Corruption Prevention: Strengthening Systems, Procedures and Practices

by

Frederico Links (IPPR)

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Hanns Seidel Foundation Namibia

Biography

Frederico Links is a research associate with the Institute for Public Policy Research (IPPR), as well as a freelance journalist affiliated to Insight Namibia magazine and Namibia's largest daily newspaper, The Namibian. As both a journalist and researcher, his focus is on governance issues as they pertain to poverty alleviation and social empowerment.

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Disclaimer

The opinions presented are those of the author and should not be regarded as the views of the Hanns Seidel Foundation or IPPR.

Preposition

General perceptions of the levels of corruption in and affecting the Namibian public sector have steadily edged deeper and deeper into negative terrain[1] in recent years. The nature, scope and scale of incidences of corruption point to existing gaps and weaknesses in legislative frameworks, which in turn negatively impact on regulatory and enforcement capacities. In light of this, various public sector institutions face threats to their credibility.

This paper briefly explores issues around transparency and accountability as they affect the government's tender and mining licensing dispensations, as well as the declaration of assets and interests of public servants and political officeholders. It makes broad recommendations on how processes can be improved to minimise the possibility of these processes being exploited for corrupt purposes.

This paper argues for the strengthening of certain legislative frameworks, by closing some glaring loopholes, in order to foster a culture of ethical decision-making within open and transparent processes.

This paper was prepared for the *Namibia: The Battle Against Corruption* conference organised by the IPPR and held on September 14 and 15 2010 in Windhoek. The paper and the conference were funded by the Hanns Seidel Foundation.

[1] See *Afrobarometer Briefings: Perceptions of Corruption in Namibia 2008* published by the IPPR which states that those who perceive government as corrupt increased by 15 percent between 2005 and 2008. Transparency International's Corruption Perceptions Index has seen Namibia remaining at 4.5 in 2009, 2008, and 2007 having scored a worse rating of 4.1 in 2006 (10 = clean, 1 = absolutely corrupt).

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1. Introduction

"If we, all of us, do not do our part, the evils of mismanagement and dishonesty in public affairs will rob our people of the possibilities and opportunities to realise their full potential." - President Hifikepunye Pohamba in early 2006, at the launch of the Zero Tolerance for Corruption Campaign[2].

Over the years since then, progress in curbing the "evils of mismanagement and dishonesty in public affairs" appears to have been slow, which prompted economist Robin Sherbourne, in his *Guide to the Namibian Economy 2010*[3], to state: "Government claims to be attempting to make a fundamental shift in the way its economy is owned and managed without explicit policies, goals and transparent ways of measuring progress. This is clearly a recipe for chaos and corruption."

Transparency remains a major concern, with most strategic state organs and divisions not being publicly accountable for their conduct with regard to state resources.

That said, the Namibian government has launched discussions with a view to amending several applicable laws and regulations to bring them into line with the developmental priorities of the state. Some of these discussion and consultation initiatives revolve most notably around the government's tender[4] and mining licensing processes. However, at this stage it is hard to assess how far these discussions have come or when and what sort of amendments will be proposed to particular laws and regulations.

But while some things appear to be enjoying some welcome and appropriate scrutiny, other issues remain largely undiscussed, such as concerns around the declaration of assets and disclosure of outside incomes and interests of public servants and political officeholders, and even the financing of political parties.

There is always a danger that the current reform processes relegate transparency and accountability to the fringes. As Sherbourne warned: "The more discretion and the less transparency there is in any system, the more corruption there is likely to be."

In light of this, this paper will briefly explore and discuss issues around transparency and accountability as they affect the government's tender and mining licensing dispensations, as well as the issue of declaration of assets and interests of public servants and political officeholders, and make broad recommendations on how

[2] See 'Pohamba blows the whistle on corruption', *The Namibian*, 26 March 2006.

[3] See *Guide to the Namibian Economy 2010*, published by the IPPR.

[4] See 'Government changes tender board law', *The Namibian*, 17 February 2010.

processes can be improved to minimise the chances of these processes being exploited for corrupt purposes.

The departure point of this paper is that, in the end, disclosure and openness can only be in aid of better service delivery to the broader public, enhancing the credibility and legitimacy of the entire state structure and that of all its component organs.

2. "This is tantamount to sabotage…"[5]

This was said by Swapo Party Member of Parliament and Deputy Minister of Works and Transport, Chief Ankama, during budget deliberations earlier in the year, when in a strongly-worded statement he called for government tender processes to be investigated.

"The tender system seems to be invaded by few individuals under the guise of black economic empowerment (BEE), where a few individuals are operating and tendering under several business or trade names. They are allegedly continually receiving tenders under fictitious names," Ankama is reported to have said.

While Ankama did not provide details of the questionable tender awards he was referring to, in alluding to the phenomenon of the 'tenderpreneur', over the years the legality of various major government contracts awarded through the Tender Board have been challenged in the country's courts.

In recent years, tender awards ranging from a multi-million dollar oxygen supply contract for the Ministry of Health, a tender for a N$75 million office for the Ministry of Lands, and the supply and laying of railway tracks for a northern Namibia railway extension, to a lucrative hostel catering contract with the Ministry of Education, have ended up in litigation over allegations of irregular awarding of these tenders. These, and many other challenges over the years, have become a threat to the reputation of the institution, with the suspicion of untoward, if not borderline corrupt, dealings clouding the image of the Tender Board.

One unsuccessful and aggrieved Namibian tenderer[6], who lost out on the northern railway extension contract and has challenged the Tender Board decision in the country's High Court, has gone as far as stating that the Namibian government, through the Tender Board, has "essentially agreed to break its laws and ignore its own policies in return for a loan", a sentiment which has been variously echoed by others over the years.

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5 See "Tender Board should stick to rules: Ankama', *The Namibian*, 13 April 2010.

6 See 'Railway tender to Chinese firm heading to court', *The Namibian*, 24 February 2010.

This comes against the backdrop of Namibia facing many economic challenges, not least of which is a staggeringly high unemployment rate, unofficially pegged at 51.2 percent, and the role of the Tender Board in encouraging job and wealth creation has come under the spotlight, with much criticism directed at the institution over its awarding of large contracts to foreign, mainly Chinese businesses, at the expense of Namibian enterprises and especially those in the SME sector.

Compounding this state of affairs is the fact that tender exemptions have increased in both number and value over the last few years. According to a report[7], in the 2005-06 financial year the Tender Board approved tenders worth N$619 million and tender exemptions worth N$170.4 million. In the 2006/07 financial year, exemptions spiralled to N$1.6 billion in value while awarded tenders amounted to N$868.3 million. This trend continued through the 2007-08 financial year, when the value of government procurement soared to over N$4 billion, and the value of tender awards amounted to N$624,3 million, compared to N$3,4 billion spent on tender exempted procurement.

Against this background, the Tender Board of Namibia, in the Ministry of Finance, was established through the Tender Board of Namibia Act (Act 16 of 1996) to "regulate the procurement of goods and services for the letting or hiring of anything or the acquisition or granting of rights for or on behalf of and the disposal of property of the Government; to establish the Tender Board of Namibia and to define its functions; and to provide for incidental matters". The Tender Board is chaired by the Permanent Secretary in the Ministry of Finance, with all other Permanent Secretaries serving as members.

Current discussions, around amending Tender Board regulations, appear to focus mainly on creating thresholds to exclude foreign companies from tendering for certain government contracts, in a drive to encourage local entrepreneurship and create local wealth and employment opportunities, without undermining the competition principle of a free-market economy. Both, Finance Minister, Saara Kuugongelwa-Amadhila, and the Tender Board Secretary, Welma Enssle, in the face of mounting criticism of the Tender Board, have stated that the "Namibianisation" of tenders has become a priority.

To date, Tender Board decision-making remains largely inscrutable, with only the successful tenderer being made public, on a bulletin board and/or on the Tender Board website, while the nature of all bid proposals and the deliberations of the Board remain secretive, as well as the reasoning behind why so many government contracts are exempted from tender processes of late.

The Namibian public has no access to detailed information about tender bids while bidders can only request to see a version of the Board's final decision. Of course, it stands to reason that the issue of 'commercially sensitive information' would come into the frame, and this is used to justify why bid proposals, and thus a complete and

[7] See 'Finance ministry late with annual Tender Board reports', *The Namibian*, 12 February 2010.

comprehensive account of the Board's deliberations, cannot be made public. Confirming this in a recent conversation with the author, Welma Enssle, stated that the tender process is "not supposed to be open to everybody".

This statement in a way belies one of the principles of Namibia's Tender Board Service Charter, namely that the Tender Board commits to "transparency and the publication of outcomes". Aside from the rudimentary publication of tender process outcomes, as illustrated above, there are no provisions in the Tender Board Act guaranteeing transparency of decision-making, provisions which would probably go a long way in dispelling suspicions, considering the billions of dollars at stake, around the workings of the Tender Board.

In this regard, **it is recommended**, that when new regulations are introduced, which Enssle said might be by the end of 2010, as per the Tender Board of Namibia Act, that transparency in decision-making become a central consideration and is appropriately provided for, placing every step, as far as legally and practically possible, of the tender process in full public glare and thereby minimising the chances of unethical decision-making and possible corrupt conduct.

It is further recommended that government consider, alongside appropriately opening up Tender Board deliberations to public scrutiny, the introduction and adoption of Integrity Pacts (IP) or some such similar mechanisms.

Integrity Pacts[8] were developed by international anti-corruption non-governmental organisation Transparency International (TI) during the 1990s, and have been adopted by various countries around the world, such as Germany, Argentina and China, to mention just three. They have as their objectives:

> (a) To enable companies to abstain from bribing by providing assurances to them that;
>
> (i) their competitors will also refrain from bribing, and
>
> (ii) government procurement, privatisation or licensing agencies will undertake to prevent corruption, including extortion, by their officials and to follow transparent procedures;
>
> (b) To enable governments to reduce the high cost and the distorting impact of corruption on public procurement, privatisation or licensing.

Transparency International states: "Beyond the individual impact on the contracting process in question, the IP is also intended to create confidence and trust in the public decision-making, a more hospitable investment climate and public support for the government's own procurement, privatisation and licensing programmes."

The IP process, furthermore, makes provision for some sort of concrete civil society

[8] See 'The Integrity Pact: A powerful tool for clean bidding', published by Transparency International (TI).

oversight over tender and all other government procurement systems and processes.

Introducing IPs or creating something similar for the Namibian environment, as well as explicitly incorporating greater transparency into the legislative framework, would go a long way in cutting down and curbing resource wastage and avenues for corruption.

3. 'We have to revisit our strategy as far as our natural resources are concerned …'[9]

Mining and mineral exploration activities have always been a mainstay of the Namibian economy, accounting for about 15 percent of GDP and around 25 percent of exports[10], according to the latest figures, and with something of a boom currently underway in especially the uranium mining sector, the industry's contribution to national accounts is expected to climb by a few percentage points over coming years.

The mining industry is regulated through the Minerals (Prospecting and Mining) Act of 1992, which vests all prospecting and exploitation rights with the Namibian state. The power to issue mining and exploration licenses are vested with the Minister of Mines and Energy, with the assistance of the Mining Commissioner.

Over the years, the Ministry of Mines and Energy's (MME) licensing processes have too, like the Tender Board, become mired in suspicion, given that when it comes to the issuance of licences and signing of extractive contracts, there exists a great deal of secrecy. A case in point is the shareholders agreement between the Namibian government and global diamond mining major De Beers AG, regarding their 50:50 Namdeb joint venture, the particulars of which have never been made public even though the diamonds in question are a public asset.

The Ministry's image is not helped by the publication and release of information that suggests corruption takes place when it comes to mining-related licensing. For instance, a 2009 report[11] looking at mining practices in Namibia's protected areas, in a way probably succinctly sums up perceptions of goings-on at the MME, by explicitly stating that "enforcement problems stem from a [licensing] process that is slow, inefficient, and occasionally tainted by corruption".

The document goes on to state: "For example, industry sources say that as recently

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9 See 'Tighter control on resources needed: Nahas', *The Namibian*, 9 April 2010.

10 See *Guide to the Namibian Economy 2010*, published by the IPPR.

11 See 'Striking a Better Balance: An investigation of mining practices in Namibia's protected areas', issued by the Legal Assistance Centre (LAC).

as 2003, when a company would apply for an EPL [Exclusive Exploration License] in a park, upper level MME officials would refuse to issue the EPL, citing the park's protected status. However, this excuse was contradicted by officials issuing licences to their political associates or to outside groups willing to bribe them often for more invasive types of mineral prospecting."

And in many cases, disregarding legislated regulatory systems and processes, "mining companies bypassed the corrupt MME officials … by appealing directly to the Ministers themselves".

Speculatively, much of the alleged dodgy dealings at the MME can probably be traced to the fact that the Minerals (Prospecting and Mining) Act does not encourage accountability of decision-making, in that transparency of licensing processes is not provided for, while "Preservation of Secrecy" is explicitly addressed. Compounding this is that both according to the law and in practice, mining and exploration licenses are granted at the discretion of the Minister, placing a lot of power over the country's mineral resources in the hands of just one person.

If the argument is taken further, then this situation must surely constitute an invite to unethical and unlawful conduct, as recently illustrated by the Supreme Court finding that former Mines Minister, Erkki Nghimtina, had acted unlawfully when in 2006 he had discretionarily granted EPLs belonging to an Australian-owned company to a prospector called Ancash, in which a prominent and politically connected individual held a significant stake at the time.

Incidences such as these, as well as cases of politically well-connected individuals[12] applying for and gaining EPLs and then on-selling them to foreign mining companies, and the sale of Namibian mining and exploration licenses and operations in other parts of the world without the Namibian government being apprised of such transactions – as happened when French uranium miner Areva bought out the uranium exploration operations of a small Canadian miner a few years ago and has since started mining in the Erongo Region – has increasingly raised considerable questions and criticisms around the existing mining and exploration licensing dispensation, which prompted Prime Minister Nahas Angula to make the statement, used to headline this section, in Parliament earlier this year.

However, all does not seem lost, as government a few years ago started the process of reviewing the Minerals (Prospecting and Mining) Act of 1992. It is unclear at what stage the consultations are, but Chamber of Mines General Manager, Veston Malango, stated in February this year that the major outstanding issues that remained to be addressed were improved mining and exploration licensing regulations. As yet, it is uncertain when a new Minerals Bill will be tabled before parliament, it having been scheduled for sometime during 2010. The expectation still appears to be that a Bill, as with the new Tender Board regulations, will be ready to

[12] A name that keeps popping up in off-shore oil and gas EPLs is that of local businessman Knowledge Katti. See 'Universal joins gas hunt in earnest', 14 July 2009, and 'Block1711 now has oil and gas', 22 July 2009, *The Namibian*.

be tabled before the end of the year.

But once again, concern however remains over the transparency of mining and exploration licensing in any envisaged Minerals Bill.

In this regard, **it is recommended** that government introduce similar mechanisms to the Integrity Pacts discussed earlier to future mining and prospecting licensing procedures.

Furthermore, **it is recommended** that government, borrowing some recommendations from international NGO the Revenue Watch Institute (RWI)[13], "should incorporate contract transparency into law and practice; that future confidentiality provisions in agreements should be carefully tailored in scope and duration in order to privilege public access to the contract and the information that it generates, and; with regard to existing contracts, government should consider options for disclosure".

RWI finds that "contract transparency is an essential precondition to ensuring that all parties benefit from the extractive industries. Disclosure is a necessary precursor for the coordinated and effective management of the sector by government agencies".

Also, **it is recommended** that any future Minerals Bill make provision for revenue transparency in the mining sector, for as Transparency International states[14] "disclosure would provide civil society and other stakeholders with the information they need to hold government to account for how [much] revenues [are generated] from extractive industries [and how such revenues] are spent".

In this regard, "government and regulatory agencies should urgently consider introducing mandatory revenue transparency reporting for the operations of mining companies, and; government should introduce regulations that require all mining companies to make public all information relevant to revenue transparency".

Lastly, in order to improve transparency and accountability in its dealings, **government should consider** becoming a signatory to the Extractive Industries Transparency Initiative (EITI).

[13] See 'Contracts Confidential: Ending secret deals in the extractive industries', published by the Revenue Watch Institute (RWI).

[14] See 'Promoting Revenue Transparency: 2008 Report on Revenue Transparency of Oil and Gas Companies', issued by Transparency International (TI).

THE EITI PRINCIPLES[15]

1 We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.

2 We affirm that management of natural resource wealth for the benefit of a country's citizens is in the domain of sovereign governments to be exercised in the interests of their national development.

3 We recognise that the benefits of resource extraction occur as revenue streams over many years and can be highly price dependent.

4 We recognise that a public understanding of government revenues and expenditure over time could help public debate and inform choice of appropriate and realistic options for sustainable development.

5 We underline the importance of transparency by governments and companies in the extractive industries and the need to enhance public financial management and accountability.

6 We recognise that achievement of greater transparency must be set in the context of respect for contracts and laws.

7 We recognise the enhanced environment for domestic and foreign direct investment that financial transparency may bring.

8 We believe in the principle and practice of accountability by government to all citizens for the stewardship of revenue streams and public expenditure.

9 We are committed to encouraging high standards of transparency and accountability in public life, government operations and in business.

10 We believe that a broadly consistent and workable approach to the disclosure of payments and revenues is required, which is simple to undertake and to use.

11 We believe that payments' disclosure in a given country should involve all extractive industry companies operating in that country.

12 In seeking solutions, we believe that all stakeholders have important and relevant contributions to make - including governments and their agencies, extractive industry companies, service companies, multilateral organisations, financial organisations, investors and non-governmental organisations.

[15] See 'EITI Rules including the Validation Guide', published 24 February 2010.

4. Nothing to declare?[16]

Almost exactly a year ago, in late September 2009, former DTA MP McHenry Venaani requested of Prime Minister Nahas Angula in Parliament to launch an investigation into outside paid work being done by civil servants, touching on the issues of declaration of assets and conflict of interest which have come to tarnish the image of the public sector.

"According to the Public Service Act of 1995 it is mandatory for all civil servants to acquire (written) permission from the Prime Minister's Office. Will you consider an investigation?" Venaani is reported to have asked[17].

Venaani's request reflects the fact that the conduct of public servants, including those at regional and local levels, as well as that of national lawmakers, has become a source of wide concern.

To put the situation into context, in late 2008 Prime Minister Angula tabled the Public Service Commission's annual report, for the period ended March 31 2008, which stated that out of around 80 000 civil servants then in the employ of the state, just over 200 had declared outside interests, a figure which was then and still is roundly regarded as a gross underestimation and misrepresentation of the true state of affairs.

With corruption already perceived to have become endemic in the public service sector, the suspicion that a great many civil servants are being economical with the truth, if not downright dishonest, regarding their outside interests, there exists the reasonable assumption of considerable unethical conduct.

According to the Public Service Act (Act 13 of 1995), civil servants are required to inform and seek permission from their particular Permanent Secretary for any outside paid work they wish to undertake or revenue generating business interests they might have a stake in. This provision exists primarily to prevent a conflict of interest arising between the individual's duties to the state and those of a private nature. Under the Act, the Public Service Commission was created to monitor and regulate the conduct of civil servants in this regard.

However, at least one Public Service Commissioner stands in total disregarded of the provisions of the Public Service Act, namely Teckla Lameck, who is currently embroiled in the largest corruption case in recent years, involving a government contract of hundreds of millions of dollars for the supply of X-ray scanners to the Ministry of Finance. Lameck is alleged not to have informed either the President or

16 Borrowed from *Insight Namibia* cover headline, *Insight Namibia*, April 2010.

17 See 'DTA demands investigation into extra work of civil servants', *The Namibian*, 28 September 2009.

the Prime Minister of her interest in a company, Teko Trading, at the heart of the bribery and corruption case currently trundling through the High Court.

In a more recent case, from earlier this year, a noble scheme involving government funding of N$100 million, for the construction of ablution facilities in rural areas across five northern regions of the country, has become mired in and tainted by conflict of interest, if not outright corrupt, activities. Various regional and local government officials have allegedly hijacked and milked the initiative by awarding the construction projects to themselves or their associates.

And then of course there's the infamous Namibia Liquid Fuels (NLF) saga dating from the early 2000s, which reeked of conflict of interest and borderline corrupt influence peddling, in that a handful of senior civil servants and politically connected individuals reportedly profited to the tune of tens of millions of dollars from a multi-year government fuel supply contract. Too much surprise, the Anti-Corruption Commission (ACC) a few years ago pronounced the deal to have been above board.

It goes without saying that the issue of conflict of interest goes hand-in-hand with that of declaration of assets, and in this regard, not only is the civil service perceived to be falling woefully short, but so are the country's lawmakers.

In an April 2010 exposé[18] it was revealed that the majority of, if not all, MPs had for most of the last decade, till end 2009, been in breach of constitutional and National Assembly rules regarding declaration of assets and interests. In an ironic twist, former DTA MP McHenry Venaani was identified as one of 13 MPs who had not even made a token attempt, which is debatably what most declarations amounted to, to comply with disclosure rules of the Register of Members' Interest.

Such instances of flagrant disregard of rules and procedures have become too numerous to mention, and what all this points to is that adequate codes of conduct either do not exist or where such codes do exist, they are weakly, or not at all, enforced. In the long term this can only exacerbate unethical conduct and negative perceptions of the public sector, and inversely, embolden corrupt elements within the sector to exploit the lax regulatory environment.

Judging by all this, it would not be unreasonable to suggest that the situation has become decidedly and increasingly disturbing.

Having said that, **it is recommended** that government, through the Office of the Prime Minister, revisit various rules and procedures governing the conduct of public servants, and strengthen these regulations where they are perceived and proven to be weak, by making them stricter and more explicit.

It is also recommended that clear codes of conduct be developed for various

[18] See 'Too little, way too late', *Insight Namibia*, April 2010.

levels of governance, such as specific codes of conduct for regional and local government level officials.

5. Role of the ACC

Considering the above discussions, it stands to reason that the Anti-Corruption Commission (ACC) has a role to play in fostering ethical governance and decision-making at various levels and across sectors.

In this regard, the Anti-Corruption Act (Act 8 of 2003) in Chapter 2 (Establishment of Anti-Corruption Commission), states under Article 3 that:

> The functions of the Commission are –
>
> (f) to take measures for the prevention of corruption in public bodies and private bodies, including measures for –
>
> (i) examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;
>
> (ii) advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;

In light of this, and against the backdrop of the discussions outlined above, **it is recommended** that the ACC live out its statutorily mandated role and become more prominent and proactive in advising on, guiding and reforming of public sector practices, processes and institutions, in its efforts to minimise the impacts of corruption on public service delivery.

6. General Recommendations

It goes without saying that anti-corruption discussions shouldn't and aren't limited to those sketched above, and that there are a number of other areas and institutions which should be brought into the sights of efforts to improve governance and service

delivery.

Thus, in casting the net wider, **it is recommended** that:

- Government seriously consider introducing access to information legislation, something which has been called for a number of years, most notably by the Namibian chapter of the Media Institute of Southern Africa (MISA);
- Government should look into strengthening the hand of the Auditor-General by statutorily mandating the Office of the Auditor-General to be able to force government to investigate irregularities as and if they should occur and are detected in the various audit reports of government ministries and departments;
- Government look into strengthening and adequately capacitating judicial processes in order to speed up the prosecution of corruption cases, and cases in general, before the country's courts; and
- Appropriate and specific legislation be introduced for the protection of whistle-blowers, to complement existing legal frameworks.

7. Conclusion

It has to be recognised that much is already being done, by government and others, to combat corruption at all socio-political and economic levels of Namibian society, with such initiatives as the Anti-Corruption Commission (ACC) and the Financial Intelligence Unit (FIU) having been introduced over just the last decade.

That said, this paper broadly calls for the strengthening and expanding of existing regulatory and enforcement capacities, at arguably relatively little additional re-organisation and financial cost to the state.

In the process, government should look to learn from international best practice examples of functioning, and even experimental, regulatory environments and set-ups.

For in the end, the fight against corruption is a good one and has as its goal the maximising of future benefits of Namibian nationhood for all the country’s citizens.

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