 Namibia received six requests not involving offences under the Convention and made no outgoing requests.

Namibia requires a treaty basis for the transfer of sentenced persons (section 2, Transfer of Convicted Offenders Act 2005). No such agreements have been entered into, but the adoption of ad hoc agreements has been considered.

Namibia has considered, but not adopted, measures on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

The International Co-operation in Criminal Matters Act 2000 (ICCMA) provides the legal framework for mutual legal assistance (MLA). The Act is under review to bring it more closely in line with the Convention. Namibia has concluded three bilateral MLA treaties (China, Angola, Zimbabwe). Namibia is also party to the SADC Protocol on Mutual Legal Assistance in Criminal Matters, as well as the Scheme for Mutual Assistance Within the Commonwealth (Harare Scheme). Namibia does not require a treaty for MLA and can provide assistance by designation/proclamation, on the basis of reciprocity and on the basis of the Convention.

There have been no incoming MLA requests in corruption-related cases. More generally, in matters not related to corruption, Namibia received 10 incoming MLA requests in 2014 and made 6 outgoing requests. Namibia has not refused any MLA requests in the last 2-3 years.

Namibia does not require dual criminality in the context of MLA.

As central authority, Namibia's Ministry of Justice communicates with other central authorities in matters related to MLA, although a formal notification to the United Nations has not been made. However, in

practice direct communication and cooperation between designated central authorities is possible and accepted. Requests are frequently received through INTERPOL and are required to be made in writing in English, but no notification to the United Nations has been made.

The Minister of Justice has wide discretion to grant or refuse requests, including on the grounds set forth in the article 6 of the SADC Protocol on Mutual Legal Assistance In Criminal Matters. However, these grounds are not spelled out in ICCMA. Namibia honors requests for confidentiality as a matter of practice.

Namibia can share information spontaneously and has done so in the past. There is no domestic legislation on confidentiality of information received spontaneously; in practice Namibia treats all incoming requests as confidential.

There have been no cases where prisoners or detained persons have been transferred for purposes of MLA. In principle such transfers could be effected in the same manner as with any other witness, though the relevant protective measures are not specified.

Namibia's legislation does not allow for videoconferencing. In principle Namibian authorities could reach an agreement for a foreign judicial authority to conduct a domestic hearing, although there has been no experience in this regard.

The customary length of time for responding to MLA requests is expected not to exceed three months. There are reported domestic coordination problems and limited capacity in responding to requests.

As a matter of practice, Namibia consults with requesting States before refusing or postponing assistance.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)

Namibia's law enforcement authorities cooperate through a variety of networks and informal channels. Namibia participates in regional and international fora such as INTERPOL and the Southern African Regional Police Chiefs Commission (SARPCCO), as well as in regional fora dealing with AML/CFT issues, such as the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and the Financial Action Task Force on Money Laundering and Terrorism Financing (FATF). Nampol participates in the STAR INTERPOL focal points network. Namibia also cooperates through the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA) and generates informal contacts through the Southern African Forum against Corruption (SAFAC).

Nampol is also part of the steering committee for the establishment of the African Police Cooperation Organization (AFRIPOL), a body supported by INTERPOL and affiliated with the African Union, aimed at coordinating police cooperation at the African level.

Nampol has entered into several bilateral agreements with other police forces and services, within and outside the SADC region to cooperate in the fight against crime, through the exchange of information on new emerging crime threats and crime trends. Specifically, Nampol has entered into bilateral agreements and established Permanent Joint Commissions on Defence and Security with Zambia, Angola and Botswana. In addition, Namibia and South Africa have established a Public Safety Committee to cooperate in the fields of defence and

security, including the exchange of information on the activities and movement of elements involved in crime.

Namibia has posted liaison officers in South Africa, Angola and Botswana pursuant to SARPCCO resolutions. Zimbabwean police officers and international experts have been posted in Namibia, including an asset forfeiture advisor placed in the Prosecutor-General's office. The ACC engages in trainings at the regional level and staff exchanges with foreign counterparts.

Namibia has not used the Convention as a basis for direct law enforcement cooperation, but could in principle do so.

Joint investigative bodies have been established in criminal matters with Angola, Botswana, Zambia and South Africa, by mutual agreement or through INTERPOL. In corruption matters, joint investigative bodies may be established by agreement on a case by case basis. Joint investigations have been conducted through SARPCCO, also involving corruption.

Namibia's law enforcement authorities may conduct a range of special investigative techniques, including undercover operations, surveillance and controlled delivery under relevant domestic legislation (CPA, Police Act, ACA, POCA, FIA, Income Tax Act, ICCMA, EA, and Prevention and Combating of Terrorist and Proliferation Activities Act). There appears to be some operational risk in conducting such techniques.

3.2. Successes and good practices

- Namibia flexibly applies the dual criminality requirement for extradition.*
- Namibia's authorities engage in a wide range of law enforcement cooperation in particular at the regional level and through INTERPOL through a variety of frameworks, agreements and arrangements; in particular, the informal cooperation by Nampol, the ACC, FIC and other law enforcement authorities at the international level are positively noted.*

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Consider specifying in the Extradition Act that extradition may be affected on the basis of a multilateral agreement, such as the present Convention or, in the absence of an agreement, on the basis of reciprocity or by proclamation (art. 44).*
- Notify the United Nations of indications that Namibia accepts UNCAC as a legal basis for extradition (art. 44(5)).*
- Consider monitoring the application of section 5(2)(a), EA, which provides grounds for refusal in cases involving convictions obtained in absentia (art. 44(8)).*
- Continue to take steps towards the adoption of amendments to the EA that would ease evidentiary requirements while safeguarding due process rights, as well as the promulgation of timelines or procedures to expedite extradition matters (art. 44(9)).*
- Fully establish the aut dedere aut iudicare obligation (art. 44(11)).*

- *Consider adopting measures providing that Namibia would consider the enforcement of a foreign sentence in cases where extradition of nationals is refused (art. 44(13)).*
- *Continue to ensure that the fair treatment guarantees enshrined in its Constitution and domestic legislation are enforced in extradition cases (art. 44(14)).*
- *Consider adopting extradition guidelines or procedures to inter alia more formally address the duty to consult before refusing extradition (art. 44(17)).*
- *Consider adopting guidelines on international cooperation, including timeframes to be followed and procedural steps to be taken, and publishing them on its website, in order to guide requesting States on Namibia's requirements for international cooperation (art. 46, in particular paras. 15-17, 19, 24 and 26)).*
- *Consider clarifying its practice on confidentiality of information shared spontaneously in the context of the ongoing revision of ICCMA (art. 46(5)).*
- *Consider specifying the matter of prisoner transfer for purposes of MLA (art. 46(10-11)).*
- *Make the requisite notification of its central authority and acceptable language for MLA to the United Nations (art. 46(13-14)).*
- *Consider specifying confidentiality matters in its law or procedure, in the context of the ongoing review of its legislation (art. 46(20)).*
- *Consider clarifying grounds for refusal of MLA (art. 46(21-23)).*
- *Clarify the practice on costs in its legislation or procedures (art. 46(28)).*
- *Engage in further capacity building on international cooperation, by investing in training, user sensitization, learning from international good practices, further enhancement of its data management system, and the development and publication on its website of guidelines on international cooperation (art. 46(24)).*
- *Consider strengthening its legal regime on special investigative techniques, including ensuring that the evidence derived is admissible in a court of law (art. 50).*

3.4 Technical assistance needs identified to improve implementation of the Convention

- *Summary of good practices/lessons learned (arts. 44, 46, 47, 48, 50)*
- *Model treaties / legal advice (art. 44)*
- *On-site assistance by a relevant expert (arts. 44, 46, 50)*
- *Capacity-building programmes (arts. 44, 46, 47, 50).*

IV. Implementation of the Convention

A. Ratification of the Convention

7. Namibia signed the Convention on 9 December 2003 (C.N.1422.2003.TREATIES-34) and it was ratified by Parliament on 27 April 2004. Namibia deposited its instrument of ratification with the Secretary-General on 3 August 2004 (C.N.793.2004.TREATIES-17).

8. The implementing legislation includes the following laws cited by Namibia:

1. The Constitution of the Republic of Namibia
2. The Criminal Procedure Act, Act 51 of 1977 (as amended in 2004)
3. The Anti-Corruption Act, Act 9 of 2003
4. The Supreme Court Act of 1990
5. The High Court Act of 1990
6. The Prevention of Organized Crime Act of 2004 (as amended in 2008)
7. The Financial Intelligence Act of 2012
8. The Prevention and Combatting of Terrorism and Proliferation Activities Act of 2014
9. The International Cooperation in Criminal Matters Act of 2000
10. The Extradition Act of 1996
11. The Foreign Courts Evidence Act of 1995
12. The Public Service Act of 1995
13. Prison Services Act 17 of 1998
14. The Companies Act of 2004
15. The Ombudsman Act of 1990
16. The Local Authorities Act of 1992

9. The Anti-Corruption Act, Act 8 of 2003, which precedes the adoption of the Convention, specifies and criminalizes relevant forms of corruption as set out in the Convention. A draft Witness and Whistleblower Protection Bill was approved at the policy level by the Cabinet of Namibia in 2014 and pending at the time of review. In addition, an amendment to the Prevention and Combatting of Terrorism and Proliferation Activities Act was pending.

10. Namibia made the following depositary notification concerning article 6(3) of the Convention on 12 April 2011 (C.N.173.2011.TREATIES-8).

1. Anti-Corruption Commission
P.O. Box 23137, Windhoek, Namibia
Frans Indongo Building, Dr. Frans Indongo Street, Windhoek

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B. Legal, institutional and political system of Namibia

11. Article 144 of the Constitution states that “[u]nless otherwise provided by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.” 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.
12. Namibia gained independence on 21 March 1990 from its colonizers, South Africa. Namibia is a Constitutional democracy where the government is elected through an election process which guarantees free and fair elections. The three branches of government are the Judiciary, the Executive and the Legislature.
13. Government is divided into central government, regional government and local authorities. Namibia is politically stable and peace and freedom is enjoyed by all citizens. The SWAPO party has been the ruling party since independence and the opposition is strongly represented in parliament, which is made up of multiple political parties. Civil Society plays an active role in the day-day business of the country and fulfills a critical role in reminding government of its obligations and failures. Government-civil society partnerships are well established at all levels and the value thereof is recognized by government.
14. Namibia has its own monetary currency, namely the Namibian Dollar. This unit is strongly dependent upon and linked to the South African Rand and fluctuates accordingly. Namibia has a central bank with a Financial Intelligence Centre (FIC).
15. The Constitution is the supreme law of the country and it contains a Bill of Rights entrenched therein in the form of Chapter III. The Constitution guarantees the right to equality and the rule of law is the one of the pillars of the Namibian democracy.
16. Namibia is a common law State which derives its legal system from its former colonizers, and the basis of the legal system are Roman-Dutch and English law.
17. The courts are divided into three levels, namely: Magistrate Court, High Court and Supreme Court. The Supreme Court is the highest court of appeal.
18. The criminal judicial system is an accusatorial one where the State has to prove all cases beyond reasonable doubt. No jury system applies within the Namibian legal system and the presiding officer(s) in each court determines the verdict. The Namibian criminal law is not entirely codified and the Criminal Procedure Act prescribes the process to be followed in criminal cases. Common law offences still form a great part of the criminal justice system.

19. Namibia's Constitution through article 144 incorporates international instruments which Namibia is a State party to, as part of Namibian law. Namibia is State party to most major international instruments.
20. Certain of Namibia's legislation is currently under review to ensure fuller compliance with the Convention, including:
- Amendments to the Anti-Corruption Act (due to be passed in the Parliament at the time of review)
 - Review of the Extradition Act (underway at the time of review).
 - Amendments to the International Cooperation in Criminal Matters Act (underway at the time of review).
21. Regarding previous assessments of the effectiveness of anti-corruption measures taken by the Government, Namibia referred to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) "*Fourth Progress Report on Namibia's Implementation Plan to the Recommendations Made In Namibia's Mutual Evaluation Report on Laundering and Combatting the Financing of Terrorism*" (March 2013), a copy of which was provided to the reviewers. Moreover, non-governmental agencies have conducted assessments previously.

C. Implementation of selected articles

22. As a cross-cutting observation, Namibia is commended for the extensive effort and commitment, including at the highest level of government, to the preparation and facilitation of the review process, in particular the knowledge by relevant official of the Convention and their apparent receptiveness to implementing the review results.

Chapter III. Criminalization and law enforcement

23. Namibia provided statistics on corruption cases with respect to the implementation of chapter III as outlined in Annex 1.
24. The term "public officer" is defined in the Anti-Corruption Act of 2003, section 32, as follows:
- "public officer" means a person who is a member, an officer, an employee or a servant of a public body, and includes -
- (a) a staff member of the public service, including the police force, prisons service and defence force, or of a regional council or a local authority council;
 - (b) a member of the National Assembly, the National Council, a regional council or a local authority council;
 - (c) a judge of the Supreme Court or the High Court or any other member of the judicial authority;
 - (e) any person receiving any remuneration from public funds;
 - (f) if the public body is a corporation, the person who is incorporated as such.

It was confirmed that this definition does not cover unpaid persons or other persons performing public functions or providing a public service (in accordance with UNCAC article 2). There was also some uncertainty whether all categories of persons holding legislative, administrative or judicial offices are covered. In this context, it is noted that the definition of “foreign public official” in section 40(2) of the Anti-Corruption Act of 2003 is much broader and closely aligned to article 2 of UNCAC, in that it specifically refers to “(a) a person holding any legislative, administrative or judicial office at any level or subdivision of government [... and]; (b) any person performing public functions [...]”. It is recommended that Namibia amend its legislation in this regard.

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

25. Namibia cited the following measures, as quoted below.

Section 34, Anti Corruption Act 2003.

Section 38, Anti Corruption Act 2003.

Section 41 (a), Anti Corruption Act 2003.

Section 42 (1), Anti Corruption Act 2003.

Section 44 (1)(b), Anti Corruption Act 2003.

Common law offence of bribery.

Section 34, Anti Corruption Act 2003

Offence of corruptly giving gratification.

A person commits an offence who, directly or indirectly, corruptly offers, gives or agrees to give to any person, whether for the benefit of that person or any other person, any gratification as -

(a) an inducement to do or to omit doing anything; or

(b) a reward for having done or having omitted to do anything.

Section 38, Anti Corruption Act 2003

Bribery of public officer.

A person who offers or gives or agrees to give to a public officer, or who, being a public officer, solicits or accepts or agrees to accept, any gratification as an inducement or a reward for, or otherwise on account of -

(a) voting or abstaining from voting at any meeting of a public body in favour of or against any measure, resolution or question relating to the functions of that public body;

(b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;

- (c) aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
- (d) showing or forbearing to show any favour or disfavour in his or her capacity as a public officer, commits an offence, whether or not the public officer had the power, right or opportunity so to do.

Section 41 (a), Anti Corruption Act 2003

Bribery in relation to auctions.

A person commits an offence who, directly or indirectly, corruptly -

- (a) offers or gives or agrees to give any gratification to any other person as an inducement to refrain, or as a reward for having refrained, from bidding at any auction;

Section 42 (1), Anti Corruption Act 2003

Bribery for giving assistance in relation to contracts.

(1) A person commits an offence who corruptly offers or gives or agrees to give any gratification to any other person whether for the benefit of that person or any other person, as an inducement or a reward for giving assistance or using influence, or having given assistance or used influence, in -

- (a) the promotion, execution or procuring, or the amendment, suspension or cancellation, of any contract with a public body, private organisation, corporate body or other organisation or institution; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Section 44 (1)(b), Anti Corruption Act 2003

Corruption in relation to sporting events.

(1) A person commits an offence who, directly or indirectly, corruptly -

- (b) offers or gives or agrees to give to any other person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event.

26. The term “gratification” is defined in the Anti-Corruption Act of 2003, section 32, as follows:

“gratification “ includes -

- (a) money or any gift, loan, fee, reward, commission, valuable security or property or interest in property of any description, whether movable or immovable;
- (b) any office, dignity, employment, contract of employment or services and any agreement to give employment or render services in any capacity;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any valuable consideration or benefit of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- (e) any forbearance to demand any money or money’s worth or valuable thing;
- (f) any service or favour, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty;
- (g) any right or privilege;
- (h) any aid, vote, consent or influence, or any pretended aid, vote, consent or influence;

(i) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs.

27. The term “corruptly” is also defined in the Anti-Corruption Act of 2003, section 32:

“corruptly” means in contravention of or against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to -

- (a) any employment relationship;
- (b) any agreement; or
- (c) the performance of any function in whatever capacity.

28. Common law principles further criminalize the bribery of public officials. In this context, officials indicated that Namibia has a common law legal system. As a result, a number of common law offences exist in the Namibian law. Common law offences are offences that exist as a result of legal developments arising from case law. There is no statute creating or describing the offence. Instead, judgments over the years have created and then developed the relevant offence as part of the evolution of the law. Common law offences can be altered or abolished by statute. To this effect, Namibia has the offence of bribery still as a common law offence. The Anti-Corruption Act of 2003 prohibits the bribery of public officers, bribery of foreign public officials, bribery in relation to auctions and bribery for giving assistance in relation to contracts.

29. The common law offence of bribery is constituted by the receiving or offering of an undue reward by or to any person in public office, in order to influence that person’s behavior in that office, and to incline that person to act contrary to accepted rules of honesty and integrity. The offence can be constituted by the mere offer of a corrupt inducement, even if the offer is rejected.

30. The offence of bribery can be constituted by the making or offering of a payment with intent to incline a person in public office to disregard his or her duty at some future time — the occasion for the disregard of duty need not have arisen at the time of the offence, and it need never arise.

31. Bribery may include the corruption of a public official as well as commercial bribery, which refers to the corruption of a private individual to gain a commercial or business advantage, as set out in Sections 41 and 42 of the Namibian Anti-Corruption Act of 2003.

32. The essential elements of official bribery are:

- Giving or receiving;
- A thing of value;
- To influence;
- An official act.

33. The thing of value is not limited to cash or money. Such things as lavish gifts and entertainment, payment of travel and lodging expenses, payment of credit card bills, "loans," promises of future employment, interests in businesses, can be bribes if they were given or received with the intent to influence or be influenced.

34. Proof of corrupt influence often involves demonstration that the person receiving the bribe favored the bribe-payer in some improper or unusual way, such as by providing preferential treatment, bending or breaking the rules, taking extraordinary steps to assist the bribe-payer, or allowing the bribe-payer to defraud the agency or company.
35. It is not necessary, however, that the prosecution or claimant demonstrate that the bribe-taker acted improperly; a bribe might be paid to induce an official to perform an act that otherwise would be legal, or an act that the official might have performed without a bribe. Bribery schemes involving these circumstances, however, are difficult to prove and lack appeal for prosecution. This results in the withdrawal of numerous cases by the Office of the Prosecutor-General or the initial decline to prosecute bribery cases.
36. The above is submitted in explaining the offence of bribery in Namibia as a State with a common law legal system.
37. Namibia referred to the statistics and the case examples in the introduction.

(b) Observations on the implementation of the article

38. Regarding acts of indirect bribery, it is noted that these are explicitly covered in respect of most offences (e.g., sections 33 to 45) under the Anti-Corruption Act 2003 except for sections 38 (Bribery of public officers) and 42 (Bribery in relation to contracts). Namibia is encouraged to amend its legislation in this regard.
39. Similarly with respect to third party beneficiaries, these are explicitly covered in some offences (for example, section 33 which covers passive bribery “for the benefit of [the person] himself or herself or any other person”, as well as sections 34-35, 39, 42 and 43), but not in other offences. It is recommended that Namibia clarify its legislation accordingly.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

40. Namibia cited the following measures, as quoted below.

Section 33, Anti Corruption Act 2003.
Section 38, Anti Corruption Act 2003.
Section 41 (b), Anti Corruption Act 2003.
Section 42 (2), Anti Corruption Act 2003.

Section 20, Local Authorities Act 1992.

Section 33, Anti Corruption Act 2003

Offence of corruptly accepting gratification.

A person commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept for the benefit of himself or herself or any other person any gratification as -

- (a) an inducement to do or to omit doing anything;
- (b) a reward for having done or having omitted to do anything.

Section 38, Anti Corruption Act 2003

Bribery of public officer.

A person who offers or gives or agrees to give to a public officer, or who, being a public officer, solicits or accepts or agrees to accept, any gratification as an inducement or a reward for, or otherwise on account of -

- (a) voting or abstaining from voting at any meeting of a public body in favour of or against any measure, resolution or question relating to the functions of that public body;
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;
- (c) aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
- (d) showing or forbearing to show any favour or disfavour in his or her capacity as a public officer, commits an offence, whether or not the public officer had the power, right or opportunity so to do.

Section 41 (b), Anti Corruption Act 2003

Bribery in relation to auctions.

A person commits an offence who, directly or indirectly, corruptly -

- (b) solicits or accepts or agrees to accept any gratification as an inducement or a reward of his or her refraining or having refrained from bidding at any auction.

Section 42 (2), Anti Corruption Act 2003

Bribery for giving assistance in relation to contracts.

(2) A person commits an offence who corruptly solicits or accepts or agrees to accept, whether for the benefit of himself or herself or any other person, any gratification as an inducement or as a reward of his or her giving assistance or using influence, or having given assistance or used influence, in -

- (a) the promotion, execution or procuring of any contract with a public body, private organisation, corporate body or other organisation or institution; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Section 20, Local Authorities Act 1992

Prohibited practices in respect of members of local authority councils.

(1) A member of a local authority council shall not accept any commission, remuneration or reward from any person other than the local authority council for or in connection with the performance or non-performance of his or her powers, duties and functions as such a member or in connection with any transaction to which the local authority council is a party.

(2) Any member of a local authority council who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine

not exceeding R8 000 or to imprisonment for a period of two years or to both such fine and such imprisonment.

(3) Any member of a local authority council who has accepted any commission, remuneration or reward in contravention of the provisions of subsection (1) shall pay to the local authority council an amount equal to the amount of such commission, remuneration or reward together with an amount equal to an amount calculated at the percentage of a rate of interest prescribed in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), on such amount, or where it did not consist of money, the value thereof as determined by the local authority council.

41. Namibia referred to the statistics and the case examples in the introduction.

42. Namibia further referred to the following case example.

A Deputy Director of the Ministry of Environment and Tourism was investigated for soliciting payment for the benefit of himself in respect of the issuing of gambling licenses to members of the public, contrary to a moratorium declared on the issuing of such licenses.

(b) Observations on the implementation of the article

43. The observations made under article 15(a) are referred to also in the context of the provision under review.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

(a) Summary of information relevant to reviewing the implementation of the article

44. Namibia cited Section 40, Anti Corruption Act 2003.

Section 40, Anti Corruption Act 2003

Bribery of foreign public officials.

(1) A person commits an offence who, in order to obtain or retain business or an advantage in the course of business, directly or indirectly, corruptly offers or gives or agrees to give any gratification to a foreign public official -

(a) as a reward for an act or omission by the official in connection with the performance of the official's duties or functions; or

(b) as an inducement to use his or her position to influence any act or decision of the foreign state or public international organisation for which the official performs duties or function.

- (2) For the purposes of subsection (1), “foreign public official” means-
- (a) a person holding any legislative, administrative or judicial office at any level or subdivision of government of a foreign state;
 - (b) any person performing public functions for a foreign state, or any board, commission, corporation or other body or authority performing a duty or function on behalf of the foreign state; or
 - (c) an official or agent of a public international organisation formed by two or more states or by two or more public international organisations.

(b) Observations on the implementation of the article

45. Namibia appears to have largely implemented this provision. However, the third party beneficiary is not covered in Section 40. It is recommended that Namibia amend its legislation in this regard.

Article 16 Bribery of foreign public officials and officials of public international organizations

Paragraph 2

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

46. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 33, Anti Corruption Act 2003.
Section 42 (2), Anti Corruption Act 2003.

Section 33, Anti Corruption Act 2003

Offence of corruptly accepting gratification.

A person commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept for the benefit of himself or herself or any other person any gratification as -

- (a) an inducement to do or to omit doing anything;
- (b) a reward for having done or having omitted to do anything.

Section 42 (2), Anti Corruption Act 2003.

Bribery for giving assistance in relation to contracts.

(2) A person commits an offence who corruptly solicits or accepts or agrees to accept, whether for the benefit of himself or herself or any other person, any gratification as an inducement or as a reward of his or her giving assistance or using influence, or having given assistance or used influence, in -

- (a) the promotion, execution or procuring of any contract with a public body, private organisation, corporate body or other organisation or institution; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

47. Namibia explained that the wording of the sections as cited needs to be enhanced to include the term "foreign public official". Amendments to the Anti-Corruption Act are due to be passed in the next Parliament in 2015.

(b) Observations on the implementation of the article

48. Namibia has criminalized active foreign bribery (section 40 cited above). At present, the offences of passive bribery do not explicitly extend to foreign public officials and officials of public international organizations. The reviewers welcome indications by Namibia that it is considering amending its legislation in this regard.

(c) Challenges, where applicable

49. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Limited capacity (e.g. human/technological/institution/other).*

(d) Technical assistance needs

50. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *On-site assistance by an anti-corruption expert: Law enforcement officials are not fully acquainted with this concept and need some training on the concept.*

None of these forms of technical assistance has been provided to Namibia to-date.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.

(a) Summary of information relevant to reviewing the implementation of the article

51. Namibia referred to the common law offences of theft and fraud as relevant to the implementation of the article under review.

(b) Observations on the implementation of the article

52. Namibia has partially implemented this provision through common law offences that do not fully address the requirements of the provision under review. It is recommended that

Namibia adopt measures to criminalize embezzlement, misappropriation or other diversion of property in line with the article under review.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

53. Namibia cited the following measures.

Section 32, Anti Corruption Act 2003.

Section 35 (2), (3), Anti Corruption Act 2003.

Section 42 (1), Anti Corruption Act 2003.

Section 34, Anti Corruption Act 2003.

Section 32, Anti Corruption Act 2003

Definitions for this Chapter.

“gratification “ includes – ...

(h) any aid, vote, consent or influence, or any pretended aid, vote, consent or influence;

Section 35 (2), (3), Anti Corruption Act 2003

Corruptly accepting gratification by or giving gratification to agent.

35. (2) A person commits an offence who, directly or indirectly, corruptly offers or gives or agrees to give to an agent, whether for the benefit of the agent or any other person, any gratification as -

(a) an inducement to do or to omit doing anything; or

(b) a reward for having done or having omitted to do anything, in relation to the affairs or business of the agent’s principal,

(3) A person commits an offence who -

(a) knowingly gives to an agent; or

(b) being an agent, knowingly uses, any receipt, account or other document in respect of which the agent’s principal is interested and which contains any statement which is false or erroneous or defective in any material particular and which to the knowledge of that person or the agent, as the case may be, is intended to mislead the principal or any other person.

Section 42 (1), Anti Corruption Act 2003

Bribery for giving assistance in relation to contracts.

42. (1) A person commits an offence who corruptly offers or gives or agrees to give any gratification to any other person whether for the benefit of that person or any other person, as an inducement or a reward for giving assistance or using influence, or having given assistance or used influence, in -

- (a) the promotion, execution or procuring, or the amendment, suspension or cancellation, of any contract with a public body, private organisation, corporate body or other organisation or institution; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Section 34, Anti Corruption Act 2003

Offence of corruptly giving gratification.

A person commits an offence who, directly or indirectly, corruptly offers, gives or agrees to give to any person, whether for the benefit of that person or any other person, any gratification as -

- (a) an inducement to do or to omit doing anything; or
- (b) a reward for having done or having omitted to do anything.

54. Namibia provided the following case example.

A staff member of the National Planning Commission solicited moneys in exchange for assisting a person to be shortlisted for a position at the National Planning Commission and for providing such applicant with the interview questions in advance of time.

(b) Observations on the implementation of the article

55. The measures presented by Namibia are either too broad in that they do not address the abuse of real or supposed influence (Section 35 (2), (3), Anti Corruption Act 2003, and Section 34, Anti Corruption Act 2003) or too narrow (Section 42 (1), Anti Corruption Act 2003) because limited to giving assistance in relation to contracts. Namibia has only partially implemented this provision.

56. In the context of its ongoing reforms it is recommended that Namibia consider adopting measures to criminalize trading in influence in line with the article under review.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

57. Namibia cited the following measures.

Section 35 (1), (3), Anti Corruption Act 2003.
Section 42 (2), Anti Corruption Act 2003.

Section 33, Anti Corruption Act 2003.
Section 38 (b), Anti Corruption Act 2003.

Section 35 (1), (3), Anti Corruption Act 2003

Corruptly accepting gratification by or giving gratification to agent.

35. (1) An agent commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept from any person a gratification -

(a) as an inducement to do or to omit doing anything;
(b) as a reward for having done or having omitted to do anything, in relation to the affairs or business of the agent's principal.

(3) A person commits an offence who -

(a) knowingly gives to an agent; or
(b) being an agent, knowingly uses, any receipt, account or other document in respect of which the agent's principal is interested and which contains any statement which is false or erroneous or defective in any material particular and which to the knowledge of that person or the agent, as the case may be, is intended to mislead the principal or any other person.

Section 42 (2), Anti Corruption Act 2003

Bribery for giving assistance in relation to contracts.

42. (2) A person commits an offence who corruptly solicits or accepts or agrees to accept, whether for the benefit of himself or herself or any other person, any gratification as an inducement or as a reward of his or her giving assistance or using influence, or having given assistance or used influence, in -

(a) the promotion, execution or procuring of any contract with a public body, private organisation, corporate body or other organisation or institution; or
(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Section 33, Anti Corruption Act 2003

Offence of corruptly accepting gratification.

A person commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept for the benefit of himself or herself or any other person any gratification as -

(a) an inducement to do or to omit doing anything;
(b) a reward for having done or having omitted to do anything.

Section 38 (b), Anti Corruption Act 2003

Bribery of public officer.

A person who offers or gives or agrees to give to a public officer, or who, being a public officer, solicits or accepts or agrees to accept, any gratification as an inducement or a reward for, or otherwise on account of -

(b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;

58. Namibia referred to the statistics and the case examples in the introduction and provided the following case example.

A tenderer attached a "Good Standing Certificate" of another legal entity to his tender documents and thereby used a document in respect of which the agent's principal is interested and which contains a false or erroneous statement which is intended to mislead the principal.

(b) Observations on the implementation of the article

59. Generally, the same comments as for article 18 paragraph (a) above are applicable.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

60. Namibia cited Section 43, Anti Corruption Act 2003.

Section 43, Anti Corruption Act 2003

Corruptly using office or position for gratification.

(1) A public officer commits an offence who, directly or indirectly, corruptly uses his or her office or position in a public body to obtain any gratification, whether for the benefit of himself or herself or any other person.

(2) For the purposes of subsection (1), proof that a public officer in a public body has made a decision or taken action in relation to any matter in which the public officer, or any relative or associate of his or hers has an interest, whether directly or indirectly, is, in the absence of evidence to the contrary which raises reasonable doubt, sufficient evidence that the public officer has corruptly used his or her office or position in the public body in order to obtain a gratification.

(3) For the purposes of subsection (2) -

(a) "relative" includes -

(i) a spouse or fiancée, including a partner living with the public officer on a permanent basis as if they were married or with whom the public officer habitually cohabits;

(ii) a child, including a stepchild or fosterchild;

(iii) a parent, including a step-parent or fosterparent;

(iv) a brother or sister of the public officer or of his or her spouse; or

(v) the spouse of any of the persons mentioned in subparagraphs (ii), (iii) or (iv); and

(b) "associate" includes -

(i) an employee, agent or nominee of the public officer;

(ii) a business partner or any company or other corporate body of which the public officer is a director or is in charge or control of its business or affairs, or in which the public officer, alone or together with any nominee of his or her, has or have a controlling interest;

(iii) a trust controlled and administered by the public officer;

61. Namibia referred to the statistics and the case examples in the introduction and provided the following case examples.

A Deputy Director of the Ministry of Works, Transport and Communication solicited a down-payment of N\$10,000 for the allocation of a project to an engineering firm and subsequently received the money.

State v. Joyce Daphne Erna Zussino (Van Wyk), PGD21/73/2013; ACC HQ013-000738. The defendant was charged with contravening section 36 read with sections 32, 46, 49 and 51 of the Anti-Corruption Act, No. 8 of 2003 (Corrupt acquisition of private interest by public officer) (purchase order and claim form no. 113298 dated 22/09/2011, requisition form amount N\$747.50) and contravening section 43(1) of Act 8 of 2003 (Corruptly using office or position for gratification).

The State v. Goabab (CC 14/2008) [2013] NAHCMD 122 (10 May 2013) High Court of Namibia.

The accused was convicted of having contravened S 43(1) of the Anti-Corruption Act 8 of 2003, ie being public officers who had used their respective positions corruptly to effect payment from State Revenue for a private debt of accused 1. The accused betrayed a position of trust being employed in senior government positions. Accused 1 however had disclosed the fact that the payment was for a private debt to subordinates and had repaid the full amount involved which fact was found to have lessened his moral blameworthiness. Both accused are first offenders. The role accused 2 played warranted differential treatment. The court was of the view that a wholly suspended sentence would be appropriate.

Sentence: Contravening S 43(1) of the Anti-Corruption Act 8 of 2003. Crimes of corruption should be visited with vigorous punishment. Court, however, of the view that a wholly suspended sentence would be appropriate in case.

(b) Observations on the implementation of the article

62. Namibia has implemented this article.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

63. Namibia indicated that it has partially implemented the article and cited Section 26 (1), (2) and (3) of the Anti-Corruption Act.

Section 26, Anti Corruption Act 2003

Power to obtain information concerning assets.

(1) If, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that it could assist or expedite the investigation, the Director may, by notice in writing, require -

(a) any suspected person to furnish a statement in writing -

(i) enumerating all movable or immovable property belonging to or possessed by him or her in Namibia or elsewhere or held in trust for him or her in Namibia or elsewhere, and -

(aa) specifying the date on which every such property was acquired;

(bb) explaining whether it was acquired by way of purchase, exchange, gift, bequest, inheritance or by any other cause; and

(cc) specifying the consideration paid or given therefor and the amount or value of the consideration;

(ii) specifying any moneys or other property acquired in Namibia or elsewhere, or held in or sent out of Namibia, in trust for him or her or on his or her behalf during such period as may be specified in the notice;

(b) any other person with whom the Director believes the suspected person had any financial transaction or other business dealing relating to an alleged corrupt practice to furnish a statement in writing enumerating all movable or immovable property acquired by that person in Namibia and elsewhere at the material time;

(c) any person to furnish, notwithstanding the provisions of any other law to the contrary, any information in that person's possession relating to the affairs of any suspected person and to produce any document or certified true copy of any document relating to such suspected person which is in the possession or under the control of the person required to furnish the information;

(d) the manager or other person in charge of any bank, building society or other financial institution, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies of the accounts or the statements of account at the bank, building society or financial institution of any suspected person notwithstanding the provisions of any other law to the contrary.

(2) Notwithstanding any oath or other obligation of secrecy imposed by law or otherwise, a person on whom a notice referred to in subsection (1) is served must, comply with the requirements of that notice within the time specified therein.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice referred to in subsection (1), commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

64. Namibia indicated that it is considering criminalizing illicit enrichment. Although there are relevant legal provisions, in practice no asset disclosure regime exists for public officials in the absence of an investigation. However, Parliament has introduced an asset/income disclosure regime for Parliamentarians. Public officials are required to declare any gift or benefit under Section 16 of the Public Service Regulations.

65. The ACC also maintains records of how many financial records of public officials were investigated on its Go-Case system.

(b) Observations on the implementation of the article

66. Namibia has adopted measures to compel the disclosure of information concerning assets as a partial implementation of this article. However, the requirement in this provision is the criminalization of illicit enrichment.

67. Namibia has not criminalized illicit enrichment and may wish to consider adopting measures to do so in light of Constitutional principles and existing disclosure requirements.

(c) Challenges, where applicable

68. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);

2. *Specificities in its legal system.*

(d) Technical assistance needs

69. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Model legislation;*
3. *Legislative drafting;*
4. *Legal advice;*
5. *On-site assistance by an anti-corruption expert.*

None of these forms of technical assistance has been provided to Namibia to-date.

Article 21 Bribery in the private sector

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(a) Summary of information relevant to reviewing the implementation of the article

70. Namibia cited the following measures.

Section 34, Anti Corruption Act 2003.

Section 35 (2), (3), Anti Corruption Act 2003.

Section 42 (1), Anti Corruption Act 2003.

Section 44 (1)(b), Anti Corruption Act 2003.

Section 37 (a), Anti Corruption Act 2003.

Section 34, Anti Corruption Act 2003

Offence of corruptly giving gratification.

A person commits an offence who, directly or indirectly, corruptly offers, gives or agrees to give to any person, whether for the benefit of that person or any other person, any gratification as –

- (a) an inducement to do or to omit doing anything; or
- (b) a reward for having done or having omitted to do anything.

Section 35 (2), (3), Anti Corruption Act 2003

Corruptly accepting gratification by or giving gratification to agent.

35. (2) A person commits an offence who, directly or indirectly, corruptly offers or gives or agrees to give to an agent, whether for the benefit of the agent or any other person, any gratification as –

- (a) an inducement to do or to omit doing anything; or

(b) a reward for having done or having omitted to do anything, in relation to the affairs or business of the agent's principal,

(3) A person commits an offence who -

(a) knowingly gives to an agent; or

(b) being an agent, knowingly uses, any receipt, account or other document in respect of which the agent's principal is interested and which contains any statement which is false or erroneous or defective in any material particular and which to the knowledge of that person or the agent, as the case may be, is intended to mislead the principal or any other person.

Section 42 (1), Anti Corruption Act 2003

Bribery for giving assistance in relation to contracts.

42. (1) A person commits an offence who corruptly offers or gives or agrees to give any gratification to any other person whether for the benefit of that person or any other person, as an inducement or a reward for giving assistance or using influence, or having given assistance or used influence, in -

(a) the promotion, execution or procuring, or the amendment, suspension or cancellation, of any contract with a public body, private organisation, corporate body or other organisation or institution; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Section 44 (1)(b), Anti Corruption Act 2003

Corruption in relation to sporting events.

(1) A person commits an offence who, directly or indirectly, corruptly - (b) offers or gives or agrees to give to any other person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event.

Section 37 (a), Anti Corruption Act 2003

Corruption in relation to tenders.

A person commits an offence who, directly or indirectly -

(a) gives or offers to give to any person any gratification as an inducement or a reward for, or otherwise on account of, the withdrawal of, or the refraining from the making of, any tender for a contract invited by any public body, private organisation, corporate body or other organisation or institution to perform any work, provide any service, supply any article, material or substance or for doing anything;

71. Namibia referred to the statistics and the case examples in the introduction.

(b) Observations on the implementation of the article

72. Namibia has implemented this provision.

Article 21 Bribery in the private sector

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

73. Namibia cited the following measures.

Section 33, Anti Corruption Act 2003.

Section 35 (1), (3), Anti Corruption Act 2003.

Section 42 (2), Anti Corruption Act 2003.

Section 44 (1)(a), Anti Corruption Act 2003.

Section 37 (b), Anti Corruption Act 2003.

Section 33, Anti Corruption Act 2003

Offence of corruptly accepting gratification.

A person commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept for the benefit of himself or herself or any other person any gratification as -

(a) an inducement to do or to omit doing anything;

(b) a reward for having done or having omitted to do anything.

Section 35 (1), (3), Anti Corruption Act 2003

Corruptly accepting gratification by or giving gratification to agent.

35. (1) An agent commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept from any person a gratification -

(a) as an inducement to do or to omit doing anything;

(b) as a reward for having done or having omitted to do anything, in relation to the affairs or business of the agent's principal.

(3) A person commits an offence who -

(a) knowingly gives to an agent; or

(b) being an agent, knowingly uses, any receipt, account or other document in respect of which the agent's principal is interested and which contains any statement which is false or erroneous or defective in any material particular and which to the knowledge of that person or the agent, as the case may be, is intended to mislead the principal or any other person.

Section 42 (2), Anti Corruption Act 2003

Bribery for giving assistance in relation to contracts.

42. (2) A person commits an offence who corruptly solicits or accepts or agrees to accept, whether for the benefit of himself or herself or any other person, any gratification as an inducement or as a reward of his or her giving assistance or using influence, or having given assistance or used influence, in -

(a) the promotion, execution or procuring of any contract with a public body, private organisation, corporate body or other organisation or institution; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Section 44 (1)(a), Anti Corruption Act 2003

Corruption in relation to sporting events.

(1) A person commits an offence who, directly or indirectly, corruptly - (a) solicits or accepts or agrees to accept any gratification, whether for the benefit of himself or herself or any other person, as an inducement or a reward of his or her influencing or having influenced the run of play or the outcome of any sport event;

Section 37 (b), Anti Corruption Act 2003

Corruption in relation to tenders.

A person commits an offence who, directly or indirectly -

(a) gives or offers to give to any person any gratification as an inducement or a reward for, or otherwise on account of, the withdrawal of, or the refraining from the making of, any tender for a contract invited by any public body, private organisation, corporate body or other organisation or institution to perform any work, provide any service, supply any article, material or substance or for doing anything;

(b) solicits or accepts or agrees to accept for himself or herself or any other person any gratification as an inducement or a reward for or otherwise on account of the withdrawal of, or the refraining from the making of, a tender for a contract referred to in paragraph (a).

74. Namibia referred to the statistics and the case examples in the introduction and provided the following case exemplified.

AFRISAM case.

A worker for AFRISAM (a private company) solicited N\$ 71million over 4 years in receiving cash money for payments made for cement purchased from the company, and failed to pay the money over to AFRISAM. She did this by manipulating the financial records/statements to conceal the embezzlement.

Namibia Economic Policy Research Unit (NEPRU) case

This is a case in which an investigation was conducted and an application was made for the issuance of a letter of request to Belgium for assistance in a criminal investigation conducted by the ACC based on allegations of corrupt practices regarding the corrupt receiving of money by the Director of a non-governmental organization, namely, Namibia Economic Policy Research Unit (NEPRU) from Agriconsulting Europe S.A. (A.E.S.A.), a company registered in Brussels Belgium. This company entered into an agreement with NEPRU, which agreement became a matter of controversy.

The following events, factors and/or circumstances gave rise to the suspicion that an offence was committed in Namibia which in return resulted in the necessity of an investigation to determine whether such offence(s) has been committed.

The investigation stems from a complaint lodged with the ACC around August 2010. The complaint involves the Director of NEPRU at the time. The allegation is that he received payments from A.E.S.A into his private bank account. NEPRU entered into an agreement (which agreement was supplied to the ACC) with A.E.S.A. for consulting work to be done. This contract was signed by the Director. Another agreement dated 19 July 2010 between the parties was signed by the director in his capacity as “collaborator”. This latter agreement was accompanied by a hand written “mission claim” representing an invoice. The project number in terms of the latter agreement is “Europe Aid / 128809/D/SER/NA”. This invoice also reflects the personal bank account details of the director. An amount of €30,000 was subsequently deposited into this account. Both the above agreements commenced on the same date.

(b) Observations on the implementation of the article

75. Namibia has implemented this provision.

(c) Challenges, where applicable

76. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Limited capacity (e.g. human/technological/institution/other).*

(d) Technical assistance needs

77. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Legal advice;*
3. *On-site assistance by an anti-corruption expert.*

None of these forms of technical assistance has been provided to Namibia to-date.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

78. Namibia indicated that it has partially implemented the article and explained that criminal law in Namibia is not codified. Common law fiduciary duty prevents embezzlement of property in the private sector.

79. The common law offence of fraud also prohibits this type of offence. The elements of common law fraud include the element of dishonesty.

80. Namibia indicated that it endeavours to amend the Anti-Corruption Act to include the offence of embezzlement of property in the private sector by the year 2015.

81. Namibia referred to the case example in the introduction.

(b) Observations on the implementation of the article

82. Namibia uses the common law offences of breach of fiduciary duty and fraud to deal with embezzlement of property in the private sector.

83. Namibia has partially implemented this article and the reviewers welcome indications by Namibia that it endeavours to adopt measures to criminalize embezzlement of property in the private sector, in line with the article under review.

(c) Challenges, where applicable

84. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Specificities in its legal system;*
2. *Limited capacity (e.g. human/technological/institution/other).*

(d) Technical assistance needs

85. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Model legislation;*
2. *Legislative drafting;*
3. *Legal advice.*

None of these forms of technical assistance has been provided to Namibia to-date.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) and (b) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (i) *The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
- (ii) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) *Subject to the basic concepts of its legal system:*
 - (i) *The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

86. Namibia cited the following measures.

Section 1 (1), Financial Intelligence Act 2012
Section 4, Prevention of Organised Crime Act 2004 (as amended).
Section 5, Prevention of Organised Crime Act 2004 (as amended).
Section 6, Prevention of Organised Crime Act 2004 (as amended).
Section 45, Anti Corruption Act 2003.

Section 1 (1), Financial Intelligence Act 2012
"money laundering" or "money laundering activity" means -

(a) the act of a person who -

(i) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;

(ii) acquires, possesses or uses or removes from or brings into Namibia proceeds of any unlawful activity; or

(iii) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity; where -

(aa) as may be inferred from objective factual circumstances, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity;

Section 4, Prevention of Organised Crime Act 2004 (as amended).

Any person who knows or ought reasonably to have known that property is or forms part of proceeds of unlawful activities and -

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or

(b) performs any other act in connection with that property, whether it is performed independently or in concert with any other person,

and that agreement, arrangement, transaction or act has or is likely to have the effect

(i) of concealing or disguising the nature, origin, source, location, disposition or movement of the property or its ownership, or any interest which anyone may have in respect of that property; or

(ii) of enabling or assisting any person who has committed or commits an offence, whether in Namibia or

elsewhere -

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits the offence of money laundering.

Section 5, Prevention of Organised Crime Act 2004 (as amended).

A person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into an agreement with anyone or engages in any arrangement or transaction whereby -

(a) the retention or the control by or on behalf of that other person of the proceeds of unlawful activities is facilitated; or

(b) the proceeds of unlawful activities are used to make funds available to that other person or to acquire property on his or her behalf or to benefit him or her in any other way, commits the offence of money laundering.

Section 6, Prevention of Organised Crime Act 2004 (as amended).

Any person who -

(a) acquires;

(b) uses;

(c) has possession of; or

(d) brings into, or takes out of, Namibia, property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities commits the offence of money laundering.

Section 45, Anti Corruption Act 2003.

A person commits an offence who, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person -

(a) enters into, or causes to be entered into, any dealing in relation to any property; or
(b) uses or causes to be used, or receives, holds, controls or conceals any property or any part thereof, which was obtained as gratification, or derived from the proceeds of any gratification obtained, in the commission of an offence under this Chapter.

(2) For the purposes of subsection (1), “dealing” includes -

(a) any purchase, sale, loan, charge, mortgage, lien, pledge, transfer, delivery, assignment, subrogation, transmission, gift, trust, settlement, deposit, withdrawal, transfer between accounts or extension of credit;

(b) any agency or grant of power of attorney; or

(c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole or in part of any property being conferred on any person.

87. Namibia referred to the statistics on referrals of suspicious transaction reports (STRs) to law enforcement authorities for further investigation provided under articles 31(2) and 39.

88. Namibia indicated that the cases for money-laundering in Namibia essentially relate to the **Teko Trading case** in which large amounts of money were moved in and out of the country and seemed to have fallen under the financial transaction monitoring and analysis mandate of the FIC. This case was, however, dealt with by the Prosecutor-General’s office under the Prevention of Organized Crime Act. The case is summarized under article 31(1)(a).

(b) Observations on the implementation of the article

89. All of the physical and mental elements of the provisions in these subparagraphs appear to be met. Namibia has implemented these provisions.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

90. Namibia cited the following measures.

Section 5, Prevention of Organised Crime Act 2004 (as amended) (quoted above).
Section 46, Anti Corruption Act 2003.

Section 46, Anti Corruption Act 2003.

A person who -

- (a) attempts to commit an offence under this Chapter;
 - (b) conspires with any other person to commit an offence under this Chapter; or
 - (c) abets, induces, incites or commands another person to commit an offence under this Chapter,
- commits an offence and is, on conviction, liable to the punishment prescribed for that offence by this Act.

(b) Observations on the implementation of the article

91. It was confirmed during the country visit that the inchoate offence of aiding and abetting someone to commit an offence of money laundering and of bribery is covered under the common law of Namibia.

92. Namibia has implemented this provision.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

93. Namibia cited the following measures.

Section 1, Prevention of Organised Crime Act 2004 (as amended).

Section 1, Prevention of Organised Crime Act 2004 (as amended).

"proceeds of unlawful activities" means any property or any service, advantage, benefit or reward that was derived, received or retained, directly or indirectly in Namibia or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived and includes property which is mingled with property that is proceeds of unlawful activity;

(b) Observations on the implementation of the article

94. It was explained that Namibia follows an “all crimes” approach to determining predicate offences (see sections 4-6 POCA quoted above). Unlawful activities are defined to include activities committed both within and outside Namibia.

95. Namibia has implemented these provisions.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

96. Namibia cited the following measures.

Section 1, Prevention of Organised Crime Act 2004 (as amended) (“proceeds of unlawful activities, quoted above).

Sections 4-6, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

Section 50, Anti Corruption Act 2003.

Section 50, Anti-Corruption Act 2003.

(1) The provisions of this Act shall, in relation to Namibian citizens and persons domiciled or permanently resident in Namibia, have effect also outside Namibia, and when an offence under this Act is committed outside Namibia by any such citizen or a person so domiciled or resident, such person may be dealt with in respect of that offence as if it had been committed at any place within Namibia.

(2) The acquittal or conviction of a person by a foreign court of law on a criminal charge for an offence similar to an offence referred to in this Act, which would be a bar to subsequent charges against that person for the same offence if committed in Namibia, is a bar to further proceedings against him or her under any law relating to the extradition of persons, in respect of the same offence, outside Namibia.

(b) Observations on the implementation of the article

97. Namibia has implemented these provisions as noted above.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

98. Namibia has furnished copies of its laws to the United Nations as prescribed above.

(b) Observations on the implementation of the article

99. It was confirmed that Namibia has furnished copies of its legislation to the United Nations, as required by the provision under review.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

100. Namibia indicated that its domestic system does not contain fundamental principles as referred to in the provision above. A prosecution can be brought against a person for self-laundering.

(b) Observations on the implementation of the article

101. Namibia has implemented this provision.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

102. Namibia cited the following measures.

Section 45 (1), Anti Corruption Act 2003.

Section 47, Anti Corruption Act 2003.

Section 4, Prevention of Organised Crime Act 2004 (as amended).

Section 5, Prevention of Organised Crime Act 2004 (as amended).

Section 45 (1), Anti Corruption Act 2003.

A person commits an offence who, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person -

- (a) enters into, or causes to be entered into, any dealing in relation to any property; or
- (b) uses or causes to be used, or receives, holds, controls or conceals any property or any part thereof, which was obtained as gratification, or derived from the proceeds of any gratification obtained, in the commission of an offence under this Chapter.

Section 47, Anti Corruption Act 2003.

A person commits an offence who, with intent to defraud or to conceal the commission of an offence under this Chapter or to obstruct an authorised officer in the investigation of any such offence -

- (a) destroys alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to or is in the possession of his or her employer, or has been received by him or her on account of his or her employment, or any entry in such book, document, account or electronic device, or is privy to any such act;
- (b) makes or is privy to the making of any false entry in such book, document, account or electronic device; or
- (c) omits or is privy to the omission of any information from any such book, document, account or electronic device.

Section 4, Prevention of Organised Crime Act 2004 (as amended).

Any person who knows or ought reasonably to have known that property is or forms part of proceeds of unlawful activities and -

- (a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or
 - (b) performs any other act in connection with that property, whether it is performed independently or in concert with any other person, and that agreement, arrangement, transaction or act has or is likely to have the effect
 - (i) of concealing or disguising the nature, origin, source, location, disposition or movement of the property or its ownership, or any interest which anyone may have in respect of that property; or
 - (ii) of enabling or assisting any person who has committed or commits an offence, whether in Namibia or elsewhere -
 - (aa) to avoid prosecution; or
 - (bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,
- commits the offence of money laundering.

Section 5, Prevention of Organised Crime Act 2004 (as amended).

A person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into an agreement with anyone or engages in any arrangement or transaction whereby -

- (a) the retention or the control by or on behalf of that other person of the proceeds of unlawful activities is facilitated; or
- (b) the proceeds of unlawful activities are used to make funds available to that other person or to acquire property on his or her behalf or to benefit him or her in any other way, commits the offence of money laundering.

(b) Observations on the implementation of the article

103. Namibia has implemented the article.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

104. Namibia cited the following measures.

Section 39, Anti Corruption Act 2003.

Section 47, Anti Corruption Act 2003.

Section 39, Anti Corruption Act 2003.

(1) A person commits an offence who, directly or indirectly, corruptly offers or gives or agrees to give any gratification to any person, whether for the benefit of that person or any other person, with the intent to -

(a) influence the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony; or

(b) influence that person or another witness to absent himself or herself from such trial, hearing or other proceedings or to withhold true testimony.

Section 47, Anti Corruption Act 2003.

A person commits an offence who, with intent to defraud or to conceal the commission of an offence under this Chapter or to obstruct an authorised officer in the investigation of any such offence -

(a) destroys alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to or is in the possession of his or her employer, or has been received by him or her on account of his or her employment, or any entry in such book, document, account or electronic device, or is privy to any such act;

(b) makes or is privy to the making of any false entry in such book, document, account or electronic device; or

(c) omits or is privy to the omission of any information from any such book, document, account or electronic device.

(b) Observations on the implementation of the article

105. The elements relating to the use of physical force, threats or intimidation to interfere with witnesses or the giving of testimony do not appear in the provisions provided by Namibia. Nor does the element relating to the interference in the production of evidence appear in the provisions provided by Namibia.
106. Namibia appears to have partially implemented this provision and is recommended to amend its legislation accordingly.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

107. Namibia cited the following measures.

Section 29, Anti Corruption Act 2003.

Section 47, Anti Corruption Act 2003.

Section 89 (3), Prevention of Organised Crime Act 2004 (as amended).

Sections 50(3), 53(5), 61(4), 63, Financial Intelligence Act 2012

Section 42 (1) (i), Criminal Procedure Act 51 of 1977 (as amended)

Section 28, Magistrates Act 2003

Section 29, Anti Corruption Act 2003.

(1) A person commits an offence who -

(a) assaults, resists or obstructs an authorised officer who is exercising a power or performing a duty conferred or imposed on, or delegated or assigned to, the authorised officer by or under this Act;

Section 47, Anti Corruption Act 2003.

(3) A person who hinders a curator bonis, a member of the police or any other person in the exercise, performance or carrying out of his or her powers, functions or duties in terms of this Act, commits an offence.

Section 89 (3), Prevention of Organised Crime Act 2004 (as amended).

A person commits an offence who, with intent to defraud or to conceal the commission of an offence under this Chapter or to obstruct an authorised officer in the investigation of any such offence -

(a) destroys alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to or is in the possession of his or her employer, or has been received by him or her on account of his or her employment, or any entry in such book, document, account or electronic device, or is privy to any such act;

- (b) makes or is privy to the making of any false entry in such book, document, account or electronic device; or
- (c) omits or is privy to the omission of any information from any such book, document, account or electronic device.

Section 42 (1) (i), Criminal Procedure Act 51 of 1977 (as amended).

- (1) A peace officer may without warrant arrest any person-
- (i) who wilfully obstructs him in the execution of his duty;

Section 28, Magistrates Act 2003.

A person who wilfully obstructs or interferes with the Commission or a committee in the performance of its functions in terms of this Act or any other law is guilty of an offence and liable on conviction to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months.

Section 63, Financial Intelligence Act 2012

Offences in general

A person who-

- (a) knowing or suspecting information is held by the Centre directly or indirectly brings, otherwise than in the course of discharging an obligation under this Act, that information or the fact that that information is held to the attention of another person;
- (b) destroys or in any other way tampers with information kept by the Centre for the purposes of this Act;
- (c) knowing or suspecting that information has been disclosed to the Centre, directly or indirectly brings information which is likely to prejudice an investigation resulting from that disclosure to the attention of another person;
- (d) unduly influences, obstructs, hinders, interferes with or threatens or attempts to unduly influence, obstruct, hinders [sic], interferes [sic] with or threaten an official or representative of the Centre in the performance of their duties or the exercise of their powers in terms of this Act;
- (e) with intent to defraud, in respect of a document to be produced or submitted under any provision of this Act, makes or causes to be made a false entry or omits to make, or causes to be omitted any entry;
- (f) fails to comply with the provisions of any regulation, guideline, circular, notice, directive, determination or undertaking issued in terms of this Act, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Section 50(3), Financial Intelligence Act 2012

Protection of informers and information

- (3) A person who obstructs, hinders or threatens another person in the performance of their duties in terms of this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Section 53(5), Financial Intelligence Act 2012

Inspections

- (5) A person who-
- (a) obstructs, hinders or threatens an inspector;

- (b) who fails to appear for questioning;
- (c) who gives false information to the inspector; or
- (d) who fails to comply with a reasonable request or order by an inspector in the performance of his or her duties or the exercise of his or her powers in terms of this Act, commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

Section 61(4), Financial Intelligence Act 2012

Powers of authorised officers

(4) Any person who-

- (a) refuses any authorized officer access to any premises, or fails to submit to the search of his or her person;
- (b) assaults, obstructs, hinders or delays an authorized officer in effecting any entrance which he or she is entitled to effect;
- (c) fails to comply with any lawful demands of any authorized officer in the execution of his or her duties under this Act;
- (d) refuses to give to an authorized officer any property, document or information which may reasonably be required of him or her and which he has in his power to give;
- (e) fails to produce to, or conceal or attempt to conceal from, an authorised officer, any property, record, report or document, which the authorized officer requires;
- (f) rescues or attempts to rescue anything which has been seized;
- (g) furnishes to an authorised officer as true any information which he or she knows or has reason to believe is false; or
- (h) before or after any search or seizure, breaks or otherwise destroys anything to prevent its seizure, or the securing of the property, record, report or document, commits an offence and is liable to a fine not exceeding N\$10 million or to imprisonment for a term not exceeding 10 years, or to both such fine and such imprisonment, and in a case of a continuing offence, to a further fine not exceeding N\$50 000 for each day during which the offence continues after conviction.

(5) An authorised officer may, by a notice in writing require any person to deliver to him or her any property, record, report or document which he or she has reason to suspect has been used in the commission of an offence under this Act or is able to assist in the investigation of an offence under this Act that is in the possession or custody of, or under the control of, that person or within the power of that person to furnish.

108. Namibia referred to the statistics and the case example in the introduction.

(b) Observations on the implementation of the article

109. It was confirmed that the element dealing with the use of physical force, threats or intimidation to interfere with the exercise of official duties is covered under the broad aspects of assaulting, resisting or obstructing officers (section 29, Anti-Corruption Act).

110. Namibia appears to have legislatively implemented this provision.

Article 26 Liability of legal persons

Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

(a) Summary of information relevant to reviewing the implementation of the article

111. Namibia cited the following measures.

Section 20, Financial Intelligence Act 2007.

Section 29, Financial Intelligence Regulations 2009.

Section 14 (4), Companies Act 2004.

Section 356 (2), Criminal Procedure Act 51 of 1977 (as amended).

Section 356 (11), Criminal Procedure Act 51 of 1977 (as amended).

Definition of "person", Interpretation of Laws Proclamation 37 of 1920

Article 29, Financial Intelligence Regulations 2009.

Any person, accountable institution or supervisory body who or which contravenes any of these regulations commits an offence and is liable to a fine not exceeding N\$200 000 or imprisonment for a period not exceeding six months.

Section 14 (4), Companies Act 2004.

(4) Any company which contravenes a prohibition imposed under subsection (1)(a) and any director or officer of a company who contravenes that prohibition, commits an offence and is liable to a fine which does not exceed N\$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

Section 356 (2), Criminal Procedure Act 51 of 1977 (as amended).

(2) For the purpose of imposing on a corporate body criminal liability for an offence, whether under a statute or at common law -

(a) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or employee of that corporate body; or

(b) the omission, with or without a particular intent, of any act that ought to have been but was not performed by or on instructions given by a director or employee of that corporate body,

in the exercise of his or her powers or in the performance of his or her duties as such a director or employee or in furthering or in endeavouring to further the interests of that corporate body, is deemed to have been performed (and with the same intent, if any) by that corporate body or to have been an omission (and with the same intent, if any) on the part of that corporate body.

Section 356 (11), Criminal Procedure Act 51 of 1977 (as amended).

(11) The provisions of this section are additional to and not in substitution for any other law that provides for a prosecution against corporate bodies or their directors or employees or against associations of persons or their members.

Definition of "person", Interpretation of Laws Proclamation 37 of 1920, which provides that if a law does not define the term "person," the term is interpreted to include legal persons

Section 14 (4), Companies Act 2004.

(4) Any company which contravenes a prohibition imposed under subsection (1)(a) and any director or officer of a company who contravenes that prohibition, commits an offence and is liable to a fine which does not exceed N\$4 000 or to be imprisoned for a period which does not exceed one year or to both the fine and imprisonment.

(b) Observations on the implementation of the article

112. Namibia has legislatively implemented these provisions.

113. Namibian law provides for criminal, civil and administrative liability of legal persons, which is established irrespective of the liability of the natural persons involved. The civil and administrative penalties for corporations are contained in the Companies Act, 2004 and the Close Corporation Act, 1998.

Article 26 Liability of legal persons

Paragraph 3

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

(a) Summary of information relevant to reviewing the implementation of the article

114. Namibia cited the following measures.

Section 7, Prevention of Organised Crime Act 2004 (as amended).

Section 356 (3), Criminal Procedure Act 51 of 1977 (as amended).

Section 356 (6), Criminal Procedure Act 51 of 1977 (as amended).

Section 356 (8), Criminal Procedure Act 51 of 1977 (as amended).

Section 7, Prevention of Organised Crime Act 2004 (as amended).

Where an offence under section 4,5 or 6 is committed by a body of persons, whether corporate or incorporate, every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of that body of persons, whether as a director, manager, secretary or other similar office, or was purporting to act in that capacity, commits that offence.

Section 356 (3), Criminal Procedure Act 51 of 1977 (as amended).

(3) In any prosecution against a corporate body, a director or employee of that corporate body must be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he or she were the person accused of having committed the offence in question, but -

(a) if that person pleads guilty, other than by way of admitting guilt under section 59, the plea is not valid unless the corporate body authorized that person to plead guilty;

(b) if at any stage of the proceedings that person ceases to be a director or employee of that corporate body or absconds or is unable to attend, the court in question may, at the request of the prosecutor, from time to time substitute for that person any other person who is a director or employee of that corporate body at the time of such substitution, and thereupon the proceedings must continue as if no substitution had taken place;

(c) if that person, as representing the corporate body, is convicted, the court convicting that person may not impose on him or her, in his or her representative capacity, any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and that fine is payable by the corporate body and may be recovered by attachment and sale of property of the corporate body in terms of section 317;

(d) the citation of a director or employee of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, does not exempt that director or employee from prosecution for that offence in terms of subsection (6).

Section 356 (6), Criminal Procedure Act 51 of 1977 (as amended).

(6) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, a person who, at the time of the commission of the offence, was a director or employee of the corporate body is, in the absence of evidence that he or she did not take part in the commission of the offence and that he or she could not have prevented it, deemed to have committed the offence and is liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and is on conviction personally liable to punishment therefor.

Section 356 (8), Criminal Procedure Act 51 of 1977 (as amended).

(8) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or in endeavouring to further its interests, committed an offence, whether by the performance of any act or by the failure to perform any act, a person who, at the time of the commission of the offence, was a member of that association, is, in the absence of evidence that he or she did not take part in the commission of the offence and that he or she could not have prevented it, deemed to have committed the offence, but, if the business or affairs of the association are governed or controlled by a committee or other similar governing body, this subsection does not apply to a person who was not at the time of the commission of the offence a member of that committee or other body.

(b) Observations on the implementation of the article

115. Namibia appears to have legislatively implemented this provision.

Article 26 Liability of legal persons

Paragraph 4

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

116. Namibia cited the following measures.

Section 11, Prevention of Organised Crime Act 2004 (as amended).

Section 29, Financial Intelligence Regulations 2009.

Section 11, Prevention of Organised Crime Act 2004 (as amended).

(1) Any person convicted of an offence contemplated in section 4, 5 or 6 is liable to a fine not exceeding N\$100 million, or to imprisonment for a period not exceeding 30 years.

(2) Any person convicted of an offence contemplated in section 9(9) is liable to a fine not exceeding N\$300 000, or to imprisonment for a period not exceeding 15 years.

Section 29, Financial Intelligence Regulations 2009.

Any person, accountable institution or supervisory body who or which contravenes any of these regulations commits an offence and is liable to a fine not exceeding N\$200 000 or imprisonment for a period not exceeding six months.

(b) Observations on the implementation of the article

117. The penalties referred to in the provisions given by Namibia deal primarily with money laundering offences. The maximum fine of N\$500,000 under the Anti-Corruption Act (section 49) is applicable to legal persons in addition to other penalties available under Namibian law, such as confiscation measures and fines under POCA, FIA and the Companies Act. In this context, the observations made under paragraph 1 of article 30 in respect of sanctions generally are referred to.

118. Civil and administrative penalties are applicable to corporations primarily under the Companies Act. It was confirmed that compensation can be given if there was a loss attributable to the legal person. Moreover, a civil action can be brought to recover losses or property impaired by the illegal act. The administrative penalties that can be imposed include winding down the entity or imposing conditions on its continued operations.

119. No case examples were available.

120. Based on the information provided, it appears that Namibia has established a framework that allows for the imposition of criminal and non-criminal sanctions, including monetary sanctions, against legal persons. In light of the information provided it is recommended that Namibia consider whether the sanctions applicable to legal persons are sufficiently effective and dissuasive or should be enhanced in context of ongoing legal reforms.

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

121. Namibia cited the following measures.

Section 46, Anti Corruption Act 2003.

Section 5, Prevention of Organised Crime Act 2004 (as amended).
Section 287, Criminal Procedure Act 51 of 1977 (as amended).

Section 46, Anti Corruption Act 2003.

A person who -

- (a) attempts to commit an offence under this Chapter;
- (b) conspires with any other person to commit an offence under this Chapter; or
- (c) abets, induces, incites or commands another person to commit an offence under this Chapter, commits an offence and is, on conviction, liable to the punishment prescribed for that offence by this Act.

Section 5, Prevention of Organised Crime Act 2004 (as amended).

A person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into an agreement with anyone or engages in any arrangement or transaction whereby -

- (a) the retention or the control by or on behalf of that other person of the proceeds of unlawful activities is facilitated; or
- (b) the proceeds of unlawful activities are used to make funds available to that other person or to acquire property on his or her behalf or to benefit him or her in any other way, commits the offence of money laundering.

Section 287, Criminal Procedure Act 51 of 1977 (as amended).

If the evidence in criminal proceedings does not prove the commission of the offence charged but proves that the accused is guilty as an accessory after that offence or any other offence of which the accused may be convicted on the offence charged, the accused may be found guilty as an accessory after that offence or such other offence, and is, in the absence of any punishment expressly provided by law, liable to punishment at the discretion of the court, but such punishment may not exceed the punishment that may be imposed in respect of the offence with reference to which the accused is convicted as an accessory.

(b) Observations on the implementation of the article

122. In addition to the cited measures on joint and other forms of participation in an offence it was confirmed during the country visit that the inchoate offence of aiding and abetting someone to commit an offence is covered under the common law of Namibia. Namibia has legislatively implemented this provision.

Article 27 Participation and attempt

Paragraph 2

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

123. Namibia cited the following measures.

Section 46, Anti Corruption Act 2003.

Schedule 1, Prevention of Organised Crime Act 2004 (as amended).
Section 286, Criminal Procedure Act 51 of 1977 (as amended).

Section 46, Anti Corruption Act 2003.

A person who -

- (a) attempts to commit an offence under this Chapter;
- (b) conspires with any other person to commit an offence under this Chapter; or
- (c) abets, induces, incites or commands another person to commit an offence under this Chapter, commits an offence and is, on conviction, liable to the punishment prescribed for that offence by this Act.

Schedule 1, Prevention of Organised Crime Act 2004 (as amended).

Offences

30. any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Section 286, Criminal Procedure Act 51 of 1977 (as amended).

If the evidence in criminal proceedings does not prove the commission of the offence charged but proves an attempt to commit that offence or an attempt to commit any other offence of which an accused may be convicted on the offence charged, the accused may be found guilty of an attempt to commit that offence or such other offence.

(b) Observations on the implementation of the article

124. It should be noted that this provision is optional.

125. Namibia has legislatively implemented this provision.

Article 27 Participation and attempt

Paragraph 3

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

126. Namibia cited the following measures.

Section 46, Anti Corruption Act 2003.

Common law principles that prohibit conspiracy to commit, facilitate, aid and abet the commission of an offence.

Section 46, Anti Corruption Act 2003.

A person who -

- (a) attempts to commit an offence under this Chapter;
- (b) conspires with any other person to commit an offence under this Chapter; or
- (c) abets, induces, incites or commands another person to commit an offence under this Chapter, commits an offence and is, on conviction, liable to the punishment prescribed for that offence by this Act.

Common law principles that prohibit conspiracy to commit, facilitate, aid and abet the commission of an offence.

(b) Observations on the implementation of the article

127. It was confirmed that the mere preparation of an offence, outside the acts of aiding and abetting, is not criminalized. It should be noted that this provision is optional.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

128. Namibia cited the following measures.

Section 18, Criminal Procedure Act 51 of 1977 (as amended).

Section 18, Criminal Procedure Act 51 of 1977 (as amended).

(1) The right to institute a prosecution for any offence, other than the offences of -

(a) treason;

(b) murder;

(c) rape, whether under a statute or at common law;

(d) kidnapping;

(e) childstealing; or

(f) robbery, when committed in any of the circumstances contemplated in Part I of Schedule 5,

lapses, unless some other period is expressly provided by law, after the expiration of a period of 20 years from the time when the offence was committed.

(2) The right to institute a prosecution for any of the offences mentioned in subsection (1) is not barred by the lapse of time.

129. There have been no examples of implementation.

(b) Observations on the implementation of the article

130. Namibia appears to have implemented this provision. The cited measure of the Criminal Procedure Act also apply to offences under the Anti-Corruption Act. Nonetheless, Namibia may wish to provide for an interruption or suspension of the period of limitations when criminal proceedings are filed, and the authorities indicated that such a measure could be useful.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

131. Namibia cited the following measures.

Section 49, Anti Corruption Act 2003.

Section 6, Tender Board of Namibia Act, 1996.

Section 11, Prevention of Organised Crime Act 2004 (as amended).

Section 61, Prevention of Organised Crime Act 2004 (as amended).

Sentencing in terms of Criminal Procedure Act and aggravating circumstances taken into account

Section 49, Anti Corruption Act 2003.

A person convicted of an offence under any provision of this Chapter is liable to a fine not exceeding N\$500 000 or to imprisonment for a term not exceeding 25 years, or to both such fine and such imprisonment.

Section 11, Prevention of Organised Crime Act 2004 (as amended).

(1) Any person convicted of an offence contemplated in section 4, 5 or 6 is liable to a fine not exceeding N\$100 million, or to imprisonment for a period not exceeding 30 years.

(2) Any person convicted of an offence contemplated in section 9(9) is liable to a fine not exceeding N\$300 000, or to imprisonment for a period not exceeding 15 years.

Section 61, Prevention of Organised Crime Act 2004 (as amended).

Making of forfeiture order

(1) The High Court must, subject to section 63, make the forfeiture order applied for under section 59(1) if the court finds on a balance of probabilities that the property concerned -

(a) is an instrumentality of an offence referred to in Schedule 1; or

(b) is the proceeds of unlawful activities.

(2) The High Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the State of property forfeited to the State under the order.

132. Sentencing in the Namibian legal system is a discretionary function bestowed upon the courts. Namibia indicated that there are no prescribed minimum sentence for corruption-related offences, but the respective legislation makes provision for maximum sentences.

Corruption	Money Laundering	Obstruction of Justice
Section 49 of the Anti-Corruption Act makes provision for a maximum sentence of N\$500,000.00 and imprisonment for a term not exceeding 25 years or both, such fine and imprisonment.	Prevention of Organised Crime Act 2004 (as amended).section 11, makes provision for penalties and the maximum is a fine not exceeding N\$100 million or imprisonment for a term not exceeding 30 years.	This is a common law offence for which provision is made for sentencing under Sections 283 and 284 of the Criminal Procedure Act of 1977 (as amended). No person shall be sentenced to imprisonment for a period of less than 4 days.

		The maximum sentence imposed for Obstruction of Justice in Namibia was 5 years.
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(b) Observations on the implementation of the article

133. It was explained that there are no sentencing guidelines in place in Namibia but that sentences are determined based on the penalties prescribed for each offence, judicial precedent and taking into account mitigating and aggravating circumstances.
134. Namibia appears to have implemented this provision insofar as applicable penalties are determined on the basis of the gravity of offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

135. Namibia cited the following measures.

Article 31, Constitution of the Republic of Namibia.
Section 2, Powers, Privileges and Immunities of Parliament Act 1996.

Article 31, Constitution of the Republic of Namibia.

- (1) No person holding the office of President or performing the functions of President may be sued in any civil proceedings save where such proceedings concern an act done in his or her official capacity as President.
- (2) No person holding the office of President shall be charged with any criminal offence or be amenable to the criminal jurisdiction of any Court in respect of any act allegedly performed, or any omission to perform any act, during his or her tenure of office as President.
- (3) After a President has vacated that office:
- (a) no Court may entertain any action against him or her in any civil proceedings in respect of any act done in his or her official capacity as President;
- (b) a civil or criminal Court shall only have jurisdiction to entertain proceedings against him or her, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office as President, if Parliament by resolution has removed the President on the grounds specified in this Constitution and if a resolution is adopted by Parliament resolving that any such proceedings are justified in the Public interest notwithstanding any damage such proceedings might cause to the dignity of the office of President.

Section 2, Powers, Privileges and Immunities of Parliament Act 1996.

Notwithstanding the provisions of any law. no member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of -

- (a) anything done in the exercise of that member's right to freedom of speech in Parliament;
- (b) any matter or thing which such member -
 - (i) brought by report, petition, bill, resolution, motion, or otherwise in or before Parliament;
 - (ii) said in Parliament. whether as a member or a witness. or otherwise may have communicated while taking part in any proceedings in Parliament.

136. No case examples were provided.

(b) Observations on the implementation of the article

137. It was confirmed that apart from the persons enumerated above, no other public officials, as defined in the UNCAC, are afforded any criminal immunities.

138. Namibia has legislatively implemented this provision.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

139. Namibia cited the following measures.

Section 31, Anti Corruption Act 2003.

Section 3, Criminal Procedure Act 51 of 1977 (as amended).

Section 4, Criminal Procedure Act 51 of 1977 (as amended).

Section 3 (d), Anti Corruption Act 2003.

Section 31, Anti Corruption Act 2003.

(1) If, upon completion of an investigation by the Commission, it appears to the Director that a person has committed an offence of corrupt practice under Chapter 4 or any other offence discovered during the investigation, the Director must refer the matter and all relevant information and evidence assembled by the Commission in connection with the matter to the Prosecutor-General.

(2) If, upon referral of a matter in terms of subsection (1), the Prosecutor-General decides to prosecute any person for an offence under this Act, the Prosecutor-General, in consultation with the Director, may delegate authority -

(a) to conduct criminal proceedings in court in respect of that matter; or

(b) to defend or prosecute any appeal emanating from criminal proceedings in relation to that matter, to any staff member of the Commission, including the Director or Deputy Director, who possesses the required legal qualifications to appear in the courts of Namibia.

(3) A person to whom authority is delegated under subsection (2), exercises the powers under that authority subject to the control and direction of the Prosecutor-General.

Section 3, Criminal Procedure Act 51 of 1977 (as amended).

Pursuant to Article 88(2)(d) of the Namibian Constitution, the Prosecutor-General may in writing delegate to any person employed in the Public Service, subject to the control and direction of the Prosecutor-General, authority to -

- (a) conduct any prosecution in criminal proceedings in any court and perform any necessary functions incidental to conducting such prosecution;
- (b) prosecute or defend in any superior court any appeal arising from criminal proceedings.

Section 4, Criminal Procedure Act 51 of 1977 (as amended).

The Prosecutor-General or any person delegated by the Prosecutor-General under section 3 to conduct a prosecution at the instance of the State, or any body or person conducting a prosecution under section 6, may -

- (a) before an accused pleads to a charge, withdraw that charge, in which event the accused is not entitled to an acquittal in respect of that charge;
- (b) at any time after an accused has pleaded, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused must acquit the accused in respect of that charge, but where a prosecution is conducted by a person other than the Prosecutor-General or a body or person referred to in section 6, the prosecution may not be stopped unless the Prosecutor-General or any person authorized thereto by the Prosecutor-General, whether in general or in a particular case, has consented thereto in writing.

Section 3 (d), Anti Corruption Act 2003.

The functions of the Commission are -

- (d) to assemble evidence obtained in the course of its functions and to furnish -
 - (i) to any appropriate authority contemplated in paragraph (c); or
 - (ii) to the prosecuting authority or any other suitable authority of another country, upon a formal request, evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;

140. Namibia provided the following information on the powers and functions of the Prosecutor-General of the Republic of Namibia.

141. Under Article 88(2) of the Namibian Constitution, the Prosecutor-General has the powers -

- (a) to prosecute, subject to the provisions of this Constitution, in the name of the Republic of Namibia in criminal proceedings;
- (b) to prosecute and defend appeals in criminal proceedings in the High Court and the Supreme Court;
- (c) to perform all functions relating to the exercise of such powers;
- (d) to delegate to other officials, subject to his or her control and direction, authority to conduct criminal proceedings in any Court;
- (e) to perform all such other functions as may be assigned to him or her in terms of any other law.

142. The discretion to decide whether to proceed with a prosecution or to withdraw it is one of the fundamental functions in exercising a duty to prosecute. The Constitution makes the

exercise of prosecutorial powers subject to its provisions in Article 88(2)(a). The Prosecutor-General, therefore, does not have the power to act contrary to constitutional provisions, and any such contrary action is invalid.

143. Two of the fundamental rights and freedoms in the Namibian Constitution are the protection from arbitrary arrest and detention and a fair trial.
144. The Prosecutor-General derives his/her powers and legitimacy from the above constitutional provisions, which are complemented by the Criminal Procedure Act, 1977 (No. 51 of 1977) (as amended). Section 2(1) of the Act gives the Prosecutor-General the prerogative to institute criminal prosecutions over all offences that fall within the jurisdiction of Namibian courts. All such prosecutions are to be instituted on behalf of the Namibian people and in the name of the State, save for private prosecutions as provided for in section 13(1) of the Act. The Prosecutor-General has the power to take over private prosecutions and continue with the prosecution. Section 6 of the Act sets out the Prosecutor-General's powers to withdraw charges before the accused has pleaded, and to stop proceedings thereafter. A prosecution can only be stopped with the written consent of the Prosecutor-General or any other person authorised to do so.
145. The Prosecutor-General also has the power to authorise an accused's release on bail as provided for by section 68 of the Act.
146. Article 88(2)(b) of the Constitution stipulates that the Prosecutor-General has the right to prosecute appeals. The right of appeal by the Prosecutor-General has always been a recognised right. Prior to the amendment of sections 310 and 311 of the Criminal Procedure Act by the Criminal Procedure Amendment Act, 1993 (No. 26 of 1993), the Prosecutor-General had a right of appeal, but this right was confined to appeal decisions of the High Court in favour of a convicted person, and then only on a question of law. The 1993 Amendment Act, being an express statutory provision, established the Prosecutor-General's general right of appeal, and gave wide powers of appeal to the office.
147. Namibia indicated that there are no prosecution guidelines in place, but that the Prosecutor General's office has issued and circulated to prosecutors the annexures issued in corruption cases setting out the charges.
148. The following statistics were provided.

In 2008, 922 reports of corrupt practices were made to the ACC. In 2009, there were 532 corruption reports, and 328 reports were made in 2010.

In 2008, 104 cases referred by the ACC to the Prosecutor General's office for prosecution. Of these 14 were declined.

In 2009, 47 cases were referred and 5 were declined for prosecution.

In 2010, 34 cases were referred, and 5 were declined for prosecution.

In 2008, there were 12 convictions in anti-corruption cases. In 2009 and 2010, 2 convictions were obtained, respectively.

(b) Observations on the implementation of the article

149. It was explained by the DPP that there is a right of complaint by an aggrieved person against a decision by the DPP not to prosecute. In the last 2-3 years, there have only been four cases of decisions not to prosecute, which did not involve corruption matters, and no complaints against such decisions. Namibia appears to have implemented this provision.

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

150. Namibia cited the following measures.

Section 62, Criminal Procedure Act 51 of 1977 (as amended).

Section 63, Criminal Procedure Act 51 of 1977 (as amended).

Section 65, Criminal Procedure Act 51 of 1977 (as amended).

Section 62, Criminal Procedure Act 51 of 1977.

(1) (a) An accused who is in custody in respect of any offence, other than an offence referred to in Schedule 3, may, before his or her first appearance in a magistrate's court, be released on bail in respect of that offence by a member of the police of the rank of commissioned officer or, in the absence of such a member of the police, by the member of the police in charge of the police station where the accused is detained, after consultation with -

(i) the member of the police charged with the investigation; and

(ii) in the case of an offence against the person, the victim of that offence, but only if that victim is readily available,

if the accused deposits at the police station the sum of money determined by that member of the police.

(b) The member of the police referred to in paragraph (a) must, at the time of releasing the accused on bail, complete and hand to the accused a recognizance on which a receipt is given for the sum of money deposited as bail and on which the offence in respect of which the bail is granted and the place, date and time of the trial of the accused are entered.

(c) The member of the police who released an accused on bail must immediately forward a duplicate original of the recognizance to the clerk of the court having jurisdiction in the matter.

(2) Bail granted under this section, if in force at the time of the first appearance of the accused in a magistrate's court, remains, subject to section 65, in force after such appearance in the same manner as bail granted by the court under section 63 at the time of such first appearance.

Section 63, Criminal Procedure Act 51 of 1977.

(1) (a) Without derogating from section 52(5)(a), an accused who is in custody in respect of an offence is, subject to subsection (2)(a), entitled to be released on bail at any stage

preceding his or her conviction or acquittal in respect of that offence, but only if the court is satisfied that the interests of justice so permit.

(b) The court referring an accused to any other court for trial or sentencing retains jurisdiction relating to the powers, functions and duties in respect of bail under this Act until the accused appears in such other court for the first time.

(c) If the question of the possible release of an accused on bail is not raised by the accused or the prosecutor, the court must ascertain from the accused whether he or she wishes that question to be considered by the court.

(2) In bail proceedings the court in question -

(a) may postpone any such proceedings as contemplated in section 52(5)(b);

(b) may, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;

(c) may, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused that evidence be adduced;

(d) must, where the prosecutor does not oppose bail in respect of matters referred to in subsection (12)(a) and (b), require of the prosecutor to place on record the reasons for not opposing the bail application.

(3) If the court considering a bail application is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the judge or magistrate presiding at the bail proceedings must order that such information or evidence be placed before the court.

(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit an offence referred to in Schedule 1; or

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system; or

(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.

(5) In considering whether the ground in subsection (4)(a) has been established, the court may, where applicable, take into account the following factors:

(a) The degree of violence towards others implicit in the charge against the accused;

(b) any threat of violence that the accused may have made to any person;

(c) any resentment the accused is alleged to harbour against any person;

(d) any disposition to violence on the part of the accused, as is evident from the accused's past conduct;

(e) any disposition of the accused to commit offences referred to in Schedule 1, as is evident from the accused's past conduct;

(f) the prevalence of a particular type of offence;

(g) any evidence that the accused previously committed an offence referred to in Schedule 1 while released on bail;

(h) whether the victim of the offence in question objects to bail being granted to the accused;

(i) any other factor that in the opinion of the court should be taken into account.

(6) In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors:

- (a) The family, community or occupational ties of the accused to the place at which he or she is to be tried;
- (b) the assets held by the accused and where such assets are situated;
- (c) the means, and travel documents held by the accused, which may enable the accused to leave the country;
- (d) the extent, if any, to which the accused can afford to forfeit the amount of bail that may be set;
- (e) the question whether the extradition of the accused could be readily effected should the accused flee across the borders of Namibia in an attempt to evade his or her trial;
- (f) the nature and the gravity of the charge on which the accused is to be tried;
- (g) the strength of the case against the accused and the incentive that the accused may in consequence have to attempt to evade his or her trial;
- (h) the nature and gravity of the punishment that is likely to be imposed should the accused be convicted of the charges against him or her;
- (i) the binding effect and enforceability of the conditions of bail that may be imposed and the ease with which those conditions could be breached;
- (j) any other factor that in the opinion of the court should be taken into account.

(7) In considering whether the ground in subsection (4)(c) has been established, the court may, where applicable, take into account the following factors:

- (a) The fact that the accused is familiar with the identity of witnesses and with the evidence that they may bring against him or her;
- (b) whether the witnesses have already made statements and agreed to testify;
- (c) whether the investigation against the accused has already been completed;
- (d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;
- (e) how effective and enforceable the conditions of bail prohibiting communication between the accused and witnesses are likely to be;
- (f) whether the accused has access to evidentiary material that is to be presented at his or her trial;
- (g) the ease with which evidentiary material could be concealed or destroyed;
- (h) any other factor that in the opinion of the court should be taken into account.

(8) In considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors:

- (a) The fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;
- (b) whether the accused is in custody on another charge or whether the accused is on parole;
- (c) any previous failure on the part of the accused to comply with conditions of bail or any indication that the accused will not comply with any conditions of bail;
- (d) any other factor that in the opinion of the court should be taken into account.

(9) In considering whether the ground in subsection (4)(e) has been established, the court may, where applicable, take into account the following factors:

- (a) Whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;
- (b) whether the outrage of the community might lead to public disorder if the accused is released;
- (c) whether the safety of the accused might be jeopardized by his or her release;

- (d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;
- (e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system;
- (f) any other factor that in the opinion of the court should be taken into account.
- (10) In considering the question in subsection (4), the court must decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice the accused is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors:
- (a) The period for which the accused has already been in custody since his or her arrest;
- (b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;
- (c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to the delay;
- (d) any financial loss that the accused may suffer owing to his or her detention;
- (e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation that may be brought about by the detention of the accused;
- (f) the state of health of the accused;
- (g) any other factor that in the opinion of the court should be taken into account.
- (11) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty contemplated in subsection (10) to weigh up the personal interests of the accused against the interests of justice.
- (12) Notwithstanding anything to the contrary in this Act contained, where an accused is charged with an offence referred to -
- (a) in Schedule 4, the court must order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence that satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;
- (b) in Schedule 3, but not in Schedule 4, the court must order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence that satisfies the court that the interests of justice permit his or her release.
- (13) (a) In bail proceedings the accused, or his or her legal practitioner, is compelled to inform the court whether -
- (i) the accused has previously been convicted of any offence; and
- (ii) there are any charges pending against the accused and whether the accused has been released on bail in respect of those charges.
- (b) Where the legal practitioner of an accused on behalf of the accused submits the information contemplated in paragraph (a), whether in writing or orally, the accused must be required by the court to declare whether he or she confirms such information or not.
- (c) The record of the bail proceedings, excluding the information contemplated in paragraph (a), forms part of the record of the trial of the accused following on the bail proceedings, but, if the accused elects to testify during the course of the bail proceedings the court must inform the accused of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.
- (d) An accused who willfully -
- (i) fails or refuses to comply with any provision of paragraph (a); or
- (ii) furnishes the court with false information required in terms of paragraph (a),

commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(14) The court may make the release of an accused on bail subject to conditions that, in the court's opinion, are in the interests of justice.

(15) The court releasing an accused on bail in terms of this section, may order that the accused -

(a) deposit with the clerk of the court or the registrar or with a member of the prison service at the prison where the accused is in custody or with a member of the police at the place where the accused is in custody, the sum of money determined by the court in question; or

(b) must furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 66(1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.

(16) The fact that a particular judge or magistrate has heard an application for bail by an accused does not preclude that judge or magistrate from presiding at the trial of the accused, notwithstanding the fact that any findings of credibility were made during such application and notwithstanding the fact that the merits of the case were covered during that application.

Section 65, Criminal Procedure Act 51 of 1977 (as amended).

(1) A court before which a charge is pending in respect of which bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail -

(a) with regard to the reporting in person by the accused at any specified time and place to any specified person or authority;

(b) with regard to any place to which the accused is forbidden to go;

(c) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;

(d) with regard to the place at which any document may be served on the accused under this Act;

(e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused;

(f) which provides that the accused must be placed under the supervision of a probation officer.

151. Namibia indicated that bail conditions are frequently included in high profile corruption cases and have encompassed, for example, a duty to report to the police and the ACC once a day and three times per week. In some cases travel documents and passports must be submitted to the ACC. In other cases, defendants cannot leave the magisterial district without notifying the investigating officer of the ACC.

(b) Observations on the implementation of the article

152. Namibia appears to have implemented this provision.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

153. Namibia cited the following measures.

Section 97, Prison Services Act 17 of 1998
Sections 106 and 110, Correctional Services Act of 2012

Section 97, Prison Services Act 17 of 1998

Further matters pertaining to parole or probation

(1) After considering the report and recommendation referred to in-

(a) section 95(2), the Minister; or

(b) section 96(2), the Commissioner,

may authorise the release on parole or probation of the prisoner concerned upon such conditions as the Minister or Commissioner, as the case may be, may determine and specify or cause to be specified in the warrant of release in question.

(2) (a) A release of a prisoner on probation or parole in terms of subsection (1) or the proviso to section 96(2) shall extend for the period between the date of such release and the expiration of the term of imprisonment in question.

(b) The monitoring and supervision of a prisoner referred to in paragraph (a) shall be as prescribed.

(3) (a) Where a prisoner has been released on parole or probation in terms of this Act, the Commissioner may at any time, after consultation with the National Release Board or the relevant zonal release board which recommended or authorized such release, as the case may be, cancel or amend any condition of such prisoner's parole or probation or add new conditions if it is in the interest of such prisoner's treatment, rehabilitation, or integration into the community or in the interest of the community.

(b) Before acting in terms of paragraph (a) the Commissioner shall make the reasons for the proposed action known to the prisoner and shall afford such prisoner an opportunity to be heard in regard thereto by himself or herself or such other prison member as he or she may authorize thereto.

(4) Where a prisoner released on parole or probation in terms of this Act completes the period thereof without contravening any of the conditions of release, he or she shall be deemed to have duly served his or her full term of imprisonment and shall stand discharged in respect of that sentence.

(5) (a) Where the Commissioner is satisfied that a prisoner released on parole or probation in terms of this Act has, during the period of parole or probation, contravened or failed to observe any of the conditions of release, he or she may issue a warrant for the arrest of that prisoner, which may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977, and which shall serve as authority for the prisoner to be detained in prison until the Commissioner has heard the prisoner and has had sufficient opportunity to hear evidence in this regard, which detention shall not exceed 48 hours.

Section 106, Correctional Services Act 2012

Principles that guide National Release Board

(1) The principles that guide the National Release Board in fulfilling its functions referred to in subsection (1) of section 105 are-

(a) that the protection of the society is the paramount consideration in the determination of any case;

- (b) that the National Release Board conducts proper and thorough risk assessment of each offender, taking into consideration all available information relevant in each case, including the stated reasons and recommendations of the sentencing court, other information from the trial or sentencing process, information and assessments provided by correctional authorities and information obtained from victims and the offender;
 - (c) that the National Release Board enhances its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of its policies and programmes to offenders, victims and the general public;
 - (d) that the National Release Board makes the least restrictive determination consistent with the protection of society;
 - (e) that the National Release Board adopts and is guided by appropriate policies and that its members are provided with the necessary training to implement such policies;
 - (f) that offenders are provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable release process.
- (2) The National Release Board may recommend or authorise, as the case may be, the release on day parole, full parole or probation or the pardon or reprieve of an offender if, in its opinion-
- (a) the offender will not, by re-offending, present an undue risk to society before the expiration of the sentence the offender is serving; and
 - (b) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen.

Section 110, Correctional Services Act 2012

Release of offender on day parole

- (1) Notwithstanding the provisions of section 112, but subject to subsections (3) and (4), the National Release Board may authorise the release on day parole of a convicted offender who has served one third of the term of his or her sentence of imprisonment, where in the opinion of the National Release Board-
- (a) such offender has displayed meritorious conduct, self discipline, responsibility and industry during such term served;
 - (b) such offender will not, by re-offending, present an undue risk to society when on day parole; and
 - (c) the release of the offender will contribute to the reintegration of the offender into society as a law abiding citizen.
- (2) The release on day parole is on such conditions as the National Release Board may determine.
- (3) The circumstances and manner in which an offender can apply for day parole, and the monitoring and supervision of an offender released on day parole is as determined by the Commissioner-General.
- (4) Subsection (1) does not apply to an offender who has been sentenced as contemplated in section 107(2)(a) or (b), or who has been sentenced to a term of imprisonment for any of the scheduled crimes or offences or who has been classified as a maximum security offender, but this subsection does not apply to juvenile offenders.
- (5) When an offender contravenes a condition of day parole or when the National Release Board is satisfied that it is necessary and reasonable to suspend the offender's release on day parole in order to prevent a contravention of any condition thereof, or to protect the society, the National Release Board must report the matter to the Commissioner-General.

(6) The Commissioner-General, on consideration of a report submitted by the National Release Board under subsection (5), may suspend the offender's release on day parole for a period he or she may determine.

(b) Observations on the implementation of the article

154. Namibia appears to have implemented this provision.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

155. Namibia cited the following measures.

Section 26, Public Service Act 1995.
Article 84, Constitution of the Republic of Namibia.
Article 94, Constitution of the Republic of Namibia.
Section 23, Police Amendment Act 3 (1999).
Section 21 (1) (a), Magistrate's Act 2003.
Section 13 (1), Local Authorities Act (1992).

Section 26, Public Service Act 1995.

(1) If a permanent secretary has reason to believe that any staff member in his or her office, ministry or agency is guilty of misconduct, he or she may charge the staff member in writing under his or her hand with misconduct.

(2) (a) The permanent secretary concerned may, on the recommendation of the Commission, suspend any staff member at any time before or after he or she is charged under this section, if the permanent secretary has reason to believe that the staff member is guilty of misconduct: Provided that the staff member shall be suspended only where the nature of the misconduct dictates that the staff member be removed from his or her place of duty or if the possibility exists that the staff member may interfere or tamper with witnesses or evidence.

(b) Any staff member suspended in terms of paragraph (a) shall not be entitled to any remuneration for the period of his or her suspension, except to such an extent as may be approved by the Prime Minister on the recommendation of the Commission: Provided that the staff member may, within seven days after his or her suspension, appeal in writing to the Prime Minister against his or her non-entitlement to any remuneration or any part thereof.

(c) Any staff member who has been suspended shall forthwith be permitted by the permanent secretary concerned to reassume duty and shall be paid his or her full remuneration for the period of his or her suspension-

(i) if no charge is brought against him or her under this section within 14 days after his or her suspension;

(ii) if he or she is found not guilty on the charge brought against him or her;

- (iii) if his or her appeal is allowed against the finding that he or she is guilty on the charge brought against him or her;
- (iv) if he or she is dealt with in a manner contemplated in subsection (12) (a) (i), (ii), (iii) or (iv).
- (d) The suspension of any staff member may at any time be abrogated-
- (i) by the permanent secretary who has suspended the staff member under subsection (2) (a), if in his or her opinion all the reasons for the suspension have lapsed; or
 - (ii) by the Prime Minister-
 - (aa) if in his or her opinion no valid cause exists for the suspension; or
 - (bb) if the Commission has recommended to the Prime Minister the abrogation thereof, but the abrogation of the suspension shall not affect any proceedings in connection with the charge of misconduct.
- (3) (a) The permanent secretary who has signed the charge shall cause the charge to be served on the staff member charged, together with any statement of particulars of the alleged misconduct.
- (b) The charge shall contain or be accompanied by a direction calling upon the staff member charged to transmit or deliver, within 14 days from the date of the charge, to a person mentioned in the direction a written admission or denial of the charge and, if he or she so desires, a written explanation of the misconduct with which he or she is charged.
- (4) If the staff member charged admits the charge or fails to comply with the direction referred to in subsection (3) (b), he or she shall be deemed to have been found guilty in terms of this section of misconduct as charged-
- (a) in the case of an admission of the charge, on the date of admitting the charge and not to have noted an appeal against the finding;
 - (b) in the case of a failure to comply with the direction referred to in subsection (3) (b), on the date of the expiry of the period mentioned in that subsection.
- (5) If the staff member charged denies the charge, the permanent secretary concerned shall, within seven days from the date of receipt of the written denial, establish a disciplinary committee consisting of-
- (a) a member of the management cadre of the office, ministry or agency in which the staff member charged is employed, who shall be the chairperson; and
 - (b) the head of the organisational component responsible for personnel administration or his or her representative; and
 - (c) any other staff member who in the opinion of the permanent secretary concerned possesses expertise of the subject on which the charge of misconduct is based, but who shall not be the head of the organizational component in which the staff member charged is employed or the supervisor of that staff member; and
 - (d) if the staff member charged so desires, a representative of a recognised trade union, who shall serve on the disciplinary committee merely as an observer without partaking in any proceedings thereof, to inquire into the charge.
- (6) The chairperson shall, in consultation with the other members of the disciplinary committee, fix the time and place of the inquiry and shall give the staff member charged reasonable notice in writing of the said time and place: Provided that such inquiry shall be conducted within 21 days after the establishment of the disciplinary committee.
- (7) The chairperson may authorise any staff member, except a person referred to in subsection (5) (d), to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge.
- (8) (a) At the inquiry the staff member charged shall have the right to be present and to be heard, either personally or through a representative, to cross-examine any person called as a

witness in support of the charge, to examine any documents produced in evidence, to give evidence himself or herself and to call other persons as witnesses.

(b) The chairperson shall keep or cause to be kept by any staff member designated by him or her a record of the proceedings at the inquiry and of all evidence given.

(c) The failure of the staff member charged to be present at the inquiry shall not invalidate the proceedings.

(9) The acquittal or the conviction of any staff member by a court of law on a charge of any offence shall not be a bar to proceedings against him or her in terms of this Act on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he or she was so acquitted or convicted or any other offence on which he or she might have been convicted on his or her trial on the said first-mentioned charge.

(10) If the misconduct with which a staff member is charged, constitutes an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court shall, upon the identification of the staff member as the person referred to in the record, be conclusive proof-

(a) of the commission by him or her of that offence;

(b) to the disciplinary committee that he or she is guilty of misconduct on account of the commission of that offence, unless the conviction has been set aside by a superior court.

(11) At the conclusion of the inquiry the disciplinary committee shall find whether the staff member charged is guilty or not guilty of the misconduct with which he or she has been charged and shall inform him or her of the finding.

(12) (a) If the disciplinary committee finds the staff member charged guilty of the misconduct with which he or she has been charged, the chairperson shall forthwith submit to the Commission and the permanent secretary concerned a copy of the record of the proceedings at the inquiry, including documentary evidence adduced at the inquiry, together with a written statement of the disciplinary committee's finding and its reasons therefor and its recommendation that-

(i) the staff member charged be cautioned or reprimand; or

(ii) a fine not exceeding N\$2 000 be imposed upon him or her; or

(iii) he or she be transferred to any other post or that he or she be retained in employment additional to the establishment; or

(iv) his or her salary or scale of salary or rank be reduced or decreased, or both, to such an extent as may be recommended; or

(v) he or she be discharged or be called upon to resign from the Public Service.

(b) Except where the disciplinary committee makes a recommendation in terms of subparagraph (v) of paragraph (a), it may make a recommendation in terms of more than one of the other subparagraphs of that paragraph.

(13) The permanent secretary concerned shall, at the request of the staff member charged made within seven days from the date on which he or she has been informed of the finding of the disciplinary committee, furnish that staff member with a copy of the record, statement, reasons and recommendation referred to in subsection (12).

(14) (a) The staff member charged may, within 14 days from the date of receipt by him or her of the record, statement, reasons and recommendation referred to in subsection (13), appeal in writing to the Prime Minister against the finding of the disciplinary committee stating fully the grounds of appeal.

(b) The appeal-

(i) shall be accompanied by the record, statement, reasons and recommendation referred to in subsection (13);

(ii) may be accompanied by written representations made by that staff member in support of the appeal.

(c) Upon receipt of the appeal the Prime Minister shall cause a copy thereof to be transmitted to the Commission.

(15) (a) After consideration of all the documents submitted to him or her, the Prime Minister may, subject to the provisions of paragraph (b)-

(i) allow the appeal in whole or in part and vary or set aside the finding;

(ii) dismiss the appeal and confirm the finding in whole or in part;

(iii) refer any matter in connection with the inquiry to the permanent secretary concerned, who shall thereupon remit the said matter to the disciplinary committee and direct it to report thereon or to hold a further inquiry and to make a finding and recommendation thereon; or

(iv) inform the permanent secretary concerned that a staff member or staff members in the Prime Minister's office will inquire into the matter.

(b) Before arriving at a final decision on the appeal, the Prime Minister shall obtain the advice of the Commission.

(c) For the purposes of a remittal or an inquiry referred to in paragraphs (a) (iii) and (a) (iv), respectively, the provisions of subsections (6),(7), (8), (11) and (12) shall apply mutatis mutandis.

(16) If the Prime Minister has arrived at a final decision on the appeal, he or she shall convey that decision to the appellant and to the Commission and the permanent secretary concerned.

(17) If the staff member charged is deemed to have been found guilty or has been found guilty of misconduct in terms of subsection (4) or (11), respectively, and has not appealed against the finding within the period mentioned in subsection (14) (a), or has appealed against the finding and the appeal has been dismissed in whole or in part under subsection (15)-

(a) the permanent secretary concerned may approve the recommendation made by the disciplinary committee in terms of subsection (12) (a) (i) or (ii), or, if the staff member charged is deemed to have been found guilty, take any action which he or she could have taken if the disciplinary committee had recommended it in terms of that subsection;

(b) the Prime Minister may, on the recommendation of the Commission, approve the recommendation made by the disciplinary committee in terms of subsection (12) (a) (iii), (iv) or (v), or, if the staff member charged is deemed to have been found guilty, take any action, on the recommendation of the Commission, which he or she could have taken if the disciplinary committee had recommended it in terms of that subsection.

(18) If in terms of subsection (17)-

(a) a fine is imposed upon that staff member, the fine may be recovered by deducting it from his or her remuneration in such instalments as the Treasury may determine;

(b) that staff member is transferred to any other post or retained in employment additional to the establishment, he or she shall assume duty in that post or employment with effect from a date fixed by the Prime Minister;

(c) the salary or scale of salary or rank of that staff member is reduced or decreased, he or she shall assume duty at the reduced salary or scale of salary or in a lower rank and an appropriate grade, or both at the reduced salary or scale of salary and in a lower rank and an appropriate grade, with effect from a date fixed by the Prime Minister;

(d) that staff member is discharged from the Public Service, the discharge shall take effect on a date fixed by the Prime Minister;

(e) that staff member who has been called upon to resign from the Public Service with effect from a date fixed by the Prime Minister, fails so to resign, he or she shall be deemed to have been discharged from the Public Service on account of misconduct with effect from that date.

(19) Any staff member who, while suspended under subsection (2) (a) or while a charge brought against him or her under this section has not been finally dealt with in accordance with the provisions of this section, resigns from the Public Service or assumes duty in other employment, shall be deemed to have been discharged on account of misconduct with effect from the date on which he or she resigned or assumed duty in other employment.

Article 84, Constitution of the Republic of Namibia.

(1) A Judge may be removed from office before the expiry of his or her tenure only by the President acting on the recommendation of the Judicial Service Commission.

(2) Judges may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.

(3) The Judicial Service Commission shall investigate whether or not a Judge should be removed from office on such grounds, and if it decides that the Judge should be removed, it shall inform the President of its recommendation.

(4) If the deliberations of the Judicial Service Commission pursuant to this Article involve the conduct of a member of the Judicial Service Commission, such Judge shall not participate in the deliberations and the President shall appoint another Judge to fill such vacancy.

(5) While investigations are being carried out into the necessity of the removal of a Judge in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Judge from office.

Article 94, Constitution of the Republic of Namibia.

(1) The Ombudsman may be removed from office before the expiry of his or her term of office by the President acting on the recommendation of the Judicial Service Commission.

(2) The Ombudsman may only be removed from office on the ground of mental incapacity or for gross misconduct, and in accordance with the provisions of Sub-Article (3) hereof.

(3) The Judicial Service Commission shall investigate whether or not the Ombudsman shall be removed from office on the grounds referred to in Sub-Article (2) hereof and, if it decides that the Ombudsman shall be removed, it shall inform the President of its recommendation.

(4) While investigations are being carried out into the necessity of the removal of the Ombudsman in terms of this Article, the President may, on the recommendation of the Judicial Service Commission and, pending the outcome of such investigations and recommendation, suspend the Ombudsman from office.

Section 23, Police Amendment Act 3 (1999).

(1) Subject to subsections (2) and (3), the Inspector-General may suspend any member from his or her office -

(a) pending his or her trial for a criminal offence;

(b) pending an enquiry under section 8(1) as to his or her fitness to remain in the Force or to retain his or her rank;

(c) pending the institution of disciplinary proceedings against him or her in terms of section 18; or

(d) after his or her conviction of an offence, whether under this Act or otherwise.

(2) The Inspector-General shall suspend a member from office during any period which he or she is under arrest or detention or is serving a term of imprisonment.

(3) Except in a case contemplated in subsection (2), or where it is in the interest of the Force that the member be immediately suspended, the Inspector-General shall, at least seven days before suspension of a member, conduct a hearing at which the member concerned shall be given an opportunity to make representations as to why he or she should not be suspended.

(4) During his or her suspension a member shall be deprived of the powers, functions and authority vested in him or her as a member, but he or she shall continue to be subject to the same responsibilities, discipline and penalties as if he or she had not been suspended.

(5) The Inspector-General may at any time terminate the suspension of a member, other than a member referred to in subsection (2), if -

(a) in his or her opinion, the reasons for the suspension have lapsed; or

(b) in his or her opinion, no valid cause exists for the suspension; or

(c) the commanding officer of the member has recommended to the Inspector-General the termination of the suspension, but the termination of the suspension shall not affect any proceedings instituted against a member on a charge of misconduct or on a criminal charge.

(6) Where the conviction of a member suspended in terms of subsection (1) or (2) is reversed on appeal or review, the Inspector-General may -

(a) reinstate such member with full remuneration with effect from the date of his or her suspension; or

(b) cause an inquiry to be instituted in terms of section 8(1) into the suitability of reinstating such member.

Section 21 (1) (a), Magistrate's Act 2003.

(1) (a) The Commission may, subject to paragraph (b), suspend a magistrate from office pending an investigation under this Act into the magistrate's fitness to hold office.

(b) The Commission may suspend a magistrate under paragraph (a) only if the Commission has reason to believe that the magistrate is -

(i) on the ground of misconduct;

(ii) on account of continued ill-health; or

(iii) on account of incapacity to perform the duties of his or her office efficiently, no longer fit to hold office.

(c) Notwithstanding section 18(4), a magistrate suspended from office under paragraph (a) is to receive, for the duration of the suspension, no salary or such salary as may be determined by the Commission.

(d) The suspension of a magistrate under paragraph (a) may at any time be terminated by the Commission.

Section 13 (1), Local Authorities Act (1992).

(1) A member of a local authority council shall vacate his or her office if he or she -

(a) becomes disqualified to be a member of a local authority council;

(b) is convicted of -

(i) any offence in terms of section 19(3) or 20(2);

(ii) any offence of bribery or any offence of which corruption or dishonesty is an element; or

(iii) any offence in respect of which he or she is sentenced to imprisonment without the option of a fine, whether or not such imprisonment is suspended;

(b) Observations on the implementation of the article

156. It was explained by the Representatives of the Public Service Commission that disciplinary measures, including the possibility of dismissal, suspension and reassignment of accused persons, may be taken on the basis of disciplinary procedures, which may run in parallel to the criminal process (Section 26, Public Service Act 1995).

157. The following statistics were provided by the Public Service Commission concerning disciplinary measures instituted in 2014-2015:

Disciplinary measure	Number of cases
Warnings	42
Transfers	1
Demotions	6
Dismissal	39

158. The provision is legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (a)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(a) Summary of information relevant to reviewing the implementation of the article

159. Namibia indicated that it has partially implemented the provision and cited the following measures.

Article 47, Constitution

Section 5, Anti Corruption Act 2003.

Section 26 (12) (a), Public Service Act 1995 (quoted above).

Section 26 (18) (e), Public Service Act 1995 (quoted above).

Article 47. Disqualification of Members

(1) No persons may become members of the National Assembly if they:

(a) have at any time after Independence been convicted of any offence in Namibia, or outside Namibia if such conduct would have constituted an offence within Namibia, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election; or

(b) have at any time prior to Independence been convicted of an offence, if such conduct would have constituted an offence within Namibia after Independence, and for which they have been sentenced to death or to imprisonment of more than twelve (12) months without the option of a fine, unless they have received a free pardon or unless such imprisonment has expired at least ten (10) years before the date of their election: provided that no person sentenced to death or imprisonment for acts committed in connection with the struggle for the independence of Namibia shall be disqualified under this Sub-Article from being elected as member of the National Assembly; or

(c) are unrehabilitated insolvents; or

(d) are of unsound mind and have been so declared by a competent Court; or

(e) are remunerated members of the public service of Namibia; or

(f) are members of the National Council, Regional Councils or Local Authorities.

(2) For the purposes of Sub-Article (1) hereof:

- (a) no person shall be considered as having been convicted by any Court until any appeal which might have been noted against the conviction or sentence has been determined, or the time for noting an appeal against such conviction has expired;
- (b) the public service shall be deemed to include the defence force, the police force, the prison service, para-statal enterprises, Regional Councils and Local Authorities.

Section 5, Anti Corruption Act 2003.

A person is not eligible to be appointed as Director or Deputy Director who -

- (a) is not a Namibian citizen;
- (b) is a member of the National Assembly or National Council;
- (c) is a member of a regional council or a local authority council;
- (d) is an unrehabilitated insolvent; or
- (e) has been convicted of -
 - (i) theft, fraud, forgery or uttering a forged document, perjury or any other offence involving dishonesty; or
 - (ii) any other offence for which a sentence of imprisonment without the option of a fine has been imposed, excluding an offence of a political nature committed before the date of Namibia's independence.

(b) Observations on the implementation of the article

160. It should be noted that this provision is not mandatory.
161. It was confirmed that public officials found guilty as a result of criminal proceedings are dismissed from the public service pursuant to provisions in Namibia's legislation, including the Prison Services Act of 1998, and disqualified from becoming members of the National Assembly (article 47, Constitution). Moreover, the Public Service Commission conducts background checks of candidates for the public service.

Article 30 Prosecution, adjudication and sanctions

Subparagraph 7 (b)

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

162. Namibia cited the following measures.

Section 17 (c), Namibia Water Corporation Act, 1997 (Act No. 12 of 1997)

Section 15(3), State-Owned Enterprises Governance Act, 2006 (Act No. 2 of 2006)

Section 17 (c), Namibia Water Corporation Act, 1997 (Act No. 12 of 1997)

Notwithstanding the provisions of subsection (1), a person shall not be eligible for appointment as a director referred to in paragraph (b), (c) or (d) of that subsection if he or she -
(c) has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine;

Section 15(3), State-Owned Enterprises Governance Act, 2006 (Act No. 2 of 2006)
Procedure for appointment of board members and alternate board members of State-owned enterprises

15. (1) Whenever it is necessary to appoint members of the board of a State-owned enterprise, either upon a first constitution or a new term of the board, or for filling a vacancy, the head of the secretariat must, after consultation with the portfolio Minister, and with due regard to section 14(2), make a report to the Council containing - ...

(d) recommendations on -

(i) the number of members, including executive members, if any, to be appointed;

(ii) the term for which the members, or members in particular positions are to be appointed; and

(iii) the expertise required in the membership of the board;

the names of persons, equal to at least one and a half times the number of members recommended under paragraph (a)(i), who are qualified to be members of the board and who are recommended as being most suited to serve on the board, including the persons recommended to serve as executive members, if any, together with reasons why they are recommended; and

in relation to the persons recommended under paragraph (b), particulars of -

(i) their personal details;

(ii) their knowledge, experience and skills concerning issues relevant to the functions of the State-owned enterprise concerned; and

(iii) their commitment, if any, in relation to positions held on boards of other State-owned enterprises and interests held in private undertakings; and

any other information that may be relevant to enable the Council to make the determinations and give the advice contemplated in section 14(1).

(2) The procedure prescribed in subsection (1) applies also in respect of the appointment of alternate members of a board.

(3) For the purposes of subsection (1)(b), a person is qualified to be a member of the board of a State-owned enterprise if the person -

(a) is not disqualified in terms of the establishing Act or the constituent document or the articles of association and statutes of association of the State-owned enterprise, as the case may be, from being appointed a member of the board of the State-owned enterprise; and

(b) is not disqualified in terms of the Companies Act, 1973 (Act No. 61 of 1973) from being appointed as a director of a company.

(b) Observations on the implementation of the article

163. It should be noted that this provision is not mandatory.

164. Provisions dealing with disqualifications based on a prior conviction as provided in the paragraph under review are addressed in the relevant legislation for each State-owned enterprise. The provision is legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

165. Namibia cited the following measures.

Section 26 (9), Public Service Act 1995.
Disciplinary provisions under the Prison Services Act
Disciplinary provisions under the Police Act
Disciplinary provisions under the Defence Force Act
Disciplinary provisions under the Regional Council Act 23 of 1993

Section 26 (9), Public Service Act 1995.

The acquittal or the conviction of any staff member by a court of law on a charge of any offence shall not be a bar to proceedings against him or her in terms of this Act on a charge of misconduct, notwithstanding the fact that the facts set forth in the charge of misconduct would, if proved, constitute the offence set forth in the charge on which he or she was so acquitted or convicted or any other offence on which he or she might have been convicted on his or her trial on the said first-mentioned charge.

(b) Observations on the implementation of the article

166. In addition to the cited measures, elected officials and members of the judiciary are subject to disciplinary measures by the Public Service Commission, which may institute disciplinary measures and refer cases for criminal investigation. The provision is legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 10

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

167. Namibia cited the following measures.

Section 321, Criminal Procedure Act 51 of 1977 (as amended).
Section 322 (1), Criminal Procedure Act 51 of 1977 (as amended).
Section 275, Prison Services Act (Act No. 17 of 1988).

Section 321, Criminal Procedure Act 51 of 1977 (as amended).

A court convicting a person of any offence may, in addition to or instead of any sentence in respect of that offence, order that that person be detained at a rehabilitation centre established by or under any law if the court is satisfied from the evidence or from

any other information placed before it, which must include a report of a probation officer or a social worker, that that person is a person who is in need of treatment provided in that rehabilitation centre, but such an order may not be made in addition to any sentence of imprisonment (whether direct or as an alternative to a fine) unless the operation of the whole of such sentence is suspended.

Section 322 (1), Criminal Procedure Act 51 of 1977 (as amended).

(1) When a court convicts a person of any offence, other than an offence in respect of which this Act or any other law prescribes a minimum sentence, the court may -

(a) postpone for a period not exceeding five years the passing of sentence and release the person concerned -

(i) on one or more conditions whether as to -

(aa) compensation;

(bb) the rendering to the person aggrieved of some specific benefit or service instead of compensation for damage or pecuniary loss;

(cc) the performance without remuneration and outside a prison of some service for the benefit of the community under the supervision or control of an organization or institution which, or person who, in the opinion of the court, promotes the interests of the community (in this section referred to as community service);

(dd) submission to correctional supervision;

(ee) submission to instruction or treatment;

(ff) submission to the supervision or control (including control over the earnings or other income of the person concerned) of a probation officer;

(gg) the compulsory attendance or residence at some specified centre for a specified purpose;

(hh) good conduct;

(ii) any other matter,

and order that person to appear before the court at the expiration of the relevant period; or

(i) unconditionally, and order that person to appear before the court if called upon before the expiration of the relevant period; or

(b) pass sentence but order the operation of the whole or a part thereof to be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) which the court may specify in the order; or

(c) discharge the person concerned with a caution or reprimand, and such discharge has the effect of an acquittal, except that the conviction must be recorded as a previous conviction.

Section 275, Prison Services Act (Act No. 17 of 1988).

Assistance on release of prisoner

275. (1) The Minister may take steps to-

(a) promote the establishment of welfare institutions or societies;

(b) appoint qualified individuals; and

(c) determine the functions and activities of the welfare institutions, societies or individuals referred to in paragraphs (a) and (b) in the furtherance of the rehabilitation and after-care of prisoners on release.

(2) The Minister may make a grant-in-aid to any welfare institution, society or individual referred to in subregulation (1), out of moneys to be voted by Parliament for this purpose, on a basis and in a manner to be determined by him or her, but subject to any condition which may be prescribed by regulation.

(b) Observations on the implementation of the article

168. It should be noted that this provision is not mandatory.
169. Rehabilitation and welfare services, as described in the measures cited above, are available to all prisoners, even prior to their release.
170. Namibia has legislatively implemented this provision.

(c) Challenges, where applicable

171. Namibia has identified the following challenges and issues in fully implementing the provision under review:
1. *Inter-agency coordination;*
 2. *Specificities in its legal system*
 3. *Competing priorities*
 4. *Limited capacity (e.g. human/technological/institution/other).*

(d) Technical assistance needs

172. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
1. *Summary of good practices/lessons learned;*
 2. *On-site assistance by an relevant expert*
 3. *Legal advice.*

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (a)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(a) Summary of information relevant to reviewing the implementation of the article

173. Namibia cited the following measures.

Section 18 (1), Prevention of Organised Crime Act 2004 (as amended).

Section 20, Prevention of Organised Crime Act 2004 (as amended).

Section 32, Prevention of Organised Crime Act 2004 (as amended).

Section 37, Prevention of Organised Crime Act 2004 (as amended).

Section 18 (1), Prevention of Organised Crime Act 2004 (as amended).

(1) For the purposes of this Chapter, proceedings on application for a confiscation order, a restraint order or an anti-disposal order are civil proceedings, and are not criminal proceedings.

Section 20, Prevention of Organised Crime Act 2004 (as amended).

(1) Subject to subsection (2), the following property is realisable in terms of this Chapter, namely -

- (a) any property held by the defendant concerned;
- (b) any property held by a person to whom that defendant has directly or indirectly made any affected gift; or
- (c) the instrumentality of an offence attributable to the defendant.

(2) Property is not realisable property if -

- (a) a forfeiture order; or
- (b) a declaration of forfeiture in terms of any other law, has taken effect in respect of that property.

Section 32, Prevention of Organised Crime Act 2004 (as amended).

(1) Whenever a defendant is convicted of an offence the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from -

- (a) that offence;
- (b) any other offence of which the defendant has been convicted at the same trial; or
- (c) any criminal activity which the court finds to be sufficiently related to the offences, referred to in paragraph (a) or (b).

(2) If the court holding an enquiry in terms of subsection (1) finds that the defendant has derived a benefit as contemplated in that subsection, the court may, notwithstanding anything to the contrary in any law or any punishment which it may impose in respect of the offence of which the defendant was convicted, make a confiscation order against the defendant for the payment to the State of any amount it considers appropriate.

Section 37, Prevention of Organised Crime Act 2004 (as amended).

(1) A confiscation order made -

- (a) by the court of a magisterial district has the effect of a civil judgment of that court;
- (b) by a divisional court has the effect of a civil judgment of the court of the district in which the trial took place.

(2) Where the High Court makes the confiscation order -

- (a) the confiscation order has the effect of a civil judgment of that court; or
- (b) the presiding judge may direct the registrar of that court to forward a certified copy of the confiscation order to the clerk of the magistrate's court designated by the presiding judge, or if no such court is designated, to the clerk of the magistrate's court within the area of jurisdiction of which the offence concerned was committed, and, on receipt of the copy of the confiscation order, the clerk of the court concerned must register the confiscation order which will have the effect of a civil judgment of that magistrate's court.

174. Namibia indicated that analysis is conducted by the FIC and delivered to the police and ACC. 144 intelligence reports were disseminated to law enforcement since the inception of the FIC in May 2009. 13 intelligence reports (i.e., information requests) were disseminated.

175. Furthermore, an Asset Forfeiture Unit was established within the Office of the Prosecutor-General. This is a crucial unit as it deals with asset forfeiture through civil litigation to ensure that suspects do not benefit from the unlawfully obtained assets.

176. Namibia provided the following summary of confiscation orders which have been recently granted through the criminal process.

CASE NUMBER	DESCRIPTION OF REALISABLE PROPERTY	CONFISCATION AMOUNT	CONFISCATION	STATUS ON REALISATION
poca7/2013	Money	37000	Confiscation order granted	Realisation order granted
	Isuzu Bakkie	43697.73		
poca7/14	371615.93	371615.93	Confiscation order granted	Realisation order granted
pcoa9/2014	1402957.85	Confiscation order granted	Realisation order granted	1402957.85
R/C 1420/2014	99800	99800	Confiscation order granted	Realisation application pending
Lud158/2014	17000	17000	Confiscation order granted	Realisation application pending
		1972071.50		

177. Namibia further provided a summary of civil forfeiture cases for the period 2011-2015 which is attached as Annex 2.

178. Namibia referred to the following case examples.

Case of Tekla Lameck and other

A Commissioner of the Public Service Commission of Namibia and another person conspired with an agent of a company which provided scanning equipment to the Namibian Government by receiving “commission” moneys which was paid into their accounts after allegedly assisting the company. The agent also received money without the knowledge of the agent. N\$42million was involved.

The Prosecutor General's application in terms of the Prevention of Organised Crime Act was brought to court on an ex parte basis, without any of the defendants having been notified of the case beforehand. The funds in question belonged to Teko Trading CC and were seized from this bank account and a curator was appointed to take care of it. It was subsequently released by court order. When the Prosecutor General asked the court for the assets restraint order, she stated that Lameck, Mokaxwa and Yang were to be charged with corruption, fraud and theft. The corruption charge is rooted in a claim that Lameck, as a member of the Public Service Commission, did not have the consent of the President to perform any paid work outside the duties of her official position. While holding office as a Public Service Commissioner, Lameck also received millions of dollars from a contract between the Ministry of Finance and a Chinese manufacturer of X-ray scanning equipment, Nuctech Company. Nuctech made a payment of some N\$42 million to a bank account of Teko Trading in mid-March last year, after the Finance Ministry had made a first payment of US\$12,8 million to Nuctech near the end of February 2010. Out of the money that Nuctech in turn paid to Teko Trading, Lameck received some N\$9,39 million, Mokaxwa N\$8 million, and Yang about N\$16,8 million. The money was paid to Teko Trading in terms of agency

and consultancy agreements that had been concluded between Teko Trading and Nucotech. According to these agreements, Teko Trading in essence became the local agent of the Chinese company in Namibia in respect of the scanning equipment deal with the Finance Ministry. It is however alleged that Teko Trading did little discernible work to justify receiving such a generous payment from Nucotech.

When the application for the assets restraint order was made before Judge President Damaseb on 6 July 2011, the court was not informed that Lameck had written a letter to President Hifikepunye Pohamba in December 2008 to declare her outside business interests - including her involvement in Teko Trading - to the President. In terms of the Public Service Commission Act a member of the Commission may not perform any paid work outside the duties of her office without the consent of the President. Lameck provided the court with proof of the letter when her response to the assets restraint application was filed with the court later in July last year. On the facts of the case a reasonable inference could be made that either an official in the Office of the President withheld that letter from the Anti-Corruption Commission's chief of investigations, Nelius Becker, or Becker withheld it from the court, Judge President Damaseb stated in his judgement. The letter, as well as evidence that Lameck had also provided a senior State House official with a copy of it when she was asked in June last year if she had the President's consent to do outside paid work, could point to the possibility that Lameck might not have had the necessary 'guilty mind for committing the offence of corruption through engaging in outside paid work without the President's consent, the Judge President stated.

He remarked that it could not be emphasized enough that the powers to obtain assets restraint orders that are given in the Prevention of Organised Act 'are so invasive of people's constitutionally guaranteed rights and, potentially, their dignity and ultimately freedom, that this court must exact the highest standards of propriety from those whose interventions might affect those rights.

If the letter and evidence about the contact between Lameck and the State House official had been placed before the court when the assets restraint order was first asked for, the court might well have come to a different conclusion and not have granted the interim order at all, the Judge President stated. The non-disclosure of this evidence to the court on July 6 last year was material, as it had the potential to mislead the court, and rendered the proceedings under the Prevention of Organised Crime Act unfair, he commented.

Case of Martin Shali

An interim preservation order freezing a N\$3,17 million Zambian bank account held by the former head of the Namibian Defence Force bank has been made final. The ruling confirming the interim preservation order under the Prevention of Organised Crime Act (POCA) was made in the Windhoek High Court. The preservation of Martin Shali's assets was done on suspicion of corruption, money laundering and tax evasion.

The State subsequently submitted an application for a final forfeiture order to seize the frozen assets. Shali had an opportunity to oppose this application.

A first attempt at forfeiting the money was dismissed in 2013 but the office of the Prosecutor General immediately applied for the interim preservation order that was confirmed.

An international letter of request for preservation of the assets has been issued in terms of Act 9 of 2009 on international cooperation in criminal matters and a final order granting the forfeiture was granted by the Zambian authorities in March 2014.

Shali served as the Namibian high commissioner to Zambia between 2005 and 2006. In 2006 he was appointed as chief of the Namibia Defence Force, from which position he retired in January 2011 when the POCA case was opened against him.

(b) Observations on the implementation of the article

179. Namibia appears to have implemented these provisions.

Article 31 Freezing, seizure and confiscation

Subparagraph 1 (b)

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

180. Namibia cited the following measures.

Section 20 (1), Prevention of Organised Crime Act 2004 (as amended) (quoted above).

(b) Observations on the implementation of the article

181. It is noted that the forfeiture mechanism under Chapter 6 of the Prevention of Organised Crime Act allows for the forfeiture of instrumentalities of offences enumerated in Schedule 1 of the Act, while the confiscation provisions (Chapter 5 of POCA) more broadly apply to instrumentalities of any offences attributable to the defendant (Section 20, quoted above). In this context, Namibia provided the following explanation of the distinction between an instrumentality of a Schedule 1 offence and an unlawful activity. The Prosecutor-General can apply for confiscation of proceeds of unlawful activities, which is a wide definition and can even include a contravention of a statute which does not criminalize the offence. An example of this would be the contravention of the Tender Board Act of Namibia. The rationale behind this wide definition is that if a contract is awarded contrary to the provision of the Tender Board Act, it is not a crime but the person benefitted from the illegal contract. This is an unlawful activity, and the proceeds of this unlawful activity can be recovered through confiscation. On the contrary, the Prosecutor-General may apply for the forfeiture of instrumentalities only in respect of Schedule 1 offences. This is due to the fact that in some instances, even though the Act makes provision for the forfeiture in respect of Schedule 1 offences, the court decided that a forfeiture of instrumentalities can amount to an arbitrary deprivation of property. Therefore, only serious offences such as those listed in Schedule 1 are included in respect of forfeiture of instrumentalities and are more likely than not to amount to an arbitrary deprivation of property.

182. The reviewers recommend in the context of the ongoing review of legislation that Namibia clarify provisions for the direct confiscation of proceeds and especially instruments in POCA, and ensure that instruments (including instruments destined for use in offences, cf. Section 20 POCA) are subject to freezing, seizing and confiscation to the full extent.

Article 31 Freezing, seizure and confiscation

Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

183. Namibia cited the following measures.

Section 25 (3), Prevention of Organised Crime Act 2004 (as amended).
Section 28, Prevention of Organised Crime Act 2004 (as amended).
Section 33, Prevention of Organised Crime Act 2004 (as amended).
Section 84, Prevention of Organised Crime Act 2004 (as amended).
Section 85, Prevention of Organised Crime Act 2004 (as amended).
Section 86, Prevention of Organised Crime Act 2004 (as amended).
Section 24(1), Anti Corruption Act 2003.
Section 26, Anti Corruption Act 2003.
Sections 20-23, Criminal Procedure Act 1977 (as amended).
Section 98, Customs and Excise Act 20 of 1998 (as amended).
Section 42 (1), Financial Intelligence Act 2007.
Section 43, Casinos and Gambling Houses Act 1994.

Section 25 (3), Prevention of Organised Crime Act 2004 (as amended).
(3) When the High Court makes a restraint order under subsection (2) it-
(a) may include in that order any ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order; and
(b) may at the same time include an order authorising the seizure of all movable property concerned by a member of the police.

Section 28, Prevention of Organised Crime Act 2004 (as amended).
(1) In order to prevent any realisable property from being disposed of or removed before a restraint order can be made, any member of the police may seize that property if he or she has reasonable grounds to believe that that property will be so disposed of or removed.
(2) Property seized under subsection (1) must be dealt with in accordance with the directions of the High Court when a restraint order is subsequently made.

Section 33, Prevention of Organised Crime Act 2004 (as amended).
(1) A public prosecutor, with the written authority of the Prosecutor-General, may apply to any court which has convicted a defendant for an order referred to in subsection (2).
(2) A court may make an anti-disposal order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates if-
(a) that court has decided to conduct an enquiry in terms of section 32(1) into any benefit which a defendant may have derived from an offence or related criminal activity;
(b) no restraint order is in force in respect of the defendant or any property in which the defendant holds an interest; and
(c) the proceedings against the defendant have not been concluded.
(3) An order under subsection (2) may be made in respect of any realisable property specified in that order and which is held by the person against whom the order is being made.

(4) A court making an order under subsection (2) may -

- (a) make an order authorising the seizure of the property concerned by a member of the police who must thereafter deal with the property in accordance with the directions of that court; or
- (b) direct that a staff member will, subject to the directions of that court, take care of the property concerned.

Section 84, Prevention of Organised Crime Act 2004 (as amended).

Property tracking orders

(1) The Prosecutor-General may, if satisfied that there are reasonable grounds for believing that a person is committing, has committed or is about to commit an offence referred to in Schedule I, apply to any court for an order -

(a) that any document relevant to -

(i) identifying, locating or quantifying any property; or

(ii) identifying or locating any document necessary for the transfer of any property, belonging to, or in possession or under the control of that person, be delivered forthwith to an authorized member of the police;

(b) that a financial institution, as defined in the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No.3 of 2001), immediately produce to an authorised member of the police all information obtained by the institution about any transaction conducted by or for that person with the institution during any period before or after the date of the order.

Section 85, Prevention of Organised Crime Act 2004 (as amended).

Warrant to search for and seize tainted property

(1) For the purposes of this section and section 86 "tainted property" means -

(a) the instrumentality of an offence referred to in Schedule I; or

(b) the proceeds of an offence referred to in Schedule I.

(2) Any court which, on an application in writing made on oath or affirmation, is satisfied that there are reasonable grounds for believing that there is in or on any site, vehicle, vessel or aircraft any tainted property, may issue a search warrant in respect of that tainted property.

(3) An application for a warrant under subsection (2) may be made by the Prosecutor-General or by an authorised member of the police force.

Section 86, Prevention of Organised Crime Act 2004 (as amended).

Powers conferred by warrant

(1) Subject to any conditions specified in the warrant issued under section 85(2), every warrant issued under section 85 authorises the member of the police executing the warrant to -

(a) enter and search the site, premises, building, vehicle, vessel, train or aircraft specified in the warrant at any time by day or night during the currency of the warrant;

(b) use such assistants as may be reasonable in the circumstances for the purpose of the entry and search;

(c) use such force as is reasonable in the circumstances for the purpose of effecting entry, and for breaking open anything in or on the place to be searched; and

(d) search for and seize any property of the kind described in the warrant that the person executing the warrant believes on reasonable grounds to be tainted property.

(2) Every person called on to assist any member of the police executing a warrant issued under section 85 of this Act has the powers described in subsection (1)(c) and (d).

(3) If a member of the police, in the course of executing a warrant issued under section 85, finds any property that he or she believes, on reasonable grounds, to be -

(a) tainted property in respect of an offence other than the offence specified in the warrant; or
(b) tainted property in relation to any offence specified in the warrant, although not of a kind specified in the warrant, the warrant is sufficient authority to seize that property if the member of the police believes on reasonable grounds that seizure is necessary to prevent loss, destruction or concealment of the property.

Section 24 (1), Anti Corruption Act 2003.

(1) A person who is authorised under section 22 or 23 to enter and search premises may -

- (a) enter the premises;
- (b) search the premises;
- (c) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any book, document or article that has a bearing on the investigation;
- (d) examine any book, document or article that is on or in those premises that has a bearing on the investigation;
- (e) request information about any book, document or article from the owner or other person in control of the premises or from any person who has control of the book, document or article, or from any other person who may have the information;
- (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
- (g) in the presence of a person in charge of, or employed at, the premises, use any computer system on the premises, or require the assistance of any such person to use that computer system, to -
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data; and
 - (iii) seize any output from that computer for examination and copying; and
- (h) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

Section 26, Anti Corruption Act 2003.

(1) If, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that it could assist or expedite the investigation, the Director may, by notice in writing, require -

- (a) any suspected person to furnish a statement in writing -
 - (i) enumerating all movable or immovable property belonging to or possessed by him or her in Namibia or elsewhere or held in trust for him or her in Namibia or elsewhere, and -
 - (aa) specifying the date on which every such property was acquired;
 - (bb) explaining whether it was acquired by way of purchase, exchange, gift, bequest, inheritance or by any other cause; and
 - (cc) specifying the consideration paid or given therefor and the amount or value of the consideration;
 - (ii) specifying any moneys or other property acquired in Namibia or elsewhere, or held in or sent out of Namibia, in trust for him or her or on his or her behalf during such period as may be specified in the notice;
- (b) any other person with whom the Director believes the suspected person had any financial transaction or other business dealing relating to an alleged corrupt practice to furnish a statement in writing enumerating all movable or immovable property acquired by that person in Namibia and elsewhere at the material time;

(c) any person to furnish, notwithstanding the provisions of any other law to the contrary, any information in that person's possession relating to the affairs of any suspected person and to produce any document or certified true copy of any document relating to such suspected person which is in the possession or under the control of the person required to furnish the information;

person required to furnish the information;

(d) the manager or other person in charge of any bank, building society or other financial institution, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies of the accounts or the statements of account at the bank, building society or financial institution of any suspected person notwithstanding the provisions of any other law to the contrary.

(2) Notwithstanding any oath or other obligation of secrecy imposed by law or otherwise, a person on whom a notice referred to in subsection (1) is served must, comply with the requirements of that notice within the time specified therein.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice referred to in subsection (1), commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

Section 20, Criminal Procedure Act 1977 (as amended)

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Namibia or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within Namibia or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

Section 21, Criminal Procedure Act 1977 (as amended)

(1) Subject to the provisions of sections 22(1), 24(1) and 25, an article referred to in section 20 may be seized only by virtue of a search warrant issued-

(a) by a district magistrate or justice of the peace, if it appears to that magistrate or justice of the peace from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or on any person or on or at any premises within his area of jurisdiction; or

(b) by a judge or magistrate presiding at criminal proceedings, if it appears to that judge or magistrate that any such article in the possession or under the control of any person or on or at any premises is required in evidence at such proceedings.

(2) A search warrant issued under subsection (1) must require a member of the police to seize the article in question and must to that end authorize such member to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3)(a) A search warrant must be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(b) A search warrant may be issued on any day and is of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A member of the police executing a warrant under this section or section 25 must, after such execution, hand to any person whose rights in respect of any search or article seized

under the warrant have been affected a copy of the warrant and, if any article is so seized, an inventory of articles seized.

(5) To the extent that subsection (2) authorizes the interference with a person's fundamental right to privacy by conducting a search thereunder, such interference is authorized only on the grounds of the prevention of crime and disorder and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.

Section 22, Criminal Procedure Act 1977 (as amended)

(1) A member of the police may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20 -

(a) if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to the search and the seizure of the article in question; or

(b) if such member on reasonable grounds believes -

(i) that a search warrant will be issued to him or her under paragraph (a) of section 21(1) if he or she applies for such warrant; and

(ii) that the delay in obtaining a search warrant would defeat the object of the search.

(2) To the extent that subsection (1) authorizes the interference with a person's fundamental right to privacy by conducting a search thereunder, such interference is authorized only on the grounds of the prevention of crime and disorder and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.

Section 23, Criminal Procedure Act 1977 (as amended)

(1) On the arrest of any person, the person making the arrest may -

(a) if such person is a peace officer, search the person arrested and seize any article referred to in section 20 that is found in the possession of or in the custody or under the control of the person arrested, and where such peace officer is not a member of the police, that peace officer must immediately deliver any such article to a member of the police; or

(b) if such person is not a peace officer, seize any article referred to in section 20 that is in the possession of or in the custody or under the control of the person arrested and must immediately deliver any such article to a member of the police.

(2) On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which is capable of being used to cause bodily harm to himself or herself or to others.

(3) To the extent that subsection (1) authorizes the interference with a person's fundamental right to privacy by conducting a search thereunder, such interference is authorized only on the grounds of the prevention of crime and disorder and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.

Section 98, Customs and Excise Act 20 of 1998

Seizure

(1) (a) An officer, magistrate or member of the Namibian Police may, by written notice in the form and in accordance with the procedures, and for the period, prescribed by regulation, detain any ship, vehicle, plant, material or goods at any place for the purpose of establishing whether such ship, vehicle, plant, material or goods are liable to forfeiture to the State under this Act.

(b) Any ship, vehicle, plant, material or goods referred to in paragraph (a) may be detained as set out in that paragraph at the place where they are found or shall be removed to, and stored at, a place of security determined by an officer, magistrate or member of the Namibian Police referred to in that paragraph, at the cost, risk and expense of the owner, importer, exporter,

manufacturer or the person in whose possession or on whose premises they are found, as the case may be.

(c) No person shall remove any ship, vehicle, plant, material or goods from any place where they are detained under paragraph (a) or from a place of security determined by an officer, magistrate or member of the Namibian Police.

(d) If any ship, vehicle, plant, material or goods referred to in paragraph (c) are liable to forfeiture under this Act, the Commissioner may, at his or her discretion, seize such ship, vehicle, plant, material or goods.

(e) The Commissioner may, notwithstanding paragraph (d), seize any other ship, vehicle, plant, material or goods liable to forfeiture under this Act.

(2) (a) If any goods liable to forfeiture under this Act cannot readily be found, the Commissioner may, notwithstanding anything to the contrary in this Act contained, in writing demand from any person who imported, exported, manufactured, warehoused, removed or otherwise dealt with such goods contrary to any provision of this Act, or who committed any offence under this Act rendering such goods liable to forfeiture, payment of an amount equal to the value for duty purposes or the export value of such goods, plus any unpaid duty thereon, as the case may be.

(b) For the purposes of paragraph (a), the value for duty purposes shall be calculated in terms of this Act relating to such value whether or not the goods concerned are subject to ad valorem duty or to a duty calculated according to a unit of quantity, volume or other measurement, as the case may be, approved by the Commissioner.

(c) If the amount demanded under paragraph (a) is not paid within a period of 14 days after the demand for payment was made, such amount may be recovered as if it were a forfeiture incurred in terms of this Act.

(d) This Act shall, in so far as it can be applied, *mutatis mutandis* apply in respect of any amount paid to the Commissioner or recovered in terms of this subsection, as if such amount-

(i) were the goods concerned; and

(ii) had been seized under subsection (1).

Section 37, Financial Intelligence Act 2012.

Powers of officers of Customs and Excise in respect of cash or bearer negotiable instruments being conveyed in or out of Namibia

(1) For the purposes of ascertaining any matter referred to in section 36 or exercising any powers under section 36, an officer of the Customs and Excise or Post Office may require any person referred to in section 36(1), (2) or (3) to-

(a) answer questions that the officer of the Customs and Excise or Post Office may put to that person which are relevant to any issue referred to in section 36;

(b) make and sign a cash or bearer negotiable instrument declaration form;

(c) provide information concerning the origin of the cash or bearer negotiable instrument and its intended purpose, in the event of a false declaration or a failure to make a declaration; and

(d) answer any other question to ensure compliance with section 36.

(2) An officer of the Customs and Excise or Post Office may-

(a) seize and detain cash or bearer negotiable instruments when such officer reasonably suspects that such cash or bearer negotiable instruments-

(i) are proceeds of crime;

(ii) may be used to commit the offence of money laundering;

(iii) may be used to commit the offence of terrorism or terrorist financing;

(iv) is connected to terrorist or terrorist financing activities;

(b) seize and detain cash or bearer negotiable instruments when such officer reasonably suspects-

- (i) the person concerned has failed to make a declaration in terms of subsections 36(1), (2) or (3); or
 - (ii) the person concerned has made a false declaration.
- (3) An officer of the Customs and Excise or Post Office may seize and detain any cash, bearer negotiable instrument, article, book or document including any container or package, which, in his or her opinion, may afford evidence relating to the commission of, or an attempt to commit a money laundering or financing of terrorism offence, or any matter incidental thereto.
- (4) An officer of the Customs and Excise may board any ship or aeroplane within the territory, the territorial sea or the exclusive economic zone of Namibia, or may stop and board any vehicle entering or leaving Namibia, and may search any such ship, aeroplane or vehicle or any person found therein or thereon, for undeclared or falsely declared cash or bearer negotiable instruments.
- (5) If any container, cargo, vehicle, cabin, place, safe, or package is locked and the keys thereof are not produced to the officer of the Customs and Excise or Post Office on demand, the officer may, for any purpose under this section, open or enter such container, vehicle, cabin, place, safe, or package in any manner he or she thinks appropriate.
- (6) All officers of the Customs and Excise or Post Office must cooperate with other law enforcement agencies on any matter concerning investigations of money laundering activities, financing of terrorist activities or both.
- (7) An officer of the Customs and Excise or Post Office may detain and hand over to the police any person who has committed an offence under this section to be arrested without a warrant of arrest.
- (8) Any cash or bearer negotiable instruments seized and detained by an officer of the Customs and Excise or Post Office in terms of subsection 2(a) must be handed over to the Namibian Police for purposes of criminal investigations and prosecutions.
- (9) Any cash or bearer negotiable instruments seized and detained by an officer of the Customs and Excise or Post Office in terms of subsection 2(b) must be handed over to the Centre for purposes of forfeiture as envisaged in subsection 36(7).

Section 61, Financial Intelligence Act 2012

Powers of authorised officers

- (1) Where an authorised officer is satisfied, or has reason to suspect, that a person has committed an offence under this Act or the Prevention of Organised Crime Act, he or she may, without a search warrant-
- (a) enter any premises belonging to or in the possession or control of the person or his or her employee, and in the case of a body corporate, its director or manager;
 - (b) search the premises for any property, electronic information and devices, record, report or document;
 - (c) inspect, make copies of or take extracts from any record, report or document so seized and detained;
 - (d) seize, take possession of, and detain for such duration as he or she thinks necessary, any property, electronic information and devices, record, report or document produced before him or her in the course of the investigation of or found on the person who is being searched by him or her.

Section 43, Casinos and Gambling Houses Act 1994.

- (1) In order to ascertain whether the provisions of this Act or any terms, conditions or restrictions imposed under this Act have been or are being complied with, or in order to

obtain evidence in connection with any suspected contravention of or non-compliance with any such provision, term, condition or restriction, an inspector may-

(a) at all reasonable times enter upon and inspect any licensed premises or any other premises on which it is suspected -

(i) a casino or a gambling house is being conducted without the authority of a licence;

(ii) persons are being allowed to play or participate in any game or to play any gambling machine; or

(iii) any gambling machine or any equipment, device, object, book, record, note or other document used or capable of being used in connection with the conducting of a casino or gambling house is being kept by any person, and, after having informed the person who is then in charge of the premises of the purpose of his or her visit, make such investigation and enquiry as he or she may think necessary;

(b) in any premises referred to in paragraph (a) -

(i) require the production of any licence, certificate of approval or any written permission or authorization that any person is required to hold under this Act;

(ii) put to any person present therein such questions as he or she may deem necessary and inspect any activities in connection with the conducting of a casino or gambling house;

(iii) examine or inspect any gambling machine, equipment, device, object, book, record, note or document referred to in paragraph (a) and make copies of or extracts from any such book, record, note or document;

(c) request any person in charge of any premises referred to in paragraph (a)-

(i) to point out any equipment, device or object referred to in that paragraph which is in his or her possession or custody or under his or her control;

(H) to produce for the purpose of examination or of making copies or extracts, all books, records, notes or other documents referred to in that paragraph which are in his or her possession or custody or under his or her control;

(Hi) to provide any information in connection with anything which has been pointed out or produced in terms of subparagraph (i) or (H);

(d) seize and remove any gambling machine, equipment, device, object, book, record, note or other document referred to in that paragraph which in his or her opinion may furnish proof of a contravention of any provision of this Act or leave it on the premises concerned after marking it for the purposes of identification.

(2) When performing any function in terms of subsection (1), an inspector may be accompanied by and avail himself or herself of the services of an assistant or interpreter or any member of the Namibian Police Force.

184. The Namibian Financial Intelligence Centre (FIC) provided the following information on Namibia's progress in tracing , freezing and seizing the proceeds of crime:

The Sub-Division Anti-Money Laundering and Asset Forfeiture was established in the FIC in 2011. Its prime duties are to receive, analyze and investigate Suspicious Transaction Report (STRs) generated and forwarded by all accountable institutions within the country. To date this sub-division, which is part of the Commercial Crime Division, has received close to 120 STRs of money-laundering activities with a value of about N\$ 178,994,299. Reference is also made to the statistics included under article 39 below.

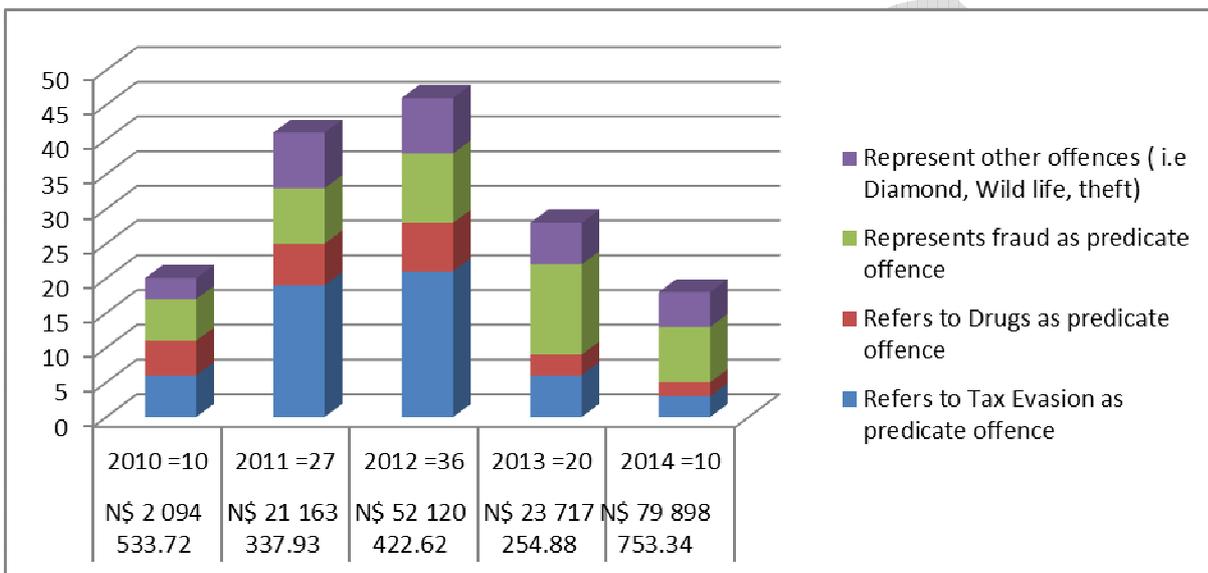
STATISTICS

YEAR	STRS RECEIVED FROM BANK OF NAMIBIA	STRS FINALIZED	STRS PENDING

2013	10	0	10
2014	30	0	30

REMARKS: Upon completion of the investigation emanating from STRS which are intelligence reports, the evidence is converted into a case docket and submitted to the Prosecutor-General's office as a money laundering case docket. The current situation according to the statistics reflects that no money laundering case docket is under investigation.

COMPARATIVE ANALYSIS OF SUSPICIOUS TRANSACTION REPORTS RECEIVED



185. Since its operations began, the Sub-Division has recorded the following notable successful investigations emanating from STRs and leading to civil proceedings:

The forfeiture in 2013 of an Oranjemund (town) employee's house in Oshakati West worth N\$ 3 million, his BMW Sedan worth N\$350,000, his Toyota Hilux pick up worth N\$250,000 a Fiat Uno worth N\$ 10,000 and an amount of N\$37,000. The man failed to provide a satisfactory explanation as to the source of funds that were used to purchase this property, which the police reasonably believed were proceeds of crime, notably illegal dealings in diamonds, tax evasion and money laundering.

During 2014, a vehicle (Land Rover model 2013) worth N\$500,000 was forfeited from a business man of Gobabis, together with an amount of N\$370,000 from his account, after he failed to provide an explanation of the source of funds which were used to purchase such property. The State argued these were proceeds from unlawful activities, namely fraud and money-laundering, after it emerged that the man stole goats and sheep from his employers, which he then sold and derived such criminal benefits.

The forfeiture of N\$2.65 million in August 2014 from a Chinese business woman after she failed to provide a reasonable explanation as to the source of the N\$ 3.28 million

under her bed during a police and INTERPOL-led operation, code named Operation Etosha, in June 2013. The State held that the money was proceeds from the sale of counterfeits, tax evasion and money-laundering.

(b) Observations on the implementation of the article

186. Namibia's Financial Intelligence Act, 2012 (Act No. 13 of 2012) provides for certain prevention and detection measures, including financial disclosure and sharing of information on suspicious transaction which may relate to money laundering

187. Namibia appears to have implemented these provisions.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

188. Namibia cited the following measures.

Section 33, Prevention of Organised Crime Act 2004 (as amended).

Section 30, Prevention of Organised Crime Act 2004 (as amended).

Section 42 (5), Financial Intelligence Act 2007.

Section 29, Prevention of Organised Crime Act 2004 (as amended).

Section 25 (4), Anti Corruption Act 2003.

Sections 30-34, Criminal Procedure Act 1977 (as amended)

Section 35(5)(a)(ii)(aa), Criminal Procedure Act 1977 (as amended).

Section 36, Criminal Procedure Act 1977 (as amended).

Section 98, Customs and Excise Act 20 of 1998.

Section 33, Prevention of Organised Crime Act 2004 (as amended).

(1) A public prosecutor, with the written authority of the Prosecutor-General, may apply to any court which has convicted a defendant for an order referred to in subsection (2).

(2) A court may make an anti-disposal order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates if-

(a) that court has decided to conduct an enquiry in terms of section 32(1) into any benefit which a defendant may have derived from an offence or related criminal activity;

(b) no restraint order is in force in respect of the defendant or any property in which the defendant holds an interest; and

(c) the proceedings against the defendant have not been concluded.

(3) An order under subsection (2) may be made in respect of any realisable property specified in that order and which is held by the person against whom the order is being made.

(4) A court making an order under subsection (2) may -

- (a) make an order authorising the seizure of the property concerned by a member of the police who must thereafter deal with the property in accordance with the directions of that court; or
- (b) direct that a staff member will, subject to the directions of that court, take care of the property concerned.

Section 30, Prevention of Organised Crime Act 2004 (as amended).

(1) The High Court when making a restraint order in respect of immovable property may at any time, with a view to ensuring the payment to the State -

(a) where a confiscation order has not been made, of an amount equal to the most recent value of the immovable property; or immovable property; or

(b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order, order the registrar of deeds to endorse anyone or more of the restrictions contemplated in subsection (2) on the title deed of the immovable property.

(5) Where the High Court has granted its approval in respect of a restriction contemplated in subsection (2)(c) and endorsed on the title deed of immovable property, the immovable property is deemed -

(a) if the estate of the owner of the immovable property was sequestrated, to have vested in the Master of the High Court or trustee concerned, as the case may be, as if that restriction was not so endorsed; or

(b) if the owner of the immovable property is a company or other juristic person which is being wound up, to have formed part of the assets of that company or juristic person as if that restriction was not so endorsed.

Section 42 (5), Financial Intelligence Act 2007.

(5) Property seized under subsection (3) must be dealt with in accordance with the directions of the High Court.

Section 29, Prevention of Organised Crime Act 2004 (as amended).

(1) Where the High Court has made a restraint order, the court may at

(a) appoint a curator bonis to do, subject to the directions of the court, anyone or more of the following on behalf of the person against whom the restraint order has been made, namely -

(i) to perform any particular act in respect of any of or all the property to which the restraint order relates;

(ii) to take care of the property;

(iii) to administer the property; and

(iv) where the property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking;

Section 29, Prevention of Organised Crime Act 2004 (as amended).

(1) Where the High Court has made a restraint order, the court may at

(a) appoint a curator bonis to do, subject to the directions of the court, anyone or more of the following on behalf of the person against whom the restraint order has been made, namely -

(i) to perform any particular act in respect of any of or all the property to which the restraint order relates;

(ii) to take care of the property;

(iii) to administer the property; and

(iv) where the property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking;

Section 25 (4), Anti Corruption Act 2003.

(4) A person who removes anything from premises being searched must -

- (a) issue a receipt for it to the owner or other person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

Section 30, Criminal Procedure Act 1977 (as amended)

Disposal by member of police of article after seizure

A member of the police who seizes an article referred to in section 20 or to whom any such article is under this Chapter delivered -

- (a) may, if the article is perishable, with due regard to the interests of the persons concerned, dispose of the article in such a manner as the circumstances may require; or
- (b) may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of the member of the police, it was stolen, and must warn that person to hold the article available for production at any resultant criminal proceedings, if required to do so; or
- (c) must, if the article is not disposed of or delivered under paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangement with regard to the custody thereof as the circumstances may require.

Section 31, Criminal Procedure Act 1977 (as amended)

Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings

(1) (a) If no criminal proceedings are instituted in connection with any article referred to in section 30(c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article must be returned to the person from whom it was seized, if that person may lawfully possess the article, or, if that person may not lawfully possess the article, to the person who may lawfully possess it.

(b) If no person may lawfully possess the article referred to in paragraph (a) or if the member of the police charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article must be forfeited to the State.

(2) The person who may lawfully possess the article referred to in subsection (1)(a) must be notified by registered post at such person's last-known address that he or she may take possession of the article, and if that person fails to take delivery of the article within 30 days from the date of such notification, the article must be forfeited to the State.

Section 32, Criminal Procedure Act 1977 (as amended)

Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid

(1) If criminal proceedings are instituted in connection with any article referred to in section 30(c) and the accused admits his or her guilt in accordance with section 59, the article must be returned to the person from whom it was seized, if that person may lawfully possess the article, or, if that person may not lawfully possess the article, to the person who may lawfully possess it, whereupon section 31(2) applies to any such person.

(2) If no person may lawfully possess the article referred to in subsection (1) or if the member of the police charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article must be forfeited to the State.

Section 33, Criminal Procedure Act 1977 (as amended)

Article to be transferred to court for purposes of trial

(1) If criminal proceedings are instituted in connection with any article referred to in section 30(c) and such article is required at the trial for purposes of evidence or for purposes of an order of court, the member of the police charged with the investigation must, subject to subsection (2), deliver the article to the clerk of the court where the criminal proceedings are instituted or, if such proceedings are instituted in the High Court, to the registrar.

(2) If it is by reason of the nature, bulk or value of the article in question impracticable or undesirable that the article should be delivered to the clerk of the court or the registrar in terms of subsection (1), the clerk of the court or the registrar may require the member of the police charged with the investigation to retain the article in police custody or in such other custody as may be determined in terms of section 30(c).

(3) (a) The clerk of the court or the registrar must place any article received under subsection (1) in safe custody, which may include the deposit of money in an official banking account if the money is not required at the trial in question for the purposes of evidence.

(b) Where the trial in question is to be conducted in a court other than a court of which that clerk is the clerk of the court, the clerk of the court must -

(i) transfer any article received under subsection (1), other than money deposited in a banking account under paragraph (a), to the clerk of the court in which the trial is to be conducted or, if the trial is to be conducted in the High Court, to the registrar, and the clerk of the court or the registrar must place the article so received in safe custody;

(ii) in the case of an article retained in police custody or in some other custody in accordance with subsection (2) or in the case of money deposited in a banking account under paragraph (a), advise the clerk of such other court or the registrar of the fact of such custody or such deposit.

Section 34, Criminal Procedure Act 1977 (as amended)

Disposal of article after commencement of criminal proceedings

(1) The judge or magistrate presiding at criminal proceedings must, at the conclusion of such proceedings but subject to this Act or any other law under which any matter must or may be forfeited, make an order that any article referred to in section 33 -

(a) be returned to the person from whom it was seized, if that person may lawfully possess the article; or

(b) if the person from whom it was seized is not entitled to the article or may not lawfully possess the article, be returned to any other person entitled thereto, if that person may lawfully possess the article; or

(c) if no person is entitled to the article or if no person may lawfully possess the article or, if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the State.

(2) The court may, for the purpose of any order under subsection (1), hear such additional evidence, whether by affidavit or orally, as it may consider fit.

(3) If the judge or magistrate presiding at criminal proceedings does not, at the conclusion of such proceedings, make an order under subsection (1), that judge or magistrate or, if he or she is not available, any other judge or magistrate of the court in question, may at any time after the conclusion of the proceedings make any such order, and for that purpose hear such additional evidence, whether by affidavit or orally, as he or she may consider fit.

(4) Any order made under subsection (1) or (3) may be suspended pending any appeal or review.

(5) Where the court makes an order under subsection (1)(a) or (b), section 31(2) applies with the necessary changes to the person in whose favour such order is made.

(6) If the circumstances so require or if the criminal proceedings in question cannot for any reason be concluded, the presiding judge or magistrate may make any order referred to in subsection (1)(a), (b) or (c) at any stage of the proceedings.

Section 35(5)(a)(ii)(aa), Criminal Procedure Act 1977 (as amended)

(5)(a) The court in question or, if the judge or magistrate concerned is not available, any judge or magistrate of the court in question, may at any time within a period of three years with effect from the date of declaration of forfeiture, on the application of any person, other than the accused, who claims that any right referred to in subparagraph (i) or (ii) is vested in him or her, inquire into and determine any such right, and if the court finds that the weapon, instrument, vehicle, container or other article in question -

(i) is the property of that person, the court must set aside the declaration of forfeiture and direct that the weapon, instrument, vehicle, container or other article in question be returned to that person, or, if the State has disposed of such weapon, instrument, vehicle, container or other article, direct that that person be compensated by the State to the extent to which the State has been enriched by the disposal;

(ii) was sold to the accused in pursuance of a contract under which the accused becomes the owner of the weapon, instrument, vehicle, container or other article in question on the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of such weapon, instrument, vehicle, container or other article on default of payment of the stipulated price or any part thereof -

(aa) the court must direct that such weapon, instrument, vehicle, container or other article be sold by public auction and that the seller be paid out of the proceeds of the sale an amount equal to the value of his or her rights under the contract to that weapon, instrument, vehicle, container or other article, but not exceeding the proceeds of the sale;

Section 36, Criminal Procedure Act 1977 (as amended)

Disposal of article concerned in an offence committed outside Namibia

(1) Where an article is seized in connection with which -

(a) an offence was committed or is on reasonable grounds suspected to have been committed in a country other than Namibia;

(b) there are reasonable grounds for believing that it will afford evidence as to the commission in a country other than Namibia of any offence or that it was used for the purpose of or in connection with such commission of any offence,

the district magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that the offence in question is punishable in that other country by a fine of N\$1 000 or more or by imprisonment for a period of 12 months or more, order the article so seized to be delivered to a member of a police force established in that country or to any other authorized representative of that country, who may thereupon remove the article from Namibia in accordance with any applicable law or any international agreement or arrangement to which Namibia is a party.

(2) When an article removed from Namibia under subsection (1) is returned to the district magistrate, or when that magistrate refuses to order that the article be delivered under that subsection, the article must be returned to the person from whose possession it was taken, unless that magistrate is authorized or required by law to dispose of it otherwise.

(b) Observations on the implementation of the article

189. Namibia appears to have implemented these provisions.

Article 31 Freezing, seizure and confiscation

Paragraph 4

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

190. Namibia cited the following measures.

Section 1, Prevention of Organised Crime Act 2004 (as amended).
Section 22, Prevention of Organised Crime Act 2004 (as amended).
Section 32, Prevention of Organised Crime Act 2004 (as amended).
Section 34, Prevention of Organised Crime Act 2004 (as amended).
Section 24 (1) (h), Anti Corruption Act 2003.

Section 1, Prevention of Organised Crime Act 2004 (as amended).
"proceeds of unlawful activities" means any property or any service, advantage, benefit or reward that was derived, received or retained, directly or indirectly in Namibia or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived and includes property which is mingled with property that is proceeds of unlawful activity;

Section 22, Prevention of Organised Crime Act 2004 (as amended).

(1) Any gift -

(a) made by a defendant not more than seven years before the fixed date; or (b) made by a defendant at any time, if it was a gift -

(i) of property received by that defendant in connection with the commission of an offence or related criminal activity carried out by him or her or any other person; or

(ii) of property which directly or indirectly represented in that defendant's hands property received by him or her in connection with the commission of an offence or related criminal activity, is, whether that gift was made before or after the commencement of this Act, an affected gift.

(2) If, in the circumstances referred to in subsection (1), a defendant receive consideration for any property which he or she had transferred to any other person, that defendant is deemed, unless the contrary is proved, to have made a gift if he or she had transferred the property concerned directly or indirectly for a consideration the value of which is significantly less than the value of the property transferred by the defendant. (3) In the case where a defendant is deemed to have made a gift as referred to in subsection (2), the gift which the defendant is deemed to have made is the share in the property transferred by the defendant which is equal to the difference between the value of that property as a whole and the consideration received by the defendant in return.

(4) The value of an affected gift at the time of the realisation of the property concerned is -(a) the value of the affected gift at the time when the recipient received it, as adjusted to take into account any subsequent fluctuations in the value of money; or

(b) where subsection (5) applies, the value mentioned in that subsection, whichever is the greater value.

(5) If property, other than cash, is given as an affected gift, the value of that gift at the time of the realisation of the property concerned is -

- (a) the value of the property at that time; or
- (b) the value at that time of the property which directly or indirectly represents, in the hands of the recipient, the property he or she received as an affected gift.

Section 32, Prevention of Organised Crime Act 2004 (as amended).

(2) If the court holding an enquiry in terms of subsection (1) finds that the defendant has derived a benefit as contemplated in that subsection, the court may, notwithstanding anything to the contrary in any law or any punishment which it may impose in respect of the offence of which the defendant was convicted, make a confiscation order against the defendant for the payment to the State of any amount it considers appropriate.

(3) The court making an order under subsection (2) may include in that order any further orders it may deem fit to ensure the effectiveness and fairness of that order, including orders as to compensation arising from an agreement between the public prosecutor and a person who has suffered damages to or loss of property or injury as a result of an offence or related criminal activity referred to in subsection (1) which was committed by the defendant.

Section 34, Prevention of Organised Crime Act 2004 (as amended).

(1) Subject to subsection (2), the value of a defendant's proceeds of offences or related criminal activities is the sum of the values of the property, services, advantages, benefits or rewards received, possessed or derived by him or her at any time, whether before or after the commencement of this Act, in connection with the offence or related criminal activity carried on by him or her or any other person.

Section 24 (1) (h), Anti Corruption Act 2003.

(1) A person who is authorised under section 22 or 23 to enter and search premises may - (h) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

(b) Observations on the implementation of the article

191. Namibia appears to have implemented these provisions.

Article 31 Freezing, seizure and confiscation

Paragraph 5

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

192. Namibia indicated that it has partially implemented the provision and cited Section 1, Prevention of Organised Crime Act 2004 (as amended) ("proceeds of unlawful activities", quoted above).

(b) Observations on the implementation of the article

193. Namibia appears to have implemented these provisions.

Article 31 Freezing, seizure and confiscation

Paragraph 6

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

194. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 1, Prevention of Organised Crime Act 2004 (as amended) ("proceeds of unlawful activities", quoted above).

Section 22, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

(b) Observations on the implementation of the article

195. Namibia appears to have implemented these provisions.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

196. Namibia cited the following measures.

Section 9 (5), Prevention of Organised Crime Act 2004 (as amended).

Section 44 (1), Financial Intelligence Act 2012.

Section 64 (1), Banking Institutions Act 1998.

Section 26, Anti Corruption Act 2003.

Section 27, Anti Corruption Act 2003.

Sections 20, Criminal Procedure Act 1977 (as amended)

Sections 21, Criminal Procedure Act 1977 (as amended)

Section 3(g), Financial Intelligence Act 2012

Section 9 (5), Prevention of Organised Crime Act 2004 (as amended).

Subject to subsection (6), no obligation as to secrecy and no other restriction on the disclosure of information as to the affairs or business of another, whether imposed by any law, the common law or any agreement, affects any obligation imposed under this section to report.

Section 44 (1), Financial Intelligence Act 2012.

(1) No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance with a provision of this Act.

Section 64 (1), Banking Institutions Act 1998.

(1) No person employed or duly authorised by the Bank to examine the affairs of a banking institution shall, subject to subsection (2) or except for the purpose of the performance or exercise of his or her duties or functions, or when lawfully required to do so by a court having jurisdiction or under any law, disclose any information acquired in the performance or exercise of such duties or functions.

Section 26, Anti Corruption Act 2003.

(1) If, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that it could assist or expedite the investigation, the Director may, by notice in writing, require -

(d) the manager or other person in charge of any bank, building society or other financial institution, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies of the accounts or the statements of account at the bank, building society or financial institution of any suspected person notwithstanding the provisions of any other law to the contrary.

Section 27, Anti Corruption Act 2003.

(1) The Director or Deputy Director, or an investigating officer or special investigator authorised in writing by the Director or Deputy Director, may require access to and investigate any bank account, share account, purchase account, expense account or any other account, or any safe box in any bank, building society or other financial institution.

(2) A person in charge of an account or safe box referred to in subsection (1) must, notwithstanding the provisions of any other law to the contrary, comply with a request made by an authorised officer referred to in subsection (1) to disclose any information or produce any book or document, including data stored in electronic form, or anything relating to an account or safe box referred to in that subsection.

(3) A person who without reasonable cause fails to comply with a request of an authorised officer in terms of subsection (2), commits an offence and is liable to a fine of N\$50 000 or to imprisonment for three years or to both such fine and such imprisonment.

Section 20, Criminal Procedure Act 1977 (as amended)

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Namibia or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within Namibia or elsewhere;

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence; or

(d) which was used for escape after the commission of an offence.

Section 21, Criminal Procedure Act 1977 (as amended)

(1) Subject to the provisions of sections 22(1), 24(1) and 25, an article referred to in section 20 may be seized only by virtue of a search warrant issued-

(a) by a district magistrate or justice of the peace, if it appears to that magistrate or justice of the peace from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or on any person or on or at any premises within his area of jurisdiction; or

(b) by a judge or magistrate presiding at criminal proceedings, if it appears to that judge or magistrate that any such article is in the possession or under the control of any person or on or at any premises is required in evidence at such proceedings.

(2) A search warrant issued under subsection (1) must require a member of the police to seize the article in question and must to that end authorize such member to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3)(a) A search warrant must be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(b) A search warrant may be issued on any day and is of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A member of the police executing a warrant under this section or section 25 must, after such execution, hand to any person whose rights in respect of any search or article seized under the warrant have been affected a copy of the warrant and, if any article is so seized, an inventory of articles seized.

(5) To the extent that subsection (2) authorizes the interference with a person's fundamental right to privacy by conducting a search thereunder, such interference is authorized only on the grounds of the prevention of crime and disorder and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.

Section 3(g), Financial Intelligence Act 2012

(3) In order to attain its objectives and perform its functions the Bank may -

(g) exercise any other power or to do any other thing not inconsistent with this Act, which is necessary or expedient to ensure the achievement of the objectives of this Act;

(b) Observations on the implementation of the article

197. The cited measures appear to be in conformity with the provision under review.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

198. Namibia cited the following measures.

Section 22, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

Section 36, Prevention of Organised Crime Act 2004 (as amended).

Section 26, Anti Corruption Act 2003 (quoted above).

Section 36, Prevention of Organised Crime Act 2004 (as amended).

(1) For the purposes of determining whether a defendant has derived a benefit in an enquiry under section 32(1), if it is found that the defendant did not at the fixed date, or since the beginning of a period of seven years before the fixed date, have legitimate sources of income sufficient to justify the interests in any property that the defendant holds, the court must accept this fact as prima facie evidence that those interests form part of that benefit.

(2) For the purposes of an enquiry under section 32(1), if it is found that a court had ordered the defendant to disclose any facts under section 32(3) and that the defendant had without sufficient cause failed to disclose those facts or had, after being so ordered, furnished false information, knowing that information to be false or not believing it to be true, the court must accept these facts as prima facie evidence that any property to which the information relates -

(a) forms part of the defendant's benefit, in determining whether he or she has derived a benefit from an offence; or

(b) is held by the defendant as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 32(1).

(3) For the purposes of determining the value of a defendant's proceeds of offences or related criminal activities in an enquiry under section 32(1) -

(a) if the court finds that he or she has benefited from an offence and that -

(i) he or she held property at any time at, or since, his or her conviction; or

(ii) property was transferred to him or her at any time since the beginning of a period of seven years before the fixed date,

the court must accept these facts as prima facie evidence that the property was received by him or her at the earliest time at which he or she held it, as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 32(1);

(b) if the court finds that he or she has benefited from an offence and that expenditure had been incurred by him or her since the beginning of the period contemplated in paragraph (a), the court must accept these facts as prima facie evidence that that expenditure was met out of the advantages, payments, services or rewards, including any property received by him or her in connection with the offences or related criminal activities referred to in section 32(1) committed by him or her.

(4) For the purpose of determining the value of any property in an enquiry under section 32(1), if the court finds that the defendant received property at any time as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in that subsection committed by him or her or by any other person the court must accept this fact as prima facie evidence that he or she received that property free of any other interest in that property.

(5) For the purpose of determining whether a defendant has derived a benefit, or of the value of the defendant's proceeds of offences or related criminal activities, if it is found in an enquiry that the defendant has effective or beneficial control over certain property the court -

(a) must accept this fact as prima facie evidence that the defendant has acquired that property irrespective of whether or not the defendant has any legal or equitable interest in, or right, power or privilege over that property; and

(b) may disregard -

(i) any shareholding, membership interest or directorship in, or the existence of, any company or close corporation that has a direct or indirect interest in that property;

(ii) the existence of any trust that has any relationship with that property; or

(iii) any relationship between any person with an interest in that property or in a company or close corporation referred to in subparagraph (i) or in a trust referred to in subparagraph (ii), and any other person.

(b) Observations on the implementation of the article

199. It is noted that this paragraph is optional in nature.

200. Namibia appears to have implemented this provision.

Article 31 Freezing, seizure and confiscation

Paragraph 9

9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

201. Namibia cited the following measures.

Section 65 (1), Prevention of Organised Crime Act 2004 (as amended).

Section 21 (1), Prevention of Organised Crime Act 2004 (as amended).

Section 327, Criminal Procedure Act 1977 (as amended).

Section 65 (1), Prevention of Organised Crime Act 2004 (as amended).

(1) Any person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 59(2), but did not receive that notice, may, within 30 days after the notice of the making of the order is published in the Gazette apply for an order excluding his or her interest in the property concerned from the operation of the order, or varying the operation of the order in respect of that property.

Section 21 (1), Prevention of Organised Crime Act 2004 (as amended).

(1) For the purposes of this Chapter, the value of property, other than money, in relation to any person holding the property is -

(a) where any other person holds an interest in the property -

(i) the market value of the property, less

(ii) the amount required to discharge any encumbrance on the property; and

(b) where no other person holds an interest in the property, the market value of the property

Section 327, Criminal Procedure Act 1977 (as amended).

Compensation to innocent purchaser of property unlawfully obtained

Where a person is convicted of theft or any other offence whereby that person has unlawfully obtained any property, and it appears to the court on the evidence that that person sold that property or part thereof to another person who had no knowledge that the property was stolen or unlawfully obtained, the court may, on the application of the purchaser and on restitution of that property to the owner thereof, order that, out of money belonging to the convicted person taken from him or her on his or her arrest, a sum not exceeding the amount paid by the purchaser be returned to the purchaser.

(b) Observations on the implementation of the article

202. Namibia appears to have implemented this provision.

(c) Challenges, where applicable

203. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Specificities in its legal system;*
3. *Limited capacity (e.g. human/technological/institution/other).*

(d) Technical assistance needs

204. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Legislative drafting*
3. *Development of an action plan for implementation*
4. *Capacity-building programmes for authorities responsible for the establishment and management of systems for the administration of frozen, seized or confiscated property*
5. *Legal advice.*

Such assistance has been partly provided to Namibia to date.

Article 32 Protection of witnesses, experts and victims

Paragraph 1

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

(a) Summary of information relevant to reviewing the implementation of the article

205. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 52, Anti Corruption Act 2003.

Section 54 (4), Anti Corruption Act 2003.

Section 50, Financial Intelligence Act 2012.

Section 208, Criminal Procedure Act 51 of 1977 (as amended).

Section 98, Prevention of Organised Crime Act 2004 (as amended).

Section 52, Anti Corruption Act 2003.

(1) Subject to subsection (2), in any trial for an offence under this Act, a witness is not obliged to –

- (a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or
 - (b) state any matter which may disclose the identity or address of such informer or person.
- (2) If in any proceedings before a court, the court, after full inquiry into the case, is satisfied -
- (a) that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or
 - (b) that justice cannot fully be done between parties without disclosing the identity of an informer or a person who assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law, the court may permit inquiry into, and require disclosure of, the identity of the informer or person concerned.
- (3) In a case contemplated in subsection (2)(b) the court may -
- (a) direct any person whose presence is not necessary at the proceedings to leave the court room before permitting the inquiry into the identity of an informer or person referred to in that subsection; and
 - (b) issue an order prohibiting the publication by any person of any information that may disclose the identity or address of such informer or person.
- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.
- (5) If any book or document, or any visual or sound recording or any other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his or her identity or discovery, the court, tribunal or other authority before which the proceedings are held must cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

Section 54 (4), Anti Corruption Act 2003.

- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.

Section 50, Financial Intelligence Act 2012 Protection of informers and information

- (1) Where a person discloses to the Centre information in terms of section 33, that any proceeds of unlawful activities is [sic] used in connection with or derived from money laundering, or terrorist financing or any matter on which that information is based-
- (a) if he or she does any act in contravention of the provisions of this Act and the disclosure relates to the arrangement concerned he or she does not commit an offence if the disclosure is made-
 - (i) before he or she does the act concerned, being an act done with the consent of the Centre; or

(ii) after he or she does the act, but the disclosure is made on his or her initiative and as soon as it is reasonable for him or her to make it;

(b) despite any other written law or the common law the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and

(c) he or she is not liable for any damages for any loss arising out of-(i) the disclosure; or

(ii) any act done or committed to be done in relation to the property in consequence of the disclosure.

(2) Where any information relating to an offence under this Act is received by an authorized officer the information and identity of the person giving the information must be confidential between the authorized officer and that person and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, may not be disclosed except for the purposes of assisting the Centre to carry out its functions as stated under this Act.

(3) A person who obstructs, hinders or threatens another person in the performance of their duties in terms of this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Section 208, Criminal Procedure Act 51 of 1977 (as amended).

Protection of witness

208. (1) (a) When a person is in the opinion of the Prosecutor-General likely to give evidence on behalf of the State at criminal proceedings in any court, and the Prosecutor-General, from information placed before him or her by any person -

(i) is of the opinion that the personal safety of the person who is likely to give such evidence is in danger or that he or she may be prevented from giving evidence or that he or she may be intimidated; or

(ii) considers it to be in the interests of the person who is likely to give such evidence or of the administration of justice that that person be placed under protection,

the Prosecutor-General may by way of affidavit place such information before a judge in chambers and apply to that judge for an order that the person who is likely to give such evidence be placed under protection pending the proceedings in question.

(b) The Prosecutor-General may, in any case in which he or she is of the opinion that the object of obtaining an order under paragraph (a) may be defeated if the person concerned is not placed under protection without delay, direct that that person be placed under protection immediately, but such a direction does not endure for longer than 72 hours unless the Prosecutor-General within that time by way of affidavit places before a judge in chambers the information on which he or she ordered the placement under protection of the person concerned and such further information as might become available to the Prosecutor-General, and applies to that judge for an order that that person be placed under protection pending the proceedings in question.

(c) The Prosecutor-General must, as soon as he or she applies to a judge under paragraph (b) for an order for the placement under protection of the person concerned, in writing inform the person in charge of the place where the person concerned is being protected, that he or she has so applied for an order, and must, where the judge under subsection (2)(a) refuses to issue an order for the placement under protection of the person concerned, immediately inform the person so in charge of the refusal, whereupon the person so in charge must without delay discontinue the protection of the person concerned.

- (2) (a) The judge hearing an application under subsection (1) may, if it appears to the judge from the information placed before him or her by the Prosecutor-General -
- (i) that there is a danger that the personal safety of the person concerned may be threatened or that he or she may be prevented from giving evidence or that he or she may be intimidated; or
 - (ii) that it would be in the interests of the person concerned or of the administration of justice that that person be placed under protection, issue an order for the placement under protection of that person.
- (b) Where a judge refuses an application under paragraph (a) and further information becomes available to the Prosecutor-General concerning the person in respect of whom the application was refused, the Prosecutor-General may again apply under subsection (1)(a) for the placement under protection of that person.
- (3) A person in respect of whom an order is issued under subsection (2)(a), must be taken to the place mentioned in the order and, in accordance with regulations which the Minister is hereby authorized to make, be protected there or at any other place determined by a judge from time to time, or, where the person concerned is placed under protection in terms of a direction by the Prosecutor-General under subsection (1)(b), that person must, pending the decision of the judge under subsection (2)(a), be taken to a place determined by the Prosecutor-General and protected there in accordance with those regulations.
- (4) A person placed under protection in terms of an order under subsection (2)(a) must be protected for the period terminating on the day on which the criminal proceedings in question are concluded, unless –
- (a) the Prosecutor-General directs that the protection of that person be discontinued earlier; or
 - (b) such proceedings have not commenced within six months of the date of the placement under protection of that person, in which event the protection of that person must be discontinued after the expiration of that period.
- (5) No person, other than a person employed in the Public Service acting in the performance of his or her official duties and the legal practitioner of a person placed under protection in terms of an order under subsection (2)(a), has access to the person so placed under protection, except with the consent of and subject to the conditions determined by the Prosecutor-General or a person employed in the Public Service delegated by the Prosecutor-General.
- (6) For the purposes of section 214, a person placed under protection in terms of an order under subsection (2)(a) is deemed to have attended the criminal proceedings in question as a witness for the State during the whole of the period of his or her placement under protection.
- (7) No information relating to the proceedings under subsection (1) or (2) may be published or be made public in any manner whatever.
- (8) To the extent that this section authorizes the deprivation of the personal liberty of a person who is likely to give evidence at criminal proceedings, such deprivation is authorized only on the grounds of the procedures established under this section pursuant to Article 7 of the Namibian Constitution.

Section 98, Prevention of Organised Crime Act 2004 (as amended).

- (2) If the court, in any proceedings before it, is satisfied that-
- (a) it would be in the interest of justice; or
 - (b) there is a likelihood that harm may ensue to any person as a result of the proceedings being open, it may direct that those proceedings be held behind closed doors and that the public must not be present at those proceedings or any part of them.

- (5) Where the court under subsection (2) on any grounds referred to in that subsection directs that the public must not be present at any proceedings or part of them, the court may -
- (a) direct that information relating to the proceedings, or any part of them, held behind closed doors, must not be made public in any manner;
 - (b) direct that a person must not, in any manner, make public any information which may reveal the identity of any witness in the proceedings;
 - (c) give any directions in respect of the record of proceedings which may be necessary to protect the identity of any witness, but the court may authorise the publication of so much information as it considers would be just and equitable.
- (6) Any person who discloses any information in contravention of subsection (5) commits an offence and is liable to a fine not exceeding N\$8 000, or to imprisonment for a period not exceeding two years.

206. Namibia does not have a witness protection programme.

207. Namibia indicated that it faces challenges in implementing these laws in that people are reluctant to come forth with information with regard to corrupt practices, because Namibia does not have substantive law which offers adequate protection to witnesses and whistle-blowers. Although section 52 of the Anti-Corruption Act provides for limited protection of informers and information (witnesses and whistle-blowers), Namibia has recently embarked upon the drafting of a Witness and Whistleblower Protection Bill, which is well-underway. The policy document for this draft Bill was already approved by Cabinet. Namibia will use UNCAC as basis for the agreements with other States in implementation of this legislation once passed. The financial and other impact on the State and witnesses and their families should be carefully studied and form the basis of in-depth research and training in this regard.

(b) Observations on the implementation of the article

208. Namibia appears to have partially implemented these provisions. The reviewers recommend swift adoption of the Witness and Whistleblower Protection Bill, to cover witnesses, experts, victims and also cooperating defendants (article 37 of UNCAC), and which incorporates physical protection and evidentiary measures in line with the Convention.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (a)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(a) Summary of information relevant to reviewing the implementation of the article

209. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 175 (2), Criminal Procedure Act 51 of 1977 (as amended).

Section 208 (1), Criminal Procedure Act 51 of 1977 (as amended) (quoted above).

Section 98, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

Section 175 (2), Criminal Procedure Act 51 of 1977 (as amended).

If it appears to a court at criminal proceedings that there is a likelihood that harm might result to a person, other than the accused, if that person testifies at such proceedings, the court may direct that -

(a) that person testifies behind closed doors and that no other person may be present when such evidence is given, unless that other person's presence is necessary in connection with such proceedings or is authorized by the court;

(b) the identity of that person may not be revealed or that it may not be revealed for a period specified by the court.

210. Cabinet authorized the drafting of a witness and whistleblower protection law. Drafting of this legislation has started and will be completed in 2015.

(b) Observations on the implementation of the article

211. Namibia appears to have partially implemented these provisions.

Article 32 Protection of witnesses, experts and victims

Subparagraph 2 (b)

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

212. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 52, Anti Corruption Act 2003 (quoted above).

Section 175 (2), Criminal Procedure Act 51 of 1977 (as amended) (quoted above).

Section 208 (1), Criminal Procedure Act 51 of 1977 (as amended) (quoted above).

Section 98 (2), Prevention of Organised Crime Act 2004 (as amended) (quoted above).

(b) Observations on the implementation of the article

213. Namibia appears to have partially implemented this provision.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

214. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 32 (3) (e), Constitution of the Republic of Namibia.

(3) Without derogating from the generality of the functions and powers contemplated by Sub-Article (1) hereof, the President shall preside over meetings of the Cabinet and shall have the power, subject to this Constitution to:

(e) negotiate and sign international agreements, and to delegate such power;

(b) Observations on the implementation of the article

215. Namibia provided no evidence that any agreements relating to witness protection had been agreed. As noted above, Namibian authorities indicated that UNCAC will be used as a basis for the agreements with other States in implementing the Witness and Whistleblower Protection law, once passed.

Article 32 Protection of witnesses, experts and victims

Paragraph 4

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

(a) Summary of information relevant to reviewing the implementation of the article

216. Namibia indicated that in its domestic legal system, the provisions of this article also apply to victims insofar as they are witnesses. Namibia cited the following measure.

Section 80 (c), Prevention of Organised Crime Act 2004 (as amended).

The objects of the Committee are to -

(c) advise Cabinet in connection with the rendering of financial assistance to any other institution, organisation or fund established with the object to render assistance in any manner to witnesses, including protected witnesses, and victims of crime.

217. No information was provided on the number of victims who have received physical protection or given testimony in a manner that ensures their safety, such as video or other communications technology.

(b) Observations on the implementation of the article

218. Namibia appears to have partially implemented this obligation. As noted above, it is recommended that Namibia take steps towards the swift adoption of the Witness and Whistleblower Protection Bill, which should provide parallel protection to victims.

Article 32 Protection of witnesses, experts and victims

Paragraph 5

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

219. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 305 of the Criminal Procedure Act of 1977 (as amended)
Section 326(3) of the Criminal Procedure Act of 1977 (as amended)

Section 305 of the Criminal Procedure Act of 1977 (as amended)
Evidence on sentence

- (1) A court may, before passing sentence, receive such evidence as it thinks fit to inform itself as to the proper sentence to be passed.
- (2) The accused may address the court on any evidence received under subsection (1), as well as on the matter of the sentence, and thereafter the prosecution may likewise address the court.

Section 326(3) of the Criminal Procedure Act of 1977 (as amended)
Court may award compensation or order restitution where offence caused injury, damage or loss

- (3) For the purposes of determining the amount of the compensation or the liability of the convicted person therefor, the court may refer to the evidence and the proceedings at the trial or hear further evidence either on affidavit or orally.

(b) Observations on the implementation of the article

220. Section 305(1) of the Criminal Procedure Act of 1977 allows the views and concerns of victims to be presented and considered at the sentencing stage. Namibia advised that the prosecution or the court may at any stage call the victims to testify in aggravation or determination of the sentence to be imposed. No information was provided as to whether this procedure has been adopted in corruption cases.

(c) Challenges, where applicable

221. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Inadequacy of existing implementing normative measures (laws, regulations, etc.);*
3. *Competing priorities*
4. *Limited capacity (e.g. human/technological/institution/other);*
5. *Limited awareness of state-of-the-art programmes and practices for witness and expert protection;*

6. *Limited resources for implementation: Witness protection is applied within the means available to the State, mainly in cases that pose a high risk for witnesses. Protections are expensive to implement.*

(d) Technical assistance needs

222. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Legal advice;*
3. *Model legislation;*
4. *Capacity-building programmes for authorities responsible for establishing and managing witness and expert protection programmes;*
5. *On-site assistance by a relevant expert;*
6. *Development of an action plan for implementation;*
7. *Model agreement(s)/arrangement(s);*
8. *Capacity-building programmes for authorities responsible for establishing and managing witness, expert and victim protection programmes.*

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

223. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 52, Anti Corruption Act 2003 (quoted under art. 32(2)(b) above).

Section 45, Financial Intelligence Act 2012.

Section 50, Financial Intelligence Act 2012.

Section 45, Financial Intelligence Act 2012 Protection of persons making reports

(1) No action, whether criminal or civil, lies against an accountable or reporting institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of that accountable or reporting institution, supervisory or regulatory body or person.

(2) A person who has made, initiated or contributed to a report in terms of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

(3) No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

(4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Section 50, Financial Intelligence Act 2012 Protection of informers and information

(1) Where a person discloses to the Centre information in terms of section 33, that any proceeds of unlawful activities is [sic] used in connection with or derived from money laundering, or terrorist financing or any matter on which that information is based-

(a) if he or she does any act in contravention of the provisions of this Act and the disclosure relates to the arrangement concerned he or she does not commit an offence if the disclosure is made-

(i) before he or she does the act concerned, being an act done with the consent of the Centre; or

(ii) after he or she does the act, but the disclosure is made on his or her initiative and as soon as it is reasonable for him or her to make it;

(b) despite any other written law or the common law the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and

(c) he or she is not liable for any damages for any loss arising out of-(i) the disclosure; or

(ii) any act done or committed to be done in relation to the property in consequence of the disclosure.

(2) Where any information relating to an offence under this Act is received by an authorized officer the information and identity of the person giving the information must be confidential between the authorized officer and that person and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, may not be disclosed except for the purposes of assisting the Centre to carry out its functions as stated under this Act.

(3) A person who obstructs, hinders or threatens another person in the performance of their duties in terms of this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(b) Observations on the implementation of the article

224. As noted above, section 52 of the Anti-Corruption Act provides for limited protection of informers and information (witnesses and whistle-blowers). Namibia begun drafting a Witness and Whistleblower Protection Bill, which has been approved by Cabinet. The reviewers recommend the swift adoption of this bill.

(c) Challenges, where applicable

225. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Limited awareness of state-of-the-art systems and programmes to protect reporting persons;*
3. *Limited capacity (e.g. human/technological/institution/other);*
4. *Limited resources for implementation (e.g. human/financial/other).*

(d) Technical assistance needs

226. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Legal advice;*
3. *Model legislation;*
4. *Capacity-building programmes for authorities responsible for establishing and managing protection programmes for reporting persons;*
5. *On-site assistance by a relevant expert;*
6. *Development of an action plan for implementation.*

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

227. Namibia cited the following measures.

Section 36 (16), Financial Intelligence Act 2012.
Section 13, Tender Board Regulations (1996).

Section 13, Tender Board Regulations (1996).

(1) If the Board is convinced that -

(a) a tenderer, in relation to the acceptance of a tender, or a contractor, in relation to the conclusion of an agreement, has promised, offered or given a bribe, commission, gift, loan, benefit or any other compensation whatsoever to a member or staff member or to any other person, or has caused or prompted such bribe, commission, gift, loan, benefit or compensation to be offered or given; or

(b) a tenderer or contractor has in relation to the acceptance of a tender or conclusion of an agreement, as the case may be, acted in a fraudulent manner or in bad faith or in any other improper manner (including the furnishing of incorrect information); or

(c) a tenderer or contractor has, in the performance of an agreement concluded with the Government, failed to comply with any statutory requirement in connection with such agreement and has as a result thereof been convicted of an offence, the Board may, in addition to any other legal remedy it may have –

(i) in the case of a tenderer, withdraw its acceptance of the tender;

(ii) in the case of a contractor, cancel the agreement and recover in accordance with the provisions of regulation 10(2) any expense, loss or damage incurred or suffered by the Government.

(2) The provisions of regulation 12 shall apply mutatis mutandis in relation to the withdrawal by the Board of its acceptance of a tender under subregulation (1).

Section 35 (16), Financial Intelligence Act 2012

The supervisory body or regulatory body of an accountable or reporting institution, upon recommendation of the Centre, may revoke or suspend the licence of the accountable or reporting institution or cause the institution not to carry on such business-

(a) if the accountable or reporting institution has been convicted of an offence under this Act;
or

(b) if the accountable or reporting institution consistently failed or refused to adhere to any or all of its obligations under this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act.

(b) Observations on the implementation of the article

228. Namibia appears to have implemented this obligation.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

229. Namibia cited the following measures.

Section 32 (3), Prevention of Organised Crime Act 2004 (as amended).
Section 39, Prevention of Organised Crime Act 2004 (as amended).
Section 326 (1), Criminal Procedure Act 51 of 1977 (as amended).

Section 32 (3), Prevention of Organised Crime Act 2004 (as amended).
(3) The court making an order under subsection (2) may include in that order any further orders it may deem fit to ensure the effectiveness and fairness of that order, including orders as to compensation arising from an agreement between the public prosecutor and a person who has suffered damages to or loss of property or injury as a result of an offence or related criminal activity referred to in subsection (1) which was committed by the defendant.

Section 39, Prevention of Organised Crime Act 2004 (as amended).
(1) When a defendant has made a payment under section 38, any person who has 'suffered damage to, or loss of property, or injury as a result of an offence or related criminal activity referred to in section 32(1) which was committed by the defendant, may apply, within 30 days of that payment, for an order under subsection (3).
(2) A court may make an order under subsection (3) if it is satisfied that (a) the applicant referred to in subsection (1) -
(i) has suffered damage to, or loss of property, or injury as a result of an offence or related criminal activity referred to in section 32(1) which was committed by the defendant;
(ii) did not willingly take part in that offence or related criminal activity; and
(iii) has acted reasonably and in good faith in so far as he or she is concerned in that offence or related criminal activity; and
(b) that it is in the public interest to make that order.
(3) A court to which an application is made in terms of subsection (1), may make any order it deems appropriate concerning the manner in which the amount paid to satisfy the confiscation order is to be applied in terms of section 40, including an order to direct the clerk or the registrar of the court where the payment under section 38 was made -
(a) to make a payment out of that amount to the applicant referred to in subsection (1); or (b) to suspend the application of the amount paid in satisfaction of the confiscation order in

terms of section 40 for a period which the court deems appropriate with a view to satisfying a claim out of that amount in respect of which the applicant referred to in subsection (1) –

- (i) has instituted civil proceedings;
- (ii) intends to institute civil proceedings within a reasonable time; or
- (iii) has obtained a judgment against a defendant.

(4) A person intending to bring an application in terms of subsection (1) must give 14 days notice of that application to the Prosecutor-General.

(5) A person in whose favour an order has been made under subsection (3)(a) may within 60 days after the date on which the order was made, in writing, renounce the payment by lodging with the clerk or the registrar of the court in question a document of renunciation and, where applicable, by making a repayment of any moneys paid under subsection (3)(a).

(6) If the person concerned does not renounce a payment under subsection (5) within the period of 60 days, the defendant who made the payment in terms of section 38 ceases to be liable at the suit of the person concerned to any other civil proceedings in respect of the damage to, or loss of property, or injury for which the order was made.

(7) If the court has made an order under subsection (3)(b) the clerk or the registrar of the court in question must as soon as possible after-

- (a) the proceedings referred to in that subsection have been disposed of, or the judgment referred to in that subsection has been satisfied; or
- (b) the period determined under that subsection has expired, whichever occurs first, apply the amount paid in satisfaction of the confiscation order in accordance with section 40.

Section 326 (1), Criminal Procedure Act 51 of 1977 (as amended).

(1) (a) Where a person is convicted by the High Court or a magistrate's court of an offence against the person or against property and it has been proved during the trial of that person that the act or omission constituting the offence caused injury, damage or loss, whether patrimonial or otherwise, to the victim of that offence, the court must, subject to section 24(2) of the Community Courts Act, 2003 (Act No. 10 of 2003), on the application of the victim or of the victim's legal practitioner or the prosecutor acting on the instructions of the victim, award the victim compensation for that injury, damage or loss, or make an order of restitution in respect of the property involved in the offence, but -

- (i) no court may make such an award or order unless the injury, damage or loss, including, where applicable, the quantum thereof, and the liability of the convicted person therefor, have been proved on a balance of probabilities;
- (ii) a district court or divisional court may not make such an award if the amount of compensation applied for exceeds its civil jurisdiction, unless the convicted person against whom the award is to be made and the victim consent in writing thereto;
- (iii) where a person is convicted under section 25(1) of the Children's Act, 1960 (Act No. 33 of 1960), of having conducted to the commission of an offence, the court may make such an award or order against that person notwithstanding that the victim has not applied for compensation.

(b) Subparagraph (ii) of paragraph (a) does not apply where the court makes an order for the restitution of property.

(b) Observations on the implementation of the article

230. Namibia reported that as a matter of practice damages are claimed through the mechanisms of the civil procedural laws. No examples of damages being claimed in corruption cases were provided.

231. Namibia appears to have legislatively implemented this provision.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

232. Namibia cited the following measures.

Section 2, Anti Corruption Act 2003.

Section 3, Anti Corruption Act 2003.

Section 2, Anti Corruption Act 2003.

(1) There is established an independent and impartial body known as the Anti-Corruption Commission with such powers, functions and duties as are provided for in this Act or any other law.

(2) The Commission consists of -

(a) a Director;

(b) a Deputy Director; and

(c) other staff members.

(3) The Commission is an agency in the Public Service as contemplated in the Public Service Act, 1995 (Act No. 13 of 1995).

(4) The Public Service Act, 1995 applies to the Commission, the Director, the Deputy Director and the other staff members of the Commission, except to the extent as provided otherwise by this Act or as is inconsistent with this Act.

Section 3, Anti Corruption Act 2003. The functions of the Commission are -

(a) to receive or initiate and investigate allegations of corrupt practices;

(b) to consider whether investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action;

(c) to consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices;

(d) to assemble evidence obtained in the course of its functions and to furnish -(i) to any appropriate authority contemplated in paragraph (c); or

(ii) to the prosecuting authority or any other suitable authority of another country, upon a formal request, evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;

(e) to investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body;

(f) to take measures for the prevention of corruption in public bodies and private bodies, including measures for -

(i) examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;

(iii) educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences;

(iv) enlisting and fostering public confidence and support in combating corruption; (g) to disseminate information to the public about the functions of the Commission;

(h) to do anything else that the Commission is required or authorised to do under this Act or any other law or which is necessary or expedient to do for achieving the purpose of this Act.

233. Namibia provided the following examples of implementation:

- Organised Crime and Criminal Intelligence Unit (specialised money-laundering unit) within the Police.
- Specialised prosecution unit within Office of the Prosecutor General for extradition and mutual legal assistance.
- Financial Intelligence Centre in the Bank of Namibia.

234. Namibia provided the following information on the measures adopted to ensure the independence of the specialized body:

The Anti-Corruption Act provides for a measure of independence of the Commission in the appointment of the Director and Staff. The ACC has its own budget, but this is allocated by the Ministry of Finance.

The Financial Intelligence Centre (FIC) is an autonomous body within the Central Bank of Namibia.

235. Namibia provided information on how staff is selected and trained. Staff is interviewed after application for positions. Vetting takes place before appointments are done. Vetting is done by the Namibia Central Intelligence Service. Training is done at the instance of the Director of the ACC. Over the last three years the ACC reported the following staff establishment.

Year	Approved	Funded
2011/2	49	49
2012/3	49	49
2013/4	91	70

236. The following details were provided on staff training in the year 2013/4:

Type of Training	Males	Females	Total
Best Practices Confiscation and a framework for an on-going work on asset recovery.	4	2	6

Protocol Diplomacy for Executive Secretaries and PA's workshop	0	3	3
Verification and Reconciliation of Government suspense accounts, Anti-Corruption Strategy, Singapore	1	0	1
Effective measures to prevent and combat corruption, Japan	0	1	1
Training Programme for Head of Public Community Education & Corruption Prevention, Botswana	1	0	1
Senior Management Development Programme, NIPAM, Windhoek	0	2	2
Implementation of the UN Convention on the rights of persons with disability, Oshakati	0	1	1
Training to pilot a Wellness Manual Kit, Windhoek	0	1	1
Foundation Programme, NIPAM, Windhoek	0	1	1
National Workshop on International Cooperation in criminal matters related to Transnational organised crime, terrorism and corruption	1	4	5
Encase Forensic Training, South Africa	4	1	5
Induction Programme	1	0	1
Financial assistance LLb	7	11	18
	1	0	1

237. Namibia further provided the following budgetary information:

Year	Total Budget for the ACC (N\$)	Total Spent (N\$)
2013/14	48,581,000	43,688,499
2014/15	54,792,000	
2015/16	53,248,000	

(b) Observations on the implementation of the article

238. It is recommended that Namibia take steps to enhance the independence of the ACC and continue to invest in training and recruitment of skilled investigative and other staff of the relevant law enforcement agencies, including the Anti-Corruption Commission, the prosecution service and the police.

239. The reviewers welcome the consideration being given to establishing a specialization in the judiciary on corruption-related matters, to address the backlog of cases and delays in the administration of justice at the magistrate's court level, as was done in the case of the specialized labour and tax courts. The representatives of the judiciary expressed a favourable opinion on this during the country visit. Moreover, further training and capacity building on corruption cases for investigators, prosecutors and members of the judiciary is recommended.

(c) Challenges, where applicable

240. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Limited capacity: Namibia would require capacity-building and training for its law enforcement personnel, in particular staff in the Anti-Corruption Commission, the Namibian Police, Prosecutor General's office, Financial Intelligence Centre in the Bank of Namibia, the Customs and Excise Department and immigration officials on the full implementation of the Financial Intelligence Act and Anti-Corruption Act, including handling and investigating corruption cases, depriving offenders of the proceeds of corruption, and sensitizing staff to international best practices. Specifically, the Namibian police force indicated that it requires technical assistance in the specialist training of detectives in the*

following fields of investigation: money-laundering, cybercrime, tracing proceeds of unlawful activities, and tax evasion investigations.

(d) Technical assistance needs

241. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Legal advice;*
3. *On-site assistance by an anti-corruption expert;*
4. *Development of an action plan for implementation.*

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

242. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 48, Anti Corruption Act 2003.

Section 52, Anti Corruption Act 2003.

Section 54 (4), Anti Corruption Act 2003.

Section 9 (1), Prevention of Organised Crime Act 2004 (as amended).

Section 45, Financial Intelligence Act 2012.

Section 48, Anti Corruption Act 2003. Duty to report corrupt transactions

(1) A public officer to whom any gratification is promised, offered, or given in contravention of any provision of this Chapter must, as soon as possible, report such fact, together with the name or any other information relating to the identity of the person or persons concerned to his or her supervisor and to the Commission.

(2) If any gratification has been demanded, solicited, accepted or obtained from any person in contravention of any provision of this Chapter, or if an attempt has been made to demand, solicit, accept or obtain any gratification from any person in contravention of any provision of this Chapter, that person must, as soon as possible, report such fact together with the name or any other information relating to the identity of the other person or persons involved to the Commission.

Section 52, Anti Corruption Act 2003.

(1) Subject to subsection (2), in any trial for an offence under this Act, a witness is not obliged to -

(a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or

- (b) state any matter which may disclose the identity or address of such informer or person.
- (2) If in any proceedings before a court, the court, after full inquiry into the case, is satisfied -
 - (a) that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or
 - (b) that justice cannot fully be done between parties without disclosing the identity of an informer or a person who assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law,
 the court may permit inquiry into, and require disclosure of, the identity of the informer or person concerned.
- (3) In a case contemplated in subsection (2)(b) the court may -
 - (a) direct any person whose presence is not necessary at the proceedings to leave the court room before permitting the inquiry into the identity of an informer or person referred to in that subsection; and
 - (b) issue an order prohibiting the publication by any person of any information that may disclose the identity or address of such informer or person.
- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.
- (5) If any book or document, or any visual or sound recording or any other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his or her identity or discovery, the court, tribunal or other authority before which the proceedings are held must cause all such parts thereof or passages therein to be concealed from view or to obliterated or otherwise removed so far as is necessary to protect such person from discovery.

Section 54 (4), Anti Corruption Act 2003.

- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.

Section 9 (1), Prevention of Organised Crime Act 2004 (as amended). Reporting of suspicion regarding proceeds of unlawful activities

- (1) Any person who carries on a business or is in charge of, or manages a business undertaking or who is employed by a business undertaking and who suspects or ought reasonably to have suspected that -
 - (a) any property which comes into his or her possession or the possession of the business undertaking is, or forms part of, the proceeds of unlawful activities;
 - (b) a transaction to which he or she or the business undertaking is a party will facilitate the transfer of the proceeds of unlawful activities; or

(c) a transaction to which he or she or the business undertaking is a party and which is discontinued -

(i) may have brought the proceeds of unlawful activities into the possession of the person or business undertaking; or

(ii) may have facilitated the transfer of the proceeds of unlawful activities, had the transaction been concluded, must report his or her suspicion and provide all available information concerning the grounds on which it rests, without unreasonable delay to the Bank and must take all reasonable steps to discharge that obligation.

Section 45, Financial Intelligence Act 2012 Protection of persons making reports

(1) No action, whether criminal or civil, lies against an accountable or reporting institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of that accountable or reporting institution, supervisory or regulatory body or person.

(2) A person who has made, initiated or contributed to a report in terms of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

(3) No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

(4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

(b) Observations on the implementation of the article

243. Namibia appears to have partially implemented this obligation. As noted above, the reviewers recommend the swift adoption of the Witness and Whistleblower Protection Bill, which would also cover cooperating defendants (art. 37).

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

244. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 52 (4), Anti Corruption Act 2003 (quoted above).

Section 48, Anti Corruption Act 2003 (quoted above).

(b) Observations on the implementation of the article

245. It is noted that this paragraph is not mandatory in nature.

246. There are no statutory provisions dealing with the mitigation of punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention. However, Namibia reported that the cooperation would be taken into account in determining the sentence. No examples of relevant cases were provided.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

247. Namibia indicated that it has partially implemented the provision and cited Section 52 (4) of the Anti Corruption Act 2003 (quoted above).

248. While immunity has been given to cooperators in criminal matters in certain cases, Namibia indicated that there have been no cases of immunity being afforded in corruption cases to date. There is no system of plea bargaining in Namibia.

249. The present Criminal Procedure Code makes no provision for plea bargaining. As noted in the annual report of the Anti-Corruption Commission for 2008-2009, a plea bargaining provision could put the prosecution in a position where it can speedily and effectively dispose of cases. A process whereby the accused and the prosecution, in a criminal case, are empowered to work out a satisfactory disposal of the case, subject to court approval, will conserve judicial resources. It limits unnecessary appeals against judgments, and money stolen may be more easily recovered. It is recommended that a broadening of the Criminal Procedure Code that allows for plea bargaining should be considered.

(b) Observations on the implementation of the article

250. It is noted that this paragraph is not mandatory in nature.

251. While the Namibian legal framework allows for immunity to be afforded to cooperating offenders in criminal matters, the adoption of a plea bargaining provision could assist the prosecution in the speedy and effective disposal of cases. Although not required under the Convention, Namibia may wish to consider adopting a relevant framework on plea bargaining in the context of its ongoing legal reforms.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

252. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 208 (1), Criminal Procedure Act 51 of 1977 (as amended).

Section 98 (2), Prevention of Organised Crime Act 2004 (as amended).

Section 208 (1), Criminal Procedure Act 51 of 1977 (as amended).

Protection of witness

208. (1) (a) When a person is in the opinion of the Prosecutor-General likely to give evidence on behalf of the State at criminal proceedings in any court, and the Prosecutor-General, from information placed before him or her by any person -

(i) is of the opinion that the personal safety of the person who is likely to give such evidence is in danger or that he or she may be prevented from giving evidence or that he or she may be intimidated; or

(ii) considers it to be in the interests of the person who is likely to give such evidence or of the administration of justice that that person be placed under protection, the Prosecutor-General may by way of affidavit place such information before a judge in chambers and apply to that judge for an order that the person who is likely to give such evidence be placed under protection pending the proceedings in question.

(b) The Prosecutor-General may, in any case in which he or she is of the opinion that the object of obtaining an order under paragraph (a) may be defeated if the person concerned is not placed under protection without delay, direct that that person be placed under protection immediately, but such a direction does not endure for longer than 72 hours unless the Prosecutor-General within that time by way of affidavit places before a judge in chambers the information on which he or she ordered the placement under protection of the person concerned and such further information as might become available to the Prosecutor-General, and applies to that judge for an order that that person be placed under protection pending the proceedings in question.

(c) The Prosecutor-General must, as soon as he or she applies to a judge under paragraph (b) for an order for the placement under protection of the person concerned, in writing inform the person in charge of the place where the person concerned is being protected, that he or she has so applied for an order, and must, where the judge under subsection (2)(a) refuses to issue an order for the placement under protection of the person concerned, immediately inform the person so in charge of the refusal, whereupon the person so in charge must without delay discontinue the protection of the person concerned.

Section 98 (2) and (5), Prevention of Organised Crime Act 2004 (as amended).

(2) If the court, in any proceedings before it, is satisfied that-(a) it would be in the interest of justice; or

(b) there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

it may direct that those proceedings be held behind closed doors and that the public must not be present at those proceedings or any part of them.

(5) Where the court under subsection (2) on any grounds referred to in that subsection directs that the public must not be present at any proceedings or part of them, the court may -

(a) direct that information relating to the proceedings, or any part of them, held behind closed doors, must not be made public in any manner;

- (b) direct that a person must not, in any manner, make public any information which may reveal the identity of any witness in the proceedings;
- (c) give any directions in respect of the record of proceedings which may be necessary to protect the identity of any witness, but the court may authorise the publication of so much information as it considers would be just and equitable.
- (6) Any person who discloses any information in contravention of subsection (5) commits an offence and is liable to a fine not exceeding N\$8 000, or to imprisonment for a period not exceeding two years.

Section 52, Anti Corruption Act 2003.

- (1) Subject to subsection (2), in any trial for an offence under this Act, a witness is not obliged to -
 - (a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or
 - (b) state any matter which may disclose the identity or address of such informer or person.
- (2) If in any proceedings before a court, the court, after full inquiry into the case, is satisfied -
 - (a) that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or
 - (b) that justice cannot fully be done between parties without disclosing the identity of an informer or a person who assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law,the court may permit inquiry into, and require disclosure of, the identity of the informer or person concerned.
- (3) In a case contemplated in subsection (2)(b) the court may -
 - (a) direct any person whose presence is not necessary at the proceedings to leave the court room before permitting the inquiry into the identity of an informer or person referred to in that subsection; and
 - (b) issue an order prohibiting the publication by any person of any information that may disclose the identity or address of such informer or person.
- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.
- (5) If any book or document, or any visual or sound recording or any other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his or her identity or discovery, the court, tribunal or other authority before which the proceedings are held must cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

253. Namibia indicated that in practice, the identity of cooperators is kept confidential in some cases. However, the protections envisioned in article 32 for witnesses, experts and victims are not afforded to cooperators in Namibia, despite relevant legal provisions.

254. No physical protection has been afforded to cooperators in corruption cases. There is no witness or cooperator protection programme. There have been no cases where cooperating defendants/offenders have given testimony using video or other communications technology to date or have been relocated to another State through arrangements or agreements.

255. Witness and offender protection frameworks are needed to implement the legal provision that exist in Namibia.

(b) Observations on the implementation of the article

256. While an appropriate legal framework for providing some protections to persons covered by this provision appears to exist, Namibia indicates that there are no programmes in existence to actually offer such protections.

257. Namibia appears to have partially implemented this obligation. The reviewers recommend the swift adoption and implementation of the Witness and Whistleblower Protection Bill.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

258. Namibia has not implemented the provision. There are no agreements or arrangements with other States in corruption matters concerning affording protections to cooperators as provided in the provision under review. Namibia indicated that agreements will be concluded once the legislation is in place (expected 2015).

(b) Observations on the implementation of the article

259. It is noted that this paragraph is optional in nature.

260. Namibia has not implemented this provision.

(c) Challenges, where applicable

261. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Specificities in its legal system;*
3. *Competing priorities;*
4. *Limited capacity (e.g. human/technological/institution/other);*
5. *Limited resources for implementation (e.g. human/financial/other).*

(d) Technical assistance needs

262. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned*
2. *Legislative drafting*
3. *Legal advice*
4. *On-site assistance by a relevant expert*
5. *Development of an action plan for implementation*
6. *Model legislation*
7. *Capacity-building programmes for authorities responsible for establishing and managing protection programmes: Namibia would require capacity-building and training for all competent institutions, in particular staff involved in international cooperation matters, judges, the Anti-Corruption Commission, the Namibian Police, Prosecutor General's office, Financial Intelligence Centre in the Bank of Namibia, the National Intelligence, the Customs and Excise Department and immigration officials on the full implementation of the Financial Intelligence Act and Anti-Corruption Act, including handling and investigating corruption cases, depriving offenders of the proceeds of corruption, and sensitizing staff to international best practices.*
8. *Model agreements/arrangements.*

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

(a) Summary of information relevant to reviewing the implementation of the article

263. Namibia cited the following measures.

Section 31, Anti Corruption Act 2003.

Section 48, Anti Corruption Act 2003.

Section 64 (4), Banking Institutions Act 1998.

Section 56, Financial Intelligence Act 2012.

Section 88, Prevention of Organised Crime Act 2004 (as amended).

Section 3, Anti Corruption Act 2003.

Section 31, Anti Corruption Act 2003.

(1) Subject to subsection (2), in any trial for an offence under this Act, a witness is not obliged to -

- (a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or
 - (b) state any matter which may disclose the identity or address of such informer or person.
- (2) If in any proceedings before a court, the court, after full inquiry into the case, is satisfied -
- (a) that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or
 - (b) that justice cannot fully be done between parties without disclosing the identity of an informer or a person who assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law,
- the court may permit inquiry into, and require disclosure of, the identity of the informer or person concerned.
- (3) In a case contemplated in subsection (2)(b) the court may -
- (a) direct any person whose presence is not necessary at the proceedings to leave the court room before permitting the inquiry into the identity of an informer or person referred to in that subsection; and
 - (b) issue an order prohibiting the publication by any person of any information that may disclose the identity or address of such informer or person.
- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.
- (5) If any book or document, or any visual or sound recording or any other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his or her identity or discovery, the court, tribunal or other authority before which the proceedings are held must cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

Section 48, Anti Corruption Act 2003. Duty to report corrupt transactions

48. (1) A public officer to whom any gratification is promised, offered, or given in contravention of any provision of this Chapter must, as soon as possible, report such fact, together with the name or any other information relating to the identity of the person or persons concerned to his or her supervisor and to the Commission.
- (2) If any gratification has been demanded, solicited, accepted or obtained from any person in contravention of any provision of this Chapter, or if an attempt has been made to demand, solicit, accept or obtain any gratification from any person in contravention of any provision of this Chapter, that person must, as soon as possible, report such fact together with the name or any other information relating to the identity of the other person or persons involved to the Commission.
- (3) A person commits an offence who fails to comply with subsection (1) or (2).

Section 64 (4), Banking Institutions Act 1998.

- (4) Notwithstanding the further provisions of this Act or of the Bank of Namibia Act, 1997, the Bank may, for the purpose of the prudential supervision of financial institutions, but subject to the confidentiality of the information transmitted, furnish information acquired by

the Bank to an authority in Namibia or in a foreign state, country, colony or territory with supervisory responsibilities in respect of financial institutions in Namibia or in the foreign state, country, colony or territory concerned, as the case may be.

Section 31, Anti Corruption Act 2003.

(1) Subject to subsection (2), in any trial for an offence under this Act, a witness is not obliged to -

(a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or

(b) state any matter which may disclose the identity or address of such informer or person.

(2) If in any proceedings before a court, the court, after full inquiry into the case, is satisfied -

(a) that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or

(b) that justice cannot fully be done between parties without disclosing the identity of an informer or a person who assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law,

the court may permit inquiry into, and require disclosure of, the identity of the informer or person concerned.

(3) In a case contemplated in subsection (2)(b) the court may -

(a) direct any person whose presence is not necessary at the proceedings to leave the court room before permitting the inquiry into the identity of an informer or person referred to in that subsection; and

(b) issue an order prohibiting the publication by any person of any information that may disclose the identity or address of such informer or person.

(4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.

(5) If any book or document, or any visual or sound recording or any other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his or her identity or discovery, the court, tribunal or other authority before which the proceedings are held must cause all such parts thereof or passages therein to be concealed from view or to obliterated or otherwise removed so far as is necessary to protect such person from discovery.

Section 56, Financial Intelligence Act 2012 Administrative sanctions

(1) The Centre or a supervisory body may impose an administrative sanction referred to in subsection (3) on any accountable institution, reporting institution or other person to whom this Act applies when satisfied on available facts and information that the institution or person-

(a) has failed to comply with a provision of this Act or any regulation, order, determination or directive issued in terms of this Act;

(b) has failed to comply with a condition of a licence, registration, approval or authorisation issued or amended in accordance with this Act or any other law; or

(c) has failed to comply with a directive issued in terms of section 54(1) or (2).

- (2) In determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors-
- (a) the nature, duration, seriousness and extent of the relevant noncompliance;
 - (b) whether the institution or person has previously failed to comply with any law; (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
 - (d) any steps taken or to be taken against the institution or person by-(i) another supervisory body; or
 - (ii) a voluntary association of which the institution or person is a member; and (e) any other relevant factor, including mitigating factors.
- (3) The Centre or a supervisory body after consultation with each other, and where applicable, after consultation with relevant regulatory body, may impose any one or more of the following administrative sanctions-
- (a) a caution not to repeat the conduct which led to the non-compliance referred to in subsection (1);
 - (b) a reprimand;
 - (c) a directive to take remedial action or to make specific arrangements; (d) the restriction or suspension of certain identified business activities; (e) suspension of licence to carry on business activities; or
 - (f) a financial penalty, not exceeding N\$10 million, as determined by the Centre, after consultation with the relevant supervisory or regulatory bodies.
- (4) The Centre or supervisory body may-
- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any regulation, order, determination or directive issued in terms of this Act;
 - (b) direct that a financial penalty must be paid by a natural person(s) for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the noncompliance;
 - (c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body considers appropriate for a period not exceeding five years.
- (5) Before imposing an administrative sanction, the Centre or the supervisory body must give the institution or person reasonable notice in writing-
- (a) of the nature of the alleged non-compliance;
 - (b) of the intention to impose an administrative sanction;
 - (c) of the amount or particulars of the intended administrative sanction; and
 - (d) advise that the institution or person may, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed. (6) After considering any representations and the factors referred to in subsection (2), the Centre or the supervisory body, subject to subsection (8), may impose an administrative sanction the Centre or supervisory body considers appropriate.

(7) Upon imposing the administrative sanction the Centre or supervisory body must, in writing, notify the institution or person of-

 - (a) the decision and the reasons therefor; and
 - (b) the right to appeal against the decision in accordance with section 58.

(8) The Centre must, prior to taking a decision contemplated in subsection (6), consult the relevant regulator, where applicable.

(9) Any financial penalty imposed must be paid into the bank account of the Fund, within the period and in the manner as may be specified in the relevant notice.

(10) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the Centre or the supervisory

body may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (7) and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Centre or supervisory body.

(11) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.

(12) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court may take into account any administrative sanction imposed under this section in respect of the same set of facts.

(13) An administrative sanction imposed in terms of this Act does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(14) Unless the Director or the head of a supervisory body is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of any decision, the Director or the head of the supervisory body must make public the decision and the nature of any sanction imposed if-

(a) an institution or person does not appeal against a decision of the Centre or supervisory body within the required period; or

(b) the appeal board confirms the decision of the Centre or supervisory body.

264. Cooperation between national authorities is ensured primarily through inter-agency memoranda of agreements. Namibia indicated that usual cooperation between law enforcement authorities is good in Namibia. Currently there is good cooperation between the ACC, FIC, Nampol and other agencies. Banks provide information when requested and there is good cooperation between the ACC and Namibian Police Force as well as the Financial Intelligence Centre.

265. The Namibian police force Nampol reported that it has an extensive web of cooperation with other criminal justice and law enforcement organizations, including:

- Office of the Prosecutor General, Detectives seconded from the Anti-Money Laundering sub-division, Commercial Crime Investigation Division, who are responsible for investigations related to the tracing of proceeds of unlawful activities as well as the recovery and forfeiture of such proceeds or assets.
- Bank of Namibia, in particular the Financial Intelligence Centre, whereby STRs related to money laundering are shared with Nampol and the Bank of Namibia for intelligence and investigation purposes.
- Anti-Corruption Commission, Nampol and the ACC regularly share resources, skills and capacity to ensure that corruption is uprooted and investigations are carried out speedily and effectively.
- Ministry of Finance, in particular its Inland Revenue Directorate, where Nampol has seconded two detectives to investigate tax fraud cases.

(b) Observations and good practice on the implementation of the article

266. This article deals with cooperation between national/public authorities and authorities responsible for investigations and prosecutions. The provisions mentioned by Namibia do not appear to be relevant to the obligation contained in this article.

267. However, Namibia indicates that cooperation between national authorities is ensured primarily through inter-agency memoranda of agreements.

268. While noting Section 21(5) of the ACC Act, the reviewers recommend that Namibia, in the context of the ongoing review of legislation, consider adopting a general duty to cooperate by public officials and members of the public, as Section 48 of the ACC Act is limited to public officials who receive gratification.

269. More generally, the reviewers positively noted the effective coordination mechanisms among national authorities (for example, through the work of the FIC), including high-level support for the implementation of the Convention and the anti-corruption agenda.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

270. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 9 (1), Prevention of Organised Crime Act 2004 (as amended).
Section 33, Financial Intelligence Act 2012
Section 45, Financial Intelligence Act 2012
Section 50, Financial Intelligence Act 2012
Section 17 (1), Financial Intelligence Regulations 2009.

Section 9 (1), Prevention of Organised Crime Act 2004 (as amended).

Reporting of suspicion regarding proceeds of unlawful activities

(1) Any person who carries on a business or is in charge of, or manages a business undertaking or who is employed by a business undertaking and who suspects or ought reasonably to have suspected that -

(a) any property which comes into his or her possession or the possession of the business undertaking is, or forms part of, the proceeds of unlawful activities;

(b) a transaction to which he or she or the business undertaking is a party will facilitate the transfer of the proceeds of unlawful activities; or

(c) a transaction to which he or she or the business undertaking is a party and which is discontinued -

(i) may have brought the proceeds of unlawful activities into the possession of the person or business undertaking; or

(ii) may have facilitated the transfer of the proceeds of unlawful activities, had the transaction been concluded,

must report his or her suspicion and provide all available information concerning the grounds on which it rests, without unreasonable delay to the Bank and must take all reasonable steps to discharge that obligation.

Section 33, Financial Intelligence Act 2012

Suspicious transactions and suspicious activities

(1) A person who-

(a) carries on any business or the business of an accountable or reporting institution, or is in charge of, or manages a business undertaking, or a business undertaking of an accountable or reporting institution; or

(b) is a director of, secretary to the board of, employed or contracted by any business, or the business of an accountable or reporting institution,

and who knows or reasonably ought to have known or suspect that, as a result of a transaction concluded by it, or a suspicious activity observed by it, it has received or is about to receive the proceeds of unlawful activities or has been used or is about to be used in any other way for money laundering or financing of terrorism purposes, must, within the prescribed period after the suspicion or belief arose, as the case may be, report to the Centre-

(i) the grounds for the suspicion or belief; and

(ii) the prescribed particulars concerning the transaction or suspicious activity.

(2) If an accountable or reporting institution or business suspects or believes there are reasonable grounds to suspect that, as a result of a transaction which it is asked to conclude or about which enquiries are made, it may receive the proceeds of unlawful activities or in any other way be used for money laundering or financing of terrorism purposes should the transaction be concluded, it must, within the prescribed period after the suspicion or belief arose, report to the Centre-

(a) the grounds for the suspicion or belief; and

(b) the prescribed particulars concerning the transaction.

(3) An accountable or reporting institution or business which made or is to make a report in terms of this section must not disclose that fact or any information regarding the contents of that report, to any other person, including the person in respect of whom the report is or [is] to be made, otherwise than-

(a) within the scope of the powers and duties of the accountable or reporting institution or business in terms of any legislation;

(b) for the purpose of carrying out this Act;

(c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or

(d) in terms of an order of court.

(4) A person who knows or suspects that a report has been or is to be made in terms of this section must not disclose that knowledge or suspicion or any information regarding the contents or suspected contents of that report to any other person, including the person in respect of whom the report is or is to be made otherwise than-

(a) within the scope of that person's powers and duties in terms of any legislation; (b) for the purpose of carrying out this Act;

(c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or

(d) in terms of an order of a court.

(5) An accountable or reporting institution or business which contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or, where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(6) A person who contravenes or fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Section 45, Financial Intelligence Act 2012

Protection of persons making reports

- (1) No action, whether criminal or civil, lies against an accountable or reporting institution, supervisory body or person complying in good faith with a provision of this Part, including any director, employee or other person acting on behalf of that accountable or reporting institution, supervisory or regulatory body or person.
- (2) A person who has made, initiated or contributed to a report in terms of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
- (3) No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.
- (4) No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Section 50, Financial Intelligence Act

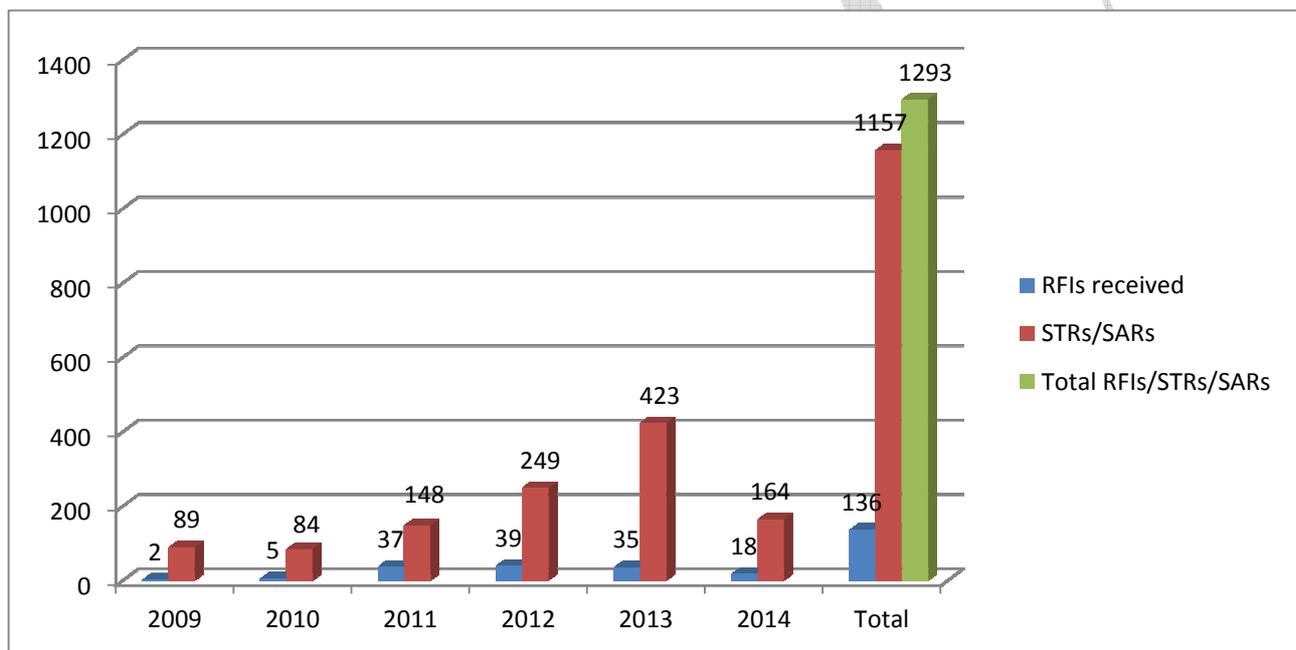
Protection of informers and information

- (1) Where a person discloses to the Centre information in terms of section 33, that any proceeds of unlawful activities is [sic] used in connection with or derived from money laundering, or terrorist financing or any matter on which that information is based-
 - (a) if he or she does any act in contravention of the provisions of this Act and the disclosure relates to the arrangement concerned he or she does not commit an offence if the disclosure is made-
 - (i) before he or she does the act concerned, being an act done with the consent of the Centre; or
 - (ii) after he or she does the act, but the disclosure is made on his or her initiative and as soon as it is reasonable for him or her to make it;
 - (b) despite any other written law or the common law the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and
 - (c) he or she is not liable for any damages for any loss arising out of-
 - (i) the disclosure; or
 - (ii) any act done or committed to be done in relation to the property in consequence of the disclosure.
- (2) Where any information relating to an offence under this Act is received by an authorized officer the information and identity of the person giving the information must be confidential between the authorized officer and that person and everything contained in such information, the identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, may not be disclosed except for the purposes of assisting the Centre to carry out its functions as stated under this Act.
- (3) A person who obstructs, hinders or threatens another person in the performance of their duties in terms of this Act or any regulation, order, notice, circular, determination or directive issued in terms of this Act commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

271. The ACC conducts seminars and workshops for the private sector on how to report corruption incidents.

272. Namibia's Financial Intelligence Centre (FIC) provided the following statistics on Requests for Information (RFIs) received from law enforcement agencies and Foreign financial intelligence units (FIUs) as well as Suspicious Transaction Reports (STRs) and Suspicious Activity Reports (SARs) received from accountable institutions, reporting institutions and others.

Year	RFIs received	STRs/SARs	Total RFIs/STRs/SARs
2009	2	89	
2010	5	84	
2011	37	148	
2012	39	249	
2013	35	423	
2014	18	164	
Total	136	1157	1293

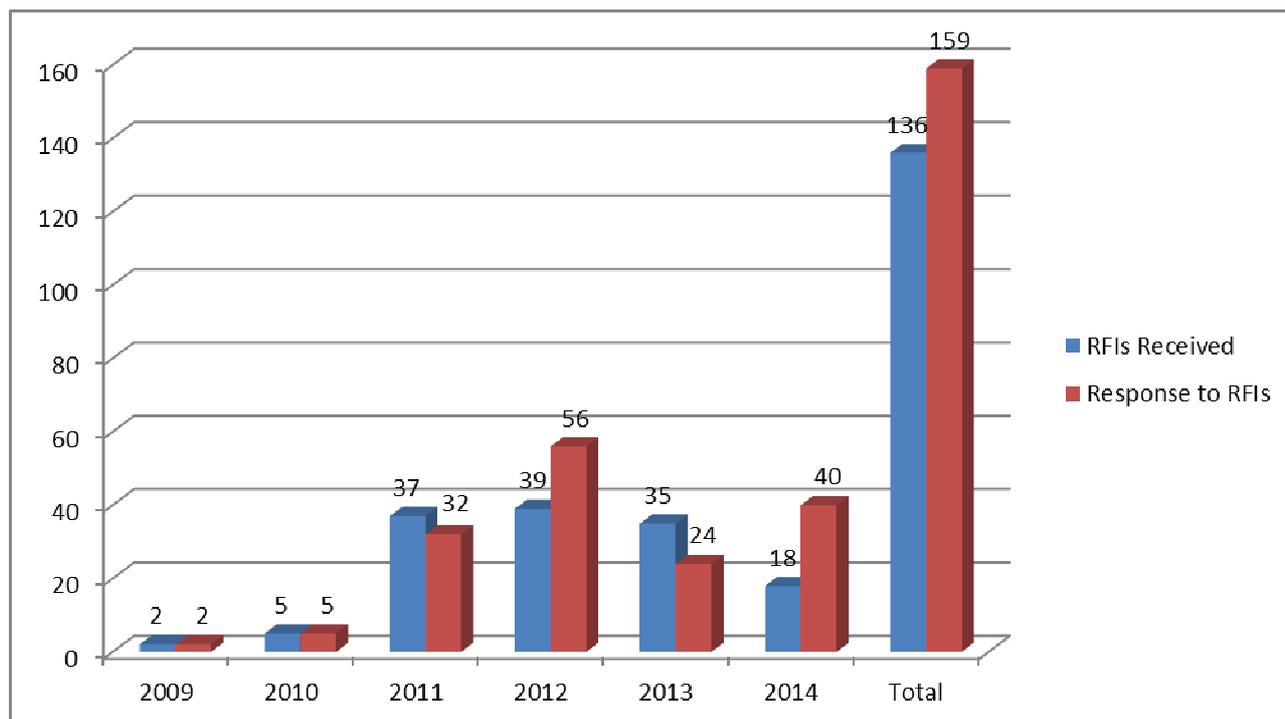


STRs/SARs received and Spontaneous Disclosures (SDs)

	STRs Received	Spontaneous Disclosures
2009	89	38
2010	84	83
2011	148	143
2012	249	163
2013	423	72
2014	164	87
Total	1157	586

RFIs received and Responses to RFIs

	RFIs Received	Response to RFIs
2009	2	2
2010	5	5
2011	37	32
2012	39	56
2013	35	24
2014	18	40
Total	136	159



Source of RFIs received (2013-2014):

Requests for Information Received per source				
Source of request	January – December 2013		January – December 2014	
	Number of requests	Share of total (%)	Number of Requests	Share of total (%)
Local Law Enforcement Agencies	31	88.6	35	92.1
Supervisory Bodies	1	2.9	-	-
GRN Ministries	2	5.7	-	-
Foreign Financial Intelligence Units	1	2	3	7.9
Total	35	100%	38	100%

273. It was further reported that during 2014, reports were disseminated to other agencies for further investigation on suspected money laundering, terrorist financing, proliferation financing and other activities. A total of 170 spontaneous Disclosures (SDs) and 56 Responses to Request for Information (RRFIs) were disseminated to local law enforcement agencies and Foreign FIUs for further investigation of suspected activities of money laundering, terrorist financing, and proliferation financing in Namibia. Possible offences

identified during analyses of the reports received were, among others, corruption, fraud, tax evasion, contravention of exchange control regulations, rhino poaching, theft, diamond smuggling, illegal scams and illegal casino gambling.

274. Banks and financial institutions cooperate regularly with the FIC and the ACC. Insurance companies cooperate with the Namibia Financial Institutions Supervisory Authority (NAMFISA) and the ACC. In one case, an insurance company approached the ACC and reported an attempted bribe of an assessor by a client and provided information, documentation and support in the investigation.
275. In a cement case, a company provided all information, books, computer records and other materials in its possession to the ACC and took steps to obtain materials not in its possession located outside Namibia.
276. All six Namibian banks have been training by the FIC since the Financial Intelligence Act came into force in 2009 with regard to the Financial Intelligence Act obligations and compliance programme requirements. Guidance on particular issues is provided under FIC Guidance Notes and compliance interventions, whereby meetings are held with management and compliance departments at the financial institutions.
277. A copy of a private sector survey (“Anti-Corruption National Survey for Namibia on existence of Anti-Corruption frameworks within private and state-owned enterprises in Namibia for the period 2013”) was provided to the reviewers. The findings of the survey are that most of the enterprises that participated in the survey have anti-corruption frameworks in place.

(b) Observations on the implementation of the article

278. Namibia appears to have implemented this provision.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

279. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 48 (2), Anti Corruption Act 2003.

Section 204, Criminal Procedure Act 51 of 1977 (as amended).

Section 48 (2), Anti Corruption Act 2003. Duty to report corrupt transactions

(2) If any gratification has been demanded, solicited, accepted or obtained from any person in contravention of any provision of this Chapter, or if an attempt has been made to demand, solicit, accept or obtain any gratification from any person in contravention of any provision

of this Chapter, that person must, as soon as possible, report such fact together with the name or any other information relating to the identity of the other person or persons involved to the Commission.

Section 204, Criminal Procedure Act 51 of 1977 (as amended).

Pre-payment of witness expenses

Where a subpoena is served on a witness at a place outside the magisterial district from which the subpoena is issued, or, in the case of the High Court, at a place outside the magisterial district in which the proceedings at which the witness is to appear are to take place, and the witness is required to travel from that place to the court in question, the necessary expenses to travel to and from that court and of sojourn at the court in question must, on demand, be paid to the witness at the time of service of the subpoena.

280. Namibia indicated that in Namibia, civil society and non-governmental organizations are active partners of government and the Anti-Corruption Commission when it comes to the collection of information, raising awareness and educational programmes. Civil society and the Anti-Corruption Commission jointly organized a march against corruption in the year 2009. ACC awareness-raising campaigns have also included a school debate programme on practical ACC cases to encourage the reporting of corruption incidents.
281. The ACC has a 24-hour toll-free telephone hotline and also accepts reports by email, fax, telephone, in writing, in person and orally.
282. In 2008, 922 reports of corrupt practices were made to the ACC. In 2009, there were 532 corruption reports, and 328 reports were made in 2010.
283. Police informants are rewarded financially to provide information and cooperation in criminal matters, and rewards are publicly announced in the media. There have been no rewards offered in corruption cases, and rewards are unlikely to be offered in the future because reporting is expected and required by law.
284. Anonymous reporting is encouraged by the ACC. In 2008, 104 cases referred by the ACC to the Prosecutor General's office for prosecution. Of these 14 were declined. In 2009, 47 cases were referred and 5 were declined for prosecution. In 2010, 34 cases were referred, and 5 were declined for prosecution

Reporting methods for the 2012/2013 financial year:

Telephone	14%
In writing	24%
Own accord	1%
SMS	1%
Hotline	1%
E-Mail	10%
Fax	11%
In person	38%

285. The number of whistleblowers has increased from 28% in 2010/2011 to 38% in 2012/2013. This can be attributed to the decentralization of the office of the Anti-Corruption Commission to Oshakati in the North and Swakopmund in the West of the country.

Anti-Corruption cases received during the period: 2012/2013 – 488.

Reporting methods for the 2011/2012 financial year:

Telephone	17%
In writing	23%
Own accord	4%
Unknown	1%
Hotline	1%
E-Mail	6%
Fax	12%
In person	36%

Anti-Corruption cases received during the period: 2011/2012 – 617.

Reporting methods for the 2009/2010 financial year:

Telephone	16%
In writing	28%
Own accord	6%
SMS	1%
Hotline	1%
E-Mail	7%
Fax	12%
In person	31%

Anti-Corruption cases received during the period: 2009/2010 – 445.

(b) Observations on the implementation of the article

286. It is noted that this paragraph is not mandatory in nature.

287. Namibia appears to have implemented this provision.

(c) Challenges, where applicable

288. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination;*
2. *Limited resources for implementation (e.g. human/financial/other).*

(d) Technical assistance needs

289. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *On-site assistance by a relevant expert*

2. *Capacity-building programmes for authorities responsible for regulating matters related to the private sector*
3. *Summary of good practices/lessons learned*
4. *Legislative drafting*
5. *Legal advice.*

Namibia indicated that this assistance has been partially provided to date.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

290. Namibia indicated that the Criminal Procedure Act 51 of 1977 (as amended), the Financial Intelligence Act 2007 and the Banking Institutions Act 1998 together enable the information pertaining to bank records to be disclosed for investigative purposes. There is no concept in Namibian law of bank secrecy.

291. ACC routinely issues summons for bank records under Section 26 of the Anti-Corruption Act and obtains relevant bank records. Such information is also regularly obtained by the FIC.

292. Namibia cited the following measures.

Section 9, (5), Prevention of Organised Crime Act 2004 (as amended).

Section 44, Financial Intelligence Act 2007.

Section 9(2), Financial Intelligence Act 2007

Section 64 (4), Banking Institutions Act 1998.

Section 26 (1) (b), (c), (d), Anti-Corruption Act 2003.

Section 27, Anti Corruption Act 2003.

Section 20, Criminal Procedure Act 1977 (as amended)

Section 21, Criminal Procedure Act 1977 (as amended)

Section 9, (5), Prevention of Organised Crime Act 2004 (as amended).

(5) Subject to subsection (6), no obligation as to secrecy and no other restriction on the disclosure of information as to the affairs or business of another, whether imposed by any law, the common law or any agreement, affects any obligation imposed under this section to report or disclose information or to permit access to any registers, records or other documents.

Section 44 (1), Financial Intelligence Act 2007.

Reporting duty not affected by confidentiality rules

(1) No duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance with a provision of this Act.

Section 9(2), Financial Intelligence Act 2007

9(2) In order to attain its objects and perform its functions the Centre may-

- (a) call for and obtain further information from persons or bodies that are required to supply or provide information to it in terms of this Act or any law;
- (b) request for information and statistics, from any government office, ministry or agency, law enforcement agency, competent authority, regulatory body and supervisory body, whether listed in Schedule 2 and Schedule 4 or not, for purposes of this Act;
- (c) direct any accountable or reporting institution, or supervisory body to take such steps as may be appropriate in relation to any information or report received by the Centre, to enforce compliance with this Act or to facilitate any investigation anticipated by the Centre;
- (d) issue determinations to any supervisory body in terms of which the supervisory body must enforce compliance by an accountable or reporting institution regulated by such supervisory body, with the provisions of this Act;
- (e) after consultation with supervisory and regulatory bodies, issue guidelines, directives, determinations, circulars or notices to accountable and reporting institutions to ensure compliance with this Act;
- (f) conduct research into trends and developments in the area of money laundering and financing of terrorism and improved ways of detecting, preventing and deterring money laundering and financing of terrorism;
- (g) exercise any other power or to [sic] do any other thing not inconsistent with this Act, which is necessary or expedient to ensure the achievement of the objects of this Act; and
- (h) exercise any power or perform any functions conferred to or imposed on it by any law.

Section 64 (4), Banking Institutions Act 1998.

(4) Notwithstanding the further provisions of this Act or of the Bank of Namibia Act, 1997, the Bank may, for the purpose of the prudential supervision of financial institutions, but subject to the confidentiality of the information transmitted, furnish information acquired by the Bank to an authority in Namibia or in a foreign state, country, colony or territory with supervisory responsibilities in respect of financial institutions in Namibia or in the foreign state, country, colony or territory concerned, as the case may be.

Section 26 (1) (b), (c), (d) and (2), Anti-Corruption Act 2003.

(1) If, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that it could assist or expedite the investigation, the Director may, by notice in writing, require -

- (b) any other person with whom the Director believes the suspected person had any financial transaction or other business dealing relating to an alleged corrupt practice to furnish a statement in writing enumerating all movable or immovable property acquired by that person in Namibia and elsewhere at the material time;
- (c) any person to furnish, notwithstanding the provisions of any other law to the contrary, any information in that person's possession relating to the affairs of any suspected person and to produce any document or certified true copy of any document relating to such suspected person which is in the possession or under the control of the person required to furnish the information;
- (d) the manager or other person in charge of any bank, building society or other financial institution, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies of the accounts or the statements of account at the bank, building society or financial institution of any suspected person notwithstanding the provisions of any other law to the contrary.

(2) Notwithstanding any oath or other obligation of secrecy imposed by law or otherwise, a person on whom a notice referred to in subsection (1) is served must, comply with the requirements of that notice within the time specified therein.

Section 27, Anti Corruption Act 2003.

(1) The Director or Deputy Director, or an investigating officer or special investigator authorised in writing by the Director or Deputy Director, may require access to and investigate any bank account, share account, purchase account, expense account or any other account, or any safe box in any bank, building society or other financial institution.

(2) A person in charge of an account or safe box referred to in subsection (1) must, notwithstanding the provisions of any other law to the contrary, comply with a request made by an authorised officer referred to in subsection (1) to disclose any information or produce any book or document, including data stored in electronic form, or anything relating to an account or safe box referred to in that subsection.

(3) A person who without reasonable cause fails to comply with a request of an authorised officer in terms of subsection (2), commits an offence and is liable to a fine of N\$50 000 or to imprisonment for three years or to both such fine and such imprisonment.

Section 20, Criminal Procedure Act 1977 (as amended)

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)-

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Namibia or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within Namibia or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

Section 21, Criminal Procedure Act 1977 (as amended)

(1) Subject to the provisions of sections 22(1), 24(1) and 25, an article referred to in section 20 may be seized only by virtue of a search warrant issued-

(a) by a district magistrate or justice of the peace, if it appears to that magistrate or justice of the peace from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or on any person or on or at any premises within his area of jurisdiction; or

(b) by a judge or magistrate presiding at criminal proceedings, if it appears to that judge or magistrate that any such article in the possession or under the control of any person or on or at any premises is required in evidence at such proceedings.

(2) A search warrant issued under subsection (1) must require a member of the police to seize the article in question and must to that end authorize such member to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3)(a) A search warrant must be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(b) A search warrant may be issued on any day and is of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A member of the police executing a warrant under this section or section 25 must, after such execution, hand to any person whose rights in respect of any search or article seized

under the warrant have been affected a copy of the warrant and, if any article is so seized, an inventory of articles seized.

(5) To the extent that subsection (2) authorizes the interference with a person's fundamental right to privacy by conducting a search thereunder, such interference is authorized only on the grounds of the prevention of crime and disorder and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution.

(b) Observations on the implementation of the article

293. Namibia appears to have implemented this article.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

294. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 302, Criminal Procedure Act 51 of 1977 (as amended).

Section 96, Criminal Procedure Act 51 of 1977 (as amended).

Section 236, Criminal Procedure Act 51 of 1977 (as amended).

Section 302, Criminal Procedure Act 51 of 1977 (as amended).

Previous convictions may be proved

(1) The prosecution may, after an accused has been convicted but before sentence has been imposed on the accused, produce to the court for admission or denial by the accused a record of previous convictions alleged against the accused.

(2) The court must ask the accused whether he or she admits or denies any previous conviction referred to in subsection (1).

(3) If the accused denies any previous conviction referred to in subsection (1), the prosecution may tender evidence that the accused was so previously convicted.

(4) If the accused admits any previous conviction referred to in subsection (1) or such previous conviction is proved against the accused, the court must take such conviction into account when imposing a sentence in respect of the offence of which the accused has been convicted.

Section 236, Criminal Procedure Act 51 of 1977 (as amended).

Evidence during criminal proceedings of previous convictions

Except where otherwise expressly provided by this Act or any other law or except where the fact of a previous conviction is an element of an offence with which an accused is charged, evidence is not admissible at criminal proceedings in respect of an offence to prove that an accused at such proceedings had previously been convicted of an offence, whether in Namibia or elsewhere, and no accused, if called as a witness, may be asked whether he or she has been so convicted.

Section 96, Criminal Procedure Act 51 of 1977 (as amended).

Previous conviction not to be alleged in charge

Except where the fact of a previous conviction is an element of an offence with which an accused is charged, it may not in any charge be alleged that an accused has previously been convicted of any offence, whether in Namibia or elsewhere.

295. Namibia indicated that in criminal matters, previous convictions are regularly introduced and that it is not inclined to introduce measures permitting evidence of previous foreign criminal convictions to be considered.

(b) Observations on the implementation of the article

296. It is noted that this article is optional in nature.

297. It was confirmed that section 302, Criminal Procedure Act 51 of 1977 (as amended) is limited to previous convictions in Namibia, while sections 969 and 236 of the Criminal Procedure Act refer to prior foreign convictions. There is accordingly no apparent legislative basis for the judicial authorities to take into account a previous foreign conviction. Namibia may wish to specify the matter in its legislation.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

298. Namibia cited the following measures.

Section 64, Financial Intelligence Act 2007.

Section 50 (1), Anti Corruption Act 2003.

Section 8, Prevention of Organised Crime Act 2004 (as amended).

Section 64, Financial Intelligence Act 2007. Jurisdiction of magistrates' courts in respect of offences

(1) Despite anything to the contrary in any other law contained, a magistrate's court has jurisdiction to impose any penalty provided for in this Act, even though that penalty may, either alone or together with any additional penalty imposed by that court, exceed the punitive jurisdiction of that court.

(2) Where an act, course of conduct or omission which constitutes an offence under this Act is or was-

(a) done by a national of Namibia within Namibia or elsewhere;

(b) done by any person on a vehicle, ship or other seafaring vessel or aircraft travelling through Namibia, putting into port in Namibia or landing on a landing strip or airport in Namibia; or

- (c) done by a person outside Namibia and other acts, courses of conduct or omissions forming part of the offence are done or to be done in Namibia;
- (d) done by any person outside Namibia and the effects of the offence are felt in Namibia, the person concerned may, regardless of anything in any law to the contrary, but subject to this Act, be tried and punished by any court which has jurisdiction over criminal matters in Namibia.

Section 50 (1), Anti Corruption Act 2003.

(1) The provisions of this Act shall, in relation to Namibian citizens and persons domiciled or permanently resident in Namibia, have effect also outside Namibia, and when an offence under this Act is committed outside Namibia by any such citizen or a person so domiciled or resident, such person may be dealt with in respect of that offence as if it had been committed at any place within Namibia.

Section 8, Prevention of Organised Crime Act 2004 (as amended). Jurisdiction in respect of offences

(1) Where an act which constitutes an offence under this Act is or was –

- (a) done by a national of Namibia within Namibia or elsewhere;
- (b) done by any person on a vehicle, ship or other seafaring vessel or aircraft traveling through Namibia, putting into port in Namibia or landing on a landing strip or airport in Namibia; or
- (c) done by any person outside Namibia and other acts forming part of the offence are done or are to be done in Namibia;
- (d) done by any person outside Namibia and the effects of the offence are felt in Namibia; the person concerned may, regardless of anything in any law to the contrary, but subject to this Act, be tried and punished for that offence by any court which has jurisdiction over criminal offences in Namibia.

(b) Observations on the implementation of the article

299. Namibia has established jurisdiction over offences committed in Namibia. Moreover, the authorities confirmed that Namibian courts have jurisdiction over all offences committed within the territory, whether by a Namibian national or a foreign citizen, in accordance with the Criminal Procedure Act.

300. The provision is implemented.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

301. Namibia cited the following measures.

Section 64, Financial Intelligence Act 2007 (quoted above).

Section 8, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

(b) Observations on the implementation of the article

302. The provisions provided by Namibia do not appear to cover all offences committed on board a vessel that is flying Namibia's flag or on an aircraft that is registered under the laws of Namibia at the time that the offence is committed.

303. Namibia appears to have partially implemented this provision. It is recommended that Namibia amend its legislation accordingly.

Article 42 Jurisdiction

Subparagraph 2 (a)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

304. Namibia indicated that there is no jurisdiction under Namibian law in these circumstances. No cases have arisen where the issue has presented itself.

(b) Observations on the implementation of the article

305. It is noted that this paragraph is optional in nature.

306. Namibia indicates that it has not implemented this provision. Namibia may wish to consider establishing jurisdiction in cases of passive personality (art. 42(2)(a)).

Article 42 Jurisdiction

Subparagraph 2 (b)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

307. Namibia cited the following measures.

Section 50 (1), Anti Corruption Act 2003 (quoted above).

Section 8, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

Section 6, Extradition Act 1996.

Section 6, Extradition Act 1996.

(1) A Namibian citizen may be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country contemplated in section 4(1), but no such prosecution shall be instituted unless-

(a) a request for the return of that person has been made in accordance with the provisions of this Act; and

(b) the Prosecutor-General has in writing authorized the institution of such prosecution. (2) For the purpose of determining the jurisdiction in relation to proceedings under subsection (1), the conduct constituting the offence shall for all purposes connected with or consequential to the trial of such offence be deemed to have been committed within the magisterial district of Windhoek.

(3) Notwithstanding section 2(1), the Minister may in writing authorize a magistrate to proceed under sections 10 and 12 against a Namibian citizen whose return has been requested under section 7, if in the opinion of the Minister such return is warranted due to-(a) the seriousness of the extraditable offence;

(b) the cost involved in bringing the necessary witnesses and other evidence to Namibia; or

(c) any other circumstances justifying extradition,

provided that the Minister is satisfied that the order for such return can lawfully be made in accordance with this Act.

308. There have been no cases applying this provision in practice.

(b) Observations on the implementation of the article

309. It is noted that this paragraph is optional in nature.

310. The provision is legislatively implemented.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

(a) Summary of information relevant to reviewing the implementation of the article

311. Namibia cited Section 8 of the Prevention of Organised Crime Act 2004 (as amended) (quoted above).

312. There is a pending fraud case in which preliminary steps towards money laundering were committed outside Namibia with a view towards the continued commission of the money laundering offence inside Namibia. Authorities are tracing the movement of proceeds both within and outside Namibia, as provided for in the provision under review.

(b) Observations on the implementation of the article

313. It is noted that this paragraph is optional in nature.

314. Namibia appears to have implemented this provision.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

315. Namibia cited the following measures.

Section 2, Criminal Procedure Act 51 of 1977 (as amended).

Section 8, Prevention of Organised Crime Act 2004 (as amended) (quoted above).

Section 2, Criminal Procedure Act 51 of 1977 (as amended).

Authority to prosecute vests in State

(1) The authority to institute and conduct a prosecution in criminal proceedings in respect of any offence in relation to which a magistrate's court or the High Court in Namibia has jurisdiction, vests in the State and must, pursuant to and in accordance with Article 88(2) of the Namibian Constitution, be exercised by the Prosecutor-General in the name of the Republic of Namibia.

(2) Criminal proceedings purporting to be instituted in the name of the State in any court in Namibia are for all purposes deemed to be instituted in the name of the Republic of Namibia.

316. Namibia has asserted jurisdiction in cases involving fraud against the Government and also corruption involving the defence force to the detriment of the public.

(b) Observations on the implementation of the article

317. It is noted that this paragraph is optional in nature.

318. Namibia appears not to have implemented this provision. Namibia may wish to consider establishing jurisdiction under the State protection principle (art. 42(2)(d)).

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this

Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

319. Namibia cited the following measure.

Section 6 (1), (2), Extradition Act 1996.

Prosecution of Namibian citizens for extraditable offences committed in other countries

(1) A Namibian citizen may be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country contemplated in section 4(1), but no such prosecution shall be instituted unless-

(a) a request for the return of that person has been made in accordance with the provisions of this Act; and

(b) the Prosecutor-General has in writing authorized the institution of such prosecution.

(2) For the purpose of determining the jurisdiction in relation to proceedings under subsection (1), the conduct constituting the offence shall for all purposes connected with or consequential to the trial of such offence be deemed to have been committed within the magisterial district of Windhoek.

320. This section confers on the Minister discretion to decide whether in any given case prosecution of nationals in Namibia may be appropriate; the section does not oblige prosecution in these circumstances. Once the Minister has exercised his or her discretion in favour of prosecution, the Prosecutor General determines whether a prosecution is warranted.

321. In most cases, the extradition process for Namibian citizens is authorized. There has been no prosecution in lieu of extradition to date, although Namibia would establish jurisdiction in such cases in order to extradite its nationals.

(b) Observations on the implementation of the article

322. As noted under paragraph 11 of article 44, Namibia has not implemented the *aut dedere aut judicare* obligation where extradition of nationals is refused. Section 6 (1), (2), Extradition Act 1996 confers discretion on the Minister to decide whether in any given case prosecution of nationals in Namibia may be appropriate. It is recommended that Namibia amend its legislation in this regard.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

323. This provision does not apply to Namibia. In most cases, the extradition process for Namibian citizens is authorized and jurisdiction was established for this purpose.

324. There have been no cases of prosecution in lieu of extradition.

(b) Observations on the implementation of the article

325. It is noted that this paragraph is optional in nature.

326. Namibian authorities indicated that they would not be precluded from establishing jurisdiction in such cases.

Article 42 Jurisdiction

Paragraph 5

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

(a) Summary of information relevant to reviewing the implementation of the article

327. Namibia indicated that it has partially implemented the provision under review.

328. Namibia consults with other States under such circumstances as a matter of practice. Although no cases have arisen to date in corruption matters, such coordination on criminal cases occurs in the context of INTERPOL and regional cooperation within the Southern African Development Community (SADC).

329. In one Namibian police case, there were coordinated investigative steps by Namibian and South African authorities into a network of fraudulent activities that took place in South Africa and Namibia. Namibian and Zambian INTERPOL are cooperating closely to investigate a theft place that took place in transit between the two countries with the same modus operandi being followed.

(b) Observations on the implementation of the article

330. Namibia appears to have implemented this provision.

Article 42 Jurisdiction

Paragraph 6

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

331. Namibia cited the following measure.

Section 2, Criminal Procedure Act 51 of 1977 (as amended).

Authority to prosecute vests in State

(1) The authority to institute and to conduct a prosecution in respect of any offence in relation to which any lower or superior court in the Republic exercises jurisdiction, shall vest in the State.

(2) Criminal proceedings purporting to be instituted in the name of the State in any court in the Republic, shall for all purposes be deemed to be instituted in the name of the Republic of Namibia.

332. Namibia would exercise jurisdiction under the cited provision and also with regard to a wide range of common law offences.

(b) Observations on the implementation of the article

333. Namibia appears to have implemented this provision.

UNODC

Chapter IV. International cooperation

Article 44 Extradition

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

334. Namibia cited the following measure.

Meaning of "extraditable offence"

Section 3 (1), Extradition Act 1996.

For the purposes of this Act "extraditable offence" means an act, including an act of omission, committed within the jurisdiction of a country contemplated in section 4(1) which constitutes under the laws of that country an offence punishable with imprisonment for a period of 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable with imprisonment for a period of 12 months or more.

Countries to which persons may be extradited

4. (1) Subject to the provisions of this Act, the extradition of persons from Namibia may be effected to-

- (a) any country which has entered into an extradition agreement with Namibia; and
 - (b) any other country, including a Commonwealth country, which has been specified by the President by proclamation in the Gazette for purposes of this Act.
- (2) The President may revoke or amend any proclamation made under subsection (1).

335. Namibia indicated that dual criminality issues do not present challenges in practice in extradition cases.

336. Namibia reported that there have been no incoming extradition requests in corruption cases, whether pursuant to Namibia's treaties or by designation/proclamation. All extradition cases have involved matters other than corruption. There have only been a limited number of outgoing requests.

(b) Observations on the implementation of the article

337. Regarding incoming extradition requests in matters not involving corruption, Namibia explained that it received six requests not involving offences under the Convention in 2014 and made no outgoing requests during the same period.

338. Dual criminality is a requirement for extradition, which may be effected for offences punishable by a minimum of one year imprisonment under the laws of both the requesting and requested countries. Extradition is limited to the extent that not all offences under the Convention are criminalized.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

339. Namibia cited the following measure.

Section 3(2)(b), Extradition Act 1996.

In determining whether any conduct constitutes an extraditable offence, all the surrounding circumstances pertaining to such conduct shall be taken into account, and it shall not matter that-

(a) the terminology which denotes the offence is not the same as, or that the conduct constituting the offence is not placed in the same category as, or that the constituent elements of the offence differ from, a similar offence in Namibia; or

(b) the offence for which the extradition is sought pertains to taxation, customs duty, exchange control, or any other form of fiscal regulation which is not enforced in Namibia.

340. Namibia reported that no extraditions have been granted pursuant to Section 3(2)(b) in corruption matters to date. The corruption offences under the Convention are covered by Namibia's domestic law. However, reference can be made to the case **Hans-Jurgen Gunther Koch v. The State**, Case No.: SA 13/2005, 29.11.2006, a copy of which was provided to the reviewers.

(b) Observations and good practice on the implementation of the article

341. The provision is legislatively implemented. It was confirmed that Namibia takes a conduct-based approach in considering whether dual criminality is satisfied rather than considering the strict terminology of offences, which was positively noted by the reviewers.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

342. Namibia indicated that to date there has been no practice of granting extradition in these cases.

343. Namibia's Extradition Act is currently being reviewed to assess the implication of this provision and the related provision of the SADC Protocol. The review of the legislation is due to be completed in 2015. The draft legislation is not yet available for sharing with the reviewers.

(b) Observations on the implementation of the article

344. Namibia does not appear to have implemented this permissive provision of the Convention. During the country visit it was explained that there has been no experience in the application of the present provision, but that Namibia would consider honouring a request involving multiple offences (as indicated in the provision under review) on a case-by-case basis. The inclination of the authorities would be to grant extradition for those offences that are deemed extraditable.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

345. Namibia provided the following information.

346. Extradition is rendered on the basis of an agreement or by designation/proclamation. Namibia has not used the Convention as a basis for extradition, although it could do so in principle, except in respect of the criminalization provisions for which domestication of treaty provisions is required.

347. Namibia cited the following measures

Section 5 (1), Extradition Act 1996.

(1) Notwithstanding section 2 or the terms of any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, if it appears to the Minister acting under section 6(3), 10 or 16 or the magistrate concerned acting under section 11 or 12, as the case may be-

(a) that the offence for which such return was requested is an offence of a political nature:

Provided that this provision shall not apply to any offence declared not to be a political offence for purposes of extradition by a multilateral international convention to which both Namibia and the requesting country concerned are parties;

348. Under Namibia's Act and agreements, extradition is only granted in matters involving serious offences (punishable by a minimum of 12 months imprisonment or more). Namibia has not used the Convention as a basis for extradition, although it could do so in principle. However, there is a political offence exception.

349. With respect to the political offence exception, Namibia cited the case of **Republic of Namibia v. Alfred and Others**, 2004 (2) BLR 101 (CA), Case No: Crim App No 64 of 2003, 27 July 2004, a copy of which was provided to the reviewers.
350. Namibia does not follow the list approach to designating extraditable offences (including for corruption cases) in its agreements, but rather the definition of “extraditable offence” in the Act is included in its agreements to determine when extradition is granted (the conduct constitutes under the laws of the other country an offence punishable with imprisonment for a period of 12 months or more and, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable with imprisonment for a period of 12 months or more.)
351. Namibia confirmed that as of the date of the country visit three bilateral extradition treaties have been signed (China, Angola, Zimbabwe) and numerous others are still in the negotiation stage. Copies of the extradition treaties concluded with the Republic of Angola and People's Republic of China were provided to the reviewers. Namibia is further a State party to the SADC Protocol on Extradition as well as the Commonwealth (London) Scheme on Extradition.
352. Namibia attends Joint Permanent Commission meetings established with various States identified. This platform is also used to discuss conclusion of bilateral treaties for extradition and mutual legal assistance, amongst others. Namibia indicated that full implementation of this provision will only be possible once Namibia has concluded the agreements.

(b) Observations on the implementation of the article

353. Namibia would not be precluded from considering UNCAC or another multilateral treaty as a legal basis for extradition, although there has been no experience in its application. It was confirmed during the country visit that in the absence of a bilateral treaty a convention like the present one, which is part of the domestic legislation in respect of international cooperation as provided for by the Constitution, could be applied directly. Although extradition is rendered in practice on the basis of a treaty or agreement, Namibia could also extradite a person on the basis of reciprocity or by proclamation.
354. In the interest of greater legal certainty in this area, Namibia could consider specifying in the Extradition Act (and the authorities endorsed such a recommendation) that extradition may be affected on the basis of a multilateral agreement, such as the present Convention or, in the absence of an agreement, on the basis of reciprocity or by proclamation.
355. The reviewers welcome indications that Namibia may accept UNCAC as a legal basis for extradition and will notify the United Nations accordingly.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

356. Namibia provided the following information.

357. Extradition is rendered on the basis of an agreement or by designation/proclamation. The extradition to designated countries or on the grounds of reciprocity does not require a treaty basis.

358. Namibia has not applied this Convention as the legal basis for extradition in respect to offences under the Convention, although it could do so in principle.

359. A notification by Namibia to use the UNCAC as a basis for extradition and mutual legal assistance to the Secretary General is underway (as of July 2015).

(b) Observations on the implementation of the article

360. Namibia does not appear to make extradition conditional on the existence of a treaty in the case of designated countries or countries with which extradition is effected on the basis of reciprocity. The provision under review therefore has no direct applicability to Namibia.

361. The reviewers welcome indications that Namibia may use UNCAC as a legal basis for extradition and will notify the United Nations accordingly.

Article 44 Extradition

Paragraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

362. Namibia indicated that it partly makes extradition conditional on the existence of a treaty. Extradition is rendered on the basis of an agreement or by designation/ proclamation.

363. Namibia has not applied this Convention as the legal basis for extradition in respect to offences under the Convention, but has concluded treaties on extradition with other States Parties to this Convention.

364. Three extradition treaties have been signed (China, Angola, Zimbabwe). In practice, the designation/proclamation approach is being applied more frequently than concluding

bilateral treaties, because it is faster and requires less negotiation. Designating additional countries can be done fairly easily in practice upon approval by the President.

365. There have been no extradition cases in corruption matters pursuant to Namibia's treaties or by designation/ proclamation. All extradition cases have involved matters other than corruption.

(b) Observations on the implementation of the article

366. The provision under review has limited applicability to Namibia insofar as extradition can be rendered in the absence of an agreement in relation to designated countries or on the basis of reciprocity.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

367. Namibia indicated that corruption offences are included in Namibia's agreements pursuant to section 3 of the Act (quoted below) and are covered among the offences that are extraditable in relation to designated countries by operation of section 3 of the Act. The operation is unilateral; there is no requirement of reciprocity for the other country to also designate Namibia for extradition purposes.

368. Namibia cited the following measure.

Section 3, Extradition Act 1996.

(1) For the purposes of this Act "extraditable offence" means an act, including an act of omission, committed within the jurisdiction of a country contemplated in section 4(1) which constitutes under the laws of that country an offence punishable with imprisonment for a period of 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable with imprisonment for a period of 12 months or more.

(2) In determining whether any conduct constitutes an extraditable offence, all the surrounding circumstances pertaining to such conduct shall be taken into account, and it shall not matter that-

(a) the terminology which denotes the offence is not the same as, or that the conduct constituting the offence is not placed in the same category as, or that the constituent elements of the offence differ from, a similar offence in Namibia; or

(b) the offence for which the extradition is sought pertains to taxation, customs duty, exchange control, or any other form of fiscal regulation which is not enforced in Namibia.

(b) Observations on the implementation of the article

369. Namibia's legislation is in conformity with this provision, in the case of UNCAC offences that satisfy the minimum period of imprisonment and dual criminality requirement. Extradition would be limited to the extent that not all UNCAC offences are criminalized.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

370. Extradition is subject to Namibia's laws, including the minimum period of imprisonment and grounds for refusal stated in Sections 3 and 5 of the Act. One such ground for refusal is that the conviction was obtained in the absence of the defendant. In practice, this provision has posed obstacles in extradition requests from civil law countries at the stage of assessing the request to obtain the Minister's authorization, insofar as such requests have been issued on the basis of a conviction in the requesting State that was rendered in the absence of the defendant.

371. Namibia cited the following measure.

Section 3 (1), Extradition Act 1996 (quoted above).

Section 5, Extradition Act 1996.

(1) Notwithstanding section 2 or the terms of any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, if it appears to the Minister acting under section 6(3), 10 or 16 or the magistrate concerned acting under section 11 or 12, as the case may be-

(a) that the offence for which such return was requested is an offence of a political nature: Provided that this provision shall not apply to any offence declared not to be a political offence for purposes of extradition by a multilateral international convention to which both Namibia and the requesting country concerned are parties;

(b) that the offence for which such return was requested is an offence under military law which is not also an offence under the criminal law of the requesting country;

(c) that there is substantial evidence to suggest that the requesting country is likely to prosecute or punish the person on account of his or her race, religion, nationality, or political opinion;

(d) that the person will be or may be liable to a death penalty or any other type of punishment that is not applied in Namibia if he or she is so returned, unless the requesting country guarantees that the death penalty or such other type of punishment will not be imposed or, if imposed, will not be carried out;

(e) that the offence for which such return was requested has, according to the laws of Namibia or the requesting country, prescribed through lapse of time;

(f) that the offence for which such return was requested is regarded under the laws of Namibia as having been committed in Namibia, and in respect of which-

(i) proceedings are pending in Namibia against that person;

(ii) a final judgement has been passed; or

(iii) the Prosecutor-General has decided not to institute or has terminated proceedings against that person;

(g) that such return or custody would be irreconcilable with humanitarian considerations in view of the age or health of the person;

(h) that the granting of the request for such return would be in conflict with Namibia's obligations in terms of any international convention, agreement, or treaty;

(i) that such person would be entitled to be discharged under any rule of law relating to previous acquittal or previous conviction if charged in Namibia with the offence for which his or her return was requested; or

(j) that the person has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or ad hoc court or tribunal: Provided that an international tribunal constituted under the authority of the United Nations to try persons accused of war crimes, crimes against humanity, or crimes against peace shall not be regarded as an extraordinary or ad hoc court or tribunal as contemplated by this paragraph.

(2) Notwithstanding section 2 or any extradition agreement which may be applicable, no person who is alleged to be unlawfully at large after conviction of an extraditable offence shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, if it appears to the Minister acting under section 6(3), 10 or 16 or the magistrate concerned acting under section 11 or 12, as the case may be-

(a) that the conviction was obtained in such person's absence;

(b) that it would not be in the interests of justice to return such person on the ground of that conviction; or

(c) that a period of less than six months of the sentence in question remains to be served.

(3) Notwithstanding section 2 or any extradition agreement which may be applicable, no person shall, except with the written consent of the Minister or of that person, be returned to a requesting country, or be committed or kept in custody for the purposes of such return, unless provision is made in the relevant laws of the requesting country or it has otherwise been arranged with that country that the person concerned shall not be surrendered by the requesting country to any other country seeking that person for an offence which he or she is accused to have committed in the latter country.

(4) Notwithstanding section 2 or any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in custody for the purposes of such return, unless provision is made in the relevant laws of the requesting country or it has otherwise been arranged with that country that such person shall not, unless he or she has first had an opportunity to leave the requesting country, be detained, charged with, or punished for any offence other than-

(a) the offence in respect of which such return was sought;

(b) any lesser offence proved on the facts on which such return was sought; or (c) an offence committed after such person has been so returned:

Provided that the Minister may give his or her written consent that such person may be so returned to be dealt with in respect of any offence not being an offence contemplated in paragraphs (a), (b), or (c).

(b) Observations on the implementation of the article

372. Namibia's legislation recognizes conditions and grounds for refusal in line with the provision under review. Namibia may wish to monitor the application of section 5(2)(a) of

the Extradition Act, which provides grounds for refusal in cases involving convictions obtained in absentia, given the difficulties reported in practice in this area.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

373. Namibia indicated that it has partially implemented the provision. Expedited and simplified extradition arrangements are in place under the Commonwealth (London) Scheme on Extradition.

374. However, in practice there have been no successful extraditions from Namibia due to the heavy burden of proof (beyond a reasonable doubt) required before a court can grant an order of extradition. Namibia referred to the case of Hans-Jurgen Koch (cited above). The evidentiary requirements also create delays on the part of requesting States in responding to Namibia's requests for evidence that satisfies its domestic standards.

375. Namibia indicated that amendments to the Extradition Act with regard to the burden of proof are needed, to provide that an order of extradition can be granted on the basis of a certificate from the requesting State stating that there is prima facie evidence for granting the extradition request. Namibia's Extradition Act is currently being reviewed in this regard.

376. Namibia indicated that strict timelines to be complied with by the courts and defence counsel need to be imposed. Specifically, there should be a time period during which defence counsel is limited to raising challenges for the court to hear the matter and render judgment, and for the appeal process to be finalized.

(b) Observations on the implementation of the article

377. During the country visit it was explained that amendments to the Extradition Act were being considered that would ease the evidentiary requirements for extradition while safeguarding due process rights, in line with the provision under review.

378. Consideration was also being given to the promulgation of timelines or procedures to be adhered to in order to expedite extradition matters. The reviewers welcome the adoption of the measures outlined in this context. It is recommended that Namibia continue to take steps towards the adoption of amendments to the Extradition Act that would ease evidentiary requirements while safeguarding due process rights, as well as the promulgation of timelines or procedures to expedite extradition matters.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

379. Namibia cited the following measures.

Section 11(1), Extradition Act 1996.

Section 10, Extradition Act 1996.

Section 11 (8), Extradition Act 1996.

Section 11(1), Extradition Act 1996.

Provisional warrants of arrest on grounds of urgency

(1) Notwithstanding section 7, and subject to subsection (2) of this section-

(a) any diplomatic or consular representative of a country contemplated in section 4(1); or (b) the International Police Commission (Interpol), on behalf of such a country; or

(c) in the case of a Commonwealth country contemplated in section 4(1), in addition to the ways set out in paragraphs (a) and (b) of this subsection, the government of such country or any person acting on its behalf, may in urgent circumstances apply to the Minister for the arrest of a person who is accused or was convicted of an extraditable offence in such a country, pending the communication of a request for the return of that person in accordance with the said section 7.

Section 10, Extradition Act 1996.

Authority to proceed and warrant of arrest

(1) Upon receiving a request made under section 7 the Minister shall, if he or she is satisfied that an order for the return of the person requested can lawfully be made in accordance with this Act, forward the request together with the relevant documents contemplated in sections 8 and 9 to a magistrate and issue to that magistrate an authority in writing to proceed with the matter in accordance with section 12.

(2) Upon receiving the documents and authorization referred to in subsection (1) or section 6(3), as the case may be, the magistrate shall, if he or she is satisfied that the external warrant accompanying the request is authenticated as contemplated in section 18(1), endorse that warrant, and whereupon that warrant may be executed in the manner contemplated in subsection (3) as if it were issued in the court of that magistrate under the laws of Namibia relating to criminal procedure.

(3) A warrant endorsed in terms of subsection (2) may be executed in any part of Namibia.

Section 11 (8), Extradition Act 1996.

(8) The magistrate referred to in subsection (7) (b), while awaiting an authorization under section 10(1) from the Minister to proceed with the matter in accordance with section 12, shall remand a person brought before him or her either in custody or on bail as if such person was brought before him or her for a preparatory examination or trial.

380. Namibia reported that cooperation with INTERPOL in arresting persons sought for extradition in other countries has been successful. For example, they have been able to locate

and arrest persons who have absconded from other jurisdictions whose whereabouts were unknown to local authorities

381. Namibia referred to the following cases.

Boris Bannai (sought by Polish authorities).

It is alleged by the Polish authorities seeking the extradition of Mr. Bannai that:

During the period 30 June 2003 to 28 May 2007 in Ruda Slaska, acting in execution of an intention taken up in advance, jointly and in cooperation with other persons, in order to obtain financial gain, being a member of the Supervisory Board of “Euro Grupa” joint-stock company with registered office in Ruda Slaska, he ceased executing the rights and obligations resulting from the Act of 15 September 2000 – Commercial Companies Code – and the Company Articles of Association in relation to maintaining a continuous supervision over the company operations, and moreover, in particular, through the selection of persons and business entities, manners and methods of execution and determination of time and value of transactions he managed the performance of the President of Management Board of the aforementioned joint-stock company who was obliged, based on regulations referred to hereinabove, to handle the property issues of this company, by performing certain activities.

On 16 February 2011, Public Prosecutor of the Regional Prosecutor’s Office in Gliwice applied for provisional arrest for Boris Bannai suspected of committing offences under article 286 (1) of the Penal Code of the Republic of Poland and others, justifying the application by the fact that the suspect was purposefully hiding from law enforcement authorities. The suspect did not appear when summoned by the Public Prosecutor’s Office for the purpose of conducting proceedings activities with his participation, despite being served such summons subject to international legal assistance procedure.

The Regional Court in Gliwice issued a warrant for provisional arrest on 28 April 2011 for the arrest of Mr. Boris Bannai. Mr. Bannai was arrested in Namibia in March 2012 and released subsequently on technical grounds and he returned to Israel before his extradition hearing could take place. The extradition request however remains intact and a new warrant for his arrest was issued recently.

Jacob Alexander v. The Minister of Justice and Others, Case No.: A 210/2007, 2 July 2008, which amongst others interprets Section 21 of the Extradition Act (Bail). A copy of the decision was provided to the reviewers.

(b) Observations on the implementation of the article

382. Namibia appears to have implemented the provision.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

383. Namibia indicated that in most cases, the extradition process for Namibian citizens was authorized. There has been no prosecution in lieu of extradition to date. If domestic prosecution were to proceed, the same evidentiary requirements as for serious criminal offences would apply and there would be cooperation with the other State on evidentiary matters.

384. Namibia indicated that it has partially implemented the provision and cited Section 6 of the Extradition Act 1996. This section confers on the Minister discretion to decide whether in any given case prosecution in Namibia may be appropriate; the section does not oblige prosecution in these circumstances. Once the Minister has exercised his or her discretion in favour of prosecution, the Prosecutor General determines whether a prosecution is warranted.

Section 6, Extradition Act 1996.

(1) A Namibian citizen may be prosecuted and punished in Namibia in accordance with the laws of Namibia for any extraditable offence which such Namibian citizen may have committed or is accused of having committed within the jurisdiction of a country contemplated in section 4(1), but no such prosecution shall be instituted unless-

(a) a request for the return of that person has been made in accordance with the provisions of this Act; and

(b) the Prosecutor-General has in writing authorized the institution of such prosecution.

(2) For the purpose of determining the jurisdiction in relation to proceedings under subsection (1), the conduct constituting the offence shall for all purposes connected with or consequential to the trial of such offence be deemed to have been committed within the magisterial district of Windhoek.

(3) Notwithstanding section 2(1), the Minister may in writing authorize a magistrate to proceed under sections 10 and 12 against a Namibian citizen whose return has been requested under section 7, if in the opinion of the Minister such return is warranted due to-

(a) the seriousness of the extraditable offence;
(b) the cost involved in bringing the necessary witnesses and other evidence to Namibia; or
(c) any other circumstances justifying extradition, provided that the Minister is satisfied that the order for such return can lawfully be made in accordance with this Act.

385. Review of the Extradition Act is underway and will be completed in 2015.

(b) Observations on the implementation of the article

386. Namibia can and does extradite its citizens. However, extradition of nationals may also be refused, and in these cases Namibia does not appear to have implemented the *aut dedere aut judicare* obligation, as the cited measure (Section 6) does not establish an obligation for the Prosecutor General to submit the case for prosecution. It is recommended that Namibia adopt a relevant provision in line with the paragraph under review.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

387. Namibia indicated that this provision does not apply to Namibia, as no such conditions exist under Namibia's domestic law.

(b) Observations on the implementation of the article

388. Namibia does not appear to recognize the conditional surrender of nationals.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

389. Namibia indicated that this provision does not apply to Namibia because such requests would not be refused by Namibia on the ground that the person is a national.

390. Namibia is looking at changing this position to adopt a more conservative/restrictive approach to extradition of its nationals.

(b) Observations on the implementation of the article

391. The provision has limited applicability as it appears that Namibia currently does not strictly refuse extradition of its nationals. However, the matter is subject to the Minister's discretion and not specified in the Extradition Act. Should Namibia adopt a more restrictive approach in the future, it is recommended to consider adopting measures to give effect to the paragraph under review, by stating that Namibia would consider the enforcement of a foreign sentence in cases where extradition is refused. It appears that Namibia could do so where a treaty is in place in accordance with Section 2 of the Transfer of Convicted Offenders Act 2005 (cited under UNCAC article 45 below).

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

392. Namibia cited the following measures.

Article 6, Constitution of the Republic of Namibia
Article 7, Constitution of the Republic of Namibia.
Article 8, Constitution of the Republic of Namibia.
Article 11, Constitution of the Republic of Namibia.
Article 12 (1) (a), Constitution of the Republic of Namibia.
Section 11 (6) (7), Extradition Act 1996.
Section 20, Extradition Act 1996.
Section 17 (1), Extradition Act 1996
Section 13, Extradition Act 1996.

Article 6, Constitution of the Republic of Namibia
The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

Article 7, Constitution of the Republic of Namibia.
No persons shall be deprived of personal liberty except according to procedures established by law.

Article 8, Constitution of the Republic of Namibia
(1) The dignity of all persons shall be inviolable.
(2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
(b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

Article 11, Constitution of the Republic of Namibia.
(1) No persons shall be subject to arbitrary arrest or detention.
(2) No persons who are arrested shall be detained in custody without being informed promptly in a language they understand of the grounds for such arrest.
(3) All persons who are arrested and detained in custody shall be brought before the nearest Magistrate or other judicial officer within a period of forty-eight (48) hours of their arrest or, if this is not reasonably possible, as soon as possible thereafter, and no such persons shall be detained in custody beyond such period without the authority of a Magistrate or other judicial officer.
(4) Nothing contained in Sub-Article (3) hereof shall apply to illegal immigrants held in custody under any law dealing with illegal immigration: provided that such persons shall not be deported from Namibia unless deportation is authorised by a Tribunal empowered by law to give such authority.
(5) No persons who have been arrested and held in custody as illegal immigrants shall be denied the right to consult confidentially legal practitioners of their choice, and there shall be no

interference with this right except such as is in accordance with the law and is necessary in a democratic society in the interest of national security or for public safety.

Article 12 (1) (a), Constitution of the Republic of Namibia.

(1) (a) In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.

Section 11 (6) (7), Extradition Act 1996.

(6) A warrant of arrest issued under subsection (4)- (a) shall be in the form and shall be executed in the manner as may be prescribed in respect of warrants of arrest in general by or under the laws of Namibia relating to criminal procedure; and

(b) may be executed in any part of Namibia.

(7) Any person arrested under subsection (6) shall in accordance with Article 11 of the Namibian Constitution be-

(a) informed promptly in a language that he or she understands of the grounds for such arrest; and

(b) be brought before a magistrate within 48 hours of his or her arrest or, if it is not reasonably possible, as soon as possible thereafter

Section 20, Extradition Act 1996

(1) Any person who has been arrested for the purposes of being returned to a requesting country in terms of this Act shall have the right to be legally represented.

(2) Notwithstanding the provisions of the Legal Aid Act, 1990 (Act 29 of 1990), if no legal practitioner has been instructed by the person whose return has been requested, the Director of Legal Aid referred to in that Act shall instruct a legal practitioner to represent such person, and any fees of such legal practitioner; if he or she is not employed in the Public Service, shall be met by the country requesting such return.

Section 17 (1), Extradition Act 1996

(1) A person extradited to Namibia shall not, unless such person has first had an opportunity to leave Namibia, be prosecuted or punished in Namibia for any offence other than-

(a) the offence in respect of which such person was returned;

(b) any lesser offence proved on the facts on which such person was returned; (c) an offence committed in Namibia after such person's return; or

(d) an offence not being an offence contemplated in paragraph (a) , (b) or (c) and in respect of which the country returning such person have consented to the person being tried.

Section 13, Extradition Act 1996

No person committed to prison under section 12(5) to await the Minister's decision contemplated in that section shall, except with his or her consent given before a magistrate in writing, be returned to the requesting country concerned-

(a) unless the Minister orders such return under section 16; and

(b) until the expiration of a period of 15 days from the date of the order of committal in question or until the conclusion of an appeal made by such person or on his or her behalf in terms of section 14 whichever is the later.

393. Namibia referred to the case of **Mwilima & Others v. Government of the Republic of Namibia & Others 2001 NR 307 (HC)**, **Government of the Republic of Namibia & Others v. Mwilima & all other accused in the Caprivi treason trial 2002 NR 235 (SC)**.

In late 1998 and 1999, several people fled to Botswana from the Caprivi region in Namibia. Proceedings in the extradition case began in September 2000 after the Government of Namibia sought the return of thirteen Namibians, to face charges of treason, murder, attempted murder, robbery, unlawful possession of firearms, ammunition, explosives and bombs. All of these thirteen respondents admitted to being members of the United Democratic Party (UDP) of Namibia. The Botswana High Court discharged the thirteen Namibians on two grounds:

- That the offences for which their extradition is sought are offences of a political nature and therefore they cannot be extradited under Botswana's Extradition Act which specifically forbids this.
- They would not be able to have a fair trial if they were returned to Namibia as they would not be immune from extra-judicial sanctions.

In the appeal of the extradition case of the thirteen Namibians, Judge Horn at the High Court delivered the judgment on 03 December 2003. The High Court's ruling overturns Botswana Magistrate Mathiba's September 2001 judgement in which she ruled that "The respondents will not be prejudiced at their trial or punished, detained or restricted in their personal liberty by reason of their political opinion". She further stated that the respondents would receive a fair trial due to Namibia's constitutional guarantees. Her ruling dismissed the two grounds which had been raised by the thirteen appellants and which were the basis of the decision of the High Court. The Namibian Government's appeal against the High Court ruling before the Court of Appeal of Botswana was unsuccessful (27 July 2004).

(b) Observations on the implementation of the article

394. Based on the information provided, the reviewers recommend that Namibia continue to ensure that the fair treatment guarantees enshrined in its Constitution and domestic legislation are enforced in extradition cases.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

395. Namibia cited the following measure.

Section 5 (1), Extradition Act 1996.

(1) Notwithstanding section 2 or the terms of any extradition agreement which may be applicable, no person shall be returned to a requesting country, or be committed or kept in

custody for the purposes of such return, if it appears to the Minister acting under section 6(3), 10 or 16 or the magistrate concerned acting under section 11 or 12, as the case may be-

(a) that the offence for which such return was requested is an offence of a political nature: Provided that this provision shall not apply to any offence declared not to be a political offence for purposes of extradition by a multilateral international convention to which both Namibia and the requesting country concerned are parties;

(b) that the offence for which such return was requested is an offence under military law which is not also an offence under the criminal law of the requesting country;

(c) that there is substantial evidence to suggest that the requesting country is likely to prosecute or punish the person on account of his or her race, religion, nationality, or political opinion;

(d) that the person will be or may be liable to a death penalty or any other type of punishment that is not applied in Namibia if he or she is so returned, unless the requesting country guarantees that the death penalty or such other type of punishment will not be imposed or, if imposed, will not be carried out;

(e) that the offence for which such return was requested has, according to the laws of Namibia or the requesting country, prescribed through lapse of time;

(f) that the offence for which such return was requested is regarded under the laws of Namibia as having been committed in Namibia, and in respect of which-

(i) proceedings are pending in Namibia against that person; (ii) a final judgement has been passed; or

(iii) the Prosecutor-General has decided not to institute or has terminated proceedings against that person;

(g) that such return or custody would be irreconcilable with humanitarian considerations in view of the age or health of the person;

(h) that the granting of the request for such return would be in conflict with Namibia's obligations in terms of any international convention, agreement, or treaty;

(i) that such person would be entitled to be discharged under any rule of law relating to previous acquittal or previous conviction if charged in Namibia with the offence for which his or her return was requested; or

(j) that the person has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or ad hoc court or tribunal: Provided that an international tribunal constituted under the authority of the United Nations to try persons accused of war crimes, crimes against humanity, or crimes against peace shall not be regarded as an extraordinary or ad hoc court or tribunal as contemplated by this paragraph.

396. This provision has not been applied in practice to date.

(b) Observations on the implementation of the article

397. Protections against discrimination on the grounds of gender and ethnic origin are enshrined in Article 10(2) of the Constitution. Namibia's legislation is in conformity with the provision under review.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

398. Namibia cited the following measures.

Section 3 (2), Extradition Act 1996.

(2) In determining whether any conduct constitutes an extraditable offence, all the surrounding circumstances pertaining to such conduct shall be taken into account, and it shall not matter that-

(a) the terminology which denotes the offence is not the same as, or that the conduct constituting the offence is not placed in the same category as, or that the constituent elements of the offence differ from, a similar offence in Namibia; or

(b) the offence for which the extradition is sought pertains to taxation, customs duty, exchange control, or any other form of fiscal regulation which is not enforced in Namibia.

399. This provision has not been applied in practice to date.

(b) Observations on the implementation of the article

400. Namibia's legislation is in conformity with the provision under review.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

401. Namibia cited the following measure.

Section 16 (5), Extradition Act 1996.

(5) The Minister shall notify the requesting country concerned of any final decision under this Act not to return to such country a person whose return was requested.

402. In practice, Namibia, like most other countries, consults with the requesting State party if there are concerns. Consultation with the other country would occur prior to the final decision being taken by the Minister under Section 16 (5). The Minister may request further particulars both prior to issuing the authorization to proceed with the enquiry and at the final stage of determination, The Magistrate may also seek further evidence during the enquiry. If a request does not comply with Namibia's requirements, a request is made for further clarification. Once grounds for refusal exist, such grounds will be communicated to the requesting State.

403. There are no cases recorded to date involving corruption offences because there have been no incoming extradition requests in corruption cases, whether pursuant to Namibia's treaties or by designation/proclamation.

(b) Observations on the implementation of the article

404. It is considered that Section 16 (5) of the Extradition Act has limited relevance as it does not specify a duty to consult before extradition is refused. Such consultations are held as a matter of practice. It was explained that there has been only one extradition case (not related to corruption) where Namibia has consulted with the requesting State before refusing extradition on the grounds that the offender would face the death penalty if extradited from Namibia.

405. Although the provision is followed in practice, Namibia is encouraged to develop extradition guidelines or procedures to more formally establish its practice in this area.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

406. Three extradition treaties have been signed (China, Angola, Zimbabwe). Proclamations/designations were provided to the reviewers.

407. Extradition arrangements are also facilitated through the SADC and African Union frameworks in addition to the Joint Permanent Commissions established as well as the Commonwealth (London) Scheme on Extradition.

(b) Observations on the implementation of the article

408. In addition to the referenced agreements and arrangements, Namibia could also apply the present Convention as a basis for extradition, although it has not done so in practice.

(c) Challenges, where applicable

409. Namibia has identified the following challenges and issues in fully implementing the article under review:

1. *Inter-agency co-ordination;*
2. *Inadequacy of existing normative measures (constitution, laws, regulations, etc.);*
3. *Competing priorities*
4. *Limited capacity (e.g. human/technological/institution/other);*
5. *Limited resources for implementation (e.g. human/financial/other).*

(d) Technical assistance needs

410. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Model treaties;*
2. *Summary of good practices/lessons learned;*
3. *Legal advice;*
4. *On-site assistance by a relevant expert;*
5. *Capacity-building programmes for authorities responsible for international cooperation in criminal matters.*

UNODC has provided assistance to Namibia in 2011 with regards to the proposed amendments to the Extradition and International Cooperation in Criminal Matters Act.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

411. Namibia indicated that it has partially implemented the article and cited the following measure.

Section 2, Transfer of Convicted Offenders Act 2005.

Subject to the provisions of this Act, a sentenced offender who is in –

- (a) Namibia and is a citizen or national of a foreign State may be transferred to that foreign State; or
- (b) a foreign State and is a citizen or national of Namibia may be transferred to Namibia, as provided by this Act so that he or she may serve the remainder of his or her sentence in that foreign State or Namibia, as the case may be.

412. The Act requires Namibia to enter into treaties before it can transfer any convicted offender to its territory pursuant to the Transfer of Convicted Offenders Act. No such agreements have been entered into.

413. There has been one request by a country with which no treaty was in place at the time, and Namibia is considering whether an ad hoc agreement on such transfer outside the legislative framework is possible. Kindly refer to the case of **Florin v Minister of Safety and Security & Others (A 416/2013) [2013] NAHCMD 383 (5 December 2013)**. Germany requested for the transfer of Mr. Florin to serve the remainder of his sentence in Germany.

414. The transfer of convicted offenders is an issue which is also under discussion with various States in the framework of the Joint Permanent Commissions.

(b) Observations on the implementation of the article

415. Namibia requires a treaty basis for the transfer of prisoners in accordance with its domestic legislation. It has reportedly considered the adoption of ad hoc agreements on prisoner transfer, as in the cited example.

Article 46 Mutual legal assistance

Paragraph 1

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

416. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 30, International Co-operation in Criminal Matters Act 2000.

Section 27 (1), International Co-operation in Criminal Matters Act 2000.

Section 30, International Co-operation in Criminal Matters Act 2000.

Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international cooperation in criminal matters otherwise than in the manner provided for by this Act.

Section 27 (1), International Co-operation in Criminal Matters Act 2000.

Minister may enter into agreements

(1) Subject to the provisions of Article 32(3)(e) of the Namibian Constitution, the Minister may, on such conditions as he or she may deem fit, enter into an agreement with any State (other than a State mentioned in Schedule 1) outside Namibia for the provision of mutual assistance in criminal matters, and may likewise agree to any amendment or revocation of such an agreement.

417. The International Cooperation in Criminal Matters Act (“ICCMA”), the Prevention of Organized Crime Act, the SADC Protocol on Mutual Legal Assistance in Criminal Matters and the Harare Commonwealth Scheme on Cooperation in Criminal Matters (Harare Scheme) are applicable to Namibia. All instruments and laws were provided to the reviewers.

418. Namibia’s approach to mutual legal assistance is that it will cooperate with other States as far as possible. Mutual legal assistance can be rendered pursuant to agreement, by designation/proclamation and on the basis of reciprocity. Namibia confirmed that the list of designated States contained in the International Cooperation in Criminal Matters Act of 2000 is the current list of designations. Namibia further cooperates with Commonwealth countries under the Harare Scheme, which covers all States that subscribe to the SADC Protocol.

419. There have been no incoming MLA requests in corruption-related cases, whether pursuant to Namibia’s treaties or by designation/proclamation. More generally, in matters not related to corruption, Namibia received 10 incoming MLA requests in 2014 and made 6 outgoing requests.

420. Namibia has not refused any requests for mutual legal assistance in the last 2-3 years.
421. Through informal arrangements on the basis of reciprocity, assistance has been rendered in criminal matters (not corruption-related) in the absence of a formal agreement or designation. Also in the context of SADC, informal arrangements have been made on the basis of comity and reciprocity. Through INTERPOL, Namibia renders assistance to other States. Namibia has signed three bilateral MLA treaties (China, Angola, Zimbabwe).
422. As described below under paragraph 13 of the article under review, the Permanent Secretary for the Ministry of Justice serves as the central authority for mutual legal assistance, though this has not been formally designated; such a designation could facilitate and expedite the provision of mutual legal assistance among central authorities. Mutual legal assistance cases should be accorded the requisite confidential treatment by the domestic authorities working on such matters. The Ministry of Justice coordinates the collection of information responsive to mutual legal assistance requests, though the various ministries cannot provide such information directly to entities other than law enforcement pursuant to the Financial Intelligence Act.
423. According to Schedule 1 of the Act, ICMAA applies to the following specified countries.

International Co-operation in Criminal Matters Act 2000

SCHEDULE 1

CERTAIN FOREIGN STATES IN RESPECT OF WHICH ACT APPLIES

Democratic Republic of Congo

Kingdom of Lesotho

Kingdom of Swaziland

Republic of Angola

Republic of Botswana

Republic of Malawi

Republic of Mauritius

Republic of Mozambique

Republic of Seychelles

Republic of South Africa

Republic of Zambia

Republic of Zimbabwe

United Republic of Tanzania

By amendment dated 20 September 2006 (published in in the Government Gazette on 2 October 2006), Schedule 1 was amended to include the following additional countries:

United Kingdom of Great Britain and Northern Ireland;

Isle of Man;

Cyprus;

United States of America;

Switzerland; and

Italy.

(b) Observations on the implementation of the article

424. Namibia confirmed that it can provide a wide range of mutual legal assistance pursuant to agreements, by designation or proclamation and on the basis of reciprocity as well as through regional arrangements including the Harare Scheme. Namibia has provided assistance in non-corruption related matters on the basis of informal arrangements in the absence of a treaty. It was also confirmed that the Act applies to Namibia's treaty partners, even if they are not listed on the Schedule.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

425. Namibia provided the following information.

ICCMA is interpreted to cover legal persons pursuant to the Interpretation of Laws Proclamation (1920), which provides that if a law does not define the term "person," the term is interpreted to include legal persons. Therefore, Namibia would afford the full measure of mutual legal assistance in investigations and cases where legal persons may be held liable.

(b) Observations on the implementation of the article

426. Namibia recognizes the criminal liability of legal persons. There appear to be no obstacles with respect to the provision of MLA for offences involving legal persons. There have been no case examples where Namibia has provided such assistance, in cases not related to corruption.

Article 46 Mutual legal assistance

Subparagraphs 3 (a) to (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

(a) Summary of information relevant to reviewing the implementation of the article

427. Namibia cited the following measures.

(a)

Section 2 (1), International Co-operation in Criminal Matters Act 2000.

Section 7, International Co-operation in Criminal Matters Act 2000.

Section 8, International Co-operation in Criminal Matters Act 2000.

(b)

Section 11 (1), International Co-operation in Criminal Matters Act 2000.

Section 15 (5)(a), International Co-operation in Criminal Matters Act 2000.

(c)

Where a request is premised on an existing foreign restraint or confiscation order, seizing and freezing is possible on the basis of Sections 23 and 25 of the International Co-operation in Criminal Matters Act. However, absent such order, these measures would require a domestic order, which has not to date been applied for at the request of another State. Possibilities are being explored to make provision for such measures in the absence of a foreign court order.

Section 23 (1), International Co-operation in Criminal Matters Act 2000.

Section 25, International Co-operation in Criminal Matters Act 2000.

(d)

In order to examine objects and sites that are private property or covered by private interests, an order or warrant would be needed. These measures would require a domestic order, which has not to date been applied for at the request of another State. Possibilities are being explored to make provision for such measures in the absence of a foreign court order.

(e)

Section 7, International Co-operation in Criminal Matters Act 2000.

Section 36 (1), Criminal Procedure Act 51 of 1977 (as amended).

(f)

Section 34 (4), Financial Intelligence Act (2007)

Section 34 (7), Financial Intelligence Act (2007)

Section 7, International Co-operation in Criminal Matters Act 2000.

(g)

Section 23 (1), International Co-operation in Criminal Matters Act 2000.

Section 25, International Co-operation in Criminal Matters Act 2000.

Section 7, International Co-operation in Criminal Matters Act 2000.

(h)

Section 9 (4), International Co-operation in Criminal Matters Act 2000.

Section 11 (2), International Co-operation in Criminal Matters Act 2000.

(i)

Section 30, International Co-operation in Criminal Matters Act 2000

428. The cited texts are below.

(a)

Section 2 (1), International Co-operation in Criminal Matters Act 2000.

(1) If, at any proceedings, it appears to a court or to the officer presiding at such proceedings (hereinafter in this Part referred to as the presiding officer) that the examination at such proceedings of a person who is in a foreign State is necessary in the interests of justice, and that the attendance of such person cannot be obtained without undue delay, expense or inconvenience, the court or presiding officer may, on application made to it or to him or her, issue a letter of request in which assistance from that foreign State is sought in obtaining such evidence as is stated in the letter of request for use at such proceedings.

Section 7, International Co-operation in Criminal Matters Act 2000.

Foreign requests for assistance in obtaining evidence

(1) A request by a court or tribunal of competent jurisdiction in a foreign State, or by an appropriate government body in a foreign State, for assistance in obtaining evidence in Namibia for use in that foreign State shall be submitted to the Permanent Secretary or, in a case of urgency, directly to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is.

Section 8, International Co-operation in Criminal Matters Act 2000.

Examination of witnesses

(1) When a request from a foreign State for assistance in obtaining evidence in Namibia is in terms of section 7(1) or (2)(a) received by the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is, any magistrate of that court shall, if he or she is satisfied as contemplated in section 7(3), cause the person whose evidence is required, to be subpoenaed to appear and give evidence or produce any book, document or object before him or her, and upon the appearance of such person the magistrate shall administer an oath to or accept an affirmation from him or her and take his or her evidence upon interrogatories or otherwise as requested, as if such person were a witness in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required: Provided that a person who, from lack of knowledge arising from youth, defective education or other cause, is found to be unable to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in the proceedings without taking the oath or making the affirmation: Provided further that such person shall, in lieu of the oath or affirmation, be admonished by the magistrate to speak the truth, the whole truth and nothing but the truth.

(b)

Section 11 (1), International Co-operation in Criminal Matters Act 2000.

Attendance of witnesses in foreign States

(1) When a subpoena purporting to be issued by a proper officer of a competent court of law or tribunal in any foreign State for the attendance of any person in any proceedings before that court or tribunal, is received from such officer by any magistrate within whose area of jurisdiction such person resides or is, that magistrate shall, if he or she is satisfied that the subpoena was lawfully issued, endorse it for service upon such person, whereupon it may be served as if it were a subpoena issued in the court of that magistrate in proceedings similar to those in connection with which it was issued.

Section 15 (5)(a), International Co-operation in Criminal Matters Act 2000.

(5)(a) Where the person on whom a foreign sentence has been imposed or against whom a foreign compensatory order has been made is present in Namibia, the notice contemplated in subsection (4) shall be served on such person in the prescribed manner.

(c) Where a request is premised on an existing foreign restraint or confiscation order, seizing and freezing is possible on the basis of Sections 23 and 25 of the International Co-operation in Criminal Matters Act. However, absent such order, these measures would require a domestic order, which has not to date been applied for at the request of another State. Possibilities are being explored to make provision for such measures in the absence of a foreign court order.

Section 23 (1), International Co-operation in Criminal Matters Act 2000.

(1) Where the High Court makes a restraint order, the High Court may, on application made to it, issue a letter of request in which assistance from a foreign State is sought in enforcing such order in that foreign State, if it appears to the High Court that the person against whom such order has been made holds property in that foreign State.

Section 25, International Co-operation in Criminal Matters Act 2000. Effect of registration of foreign restraint order When a foreign restraint order has been registered in terms of section 24, such order shall have the effect of a restraint order made by the High Court.

(d)

In order to examine objects and sites that are private property or covered by private interests, an order or warrant would be needed. These measures would require a domestic order, which has not to date been applied for at the request of another State. Possibilities are being explored to make provision for such measures in the absence of a foreign court order.

(e)

Section 7, International Co-operation in Criminal Matters Act 2000.

Foreign requests for assistance in obtaining evidence

(1) A request by a court or tribunal of competent jurisdiction in a foreign State, or by an appropriate government body in a foreign State, for assistance in obtaining evidence in Namibia for use in that foreign State shall be submitted to the Permanent Secretary or, in a case of urgency, directly to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is.

Section 36 (1), Criminal Procedure Act 51 of 1977 (as amended).

(1) (1) Where an article is seized in connection with which -

(a) an offence was committed or is on reasonable grounds suspected to have been committed in a country other than Namibia;

(b) there are reasonable grounds for believing that it will afford evidence as to the commission in a country other than Namibia of any offence or that it was used for the purpose of or in connection with such commission of any offence, the district magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that the offence in question is punishable in that other country by a fine of N\$1 000 or more or by imprisonment for a period of 12 months or more, order the article so seized to be delivered to a member of a police force established in that country or to any other authorized representative of that country, who may thereupon remove the article from Namibia in accordance with any applicable law or any international agreement or arrangement to which Namibia is a party.

(f)

Section 34 (4), Financial Intelligence Act (2007)

(4) The Bank may disclose any information to an institution or agency in a foreign state that has powers and duties similar to those of the Bank under this Act on such terms and conditions as are set out in an agreement, sanctioned by the Council, between the Bank and that foreign agency regarding the exchange of that information.

Section 34 (7), Financial Intelligence Act (2007)

(7) The Bank may, in writing, authorise the Prosecutor-General or his designated officer to have access to such information as the Bank may specify for the purpose of dealing with a foreign state's request to mutual assistance in criminal matters.

Section 7, International Co-operation in Criminal Matters Act 2000.

Foreign requests for assistance in obtaining evidence

(1) A request by a court or tribunal of competent jurisdiction in a foreign State, or by an appropriate government body in a foreign State, for assistance in obtaining evidence in Namibia for use in that foreign State shall be submitted to the Permanent Secretary or, in a case of urgency, directly to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is.

(2) When a request from a foreign State for assistance in obtaining evidence in Namibia is in terms of subsection (1) received-

(a) by the Permanent Secretary, the Permanent Secretary shall forward such request to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is;

(b) by such magistrate's court, the Permanent Secretary shall without delay be notified thereof in writing by the clerk of the court and be furnished with a certified copy of such request.

(3) Upon receipt by a magistrate's court of a request contemplated in subsection (1), that court shall satisfy itself-

(a) that proceedings have been instituted in a court or tribunal of competent jurisdiction in the requesting State concerned; or

(b) that-

(i) there are reasonable grounds for believing that an offence has been committed in that requesting State or that it is necessary to determine whether an offence has been so committed; and

(ii) an investigation in respect thereof is being conducted in that requesting State.

(4) For the purposes of subsection (3), a court may rely on a certificate purporting to be issued by any competent authority of the requesting State concerned, stating the facts contemplated in paragraph (a) or (b) of that subsection.

(g)

Section 23 (1), International Co-operation in Criminal Matters Act 2000.

Request to foreign States for assistance in enforcing restraint orders

(1) Where the High Court makes a restraint order, the High Court may, on application made to it, issue a letter of request in which assistance from a foreign State is sought in enforcing such order in that foreign State, if it appears to the High Court that the person against whom such order has been made holds property in that foreign State.

Section 25, International Co-operation in Criminal Matters Act 2000.

Effect of registration of foreign restraint order

When a foreign restraint order has been registered in terms of section 24, such order shall have the effect of a restraint order made by the High Court.

Section 7, International Co-operation in Criminal Matters Act 2000.

Foreign requests for assistance in obtaining evidence

(1) A request by a court or tribunal of competent jurisdiction in a foreign State, or by an appropriate government body in a foreign State, for assistance in obtaining evidence in Namibia for use in that foreign State shall be submitted to the Permanent Secretary or, in a case of urgency, directly to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is.

(2) When a request from a foreign State for assistance in obtaining evidence in Namibia is in terms of subsection (1) received-

(a) by the Permanent Secretary, the Permanent Secretary shall forward such request to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is;

(b) by such magistrate's court, the Permanent Secretary shall without delay be notified thereof in writing by the clerk of the court and be furnished with a certified copy of such request.

(3) Upon receipt by a magistrate's court of a request contemplated in subsection (1), that court shall satisfy itself-

(a) that proceedings have been instituted in a court or tribunal of competent jurisdiction in the requesting State concerned; or

(b) that-

(i) there are reasonable grounds for believing that an offence has been committed in that requesting State or that it is necessary to determine whether an offence has been so committed; and

(ii) an investigation in respect thereof is being conducted in that requesting State.

(4) For the purposes of subsection (3), a court may rely on a certificate purporting to be issued by any competent authority of the requesting State concerned, stating the facts contemplated in paragraph (a) or (b) of that subsection.

(h)

Section 9 (4), International Co-operation in Criminal Matters Act 2000.

(4) Any person required to give evidence at an examination under section 8 shall be entitled to payment of such expenses and fees as are payable to witnesses in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required.

Section 11 (2), International Co-operation in Criminal Matters Act 2000.

(2) Upon service of a subpoena under subsection (1) on any person, an amount sufficient to cover such person's reasonable expenses in connection with his or her attendance in the proceedings shall be tendered to him or her.

(i)

Section 30, International Co-operation in Criminal Matters Act 2000.

Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international cooperation in criminal matters otherwise than in the manner provided for by this Act.

(b) Observations on the implementation of the article

429. Namibia's legislation is in accordance with the provision under review.

Article 46 Mutual legal assistance

Subparagraph 3 (j)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

430. Namibia cited section 11 of the International Cooperation in Criminal Matters Act.

11. (1) The written notice of registration of a foreign confiscation order contemplated in section 20(4) of the Act must be in Form 3 set out in the Annexure, and must contain -

(a) a consecutive civil case number referred to in regulation 10(a);

(b) the date on which the foreign confiscation order was registered;

(c) in the case of the payment of money, the balance in the currency of Namibia of the amount payable under the foreign confiscation order; and

(d) in the case of the recovery of particular property, full particulars of the property specified in the foreign confiscation order in so far as such particulars are available.

(b) Observations on the implementation of the article

431. Part IV of the International Cooperation in Criminal Matters Act appears to address the provisions under review. During the country visit it was confirmed that requests for asset tracing are rare, but that a good example of cooperation in this area involved an asset tracing investigation with Zambia.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

432. Namibia indicated that it has partially implemented the provision. No formal provision is made for this type of assistance in the ICCMA. Where Namibian authorities are aware of an investigation in a foreign country and are in possession of information pertaining thereto, they would share the information with such country either in terms of regional/bilateral MOUs, treaties, or using INTERPOL channels.

433. Amendments to the ICCMA are underway and should be finalized in 2015.

(b) Observations on the implementation of the article

434. During the country visit, a case example was provided by the Ministry of Justice (**State v. Markus Kevin Thomas & Another**), where Namibia shared case-related information spontaneously as a follow up to a domestic investigation.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

435. Namibia indicated that it has partially implemented the provision.

436. In Namibia's outgoing requests, requests for confidentiality are frequently included. If Namibia receives a request for mutual legal assistance that contains a request that the information be kept confidential, Namibia will honor such request. There have been no cases to date where the content of a request has included exculpatory evidence.

437. Where States require communication to be made through diplomatic channels, confidentiality restrictions are more difficult to adhere to. Direct bilateral communication among central authorities is preferable.

438. Amendments to the ICCMA are underway.

(b) Observations on the implementation of the article

439. Namibia indicated that there is no domestic legislation on confidentiality of information received spontaneously. In practice Namibia treats all incoming requests as confidential and indicated that there were cases where confidentiality had been observed.

440. Namibia advised that it would notify the transmitting State before releasing any exculpatory information.

441. The reviewers recommended that Namibia consider clarifying its position on confidentiality of information shared spontaneously in the context of the ongoing revision of ICCMA.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

442. Namibia provided the following information. The International Co-operation in Criminal Matters Act 2000, the Criminal Procedure Act 51 of 1977 (as amended) and the Financial Intelligence Act 2012 together enable the rendering of mutual legal assistance relating to information pertaining to bank records. There is no concept in Namibian law of bank secrecy. Law enforcement (through INTERPOL) and the FIC share such information as a matter of practice.

(b) Observations on the implementation of the article

443. Bank secrecy does not appear to present any obstacles to the provision of mutual legal assistance. Namibia's FIC referred to the statistics relating to INTERPOL queries received from other countries included under article 48.

Article 46 Mutual legal assistance

Paragraph 9

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

9. (b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

(a) Summary of information relevant to reviewing the implementation of the article

444. Namibia indicated that the country does not require dual criminality in the context of mutual legal assistance. There have been no cases where Namibia refused mutual legal assistance on the ground of absence of dual criminality.

445. By not requiring dual criminality and taking into account Section 30 of the International Co-operation in Criminal Matters Act 2000, Namibia has adopted measures enabling it to provide a wide scope of assistance.

Section 30, International Co-operation in Criminal Matters Act 2000.

Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international cooperation in criminal matters otherwise than in the manner provided for by this Act.

(b) Observations on the implementation of the article

446. Namibia's law and practice are aligned with the provisions under review.

Article 46 Mutual legal assistance

Paragraphs 10 and 11

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

447. Namibia indicated that it has partially implemented the paragraphs. There have been no cases where prisoners or detained persons have been transferred for such purposes. However, in principle such transfers could be effected in the same manner as with any other person or witness. Under Namibian law, if a subpoenaed person fails to appear as required, he or she may be liable to a criminal offence.

448. The transfer of a prisoner would not interrupt the period of service of his or her sentence. No extradition proceedings would be required for the person to be transferred into or from the relevant State. In accordance with article 15 of the Southern African Development Community (SADC) Protocol on Mutual Legal Assistance In Criminal Matters, which is substantially similar to the UNCAC, the person shall be kept in custody and returned at the conclusion of the request. This would be done by Namibia as a matter of course.

SADC Protocol on Mutual Legal Assistance In Criminal Matters

Article 15: Availability of Persons In Custody to Give Evidence or to Assist In Investigation

1. Upon request, a person in custody in the Requested State shall be temporarily transferred to the Requesting State to assist investigations or to testify, provided that the person consents.

2. When the person transferred is required to be kept in custody under the law of the Requested State, the Requesting State shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.

3. When the sentence imposed expires, or where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the Requesting State pursuant to a request seeking that person's attendance in terms of Article 14.

(b) Observations on the implementation of the article

449. Namibia indicates that the transfer of prisoners for purposes of providing evidence or testimony would proceed in the same manner as the transfer of any other witness. However, the specific measures outlined in the provision under review are not addressed in the Act. While it is noted that the Convention may be directly applied by Namibia, Namibia may wish to consider clarifying its legislation in line with this provision, especially in the case of non-SADC countries, where there is no separate treaty basis.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty

in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

450. Namibia cited Section 12 of the International Co-operation in Criminal Matters Act 2000. Article 14 of the SADC Protocol on Mutual Legal Assistance In Criminal Matters also provides that such persons shall not be subject to prosecution or any deprivation of liberty for conduct preceding the transfer. Namibia would apply this principle to all witnesses sent abroad.

Section 12, International Co-operation in Criminal Matters Act 2000.
Witnesses from foreign States attending court in Namibia not to be arrested in Namibia for certain matters

12. No witness residing in a foreign State and who is required to appear in any proceedings before a court in Namibia shall, while attending that court, be liable to be arrested in Namibia on any criminal charge for any offence committed or allegedly committed in Namibia before his or her entry into Namibia for the purpose of his or her attendance in such proceedings.

SADC Protocol on Mutual Legal Assistance In Criminal Matters
Article 14: Testimony In The Requesting State

1. When the Requesting State requests the appearance of a person in that State, the Requested State shall invite the person to appear before the appropriate authority in the Requesting State. The Requested State shall promptly inform the Requesting State of the response of the person.
2. A person appearing in the Requesting State pursuant to this Article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any act or conviction which preceded his departure from the Requested State.
3. The safe conduct provided for by this Article shall cease fifteen (15) days after the Requesting State has notified the Requested State and the person concerned that his or her presence is no longer required, or when the person, having left the Requesting State, voluntarily returns. The Requesting State may, in its discretion, extend this period if it determines that there is good cause to do so.

(b) Observations on the implementation of the article

451. The provision is legislatively implemented.

Article 46 Mutual legal assistance

Paragraph 13

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of

the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

(a) Summary of information relevant to reviewing the implementation of the article

452. Namibia has partially implemented the provision. A Central Authority has been established. However, Namibia did not notify the Secretary General of the Central Authority when the ratification instrument was deposited.

453. The Permanent Secretary for the Ministry of Justice serves as the Central Authority for requests for Mutual Legal Assistance. As central authority, Namibia's Ministry of Justice communicates with other central authorities in matters related to mutual legal assistance. Namibia also still requires diplomatic channels to be followed. However, in practice direct communication and cooperation between designated Central Authorities is possible and accepted.

454. In urgent circumstances, requests for mutual legal assistance and related communications may be addressed to Namibia through INTERPOL channels. Requests are frequently received through INTERPOL.

455. Namibia indicated that notification to the Secretary General to ensure compliance with this provision is underway.

456. It was explained that MLA requests are generally acknowledged within one or two days.

(b) Observations on the implementation of the article

457. The reviewers recommend generally that Namibia may wish to consider adopting guidelines on international cooperation and publishing them on its website, in order to guide requesting States on Namibia's requirements for international cooperation. While it is noted that the Convention may be directly applied by Namibia, such guidelines could also address the content of the specific provisions under review of this article (e.g., paragraphs 15-17, 19, 24 and 26).

458. It is recommended that Namibia make the requisite notification. The Secretary-General would be grateful if Governments would send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

459. Namibia indicated that it has not implemented the provision. Requests are required to be made in writing in English, but no notification to the United Nations was made.

(b) Observations on the implementation of the article

460. Namibia would, in urgent circumstances, accept a request made by e-mail if followed up forthwith.

461. It is recommended that Namibia make the requisite notification. The Secretary-General would be grateful if Governments would send the aforementioned information to the Chief, Treaty Section, Office of Legal Affairs, Room M-13002, United Nations, 380 Madison Ave, New York, NY 10017 and copy the Secretary of the Conference of the States Parties to the United Nations Convention against Corruption, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime, Vienna International Centre, P.O. Box 500, 1400 Vienna, Austria (uncac.cop@unodc.org).

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

462. No formal text included in the ICCMA or other legislation. For outgoing requests, Namibia complies with the requirements of the domestic law of the requested country and also relies on the Convention and other international legal instruments.

463. For incoming requests, if the request relies on the Convention or another international legal instrument as a legal basis, the procedural elements of the Convention would have to be satisfied. If a request does not rely on the Convention or another international legal instrument, Namibia will assess the request on a case by case basis to determine whether sufficient information has been provided to proceed.

464. Although no notification has been made to the Secretary General yet, Namibia applies the Convention as a basis for mutual legal assistance requests, which satisfy the elements of the Convention. Mutual legal assistance requests contain the required information at a minimum as a matter of procedure. In several cases, Namibia's requests for mutual legal assistance have been supplemented with requests for further specificity by the requested State.

(b) Observations on the implementation of the article

465. Although the Convention may be directly applied, Namibia could consider adopting and publishing guidelines to give certainty to requesting countries as to its procedural requirements for MLA.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

466. No formal provision made in the ICCMA. In practice, Namibia applies the law of the requested State in executing mutual legal assistance requests. For incoming requests, Namibia applies its domestic law and, unless contrary to existing law, the procedures specified in the request.

467. There have been no examples where requests were executed in ways specified in the request other than those envisaged in the domestic law.

(b) Observations on the implementation of the article

468. Although the Convention may be directly applied, the matters spelled out in the provision under review could be specified in any guidelines to be adopted for MLA.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree

that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

469. Namibia indicated that it has not implemented the provision. Namibia does not have the technical facilities for video conferencing in court proceedings.

470. While such facilities could be set up, the domestic law does not provide for evidence to be obtained in this manner. The relevant legal provisions, in particular the Criminal Procedure Act, are being reviewed at the moment with a view to possible amendments.

(b) Observations on the implementation of the article

471. Namibia's legislation does not allow for videoconferencing. It was explained that Namibian authorities could in principle reach an agreement with another country to have its judicial authorities conduct a domestic hearing, although there has been no experience in this regard. Namibia has not implemented this optional provision.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

472. Namibia cited Section 5 of the International Cooperation in Criminal Matters Act.

Section 5, International Cooperation in Criminal Matters Act

Admissibility of evidence obtained by letter of request

5. (1) Evidence obtained by a letter of request shall be deemed to be evidence under oath if it appears from the record that the witness was in terms of the law of the requested State concerned properly warned to tell the truth.

(2) Evidence obtained by a letter of request before proceedings have been instituted shall be admissible as evidence at any subsequent proceedings, and shall form part of the record of such proceedings, if -

(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings; or

(b) the court, having regard to-

(i) the nature of the proceedings;

(ii) the nature of the evidence;

(iii) the purpose for which the evidence is tendered;

(iv) any prejudice to any party to the proceedings which the admission of such evidence might entail; and

(v) any other factor which in the opinion of the court should be taken into account, is of the opinion that such evidence should be admitted in the interests of justice.

(3) The provisions of subsection (2) shall not render admissible any evidence which would have been inadmissible had such evidence been given at the subsequent proceedings by the witness from whom it was obtained.

(4) Evidence obtained by a letter of request issued by a court or presiding officer after proceedings have been instituted shall, in so far as such evidence is not otherwise inadmissible under the law of Namibia, be admitted by that court or presiding officer as evidence at such proceedings, and the evidence so admitted shall form part of the record of such proceedings.

473. No mutual legal assistance requests (incoming or outgoing) have been postponed to date on the ground that they interfered with an ongoing investigation or proceeding.

474. Namibia does not use information obtained for any other purposes than those stated in the request without the prior consent of the other State. However, in regards to criminal proceedings ongoing in Namibia, exculpatory evidence would have to be disclosed by relevant authorities to the accused, and the requested State would be notified of this possibility in advance. Consultations with the requested State would take place in this context.

(b) Observations on the implementation of the article

475. The cited measure does not appear to fully address the limitation on use of information or evidence received for purposes other than those stated in the request. Although the Convention could be directly applied, it is recommended that Namibia adopt relevant measures to address the provision under review in the context of ongoing revisions of the ICCMA.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

476. Namibia indicated that it has partially implemented the provision. In Namibia's outgoing requests, requests for confidentiality are frequently included. If Namibia receives a request for mutual legal assistance that contains a request that the information be kept confidential, Namibia will honor such request. If such confidentiality cannot be assured, Namibia will notify the requesting State.

(b) Observations on the implementation of the article

477. The reviewers recommend that Namibia consider specifying confidentiality matters in its law or procedure, in the context of the ongoing review of its legislation.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

(a) Summary of information relevant to reviewing the implementation of the article

478. Namibia indicated that the Minister has wide discretion to grant or refuse a request, including on the grounds set forth in the article 6 of the SADC Protocol on Mutual Legal Assistance In Criminal Matters. However, these grounds are not spelled out in the ICCMA.

SADC Protocol on Mutual Legal Assistance In Criminal Matters

Article 6: Grounds for Refusal of Assistance

1. Assistance may be refused, if in the opinion of the Requested State:

- a. the request relates to a political offence or an offence of a political character;
 - b. the request relates to an offence under military law which would not be an offence under ordinary criminal law;
 - c. the execution of the request would impair its sovereignty, security, public order, public interest or prejudice the safety of any person; or
 - d. the request is not made in conformity with this Protocol.
2. Reasons shall be given for any refusal of mutual assistance.

(b) Observations on the implementation of the article

479. It was confirmed that Namibia has not refused any requests for MLA in the last 2-3 years.

480. Although the Convention may be directly applied, it is recommended that Namibia consider clarifying the grounds for refusal of MLA.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

481. Namibia referred to the previous response and indicated that Namibia is increasingly being asked to render assistance in cases involving fiscal matters. However, there has been a relative lack of experience in responding to such requests.

482. A workshop with INTERPOL and relevant parties (eg, domestic law enforcement, FIC, ACC and others) would be useful to explore the possibility of establishing standard operating and communication procedures, in particular where multiple States are involved in the request.

483. Namibia has not refused any MLA requests in the last 2-3 years.

(b) Observations on the implementation of the article

484. The same observation made under the previous provision is referred to.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

485. Namibia referred to the information under article 46, para. 21. As a matter of practice, requests are not automatically denied but attempt is made to respond to requests or seek further clarification and specification where needed.

486. Namibia has not refused any MLA requests in the last 2-3 years.

(b) Observations on the implementation of the article

487. The same observation made under the previous provision is referred to.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

488. No relevant provisions are contained in ICCMA.
489. Namibia indicated that requests received by Namibia do not frequently include deadlines, although every attempt would be made to comply with such deadlines. Namibia does not typically include a deadline in its outgoing requests, but rather asks that they be satisfied at the earliest possible date. Namibia regularly asks for status updates on its requests and also responds to such incoming update requests.
490. Namibia indicated that the customary length of time between receiving requests for mutual legal assistance and responding to them is expected not to exceed three (3) months.
491. There are often significant delays in receiving responses to Namibia's requests for mutual legal assistance. Moreover, Namibia's responses are often delayed due to inter-agency coordination problems and limited capacity to respond to such requests.

(b) Observations on the implementation of the article

492. Namibia indicated that there are domestic coordination problems and limited capacity in responding to requests for MLA. The reviewers recommend the adoption of guidelines to streamline the provision of assistance, including timeframes to be followed and procedural steps to be taken, is recommended and could be a useful measure.
493. In addition, it is recommended that Namibia engage in further capacity building on international cooperation, by investing in training, user sensitization, learning from international good practices, further enhancement of its data management system, and the development and publication on its website of guidelines on international cooperation.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

494. Namibia indicated that, unless there is a direct conflict with an ongoing investigation or proceeding, Namibia would render assistance. Proceedings or investigations can also be postponed in serious matters on a case by case basis to accommodate a request.
495. Namibia cited Sections 7 and 30 of the International Cooperation in Criminal Matters Act, which essentially deal with the discretion whether to grant assistance or not.

Section 7, International Cooperation in Criminal Matters Act

Foreign requests for assistance in obtaining evidence

7. (1) A request by a court or tribunal of a competent jurisdiction in a foreign State, or by an appropriate government body in a foreign State, for assistance in obtaining evidence in Namibia for use in that foreign State shall be submitted to the Permanent Secretary or, in a case of urgency, directly to the magistrate's area of jurisdiction the person whose evidence is required resides or is.

(2) When a request from a foreign State for assistance in obtaining evidence in Namibia is in terms of subsection (1) received--

(a) by the Permanent Secretary', the Permanent Secretary shall forward such request to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is;

(b) by such magistrate's court, the Permanent Secretary shall without delay be notified thereto in writing by the clerk of the court and be furnished with a certified copy of such request.

(3) Upon receipt by a magistrate's court of a request contemplated in subsection (1), that court shall satisfy itself-

(a) that proceedings have been instituted in a court or tribunal or competent jurisdiction in the requesting State concerned; or

(i) there are reasonable grounds for believing that an offence has been committed in that requesting State or that it is necessary to determine whether an offence has been so committed; and

(ii) all investigation in respect thereof is being conducted in that requesting State.

(4) For the purposes of subsection (3), a court may rely on a certificate purporting to be issued by any competent authority of the requesting State concerned, stating the facts contemplated in paragraph (a) or (b) of that subsection.

Section 30, International Cooperation in Criminal Matters Act

Act not to limit provision of other assistance

30. Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international co-operation in criminal matters otherwise than in the manner provided for by this Act.

496. No mutual legal assistance requests (incoming or outgoing) have been postponed to date on the ground that they interfered with an ongoing investigation or proceeding.

(b) Observations on the implementation of the article

497. It appears that Namibia could postpone assistance in these cases as a matter of discretion on a case by case basis.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

498. Namibia indicated that it has partially implemented the provision and cited the following measure.

Section 27 (1), International Co-operation in Criminal Matters Act 2000.

Subject to the provisions of Article 32(3)(e) of the Namibian Constitution, the Minister may, on such conditions as he or she may deem fit, enter into an agreement with any State (other than a State mentioned in Schedule 1) outside Namibia for the provision of mutual assistance in criminal matters, and may likewise agree to any amendment or revocation of such an agreement.

499. As a matter of course, Namibia would consult with another State before refusing a request on the ground that it interferes with an ongoing proceeding or investigation. Namibia would consider possible arrangements or proposed terms and conditions in such cases.

(b) Observations on the implementation of the article

500. While noting that the Convention may be directly applied, Namibia may wish to adopt measures providing for consultations to be had before assistance is postponed or refused.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

501. Namibia indicated that it has partially implemented the provision and cited the following measure.

Section 12, International Co-operation in Criminal Matters Act 2000.

Witnesses from foreign States attending court in Namibia not to be arrested in Namibia for certain matters

No witness residing in a foreign State and who is required to appear in any proceedings before a court in Namibia shall, while attending that court, be liable to be arrested in Namibia on any criminal charge for any offence committed or allegedly committed in Namibia before his or her entry into Namibia for the purpose of his or her attendance in such proceedings.

502. There have been no cases implementing the provision to date. As a matter of process and pursuant to Section 12 of the International Co-operation in Criminal Matters Act, Namibia would not prosecute, detain or punish a witness, expert or other person present in Namibia in respect of acts committed prior to his or her transfer. Namibia would recognize the 15-day period in UNCAC-related cases before subjecting a person present in Namibia to prosecution, detention or punishment

(b) Observations on the implementation of the article

503. Namibia's legislation addresses the safe conduct guarantees foreseen in the provision under review.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

504. Namibia indicated that it has partially implemented the provision and cited the following measures.

Section 3 (3) (a), International Co-operation in Criminal Matters Act 2000.

Section 13 (2), International Co-operation in Criminal Matters Act 2000.

Section 17 (3), International Co-operation in Criminal Matters Act 2000.

Section 19 (2), International Co-operation in Criminal Matters Act 2000.

Section 21 (3), International Co-operation in Criminal Matters Act 2000.

505. Namibia will deduct its expenses in responding to a request for mutual legal assistance, where possible.

Section 3 (3) (a), International Co-operation in Criminal Matters Act 2000.

(a) Where proceedings have been instituted, and the application for a letter of request contemplated in section 2(1) is made by the State, the court or presiding officer may, as a condition of the letter of request, order that the costs of legal representation for the accused at the examination be paid by the State.

Section 13 (2), International Co-operation in Criminal Matters Act 2000.

(2) The amount of money to be levied by such letter of request shall be sufficient to cover, in addition to the amount of the relevant fine or compensatory order, all costs and expenses incurred in connection with the issue of that letter of request and the recovery of that fine or compensation.

Section 17 (3), International Co-operation in Criminal Matters Act 2000.

(3) The Permanent Secretary shall, subject to any agreement or arrangement between the requesting State concerned and Namibia, pay over to that requesting State any amount recovered pursuant to a foreign sentence or foreign compensatory order, less all expenses incurred in connection with the execution of such sentence or order.

Section 19 (2), International Co-operation in Criminal Matters Act 2000.

(2) The amount of money to be levied by such letter of request shall be sufficient to cover, in addition to the amount of the relevant confiscation order, all costs and expenses incurred in connection with the issue of that letter of request and the execution of that confiscation order.

Section 21 (3), International Co-operation in Criminal Matters Act 2000.

(3) The Permanent Secretary shall, subject to any agreement or arrangement between the requesting State concerned and Namibia, pay over to that requesting State any amount recovered pursuant to a foreign confiscation order, less all expenses incurred in connection with the execution of such order.

506. No arrangements related to such costs have been made to date.

(b) Observations on the implementation of the article

507. Namibia's authorities clarified during the country visit that Namibia had always had covered the costs of MLA but had no clear policy on this. While noting that the Convention may be directly applied, Namibia may wish to clarify its practice on costs in its legislation or procedures.

Article 46 Mutual legal assistance

Paragraph 29

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

508. Namibia indicated that it has partially implemented the provision. As a matter of procedure, Namibia would provide publicly available government and other records to requesting States. For example, in the context of requests through INTERPOL, both corporate and property records have been provided.

509. Non-public information in the possession of Government would be provided on a case by case basis and attempts to obtain such information would be made, where possible, depending on the request. There have been no such case examples to date.

(b) Observations on the implementation of the article

510. Namibia has adequately implemented the provision.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

511. Namibia indicated that it has partially implemented the provision and cited the following measure.

Section 27 (1), International Co-operation in Criminal Matters Act 2000.

Subject to the provisions of Article 32(3)(e) of the Namibian Constitution, the Minister may, on such conditions as he or she may deem fit, enter into an agreement with any State (other than a State mentioned in Schedule 1) outside Namibia for the provision of mutual assistance in criminal matters, and may likewise agree to any amendment or revocation of such an agreement.

512. In practice, Namibia provides assistance to States Parties using the Convention and SADC Protocol as a basis, as well as on the basis of designation/reciprocity. Agreements have been signed with three countries, as noted under article 46(1).

(b) Observations on the implementation of the article

513. Namibia has not received any requests on the basis of UNCAC, but confirmed that it has made one outgoing request on the basis of the Convention, which was pending at the time of the country visit.

(c) Challenges, where applicable

514. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inter-agency co-ordination: There are often significant delays in receiving responses to Namibia's requests for mutual legal assistance. Namibia's responses are often delayed due to inter-agency coordination problems and limited capacity to respond to such requests;*
2. *Specificities in its legal system;*
3. *Limited capacity (e.g. human/technological/institution): for example, as noted under art. 46(22), a workshop with INTERPOL and relevant parties (eg, domestic law enforcement, FIC, ACC and others) would be useful to explore the possibility of establishing standard operating and communication procedures, in particular where multiple States are involved in the request;*
4. *Other issues: The International Cooperation in Criminal Matters Act is presently being reviewed to assess the possibility of introducing measures to implement subparagraphs 3 (j) and 3 (k) of article 46.*

(d) Technical assistance needs

515. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*

2. *Capacity-building programmes for authorities responsible for international cooperation in criminal matters: with regard to subparagraphs 3 (j) and 3 (k) of article 46, training on asset forfeiture and asset recovery is needed;*
3. *On-site assistance by an anti-corruption expert: Law enforcement officials are not fully acquainted with this concept and need some training on the concept.*

Some of these forms of technical assistance have been provided to Namibia to-date through UNODC. There is no specific programme, but assistance is rendered at request.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

516. Namibia indicated that it has not implemented the article. There have been no transfers to date of corruption proceedings to or from Namibia and no applicable legal provisions are in place. In some cases evidence is transferred for purposes of the proceedings, but the transfer of cases has not presented itself. No measures have been taken in this regard.

(b) Observations on the implementation of the article

517. Namibia has considered, but not adopted, measures on the transfer of criminal proceedings.

(c) Challenges, where applicable

518. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Inadequacy of existing normative measures (constitution, laws, regulations, etc.);*
2. *Specificities in its legal system;*
3. *Limited capacity (e.g. human/technological/institution/other).*

(d) Technical assistance needs

519. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *Capacity-building programmes for authorities responsible for international cooperation in criminal matters.*

None of these forms of technical assistance have been provided to Namibia to-date.

Article 48 Law enforcement cooperation

Subparagraph 1 (a)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(a) Summary of information relevant to reviewing the implementation of the article

520. Namibia cited the following measures.

Section 3, Anti Corruption Act 2003.

Section 34 (4), Financial Intelligence Act (2012)

Section 3, Anti Corruption Act 2003. The functions of the Commission are -

- (a) to receive or initiate and investigate allegations of corrupt practices;
- (b) to consider whether investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action;
- (c) to consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices;
- (d) to assemble evidence obtained in the course of its functions and to furnish - (i) to any appropriate authority contemplated in paragraph (c); or (ii) to the prosecuting authority or any other suitable authority of another country, upon a formal request, evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;
- (e) to investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body;
- (f) to take measures for the prevention of corruption in public bodies and private bodies, including measures for -
 - (i) examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;
 - (ii) advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (iii) educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences;
 - (iv) enlisting and fostering public confidence and support in combating corruption;
- (g) to disseminate information to the public about the functions of the Commission;
- (h) to do anything else that the Commission is required or authorised to do under this Act or any other law or which is necessary or expedient to do for achieving the purpose of this Act.

Section 34 (4), Financial Intelligence Act (2012)

(4) The Bank may disclose any information to an institution or agency in a foreign state that has powers and duties similar to those of the Bank under this Act on such terms and conditions as are set out in an agreement, sanctioned by the Council, between the Bank and that foreign agency regarding the exchange of that information.

521. Namibia fully participates in regional and international policing forums such as INTERPOL and the Southern African Regional Police Chiefs Commission (SARPCCO), as well as in regional forums dealing with AML/CFT issues, such as the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and the Financial Action Task Force on Money Laundering and Terrorism Financing (FATF). The Namibian police participates in the STAR INTERPOL focal points network. Namibia also cooperates through the Asset Recovery Inter-Agency Network of Southern Africa (ARINSA) and generates informal contacts through the Southern African Forum against Corruption (SAFAC). The Namibian police force (Nampol) is also part of the steering committee for the establishment of the African Police Cooperation Organization (AFRIPOL), a body supported by INTERPOL and affiliated with the African Union, aimed at coordinating police cooperation at the African level.

522. Nampol has entered into several bilateral agreements with other police forces and services, within and outside the SADC region to cooperate in the fight against crime, through the exchange of information on new emerging crime threats and crime trends. Specifically, Nampol has entered into bilateral agreements and established Permanent Joint Commissions on Defence and Security with Zambia, Angola and Botswana. In addition, Namibia and South Africa have established a Public Safety Committee to cooperate in the fields of defence and security, including the exchange of information on the activities and movement of elements involved in crime.

523. Although a formal agreement or MOU is not required for Namibia's FIC to cooperate with other FIUs (see section 48 of the Financial Intelligence Act), the FIC has signed MOUs for cooperation with all ESAAMLG member countries except two, including the following FIUs:

- South Africa
- Botswana
- Seychelles
- Malawi
- Tanzania
- Angola
- Swaziland
- Mozambique
- Mauritius
- Lesotho

524. There are direct cooperation mechanisms with Indonesian and Russian law enforcement authorities in criminal and corruption matters.

525. Communication channels are effective in practice, and the INTERPOL I24/7 database is used to communicate. There are frequent meetings through INTERPOL and SARPCCO and information exchange on specific cases and investigations.

526. Namibia referred to the following examples of cooperation (not related to corruption). Further details of these cases were made available.

In a murder case (Orina Mbunga), Kenyan officials assisted in conducting an investigation in Kenya and provided Namibia with their findings and assisted in locating key witnesses and facilitating their appearance in Namibia.

In a N\$5.7 cash in transit robbery case, a portion of the money was traced and recovered in South Africa with the help of South African police service.

In a Belgian ACC case, Belgian authorities provided information on the legal entity with which the suspect had dealings. This information was provided to the ACC investigators before responding formally to a mutual legal assistance request

527. Nampol provided the following statistics related to INTERPOL queries received from other countries:

YEAR	QUERIES RECEIVED	QUERIES PENDING	QUERIES FINALIZED	QUERIES FOR PROSECUTION
2013	205	25	180	0
2014	168	10	158	0

528. Namibia indicated that enhancing the existing INTERPOL database to give access to all law enforcement agencies, including especially border/customs and immigration control, with respect to the movement of persons and goods would be useful to improve existing cooperation mechanisms and more fully implement the provision. There is also a need to establish a domestic police database that is linked to the INTERPOL database and incorporates Namibia's Immigration department and the Namibian Ports Authority, because at present Namibian police uses the INTERPOL database domestically.

(b) Observations and good practices on the implementation of the article

529. Namibia's law enforcement authorities appear to engage in a wide range of law enforcement cooperation in particular at the regional level and through INTERPOL through a variety of frameworks, agreements and arrangements. Examples of effective cooperation were provided.

530. An example of informal contacts that led to case-specific cooperation was provided in which Namibia's Anti-Corruption Commission utilized direct contacts to obtain information in an investigation involving allegations of fraudulent passports in Zambia, as a result of which the Zambian authorities traced the suspect; the matter subsequently led to an incoming request from Zambia for cooperation in a corruption-related case. Another example involving cooperation with the prosecution in Zimbabwe in a matter related to conflicts of interest was also provided.

531. In particular, the informal cooperation by Nampol, the ACC, FIC and other law enforcement authorities at the international level were positively noted by the reviewers.

Article 48 Law enforcement cooperation

Subparagraph 1 (b)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(a) Summary of information relevant to reviewing the implementation of the article

532. Namibia cited the following measures.

Section 3, Anti Corruption Act 2003.

Section 19, International Co-operation in Criminal Matters Act.

Section 23, International Co-operation in Criminal Matters Act.

Section 21, International Co-operation in Criminal Matters Act.

Section 25, International Co-operation in Criminal Matters Act

Section 3, Anti Corruption Act 2003.

The functions of the Commission are -

(a) to receive or initiate and investigate allegations of corrupt practices;

(b) to consider whether investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action;

(c) to consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices;

(d) to assemble evidence obtained in the course of its functions and to furnish –

(i) to any appropriate authority contemplated in paragraph (c); or

(ii) to the prosecuting authority or any other suitable authority of another country, upon a formal request,

evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;

(e) to investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body;

(f) to take measures for the prevention of corruption in public bodies and private bodies, including measures for -

(i) examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;

- (ii) advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;
- (iii) educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences; the publication and distribution of brochures and pamphlets or the holding of public conferences;
- (iv) enlisting and fostering public confidence and support in combating corruption; (g) to disseminate information to the public about the functions of the Commission;
- (h) to do anything else that the Commission is required or authorised to do under this Act or any other law or which is necessary or expedient to do for achieving the purpose of this Act.

Section 19, International Co-operation in Criminal Matters Act

Request to foreign States for assistance in enforcing confiscation orders

- (1) Where a court in Namibia makes a confiscation order, the court may, on application made to it, issue a letter of request in which assistance from a foreign State is sought in enforcing such order in that foreign State, if it appears to the court that a sufficient amount of money to satisfy such order cannot be realised in Namibia and that the person against whom such order has been made holds property in that foreign State.
- (2) The amount of money to be levied by such letter of request shall be sufficient to cover, in addition to the amount of the relevant confiscation order, all costs and expenses incurred in connection with the issue of that letter of request and the execution of that confiscation order.
- (3) A letter of request issued under subsection (1) shall be sent to the Permanent Secretary by the registrar or clerk of the court, as the case may be, for transmission-
 - (a) to the court or tribunal specified in the letter of request, exercising jurisdiction in the area or place where the confiscation order is to be enforced; or
 - (b) to the appropriate government body in the requested State concerned.

Section 23, International Co-operation in Criminal Matters Act

Request to foreign States for assistance in enforcing restraint orders

- (1) Where the High Court makes a restraint order, the High Court may, on application made to it, issue a letter of request in which assistance from a foreign State is sought in enforcing such order in that foreign State, if it appears to the High Court that the person against whom such order has been made holds property in that foreign State.
- (2) A letter of request issued under subsection (1) shall be sent to the Permanent Secretary by the registrar of the High Court for transmission-
 - (a) to the court or tribunal specified in the letter of request, exercising jurisdiction in the area or place where the restraint order is to be enforced; or
 - (b) to the appropriate government body in the requested State concerned.

Section 21, International Co-operation in Criminal Matters Act

Effect of registration of foreign confiscation order, and execution

- (1) When a foreign confiscation order has been registered in terms of section 20, such order shall have the effect of a civil judgment of the court at which that order has been so registered. (2) Notwithstanding anything to the contrary in this section or in any other law contained, a foreign confiscation order registered in terms of section 20 shall not be executed before the expiration of the period within which an application contemplated in section 20(4)(b) may be made, or, if such application has been made, before the application has been finally decided. (3) The Permanent Secretary shall, subject to any agreement or arrangement

between the requesting State concerned and Namibia, pay over to that requesting State any amount recovered pursuant to a foreign confiscation order, less all expenses incurred in connection with the execution of such order.

Section 25, International Co-operation in Criminal Matters Act

Effect of registration of foreign restraint order

When a foreign restraint order has been registered in terms of section 24, such order shall have the effect of a restraint order made by the High Court.

533. Namibia indicated that systems to give effect to the provision under review have been established and are being applied in practice.

534. Namibia referred to the following case examples.

Case of Tekla Lameck and other: property used in the commission of a crime traced in South Africa

A Commissioner of the Public Service Commission of Namibia and another person conspired with an agent of a company which provided scanning equipment to the Namibian Government by receiving “commission” moneys which was paid into their accounts after allegedly assisting the company. The agent also received money without the knowledge of the agent. N\$42million was involved.

The Prosecutor General's application in terms of the Prevention of Organised Crime Act was brought to court on an ex parte basis, without any of the defendants having been notified of the case beforehand. The funds in question belonged to Teko Trading CC and were seized from this bank account and a curator was appointed to take care of it. It was subsequently released by court order. When the Prosecutor General asked the court for the assets restraint order, she stated that Lameck, Mokaxwa and Yang were to be charged with corruption, fraud and theft. The corruption charge is rooted in a claim that Lameck, as a member of the Public Service Commission, did not have the consent of the President to perform any paid work outside the duties of her official position. While holding office as a Public Service Commissioner, Lameck also received millions of dollars from a contract between the Ministry of Finance and a Chinese manufacturer of X-ray scanning equipment, Nuctech Company. Nuctech made a payment of some N\$42 million to a bank account of Teko Trading in mid-March last year, after the Finance Ministry had made a first payment of US\$12,8 million to Nuctech near the end of February 2010. Out of the money that Nuctech in turn paid to Teko Trading, Lameck received some N\$9,39 million, Mokaxwa N\$8 million, and Yang about N\$16,8 million. The money was paid to Teko Trading in terms of agency and consultancy agreements that had been concluded between Teko Trading and Nuctech. According to these agreements, Teko Trading in essence became the local agent of the Chinese company in Namibia in respect of the scanning equipment deal with the Finance Ministry. It is however alleged that Teko Trading did little discernible work to justify receiving such a generous payment from Nuctech.

When the application for the assets restraint order was made before Judge President Damaseb on 6 July 2011, the court was not informed that Lameck had written a letter to President Hifikepunye Pohamba in December 2008 to declare her outside business interests - including her involvement in Teko Trading - to the President. In terms of the Public Service Commission Act a member of the Commission may not perform any paid work outside the duties of her office without the consent of the President. Lameck provided the court with proof of the letter when her response to the assets restraint application was filed with the court later in July last year. On the facts of the case a reasonable inference could be made

that either an official in the Office of the President withheld that letter from the Anti-Corruption Commission's chief of investigations, Nelius Becker, or Becker withheld it from the court, Judge President Damaseb stated in his judgement. The letter, as well as evidence that Lameck had also provided a senior State House official with a copy of it when she was asked in June last year if she had the President's consent to do outside paid work, could point to the possibility that Lameck might not have had the necessary 'guilty mind for committing the offence of corruption through engaging in outside paid work without the President's consent, the Judge President stated.

He remarked that it could not be emphasized enough that the powers to obtain assets restraint orders that are given in the Prevention of Organised Act 'are so invasive of people's constitutionally guaranteed rights and, potentially, their dignity and ultimately freedom, that this court must exact the highest standards of propriety from those whose interventions might affect those rights.

If the letter and evidence about the contact between Lameck and the State House official had been placed before the court when the assets restraint order was first asked for, the court might well have come to a different conclusion and not have granted the interim order at all, the Judge President stated. The non-disclosure of this evidence to the court on July 6 last year was material, as it had the potential to mislead the court, and rendered the proceedings under the Prevention of Organised Crime Act unfair, he commented.

(b) Observations on the implementation of the article

535. The provision appears to be adequately implemented.

Article 48 Law enforcement cooperation

Subparagraph 1 (c)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(a) Summary of information relevant to reviewing the implementation of the article

536. There is no relevant legislation and no formal agreements exist to give effect to the provision under review. The sharing of information or evidence for analytical purposes proceeds on the basis of informal arrangements among agencies and forensic institutes for administrative purposes.

537. States that could render assistance should be identified and formal agreements should be entered into with those countries. In addition, local experts should be identified and trained, and appropriate laboratory equipment is needed.

538. States that could render assistance should be identified and formal agreements should be entered into with those countries. In addition, local experts should be identified and trained, and appropriate laboratory equipment is needed.

539. While substances and quantities are routinely sent for analysis or examination domestically in corruption cases, no such evidence has been shared internationally to date.

540. In criminal cases not pertaining to corruption, South Africa and Canada have assisted Namibia in analyzing and examining DNA evidence:

(b) Observations on the implementation of the article

541. The provision appears to be adequately implemented.

Article 48 Law enforcement cooperation

Subparagraph 1 (d)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(a) Summary of information relevant to reviewing the implementation of the article

542. Namibia indicated that cooperation with other States in these matters proceeds on specific cases. For example, Namibian passports have been forged in South Africa and were transferred to Canada, which led to cooperation with Canadian and South African authorities. In a matter involving forged Namibian birth certificates there was cooperation with Angolan and South African immigration authorities.

(b) Observations on the implementation of the article

543. The provision appears to be adequately implemented.

Article 48 Law enforcement cooperation

Subparagraph 1 (e)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(a) Summary of information relevant to reviewing the implementation of the article

544. Namibia indicated that it has posted liaison officers in South Africa, Angola and Botswana pursuant to SARPCCO resolutions. Zimbabwean police officers have been posted in Namibia to assist with strategic planning. International experts have been posted in Namibia, including an asset forfeiture advisor placed in the Prosecutor-General's office. Study tours with relevant agencies abroad, including the Kenya Anti-Corruption Commission, have been organized for staff of the ACC.

(b) Observations on the implementation of the article

545. Namibia's law enforcement authorities engage in cooperation, including through the exchange of personnel and liaison officers with other countries. For example, the ACC engages in trainings at the regional level and staff exchanges with foreign counterparts. The police also engage in the exchange of personnel through the posting and receiving of liaison officers.

Article 48 Law enforcement cooperation

Subparagraph 1 (f)

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

546. Namibia indicated that it has partially implemented the provision. Although Namibia's law enforcement authorities exchange information and coordinate measures, including through Interpol communication channels and informal contacts between ACC, FIC and foreign counterparts, the exchange of information is generally reactive. ACC awareness raising activities are targeted on the domestic level.

547. To more fully implement the provision, learning from best practices of other countries to identify corruption prone areas (eg, the public service and elected officials, as well as cybercrime) is needed, and information sharing/knowledge exchange in these areas should be promoted.

(b) Observations on the implementation of the article

548. Namibia's law enforcement authorities engage in law enforcement cooperation through a variety of networks and informal cooperation, as indicated above. The reviewers welcome indications by Namibia that it seeks to continue to strengthen law enforcement cooperation through the exchange of good practices and knowledge to identify corruption prone areas.

Article 48 Law enforcement cooperation

Paragraph 2

2. *With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

(a) Summary of information relevant to reviewing the implementation of the article

549. Namibia has cooperation arrangements within SADC under SARPCCO and is also a member of INTERPOL, in the context of which it cooperates closely with law enforcement in other countries. It participates fully in regional and international forums dealing with AML/CFT issues, such as ESAAMLG and FATF, and also through ARINSA/CARIN. There are direct cooperation mechanisms with Indonesian and Russian law enforcement authorities in criminal and corruption matters.

550. Namibia has not used the Convention as a basis for direct law enforcement cooperation, but could in principle do so because the Convention is part of the domestic law.

(b) Observations on the implementation of the article

551. It was confirmed during the country visit that Namibian authorities could use the Convention to facilitate law enforcement cooperation but there has been no experience in its application.

Article 48 Law enforcement cooperation

Paragraph 3

3. *States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

(a) Summary of information relevant to reviewing the implementation of the article

552. Namibia indicated that it has partially implemented the provision. There is no relevant legislation. When Namibia is asked to transmit bank statements, the Namibian FIC responds using electronic data through the use of modern technology and has been able to trace and identify data using such electronic means.

(b) Observations on the implementation of the article

553. Examples of available FIC channels were discussed during the country visit.

(c) Challenges, where applicable

554. Namibia has identified the following challenges and issues in fully implementing the article under review:

1. *Other: limited information sharing and coordination mechanisms with other States for the early identification of offences (UNCAC art. 48(1)(f)).*

(d) Technical assistance needs

555. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Good practices/lessons learned: Learning from best practices of other countries to identify corruption prone areas (eg, the public service and elected officials, as well as cybercrime) is needed, and information sharing/knowledge exchange in these areas should be promoted.*

None of these forms of technical assistance have been provided to Namibia to-date.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

556. Namibia indicated that joint investigative bodies have been established in criminal matters with Angola, Botswana, Zambia and South Africa, with investigations taking place in those countries and in Namibia by mutual agreement. In corruption matters, joint investigative bodies may be established by agreements entered into on a case by case basis. There have been no such agreements on corruption matters to date. An example of a joint investigation through the SARPCCO mechanism, which also involved corruption is included below.

557. The Namibian police has participated in several cross-border operations in the SADC region aimed at reducing cross-border crimes, including theft of motor vehicles, drug trafficking, stock theft, human trafficking, trafficking in illicit goods, and trafficking in small arms and light weapons, including:

- Operation “Okavango”, 27-28 June 2012, between Namibia, Zimbabwe, Botswana, South Africa and Angola. The joint operation was aimed at combating the illicit trafficking in precious minerals, firearms, drugs and stolen motor vehicles.
- Operation “USALAMA”, 16-18 July 2013, between SARPCCO and the Eastern African Police Chiefs Cooperation Organization (EARPCCO). This operation was aimed at combating the theft of motor vehicles, trafficking in drugs, small arms and light weapons, trafficking in environmental resources, terrorism and corruption.
- Operation “Wipe-Out”, 18-30 April 2014, between Namibia, Botswana, Kenya, Rwanda, Zambia, and Tanzania. This operation targeted the trafficking in illicit and counterfeit goods.

558. The Namibian police force has also conducted a large number of joint investigations with its counterparts in the region, South Africa, Angola and Zambia. These joint investigations are usually coordinated through the INTERPOL sub-regional bureau in Zimbabwe. Through

the ICCMA (Act No. 9 of 2000), the Namibian police force has the widest range of mutual legal assistance techniques available to make use of in investigating cross-border crimes. This legislation facilitates the sharing of information and the provision of evidence in criminal matters with foreign States.

(b) Observations on the implementation of the article

559. Based on the information provided, Namibia has implemented the article.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

560. Namibia indicated that it has partially implemented the article and cited the following measures.

Sections 3 and 21, Anti-Corruption Act 200.

Section 6, Police Act (Act 3 of 1999) (as amended)

Section 3, Anti-Corruption Act 2003 Functions of the Commission

3. The functions of the Commission are -

- (a) to receive or initiate and investigate allegations of corrupt practices;
- (b) to consider whether investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action;
- (c) to consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices;

- (d) to assemble evidence obtained in the course of its functions and to furnish -(i) to any appropriate authority contemplated in paragraph (c); or
 - (ii) to the prosecuting authority or any other suitable authority of another country, upon a formal request,
- evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;
- (e) to investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body;
 - (f) to take measures for the prevention of corruption in public bodies and private bodies, including measures for -
 - (i) examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;
 - (ii) advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (iii) educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences;
 - (iv) enlisting and fostering public confidence and support in combating corruption;
 - (g) to disseminate information to the public about the functions of the Commission;
 - (h) to do anything else that the Commission is required or authorised to do under this Act or any other law or which is necessary or expedient to do for achieving the purpose of this Act.

Section 21, Anti-Corruption Act 2003 Investigation by Commission

21. (1) For the performance of the functions of the Commission under this Act an authorised officer may conduct any investigation which the Commission is empowered to undertake in terms of this Act or any other law.
- (2) Upon initiating or receiving a complaint which in the opinion of the Director warrants investigation on reasonable grounds, the Director must cause the complaint to be investigated as quickly as practicable.
- (3) At any time during an investigation, the Director may designate one or more other authorised officers to assist the authorised officer conducting the investigation.
- (4) A person questioned by an authorised officer conducting an investigation must answer each question truthfully and to the best of that person's ability, but a person is not obliged to answer any question if the answer is self-incriminating.
- (5) At any time during an investigation the Director may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or article that has a bearing on that subject to appear before the Director, or any other authorised officer designated by the Director, at a specified time and place in order -
- (a) to be questioned; or
 - (b) to deliver or produce such book, document or article.
- (6) The Director or other authorised officer before whom a person appears in terms of subsection (5) may -
- (a) require that person to furnish the information under oath or on affirmation; and (b) administer an oath to, or accept an affirmation from, that person.

(7) No self-incriminating answer given or statement made by any person to the Director or other authorised officer in terms of this section is admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings -

(a) for perjury; or

(b) for an offence referred to in section 29,

and then only to the extent that the answer or statement is relevant to prove the offence charged.

Section 6, Police Act (Act 3 of 1999) (as amended) Functions of the Force

The functions of the Force shall be the preservation of the internal security of Namibia; the maintenance of law and order;

the investigation of any offence or alleged offence;

the prevention of crime; and

the protection of life and property.

561. The Namibian police force has a wide variety of investigative powers, tools and techniques that they may make use of when investigating criminal offences. These are provided for under various statutes, including the Criminal Procedure Act (as amended), Police Act (Act 19 of 1990), Anti-Corruption Act (Act 8 of 2003), Prevention of Organized Crime Act (Act 29 of 2004) (as amended), Financial Intelligence Act (Act 13 of 2012), Income Tax Act (Act 3 of 1981), International Cooperation in Criminal Matters Act (Act 9 of 2000), Extradition Act (Act 11 of 1996), and Prevention and Combating of Terrorist and Proliferation Activities Act (Act 4 of 2014). Police officers have the power to arrest, search and seize property, obtain tracking orders, request information from foreign States, preserve or forfeit criminal assets, set up road barriers or traffic cordons, and may request any person employed in or associated with an agency, office, ministry or statutory body to furnish free of charge all information that may be reasonably required for any investigation of an offence.
562. The Specialized Investigation Divisions employ many investigative techniques and can engage in undercover operations in order to detect, investigate or uncover the commission of an offence. They also make use of informants for information pertaining to the commission of offences. Proactive (as opposed to reactive) police investigations are intelligence-driven, where detectives use informers, surveillance and undercover operations to investigate syndicates or suspects in secret, after which the case docket is opened. To prevent costly investigative mistakes in serious investigations, these Divisions usually work in close liaison with the Office of the Prosecutor-General from the inception of the investigations until the conclusion of cases.
563. Controlled delivery is used as an investigative technique by the Namibian police. There have been cases using controlled delivery in criminal matters involving South Africa and international air cargo. However, there is no legal provision on controlled delivery.
564. Namibia's ACC conducts undercover operations and surveillance under sections 3 and 21 of the Anti-Corruption Act. Examples are below:

In one case, an official of the Ministry of Works was arrested by the ACC following surveillance and undercover activities for accepting a N\$10,000 kickback payment in regard to a contract given to a company.

A police officer was arrested by the ACC for receiving kickback payments for altering his statements to avoid prosecution following undercover and surveillance activities.

In a bribery case involving tax evasion and suspicion of money laundering, ACC officers employed surveillance measures that led to the arrest of the owner of a private company and an official of the Revenue Department.

Controlled delivery cases have allowed goods and funds to be transferred through Namibia while in transit, where such goods and funds have remained intact.

565. There is a lack of proper legislation and a risk of lawsuits or challenges to the legality of specialized techniques used in investigations.

566. There have been no agreements for special investigative techniques at the international level, either on a bilateral or multilateral basis, or in the context of INTERPOL or SARPPCO. Namibia should enter into formal arrangements to provide for special investigative techniques on the international level.

(b) Observations on the implementation of the article

567. Namibia's law enforcement authorities including ACC and police appear to be able to conduct a range of special investigative techniques, including undercover operations, surveillance and controlled delivery under their relevant domestic legislation, although there appears to be some operational risk in conducting such techniques. Case examples were provided. Namibia may wish to strengthen its legal regime in this area, including to ensure that evidence derived from such techniques is admissible in a court of law. It was confirmed during the country visit that technical assistance in this area could be useful to strengthen the application of enhanced special investigative techniques.

(c) Challenges, where applicable

568. Namibia has identified the following challenges and issues in fully implementing the provision under review:

1. *Specificities in its legal system;*
2. *Limited awareness of state-of-the-art special investigative techniques.*

(d) Technical assistance needs

569. Namibia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. *Summary of good practices/lessons learned;*
2. *On-site assistance by a relevant expert;*
3. *Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques.*

None of these forms of technical assistance have been provided to Namibia to-date.

Annex 1

Statistics for Anti-Corruption Cases according to ACC Annual Report: 2012 – 2013

Cases according to their current status for the year 2012 – 2013	
Cases closed (declined to investigate)	51%
Cases closed (declined to prosecute by Prosecutor General)	1%
Cases closed (unfounded after investigation)	2%
Cases closed (referred back without feedback required)	13%
Cases closed (unsubstantiated after investigation)	12%
Cases where status changed to “in court” during period under review	3%
Ongoing investigations	13%
Cases referred where feedback is pending	1%
Cases awaiting Prosecutor-General decision	4%
Cases back from PG with further instructions	1%

Statistics for Anti-Corruption cases according to ACC annual report: 2011 – 2012

Cases according to their status for the year 2011 – 2012	
Cases closed (non-jurisdictional)	47%
Cases closed (unfounded after investigation)	5%
Cases closed (referred back without feedback required)	17%
Cases closed (unsubstantiated after investigation)	11%
Ongoing investigations	12%
Cases referred where feedback is pending	1%
Cases awaiting Prosecutor-General decision	7%

Statistics for Anti-Corruption cases according to ACC annual report: 2009 – 2010

Cases according to their current status for the year 2009 – 2010	
Cases closed (non-mandate related reports)	42%
Cases closed (declined to prosecute by Prosecutor General)	2%
Cases closed (unfounded or unsubstantiated after investigation)	15%
Cases closed (acquitted in court)	1%
Cases closed (convicted)	2%
Cases where status changed to “in court” during period under review	6%
Ongoing investigations	7%
Referred to other institutions	22%
Cases awaiting Prosecutor-General decision	0%
Cases pending in court	6%

570. Namibia provided the following data from the Namibian Anti-Corruption Commission (ACC) on case outcomes, acquittals, convictions, prosecution decisions and submissions of cases for trial for the years: 2009 – 2013, as provided for in the annual reports issued by the ACC.

General Outcome:

- **Investigation (4740)**
 - **Pending ACC Director Decision (7)**
 - **Approved for Investigation/Preliminary Invest. (1)**
 - **Ongoing Investigation (190)**

- Pending PG Decision (22)
- In Court (175)
- Closed (258)
- Closed – Without Investigation (1786)
- Closed – Referred without Feedback (1174)
- Pending – Referred with Feedback (27)
- Closed – Unsubstantiated (588)
- Closed – Unfounded (437)
- Closed – Prosecution Declined (71)
- Further instructions from PG (4)

Acquittals:

No	ACC Case No	Decision	Outcome
6	2007/393	Acquitted	
15	2007/443	Acquitted	
17	2007/445	Acquitted	
21	2007/687	Acquitted	
26	2007/518	Acquitted	Not guilty + discharged
29	2008/150	Acquitted	
35	2007/228	Acquitted	
36	2006/023	Acquitted	
43	2008/214	Acquitted	
50	2007/183	Acquitted	
58	2008/257	Acquitted	Matter on appeal
68	2008/045	Acquitted	Not guilty
81	2008/864	Acquitted	
84	2008/277	Acquitted	
85	2007/821	Acquitted	
102	2008/274	Acquitted	
115	2009/128	Acquitted	
123	2008/704	Acquitted	
129	2008/278	Acquitted	
135	2009/292	Acquitted	
140	2008/501	Acquitted	
154	2009/305	Acquitted	
155	2009/307	Acquitted	
159	2008/651	Acquitted	
173	2008/919	Acquitted	
176	2007/096	Acquitted	Acquitted
177	2009/429	Acquitted	
181	2009/490	Acquitted	Not guilty
189	2010/035	Acquitted	

196	2010/040	Acquitted	
200	2010/044	Acquitted	
219	2010/209	Acquitted	
274	2011/40	Acquitted	
281	2011/383	Acquitted	

Convictions:

No	GoCase management system number	ACC Case No	Decision	Outcome
1		2006/191	Conviction	
5		2007/222	Conviction	
9		2007/431	Conviction	Guilty fraud forging + uttering 4 yrs imprisonment wholly susp. Court 2 N\$4 000 fine
11		2006/353	Conviction	
14		2007/326	Conviction	
20		2007/672	Conviction	
24		2007/398	Conviction	Fined N\$8 000 or 6 years N\$4 000 +yrs suspended
27		2007/378	Conviction	
28		2008/147	Conviction	
30		2006/193	Conviction	(Partly heard)
32		2008/050	Conviction	N\$ 9000 or 2 yrs (N\$ 4550 suspended & 1 year)
38		2008/127	Conviction	
41		2008/222	Conviction	N\$ 1500 fine or six months
47		2008/256	Conviction	
48		2008/263	Conviction	Guilty N\$20 000 or 2 years imprisonment suspect for 5 years
49		2008/272	Conviction	Guilty - fined N\$7 000/4 yrs of which N\$200 or 1yrs suspended
52		2008/264	Conviction	
53		2008/262	Conviction	
54		2008/193	Conviction	Seperation of trials
55		2008/497	Conviction	

57		2008/407	Conviction	Fined N\$4 000 or 8 months imprisonment
59		2008/255	Conviction	
62		2006/566	Conviction	Guilty N\$6 000 or 6 months half of which is suspended for 1 year
63		2008/267	Conviction	
69		2008/625	Conviction	
72		2008/677	Conviction	Fined N\$20 000 or 5 years
75		2008/260	Conviction	Fined N\$2 500.00
76		2008/294	Conviction	
79		2008/363	Conviction	
83		2008/230	Conviction	
99		2007/643	Conviction	
101		2008/266	Conviction	
105		2008/259	Conviction	
106		2008/850	Conviction	
109		2008/705	Conviction	
113		2008/269	Conviction	
114		2008/842	Conviction	N\$ 5000 or 6 months of which N\$ 2500 or 3 mths is suspended for 2 years
120		2009/261	Conviction	
122		2009/087	Conviction	
124		2008/706	Conviction	
131		2008/401	Conviction	
133		2009/089	Conviction	N\$ 300 or 1 month imprisonment
138		2009/102	Conviction	
146		2009/001	Conviction	
147		2008/431	Conviction	
151		2009/116	Conviction	Sentenced to 4 years imprisonment of which 6 months suspension
169		2009/304	Conviction	
171		2009/430	Conviction	N\$12 000 or 24 month imprisonment/4 000 CR 12 months suspended

179		2008/118	Conviction	
184		2010/029	Conviction	
187		2010/028	Conviction	
188		2010/010	Conviction	
190		2009/012	Conviction	
191		2010/083	Conviction	
193		2010/084	Conviction	
194		2010/021	Conviction	
199		2010/051	Conviction	
204		2010/030	Conviction	
209		2009/173	Conviction	Convicted on alternative charge of use of m/vehicle without owners consent
216		2010/152	Conviction	
217		2009/501	Conviction	
231		2008/289	Conviction	
232		2008/301	Conviction	
245		2010/033	Conviction	
260		2010/306	Conviction	
291		2011/380	Conviction	
292		2008/327	Conviction	N\$ 8000 or 24 months imprisonment suspended
305	ACC HQO-11-000539	2011/516	Conviction	
307	ACC HQO -12-000201	None	Conviction	
310	ACC HQO -12-000083	125/2012	Conviction	N\$ 8000 or 1 year susp for 5yrs
311	ACC HQO -11-000367	376/2011	Conviction	
332	ACC HQO 11-000374	None	Conviction	

Decline to Prosecute:

No	GoCase management system number	ACC Case No	Decision
8		2006/500	Decline to Prosecute
19		2007/478	Decline to Prosecute

56		2008/499	Decline to Prosecute
64		2008/275	Decline to Prosecute
67		2006/429	Decline to Prosecute
73		2008/258	Decline to Prosecute
77		2008/624	Decline to Prosecute
78		2008/148	Decline to Prosecute
86		2008/100	Decline to Prosecute
91		2008/271	Decline to Prosecute
94		2008/268	Decline to Prosecute (Withdrawn)
97		2008/339	Decline to Prosecute
98		2008/339	Decline to Prosecute
104		2008/254	Decline to Prosecute
108		2008/500	Decline to Prosecute
117		2008/270	Decline to Prosecute
118		2009/090	Decline to Prosecute
119		2009/068	Decline to Prosecute
145		2007/524	Decline to Prosecute
149		2008/164	Decline to Prosecute
158		2007/084	Decline to Prosecute
167		2009/282	Decline to Prosecute
192		2008/220	Decline to Prosecute

201		2010/042	Decline to Prosecute
207		2010/036	Decline to Prosecute
208		2008/298	Decline to Prosecute
210		2010/043	Decline to Prosecute
215		2009/253	Decline to Prosecute
221		2010/085	Decline to Prosecute
222		2009/252	Decline to Prosecute
223		2009/035	Decline to Prosecute
225		2010/063	Decline to Prosecute
226		2009/198	Decline to Prosecute
242		2010/011	Decline to Prosecute
247		2008/215	Decline to Prosecute
250		2009/073	Decline to Prosecute
251		2008/086	Decline to Prosecute
261	ACC HQO-07-000375	2007/340	Decline to Prosecute
273		2011/198	Decline to prosecute
279		2010/114	Decline to Prosecute
283		2011/378	Decline to Prosecute
284		2011/231	Decline to Prosecute
286		2011/377	Decline to Prosecute
287		2008/470	Decline to Prosecute

289		2011/382	Decline to Prosecute
301		2011/471	Decline to Prosecute
303		2011/381	Decline to Prosecute
308	ACC HQO-12-000063	None	Decline to Prosecute
309	ACC HQO-12-000103	None	Decline to Prosecute
315	ACC HQO 12-000347	530/2009	Decline to Prosecute
327	ACC HQO 10-000034	None	Decline to Prosecute
333	ACC HQO 12-000386	None	Decline to prosecute
339	ACC HQO 12-000097	None	Decline to Prosecute
340	ACC HQO 11-000259	None	Decline to Prosecute
343	ACC HQO 10-000193	None	Decline to Prosecute
344	ACC HQO 12-000171	221/2012	Decline to Prosecute
346	ACC HQO 11-000311	None	Decline to Prosecute
347	ACC HQO 11-000391	None	Decline to Prosecute
354	ACC HQO 12-000224	None	Decline to prosecute
357	ACC OSH 12-000489	None	Decline to prosecute
362	ACC HQO 12-000070	None	Decline to Prosecute
370	ACC HQO 12-000340	None	Decline to Prosecute
381	ACC HQO 13-000608	None	Decline to Prosecute
384	ACC ERO 13-000707	None	Decline to Prosecute
388	ACC HQO 11-000040	None	Decline to prosecute

389	ACC HQO 12-000281	None	Decline to Prosecute
398	ACC HQO 11-000317	None	Decline to Prosecute
399	ACC HQO 11-000069	None	Decline to prosecute
403	ACC HQO 12-000265	None	Decline to Prosecute

Waiting for PG decision:

No	GoCase management system number	ACC Case No	Decision
240	ACC HQO 10-000219	2010/216	Prosecutor-General
264		2010/100	Prosecutor-General
320	ACC HQO 11-000337	None	Prosecutor-General
361	ACC HQO 12-000282	None	Prosecutor-General
374	ACC HQO 11-000390	None	Prosecutor-General
375	ACC HQO 12-000085	None	Prosecutor-General
378	ACC OSH 13-000639	None	Prosecutor-General
383	ACC HQO 11-000351	None	Prosecutor-General
385	ACC HQO 12-000523	None	Prosecutor-General
387	ACC HQO 12-000522	None	Prosecutor-General
390	ACC HQO 07-000159	None	Prosecutor-General
391	ACC OSH 13-000632	None	Prosecutor-General
392	ACC HQO 11-000074	2011/277	Prosecutor-General
393	ACC HQO 08-000213	2008/211	Prosecutor-General
394	ACC HQO 08-000211	2008/207	Prosecutor-General

396	ACC HQO 10-000192	None	Prosecutor-General
400	ACC HQO 12-000139	None	Prosecutor-General
402	ACC HQO 11-000270	None	Prosecutor-General
404	ACC ERO 12-000411	None	Prosecutor-General
406	ACC HQO 10-000084	None	Prosecutor-General
408	ACC HQO 13-000740	None	Prosecutor-General
410	ACC HQO 13-000763	None	Prosecutor-General
411	ACC HQO 12-000313	None	Prosecutor-General
412	ACC HQO 13-000825	None	Prosecutor-General
413	ACC HQO 08-000788	None	Prosecutor-General
414	ACC OSH 14-000999	None	Prosecutor-General
415	ACC HQO 13-000863	None	Prosecutor-General

In Court pending Trial:

No	GoCase management system number	ACC Case No	Decision
2		2007/004	Prosecution
3		2006/524	Prosecution
4		2007/230	Prosecution
7		2006/423	Prosecution
10		2007/140	Prosecution
12		2006/550	Prosecution
13		2007/453	Prosecution
16		2007/609	Prosecution
18		2007/349(A)	Prosecution
22		2007/577	Prosecution
25		2007/126	Prosecution
40	ACC HQO 07-000069	2007/248	Prosecution
42		2008/024	Prosecution

44		2008/347	Prosecution
45		2008/213	Prosecution
46		2008/209	Prosecution
51		2008/681	Prosecution
60		2008/167	Prosecution
61		2008/273	Prosecution
65		2008/036	Prosecution
66		2006/260	Prosecution
70		2008/291	Prosecution
74		2008/496	Prosecution
80		2007/231	Prosecution
82		2008/800	Prosecution
87		2008/906	Prosecution
88		2007/197	Prosecution
89		2007/140	Prosecution
90		2007/507	Prosecution
92		2007/820	Prosecution
93		2008/498	Prosecution
100		2007/134	Prosecution
103		2008/701	Prosecution
107		2006/577	Prosecution
110		2007/349 (B)	Prosecution
111		2008/707	Prosecution
112		2008/229	Prosecution
116		2008/552	Prosecution
121		2008/253	Prosecution
126		2009/183	Prosecution
127		2008/702	Prosecution
128		2008/188	Prosecution
130		2009/129	Prosecution
132		2007/477	Prosecution
134		2009/127	Prosecution
136		2008/675	Prosecution
137		2007/391	Prosecution
139		2009/161	Prosecution
141		2009/004	Prosecution
142		2008/355	Prosecution
143		2008/691	Prosecution
144		2008/894	Prosecution
148		2009/216	Prosecution
150		2009/174	Prosecution
152		2009/053	Prosecution
153		2009/321	Prosecution

156		2008/854	Prosecution
157		2009/340	Prosecution
160		2008/265	Prosecution
161		2008/916	Prosecution
163		2008/290	Prosecution
164		2009/211	Prosecution
165		2008/717	Prosecution
166		2009/306	Prosecution
170		2009/167	Prosecution
172		2009/303	Prosecution
174		2008/728	Prosecution
175		2009/277	Prosecution
180		2008/642	Prosecution
182		2009/443	Prosecution
183		2009/224	Prosecution
185		2010/041	Prosecution
186		2010/015	Prosecution
195		2009/069	Prosecution
197		2010/086	Prosecution
198		2009/446	Prosecution
202		2009/273	Prosecution
205		2010/222	Prosecution
206		2010/034	Prosecution
211		2010/039	Prosecution
212		2008/663	Prosecution
213		2010/092	Prosecution (Conviction / partly heard)
214		2009/396	Prosecution
218		2008/202	Prosecution
220		2010/185	Prosecution
224		2009/145	Prosecution
227		2010/208	Prosecution
228		2010/253	Prosecution
229		2010/266	Prosecution
230		2009/428	Prosecution
233		2008/758	Prosecution
234		2010/058	Prosecution
235		2010/147	Prosecution
236		2008/152	Prosecution
237		2007/060	Prosecution
238		2010/164	Prosecution
239		2010/195	Prosecution
241		2010/321	Prosecution

243		2010/260	Prosecution
244		2008/860	Prosecution
246		2008/051	Prosecution
248		2010/220	Prosecution
249		2010/241	Prosecution
252		2008/431A	Prosecution
253		2010/302	Prosecution
254		2008/848	Prosecution
255		2010/318	Prosecution
256		2010/301	Prosecution
257		2009/482	Prosecution
259		2011/115	Prosecution
262		2011/88	Prosecution
263		2011/124	Prosecution
265		2008/210	Prosecution
266		2010/267	Prosecution
267		2010/324	Prosecution
268		2011/154	Prosecution
269		2008/793	Prosecution
270		2011/109	Prosecution
271		2010/325	Prosecution
272		2010/19	Prosecution
275		2011/03	Prosecution
276		2011/361	Prosecution
277		2011/199	Prosecution
278		2008/747	Prosecution
280		2011/076	Prosecution
282		2010/238	Prosecution
285		2011/452	Prosecution
288		2011/379	Prosecution
290		2011/67	Prosecution
293		2011/279	Prosecution
294		2010/308	Prosecution
295		2007/103	Prosecution
296		2011/384	Prosecution
297		2011/314	Prosecution
298		2011/216	Prosecution
299		2011/117	Prosecution
302		2012/116	Prosecution
304		2012/71	Prosecution
306		2012/149	Prosecution
312	ACC HQO 12-000087	127/2012	Prosecution

313	ACC HQO 11-000446	511/2011	Prosecution
314	ACC HQO 11-000246	250/2011	Prosecution
316	ACC HQO 11-000456	None	Prosecution
317	ACC HQO 12-000017	None	Prosecution
318	ACC HQO 12-000280	None	Prosecution
319	ACC HQO 11-000279	Windhoek CR 762/10/2011	Prosecution
321	ACC HQO 12-000140	185/2012	Prosecution
322	ACC HQO 12-000364	169/2012	Prosecution
323	ACC HQO 12-000022	28/2011	Prosecution
324	ACC HQO 12-000081	124/2012	Prosecution
325	ACC HQO 12-000187	None	Prosecution
326	ACC HQO 12-000221	None	Prosecution
328	ACC HQO 12-000481	None	Prosecution
329	ACC HQO 12-000395	None	Prosecution
330	ACC HQO 12-000202	None	Prosecution
331	ACC HQO 12-000066	None	Prosecution
334	ACC HQO 11-000527	None	Prosecution
335	ACC HQO 11-000289	293/2011	Prosecution
336	ACC HQO 09-000270	293/2009	Prosecution
337	ACC HQO 11-000153	156/2011	Prosecution
338	ACC HQO 12-000081(A)	None	Prosecution
341	ACC HQO 12-000355	None	Prosecution

342	ACC HQO 12-000138	None	Prosecution
345	ACC HQO 12-000213 & ACC HQO 12-00269	None	Prosecution
348	ACC HQO 08-000826	2008/780	Prosecution
349	ACC HQO 12-000439	None	Prosecution
350	ACC ERO 12-000502	None	Prosecution
351	ACC ERO 12-000447	None	Prosecution
352	ACC HQO 12-000277	None	Prosecution
353	ACC HQO 12-000067	None	Prosecution
355	ACC ERO 13-000597	None	Prosecution
356	ACC HQO 12-000448	None	Prosecution
358	ACC HQO 13-000585	None	Prosecution
359	ACC HQO 11-000240	None	Prosecution
360	ACC HQO 10-000072	None	Prosecution
364	ACC HQO 12-000434	None	Prosecution
365	ACC ERO 12-0000426	None	Prosecution
366	ACC HQO 12-000307	None	Prosecution
367	ACC ERO 12-000473	None	Prosecution
368	ACC HQO 12-000192	None	Prosecution
369	ACC HQO 13- 000598	None	Prosecution
371	ACC HQO 12-000461	None	Prosecution
372	ACC HQO 12-000312	None	Prosecution
373	ACC HQO 13-000713	None	Prosecution

376	ACC HQO 13-000563	None	Prosecution
377	ACC HQO 12-000416	None	Prosecution
379	ACC HQO 12-000521	None	Prosecution
382	ACC HQO 12-000531	None	Prosecution
386	ACC HQO 11-000227	None	Prosecution
395	ACC HQO 13-000695	None	Prosecution
397	ACC HQO 12-000185	None	Prosecution
401	ACC HQO 13-000738	None	Prosecution
405	ACC ERO 12-000527	None	Prosecution
409	ACC HQO 13-000933	None	Prosecution

571. Namibia provided the following additional data.

Corruption Cases Investigated by Anti-Corruption Commission or Namibian Police

Anti-Corruption / Namibia Police case number	Case summary	UNCAC article
1. ACC2008/0552	<p>Alleged corrupt solicitation of a gratification by a member of the Namibian Police Force.</p> <p>An investigation into allegations that a member of the Namibian Police Force corruptly used his position to obtain a gratification in that he solicited money from an individual in exchange for ensuring that a criminal case that had been provisionally withdrawn against the individual will not be re-opened. A sting operation was conducted during which the police officer was arrested. The investigation was finalised and a case docket compiled and forwarded to the Prosecutor-General with the recommendation that the police officer be arraigned on corruption charges. The Prosecutor-General's decision is awaited.</p>	Article 15 – Bribery of National public officials
2. ACC2008/0229	<p>Alleged corrupt use of office/position for gratification by an employee of the Rundu Town Council.</p> <p>An investigation into allegations that an employee of Rundu Town Council was corruptly using his position for personal gratification. It was alleged that he</p>	Article 15 – Bribery of National public officials Article 19 – Abuse of function

	<p>delayed the approval of building plans by the Council and then solicited moneys in exchange for the approval of such plans. The allegations were investigated and substantiated and the employee arrested. The investigation was concluded and the case docket referred to the Prosecutor-General with a recommendation that the employee be arraigned on corruption charges. On 13 March 2009 the Prosecutor-General gave instructions that the employee of the Rundu Town Council should be arraigned on three charges of:</p> <p>Contravention of section 35(1)(a) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly soliciting, accepting or agreeing to accept a gratification by an agent</p> <ul style="list-style-type: none"> o First alternative - contravention of section 38(b) the Anti-Corruption Act, 2003 — bribery of public officer o Second alternative - contravention of section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003) — corruptly using office or position for gratification. <p>The Prosecutor-General's instructions were complied with. The matter is currently pending before court.</p>	
3. ACC2008/0209	<p>Alleged corrupt use of office/position for gratification by a member of the National Police Force.</p> <p>An investigation into allegations that a member of the Namibian Police acting in concert with two civilians corruptly used his office or position as a driving examiner and traffic officer in the Namibian Police Force to obtain a gratification of N\$1,000.00 in exchange for issuing or authorizing the issuing of a driving licence to an individual without subjecting him to the examination or testing prescribed by the Road Traffic and Transport Act, 1999. The matter was investigated and substantiated. The case docket was compiled and forwarded to the Prosecutor-General with a recommendation that the police officer and two civilians be arraigned on corruption charges, alternatively on contravening the Road Traffic and Transport Act. On 4 November 2008 the Prosecutor-General gave instructions that the police officer and two civilians be arraigned on:</p> <ul style="list-style-type: none"> - Contravention of section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly using office or position for gratification <p>Alternatively</p> <ul style="list-style-type: none"> - Contravention of section 37(10) of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999) — unlawfully authorizing the issuing of a driving licence. <p>The Prosecutor-General's instructions were complied with. The matter is currently pending before court.</p>	Article 15 – Bribery of National public officials Article 19 – Abuse of function
4. ACC2008/0222	<p>Alleged corrupt use of office/position for gratification by a staff member of the National Planning Commission.</p>	Article 15 – Bribery of National public officials Article 19 – Abuse of function

	<p>An investigation into allegations that a staff member of the National Planning Commission solicited moneys in exchange for assisting a person to be shortlisted for a position at National Planning Commission and for furnishing such person with the interview questions. The allegations against the National Planning Commission's staff member were substantiated and the case docket forwarded to the Prosecutor-General with a recommendation that the staff member be arraigned on corruption charges. On 13 March 2009 the Prosecutor-General gave instructions that the staff member of the National Planning Commission should be arraigned on the following charges:</p> <ul style="list-style-type: none"> - Contravention of section 35(1)(a) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly soliciting, accepting or agreeing to accept a gratification by an agent <ul style="list-style-type: none"> o First alternative — contravention of section 38(b) the Anti-Corruption Act, 2003 — bribery of public officer o Second alternative - contravention of section 43(1) of the Anti-Corruption Act, 2003 — corruptly using office or position for gratification. <p>The Prosecutor-General's instructions were complied with. The matter is currently pending before court.</p>	
5. ACC2007/609	<p>Alleged corrupt giving of a gratification to an official of Inland Revenue</p> <p>An investigation into allegations that an amount of N\$40,000.00 was offered to an official of the Tax Audit Division of Inland Revenue, Ministry of Finance, as an inducement to manipulate the amounts that were due in terms of tax assessments that had been done in respect of two individuals and a company. During a sting operation by the ACC one individual was arrested. The investigation was thereafter finalised and the case docket forwarded to the Prosecutor-General with a recommendation that the individual be arraigned on corruption charges. On 9 May 2008 the Prosecutor-General's decided to arraign the accused on:</p> <ul style="list-style-type: none"> - Contravention of section 35(2)(a) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly giving a gratification of N\$40,000.00 to an agent as an inducement <ul style="list-style-type: none"> o Alternatively - Contravention of section 34(a) of the Anti-Corruption Act, 2003 — corruptly giving a gratification of N\$40,000.00 as an inducement. <p>The case is currently pending before court.</p>	Article 15 – Bribery of National public officials
6. ACC2007/0507	<p>Alleged corrupt use of office/position by certain employees of the Otavi Village Council</p> <p>An investigation into allegations that the Chief Executive Officer of the Otavi Village Council had</p>	Article 15 – Bribery of National public officials

	<p>misappropriated Build Together/Council Funds to the amount of N\$50,833.95 and that an employee of the Council had corruptly been awarded a tender. Certain of the allegations were substantiated and the Chief Executive Officer and employee were arrested. The investigation was concluded and a case docket compiled and forwarded to the Prosecutor-General on 4 February 2009 with a recommendation that the Chief Executive Officer and employee be arraigned on corruption charges. The Prosecutor-General's decision is awaited.</p>	
7. ACC40/2011	Corruptly giving a false document to an agent of the Tender Board of Namibia	Article 15 – Bribery of National public officials
8. ACC800/2008	Corruptly using office or position or gratification	Article 15 – Bribery of National public officials
9. CRM11315/2011	Corruptly accepting gratification by or giving gratification to an agent	Article 15 – Bribery of National public officials
10. ACC2007/0140(b)	<p>Alleged corrupt giving of a gratification to a NATIS official and a member of the Namibian Police Force Traffic Division</p> <p>An investigation into allegations that a civilian who applied for roadworthiness certificates for a truck and trailer corruptly offered a gratification in the amount of N\$1,500.00 to a Natis official for the issuing of such certificate without the truck being examined as required by law. A Namibian Police Traffic Officer was also implicated. The matter was investigated and substantiated. The case docket was forwarded to the Prosecutor-General on 4 February 2009 with a recommendation that the civilian, Natis official and police officer be arraigned on corruption charges. The Prosecutor-General's decision is awaited.</p>	Article 15 – Bribery of National public officials
11. ACC2008/0681	<p>Alleged corruption with regard to the recruitment of certain Namibian Police Force Members.</p> <p>An investigation into alleged corrupt practices with regard to the recruitment of certain Namibian Police Force Members. It was alleged, amongst others, that the new recruits did not meet the minimum requirements for enlistment, and that they were appointed merely on account of them being family members of certain high ranking Police Force Members. During the investigation the allegations were substantiated with regard to the recruitment of three members only. Two members of the Namibian Police Force were arrested after it was established that they had manipulated the recruitment process to accommodate their family members. The investigation was concluded and the case docket forwarded to the Prosecutor-General with the recommendation that both of the police officers be arraigned on corruption</p>	<p>Article 18 – Trading in influence</p> <p>Article 19 – Abuse of function</p>

	<p>charges. On 19 August 2008 the Prosecutor-General gave instructions that the accused should be arraigned on three counts of: Contravening section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003) - Corruptly using office or position for gratification. The Prosecutor-General's instructions were complied with and the matter is currently before court.</p>	
12. ACC2009/0087	<p>Alleged corrupt use of office/position by a member of the Namibian Police.</p> <p>An investigation into allegations that member of the Namibian Police Force solicited moneys or payment in kind from a motorist at the Otjihase Roadblock in order to let the motorist through at the roadblock. The motorist apparently did not have the required certificate authorizing the transportation of carcasses on the vehicle. A sting operation was conducted. The police officer was subsequently arrested and a case docket compiled and forwarded on 19 March 2009 to the Prosecutor-General with a recommendation that the police officer be arraigned on having contravened section 43 of the Anti-Corruption Act, 2003, in that he corruptly used his office or position to obtain a gratification. The Prosecutor-General's decision is awaited.</p>	Article 19 – Abuse of function
13. ACC2008/0536	<p>Alleged corrupt use of office/position by an Immigration Officer.</p> <p>An investigation into allegations that an immigration control officer at the Hosea Kutako International Airport corruptly used his office or position to obtain a gratification. It was alleged that he provided for official visitors' entry permits in three forged Swaziland passports and one Congolese expired travel document thereby indicating that the four foreigners had entered Namibia via the said airport whilst that was not the case. The allegations were investigated and substantiated.</p> <p>The immigration control officer and four foreigners were arrested and the case docket was compiled and forwarded to the Prosecutor-General with a recommendation that they all be arraigned on corruption charges. On 11 November 2008 the Prosecutor-General gave instructions that the accused should be arraigned as follows:</p> <ul style="list-style-type: none"> - 4 Counts of contravening section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly using office or position for gratification (accused 1 only) o Alternatively: 4 Counts of contravening section 56(a) of the Immigration Control Act, 1993 (Act No. 7 of 1993) — aiding or abetting a person to remain in Namibia contrary to the Immigration Control Act - Contravening section 46(c) of the Anti-Corruption 	Article 19 – Abuse of function

	<p>Act, 2003 — aiding, inducing or inciting another person to commit an offence under the Anti-Corruption Act, 2003 (accused 2, 3 and 4 only)</p> <ul style="list-style-type: none"> - Contravening section 29(1) of the Anti-Corruption Act, 2003 — providing false information to an authorized officer (accused 2, 3 and 4 only) <ul style="list-style-type: none"> o Alternatively - contravening section 54(e) of the Immigration Control Act, 1993 — furnishing an immigration officer with false information (accused 2, 3 and 4 only) - Contravening section 56(e) of the Immigration Control Act, 1993 - using or attempting to use a certificate or document not issued by a lawful authority for the purposes of remaining in Namibia (accused 2, 3 and 4 only) <ul style="list-style-type: none"> o Alternatively - forgery and uttering (accused 2, 3 and 4 only) - Contravening section 29(5) of the Immigration Control Act, 1993 — remaining in Namibia after the expiration of the visitor's entry permit (accused 3 and 4 only) - Contravening section 24(b)(iffi of the Immigration Control Act, 1993 — entering or residing in Namibia without a visitor's entry permit (accused 2 only) <ul style="list-style-type: none"> o Alternatively- contravening section 29(5) of the Immigration Control Act, 1993 — remaining in Namibia after the expiration of the visitor's entry permit. <p>The Prosecutor-General's instructions were complied with and the matter is currently pending before court.</p>	
14. ACC2008/0496	<p>Alleged corrupt use of office/position by an employee of the Directorate of Elections.</p> <p>An investigation into allegations that a staff member of the Directorate of Elections was corruptly using a government vehicle to transport his child to school. During the investigation the staff member and his wife offered and paid a bribe to ACC officials. They were subsequently arrested. The investigation was concluded and the case docket referred to the Prosecutor-General with a recommendation that the accused be arraigned on corruption charges. On 27 November 2008 the Prosecutor-General gave instructions that the accused should be arraigned as follows:</p> <ul style="list-style-type: none"> - Count 1 (with regard to the husband only) — Contravention of section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly using office or position for gratification <ul style="list-style-type: none"> o Alternatively— contravention of section 83(2) of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999) - using a vehicle without the owner's consent - Count 2 (with regard to the husband and wife) — 	Article 19 – Abuse of function

	<p>Contravention of section 35(2)(a) of the Anti-Corruption Act, 2003</p> <ul style="list-style-type: none"> - corruptly giving a gratification to an agent as an inducement o Alternatively — contravention of section 34(a) of the Anti-Corruption Act, 2003 — corruptly giving gratification as an inducement. <p>The Prosecutor-General's instructions were complied with and the matter is currently pending before court.</p>	
15. ACC2008/0363	<p>Alleged corrupt use of office/position by a staff member of Ministry of Works and Transport.</p> <p>An investigation into allegations that a staff member of the Ministry of Works and Transport corruptly during a weekend transported government property (scaffolding) with a government vehicle to a scrap dealer to sell to such scrap dealer. The allegations were investigated and substantiated. The investigation was concluded and the case docket referred to the Prosecutor-General with a recommendation that employee be arraigned on corruption charges. On 28 November 2008 the Prosecutor-General gave instructions that the staff member should be arraigned as follows:</p> <ul style="list-style-type: none"> - Theft of motor vehicle o First alternative — Contravention of section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly using office or position for gratification o Second alternative — Contravention of section 83(2) of the Road Traffic and Transport Act, 1999 (Act No. 22 of 1999) — driving a motor vehicle without the owner's consent or person lawfully in charge thereof - Theft of scaffolding. <p>The Prosecutor-General's instructions were complied with. The matter is currently pending before court.</p>	Article 19 – Abuse of function
16. ACC2008/0291	<p>Alleged corrupt use of office/position by staff members of the Ministry of Education.</p> <p>An investigation into allegations that two officials in the Creditors Division of the Ministry of Education, acting in concert with persons representing a particular service provider responsible for sewerage and refuse removal, corruptly used their office or positions in the said division of the Ministry of Education to obtain a gratification for their own benefit and/or that of the service provider. It was alleged that amounts on invoices submitted by the service provider were altered and that payment was rendered by the Ministry on the changed invoices. The matter was investigated and the allegations substantiated.</p> <p>The State suffered a loss of approximately N\$519,908.60. The case docket was forwarded to the Prosecutor-General on 3 November 2008 with a recommendation that the two officials of the Ministry of Education and three individuals acting for the</p>	Article 19 – Abuse of function

	<p>service provider be arraigned on corruption charges. The Prosecutor-General's decision is awaited.</p>	
17. ACC2008/0050	<p>Alleged corrupt use of office or position by an employee of the Ministry of Agriculture, Water and Forestry</p> <p>An investigation into allegations that a works inspector at the Ministry of Agriculture, Water and Forestry had moved a trailer belonging to the Ministry from the Ministry's premises to his private residence and that he had removed certain parts of the trailer and placed the same on his private vehicle. The matter was investigated and substantiated. A case docket was compiled and forwarded to the Prosecutor-General with a recommendation that the official be arraigned on corruption charges. On 9 May 2008 the Prosecutor-General gave instructions that the official should be arraigned on:</p> <p>Contravention of section 43(1) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly using office or position for a gratification o Alternatively - Theft</p> <p>The instructions were complied with and the matter is currently pending before court.</p>	Article 19 – Abuse of function
18. ACC2008/0206	<p>Alleged corrupt use of office/position by a member of the Namibian Police Force.</p> <p>An investigation into allegations that a member of the Namibian Police Force attached to the Windhoek Magistrates Court received moneys in exchange for aiding a prisoner to escape from lawful custody. The allegations were substantiated and the case docket compiled and forwarded to the Prosecutor-General with a recommendation that the staff member be arraigned on corruption charges. On 19 June 2008 the Prosecutor-General gave instructions that the police officer should be arraigned on the following charges:</p> <p>- Contravention of section 35(1)(a) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003) — corruptly accepting a gratification by an agent o Alternatively- Contravention of section 43(1) of the Anti-Corruption Act, 2003 — corruptly using office or position for gratification.</p> <p>The Prosecutor-General's instructions were complied with. The matter is currently before court.</p>	Article 19 – Abuse of function
19. ACC2007/0248	<p>Alleged corrupt use of office/position at the Roads Contractor Company (RCC)</p> <p>An investigation into allegations that three officials at the Roads Authority Company corruptly used their positions to obtain a gratification for their own benefit and that of others in respect of the issuing of learners' licences, driving licences and certificates of roadworthiness. It was furthermore alleged that two</p>	Article 19 – Abuse of function

	<p>private individuals conspired with them to commit these corrupt practices. The allegations were substantiated and the case docket forwarded to the Prosecutor-General during February 2009 with a recommendation that the three officials and the two private individuals be arraigned on corruption charges. The Prosecutor-General's decision is awaited.</p> <p>Specifically, the investigation concerned allegations that a former CEO of the Roads Contractor Company (RCC) corruptly used his office/position to obtain a gratification for a company and certain individuals. The amount involved was estimated at N\$5,065,071.00. The matter was investigated and a case docket compiled and forwarded to the Prosecutor-General on 10 June 2008 with a recommendation that the CEO and other individuals be charged with various offences ranging from corrupt practices in terms of the Anti-Corruption Act, 2003 to the common law crime of fraud. The Prosecutor-General's decision is awaited.</p>	
20. A2056/06	Corrupt use of office/position for gratification	Article 19 – Abuse of function
21. CC14/2008	Public officers corruptly using their respective positions to effect payment from the State Revenue Fund for a private debt	Article 19 – Abuse of function
22. ACC HQ013-000738	Corrupt use of office/position for gratification. Corrupt acquisition of private interest by a public officer.	Article 19 – Abuse of function
23. ACC2008/0677	<p>Alleged corrupt offering of a gratification to an employee of the Polytechnic of Namibia.</p> <p>An investigation into allegations that the owner of a computer company offered money to an employee of the Polytechnic of Namibia in exchange for using his influence to get a tender awarded to the said company. A sting operation was conducted. The owner of the company was thereupon arrested. The investigation docket was thereafter referred to the Prosecutor-General with a recommendation that corruption charges be formulated as the accused had indicated that he would like to plead guilty. On 10 November 2008 the Prosecutor-General instructed that the accused should be arraigned on: Contravening section 35(2)(a) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly giving gratification to an agent as an inducement</p> <ul style="list-style-type: none"> o First alternative —Contravening section 34(a) of the Anti-Corruption Act, 2003 — corruptly giving gratification as an inducement o Second alternative — Contravening section 38(d) of the Anti-Corruption Act, 2003 — bribery of Public Officer <p>The Prosecutor-General's instructions were complied with and the accused was arraigned. He pleaded guilty on the main charge and was convicted and sentenced</p>	Article 21 – Bribery in the Private Sector

	to N\$20,000.00 or five years imprisonment. The money confiscated was also declared forfeit to the State.	
24. ACC2008/0048	Alleged corrupt use of office/position at the Roads Authority Company	Article 21 – Bribery in the Private Sector
25. ACC2007/0518	<p>Alleged corrupt solicitation of a gratification by an employee of the Weatherly Mine</p> <p>An investigation into allegations that an employee of Weatherly Mine at Kombat solicited moneys in exchange for arranging employment at the mine. The allegations were investigated and substantiated. Upon conclusion of the investigation the case docket was forwarded to the Prosecutor-General with a recommendation that the employee be arraigned on corruption charges. On 1 April 2008 the Prosecutor-General gave instructions that the employee should be arraigned on two counts of :</p> <ul style="list-style-type: none"> - Contravening section 35(1)(a) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— corruptly soliciting, accepting or agreeing to accept a gratification by an agent <ul style="list-style-type: none"> o First alternative — contravening section 38(b) the Anti-Corruption Act, 2003 — bribery of public officer o Second alternative — contravening section 43(1) of the Anti-Corruption Act, 2003 — corruptly using office or position for gratification. <p>The instructions were complied with and the matter is currently pending before court.</p>	Article 21 – Bribery in the Private Sector
26. ACC2007/0140(a)	<p>Alleged inducement/incitement of a private individual to commit an offence</p> <p>An investigation into allegations that a private individual abetted, induced and incited another individual to offer a gratification of N\$250,000.00 to a middleman to facilitate the corrupt issuing of a work permit by the Ministry of Home Affairs and Immigration. The matter was investigated and substantiated and a case docket was compiled and forwarded to the Prosecutor-General with a recommendation that the suspects should be arraigned on corruption charges. On 31 January 2008 the Prosecutor-General instructed that the two suspects should be arraigned on:</p> <ul style="list-style-type: none"> - Contravening section 46(c) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— abets, induces or incites another person to commit the offence of corruptly giving a gratification in contravention of the Anti-Corruption Act. <p>The instructions were complied with and the matter is currently pending before court.</p>	Article 21 – Bribery in the Private Sector
27. ACC2007/0126	Alleged corrupt acceptance/solicitation of gratification by former editor-in-chief of the Informante Newspaper	Article 21 – Bribery in the Private Sector

	<p>An investigation into allegations that the former editor-in-chief of the Informants Newspaper owned by Trustco Media (Pty) Ltd had accepted/solicited a gratification to the approximate amount of N\$248,500.00 whilst negotiating the purchase price of printing paper and a printing press on behalf of his employer. The matter was investigated and a case docket compiled and forwarded to the Prosecutor-General on 18 August 2008 with a recommendation that the former editor-in-chief be charged with having contravened section 35 of the Anti-Corruption Act, 2003. The Prosecutor-General's decision is awaited.</p>	
28. ACC2008/0167	<p>Alleged corrupt practice by an employee of Namib Contract Haulage (Pty) Ltd (NHC).</p> <p>An investigation into allegations that a sales clerk at Namib Contract Haulage (Pty) Ltd (NCH) was corruptly using her position at the company to benefit herself. It was alleged that she pocketed moneys that were given to her for safekeeping by the drivers of NCH in respect of the transport of passengers and goods on NCH vehicles. The allegations were substantiated and the case docket compiled and forwarded to the Prosecutor-General. On 18 February 2009 the Prosecutor-General instructed that the NCH sales clerk should be arraigned on four counts of theft. The matter is currently pending before court.</p>	Article 22 – Embezzlement in the Private Sector
29. ACC2008/0024	<p>Alleged corrupt posing as authorized ACC officers by private individuals</p> <p>An investigation into allegations that two individuals falsely pretended to be authorized officers of the Anti-Corruption Commission mandated to act under the authority of the Commission. A sting operation was conducted and the two individuals were arrested. The investigation was concluded and a case docket forwarded to the Prosecutor-General with the recommendation that the two individuals be charged with having committed an offence in relation to the functions of the Commission — falsely pretending to be authorized officers or that they have the powers of such officers or that they are acting under an authorization of the Commission issued under the Anti-Corruption Act. On 19 June 2008 the Prosecutor-General gave instructions that the two accused should be arraigned on the following charge: - Contravention of section 29(1)(g) of the Anti-Corruption Act, 2003 (Act No. 8 of 2003)— falsely pretending to be authorized officers. The Prosecutor-General's instructions were complied with. The matter is currently pending before court.</p>	Article 25 – Obstruction of Justice

Annex 2

Summary of civil forfeiture cases for the period 2011-2015

Case Number	Assets	Status	Money to Fund (N\$)	Estimated Value of Assets (N\$)	Procedure
poca1/2011	Bank account	Finalised forfeiture	561938.98		chpt6
	Nissan Skyline				
	Golf Gti				
poca2/2011	Money	Finalised forfeiture	63580		chpt6
poca3/2011	Bank account	Finalised forfeiture	385980.25		chpt6
poca4/2011	US\$5670	Finalised forfeiture	410811.28		chpt6
	N\$2000				
	R 1 400				
poca5/2011	Money	withdrawn			chpt6
	Bank account				
	Toyota Yaris	see POCA8/12			
	Hyundai				
poca6/2011	BMW	Withdrawn			chpt6
		see POCA6/2012			
poca7/2011	Bank account				
	Toyota Bakkie				
poca8/2011	Toyota Corolla	Withdrawn see			chpt6
	Isuzu Bakkie	POCA6/13			
	Volkswagen Golf				
	Toyota Corolla				
poca9/2011	Bank account	Finalised forfeiture	3960701.2		chpt6
	Bank account		14008		
poca10/2011	Bank account	Withdrawn see			Chpt 6
	BMW	POCA3/12			
	Toyota Hilux				

	Uno Fiat				
poca11/2011	Money	finalised forfeiture	47864.5		Chpt6
	Golf Gti	pending payment			
poca1/2012	Money	finalised forfeiture	1600	20000	Chpt6
	Nissan Micra			10000	
	Golf VW				
	Tata Inidica				
poca2/2012	Money	finalised forfeiture	24949.86		
poca3/2012	Bank account	finalised forfeiture		7000	
	Uno Fiat			70000	
	Toyota Hilux			50000	
	BMW			1500000	
	Erf No0014 (house)				
poca4/2012	Bank account	pending judgement on appeal			
	Toyota Bakkie				
	BMW				
poca6/2012	BMW	pending judgement on appeal			
poca7/2012	VW Golf 4	finalised forfeiture	45829		Chpt6
	jewellery				
poca8/2012	Money	finalised forfeiture	109791.85	40000	Chpt6
	Toyota Yaris			20000	
	Bank account				
	Hyundai				
poca9/2012	Bank account	finalised forfeiture			
	Bank account				
poca10/2012	Bank account	pending judgement on forfeiture			Chpt6
	Bank account				
	Bank account				
	Bank account				

	Volkswagen Golf				
poca11/2012	Bank account	Finalised forfeiture	691425.63		Chpt6
	Money				
	Toyota Corolla				
	Toyota Corolla				
	Toyota Corolla				
	Toyota Corolla				
	Toyota Corolla				
	Ford Ranger				
	Ford Ranger				
poca1/2013	Bank account	Finalised forfeiture			Chpt6
poca2/2013	Money	pending appeal			
	Toyota				
poca3/2013	Money	pending appeal			
	Toyota				
poca4/2013	Money	Finalised forfeiture	2650396.5		Chpt6
poca5/2013	Bank account	Finalised forfeiture	372171.61	250000	Chpt6
	Land Rover				
poca6/2013	Toyota Corolla	Finalised forfeiture		40000	
	Toyota Corolla			30000	
	Isuzu Bakkie			80000	
	Volkswagen Golf			60000	
poca7/2013	Money	Finalised realisations	80697.73		Chpt 5
	Isuzu Bakkie				
A32/13	BMW Z3	Forfeiture granted 30 days gazette period			Chpt 6
	Golf 4				
poca1/14	Bank account	Forfeiture pending			Chpt6

poca2/14	Bank account	finalised forfeiture pending payments			
	Bank account		7371.33		
	Mercedes Benz		26507.7		
	Toyota Conquest		37660		
poca3/14	Bank account	pending forfeiture			Chpt6
	Toyota Corolla				
poca4/14	Money	Finalised forfeiture	9573		Chpt6
poca5/14	Nissan Bakkie	pending forfeiture			Chpt6
poca6/14	Bank account	forfeiture granted	746863.61		Chpt6
	Bank account				
poca7/14	N\$371615.93	Realisation finalised pending sale for victim compensation			Chpt5
poca8/14	Bank account	pending preservation			Chpt6
pcoa9/2014	N\$1402957.85	finalised realisation	1402957.9		Chpt 5
poca1/2015 whk	positive balances				Chpt 6
poca1/2015 Oshakati					Chpt 6
poca2/2015 whk	Instrumentality POLO	preservation pending			Chpt 6

poca2/2015 Oshakati	bank account	preservation confirmation pending			Chpt 6
	cash seized				
R/C 1420/2014	99800	confiscation order granted realisation pending			Chpt 5
Lud158/2014	17000	confiscation order granted realisation pending			Chpt 5
Totals			11652680	2177000	
Total finalised final orders				16078539	