

# **An Evaluation of the Role of the Directorate on Corruption and Economic Crime (DCEC) Botswana**

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## **DECLARATION**

I declare that *An Evaluation of the Role of the Directorate on Corruption and Economic Crime (Botswana)* is my own unaided work, that it has not been submitted before for any degree or examination at another University or tertiary institution, and that all sources I have used or quoted have been indicated and acknowledged as complete references.

Boitshoko Matlhare May 2006

Signed.....



## **DEDICATION**

I wish to dedicate this research report to the following:

Mr. Spokes Ontiretse Matlhare, my father

Mrs. Mercy Kenalegetsho Matlhare, my mother

Miss Theo Kala Matlhare my precious daughter,

who gave me the support, care and love to complete my research report.



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## **ABBREVIATIONS**

AIDS: Acquired Immuno Deficiency Syndrome

BDP: Botswana Democratic Party

BHC: Botswana Housing Corporation

BIAC: Botswana Institute of Administration and Commerce

BITF: Botswana International Trade Fair

CEC Act: Corruption and Economic Crime Act

CMS: Computerised Case Management System

DCEC: Directorate on Corruption and Economic Crime

ESAAMLG: Eastern and Southern African Anti-Money Laundering Group

HIV: Human Immuno-deficiency Virus



ICAC: Independent Commission against Corruption

IDM: Institute of Development Management

MISA: Media Institute of Southern Africa

NDB: National Development Bank

NEPAD: New Partnership for Africa's Development

NGO: Non-Governmental Organisations

SADC: Southern African Development Community

SAFAC: The Southern African Forum against Corruption

SAHRIT: South African Human Rights Trust

SAMNAC: Southern African Media Network against Corruption

UN: United Nations

WITS: Work Improvement Teams

## **ABSTRACT**

In this research report, I evaluate the role of the Directorate on Corruption and Economic Crime (DCEC) which was established by the Government of Botswana in 1994 to play a major role in the fight against corruption and economic crime in the country. I establish what led to the formation of the DCEC and assess whether the DCEC has met its aims and objectives. I also evaluate the legislation that gives the DCEC the powers to fight corruption and economic crime and ascertain if it is sufficient and effective.

I explore the challenges and constraints faced by the DCEC, and assess the effectiveness of the three-pronged strategy adopted by it in combating corruption and economic crime in Botswana. I critically evaluate the successes and failures of the DCEC and find whether the public expectations for the DCEC have been met.

The research report is concluded with an assessment of the challenges and constraints faced by the DCEC, which have inhibited its work, as well as recommendations for addressing them.

The interviews for the study were conducted in Gaborone, the capital city of Botswana, and made use of semi-structured questionnaires. The interviews were randomly selected from the current and former staff of the DCEC, as well as other stakeholders, including police officers, teachers, journalists, and representatives from the private sector and the public.

## **KEY WORDS**

Accountability

Botswana

Bribery

Corruption

Economic Crime

Ethics

Good governance

Money Laundering

Corruption Prevention

Prosecution



# **CHAPTER 1**

## **INTRODUCTION AND BACKGROUND**

### **1.1 INTRODUCTION**

Corruption if left unattended could spread like wild fire. It is like HIV/AIDS in that it may spread and affect a much larger population if left unchecked. Hence there is need for a massive public education campaign, effective corruption prevention techniques and professional investigations.

Throughout the world, there is a growing awareness that corruption can contribute to reduced investment or even disinvestments with many long term effects including social polarization, lack of respect for  human rights, undemocratic practices and diversion of funds intended for development and other essential services. This diversion of scarce resources by corrupt practices can affect a government's ability to provide basic services to its citizens and hinder its economic, social and political development goals or plans. Moreover, it can jeopardize the health and safety of citizens through poorly designed infrastructure projects and substandard medical and educational services.

The adoption of the Southern Africa Development Community (SADC) Protocol against Corruption by the Heads of State in 2001 is a recognition of the existence of the problem and highlights the importance of regional cooperation in fighting it. It is generally acknowledged that corruption redirects scarce national resources, intended for the public good, into the hands of dishonest individuals, raises the cost of basic

goods and services, discourages foreign and domestic investment, and inhibits political stability and economic development. With the SADC protocol in place, corruption is now high on the agenda for most SADC governments and this is evidenced by the many proclamations that heads of states have made in an attempt to combat the scourge.

Since corruption costs the developing world billions of dollars each year by siphoning off scarce resources and diminishing a country's prospects for development, all countries must use all mechanisms at their disposal to combat it. Despite Botswana's reputation as a shining example in Africa for its democracy and good governance in Africa, the Botswana government deemed it necessary to put in place legislative and structural mechanisms to combat corruption before it spiraled out of control. The key legislative intervention was the Corruption and Economic Crime Act of 1994, which amongst other things established a new anti-corruption structure, the Directorate on Corruption and Economic Crime (DCEC). The Act empowers the DCEC to execute preventive activities, public education and investigative work with a view to alleviating the problem of corruption.

## **1.2 STATEMENT OF RESEARCH PROBLEM**

Botswana's rapid economic growth has provided innumerable opportunities for corruption and influence-peddling, which its fairly rigorous system of accounting controls and its independent audit have not been fully able to check and control. In fact, from 1990 the country's reputation for clean and honest government was shattered by a series of scandals involving powerful political and economic figures. These scandals led the Government to establish the DCEC in 1994 as a key

instrument for the detection and prevention of corruption. This research report therefore focuses on why the DCEC was formed, as well as on an evaluation of the progress made in implementing its aims and objectives. In particular, the study explores the challenges faced by the Directorate and the successes achieved. It also assesses the challenges and constraints that have affected the DCEC since its inception in 1994 and provides recommendations for addressing them. The anti-corruption strategy adopted by the Botswana Government is designed to ensure that corruption does not erode the political, social and economic gains achieved by the country, in particular in terms of social harmony, good governance, respect of human rights and the rule of law.

### **1.3 OBJECTIVES OF THE RESEARCH**

The main purpose of this study is to analyse and assess the effectiveness of the DCEC's strategies in combating corruption and economic crime in Botswana. More specifically the objectives of the research are to:

- Look at what led to the formation of the DCEC and investigate whether it has succeeded in meeting its aims and objectives.
- Evaluate the effectiveness of the legislative framework for combating corruption in Botswana.
- Assess in particular the effectiveness of the three-pronged strategy (corruption prevention, public education, and investigation) adopted by the DCEC in its fight against corruption.
- Identify the main challenges and constraints that have limited the DCEC's achievements.
- Provide recommendations and conclusions.

## **1.4 SIGNIFICANCE OF THE RESEARCH**

This study is significant in that it will assess the DCEC's approach to combating corruption and economic crime in Botswana. The research should be of benefit to other researchers investigating corruption in Botswana or in other countries. Journalists could also benefit in that they could report on the activities of the DCEC from a more informed perspective. The DCEC itself could be assisted by the research to improve its operations and performance. The study could also contribute to the Botswana Government's policy development and the possible amendment of the CEC Act which was designed to curb corruption and economic crime.

## **1.5 LITERATURE REVIEW**

There is no single universal definition of corruption. Different writers and institutions define it differently. In this paper, corruption is defined as a form of anti social behavior by an individual or social group which confers unjust or fraudulent benefits on its perpetrators. It conflicts with the established legal norms and prevailing moral ethos of the land and is likely to subvert or diminish the capacity of the legitimate authorities to provide fully for the material and spiritual well being of all members of society in a just and equitable manner. (Frimpong and Jacques, 1999). The word corruption also is used to refer to dishonest, bribable, fraudulent or dishonourable action by a political office-bearer, public official or other person (Witgaard in Cloete 1996:28-29).

Witgaard further notes that:

Every such corrupt action will be an unaccountable action. Thus it is obvious that an accountable government and public administration will have to be

uncorrupted. Therefore it is essential that steps should be taken to prevent the development of a culture of corruption. Where there is a custom of giving gifts even free lunches to officials or government functionaries, there is a real danger. A culture of corruption requires consistence vigilance against corruptive misdeeds committed by citizens as well public functionaries. (Witgaard in Cloete 1996:30).

It is therefore crucial that strategies to fight corruption should be developed to curb the problem in any society or country. Corruption can also be termed white collar crime, that is crime by the powerful and wealthy that can lead to moral deterioration and the perversion of integrity in the discharge of public duties. Corruption is a behavior which deviates from accepted norms in order to serve private ends, or the misuse of public power for private profit. Corruption can take many forms including the falsification of financial statements; the bribery of public officials, embezzlement of funds, computer and credit fraud and so on (Sutherland, 1983; Theobald, 1990).

The diverse manifestations of corrupt transactions have been identified as ranging from acceptance of money or other rewards for awarding contracts; violations of procedures to advance personal interests, including kickbacks from development programmes or multinational corporations; pay-offs for legislative support; diversion of public resources for private use; overlooking illegal activities; and intervening in the justice process. Forms of corruption also include nepotism, common theft, overpricing, establishing non-existent projects, as well as tax collection and tax assessment frauds.

(Doig and Theobald, 1999:3)

Corruption, in addition, bears down most heavily upon the poorest sections of the society who must ultimately bear the cost of the distortions and deprivations it produces. The importance of combating corruption was also signaled in one of Kofi Annan's early interviews after his appointment as the Secretary General of the United Nations. Economic development on the continent of Africa, Annan stressed, "implies good governance, competent elites, and above all, the disappearance of corruption" (cited in

(Doig and Theobald, 1999). In December 1996 the United Nations issued a declaration against international corruption and bribery enjoining member nations to strive to eliminate these and associated pathologies.

Hope (1996) blames the existence of corruption on African social structures, and, in a thinly veiled praise of colonialism, argues that with independence most African countries moved from bureaucratic administration that emphasized good governance to one that emphasized clientism, familism, personalism and tribalism, all of which militated against public accountability and good governance. The author argues that corruption in Africa should be seen as an outgrowth of government's involvement in the economy, which has allowed for the systematic exploitation of illegal income earning and the enhancement of rent seeking opportunities by public official. He cites the decline in real earnings of public officials in certain countries as a recipe for corruption in Africa and goes on to cite Botswana as an example of how corruption can be prevented from taking root. The control of corruption is accomplished through fundamentals of good governance, sound economic management and this implantation of measures that make administrative process transparent. Botswana's

approach is highly recommended as a model for African nations to follow.

It is evident that government corruption cannot be fully explained solely by the actions of isolated individuals. According to Osei-Hwedie, (1999) law enforcement processes and structures have also contributed to corruption. He believes that law enforcement finds itself in the middle of two conflicting positions and demands. It is obliged to enforce law with discretion and also there is a great deal of disagreement as to whether some Acts should be sanctioned. This comes about due to the fact that some powerful people insist that all laws be enforced; others demand that this should not be done at all. This selective application of legislation by the bureaucracy, which makes some degree of corruption likely, is built in to the very structure of bureaucratic power organizations. This is also a factor of discretionary decision-making powers, which are open to abuse and misuse. Corruption is also seen as rampant in countries where public service pay differentials are huge. Corruption has been in existence and does persist in all societies despite changes in the political and social structures. (Hope and Chikulo, 2000)

(Mbaku, 1997) is adamant that the causes of corruption are varied and complex. Structural and individual conditions give rise to corrupt behaviors. Several structural factors that are said to contribute to corruption have been identified. Some researchers believe that bureaucratic corruption is usually wide spread in societies with soft states. Lack of devotion to public service has been cited as an important determinant of the pervasiveness of corruption in the public services of many African countries. He goes on to state that culture has also been said to contribute to bureaucratic corruption. He substantiates it by emphasizing that generally it is argued that corruption arises due to

clash between traditional African values and the foreign norms that accompany industrial development or modernization. (Alam1989; Bayley 1966)

Corruption in Africa may be an extension of the tradition of gift giving. Ekpo (1979) argues that in Nigeria, lower –level civil servants like messengers or clerks may actually return part of their monthly wages to a top official as a gift. Although such behavior may not necessarily be interpreted as corruption, the donor expects to be treated favourably by the recipient of the gift in the future. Although these cultural practices do not in themselves constitute corruption, they often lead to corrupt activities (Ekpo 1979). Similarly in Botswana, the culture from ages ago has been that of giving gifts. If a customer is fully assisted quickly and with respect, they automatically feel obliged to give out a ‘thank you’ gift either in a form of money or just any gift.



Generally there are three types of consequences of corruption in developing states in general and African states in particular. Corruption impacts negatively economically, politically and administratively. Economically, corruption increases the cost to African countries of doing business. Kickbacks and illegal commissions of contracts which have to be paid to public officials are simply added to the final costs of contracts, equipment, supplies and so on. Similarly, theft, embezzlement and fraud by public officials reduce the availability of government funds for development-related activities. For instance in Zimbabwe the national Police disclosed that the government had lost a total of US\$3 million in 1991 owing to theft and fraud by public officials and more recently it was reported that at least 5% of Zimbabwe’s annual economic output (equivalent to US\$ 300 million) was lost to graft (Makumbe,1994; Hope and

Chikulo, 2000).

Corruption stifles initiative and enterprise in Africa. Rent-seeking activities tend to have the effect of inflating the cost of doing business. Corruption also slows down investment and economic growth either by crowding out productive investment directly or through the uncertainty created by corrupt contracts which are not governed by formal property rights and are therefore not enforceable. Corruption in this sense can be seen as a tax which increases risk and reduces the incentive to invest. It also impairs economic efficiency in Africa. Financial gains obtained through corruption are likely to be transferred to the investment sector since ill-gotten money is either used up in conspicuous consumption or is transferred to foreign bank accounts. Any economy infested with corruption will also suffer from its effects of discouraging potential foreign investors and aid donors. (Mauro, 1997)



Botswana has enjoyed relatively good governance since independence. The lack of systematic corruption, along with the high levels of political and macro-economic stability, has earned Botswana the confidence of foreign investors. Corruption however does exist in Botswana as in all countries. Prominent instances have implicated a handful of highly-placed government officials in control of major government procurement, parastatals corporations or industrial incentives programs. Rather than denying allegations exposed by the media, the Botswana Government has, however, generally carried out quite thorough investigations into cases of corruption that have arisen. (Rose-Ackerman, 1999; Coolidge, 1997). Nevertheless, the penalties for those involved in corrupt activities have often been quite minimal. Very often officials have merely been moved out to other posts in government, whilst

political leaders implicated in corrupt activities have often been re-elected to their former positions by the ruling party. (Good, 1994).

Corruption also impacts on political development and stability. When corruption becomes part of the status quo, its maintenance tends to involve the use of repressive tactics through the state's instrument for law and order. Political leaders, in whose own interest it is to maintain the patrimonial state, will suppress political opposition and public criticism of their behavior. For instance in Kenya during Moi's reign, where the state bureaucracy was controlled by the ruling elite, fear and repression prevented any serious threat from dissenting groups or individuals. Corruption also affects political stability in Africa because it contributes to violence and frequent regime changes. Indeed the damaging effect of corruption on administrative development and efficiency can be extensive and varied. Once corruption has afflicted the bureaucracy the resulting negligence, protected through favouritism or other influences, creates innumerable problems and grave consequences for the people (Altas, 1990). Corruption affects professionalism in the African public services and leads to frustration on the part of those public servants who do conduct themselves honestly, leading some of them to leave the service altogether. Some have even emigrated, in Uganda for example (Ouma, 1991).

As stipulated above, corruption has serious negative consequences on the development process in Africa. It is also of particular concern because it helps to promote a crisis in ethical leadership which contributes to instability and the institutionalization of weak states. Anti-corruption campaigns are necessary and must be sustained if corruption is to be brought under control in Africa. Corruption can

only be eliminated when both public officials and the public make a concerted effort not to tolerate it further. One of the most prevalent of the reform strategies to control corruption in Africa is the introduction of codes of conduct for public officials for both politicians and public officials. Such codes, if properly enforced, can help to foster vigilant, upright and honest public servants and citizens, as well as to instill an atmosphere of moral accountability and ethical behavior. African states have also attempted to control corruption through the introduction of legislation and institutional frameworks to promote discipline and accountability in public officials (Coldham, 1995). Among these institutions, for example are the office of the Ombudsman in Zimbabwe, the Public Complaints Commission in Nigeria, the Public Accounts Committee in Uganda, the Anti-Corruption Squad and the Permanent Commission of Inquiry in Tanzania, the serious Fraud office in Ghana, the Directorate on Corruption and Economic crime in Botswana and the Office of the Public Prosecutor in South Africa. The common purpose of these institutions is to induce fundamental changes in the attitudes and behavior of public officials, in order to promote honesty and integrity in the public service, through their watch dog powers to disclose and/or investigate any suspected acts of corruption. (Hope and Chikulo, 2000)



## **1.6 RESEARCH METHODOLOGY**

This research report takes the form of a detailed case study of the workings of the Botswana Government's chief anti-corruption agency, the Directorate on Corruption and Economic Crime (DCEC). Although generalizations are rendered difficult through a case study approach, there are clear benefits to be achieved. As Bell (1993:8) has noted, "the strength of the case method is that it allows the researcher to

concentrate on specific instance or situation and to identify the various interactive processes at work.”

The study was conducted in Gaborone, Botswana’s capital, because it houses the head office of the DCEC. It makes use of both primary and secondary sources, and was both qualitative and quantitative in nature. The primary sources included official documents and reports, as well as questionnaires and interviews with key stakeholders. Secondary sources included relevant books, articles, academic papers, conference papers and newspaper reports. These were consulted not only for background purposes but also to assist in supporting and substantiating the information derived from the interviews and questionnaires. Two questionnaires were designed and used by the researcher. One was for use with current and former officers of the DCEC, and the other was for use with other stakeholders including politicians, civil servants, and the journalists (see appendices 1 and 2 for details of these questionnaires).

Fifty questionnaires were distributed by email to current and former officers of the DCEC. Although the respondents were sent subsequent e-mail reminders, the response rate was somewhat disappointing. A total of thirty-one responded to the questionnaires, some by email and others by hard copies. Out of the 31 who responded only seven agreed to be interviewed verbally.

Twenty questionnaires were also emailed to both government and private media journalists, of whom five were also interviewed. Finally, thirty questionnaires were distributed to a representative sample of teachers, police officials and government

officers.

## **1.7 LIMITATIONS OF THE STUDY**

Although the interviews conducted by the researcher proved very helpful, there were some limitations. Some current and former staff of the DCEC were very cooperative. Others, however, were reluctant to respond or responded vaguely. Some were negative about the whole exercise; fearing perhaps that the researcher, being an officer of the directorate, might reveal their comments, resulting in victimization by management. There was also limited time and funds to travel around the country conducting the study. This is why the researcher chose to conduct most interviews electronically.

## **1.8 ORGANIZATION OF THE RESEARCH REPORT**

The study is organised as follows:



### ***Chapter 1***

In this chapter, the researcher outlines the introduction of the study, the problem statement and the objectives and significance of the study. This chapter also reviews the literature and the research methodology used to conduct the research, and highlights a number of the limitations encountered by the researcher.

### ***Chapter 2***

This chapter looks at the background of corruption in Botswana as well as the legislative background of the Corruption and Economic Crime Act. It also discusses the organization of the directorate and outlines the functions of the three-pronged strategy used to combat corruption.

### ***Chapter 3***

This chapter outlines and analyses the research finding, particularly with regard to the achievements and limitations of the DCEC's anti-corruption work, and the challenges and constraints faced by the organization.

### ***Chapter 4***

This chapter provides conclusions as well as recommendations for addressing the challenges and constraints identified in Chapter 3.



## **CHAPTER 2**

### **BACKGROUND AND CONTEXT**

#### **2.1 INTRODUCTION**

This chapter provides background detail on corruption in Botswana, as well as the strategies adopted by the Botswana Government for addressing the problem. Particular attention is devoted to the origins, objectives, structures and activities of the Directorate on Corruption and Economic Crime.

#### **2.2 BACKGROUND ON CORRUPTION BOTSWANA**

The Republic of Botswana was born in September 1966 following the elections that were held in 1965. Botswana's march to independence was distinctively smooth. The smooth transition to independence has enabled Botswana to concentrate on building the capacity of the state to govern. This factor also contributed in no small measure to building the ethics infrastructure. Botswana has acquired a positive reputation for sound economic management, strong administrative capacity and public probity. As a major diamond producer, for example the country confronts all the usual problems of international commodity price volatility. However, the Botswana government has been able to maintain a stable macro economic environment at the same time as promoting agricultural and livestock production. Unlike most sub-Saharan states, Botswana has not experienced military government and has seen a succession of multi-party elections. Although the same party has been in power since independence, there has been no evidence of significant electoral manipulation or fraud. (Maswabi 2003).

The anchor for good governance in Botswana is the Constitution of 1966. It guarantees individual freedoms and civil liberties, the protection of property and political rights, and establishes three separate spheres of government: the Legislature, the Judiciary, and the Executive. It also defines their respective responsibilities and powers, and limits their authority, as well as regulating the political processes within the state. Although many countries have a constitution, not all of them adhere to it. Neither do they adhere to the spirit and letter of the constitution. Botswana's respect and adherence to the constitution sets her apart from some other African states. This particular attribute, among others, make Botswana unique in terms of governance. Botswana has a multiparty parliamentary system with a president as head of state and head of government.

However, Botswana's reputation for good government was severely dented during the early 1990s by a succession of scandals involving powerful political figures, which led to a series of presidential commissions being established. The first of these was established in 1991 and concerned itself with the award, to an obscure company under highly dubious circumstances, of a lucrative contract to supply teaching materials to the country's primary schools. This Commission revealed startling mismanagement and fraud which resulted in the loss of 27 million Pula. Senior civil servants were held responsible for the loss. Also in 1991, The Report of the Presidential Commission of Inquiry into Land Board problems in Mogoditshane and other Peri-Urban Villages (known as the Kgabo Commission) implicated senior cabinet ministers in corruption in shady land deals in Mogoditshane and Tlokweng. Peter Mmusi, the then Vice President and Chairman of the ruling Botswana Democratic Party (BDP) and Daniel Kwelagobe, the then Minister of Agriculture and Secretary General of the party later

left cabinet. Apparently, when the construction company applied for permission to construct high-density housing estate in Tlokweng, both the Physical Planning and Building Control Committee of the local authority and the Department of Town and Regional Planning rejected the application. The company appealed to the Vice-President and the Minister, following which its appeal was upheld. The company went ahead with its plans and constructed 36 housing units which it later sold for about 12 million Pula. According to the Commission these houses were constructed on land they have not even paid a thebe for. In addition, a land board official alleged that Vice President Mmusi helped his cabinet colleague, Minister Kwelagobe, to acquire a plot of land for his own private purposes that the land board had earmarked for commercial development and a primary school. According to this Commission, the Kweneng Land Board was bitter because the Vice-President deliberately overruled their layout plan in order to appease a friend and a colleague at the expense of the public interest. In another incident investigated by the Commission, a retired senior police officer sold well over 50 plots of land at P 3,000 each and pocketed 150,000 Pula. According to Commission, the actions of a number of highly placed politicians were having an additional adverse affect by encouraging elected and appointed officials at lower levels to take their cue from their leaders. This was leading to declining levels of confidence in the Government. Ultimately the Vice-President and the Minister were forced to resign.

The biggest case of corruption and economic crime in Botswana, involving politicians, senior civil servants and private sector business executives was the so-called ‘BHC Scandal.’ In 1992, the Report of the Presidential Commission of Enquiry into the Operations of the Botswana Housing Corporation (BHC) revealed that tens of

millions of Pula that should have gone into providing houses were lost as a result of mismanagement and gross dishonesty at the corporation. At the centre of allegations of corruption and economic crime was a Gaborone based company, Wade Adams. Amongst the findings of this Commission ((known as the Christie Commission) were that:

- Wade Adams improperly acquired plot of land to develop a housing estate, and that the resulting loss to the corporation and improper benefits to Wade Adams was approximately P20 million;
- Wade Adams' Chief Executive bribed the BHC chief executive with P 350,000 towards the acquisition of the said plot;
- Wade Adams made a donation of about 2 million Pula to the ruling Botswana Democratic Party (BDP).



The Christie Commission also found that the top managers at Wade Adams were fundamentally dishonest people. It revealed that the Chief Executive Officer of the BHC was a young man elevated to a position in which he could influence the award of a multi million contract and was unable to resist the temptation of the offers of a dishonest inducement which so often accompany such offers. The man, who later died in a road accident, was reported to have kept about 250,000 Pula in a safe in his office and in a very short time built an estate of over 3 million Pula. Another act of corruption involved a cabinet minister who was bribed with 500,000 Pula to ensure that a company called Spectra was awarded a tender to build the BHC headquarters. Apparently, the Minister was under pressure from the National Development Bank (NDB) to repay his loan, and on learning about the Minister's predicament, Spectra promised the Minister payment sufficient to enable him to discharge his obligation to

the NDB on condition that the contract for the construction of BHC headquarters went to Spectra Botswana.

Even more shocking was the revelation that, by late 1993, the National Development Bank, described by the then Minister of Finance and Development Planning and subsequently President, Festus Mogae, as a pillar of Botswana's financial system was near bankruptcy. According to unidentified sources within the bank, prominent among defaulting debtors were not only several ministers but the then President Ketumile Masire, as well as his brother, Basimane. Although the Botswana Police were responsible for tackling corruption and fraud, these scandals were found to be so serious as to warrant the creation a special agency (DCEC) to specifically combat corruption. (Mogalakwe, 1997).



### **2.3 LEGISLATIVE BACKGROUND OF THE DIRECTORATE OF CORRUPTION AND ECONOMIC CRIME (DCEC)**

Since independence, the Botswana Police have dealt with corruption through Section 99 of the Penal Code. However, this legislation was increasingly becoming inadequate. Resources were dwindling and the magnitude of the problem was proving too difficult for the police alone to deal with as they also had to respond to other competing needs of equal importance through enforcement of varying legal instruments to fight other crimes such as rape, murder, theft and so forth.

Action to combat corruption and economic crime in Botswana became necessary because of the increasing abuse of public office and the loss of public trust in government and the business sector. Existing legislation and resources proved

inadequate to combat the problem and the majority of citizens strongly disapproved of an influential minority enriching themselves at the expense of the country.

The Government reviewed the approaches taken elsewhere in the world, particularly Hong Kong's Independent Commission Against Corruption (ICAC), and saw that significant results had been achieved by implementing what has become known as the 'three pronged attack' of detailed investigation, corruption prevention and public education. The greatest success has been enjoyed in those countries that have established separate bodies specifically set up and designed to deal with the problems rather than imposing additional burdens on existing law enforcement agencies. (<http://www.gov.bw/government/dcec/>).

One major difference between the ICAC and the DCEC is that the latter also deals with economic crime as well as corruption. The decision to include economic crime was motivated in part by the absence of a fraud squad in the Botswana Police Force. The decision to include economic crime (defined as cheating public revenue) within its remit has a major impact on the workload of the directorate.

Following numerous cases of corruption, the Botswana Parliament passed a law in August 1994, the Corruption and Economic Crime Act (CEC Act), which led to the formation of the DCEC in the Office of the President. This act gives the DCEC the powers to combat corruption and economic crime. The CEC Act is:

An Act to provide for the establishment of a Directorate on Corruption and Economic Crime; to make comprehensive provision for the prevention of corruption; and confer power on the Directorate to investigate suspected cases of

corruption and economic crime and matters incidental thereto. (Corruption and Economic Crime Act 1994:3).

Section 23 of the CEC Act provides a broad definition of corruption and economic crime through the notion of ‘valuable consideration’, that is what the corruptor and corruptee exchange after a corrupt act has been committed or will be committed. The Act defines a ‘valuable consideration’ in section 23 to include:

- (a) Any gift, benefit, loan, fee, reward or commission consisting of money or on any valuable security or other property or interest in property of any description;
- (b) Any office, employment or contract;
- (c) Any payment, release, discharge or liquidation of any loan, obligation or liability, whether in whole or in part;
- (d) Any other service, or favours including protection from any penalty or disability incurred or apprehended or from any action or proceedings of disciplinary civil or criminal nature, whether or not already instituted;
- (e) The exercise or forbearance from the exercise of any right or any power or duty;
- (f) Any offer, undertaking or promise whether conditional or unconditional, of any valuable consideration within the meaning of the provisions of any preceding paragraphs.

Through the CEC Act, the DCEC is conferred with more extensive powers than any law enforcement agency had ever been given in Botswana. These powers are reflected in section 7 of the CEC Act as follows;

- 7(1) for the performance of the functions of the directorate, the Director may
- (a) authorise any officer of the directorate to conduct an inquiry or an investigation into any alleged or suspected offences under this Act;
  - (b) require any person in writing to produce, within a specified time, all books, records, returns, data stored electronically on computer or otherwise and any other documents relating to the functions of any public or private body;
  - (c) require any person, within specified time to provide any information or to answer any questions which the Director is empowered to conduct under this Act.

Section 7 (2) goes on to elaborate what will transpire if the person under investigation fails to comply with instructions from an investigation officer of the DCEC. The section states that;



- Any person who fails –
- (a) to produce any matter required under subsection (1) (b); or
  - (b) to provide any information, or to answer any questions, or to willfully provides false information or makes any false statement in answer to a question , under subsection (1)
  - (c) shall be guilty of an offence and shall be liable to the penalty prescribed under section 18(2)

## **2.4 ORGANIZATION OF THE DIRECTORATE**

The Directorate on Corruption and Economic Crime (DCEC) combats corruption by means of a three pronged strategy involving Corruption Prevention, Public Education

and Investigations. This organization is a department of the State President Ministry and carries out its mandate as an operationally autonomous body, which administratively wholly relies on the Central Government for staff salaries, vehicles, office furniture, and office accommodation. The Director, who is the head of this organization, is appointed by the President and assisted by a Deputy Director. The DCEC is accountable to the President through the submission of annual reports on the directorate's activities. Initially the directorate operated from one centre in Gaborone. However, as a result of a significant increase in the number of reports emanating from the northern part of the country, the DCEC set up another office in Francistown.

The DCEC has three main operational branches or divisions dealing respectively with corruption prevention, public education, and investigations. The corruption prevention and public education divisions are each headed by an assistant director. The investigations division, which is the largest, has three assistant directors, one for prosecutions, one for investigations and one for Intelligence & Technical Support. The investigations division also has a number of sub-units, including the prosecution unit, the report center/intelligence unit and the anti-money laundering unit. The DCEC has six investigation groups namely Group A-F which consist of a Principal Anti Corruption Officer, one or two sometimes three Senior Anti Corruption Officers depending on the size of the group. One Intelligence group named Group H which has two Senior Anti Corruption Officers and three Anti Corruption officers. There is also a Surveillance Unit known as Group G which unfortunately due to staff shortages has one Senior Anti Corruption and One Assistant Anti Corruption officer. The Groups A-F and J are headed by the Assistant Director- Investigation, whilst Group G & H are headed by Assistant Director-Intelligence. The Anti Money Laundering unit is

referred to as Group J and falls under the leadership of Assistant Director - Investigation. The Group has Senior Anti Corruption Officer acting as a Principal Officer, one Anti Corruption Officer who acts as Senior Anti Corruption Officer then three Anti corruption officers. The Corruption Prevention Division is headed by Assistant Director Corruption Prevention. The division has one Principal Anti Corruption Officer, two Senior Anti Corruption officers, four Anti Corruption Officers and one Assistant Anti Corruption officer. The Public Education Division is headed by an Assistant Director-Public Education, and consists of one Principal Anti Corruption Officer, One Senior Anti Corruption officer, five Anti corruption officers and one Assistant Anti Corruption Officer. The DCEC has also a small Prosecution Unit headed by Assistant Director Prosecutions with one Anti- Corruption Officer. The DCEC also has an administrative and support staff which comprises accounts officers, typists, transport officers, library officers, training officers, and supplies officers under a Principal Administration Officer. These are mostly officers seconded to the directorate to assist in the execution of DCEC duties from other government departments. There are also 38 industrial class staff, comprising cleaners, drivers and messengers. The total establishment complement of the DCEC's permanent and pensionable staff is 103.

## **2.5 FUNCTIONS AND RESPONSIBILITIES OF THE DIRECTORATE**

This section of the report provides an analysis of the duties and responsibilities of the DCEC's main divisions and units. It also examines the powers of the Directorate's investigation officers.

### **2.5.1 Corruption Prevention Division**

An Assistant Director heads the Corruption Prevention Division, implementing Sub-sections 6(f), (g) and (h) of the Corruption and Economic Crime Act of 1994. This division has a statutory responsibility to examine the practices and procedures of all government departments, parastatals and the private sector (if so requested) to identify corruption opportunities with a view to eliminate them and replacing them with more effective structures, practices and procedures. The Division accomplishes its responsibilities by conducting assignment studies. These involve an analysis of the operational systems, information systems, quality of supervision and decision-making processes of any department or organization to assess existing levels of accountability and identify opportunities for corrupt practices and theft. The main purpose of these studies is to identify weaknesses and potential areas open to abuse and exploitation in the public sector and parastatals. Corruption prevention activities are undertaken, either by carrying out formal assignments or research, or by providing ad hoc advisory services.

The Corruption Prevention Division also organizes and conducts management-oriented presentations to the senior managers of both the public and the private sector on corruption prevention techniques, which are namely accountability, transparency, codes of ethics and conduct. Corruption and economic crime take place because people take advantage of inadequate systems and procedures they operate in. Where procedures are ineffective, these opportunities can be exploited because of poor supervision and inadequate levels of accountability. Effective prevention requires an analysis of these systems, the operational management reporting structures and the enforcement of the law to see what opportunities for exploitation are present. The

initial task is to review the results of criminal investigations, to identify organizations whose practices and procedures have already given rise to corruption opportunities.

An assignment study begins with the assignment officer agreeing with the client organization on what scope the assignment study is going to cover. Then an examination of background material including case files, applicable legislation, policy documents and organizational structures is conducted. The next step is the first hand observation of the systems in operation to ascertain theory vis-à-vis practice. Documents, information systems, the quality of supervision and decision-making processes are also scrutinized to assess existing levels of accountability. As this information is analysed opportunities for fraud and corruption are identified. Once the research has taken place, the next stage is to develop new procedures and systems which reduce those opportunities which come in the form of recommendations. The recommendations, which might arise, may include structural management changes, possible revisions to the law and the introduction of enhanced standards of accountability and ethics. All recommendations for change are expected to be more cost effective, efficient and understandable than the ones they are replacing. At the completion of the study, the facts relating to the procedures observed and those that are documented are discussed and verified with the senior management of the organization. This is an important intermediate step to ensure that the full analytical report carries complete credibility, and can be implemented. After the final report is prepared, a workshop is arranged involving all stakeholders to consider the contents of the report and to agree on the recommendations, which will be implemented by the organization. Thereafter the Corruption Prevention Division monitors the progress at regular intervals. A particular focus of the Division's work has been to encourage

departments and organizations to include its recommendations in their annual performance plans, thereby ensuring a clear commitment for implementation.

Apart from formal assignment studies, advice can also be offered on a less rigorous consultation basis. Organizations with specific problems, particularly regarding the introduction of new procedures because of changes in legislation, may seek advice on ways to implement these without creating opportunities for fraud or corruption. This is particularly true of the private sector whose experience and expertise in this area may be limited.

The underlying principle of all effective corruption prevention measures are improvements and in the quality of management systems. The introduction of internationally recognised quality management standards, the adoption of codes of ethics and codes of conduct are significant steps that can have a major effect on the reduction of corruption. Properly implemented codes of conduct can have practical and immediate benefits for the profitability of companies, as well as for the performance of public sector organizations. Ethical business practices are vital to the wealth and health of the nation.

### **2.5.2 Public Education Division**

The Public Education Division has, as its mandate, the responsibility of publicising the activities of the DCEC. The Division is one of the three principal divisions of the Directorate and its task of educating the public against the evils of corruption and enlisting and fostering public support in combating corruption is enshrined in the Sub-sections 6 (i) and (j) of the Corruption and Economic Crime Act of 1994. Education is

of equal if not greater importance than investigation and prevention in eradicating corruption because it requires the whole community to support the DCEC, understand its role and the damage that corruption results in. In carrying out its tasks, the Division has adopted a multi-media as well as a participatory approach. This includes the use of sensitisation talks and presentations, radio and television shows, drama, print media and message boards. The Public Education Division also produces publicity material in-house. Themes promoted in the print media cover a variety of corruption curbing ideas on how best citizens and non-citizens can help the DCEC in the fight against corruption.

The Division also prints and distributes copies of English brochures which are aimed at informing the public about the role of DCEC, the types of offences it investigates, penalties and the ways in which clients could file reports to the DCEC. The same brochure has been translated into Setswana. Copies of these brochures are distributed at the Botswana International Trade Fair (BITF) and around the country. Trade fairs give the DCEC the opportunity to meet the public and overseas investors. The emphasis is on ethics, bribery, how the DCEC can be of assistance, as well as how the public can assist the DCEC. The officers of the DCEC are on hand to deal with the many questions posed by the visiting public who in general display a keen interest in the work of the Directorate.

One of the most recent strategies of this Division involves targeting school going youth with a view to inculcating zero tolerance for corruption and economic crime among them as well as to mould them into honest and morally upright future citizens. For primary school youth, a mascot bearing the name “Rra Boammaruri” (father of the Truth) is used in the educational programme and this campaign has proved to be

popular around the country over the past four years. Feedback received suggests that children continue to refer to the Rra Boammaruri character and how it has helped them to make moral decisions when faced by ethical dilemmas. For secondary and tertiary schools, anti-corruption clubs have been formed. Educational competitions encouraging students to partake through research and graphic illustrations. Essay competitions, debates and panel discussions have also been introduced.

This Division's strategy is intended to be holistic in addressing issues of corruption in Botswana. It is also based on the fact that corruption is a global phenomenon and a vice that has adverse and destabilising effects on the cultural, economic, social and political foundations of society. Corruption respects no national frontier, weakens society's morale, throttles economic development and tarnishes the political legitimacy of the government.



### **2.5.3 Investigations Division**

The DCEC Investigation Division has a total of seven investigation groups; six of them are based in Gaborone and one in Francistown. One of the groups based in Gaborone has a responsibility for the DCEC's additional mandate, that of looking at instances of suspected money laundering. Criminal investigation is an important part of the judicial system. The Investigation Division receives all reports related to corruption and economic crimes which are to be investigated. When complaints are authorised for investigation, the Assistant Director allocates the cases to the heads of the investigation groups who distribute the cases among the investigators to launch an investigation. A Principal Investigator who is responsible for the prioritisation and supervision of work heads each investigation team.

According to section 6 of the Corruption and Economic Crime Act of 1994 the duties and responsibilities of the investigation Division are:

- (a) to receive and investigate complaints alleging corruption in any public body;
- (b) to investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
- (c) to investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;

Subsequent to investigations, the decision to institute prosecutions is reserved for the Attorney General after the referral of a prosecution docket file. As soon as prosecution is authorised by the Attorney General the case is passed to the DCEC Assistant Director of Prosecutions. The Prosecutions unit will then prepare a charge sheet for the case to be taken to a Magistrate Court. Initially, investigations and prosecutions were joined in the same function whereby investigators prepared their own cases.

The Investigations Division has three main units dealing respectively with prosecution, intelligence and money laundering. The duties and responsibilities of these three units are outlined below.

### ***Prosecutions Unit***

The Prosecutions unit of the DCEC is the liaison point between the DCEC investigation Division and the Attorney General's chambers. In addition the DCEC is obliged to take on several prosecutions itself due to the pressure of work on the

Attorney General's Chambers. An Assistant Director currently heads this unit. Previously it was headed by a Principal Investigator. Once a docket is submitted from the Investigation Division to the Prosecution unit, the Assistant Director Prosecutions attends to it. Following the necessary research, the Assistant Director prepares a charge sheet if she decides to prosecute it herself. Otherwise she refers it to the Attorney General's Chambers for prosecution. If the case is not properly investigated or if she believes that there are pertinent issues that have not been covered during investigations, she sends it back to the responsible investigation Division for further investigation.

### ***Report Centre/Intelligence Unit***

The Report Centre or the Intelligence unit is a unit of the Investigation Division of the DCEC. It receives and deals with all complaints and allegations from the public or other public officials. All of these reports are managed through a Computerised Case Management System (CMS). The system records all reports, from the initial information received by the DCEC, until the case is closed. The system has greatly enhanced the ability to manage cases under investigation and thus being able to improve service delivery to its stakeholders. Managers are able to see, at a touch of a button, the current status of any report, and hence ensure that it is being dealt with promptly, effectively and thoroughly. The system is also designed to produce any statistics that may be required for planning purposes within the DCEC and for information for the production of the DCEC's annual report.

After receipt of an allegation, it is captured into the database and a summary of the allegation is prepared and submitted to management and assessed during management

meetings held twice a week. Management classifies the reports by deciding which reports are to be investigated, which are to be referred to other government departments or parastatals and those that are too trivial to be pursued. Those that relate to corruption and economic crimes are handed over to the Assistant Director of investigations. Those that do not fall under the legal description of corruption or economic crime, but are concerned with unnecessary delays, lack of action, incorrect or missing information or uncooperativeness on the part of officials, are referred as appropriate to the Corruption Prevention Division of the DCEC to conduct assignment studies (research) and also to different departments such as the Police, the Office of the Ombudsman or to the implicated department for disciplinary hearing and action. The DCEC will expect a report back concerning the referred report. There is a standard policy that the complainant should always be informed as to what action has been taken with regard to the report they made.



There are five classifications currently used to classify reports:

1. INV- means that the allegation is allocated to an investigation for a file to be opened.
2. REF- means that the matter is referred to another agency, for example the Police Service or ministry involved, for them to make further enquiries in to the matter.
3. ADV- means that appropriate advice is given to the person making the report.
4. INT-means that the information is stored in the intelligence database for use in the future by the intelligence unit.
5. FR- means that this is a further report to a matter already reported to the DCEC and previously classified.

There are two types of reporting, namely open and anonymous reporting. The open report is where complainants reveal their identity whilst an anonymous report is where the complainant does not disclose his or her identity. Although the Directorate accepts anonymous reports, they are not encouraged, as the complainant cannot be traced back for more information pertaining to the report or allegation. With the open report the complainant can be contacted for clarity, additional information and even feedback on the progress of the allegation. Although it is preferred that all individuals making reports to the DCEC supply their names and contact details, it is appreciated that, in certain circumstances, this is not possible. Many people making reports to the DCEC fear reprisals against them if it became known that they had made a report to the DCEC, even though DCEC officers always attempt to maintain as much confidentiality as possible. In addition, Section 45 of the Corruption and Economic Crime Act of 1994 gives protection to informers in any proceeding before a court. The complainant can choose to write and submit the allegation by post, fax or electronically by email. The allegation or complaint can also be conveyed in person at the Gaborone DCEC headquarters or the regional office in Francistown.

### ***Anti-Money Laundering Unit***

As an important step in the Botswana's progress towards becoming an International Financial Services Centre, Parliament effected in 2000 an amendment to the Proceeds of Serious Crimes Act of 1990 to give the DCEC an additional mandate to investigate money laundering. The Proceeds of Serious Crimes Act, in part V, deems persons to be engaged in money laundering if they engage in transactions that involve money or property that is the proceeds of a serious crime or if they receive, process, conceal, dispose of or bring into Botswana any money or property that is the proceeds of a

serious offence, or know that such money or property is derived from unlawful activity. For the purposes of understanding a ‘serious offence’ means an offence the maximum penalty for which is imprisonment for not less than two years.

In 1999 Botswana became a member of The Financial Action Task Force on Money Laundering (FATF). This is the leading international body established to develop and promote policies to combat money laundering. The need to cover all relevant aspects of the fight against money laundering is reflected in the scope of the forty FATF recommendations. These recommendations are measures that the FATF task force has agreed to implement and, which member countries are encouraged to adopt.

The Proceeds of Serious Crimes Act 1990 was in 2000 amended by the Botswana Government primarily to take on board the FATF recommendations hence strengthening the existing Act. Under the amended Act, the Directorate on Corruption and Economic Crime (DCEC) was given the additional role of investigating money laundering offences. The unit is responsible for receiving suspicious transaction reports in relation to suspected money laundering. The unit also provides advice on tackling money laundering generally and offers practical guidance and assistance to the financial sector on the subject.

In 2002 a specialized unit was established within the DCEC to handle matters of suspected cases of money laundering. In 2003 the Banking Act number 13 of 1995 was amended, and now lists all activities that may seem to amount to suspicion of money laundering. Under the amended Banking Act it is obligatory for all financial institutions to:

- Report to the DCEC or Bank of Botswana (BOB) all suspicious transactions.
- Have in their banking institutions compliance officers who deal directly with matters of Money Laundering.
- Run two programs of Money Laundering every year to sensitise their employees in this matter.
- Report **all** deposits exceeding P10, 000.00 even if they are not suspicious.

In August 2003 Botswana became a member of the Eastern and Southern Africa Anti – Money Laundering Group (ESAAMLG) whose member countries are required, in accordance with applicable domestic laws, to establish anti-money laundering committees comprising senior representatives from legal, financial and law enforcement bodies. Accordingly in late 2003 a national anti-money laundering committee was established in Botswana, comprising representatives from the DCEC, the Bank of Botswana, the Attorney General's Office, the Ministry of Finance and the Police. This committee sits once every two months to share in self-assessment, evaluation, information support and technical support in the fight against money laundering.

#### **2.5.4 Powers of DCEC Investigation Officers**

In carrying out their investigations, the DCEC's investigation officers are equipped with a number of powers under the Corruption and Economic Crime Act of 1994. These are detailed below.

***Applications for the issue of Notices under Sections 7 and 8 of the Corruption and Economic Crime Act.***

Sections 7 and 8 of the CEC Act provide the DCEC's Director with the powers to demand information from persons including suspects. When the Director is absent, the Acting Director (who will normally be the Deputy Director) can sign notices. If both the Director and his Deputy are absent from duty the President may appoint another person to act as the Director until the return to duty of either the Director or his Deputy. A notice is a request by the Director to a banking institution to seek financial information pertaining to the person under investigation. Prior to signing a notice the Director will need to be satisfied that the use of the power is justified. Investigating officers who consider that a notice is essential to the conduct of their investigation should state reasons in the investigation file. At the same time, notices should be prepared for signature using templates in the Case Management System (CMS). Investigators should then submit the file to the Director through their Principal Investigators, Assistant Director and the Deputy Director, each whom will add their recommendations. Sections 7 and 8 of the CEC Act give the person on whom the notice is served a specific time in which to comply with the terms of the notice which is not normally less than one month from the date of the signature. Investigating officers are responsible for the service of signed Notices. Notices to be served on a Bank are served only on the appointed liaison officer at each Bank. Under no circumstances must investigating Officers make enquiries at a branch of a bank without the express consent of the DCEC's Director or his Deputy.

### ***Applications for Search Warrants***

Sections 13 and 14 of the CEC Act provide DCEC officers with the powers to search premises and vessels belonging to any person under investigation. Section 13 permits searches with a warrant obtained from a magistrate whilst Section 14 permits such action without a warrant where special exigencies of a case require. It is DCEC policy that Section 14 of the Act be used rarely and only on those occasions where it is impracticable to obtain a warrant or where the urgency or confidentiality of an enquiry dictates that course. An application for a Search Warrant can be applied from a magistrate by any investigator. It does not have to be signed by the Director himself. However before such an application is made, it must be approved by the appropriate Assistant Director. The authorised forms must be used when making the application. The application should normally be made to the Magistrate Court covering the area where the search is to take place. When searching the premises with a search warrant the Investigators must identify themselves, showing their Identity cards (as stipulated by Section 9 of the CEC Act) and produce the warrant and show it to the owner or occupier of the premises being searched. The warrant should always be kept by the Investigator and may not be given to any person. During the search such other officers may accompany the Investigator as may be deemed necessary, and such force as is necessary to conduct search, may be used.

### ***Arrest Procedures***

Section 10 of the Corruption and Economic Crime Act confers powers of arrest on DCEC officers. The power requires an officer to have reasonable suspicion that the person arrested has committed or is about to commit an offence under the Corruption and Economic Crime Act or an offence disclosed whilst investigating such offences.

Arrest should be resorted to only when absolutely necessary to achieve an objective. The arrest must be followed by detention. It is wholly unacceptable for an arrest to be made merely to compel a person to attend DCEC offices for interview. In making an arrest officers should explain in clear language who they are and why the person is being arrested, together with particulars of the offence in question. The officer should caution the person and any reply must be noted. Immediately after the arrest has been made the subject should be searched by an officer of the same sex. The objective of this search is not only to secure evidence but also to ensure that the subject has nothing on their person with which to hurt themselves. Handcuffs are available for use by the DCEC officers but they should only be used when absolutely necessary. Arrests should be carried as soon as possible and with due regard to the dignity of the person under arrest. Section 12 of the CEC Act requires the DCEC officers to convey arrested persons to a police station as soon as practicable. (DCEC Investigation Procedures Manual, 1999:29)



### ***Charge Procedures***

Once the charge sheet has been received from the Attorney General's Chambers or Public Prosecutor the person to be charged should be taken to a police station where s/he will be processed by a designated police officer. However, if appropriate, the DCEC officer in charge of the case should arrange for the accused to attend a Police Station at a convenient time with a Defense Attorney. Although this is not a legal requirement, if the accused person requests legal representation then they are entitled to it. If the accused person refuses this arrangement or fails to appear at the appointed time then it is appropriate to arrest that person. They should then be taken to Police Station for charging and then directly to Court to register the case in the charge

register. Notes should be taken of all that transpires during the charging process including any statement made by the accused person. The appropriate Police Station is usually the nearest one to where the offence was committed, although Magistrates' Courts do have power to deal with cases in other Administrative Districts. After the person has been charged, s/he should be served with a copy of the charge sheet, and where appropriate a copy of the Attorney General's consent to prosecute. Three copies of the fingerprints will be handed to the DCEC officer. Two of these should be immediately forwarded to the Police Criminal Record Bureau. Section 337 (2) of the CEC Act empowers the police to apply for a court order to take finger prints by force if the accused person withdraws consent. At the conclusion of the proceedings at the Police Station, the DCEC case officer should obtain a written statement from the Police Officer who undertook the charging process. The Police Charge Register Number should be endorsed on the fingerprint forms. On return to the DCEC, an arrest form should be completed on Case Management System. An alternative to arrest and charging is to proceed by way of summons. This is done by laying information at a Magistrates Court which will then issue a summons for service upon the accused person. The summons will specify the date and time at which the accused is appear in court (DCEC Investigation Procedures Manual, 1999:30).

# **CHAPTER 3**

## **RESEARCH FINDINGS AND ANALYSIS**

### **3.1 INTRODUCTION**

This chapter provides a presentation and analysis of the research findings, focusing in particular on the achievements and limitations of the Directorate on Corruption and Economic Crime (DCEC), and the challenges and constraints faced by it in carrying out its important anti-corruption work. The research findings draw on the responses to the questionnaires circulated to current and former employees of the DCEC, as well as to other key stakeholders. Each of the three major divisions of the DCEC will be considered in turn, following which a number of general challenges and constraints will be highlighted.



### **3.2 CORRUPTION PREVENTION DIVISION**

#### **3.2.1 Successes and Achievements**

The Corruption Prevention Division has made a number of achievements, particularly with respect to the production of prevention booklets, the introduction of training programmes, and the implementation of a performance management system.

##### ***Corruption Prevention Booklets and Manuals***

In the quest for excellence as reflected in the DCEC's vision, "Aiming to be the Best", upholding ethical standards has always been considered vital to the maintenance of the directorate's reputation. The integrity of any organization draws strength from a culture that stresses the rule of law and adherence to high ethical

standards. Above all it derives its momentum from the personal integrity of those individuals engaged in day-to-day management of its operations. In line with these principles the Corruption Prevention Division has produced a number of booklets and manuals to inform and guide both public and private organizations. These include Codes of Conduct for Public Servants, a Corruption Prevention Booklet and a Standing Procedures Booklet. These booklets were produced in house but printed and published at the Government Printer. The Corruption Prevention Booklet and Codes of Conduct for Public Servants are distributed during gatherings organized by the DCEC such as workshops, seminars and presentations. The Standing procedures booklet is mainly for use by DCEC officers. These publications have had a definite impact, as demonstrated by the fact that an increasing number of public sector organizations have invited the DCEC to make presentations for their staff on issues to do with corruption, as well as to assist with the drawing up of their own codes of conduct.



### ***Codes of Conduct in the Workplace***

Through the distribution of its Codes of Conduct booklet to both public and private organizations, the Corruption Prevention Division has encouraged both private and public organizations to spearhead the adoption of codes of ethics and good conduct in the workplace. If properly implemented, it is anticipated that these codes will help to improve the efficiency and accountability of such organizations, as well as the profitability of private sector institutions.

### ***Corruption Prevention Manual***

This manual is designed to give new officers in the DCEC's corruption prevention sections a general grounding on various aspects of the work and provide guidance on the different activities relating to the conduct of assignments. The manual is also aimed at guiding current corruption prevention officers on the processes and procedures in executing corruption prevention duties. It spells out in details steps entailed in conducting an assignment study, a major responsibility of the Corruption Prevention Division. It furthermore provides guidance on how best to address the problems they may encounter during their management of the divisions operations.

### ***Corruption Prevention Booklet***

This booklet, which has been widely circulated, highlights the role of the Corruption Prevention Division of the DCEC, in particular in terms of the promotion of good governance, accountability and transparency in Botswana. The booklet defines what corruption is and identifies typical examples. In particular, it outlines how corruption can adversely affect the country's economy and emphasizes the need for continued vigilance by government, the private sector and citizens.



### ***Standing Procedures Booklet***

The Standing Procedures booklet combines ethical principles with practical situations thereby offering a practical approach to promoting professionalism and acceptable personal conduct within the DCEC. It also addresses common ethical dilemmas faced by public servants and private institutions. This booklet was designed solely for use by DCEC officers. It is intended to ensure that DCEC officers practice what they preach. It clearly stipulates the DCEC's values and that the officers must abide by them.

### ***Training and Capacity Building***

Training and capacity building is an important priority within the DCEC, and the Corruption Prevention Division has engaged in a number of important initiatives in this area. For example, in 2000 one officer successfully pursued a one year Masters of Arts Degree in Management Systems at the University of Hull in the United Kingdom. In addition, the entire division attended a certificate course on Corruption Prevention at the University of Pretoria in 2004. In September 2005 two officers were placed for one month on an attachment at the Institute of Security Studies in Cape Town. The main focus of the research institute is to research on issues relating to organized crime and anti corruption strategies in Southern Africa. The officers acquired skills and techniques on how to prepare a detailed project proposal, as well as how to carry out research on corruption and anti-corruption measures. In 2005 two Corruption Prevention officers attended a short course at Pretoria sponsored by SAFAC (South African Forum against Corruption).

Although the DCEC has introduced a range of training and capacity building initiatives for its corruption prevention staff, several of the staff members interviewed in the course of this research study felt that more needs to be done, in particular by providing in-house training for the entire Corruption Prevention Division on how to conduct assignment studies. Other respondents, however, and especially those in the investigations division of the DCEC, felt that the Corruption Prevention staff are the most well-trained in the whole directorate.

### **3.2.2 Limitations and Constraints**

The Corruption Prevention Division has been faced by a number of challenges and constraints that have hindered the Division in achieving its objectives. In the first place, and despite the training efforts that have been made, many officers within the Division lack the necessary skills and competencies required to execute their duties and responsibilities effectively. In particular, the officers urgently require a diverse range of skills to enable them to conduct research on issues such as governance, ethics and procurement. However, such skills are lacking in many cases at present. One corruption prevention officer, interviewed by the researcher, stressed that officials within the Division were unable to conduct extensive empirical research on different aspects of corruption as they have limited knowledge and skills in this respect.

Other constraints mentioned by several of the corruption prevention officers interviewed included budgetary constraints as well as low salaries. The latter, they argued, prevent the Division from attracting qualified personnel able to undertake complex research or assignment studies. They also pointed out that their Division lacks adequate office accommodation and equipment, which has had an adverse effect on performance. Almost all the corruption prevention officers that were interviewed expressed concern at the lack of appropriate punitive measures in the Corruption and Economic Crime Act that can be used against departments and officials who fail to implement the Division's assignment study recommendations.

### **3.3 INVESTIGATIONS DIVISION**

#### **3.3.1 Successes and Achievements**

The Investigations Division has made a number of positive achievements, in particular through the introduction of a Computerised Case Management System, the establishment of an anti-money laundering unit, and the introduction of a number of training and capacity building initiatives.

##### ***Introduction of a Computerised Case Management System***

The Computerised Case Management System (CMS) manages the flow of an investigation from initial allegation to final resolution. The CMS system has the ability and capability to allow patterns and trends analysis using statistics. Its introduction has added valuable impetus, not only to the management of cases but also to the ability to analyse information promptly and effectively. On receipt of an allegation, the report centre officers input it into the system and allocate a unique reference number which enables the case to be continuously checked and tracked. Allegations are then put in a summary format for the management board to classify, which is done weekly, and those that are classified for investigations are transferred electronically to the Assistant Director Investigation's basket within the CMS, from which he distributes them to different investigation groups. The CMS system has made it straightforward for supervisors to gain access to investigation files in order to be updated on the progress of each file. It has also reduced the period taken to exchange manual file cases between officers and their supervisors. The supervisors are able to check the progress of a file by just a press of a button.

The introduction of the Case Management System has undoubtedly assisted the Division in processing the large number of cases with which it has been dealing in recent years. In 2004, for example, the Division received a total 2045 reports, 605 of

which were classified for investigation. These reports covered corruption, economic crime and fraud allegations. The reports that were not classified for investigation were either retained for intelligence purposes or referred to appropriate government departments or authorities.

Although the CMS has greatly improved the operations of the DCEC with regard to the handling of the cases, it also has some challenges. The system breaks down quite often, resulting in delays in the processing of cases. Some of the investigations staff are not sufficiently computer literate to utilize the system effectively. There is also a challenge with regard to security measures. The directorate constantly checks if the security of the CMS is intact so that unauthorized people cannot gain access.

In its quest to improve service delivery, and in keeping with the DCEC corporate values of transparency and accountability, the Investigation Division provides feedback on the results of investigations undertaken. Of the total number of investigations launched in 2005, the Ministry of Local government accounted for 14%, the Ministry of Works for 9%, the State President Ministry for 7%, Education for 6%, Labour and Health for 4% each, the Ministry of Lands and Housing for 3%, and the Ministries of Science and Technology, Minerals, and Finance for 1% each. The remaining 48% pertained to allegations regarding the private sector and parastatal corporations.

The Investigation Division also produced an in-house Investigation Manual in 1999. This guides the officers of the Division on how to perform their duties as well as what procedures to follow during the arrest, search and seizure of suspects under DCEC

investigation. Most of the investigations staff interviewed found this manual very useful in their work, though some felt that it was now in need of updating to include new aspects of their work, money laundering in particular.

### ***The Anti-Money Laundering Unit***

The establishment of an Anti-Money Laundering Unit within the Investigations Division marks another important achievement. According to the DCEC's 2003 Annual Report, 24 reports relating to suspected money laundering were received. The total amount involved was Pula 7,207,000. Whilst a number of these cases are still under investigation, it is evident that some of them will result in prosecution, thereby heralding a new chapter in the history of such offences in the country.

Recent years have witnessed an increase in financial crimes, including money laundering, in which employees of a number of financial institutions and legal institutions were found to be working in cahoots with fraudsters. In 2005, the directorate received 1685 reports of financial or economic crimes, of which 555 were taken up for investigation. Thirteen cases were taken to court, resulting in 10 convictions, 1 acquittal and 2 closed cases due to lack of evidence. Of the 1685 reports received, 85 were directly related to money laundering, involving a total amount of Pula 12,479,854.94.

### ***Training and Capacity Building***

The Investigations Division has also introduced a number of training and capacity building initiatives for its staff. Four investigation officers are currently pursuing law degrees in South Africa with financial support and study leave from the DCEC. One

is studying at the University of South Africa (UNISA), two at the University of the North West, and another at the University of Cape Town. Four other investigation officers have enrolled at the University of Botswana. Two are studying for a degree in accountancy, one for a degree in adult education, and another is pursuing a diploma in Criminal Justice. Other officers have attended on-the-job training programmes on issues such as report writing, investigative techniques, and supervision and management. These on-site training and capacity building programmes have been delivered by experts from local institutions such as the Botswana Institute of Administration and Commerce (BIAC), the Institute of Development Management (IDM), MAST Botswana, and Louis Allen Associates.

Due to acute shortage of prosecutors in Botswana and the increase in volume of work performed by the Attorney General's Office, the Investigations Division has been obliged to prosecute an increasing number of cases by itself. As a result of its training and career development programmes, the Division now has a legally qualified prosecutor and several investigators who have successfully completed Diplomas in Law. With these positive developments it is hoped that the Division will prosecute an increasing number of cases in the future.

### **3.3.2 Limitations and Constraints**

Despite the positive developments noted above, the Investigations Division continues to face a number of important limitations and constraints. These include human resources constraints, related in particular to the staff shortages and the lack of skills and capacity, and problems with the current legal framework.

### ***Human Resources Constraints***

According to nearly all the staff interviewed, the current establishment of the investigations division is insufficient to effectively cope with the large number of number of investigation cases it has to deal with. In addition, because of the relatively low salaries offered to staff (compared to what some of them could command in the private and parastatal sectors), the division has found it difficult to retain its most qualified and experienced staff, many of whom have left for greener and more lucrative pastures elsewhere.

### ***Legal Constraints***

According to the researcher's interview with one of the DCEC's Assistant Directors, it seems clear that the current CEC Act has been overtaken by events, and currently does not make provision for certain corrupt activities that are quite prevalent in Botswana. For example, there are no legislative provisions that adequately address the issue of private sector corruption and trading in influence. From investigations and interviews carried out, it is quite obvious that there is a lot of corruption taking place in the private sector and that many of these corrupt activities are not adequately covered by the current Act.

There are also problems in relation to whistle blowing and the protection of witnesses. The provision that currently protect informers and their identity is section 45 of the Corruption and Economic Crime Act. This provision is clearly inadequate in that it only protects witnesses in relation to court proceedings. As a result many potential witnesses and whistle blowers are clearly afraid of victimization and/or intimidation. It is therefore essential to enact legislation that will stipulate that whistle blowers must be protected from the time they disclose information. The Act must also clearly spell

out the remedies that would be available to witnesses and whistle blowers if they were subject to victimization or intimidation.

Statistics compiled by the report centre of the investigations division indicate that there has been an increase over the past few years in the number of anonymous reports made to the division. This suggests that people who report to this division often prefer to keep their identities secret for various reasons. This adversely affects the operations of the DCEC as it is difficult to get more information from people who report but prefer to remain anonymous.

### **3.4 PUBLIC EDUCATION DIVISION**

#### **3.4.1 Successes and Achievements**

The Public Education Division has made quite significant progress over the past few years in its efforts to publicise and spread awareness of the need to combat corruption.

This has been in line with the Government's Vision 2016 to achieve a 'safe and secure nation' and 'an educated and informed nation' (DCEC Annual Report, 2003:17-19). During 2005, the public education division held a panel discussion in Selibe-Phikwe to launch the 'Vision month', with the topic '*With so much corruption in Botswana, Achievement of Vision 2016 remains a pipe-dream.*' Those invited included representatives from the business community, government, the general public, the Vision 2016 Council, and the teaching fraternity. What came out of the discussions was that Vision 2016 is likely to remain illusory if corruption is not successfully tackled.

#### ***Educating the Public Sector and the General Public***

In recent years the Division has delivered talks and made presentations to numerous

organizations and institutions, including the Ministry of Education, the Ministry of Local Government, the House of Chiefs, the Department of Roads, Transport and Safety, the Police Service, the Department of Water Affairs and the Manual Workers' Union. The Division also continued its relationship with advertising and media groups countrywide to meet its objectives of publicising DCEC activities. A number of advertisements portraying anti-corruption messages have been placed in local and regional newspapers, magazines and directories. These publications were intended to promote community partnership with law enforcement agencies and to encourage positive attitudes towards the building of ethical standards. The Division also produced and disseminated its own in-house material, containing anti-corruption messages and information on DCEC events. Brochures entitled 'Know about the DCEC' (Itse ka DCEC' in Setswana) were printed in English and Setswana and distributed countrywide. According to the researcher's interviews, the brochures received a lot of appreciation from users because there were constant request to distribute more copies in schools, government departments, churches, parastatals, NGOs and the private sector. The brochures contained vital information about the DCEC's activities, together with a detailed description of what constitutes corruption and economic crime. They also provided the DCEC's contact details and information on how to go about reporting suspected cases of corruption. In order to enlist and foster public support, the DCEC has also distributed promotional materials such as T-shirts, caps, rulers, pens, drivers' license disc holders and stationary bearing anti-corruption themes. An added advantage to such promotional materials has been that they all carried the DCEC toll free number, for easy reporting, plus the regular telephone number for ease of communication with the DCEC. In 2005 the Public Education unit completed the production of 10 posters in both English and Setswana

with different themes and targeting various audiences. These included themes such as ‘Blow the whistle ...on foul play and get the green light to a prosperous future;’ ‘Watch you step! Corruption makes development ground slippery;’ ‘Look down on corruption and not up to it;’ ‘Corruption starts with 2 people but affects everyone;’ and ‘Public funds mismanagement...leads to poverty.’

The Division has also produced a number of guidelines and brochures for use in schools and youth centers. These have been specifically designed to raise awareness amongst the country’s young people of the need to combat corruption in its various forms. Five anti- corruption clubs have been established at senior secondary schools. In publicizing and popularizing their message, the officers of the Division have also made use of drama and theatre, television appearances, radio debates, workshops, seminars, presentations and public gatherings.



The Public Education Division has also addressed a number of different stakeholders at meetings around the country. The intention was to take DCEC to the people. Targeted organizations included the Botswana Police Service, Local District Councils, Land Boards and the Department of Roads, Transport and Safety. These departments were deliberately targeted because they reported a high prevalence of corruption. Eighteen local government constituency meetings were also addressed. The division has also hosted an Anti-Corruption National Youth Congress with the theme *‘DCEC and the youth - a smart partnership against corruption.’* The relevance of the theme was to highlight the crucial role youth as a critical stakeholder of the DCEC can play in minimizing corruption.

### ***Liaison with the Media***

Given the media's role in shaping public opinion, the Public Education Division has made a vigorous effort to share with them the latest developments in anti-corruption work, as well encouraging investigative reporting through the Southern African Media Network against Corruption (SAMNAC). Public education officers have attended regional anti-corruption workshops for media practitioners, sponsored, amongst others, by the Media Institute of Southern Africa (MISA), the Southern African Forum against Corruption (SAFAC), and the New Partnership for Africa's Development (NEPAD). The objective of the workshops was to boost investigative reporting skills and come up with strategies to share information. The Southern African Human Rights Trust sponsored one public education officer to attend a workshop in Mauritius. The objective of the workshop was to provide civil society with an understanding of the SADC Protocol against Corruption and how the protocol can be used as a democratisation tool to promote transparency and accountability. The established liaison between the media and the Public Education Division has seen many of the DCEC's activities publicised in the newspapers, in particular press statements of cases that have been registered before the courts. To strengthen a good working relation with the media, the Division has also held a number of media workshops for the country's journalists. In addition to journalists, public education officers have also collaborated with Non-Governmental Organizations to facilitate awareness raising and debates on corruption.

### ***Categories of Stakeholders***

In its campaigns, the public education division has targeted different broad categories of stakeholders. These include young people, the general public, and employees. The

youth were targeted in order to mobilize young people in Botswana into a formidable anti-corruption force; to build a disciplined youth and inculcate in them a sense of accountability and responsibility; and to create a future workforce free from corruption and economic crime. Different forums targeting young people have been established. These include the Rra Boammaruri Campaign, the Anti-Corruption Clubs Youth Congress, and careers fairs and exhibitions. Schools have also been involved in the anti-corruption campaign through activities such as essay and art competitions, debates, and drama classes. Promotional materials bearing the DCEC's logo and anti-corruption slogans have also been distributed in Schools.

With respect to the general public, the DCEC has introduced various promotional campaigns highlighting the dangers of corruption and the need for public vigilance.

These include the use of radio, television, billboards, fairs and exhibitions; the organization of community meetings and civic gatherings; meetings with NGOs; the publication and dissemination of brochures and newsletters; and the distribution of promotional material.

With respect to employees, the Public Education Division has made presentations and held panel discussions with the staff of quite a large number of public sector organizations, as well as some private sector organizations as well. These have focused on improving the workforce's understanding of ethics and the importance of enhancing ethical conduct in the workplace.

They also target them in order to reduce or eliminate corruption where it currently matters most. They use forums such as customised talks and presentations as well as panel discussions and NGO gatherings.

### ***Training and Capacity Building***

In line with DCEC's overall commitment to capacity building, the Public Education Division has engaged in a number of training and capacity building initiatives. Officers of the Division have therefore been sponsored to attend a variety of training programmes and workshops on topics such as graphic design and media liaison, as well as on more generic topics such as human resources management and project management. A number of officers within the division are studying for diplomas in graphic design, whilst others are enrolled for postgraduate programmes in journalism and media studies. The Division has computerized its work systems and officers have been trained in programmes such as Microsoft Word, PowerPoint and Publisher, as well as Corel Draw. In 2003 one female officer obtained an Honours degree in Journalism at WITS University in Johannesburg, and then proceeded to the University of the Free State to pursue a Masters Degree in Media Studies. In 2004 two officers enrolled in a Diploma in Graphic Design Course at the Genetic School of Computers in Gaborone, Botswana. In 2005 one officer attended a Certificate Course in the Prevention and Detection of Procurement and Contract Fraud at the University of Pretoria in South Africa. Also in 2005, another officer attended a Public Campaigns Training workshop sponsored by the South African Human Rights Trust.

#### **3.4.2 Limitations and Constraints**

The public education officers interviewed by the researcher expressed a number of concerns, relating in particular to staff shortages and the lack of skills and capacity, as well as logistics and finance. Many of them stressed that the relatively low salaries made it difficult to recruit and retain good quality staff, especially given competition from other employers. Although they were generally appreciative of the DCEC's

efforts in the field of training and capacity building, most of the respondents felt that more could and should be done, especially in such areas as research, mass media production, education policy and procedures, and ethics and good governance. Several felt that attachments to anti-corruption agencies in other countries would be of great benefit.

Inadequate budgets and office accommodation were also mentioned as key limitations on the efficient working of the Division. There is also a lack of up-to-date software for desktop publishing to enable the Division to publish more materials in-house.

### **3.5 OVERALL IMPACT OF THE DCEC**

From the findings of this research study, it seems clear that the DCEC, despite shortcomings and limitations, is having a positive impact in terms of exposing acts of corruption and bringing those culpable to book, as well as in terms of promoting greater awareness of the about the dangers of corruption in the broader Botswana society. creating. Table 3.1 below shows that the number of reports about possible corrupt activities that have been received by the DCEC have grown steadily since the organization was established in 1994. The data in Table 3.1 also demonstrates that the proportion of complainants who are prepared to reveal their identity has also increased quite significantly in the period since 1994. In addition, as noted in the sections above, the DCEC continues to receive a growing number of requests from both public and private sector organizations for guidance, advice and training workshops on how to deal more effectively with corruption in the workplace. All this is indicative of a growing public confidence with regard to the operations of the DCEC. In addition, when respondents to the researcher's general public

questionnaire were asked (in Question 15) to whom they were most likely to report suspected cases of corruption, over 90% chose the DCEC rather than the other choices listed in the questionnaire (the Botswana Police, the Ombudsman, and Internal Management Structures).

*Table 3.1: DCEC: Reports Received and Investigations Commenced 1994-2005*

Year	Reports Received	From Identified Complainants	By Anonymous Complainants	Investigations Commenced
1994	254	237	17	170
1995	896	734	162	411
1996	1378	1003	375	417
1997	1511	1132	379	316
1998	1525	1052	473	318
1999	1023	741	282	362
2000	1475	1096	379	390
2001	1841	1362	479	413
2002	1779	1338	441	357
2003	1775	1419	356	485
2004	2045	1629	416	605
2005	1951	1534	417	642
TOTAL	17453	13277	4176	4886

Source: DCEC Annual Reports

### **3.6 GENERAL LIMITATIONS, CHALLENGES AND CONSTRAINTS**

Despite the positive progress made by the DCEC, the previous sections of this chapter have also highlighted a number of limitations and constraints specific to the three main divisions of the DCEC. During the course of the researcher's interviews and documentary search, a number of more general challenges and constraints were revealed that affected the work of the DCEC as a whole. These related in particular to the lack of knowledge about the DCEC's mandate, shortcomings and gaps in the legislative framework, delays in obtaining information and cooperation from financial institutions and the Attorney General's Office, and the lack of adequate funding, staffing and logistical support.

### **3.6.1 Knowledge of the DCEC's Mandate**

Although all the respondents interviewed outside the DCEC indicated that they were aware of the DCEC's existence, it became clear that very few were fully conversant with the duties and responsibilities of the DCEC as stipulated in the Corruption and Economic Crime Act of 1994. The interviews also revealed that few of the respondents within and outside the DCEC were conversant with the provisions of the CEC Act itself. A number of the respondents, for example, believed that the DCEC does not have the power or responsibility to investigate alleged corruption in the private sector, although such powers are conferred by Section 28 (1) of the Act. Most interviews thought that DCEC was not a government department, whilst some thought it was another branch of the Botswana Police Service. Close to 90 % of the interviewees thought that the DCEC was only responsible for investigating allegations of corruption. They were unaware of the existence of other divisions like public education and corruption prevention.



### **3.6.2 Problems with the Legislative Framework**

The CEC Act does not include nepotism and favouritism in its list of punishable criminal offences. Most of the respondents believed that the Government should amend the Act accordingly, if it is serious about rooting out all forms of corrupt activities. In addition, according to chairman of the Botswana Law Society, Mr. Omphemetse Motumise, the DCEC's mandate and role needs to be defined more clearly for it to carry out its work more effectively. He stated that the CEC Act defines corruption in rather narrow legalistic terms, and argued that the DCEC would be more effective if it was given greater powers and more autonomy. The powers of the DCEC can currently be limited by the political leadership. For example, access to

certain documents or premises may be denied under section 15(2) of the Act, if the President is of the view that access may endanger national security. The issue of national security can be used to limit the role and effectiveness of the DCEC. In contrast, in Spain the Supreme Court “held that public officials could not use state security as a defense if criminal activities are suspected” (Rose-Ackerman, 1999: 152). Under the current legislation in Botswana, this is not the case.

Mr Motumise went on to argue that the DCEC must be more independent of the executive if it is to fully achieve its objectives. Relying on the executive for financial resources, as is the case at present, has obvious implications for the organization’s ability to carry out its tasks independently without fear or favour. Currently he feels that the DCEC’s work is compromised by the fact that it cannot afford to “bite the hand that feeds them.”



The journalists that were interviewed by the researcher strongly felt that the Corruption and Economic Crime Act of 1994 limits the freedom of the press. For instance, Section 44 of the Corruption and Economic Crime Act makes it an offence to divulge information relating to an ongoing investigation. Specifically, it is an offence for anyone, even DCEC officers, without lawful authority or reasonable excuse to publish or disclose to any other person either the identity of any person who is the subject of such an investigation or any detail of such an investigation. This section of the CEC Act was used to prosecute Professor Malema in 1996 for publishing an article in a newspaper on an ongoing investigation. All the journalists interviewed see this provision as depriving them of the freedom to freely communicate ideas and information to the public on corruption related activities.

However, the DCEC strongly believe that this section of the CEC Act protects the DCEC itself as well as the accused person, in that, if the accused person is aware that they are under investigation, they may flee the country, destroy evidence or even threaten potential witnesses. The person under investigation is also protected in that it is only after a thorough investigation has been conducted, the person is charged and the matter is registered before a magistrate that the DCEC's Public Education Unit informs the media.

The CEC Act did not make the DCEC an independent institution, which continues to fuel doubts about its legitimacy and public reputation. The Director of the DCEC is appointed by the President and is also directly accountable to him as a political appointee. Many of the journalists interviewed felt that the appointment of the Director by the President compromises the independence of the DCEC. Moreover, according to the Act, the President also determines the Director's terms and conditions of service 'as he thinks fit'. The other factor that is important and impacts on the independence of the DCEC is the tenure of office of its Director, a matter on which the Act is silent. This suggests that the Director of the DCEC is subjected to the whims and caprices of the President, which further undermines the credibility of the DCEC.

### **3.6.3 Delays in Obtaining Information from Financial Institutions**

Under ordinary principles of banking law, banks have the duty to keep secret the affairs of their customers. However, section 8 (1) (d) of the CEC Act empowers the Director of the DCEC to obtain any information from any bank manager regarding the details of anyone suspected of offences under the CEC Act. Details of the financial

circumstances of suspects are central to many investigations. However, because of inadequate record keeping, Botswana's commercial banks have often been unable to supply vital information, leading in some instances to cases having to be dropped.

#### **3.6.4 Delays at the Attorney General's Chambers**

Since the DCEC must obtain authorization to prosecute from the Attorney General's Chambers, delays in processing applications in that department have retarded the process considerably. Such delays have a knock-on effect for the scheduling of court appearances, organizing witnesses and so forth. An important problem in this regard is the fact that the staff establishment in the Attorney General's office has not expanded to meet the increased workload caused by the establishment of the DCEC.

In almost all the DCEC's Annual Reports, the Director complains of serious delays in the processing of cases through the Magistrates' Courts. Delays are attributable to number of factors including the non-appearance of defense counsel, and unscheduled adjournments due to illness or ritual occasions such as funerals. The investigators incur problems with regard to obtaining confessions as evidence as they are admissible in Court only if made in the presence of a judicial officer, usually a Magistrate or a District officer. If a suspect suddenly confesses to a criminal offence the investigating officer must immediately be taken to a judicial officer to authenticate the confession.

#### **3.7 SUMMARY**

This chapter has demonstrated that, through its three-prong strategy (through the three main divisions of the DCEC), the DCEC has made positive progress in raising institutional and public awareness about corruption, in exposing individual acts of

corruption, and in bringing offenders to book. However, it has also revealed a number of specific and more general limitations and constraints which will need to be addressed if the DCEC is to make the kind of impact on corruption prevention envisaged in the Corruption and Economic Crime Act of 1994 and subsequent legislation. The concluding chapter of this study will summarise the achievements and limitations of the DCEC in more detail, and provide recommendations for addressing some of the principal constraints that are currently affecting the work of the DCEC.



## **CHAPTER 4**

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **4.1 CONCLUSIONS**

The 2005 Transparency International Corruption perception index ranked Botswana the 32nd least corrupt country, worldwide, and one of the least corrupt countries on the African continent. This is in part a testament to the work of the DCEC. It is the DCEC's aim to see the country ranked as one of the least corrupt in the whole world. However, this will only be achieved if all the concerned parties continued to contribute in a meaningful way towards improved honesty and integrity in the workplace.



This research report has shown that the DCEC, through the work of its three main divisions, has made significant progress in its anti-corruption work. The Corruption Prevention Division has made a positive contribution towards greater institutional and public awareness of the dangers of corruption, in particular through the publication and dissemination of a variety of anti-corruption booklets and codes of conduct. The increasing demand, especially from public sector organizations, for these booklets and codes is indicative of the effectiveness of the division's work. In addition the Division has had an opportunity to brief the Parliamentary all-party caucus on its work and that of the DCEC as a whole. Following this briefing, almost all members of parliament have ensured that there is a slot for anti-corruption messages in their Kgotla meetings with the public, thereby demonstrating a growing political will amongst the country's political leaders to combat corruption and economic crime.

With respect to the Investigations Division there have also been a number of successes, including the introduction of the computerized Case Management System, the establishment of the Money Laundering Unit, and a number of training and capacity building initiatives in partnership with the International Law Enforcement Agency (ILEA) and Southern African Forum Against Corruption (SAFAC). All these developments have enhanced the investigative capacity of the Investigation division. The Division has also produced an Investigation Manual which has proved very helpful to the investigations officers in their work. With regard to the Public Education Division a number of milestones have been achieved in the area of publicity. Public education campaigns such as panel discussions, public debates, awareness campaigns and the production of publications have achieved a lot in terms of raising awareness.



Despite such successes, the DCEC's divisions have also faced a number of important challenges and constraints in their work. At the internal level, these include the lack of skills and competencies among their staff, the high staff turnover (due in part to the lack of competitive salaries), limited budgets to execute their mandate, and inadequate office accommodation and equipment. At the more general level, key challenges and constraints include important shortcomings and gaps in the legislative framework, and delays in obtaining information and cooperation from financial institutions and the Attorney General's Office. The following section of this chapter provides a number of recommendations for addressing these constraints.

## **4.2 RECOMMENDATIONS**

### **4.2.1 Failure to Report instances of Corruption and Economic Crime**

It is an individual's duty to report corrupt transactions. However, this research report has revealed that quite a number of citizens do not report instances of corruption because they do not want to be involved as they are not directly affected by the corrupt transaction. To address this concern, it is recommended that the CEC should be amended to make it an offence not to report attempted or actual corrupt transactions. The Act should have a section that clearly states if it is discovered, after an investigation of an allegation of corruption and economic crime, that certain persons were aware of the allegation but failed to report it, they may be prosecuted and convicted of a punishable offence.



### **4.2.2 Acceptance of Gratification**

The CEC Act should also have a provision that stipulates that when a public or private sector official or an agent acting for the official accepts or agrees to accept any gratification from another who is seeking to obtain a contract, license, permit, employment or anything else from the organization which the official represents, or who is likely to be concerned in any business transactions with that organization, the acceptance or agreement to accept such gratification is presumed to be corrupt unless evidence is produced to the contrary. This will address the concern of those who believe that the current legislation is too vague with regard to offences or corruption by private sector individuals and organizations.

#### **4.2.3 Nepotism, Favouritism and Maladministration**

The CEC should provide that no public service employee may be favoured or prejudiced because an employee supports a particular political party or cause. The Act should spell out more clearly than at present that an official will be guilty of an offence if they favour or prejudice another through acts of nepotism, favouritism or maladministration.

#### **4.2.4 Protection from any Discrimination in Procurement**

The CEC Act should require all organs of state in the central and local spheres of government or any other institution identified in national legislation to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. There should be a section which allows organs of state or institutions to implement a procurement policy which provides for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

#### **4.2.5 Witness Protection**

It is often difficult to prosecute cases of corruption successfully due to the refusal of witnesses to testify because of the fear of intimidation. It is appreciated that the CEC Act currently provides for the protection of informers but it is also recommended that the Act should also provide for the protection of witnesses, for example through witness protection programmes to be administered the DCEC.

#### **4.2.6 Blacklisting of Corrupt Businesses**

It is recommended that any person who defrauds the Government or who engages in corrupt practices should be blacklisted from any public dealings especially with the Government. The Botswana Government should promote a high standard of professional ethics within the Public Service with the assistance of the DCEC by determining the requirements for the blacklisting of business organizations and individuals involved in corrupt and unethical behaviour.

The first step towards establishing a blacklist for corrupt business and persons should be taken when the DCEC publishes a list of names of persons and suppliers that have been convicted by the courts as result of an allegation of corruption. Government departments should be required to consult the list before tenders or quotations for goods or services are awarded. A blacklisted supplier could easily re-appear under another name. The blacklist would therefore need to apply as much to the individual owners or directors of an enterprise as to the enterprise itself, and the list and information on it should therefore be constantly updated. However, information obtained illegally (for example, where information was obtained by means which breach the constitutional right to privacy or the Criminal Procedure Act) should not be used for the purposes of blacklisting.

#### **4.2.7 Whistle Blowing**

Corruption is extremely difficult to detect and, thus, those who have the courage to report any act of corruption must be protected. The interviews carried out as part of this research study reveal that people who are aware of corrupt activities and practices

are often unwilling to report such activities for fear of being victimized. The current CEC Act only protects whistle blowers in relation to court proceedings. Section 45(1) provides that “a witness is not obliged to disclose the name or address of any informer or state any matter, which may lead to his discovery.” (Corruption and Economic Crime Act1994: 104). This is clearly inadequate. As the DCEC’s 2003 Annual Report states (DCEC, 2003:16), “until whistle–blowing legislation is in place in Botswana to protect informers, especially in their work place, reprisal action will always remain a possibility, which is difficult to guard against.” It is recommended, therefore, that the CEC act should set out very clearly that whistle blowers must be protected from the time they first disclose the information. The Act should also spell out the type of protection to be offered. In particular, employees should be protected from "occupational detriments" in relation to the working environment for whistle blowing. The CEC Act should clearly define an occupational detriment as:



- Being dismissed, suspended, demoted, harassed or intimidated;
- Being refused transfer or promotion;
- Being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
- Being denied appointment to any employment, profession or office; or
- Being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security.

Given the importance of whistle blowing as a source of information about corruption, it follows that all organizations, public and private, should devote substantial energy

and resources into creating conditions in which bona fide whistle blowing is encouraged and valued.

The DCEC has come to the realization that it can only fight corruption effectively if provision is made for the protection of those who blow the whistle on their employers.

It is a considered view that whistle blowing legislation would be an effective tool that can be used to encourage people to report fraud and corruption, in that they would be assured of protection and their identities would be kept confidential.

The SADC Protocol against Corruption provides for the establishment of systems for the protection of whistle blowers but does not spell out these mechanisms. The UN Convention against Corruption contains an equally brief provision. But Article 32 of the Convention, which deals with the protection of witnesses, experts and victims of corruption, contains examples of mechanisms of protection that might be applied with the necessary changes for whistle blowers. The mechanisms include physical protection, provision of safe houses, limited or total non disclosure of identity; and permitting testimony to be given through the use of communications technology such as video or other adequate means.

#### **4.2.8 Obtaining Information from Financial Institutions**

Given the current difficulties that are quite frequently encountered in obtaining relevant records and information from the commercial banks in Botswana, it is

recommended that the CEC Act should require all financial institutions to keep records for at least five years after an account has been closed. These records should be sufficient to permit the reconstruction of individual transactions and should be made available to domestic competent authorities in the context of relevant criminal prosecutions and investigation. For this to be possible, the format in which the records are to be maintained should be determined in accordance with the requirements for admissibility of evidence in court proceedings.

#### **4.2.9 Resource Constraints**

The researcher's interviews with existing and former staff of the DCEC reveal that resource constraints (human, financial and logistical) are perceived to be a major impediment to the work of the organization. If the Botswana Government is to effectively realize its stated commitment to the eradication of corruption and economic crime, these constraints will need to be addressed as a matter of urgency.

Strategies in this respect will need to focus in particular on issues such as the training and capacity building of staff, policies for staff career progression and retention (including the introduction of more competitive salaries for highly qualified and experienced staff), and the provision of adequate facilities, accommodation and equipment.

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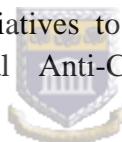
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## **APPENDIX 1**

### **QUESTIONNAIRE FOR CURRENT AND FORMER OFFICERS OF THE DIRECTORATE ON CORRUPTION AND ECONOMIC CRIME**

Dear Respondent,

I am a student undertaking a degree of Master of Public Administration in the School of Government, Faculty of Economic and Management Sciences at the University of the Western Cape. As part of the requirement to successfully complete the course, I am conducting a research on the following topic: An Evaluation of the Role of the Directorate on Corruption and Economic Crime. I kindly request you to please complete the questionnaire with the best of your ability.

I thank you in Advance

#### **DEMOGRAPHIC VARIABLES**



**Name (optional)**

**Gender**

**Age**

**Highest Level of Education**

**Occupation**

**Position in the organizational structure**

**Number of Years Work Experience in the DCEC**

#### **ORGANIZATIONAL MANDATE AND BACKGROUND**

- 1.** Why was your organization established?
- 2.** How does the statute define corruption?
- 3.** Are the penalties adequate?
- 4.** If yes, how?

5. If no, what do you think can be done to ensure your duties are performed effectively?
6. What is the range of penalties offenders usually get?
7. Are the penalties adequate?
8. If yes, how?
9. If no, what can be done?
10. Is your organisation transparent, with regard to execution of its mandate?
11. if yes, how?
12. If no, why not?
13. Have you been successful in combating corruption since inception?
14. If yes, what makes you say that?
15. If no, why do you think you are not successful?
16. What yardstick do you see for effectiveness?
17. Are there any cases that you investigate that are outside your remits?
18. If no, why do you think you are not successful?
19. Does it have statutory independence? (Justify your answer?)
20. How do you protect informants from victimization?
21. Have there been any attempts to intimidate you?
22. If yes, what action did you take?
23. Do you have mutual relationship with the media?

#### **DIVISIONAL EXPERTISE**

24. What kind of expertise does your division require?  
Do you have adequate expertise?
25. Do you receive necessary and relevant training?
26. If no, what steps have you taken to improve or provide the required training?
27. What is the exact nature of powers (specific) given to conduct your work?

- 28.** What is the source of them?
- 29.** Has there been any amendments to your statute to reduce or increase your powers?
- 30.** Do you think these changes have made it easier for you to conduct your work?
- 31.** Is the way you exercise your powers subject to external review?
- 32.** What limits are put on the way you execute your duties?

## **SUPPORT STRUCTURES**

- 33.** Do you feel the organization enjoys public support?
- 34.** If yes, what makes you say that?
- 35.** If no, what do you think can make the public conscious and confident in your work?
- 36.** Do you think your organization has support of politicians?
- 37.** If yes, which ones?
- 38.** Why do you say that?
- 39.** If no, what do you thin can make politicians conscious and confident about your work?
- 40.** Which departments do you work closely with?
- 41.** Do the departments work cooperatively with you?
- 42.** If yes, justify?
- 43.** If no, what do you think might be the cause of the poor work relations?
- 44.** What strategy do you use to combat corruption?
- 45.** Is it adequate?
- 46.** Do the following respect your organization?
- 47.** If yes, which part of government and why makes you say that?
- 48.** If no, why?
- 49.** What kind of problems do you encounter?

**50.** How can the problems be solved?

## **ORGANISATIONAL EFFECIENCY AND EFFECTIVENESS**

**51.** In your opinion is your organization effective?

**52.** If yes, how?

**53.** If no, what are the shortcomings?

**54.** Are there any resources constraints?

**55.** What additional resources would assist you to improve your work?

**56.** How are your activities monitored?

**57.** Given that your work is mostly confidential, to what extent are you open to the public about your operations?

**58.** Do you publish results or your operations?

**59.** In what form?

**60.** How widely is the information available?

**61.** Does Parliament scrutinize what you do?

**62.** Are you subject to the Auditor General?



## **APPENDIX 2**

### **QUESTIONNAIRE FOR POLITICIANS, CIVIL SERVANTS, JOURNALISTS AND THE GENERAL PUBLIC**

Dear Respondent

I am a student undertaking a Degree of Master of Public Administration in the School of Government, Faculty of Economic and Management Sciences at the University of the Western Cape. As part of the requirement to successfully complete the course, I am conducting a research on the following topic: An Evaluation of the Role of the Directorate on Corruption and Economic Crime. I kindly request you to please complete the questionnaire to the best of your ability.

I thank you in Advance

#### **Demographic Variables**

**Name** (optional)



**Gender**

**Age**

**Highest level of Education**

**Occupation**

**Position in the organizational structure**

#### **FUNCTIONS AND ORGANIZATIONAL REQUIREMENTS**

1. Why was the DCEC established?
2. What was it charged to do?
3. Do you think it is doing a valuable job?

If no, what makes you say that?

4. Do you think it has been successful in combating corruption and economic crime?

If yes, why?

If no, why has it not been successful in combating corruption and economic?

5. Does it have a credible reputation?

If yes, how?

If not why?

6. Are you happy with the work of the DCEC's three divisions? (Please justify your answers)

(a) Public Education

(b) Corruption Prevention

(c) Investigations

7. What is your opinion about the Small fish-Big fish syndrome?

8. Do you have trust and confidence in the organization?

If so, why?



If not, why not?

9. Do you think the DCEC enjoys public support?

If yes, why?

If not, what do you think needs to be done to make the public more conscious and confident of its work?

10. Do you think it enjoys support of politicians?

If yes, why?

If not, what do you think can be done to encourage such support?

11. Do you think it has adequate expertise?

If yes, please support your answer

If no, what kind of expertise does it require?

12. Do you think the DCEC is adequately funded?

Please justify your answer.

13. What kind of problems does it encounter?

14. In what way can these problems be solved?

15. Where would you report if you suspect any corrupt activity in your organization?

The Police

The Ombudsman

The DCEC

Internal Management structures



## APPENDIX 3

### Directorate on Corruption and Economic Crime

