



Anti-Corruption Act 8 of 2003

What does the law do?

This law establishes an Anti-Corruption Commission and provides measures for the prevention and penalty of corruption.

What is the purpose of the law?

Broadly speaking, the mandate of the Anti-Corruption Commission is to prevent corruption, to educate the public on the impact of corruption, and to investigate allegations of corrupt practices. Because corruption can often involve government officials, the Commission is designed to be an independent and impartial body.

The law sets up the Commission and says how it will operate. The law also creates a number of new crimes aimed at various corrupt practices. This law helps Namibia to carry out its duties under the United Nations Convention against Corruption, the African Union Convention on Preventing and Combating Corruption and the SADC Protocol Against Corruption.



When did the law come into force?

15 April 2005. The Namibian Constitution was amended in 2010 to add a new provision on “Anti-Corruption Measures” which was further amended in 2014. The Constitution as amended requires Parliament to pass a law setting up an independent and impartial Anti-Corruption Commission with a Director-General and a Deputy Director-General nominated by the President and appointed for five-year terms by the National Assembly. The constitutional amendments move the task of investigating complaints of corruption from the Ombudsman to the Anti-Corruption Commission. Even though Parliament had already taken these steps, adding a provision to the Constitution on the Anti-Corruption Commission signals its importance.



What is corruption?

The law does not include a definition of corruption. The Anti-Corruption Commission has described it as “the abuse of a position of trust for personal gain”.¹

These are some typical forms of corruption:

- public servants demanding or taking money or favours in exchange for services
- politicians misusing public money or granting public jobs or contracts to their friends and family members
- companies bribing public officials to get valuable deals.

¹ Anti-Corruption Commission, “[Your role to ensure a corrupt-free society](#)”, undated.

Corruption undermines democracy and economic development. It increases poverty, inequality and damage to the environment. It also destroys public trust in government.²

What are the powers and functions of the Anti-Corruption Commission?

The laws give the Commission these key duties:

- to consider complaints about corruption reported to it, and also to act on its own to uncover corrupt practices
- to decide when an investigation is needed, and whether the investigation should be conducted by the Commission or another authority
- to investigate possible corruption, and to report on its investigations to the public or private bodies that are affected
- to work together with other authorities that investigate corrupt practices in Namibia and in other countries
- to gather evidence of corrupt practices and give this evidence to the Prosecutor-General of Namibia or to prosecuting authorities in other countries
- to take measures to prevent corrupt practices in both public and private bodies, such as helping them improve their internal practices and procedures, and advising them on steps that can prevent corruption
- to educate the public about the dangers of corruption and to provide information to the public on the Commission's functions.

Who heads the Anti-Corruption Commission?

The Anti-Corruption Commission is an independent and impartial body. It is headed by a Director-General and a Deputy Director-General nominated by the President and appointed by the National Assembly for five-year terms. The law says that these officials must have "good character" and "high integrity" as well as relevant knowledge or experience. The Director-General is the head of the Commission and responsible for its direction and control.

Who staffs the Anti-Corruption Commission?

The staff members are public servants appointed in the same way as the staff of other government institutions. The Director-General has the power to issue administrative orders to the staff of the Commission on matters such as their training, duties and responsibilities. The Director-General will select some staff members to act as investigating officers who look into specific cases. The Director-General also has the power to appoint external experts as "Special Investigators" for specific incidents of suspected corruption, if the Prime Minister agrees to this.

How is the independence of the Anti-Corruption Commission protected?

The Director-General and the Deputy Director-General must not be involved in the day-to-day management of any business or occupation, or the management of any political party. They must not be salaried employees of any other person or organisation. These rules are intended to prevent conflicts of interest.

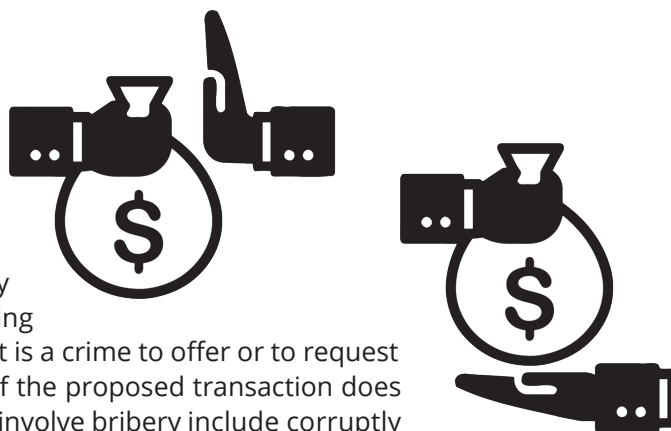
Another safeguard is that the Director-General and the Deputy Director-General can be dismissed from office before the end of their terms only after their removal has been considered by a three-person board appointed by the Chief Justice of the Supreme Court of Namibia. This board must be chaired by

² You can find out more about corruption on the [website of Transparency International](#), an organisation that works in countries around the world to end corruption.

someone who has been a judge or would be qualified to serve as a judge. The board gives its report to the President for consideration. If the President thinks that an official should be removed from office after receiving the board's report, the President must refer the matter to the National Assembly. If the National Assembly adopts a resolution calling for removal, the President must then remove the official from office.

Corrupt practices

The table below lists some of the crimes created by the law. The maximum penalty for any of these crimes is a fine of N\$500 000, prison for 25 years, or both.

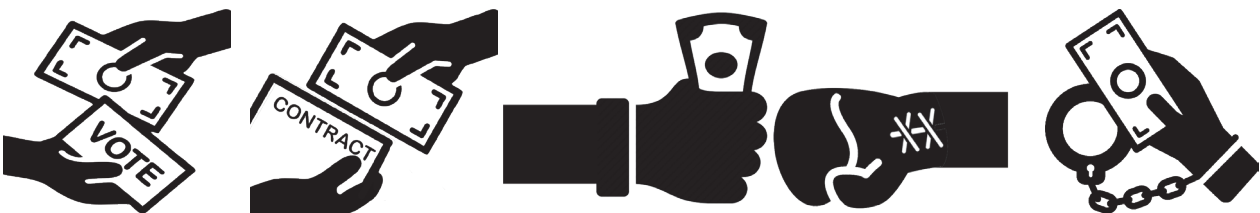


Note that bribery and similar crimes generally apply on both sides of the transaction: both giving and receiving bribes is a crime. Note also that it is a crime to offer or to request a bribe, even if the person on the other side of the proposed transaction does not cooperate. So almost all of the crimes that involve bribery include corruptly offering, giving, requesting, accepting or agreeing to accept some inducement or reward. The corrupt element means that the aim was to get someone to act to the advantage of a particular person or business, instead of doing their duties in a proper and impartial way.

Most of the crimes involving bribery talk about requesting or providing “gratification”. This term is broadly defined to cover many forms of benefits. For instance, it includes money, gifts, loans, being released from loans already owing, appointments to some job or position, discounts, rebates, services and favours. The definition has to be wide because corruption can take many different forms.

CORRUPT PRACTICES	
Crime	Description
Bribery	<p>Bribery, directly or indirectly, for doing or not doing something. It is also an offence to arrange this with an employee or an agent of the business or the institution in question.</p> <p><i>Example: offering a shop employee a bribe to “look the other way” while you steal goods from the shop</i></p>
Bribery of a public officer	<p>Bribing a public officer for:</p> <ul style="list-style-type: none"> ● voting for or against something (or abstaining from a vote) ● doing or not doing any official act ● delaying an official act, or giving it priority ● hindering or preventing an official act ● acting to influence the granting of an contract or advantage in favour of any person ● showing undue favour or disfavour to anyone. <p>A “public officer” includes a staff member of the public service (including the police force, the correctional service, the defence force, and regional and local authority councils), a member of Parliament, a regional or local authority councillor, a judge or anyone who is being paid from public funds.</p> <p><i>Examples: paying a police officer to “lose” a police docket; paying a government official to put your ID application at the front of the queue</i></p>

<p>Bribery of foreign public officials</p>	<p>Bribing a foreign public official directly or indirectly to get or retain business or some advantage in the course of business – but in this case the crime covers only the person who offers or gives the bribe and not the person who requests or receives it (who will often be based outside Namibia).</p> <p>A “foreign public officer” includes anyone holding a legislative, administrative or judicial office in another country, anyone who carries out public functions on behalf of a foreign country, and an official or agent of a public international organisation.</p> <p><i>Examples: paying a government official in Angola to recommend your company for a fishing quota; paying someone in the SADC office to give your business an advance look at forthcoming tender documents</i></p>
<p>Bribery in relation to tenders</p>	<p>Bribing someone in connection with a tender for a public or private body. <i>Example: offering a bribe to an employee of a company or a member of a government tender board to recommend you as a supplier</i></p>
<p>Bribery of witnesses</p>	<p>Bribing a witness (or someone else) to influence the witness’s testimony or to try and get them not to testify at all. <i>Example: offering to pay for your daughter’s university fees if you will agree to lie to the court about the traffic accident that you saw</i></p>
<p>Bribery in connection with auctions</p>	<p>Bribing someone to influence the bidding at an auction <i>Example: paying someone not to bid against you at an auction of municipal properties to try and keep the price low</i></p>
<p>Bribery in connection with contracts</p>	<p>Bribing someone to influence a contract with a public or private body, or to influence the price provided in a contract <i>Example: “If you pay me a cut, I will tell my boss that the company competing against you for the catering contract provides bad food.”</i></p>
<p>Bribery in connection with sporting events</p>	<p>Bribing someone to influencing the run of play or the outcome of a sporting event <i>Example: “Everyone thinks that Namibia is going to win the next soccer match. If you can make sure that we lose the game, we can make a lot of money betting against Namibia.”</i></p>
<p>Conflicts of interest</p>	<p>Where public officers have personal interests in contracts, agreements or investments made by the public body they work for. <i>Example: pushing for a government contract to be given to a company that you have a stake in, without disclosing your involvement</i></p>
<p>Abuse of a public office or position</p>	<p>Corruptly using a public position for the benefit of yourself or some other person <i>Example: You work at NATIS and print out some fake driver’s licences for your cousin to sell in the parking lot.</i></p>



There are also many related crimes – such as hiding money or property that was used as a bribe, attempting to commit a corrupt practice, assisting someone to commit a corrupt practice, or changing computer systems or account books to conceal corrupt practices.

Duty to report

A public officer has a duty to report any offers of bribes to the Anti-Corruption Commission, and every member of the public has a duty to report a request for a bribe as well as any knowledge of a corrupt practice. Failure to report knowledge of a corrupt practice is a crime in itself, and the maximum penalty is the same as for the underlying crime.



BREAK THE CORRUPTION CHAIN

Complaints about possible corrupt practices

Anyone can give the Commission information about a suspicion of a corrupt practice. You can make a complaint orally or in writing. If you make the complaint orally, a staff member of the Commission will write it down and ask you to sign it.

The Commission has a duty to examine every complaint made to it and decide whether or not an investigation is needed. The Commission will consider:

- the seriousness of the conduct that has been reported
- whether the complaint is trivial, and whether it was made in good faith
- whether or not an investigation into the conduct by some other authority is underway, or has already been completed
- whether an investigation of the complaint would be in the public interest.

If an investigation is warranted, the Commission will also decide if it should carry out the investigation, or refer it to some other authority. The final decision on whether the Commission will undertake an investigation lies with the Director-General. If the Director-General decides that the Commission will investigate, the investigation must be done as quickly as possible.





BE PART OF THE FIGHT!

REPORTING CORRUPTION IN MORE THAN ONE WAY



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The Commission must inform the person who made the complaint of its decision on the way forward.

The identity of informants who assisted in a corruption investigation can be protected, unless the informer has given false information on purpose, or where justice cannot be done without revealing the informer's identity. Even if a court decides that it is necessary to reveal an informer's identity, the informer can be protected by closing the court to the public and prohibiting the publication of any information that could reveal the informer's identity. The law protects informers who act in good faith against disciplinary proceedings, and against civil or criminal lawsuits related to their reporting.

Note that the Commission does not have to wait for a complaint. It can also initiate an investigation on its own.

Investigations

The Commission has a range of investigative powers. It can summon people for questioning, examine documents and get warrants from a magistrate or a judge for the search and seizure of relevant items. It can even search places (other than private dwellings) without a warrant if it is likely that a warrant would be issued but the delay involved would probably defeat its purpose (because it would give the wrongdoers time to hide the evidence).

The Commission can require individuals to provide details about their financial transactions and their assets – including information on when and how they got money or property. It can also order banks and other financial institutions to provide information about persons suspected of corrupt practices, and it can get access to account information and safe deposit boxes.

The Director-General, the Deputy Director-General and persons authorised to carry out investigations for the Commission have the power to make arrests without a warrant when there is a reasonable suspicion that someone has carried out a corrupt practice, or is about to do so.

It is a crime to interfere with an investigation by the Commission, to refuse to appear for questioning, to refuse to provide relevant documents, to provide false information or to try to improperly influence an investigation. The penalty for any of these crimes is a fine of up to N\$100 000, prison for up to five years, or both.

If an investigation indicates that a crime relating to corruption has been committed, the Director-General may refer the case to the Prosecutor-General for possible criminal prosecution. The Prosecutor-General has the power to delegate the duty for prosecution of the suspected crime to a staff member of the Commission who has the necessary legal qualifications.

Annual reports

Every year, the Director-General must give a report to the Prime Minister about the activities of the ACC. This report must be tabled in the National Assembly, which makes it a public document.

Why is fighting corruption important?

Corruption is very damaging to society. It enriches a few people at the expense of the majority. It destroys trust in government and between citizens. It reduces productivity, because profiting from corruption seems easier than working for a living. It discourages local and international investment, which undermines economic growth. It wastes taxpayers money, which interferes with effective delivery of public services and goods. It ultimately undermines democratic institutions by affecting electoral processes, distorting the rule of law and destroying equality.



Criticism

The **independence of the Anti-Corruption Commission** could be strengthened. In the Parliamentary debate on the law, a concern was raised about the requirement that a Special Investigator can be appointed only with the agreement of the Prime Minister. The fear was that this could undermine the investigation of corruption in the Office of the Prime Minister.³

³ Hansard (record of debates in the National Assembly), 1 April 2003.

Another issue is the requirement that the Director-General and the Deputy Director-General must be nominated by the President and appointed by the National Assembly. This approach will normally put the decision on these appointments entirely in the control of the ruling party. The law could require the agreement of the main opposition party on the appointment, or require some form of multi-party consultation.⁴

A related criticism is that the Director-General of the **Anti-Corruption Commission has too much discretion about what corrupt practices to investigate and prosecute**. The Director-General decides if an investigation by the Commission is warranted. Also, once an investigation is concluded, the Director-General decides if the matter should be referred for possible prosecution. Giving these key decisions to one person alone seems unwise.⁵

The Anti-Corruption Commission itself has recommended that the law should be amended to include **embezzlement by a person in the private sector** as a “corrupt practice” that it can investigate. Embezzlement means misusing a position of trust to misappropriate money. Examples are where accountants for private companies issue false invoices as a way of diverting funds to themselves or their friends, or where cashiers pocket money that was paid by customers to the company.

The Commission has also recommended that **the crime of bribery of foreign public officials should be extended to cover both sides of the transaction, like other forms of bribery**. It has also been suggested that bribery of foreign public officials should include instances where the bribe benefits a third party.⁶

The Anti-Corruption Commission and Namibia’s Institute for Public Policy Research have both recommended that the law should be amended to create the crime of **“illicit enrichment”** which is used by many other countries. Because corruption is secretive and often hard to prove, this crime applies when the wealth of public officials exceeds their legitimate income. If public officials cannot show where the money for their bank accounts or their purchases came from, then it is assumed that they must be corrupt. This helps to combat corrupt acts that might otherwise stay hidden.⁷



⁴ Job Shipululo Amupanda, “The Fight against Corruption in Namibia: An Appraisal of Institutional Environment and a Consideration of a Model for Civil Society Participation”, *Namibia Law Journal*, Volume 11, Issue 1, 2019

⁵ Job Shipululo Amupanda, “The Fight against Corruption in Namibia: An Appraisal of Institutional Environment and a Consideration of a Model for Civil Society Participation”, *Namibia Law Journal*, Volume 11, Issue 1, 2019

⁶ Anti-Corruption Commission, [Namibia National Anti-Corruption Strategy and Action Plan 2016-2019](#); Anti-Corruption Commission, Final Draft National Anti-Corruption Strategy and Action Plan 2021-2025; United Nations Office of Drugs and Crime, [Country Review Report of the Republic of Namibia](#) (under the United Nations Convention against Corruption, based on Namibia’s report for 2010-2015).

⁷ Anti-Corruption Commission, [Namibia National Anti-Corruption Strategy and Action Plan 2016-2019](#); Anti-Corruption Commission, Final Draft National Anti-Corruption Strategy and Action Plan 2021-2025; Max Weylandt, “[The Crime of Illicit Enrichment in Namibia: New Opportunities for Enforcement?](#)”, Institute for Public Policy Research, June 2017. See also United Nations Office of Drugs and Crime, [Country Review Report of the Republic of Namibia](#) (under the United Nations Convention against Corruption, based on Namibia’s report for 2010-2015).