

Overall Score:

68 - Weak

Legal Framework Score:

81 - Strong

Actual Implementation Score:

57 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁵⁸Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

These provisions generally relate to civil participation in the governance process, and not specifically to anti-corruption.

References:

Articles 17, 21, 95k of the Constitution of the Republic of Namibia

<http://www.orusovo.com/namcon/>

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

One of the objectives of this policy is to enhance the impact and effectiveness of CSOs through combined and more efficient use of resources (e.g. coordination, integration and concentration on priorities). Thus, generally, the law does not impose any restrictions on CSO funding sources.

References:

National Planning Commission, Government of the Republic of Namibia – Civil Organizations Partnership Policy, December 2005

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

There is no legal provision to this effect.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

Comments:

A classic example that the practice does at times not fully conform with the stipulation of the National Constitution was attested by Johnny Hakaye, a ruling Swapo Party member of the National Council MP for Omusati Region. He proposed a motion calling on the second chamber of the Namibian bi-cameral parliamentary system to take a stand on the state, place and the role of the National Society for Human Rights in a free and independent Namibia.”

References:

The New Era Newspaper,
Matundu-Tjiparuro K.,
Aug. 31, 2007,
Media Gag Not the Answer,
<http://www.newera.com.na/archives.php?id=17325>

The Namibian Newspaper,
Isaac D.,
Aug. 21, 2007,
SWAPO Councillor Takes on Democracy,
<http://www.namibian.com.na/>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party),
Monday, Nov. 19, 2007, Windhoek

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

References:

Kaapama P., Blaauw L, Kaakunga E. & Zaaruka B,
forthcoming, Democratic Governance in Southern Africa: A Case Study of Namibia (Electoral Institute of Southern Africa)

Tjombe N., Director, Legal Assistance Centre,
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Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party),
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100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party),
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YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party),
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YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party),
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YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
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Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party),
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YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Articles 17, 21, 95 (c and k) of the Constitution of the Republic of Namibia, <http://www.orusovo.com/namcon>;

Labour Act of 1992, further reinforced in the 2007 Labour Bill that is awaiting ratification by the president.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Article 21 (1) a of the Constitution of the Republic of Namibia guarantees the right of citizens to freedom of speech and expression, which shall include freedom of the press and other media – <http://www.orusovo.com/namcon>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Article 21(1) a of the Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

88

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
Monday, Jan. 14, 2008

Kangwa-Wilkie S, Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
Monday, Jan. 14, 2008, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The Ministry of Trade and Industry is responsible for registering businesses, including print media entities, hence the legal requirements are generic and not specific to the media. Moreover, such appeal mechanism derives from Article 18 of the Namibian Constitution that states that administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent Court or Tribunal.”

References:

Companies Act 61 of 1973,
Close Corporations Act of 1988
Trust Property Control Act 57 of 1988

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Kangwa-Wilkie S, Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
Monday, Jan. 14, 2008, Windhoek

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Kangwa-Wilkie S, Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
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Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

Comments:

The law is such that the broadcasting regulator falls directly under the government, hence the perception that its operations are control by the state, which allows for manipulations by the ruling party. Another cited obstruction is that of cost, depending on who is applying it and the type of resources they have access to.

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
Monday, Jan. 14, 2008

Kangwa-Wilkie S, Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
Monday, Jan. 14, 2008, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

Regulation adopted pursuant to the provisions of the Namibia Communication Commission Act no. 4 of 1992.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Cost varies according to the type of broadcasting license that is being sought: televisions licenses tend to more costly than radio licenses, while commercial licenses are more costly than community broadcasting licenses; the same goes for national broadcasting licenses in comparison with those for specific geographical locations.

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa, Monday, Jan. 14, 2008

Kangwa-Wilkie S, Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa, Monday, Jan. 14, 2008, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Friday, Nov. 16, 2007, Windhoek

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

However, the Namibian Newspaper was sued by the former President Sam Nujoma, who alleged that the newspaper, in several issues, implied that he was corrupt.

References:

Article 21, Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>

The Namibian Newspaper,
Lister G.,

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

It depends on which media, who controls it, and who is affected by the corrupt practices.

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre, previously served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

This varies for public media under government control, which some of the informants rated at 50 percent, while they rated the private/independent media at 80 percent.

References:

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Dec. 5, 2007, Windhoek

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

70

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

Companies Act 61 of 1973,
Close Corporations Act of 1988
Trust Property Control Act 57 of 1988

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

Regulations adopted pursuant to the Namibia Communication Commission Act No. 4 of 1992

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Dec. 5, 2007, Windhoek

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

References:

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa, Monday, Jan. 14, 2008

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Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre, previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

Comments:

The following formula was adopted for the allocation of air-time on the public broadcaster, the Namibian Broadcasting Corporation: 40 percent was equally shared among all participating parties, while the remaining 60 percent was given to political parties in proportion to their representation in the National Assembly (Upper Chamber of Parliament). Hence, big parties were favored in comparison to smaller and/or newly established parties.

References:

Kaapama P., 2004,

Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
Monday, Jan. 14, 2008

Kangwa-Wilkie S, Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
Monday, Jan. 14, 2008, Windhoek

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Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre, previously served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maletsky C., Assistant News Editor at the Namibian Newspaper, also serving as the Chairperson of the Namibian Chapter of the Media Institute of Southern Africa,
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Kangwa-Wilkie S. Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
Monday, Jan. 14, 2008, Windhoek

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

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YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
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Kangwa-Wilkie S. Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa,
Monday, Jan. 14, 2008, Windhoek

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

85
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

0

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Some people tend to confuse the right to freedom of expression, as guaranteed by article 21 of the Constitution of the Republic of Namibia, with the right to information, which thus far has not been accommodated within the existing legal frameworks.

References:

Although there is a draft Information Policy, this has not yet been promulgated into policy.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

References:

Although the draft Information Policy makes provisions to this effect, it has not yet been promulgated into law.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

References:

Although the draft Information Policy makes provisions to this effect, it has not yet been promulgated into law.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

10

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

Legally there are no provisions entitling citizens to the right to information, however this does not preclude citizens to request information, nor does it prevent the relevant institutions to provide citizens with the requested information. This is therefore not mandatory, but is left to the discretion of the various institutions and/or officials. Hence, on the question of whether in practice, citizens receive responses to access to information requests within a reasonable time period," this varies from institution to institution, as well as the different persons within such institutions.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

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Kangwa-Wilkie S. Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa, Monday, Jan. 14, 2008, Windhoek

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There are no generic mechanisms in place across and within institutions.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Monday, Jan. 14, 2008, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is simply no legal basis for such appeal, as the provision of information is mainly done at the discretion of the institution and/or person concerned.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

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Monday, Jan. 14, 2008, Windhoek

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is simply no legal basis for such appeal, as the provision of information is mainly done at the discretion of the institution and/or person concerned.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Monday, Jan. 14, 2008, Windhoek

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | **25** | 0

Comments:

This happens only sometimes, and here the emphasis is not only on any reason, but more on reasonable reasons.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

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Kangwa-Wilkie S. Program Officer: Freedom of Expression and Right to Information, Media Institute of Southern Africa, Monday, Jan. 14, 2008, Windhoek

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Articles 17 (2 and 3) and 28 (2), Constitution of the Republic of Namibia, <http://www.orusovo.com/namcon>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Articles 29 (1a), 46 (1a), 50, 70(1), Constitution of the Republic of Namibia, <http://www.orusovo.com/namcon>

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

Tjombe N., Director, Legal Assistance Centre,
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previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

References:

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Article 17 (1), Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Articles 17 (2) and 28 (3), Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

Kaapama P., 2004,

Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

Website of the National Assembly,
<http://www.parliament.gov.na/default.asp>

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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Monday, Nov. 19, 2007, Windhoek

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

The Electoral Commission of Namibia (ECN) is provided for under Sections 3 and 4 of the Electoral Act (Act 24 of 1992), in terms of which it is entrusted with the overall responsibilities for election monitoring in the Republic of Namibia.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

70

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Sections 3 and 4 of the Electoral Act (Act 24 of 1992);
Electoral Amendment Act (Act 30 of 1998)

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

From 1992 until 2000, the Electoral Commission of Namibia (ECN) was administered as part of the Prime Minister's Office. However, after criticism that this might affect the body's independence and impartiality, it was re-established in its own right and given its own budget in 2000. Another issue relates to the fact that the ECN maintains basic full-time staff, which is complemented by additional staff on secondment from the public service during times of voter registration and actual polling.

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Such powers are provided for under Part 6 of the Electoral Act (Act No. 24 of 1992), which relates to the processes for registration of voters, nomination of candidates, political parties, voting procedures and polling stations, corrupt and illegal practices. Whilst there is a Code of Conduct for Political Parties, this is, however, loosely constituted and makes no provisions for punitive measures for transgressors.

References:

Tjombe N., Director, Legal Assistance Centre,
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100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

71

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

Tjombe N., Director, Legal Assistance Centre,
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previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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The Namibian Newspaper,
Kuteeue P.,
CoD in Bid To Stop Voter Registration,

June 30, 2003,
<http://www.namibian.com.na/2003/june/national/03DDA262EE.html>

The Namibian Newspaper,
Maletsky C.,
Sworn Statement System Used for Voting 'Widely Abused',
Jan. 10, 2003,
<http://www.namibian.com.na/2003/January/national/03AA028D3C.html>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

These provisions were invoked in both the 1999 and 2004 national elections, by the Democratic Turnhalle Alliance (DTA) and the Congress of Democrats, respectively. However, based on these experiences, it has transpired that these measures are costly and time consuming. The impartiality of judges has also been questioned in some of these cases.

References:

Electoral Act (Act 24 of 1992), Part 7

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

These provisions were invoked in both the 1999 and 2004 national elections, by the Democratic Turnhalle Alliance (DTA) and the

Congress of Democrats, respectively. However, based on these experiences, it has transpired that these measures are costly and time consuming. The impartiality of judges has also been questioned in some of these cases.

References:

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Although the security sector has generally refrained from active political involvement before/during/after elections in Namibia, there was one exception in this regard during the 1998 Regional Council Elections in the aftermath of the failed 1998 Caprivi secessionist attacks. They were accused of being actively used as political instruments in the hands of the ruling party.

References:

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100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | **NO**

Comments:

Although there are no explicit legal provisions to this effect, this practice has become an entrenched feature of the Namibian electoral process.

References:

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Friday, Nov. 16, 2007, Windhoek

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YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

Comments:

International elections observations teams only arrive close to the polling dates, and tend to be concentrated in a few major political centers, paying sporadic visits to outlying areas in the remote reaches of the country. In most cases they also arrive on pre-determined schedules, hence they do not only go back to their points of origin but also pronounce their verdicts prematurely, prior to the conclusion of the entire process.

References:

Kaapama P., 2004,

Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

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100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

80 II-3. Political Financing

20. Are there regulations governing political financing?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

As noted by Kaapama (2004: 105), although the electoral law provides a framework for the disclosure of private contributions and donations to political parties in excess of N\$500 (US\$67), there are no elaborate measures for the regulation and/or enforcement of these requirements.

References:

Section 46 of the 1992 Electoral Act (Act No. 24) deals with the requirements regarding foreign funding of political parties

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

The only requirement relates to the disclosure of any donation and/or contribution in excess of N\$500 (US\$67), however there are no limits on individual donations to candidates and political parties, per se.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

The only requirement relates to the disclosure of any donation and/or contribution in excess of N\$500 (US\$67), however there are no limits on individual donations to candidates and political parties, per se.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

The law is totally silent on this issue.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

The law requires the disclosure of any private donation and/or contribution in excess of N\$ 500 (US\$67), however there are no limits on individual donations to candidates and political parties, per se.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

Political parties are required to audit their accounts, submit them to the Office of the Auditor General and then report back to Parliament under general categories. However, the Auditor General complained in June 2004 that these requirements are not being adhered to, which led the Parliament to resolve in 2005 that new rules would be introduced requiring political parties to show how money is being spent. The Auditor General also undertook to put in place restrictions on the ways in which these public funds can be spent.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

Public funding of political parties are executed through Parliament as part of the National Budget cycle, and the Office of the Auditor General is entrusted with the prerogative of scrutinizing the audit accounts of political parties, and to report back to Parliament under general categories. However, the Auditor General complained in June 2004 that these requirements are not being adhered to, which led the Parliament to resolve in 2005 that new rules would be introduced requiring political parties to show how money is being spent. The Auditor General also undertook to put in place restrictions on the ways in which these public funds can be spent.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

0

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

As Noted by Kaapama (2004: 105), although the electoral law provide a framework for the disclosure of private contributions and donations to political parties in excess of N\$500 (US\$67), there are no elaborate measures for the regulation and/or enforcement of these requirements.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

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100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

As Noted by Kaapama (2004: 105), although the electoral law provide a framework for the disclosure of private contributions and donations to political parties in excess of N\$500 (US\$67), there are no elaborate measures for the regulation and/or enforcement of these requirements.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics,
Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa,
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100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

As Noted by Kaapama (2004: 105), although the electoral law provide a framework for the disclosure of private contributions and donations to political parties in excess of N\$500 (US\$67), there are no elaborate measures for the regulation and/or enforcement of these requirements.

References:

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100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

As Noted by Kaapama (2004: 105), although the electoral law provide a framework for the disclosure of private contributions and donations to political parties in excess of N\$500 (US\$67), there are no elaborate measures for the regulation and/or enforcement of these requirements, nor are there any provisions for an agency or entity entrusted with the monitoring of financing of political parties.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

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100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

As Noted by Kaapama (2004: 105), although the electoral law provide a framework for the disclosure of private contributions and donations to political parties in excess of N\$500 (US\$67), there are no elaborate measures for the regulation and/or enforcement of these requirements, nor are there any provisions for an agency or entity entrusted with the monitoring of financing of political parties.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

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100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are required to audit their accounts, submit them to the Office of the Auditor General and then report back to Parliament under general categories. However, the Auditor General complained in June 2004 that these requirements are not being adhered to, and subsequently Parliament resolved in 2005 that new rules would be introduced requiring political parties to show how money is being spent. The Auditor General also undertook to put in place restrictions on the ways in which these public funds can be spent.

References:

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100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

0

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are required to audit their accounts, submit them to the Office of the Auditor General and then report back to Parliament under general categories. However, the Auditor General complained in June 2004 that these requirements are not being adhered to, and subsequently Parliament resolved in 2005 that new rules would be introduced requiring political parties to show how money is being spent. The Auditor General also undertook to put in place restrictions on the ways in which these public funds can be spent.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics,
Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa,
Windhoek, Media Institute for Southern Africa

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are required to audit their accounts, submit them to the Office of the Auditor General and then report back to Parliament under general categories. However, citizens' access to such financial records has remained extremely constrained. The Auditor General complained in June 2004 that these requirements are not being adhered to, and subsequently Parliament resolved in 2005 that new rules would be introduced requiring political parties to show how money is being spent. The Auditor General also undertook to put in place restrictions on the ways in which these public funds can be spent.

References:

Boer M., 2004, The Life of the Party: The Hidden Role of Money in Namibian Politics,
Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed), Outside the Ballot Box: Preconditions for Elections in Southern Africa,
Windhoek, Media Institute for Southern Africa

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are required to audit their accounts, submit them to the Office of the Auditor General and then report back to Parliament under general categories. However, citizens' access to such financial records has remained extremely constrained. The Auditor General complained in June 2004 that these requirements are not being adhered to, and subsequently Parliament resolved in 2005 that new rules would be introduced requiring political parties to show how money is being spent. The Auditor General also undertook to put in place restrictions on the ways in which these public funds can be spent.

References:

Boer M., 2004, *The Life of the Party: The Hidden Role of Money in Namibian Politics*, Hanns Seidel Foundation, Namibia Occasional Paper No. 5

Kaapama P., 2004, *Preconditions for Free and Fair Elections: A Namibian Country Study*, in Minnie J. (ed), *Outside the Ballot Box: Preconditions for Elections in Southern Africa*, Windhoek, Media Institute for Southern Africa

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-1. Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Constitution of the Republic of Namibia, Article 25 (1 – 4),
<http://www.orusovo.com/namcon>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

81

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

One of the important avenues through which explanations, reasons and justifications can be solicited from Cabinet ministers is the customary parliamentary practice, in terms of which ministers are given at least a week's notice that they are expected to provide feedback on questions posed by the opposition, which in the specific case of Namibia are usually answered during the Thursday afternoon session. There are, however, the following two factors that impede on this practice: first the fact that the ruling party tends to use its two third majority in both houses of Parliament to overrun the opposition; second the members of the executive accounts for more than 60 percent of the National Assembly, resulting in the executive dominance over the legislature.

References:

Kaapma P, Blaauw L., Kaakunga E and Zaaruka B, forthcoming, Consolidating Democratic Governance in Southern Africa: Namibia, Johannesburg: Electoral Institute for Southern Africa (EISA)

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre, previously served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Dentlinger L.,
October 24, 2005

More Questions than Answers in Parliament <http://www.namibian.com.na/2005/October/national/05E34191C8.html>

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Constitution of the Republic of Namibia, Articles 18 and 25
<http://www.orusovo.com/namcon>

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre, previously served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Menges W,
Angry Judge Quits Case,
Jan. 15, 2001
<http://www.namibian.com.na/2001/January/news/01C8DB2393.html>

The Government of the Republic of Namibia vs Ngeve Raphael
Sikunda <http://www.superiorcourts.org.na/supremecourt/docs/judgements/criminal/sikunda.pdf>

The Namibian Newspaper,
Menges W. and Amupathi T,
High Court Checks Govt Expulsion Bid,
Oct. 25, 2000,
<http://www.namibian.com.na/2000/October/news/00AEE8183B.html>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

These are also regulated by a number of enabling legislative provisions, as provided for in the context of the specific laws enacted by the legislature.

References:

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

According to Article 31 (3) , a civil or criminal court shall only have jurisdiction to entertain proceedings against a former president, in respect of acts of commission or omission alleged to have been perpetrated in his or her personal capacity whilst holding office. Moreover, Parliament may also by resolution remove the president from office 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.

References:

Constitution of the Republic of Namibia, Article 31,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

There is no explicit legal provision for immunity from prosecution for crimes they happen to commit.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

28

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

This is based on Cabinet decisions and resolutions.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Powers, Privileges and Immunities of Parliament Act 17 of 1996, which applies to some of them in their capacity as legislators.

Specific Cabinet resolutions and/or decisions also apply.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

There are no specific legal provisions to this effect.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

There are no specific legal provisions to this effect.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

References:

The law does not have provisions to this effect.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no legal provisions to this effect; moreover, the interviewees also cited a number of persons who previously served in the legislature, and who currently occupy high profile positions with wide-ranging interests in the private sectors.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

The Namibian Newspaper, April 10, 2000,

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Such regulations do not exist.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from

outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

If such auditing is done at all, then it is not open and independent.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

The law does not provide for such disclosures.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | **25** | 0

Comments:

A classic example to this effect are the campaigns spearheaded by the ruling Swapo Party Youth League (SPYL), calling for the recruitment of party cadres who know the program of the party into top positions. Although there have not been formal indication as to where the government stands in relations to such calls, to some it has been worrying that these campaigns have not been nipped in the buds by those entrusted with the upholding both the constitution and the laws of Namibia.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

100

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitution of the Republic of Namibia, Articles 18 and 25,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The only exception relates to anything involving the exercise of the members' rights to freedom of speech in Parliament; and/or any matter or thing which they brought by report, petition, bill, resolution, motion or otherwise in or before Parliament, as well as said in Parliament while taking part in any proceedings in Parliament.

References:

Powers, Privileges and Immunities of Parliament Act 17 of 1996

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Directives of the Committees of Privileges of the National Assembly and National Council, respectively, which are issued in terms of the Powers, Privileges and Immunities of Parliament Act 17 of 1996.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

There is no provision in law to this effect.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Directives of the Committees of Privileges of the National Assembly and National Council, respectively, which are issued in terms of the Powers, Privileges and Immunities of Parliament Act 17 of 1996.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

The relevant laws do not make provisions to this effect.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no legal provisions to this effect; moreover, the interviewees also cited a number of persons who previously served in the legislature and who currently occupy high profile positions in the private sectors.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Code of Conduct and a Disclosure of Members' Interests list were introduced in 2000; however, they were only operationalized three years later, and even then it was only after the passage of several deadlines that MPs finally started to go along with the process. In 2002, the majority of the MPs swore they had nothing to declare when asked about travel and travel discounts, gifts and hospitality, sponsorships, consultancies and any other benefits.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

The Namibian Newspaper
Amupathi T.,
March 31, 2003,
MPs Face Full Disclosure,
<http://www.namibian.com.na/2003/march/national/03C17E92C2.html>

The Namibian Newspaper
Amupathi T.,
Nov. 26, 2003,
MP's Asset Register Released, <http://www.namibian.com.na/2003/november/national/03B528AD8.html>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

If this is being done at all, then it is not conducted in an open and independent manner.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

67

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

In terms of the directives of the Committees of Privileges of the National Assembly and National Council, respectively, issued in terms of the Powers, Privileges and Immunities of Parliament Act 17 of 1996, the Assets Register form contains two sections – one that is open for the general public consumption and another one that is confidential and may only be viewed by the public subject to the granting of permission by the speaker of the Assembly.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The Assets Register form contains two sections – one that is open for the general public consumption and another one that is confidential and may only be viewed if permission is granted by the speaker of the Assembly.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

The Namibian Newspaper
Amupathi T.,
MP's Asset Register Released,
Nov. 26, 2003,
<http://www.namibian.com.na/2003/november/national/03B528AD8.html>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The Assets Register form contains two sections – one that is open for the general public consumption and another one that is confidential and may only be viewed if permission is granted by the speaker of the Assembly.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

The Namibian Newspaper

Amupathi T.,

MP's Asset Register Released,

Nov. 26, 2003,

<http://www.namibian.com.na/2003/november/national/03B528AD8.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

83

32a. In law, citizens can access records of legislative processes and documents.

YES

NO

References:

Constitution of the Republic of Namibia, Article 61,

<http://www.orusovo.com/namcon>

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Apart from minor administrative challenges, records of the legislature can generally be accessed by citizens' Hansard program, as well as through print and electronic media. Nevertheless, although such information is generally freely available, its uses are in some cases hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Apart from minor administrative challenges, records of the legislature can generally be accessed by citizens' Hansard program, as well as through print and electronic media. Nevertheless, although such information is generally freely available, its uses are in some cases hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

71 III-3. Judicial Accountability

33. Are judges appointed fairly?

58

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Constitution of the Republic of Namibia, Article 82,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are

nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Some of the applicable criteria include legal professional qualifications, extensive experience, highly successful track record in the legal practice, ability to apply common sense, etc.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre, previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

According to Article 82 (1) of Constitution of the Republic of Namibia, all appointments of judges to the Supreme Court and the High Court are made by the president on the recommendation of the Judicial Service Commission. Upon appointment, judges shall make an oath or affirmation of office.

References:

There is no specific requirement and/or institutional framework to this effect.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

100

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

This is a requirement deriving from the common law custom.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

It is the Judicial Service Commission, as provided for in terms of Article 85 of the Constitution of the Republic of Namibia.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

Concerns were, however, expressed regarding the composition of the Judicial Services, which in terms of Article 85 (1) comprises of the Chief Justice, a judge appointed by the president, the Attorney-General and two members of the legal profession nominated in accordance with the provisions of an Act of Parliament by the professional organization or organizations representing the interests of the legal profession in Namibia.

References:

Provisions of Article 78 (2 & 3) of the Constitution of the Republic of Namibia, which establishes the Judiciary's basis for independence.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,

Menges W.

Oct. 15, 2005,

Pio Teek Retires as Judge in the Wake of Rape Charges, <http://www.namibian.com.na/2005/October/national/05E1137FC5.html>

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Although the Magistrate Services Commission is empowered to impose penalties, cases have however not arisen for these mechanisms to be tested in practice.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

0

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | **NO**

References:

There are no legal provisions to this effect.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

References:

There are no legal provisions and/ or requirements to this effect.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

There are no legal provisions and/or requirements to this effect.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

There are no legal restrictions and/or requirements to this effect.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

References:

There are no such restrictions and/or requirements in law.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues.

Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

There are no such requirements and/or provisions in law.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Such a disclosure process does not exist.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

Such a disclosure process does not exist.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Such a disclosure process does not exist.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Such a disclosure process does not exist.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Tjombe N., Director, Legal Assistance Centre, Friday, Nov. 16, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

37a. In law, the legislature can amend the budget.

YES | NO

References:

Constitution of the Republic of Namibia, Article 126,
<http://www.orusovo.com/namcon>

State Finance Act, 31 of 1991

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

The recurring and increasing trend of unauthorized expenditure by various government agencies has remained a matter of great concern. This has been attributed to a number of factors, such as the lack of adequate control measure within government, unexpected cost increases, insufficient budgetary provisions, late processing of orders from the Government Garage, constant increases in fuel prices, the non-existence of an additional budget and the system to collect subsistence and travel allowances.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,

Weidlich B.,

Govt In Red By N\$356,3 Million,

Nov. 8, 2006,

<http://www.namibian.com.na/2006/November/national/065942E407.html>

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

There has been a significant strengthening of the institutional and professional capacity of the Public Accounts' Standing Committee.

References:

Namibia National Chamber of Commerce and Industry (NCCI), 1998, Understanding the National Budget, Windhoek Solitaire Press, http://www.ndi.org/ndi/library/1348_na_budget.txt

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

This is, however, impeded by the following two factors: first the fact that the ruling party tends to use its two third majority in both houses of Parliament to overrun the opposition, and second the members of the executive accounts for more than 60 percent of the National Assembly, resulting in the executive dominance over the legislature.

References:

Kaapama P, Blaauw L., Kaakunga E and Zaaruka B, forthcoming, Consolidating Democratic Governance in Southern Africa: Namibia, Johannesburg: Electoral Institute for Southern Africa (EISA)

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Budget hearings are conducted at ministerial level and not during the debate at the legislative level. As a result the Namibia

national budgeting cycle does not at all provide avenues for direct public participation. Therefore, the budget process remains highly centralized at the central governmental level, despite the adoption of a Decentralization policy in the early 1990s.

References:

Namibia National Chamber of Commerce and Industry (NCCI), 1998, Understanding the National Budget, Windhoek Solitaire Press, http://www.ndi.org/ndi/library/1348_na_budget.txt

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constraints, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

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100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

These functions are performed by the Standing Committee on Public Accounts, whose existence derived from Article 59 of the Namibian Constitution, as well as the Powers, Privileges and Immunities of Parliament Act 17 of 1996, both of which outline the framework for Parliamentary Rules of Procedure, Committees and Standing Orders.

References:

Namibia National Chamber of Commerce and Industry (NCCI), 1998, Understanding the National Budget, Windhoek Solitaire Press, http://www.ndi.org/ndi/library/1348_na_budget.txt

The Web Site of the National Assembly of the Republic of Namibia, <http://www.parliament.gov.na/default.asp>

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

63

40a. In practice, department heads regularly submit reports to this committee.

Comments:

The Standing Committee on Public Accounts deliberates on the financial accounts of government agencies, as reported upon by the Office of the Auditor General. The Committee faces a number of challenges, such as those relating to the fact that its recommendations are in most instances not enforced, as well as the backlog of audit reports that delays their completion by the Auditor General's Office, and subsequent presentation to the Committee for scrutiny.

References:

Kaapama P., 2004, Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed.), Outside the Ballot Box: Preconditions for Elections in Southern Africa, Windhoek, Media Institute for Southern Africa

Namibia National Chamber of Commerce and Industry (NCCI), 1998, Understanding the National Budget, Windhoek Solitaire Press, http://www.ndi.org/ndi/library/1348_na_budget.txt

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

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Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

Hunter J., , Namibia Institute for Democracy

The Namibian Newspaper,
Dentlinger L.,
April 20, 2005,
Auditor General Set On Meeting Goals <http://www.namibian.com.na/2006/April/national/061B2E37C5.html>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

Comments:

The composition of the members of Parliamentary Committees is based on the principle of proportional (rather than equitable) representation based on the political parties represented in the National Assembly. Members of Committees are nominated by their respective political parties. It has become convention that a member of the official opposition chairs the Standing Committee on Public Accounts.

References:

Kaapama P., 2004,
Preconditions for Free and Fair Elections: A Namibian Country Study, in Minnie J. (ed.), *Outside the Ballot Box: Preconditions for Elections in Southern Africa*,
Windhoek, Media Institute for Southern Africa

Namibia National Chamber of Commerce and Industry (NCCI), 1998,
Understanding the National Budget, Windhoek Solitaire Press, http://www.ndi.org/ndi/library/1348_na_budget.txt

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Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

Hunter J., Namibia Institute for Democracy

Web Site of the National Assembly of the Republic of Namibia, <http://www.parliament.gov.na/default.asp>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

Comments:

It is difficult to expect a significant degree of political autonomy from the Committee, given the fact that its composition is based on the principle of proportional representation based on the political parties represented in the National Assembly, as well as the fact that its members are nominated by their respective political parties.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

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Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

Web Site of the National Assembly of the Republic of Namibia, <http://www.parliament.gov.na/default.asp>

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

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Mwinda M, Chief Executive Officer, RMB Asset Management Namibia; previously served as Manager of Banking and Finance at
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100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ~~66~~ Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Constitution of the Republic of Namibia, Articles 112 and 113
<http://www.orusovo.com/namcon>

Public Service Commission Act 2 of 1990, Article 2

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

The Public Service Code of Conduct, which derives from the provisions of the Public Service Act 13 of 1995

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

In terms of The Public Service Code of Conduct, which derives from the provisions of the Public Service Act, 13 of 1995, civil servants may appeal to the prime minister through the secretary of the Cabinet.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

The Public Service Code of Conduct, which derives from the provisions of the Public Service Act, 13 of 1995.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

75

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There has been a campaign spearheaded by the ruling Swapo Party Youth League (SPYL), calling for the recruitment of party cadres who know the program of the party into top positions. Although there has not been formal indication as to where the government stands in relations to such calls, to some it has been worrying that these campaigns have not been nipped in the buds by those entrusted with the upholding both the constitution and the laws of Namibia.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
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Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,

Hamata M.,

June 14, 2002,

SWAPO Calls for Jobs for Comrades, Draw Flak, <http://www.namibian.com.na/2002/june/news/0268C24A73.html>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
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Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
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100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

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Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

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100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

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at the Bank of Namibia,
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100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

They are published every financial year, as part of the National Budget.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

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at the Bank of Namibia,
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100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

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Mwinda M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
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100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

A case in point in this regard is attested to by the newspaper article cited above, in which a top official in the Ministry of Home Affairs was charged with misconduct over allegations that he issued national documents improperly and received certain items to which he was not entitled. He has since then been redeployed to various roles within the public service and is currently serving in managerial capacity at regional government level within the Namibian public service.

References:

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at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Maletsky C.,
Verdict on Hubschle May Never Happen,
Oct. 27, 1998,
<http://www.namibian.com.na/Netstories/October98/hubschle.html>

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

46

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Tender Board of Namibia Act 16 of 1996

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

Apart from the fact that there are no legal provisions regulating the entrance of civil servants into private employment after leaving the public service, it is also not against the law for a public servant to engage in remunerative work outside the Public Service, provided permission thereof has been granted by the relevant authority.

References:

There are no legal provisions to this effect.

The Namibian Newspaper,
Grobler J.,
July 18, 2007,
Liquid Fuel A Clean Deal
<http://www.namibian.com.na/2007/July/national/07A5E6817B.html>

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

The Public Service Code of Conduct, which derives from the provisions of the Public Service Act, 13 of 1995

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Tjombe N., Director, Legal Assistance Centre,
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Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

Comments:

The relevant provisions of the Public Service Code of Conduct are not strictly enforced.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Hamata M.,
SWAPO Calls for Jobs for Comrades, Draw Flak,
June 14, 2002,
<http://www.namibian.com.na/2002/june/news/0268C24A73.html>

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

Comments:

The lack of strict enforcement of the relevant provisions of the Public Service Code was exemplified through the widely publicized case featured in the newspaper article cited above. One of the Avid directors also served the Labour Ministry's contact person for the Social Security Commission, which invested N\$30 million (US\$4 million) in Avid, whilst also serving as the head of a task

force that has to implement the Presidential Commission of Inquiry on the Administration of the Social Security Commission's recommendations.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
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Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Menges W.
Avid Report Warns of Conflict of Interest,
Dec. 19, 2005,
<http://www.namibian.com.na/2005/December/national/05F48F1134.html>

The Namibian Newspaper,
Menges W.,
Ex-Avid Director Admits He Knew of Kandara Link,
Aug. 1, 2005,
<http://www.namibian.com.na/2005/August/national/05C95004AE.html>

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

There are no legal provisions to this effect.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law does not legally provide for such disclosure, nor for the public accessibility to any disclosure forms.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
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Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

Comments:

The law does not legally provide for such disclosure, nor for the public accessibility of any disclosure forms.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
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Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Article 52 (more specifically subsection 4) of the Anti-Corruption Act (No. 8 of 2003), <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

A case in point attesting to the fact that employees who reports case of corruption, graft, abuse of power, or abuse of resources are not sufficiently protected from recrimination or other negative consequences is the alleged firing of an accountant of the ELECTRICITY Control Board (ECB), after he exposed his boss's abuse of company allowances and borrowing funds from the company without repayment.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Informante,
Hamata M and Ndjoze J,
June 15, 2007,
Simasiku Fires Whistleblower for Graft Expose, http://www.informante.web.na:8080/informante/index.php?option=com_content&task=view&id=931

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Article 52 (more specifically subsection 4) of the Anti-Corruption Act (No. 8 of 2003), <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | **NO**

References:

There are no specific legal stipulations to this effect.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

44

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Although such mechanisms have not been internalized within the context of the public service, there are, however, collaborative initiatives to this effect. The Report Centre is presented in good faith by the Namibia's Zero Tolerance for Corruption Campaign to enable the confidential reporting of instances of alleged corruption. The Report Centre is administered by the NID in co-operation with the Anti-Corruption Commission.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Namibia's Zero Tolerance for Corruption Campaign
http://www.anticorruption.info/rep_main.php

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

The Namibia's Zero Tolerance for Corruption Campaign that fills this gap is primarily funded by international development partners.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is difficult to gauge given the fact that most complaints may be lodged in confidence.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The power to investigate is vested in the Anti-Corruption Commission, as per articles 20 – 21 of the Anti-Corruption Act (No. 8 of 2003), <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

40 IV-3. Procurement

48. Is the public procurement process effective?

80

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Article 6 of the Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

The Tender Board Regulations that are adopted based on the provisions of the Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Menges W.

Dec. 19, 2005,

Avid Report Warns of Conflict of Interest, <http://www.namibian.com.na/2005/December/national/05F48F1134.html>

The Namibian Newspaper,

Amupathi T.,

Oct. 18, 2002,

Govt Official to Face Corruption Charges <http://www.namibian.com.na/2002/October/national/028F06BCDD.html>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

There are no such provisions in law.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

Article 17 of the Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

There may be doubts regarding how strict and elaborate these provision are.

References:

Article 17 of the Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Tender Board Regulations that were adopted pursuant to the provisions of the Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

This article states that administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation; persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent court or tribunal.

References:

Article 18 of Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Tender Board Regulations that are adopted on the basis of the provisions of the Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

There has been a much published instance, in which a certain investment broker implicated during the hearings of the Presidential Commission of Inquiry into the administration of the Social Security Commission (SSC), later happened to be entrusted through an investment firm that he was part of, with the administration of an ill-fated N\$30 million (US\$4 million) on behalf of the same SCC.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constraints, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

All public procurement regulations are published in the Government Gazette, which is publicly accessible.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Tender Board Regulations adopted on the basis of the provisions of Tender Board of Namibia Act, 16 of 1996

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available through the Tender Board Secretariat at the Ministry of Finance, its uses

are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available through the Tender Board Secretariat at the Ministry of Finance, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Although such information may be generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

83

50a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

Comments:

The Namibian Government has thus far shun away from the full privatization of state assets, thus there might not be much in terms of privatizations of assets to talk about, in contrast with the outsourcing of services delivery through processes of commercialization.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,

Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Given the fact that the Namibian Government has thus far shun away from the full privatization of state assets, this assertion therefore mainly relates to commercialized and outsourced public services, and not the privatization of public assets. Such activities are regulated in terms of the Tender Board Regulation that were adopted pursuant to Tender Board of Namibia Act, 16 of 1996.

References:

Tender Board Regulations adopted within the context of Tender Board of Namibia Act, 16 of 1996

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Menges W.

Dec. 19, 2005,

Avid Report Warns of Conflict of Interest, <http://www.namibian.com.na/2005/December/national/05F48F1134.html>

The Namibian Newspaper,

Amupathi T.,

Oct. 18, 2002,

Govt Official to Face Corruption Charges <http://www.namibian.com.na/2002/October/national/028F06BCDD.html>

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

90

51a. In law, citizens can access privatization regulations.

YES

NO

Comments:

Given the fact that the Namibian Government has thus far shun away from the full privatization of state assets, this assertion therefore mainly relates to commercialized and outsourced public services, and not the privatization of public assets. Such activities are regulated in terms of the Tender Board Regulation that were adopted pursuant to Tender Board of Namibia Act, 16 of 1996. Hence, all regulations relating to public procurement and outsourcing services are published in the Government Gazette, which is publicly accessible.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privitizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Given the fact that the Namibian Government has thus far shun away from the full privatization of state assets, this assertion therefore mainly relates to commercialized and outsourced public services, and not the privatization of public assets.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

Given the fact that the Namibian Government has thus far shun away from the full privatization of state assets, this assertion therefore mainly relates to commercialized and outsourced public services, and not the privatization of public assets. Such activities are regulated in terms of the Tender Board Regulation that were adopted pursuant to Tender Board of Namibia Act, 16 of 1996.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | **75** | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constraints, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Constitution of the Republic of Namibia, Articles 89 – 94,
<http://www.orusovo.com/namcon>

Ombudsman Act (No. 7 OF 1990)
<http://www.parliament.gov.na/parlidoc/ACT700.pdf>

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

68

53a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Constitution of the Republic of Namibia, Article 89 (2 – 3),
<http://www.orusovo.com/namcon>

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The fact that the Ombudsman's Office does not enjoy full administrative autonomy and independence is seen as a potential avenue for political interference.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Constitution of the Republic of Namibia, Article 89 (3),
<http://www.orusovo.com/namcon>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There are a number of constraints resulting from the fact that the Ombudsman's Office receives its budget through the Ministry of Justice, while the conditions of service of its staff are subjected to the regulations of the Public Service Commission.

References:

Ombudsman Act (No. 7 OF 1990) Article 7 (1 – 2)
<http://www.parliament.gov.na/parlidoc/ACT700.pdf>

Office of the Ombudsman
<http://www.ombudsman.org.na/>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

There are a number of constraints enforced by the fact that the Ombudsman's Office receives its budget through the Ministry of Justice, while the conditions of service of its staff are subjected to the regulations of the Public Service Commission.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Although irregular, such funding is, however, adequate to fully meeting the operational needs of the Office.

References:

Ombudsman Act (No. 7 OF 1990) Article 9,
<http://www.parliament.gov.na/parlidoc/ACT700.pdf>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Concerns were, however, expressed regarding the substantive content of the report, especially in terms of the nature and depth of the cases covered.

References:

Ombudsman Act (No. 7 OF 1990) Article 6,
<http://www.parliament.gov.na/parlidoc/ACT700.pdf>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The effectiveness of these is, however, hampered by a number of administrative constraints, such as the lack of adequate staff, and the fact that in some cases the recommendations emanating from such investigations are overlooked.

References:

Ombudsman Act (No. 7 of 1990) Article 3,
<http://www.parliament.gov.na/parlidoc/ACT700.pdf>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

In terms of its duties as defined in the Ombudsman Act, the Office has the powers to inquire into and investigate any instance or matter laid before it and/or as prescribed by the Act. The Act explicitly empowers the Ombudsman to institute appropriate actions or steps to call for or require the remedying, correction and reversal of matters or instances through such fair, proper and effective means. In this way, the Act precludes the imposition of penalties on offenders, but may rather refer the matter to the Prosecutor-General or the Auditor-General. It can also bring proceedings before a court of competent jurisdiction for an interdiction or some other suitable remedy to secure the termination of the offending action or conduct or the abandonment or alteration of the offending procedures.

References:

Ombudsman Act (No. 7 OF 1990) Articles 3 and 5
<http://www.parliament.gov.na/parlidoc/ACT700.pdf>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

Comments:

The two newspaper articles cited above depict the divergence with which the government acts on various findings from investigations undertaken by the Office of the Ombudsman. Thus, to a large extent, it can be argued that the responsiveness of government is dictated by the magnitude of the cases, with the government being more responsive to the smaller cases in comparison with bigger ones.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper
Hamata M.,
July 9, 2002,
SSC Graft Claims Gain Momentum
<http://www.namibian.com.na/2002/july/news/026FA3DB5A.html>

The Namibian Newspaper,
Maletsky C.,
Sept. 27, 2006,
Unbelievable" Union Hits at Apathy at TransNamib, <http://www.namibian.com.na/2006/September/national/064C509C88.html>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The effectiveness with which the Ombudsman reacts to citizens' complaints tends to be hampered by a number of administrative

constraints, such as the lack of adequate staff. Hence, sometimes it takes too long to either commence or complete an investigation. Moreover, in some cases, the recommendations emanating from such investigations are overlooked.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

83

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Article 91 (g) of the Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>,

It requires the ombudsman to report annually to the National Assembly on the exercise of his or her powers and functions.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Constitution of the Republic of Namibia, Article 127,
<http://www.orusovo.com/namcon>

State Finance Act, 31 of 1991, Part III

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

78

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

It should be noted, however, that the above cited Article is not clearly explicit on this matter. Also, the appointments of key staff of this agency are done through processes that may be termed political.

References:

Constitution of the Republic of Namibia, Article 127,
<http://www.orusovo.com/namcon>

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

One of the key informants alluded to the fact that despite the availability of full-time staff, there is, however, a shortage in terms of the relevant professionally qualified and certified personnel.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

All appointments, with the exception of the auditor general him/herself, are done through the Public Service Commission, in accordance with its regulations.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Apart from the funding specifically earmarked by the legislature, Article 28 of the State Finance Act states that expenditures incurred in connection with auditing, investigating and examining of public financial records should be defrayed from the State Revenue Fund.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinda M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,

Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

Comments:

Issues and concerns raised by the Auditor General are not always acted upon.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

83

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

This Act provides the legal requirements for the tabling of such reports in the legislature, the business of which is conducted in the full view of citizens.

References:

State Finance Act, 31 of 1991

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constrains, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly, Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party) Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia, Friday, Nov. 16, 2007, Windhoek

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

87
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

References:

Income Tax Act, 24 of 1981

Value Added Tax Act, 10 of 2000

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

75

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

One of the key informants alluded to the fact that despite the availability of full-time staff, there is, however, a shortage in terms of the relevant professionally qualified and certified experts in the domains of tax, accounting and auditing.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

75

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There are minor cases of irregular practices, such as those cited in the above newspaper report.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Grobler J.,
Taxman Swoops on Northern Business Gaints,
Sept. 25, 2007,
<http://www.namibian.com.na/2005/September/national/05DB33CCCB.html>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

Customs and Excise Act, 20 of 1998

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

88

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

One of the key informants alluded to the fact that despite the availability of full-time staff, there is, however, a shortage in terms of the relevant professionally qualified and certified personnel.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There are minor incidents, such as the one cited in the above newspaper article.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Grobler J.,
Taxman Swoops on Northern Business Gaints,
Sept. 25, 2007,
<http://www.namibian.com.na/2005/September/national/05DB33CCCB.html>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

It is known as the State-Owned Enterprises Governance Council, established in terms of Article 2 (1) of the State-Owned Enterprises Governance Act, 2 of 2006

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

The State-Owned Enterprises Council is deemed as a committee of Cabinet, comprising of the prime minister as chairperson, as well as other four members of the Cabinet. Its performance is subject to the approval of the Cabinet. Therefore a number of related reservations were expressed by stakeholders during the public hearings conducted by the National Council during their deliberations on the Bill establishing the Council.

References:

State-Owned Enterprises Governance Act, (Act No.2 of 2006), Articles 2 (2) and 3, <http://www.parliament.gov.na/parlidoc/ACT650.pdf>

The Namibian Newspaper,
Dentlinger L.,
State-Owned Enterprises In The Spotlight,
Feb. 24, 2006,
<http://www.namibian.com.na/2006/February/national/06A80E41E.html>

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

Comments:

Article 9 states that the work incidental to the performance of the function of the State-Owned Enterprises Council must be performed by a secretariat consisting of administrative personnel as the Council may consider necessary.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Article 10 states that all expenditures connected with the performance of the function of Council must be defrayed from money appropriated by Parliament for the purpose.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

State-Owned Enterprises Governance Act, (Act No.2 of 2006), Article 9, <http://www.parliament.gov.na/parlidoc/ACT650.pdf>

The Namibian Newspaper,
Dentlinger L.,
Salary Increases Dominate Prime Minister's Budget
April 20, 2006
<http://www.namibian.com.na/2006/April/national/061B2E1E4D.html>

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

State-Owned Enterprises Governance Act, (Act No.2 of 2006), Article 9, <http://www.parliament.gov.na/parlidoc/ACT650.pdf>

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

80

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

In terms of Article 26 (1) of State-owned Enterprises Governance Act, (Act No.2 of 2006), boards of state-owned enterprises are under obligation to submit annual reports to both the portfolio minister and the State-Owned Enterprise Governance Council; while Article 26 (3) further requires the portfolio minister to cause a copy of such a report to be laid before the National Assembly within 30 days of receipt thereof.

References:

State-Owned Enterprises Governance Act, (Act No.2 of 2006), Article 26 (1))<http://www.parliament.gov.na/parlidoc/ACT650.pdf>

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

It is a statutory requirement in terms of Article 26 (2) of the State-owned Enterprises Governance Act, (Act No.2 of 2006).

According to the key informants, there have been major improvements in this regard over the years.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

State-Owned Enterprises Governance Act, (Act No.2 of 2006), Article 9, <http://www.parliament.gov.na/parlidoc/ACT650.pdf>

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Article 26 of the State-Owned Enterprises Governance Act, (Act No.2 of 2006), requires the preparation of financial records in a form that clearly sets out information according to the major businesses or activities of the enterprise concerned.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

State-Owned Enterprises Governance Act, (Act No.2 of 2006), Article 9, <http://www.parliament.gov.na/parlidoc/ACT650.pdf>

The Namibian Newspaper,
Dentlinger L.,
DBC Finances Still Unresolved,

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constraints, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although such information is generally freely available, its uses are hampered by a number of socioeconomic, cultural and economic constraints, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), geographic remoteness etc.

References:

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

77

V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

81

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

The law does make exceptions for those persons who may suffer legal incapacities, e.g. insanity, under-age, etc.

References:

The fundamental right to practice any profession, or carry on any occupation, trade or business is guaranteed under article 21 (j) of the Constitution of the Republic of Namibia, <http://www.orusovo.com/namcon>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Article 18 Constitution of the Republic of Namibia (<http://www.orusovo.com/namcon>), requires all administrative bodies and administrative officials to act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, whilst further guaranteeing the right of any persons aggrieved by the exercise of such acts and decisions to seek redress before a competent court or tribunal.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are a number of administrative delays that can be attributed to the intransigence of the functionaries responsible for business licensing.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Kangueehi K., Head: Commercial Law, Faculty of Law, University of Namibia; also currently serving as a Director of the Hengari, Kangueehi, Kavendjii Inc.,
Friday Jan. 11, 2008, Windhoek

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Apart from revenue stamps, there are no major government charges; however, given the cumbersome and technical requirements, some people do engage professional legal services at an extra cost.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

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Friday Jan. 11, 2008, Windhoek

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The Local Authorities Act of 1992 provides for a decentralized framework for the administration of the basic business requirements for meeting public safety standards. As a result, each local authority is legally empowered to adopt its own by-laws and regulations in this regard.

References:

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Friday, Nov. 16, 2007, Windhoek

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Friday Jan. 11, 2008, Windhoek

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The Local Authorities Act of 1992 provides for a decentralized framework for the administration of the basic business requirements for meeting public safety standards. As a result, each local authority is legally empowered to adopt its own by-laws and regulations in this regard.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The Local Authorities Act of 1992 provides for a decentralized framework for the administration of the basic business requirements for meeting public safety standards. As a result, each local authority is legally empowered to adopt its own by-laws and regulations in this regard.

References:

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Friday Jan. 11, 2008, Windhoek

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Different local authorities have different capabilities.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

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Friday Jan. 11, 2008, Windhoek

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

Different local authorities have different capabilities.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia; previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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Friday Jan. 11, 2008, Windhoek

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | **50** | 25 | 0

Comments:

Different local authorities have different capabilities.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
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Monday, Nov. 19, 2007, Windhoek

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Kangueehi, Kavendjii Inc.,
Friday Jan. 11, 2008, Windhoek

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Articles 33-35, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Articles 33 and 35, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Articles 33-35, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Articles 34-35, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Article 40, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Articles 36 and 43, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Articles 36 and 43, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

Comments:

In October 2004, the National Assembly passed the Prevention of Organized Crime Bill as part of the government drive to clamp down on racketeering, money laundering, criminal syndicate and gang activities, trafficking of human beings and smuggling of migrants. This was followed by the introduction of an elaborate legislation that is specifically dedicated to the prevention of money laundering and to investigating suspicious financial transactions. The legislation was presented in the National Assembly in September 2006.

References:

The Namibian Newspaper,
Dengtlinger L.,
NA Passes The Prevention of Organized Crime Bill,
Oct. 14, 2004,
<http://www.namibian.com.na/2004/october/national/047050D66B.html>

The Namibian Newspaper,
Weidlich B.,
Financial Intelligence Bill Tabled Again
Sept. 22, 2006,
<http://www.namibian.com.na/2006/September/national/0649B5EFA0.html>

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

In October 2004, the National Assembly passed the Prevention of Organized Crime Bill as part of the government drive to clamp down on racketeering, money laundering, criminal syndicate and gang activities, trafficking of human beings and smuggling of migrants.

References:

The Namibian Newspaper,
Dengtlinger L.,
NA Passes The Prevention of Organized Crime Bill,
Oct. 14, 2004,
<http://www.namibian.com.na/2004/october/national/047050D66B.html>

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Article 2, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

89

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

Notwithstanding the above-captioned provision, Article 2 (3 and 4) stipulates that the Commission is an agency in the public service; furthermore in terms of article 30, the prime minister may, after consultation with the director, make regulations relating to, among other, the code of conduct for office bearers and members staff of the Commission, as well as impose duties on political office bearers, members of regional and local authorities councils, and other public officials.

References:

Anti-Corruption Act (No. 8 of 2003), Article 2 (1), provides for the establishment of an independent and impartial Anti-Corruption Commission.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Article 2 (3 and 4) stipulates that the Commission is an agency in the public service; furthermore in terms of article 30, the prime minister may, after consultation with the director, make regulations relating to, among other, the code of conduct for office bearers and members staff of the Commission, as well as impose duties on political office bearers, members of regional and local authorities councils, and other public officials.

References:

Anti-Corruption Act (No. 8 of 2003), Articles 2 (1, 3 and 4) and 30 <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
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Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
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at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act (No. 8 of 2003), Articles 2 (1, 3 and 4) and
30 <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

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at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act (No. 8 of 2003), Articles 2 (1, 3 and 4) and
30 <http://www.superiorcourts.org.na/high%20court/docs/anticorrract.pdf>

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Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act (No. 8 of 2003), Articles 2 (1, 3 and 4) and
30 <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

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at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Amupathi T.,
Anti-Graft Agency Will Not See Light of Day Until 2004,
Nov. 10, 2003
<http://www.namibian.com.na/2003/november/national/0369EF962.html>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,

Friday, Nov. 16, 2007, Windhoek

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Jauch H., Head: Research and Education, Labour Research & Resources Institute, Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
National Assembly Approves Packages for Corruption Busters,
June 26, 2005
<http://www.namibian.com.na/2005/June/national/05BE7F7921.html>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act (No. 8 of 2003), Articles 2 (1, 3 and 4) and 30 <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

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Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

The Namibian Newspaper,
Govt Secret Reports to be Made Public,
Oct. 9, 2006
<http://www.namibian.com.na/2006/October/national/064F5FEADC.html>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

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previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

Anti-Corruption Act (No. 8 of 2003), Article 3 as well as the whole of Chapter 3, which sets the framework for the investigation of
corrupt practices <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Anti-Corruption Act (No. 8 of 2003), Articles 3(a) and 20 <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwanga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

63

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,
Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

Maamberua U., Senior Lecturer and Head of the Department of Accounting, Auditing and Taxation, University of Namibia;
previously he served as Permanent Secretary of the Ministry of Finance, President of SWANU (a political party)
Monday, Nov. 19, 2007, Windhoek

Mwinga M, Chief Executive Officer, RMB Asset Management Namibia; previously he served as Manager of Banking and Finance
at the Bank of Namibia,

Friday, Nov. 16, 2007, Windhoek

Jauch H., Head: Research and Education, Labour Research & Resources Institute,
Friday, Nov. 16, 2007, Windhoek

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

84 VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

83

74a. In law, there is a general right of appeal.

YES | NO

References:

Supreme Court Act 15 of 1990, Article 15;

High Court Act 16 of 1990, Article 18 (6)

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

One of the commonly cited challenges hampering the realization of the expedient resolution of legal appeals results from the insufficient public budgetary allocation to the function of the administration of justice. As a result, in view of the drastic increase in the number of appeals in civil, criminal and labor matters, there has been an expressed need for the appointment of judges.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Dentlinger L.,
Boost Funds or Face Court Backlog
April 20, 2006
<http://www.namibian.com.na/2006/April/national/061B2D4E23.html>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The key issue in this regard relates to the fact that although there is no constitutional right for state-funded legal aid, there has been a 2002 Supreme Court judgment in which the government and the director of Legal Aid were ordered to provide publicly-funded legal representation to those of the 128 accused persons who qualified for it.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Menges W.,

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Article 66 of the Namibian Constitution recognizes customary law and the common law of Namibia in force on the date of Independence, to the extent that these do not conflict with this constitution or any other statutory law. These, in most cases, tend to comprise of unwritten rules, codes and values.

References:

Constitution of the Republic of Namibia,
<http://www.orusovo.com/namcon>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

75

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

There are few incidences in which the state stood in defiance of court rulings. The incidence cited in the newspaper article is one example to this effect.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Amupathi T,
Govt Defies Court Order,
Oct. 26, 2000

<http://www.namibian.com.na/2000/October/news/00AF8B6A5C.html>

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

75

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution of the Republic of Namibia, Article 78,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Menges W.,
Government Reaffirms Independence of the Judiciary, But With Accountability,
Aug. 15, 2005
<http://www.namibian.com.na/2005/August/national/05CDA208F9.html>

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

There is no specific legal provision to this effect.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Concerns have been, however, expressed regarding the conditions of foreign judges who are appointed on fixed term contractual basis. Some think this may result in situations in which they may not be able to make rulings against the state, as this may jeopardize the extension of their contracts once these have expired.

References:

Constitution of the Republic of Namibia, Article 84,
<http://www.orusovo.com/namcon>

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There has been an incident in which a house of an Oshakati magistrate who was presiding over a high profile case of corruption

was petrol bombed; investigations are continuing as the culprits have not been identified and the true motives for their acts of aggression have not been established.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Shivute O.,
Judiciary Condemns Attack on Magistrate,
Aug. 15, 2007
<http://www.namibian.com.na/2007/August/national/07AE7BE36C.html>

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

50

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Despite the legal and constitutional guarantees to this effect, the full access of women to the judiciary, both in terms of representation on the bench and accessing the services and/or protections of the courts, continues to be hampered by numerous social, economic, political and cultural obstacles.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Legal Aid Act of 1990

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | **25** | 0

Comments:

Although there are no constitutional provisions for the right to state-funded legal aid, there has been a 2002 Supreme Court judgment in which the government and the director of Legal Aid were ordered to provide publicly-funded legal representation to those of the 128 accused persons who qualified for it. This ruling was predicated upon the provision of Article 12 (e) of the Namibian Constitution, which states that all persons shall be afforded adequate time and facilities for the preparation and presentation of their defense, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice". However, it was noted by one of the informants that statistically more people are in court without adequate legal counseling than the other way around.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

Although there are courts of law in most geographic localities, their accessibility to some sections of the population continues to be hampered by other socioeconomic, cultural and economic constraining factors, such as illiteracy, legal and political ignorance, limited ability to converse in the official language (English), etc.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

42

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Dentlinger L.,
Police Force in Crises
June 16, 2005

<http://www.namibian.com.na/2005/June/national/05BB43EA47.html>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

The Namibian Newspaper,
Amupathi T.,
Amnesty Slams Nampol,
July 11, 2002

<http://www.namibian.com.na/2002/july/news/0270DF10DD.html>

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

75

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Within the structure of the Namibian Police there is also provision for police's own internal watchdog – the Complaints and Discipline Unit.

References:

Constitution of the Republic of Namibia, Article 91 (b)
<http://www.orusovo.com/namcon>.

It entrust the Ombudsman's Office with the powers of investigating complaints of this nature.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

It is not clear to what extent the Ombudsman's Office is successful in its duties, but reports by Amnesty International (cited in Berg) stated that the Ombudsman would ordinarily only conduct preliminary investigations and complaints against the police. These would be referred back to the Complaints and Discipline Units, thereby to be dealt with internally by the police. This clearly negates the independence of the Ombudsman.

References:

Berg J., 2005,
Overview of Plural Policing Oversight in Selected Southern African Development Community Countries,
<http://www.policeaccountability.co.za/Publications/Pub-Categories.asp?PubCatID=15>

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

Anti-Corruption Act (No. 8 of 2003), Article 2, <http://www.superiorcourts.org.na/high%20court/docs/anticorrupt.pdf>.

It provides for the Anti-Corruption Commission, which has a general jurisdiction.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

There is also an internal unit within the Namibian Police force responsible for disciplinary issues, including complaints brought forward by citizens.

References:

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

Ndjarakana M., Director of the Namibia Democracy Support Centre; previously he served as Secretary to the National Assembly,
Dec. 5, 2007, Windhoek

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

The only exemption is provided under Article 38 (2) of the Police Act, 19 of 1990, which states that A member who in good faith performs any act in accordance with or in the enforcement of any provision purporting to be an enactment of a competent legislative authority, shall, notwithstanding any irregularity in the enactment of or defect in such provision or want of jurisdiction on the part of such legislative authority, be exempt from liability in respect of the performance of that act to the same extent and subject to the same conditions as of such irregularity had not occurred or such defect or want of jurisdiction had not existed.”

References:

Police Act 19 of 1990

Tjombe N., Director, Legal Assistance Centre,
Friday, Nov. 16, 2007, Windhoek

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

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100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.