

## Corruption and its control in Botswana

David Sebudubudu

Botswana is widely perceived as a successful, working democracy in Africa. What is striking about Botswana is that one party dominance over the past 36 years has not led to a proliferation of corruption as it did in most African countries. However, in 1994, Botswana established a specialised anti-corruption agency, the Directorate on Corruption and Economic Crime (DCEC), following a series of corruption scandals. The DCEC combats both corruption and economic crime i.e. thefts and frauds perpetrated on the public revenue. The focus of this article is on the DCEC, the reasons for establishing it, and the nature of its performance.

Botswana has not experienced the same widespread corruption which affects most parts of Africa (UNDP, 1998). In fact, Transparency International considered Botswana to be the least corrupt country in Africa in its 2001 Corruption Perception Index (CPI) and ranked the country 26th out of 91 countries assessed worldwide (<http://www.transparency.org>).

Although Botswana inherited a legacy of underdevelopment at independence, the discovery of minerals, especially diamonds, in the late 1960s transformed its economic situation from one of the poorest to a middle income country, according to World Bank ranking (Du Toit, 1995; Holm, 2000). However, many analysts such as Tsie (1996), the UNDP (1998) and Theobald and Williams (1999) also attribute its growth to good economic management and political stability. Wiseman emphasises 'the contributions to development made by the operation of an efficient and, despite a few recent blemishes, essentially non-corrupt state structures and sound policy choices made by an astute political leadership: economic success is due to a combination of good luck and good management' (1995: 1).

Since independence, Botswana has maintained a relatively good record of governance. Unlike countries such as Kenya, Malawi, Nigeria, Zaire and Zambia, corruption, authoritarian rule, patronage and mismanagement have not consumed Botswana's politics. Because of this, Botswana has been dubbed 'an economic miracle' (Chipasula & Miti, 1989: 116); 'an exceptional case of democratic success' (Du Toit, 1995: 17); the oldest multi-party democracy in Africa (Wiseman, 1997); and 'an oasis in a desert of corruption' (Theobald and Williams, 1999: 117). 'For many, Botswana is regarded as an island of stability in a sea of turbulence, a long-standing democracy which has never known military government' with an 'administrative probity . . . unequalled in tropical Africa' (Doig and Theobald, 1999: 10). Botswana has indeed managed to curb corruption through the creation of institutions which promote democratic accountability (Holm, 2000).

Unlike most African states, which moved 'away from pluralism towards the centralisation of power in the hands of a single party' (Todorff, 1993: 4), Botswana has retained its formal multi-party democracy. It has, since independence, functioned as a dominant party system with observable features of pluralism. The survival of multi-party democracy in Botswana is ascribed by some to the small size of both the ruling elite and counter elite as well as the impressive performance of the economy (Wiseman, 1977). Along with this reasonable level of stable democracy has come a low level of corruption. As Johnston notes:

Botswana is in many respects an African success story. Since independence in 1966 it has not only maintained democratic politics and respect for human rights, but it has also avoided the devastating corruption found in many other countries on the continent. Indeed, through the end of the 1980s, the general view both in and outside of Botswana was that whatever the country's other challenges might be, serious corruption was not among them (1999: 223)

The aim of this article is to evaluate the veracity of this statement and to examine the ways by which corruption is combated in Botswana.

### **The nature of corruption in Botswana: how serious a problem?**

In spite of its democratic success, Botswana has its share of corruption, although it is not yet a way of life. This has been acknowledged by the DCEC, which noted in its 1995 annual report that:

Here in Botswana, there is thankfully little evidence that corruption has become a way of life for the majority and it is encouraging that the population abhor the actions of those who enrich themselves at the expense of their country's development. Unfortunately however, the fact is that corruption and economic crime have invaded many walks of life here. They are evident in government, both central and local, and they are prevalent in the private business sector. More worrying, is the emerging evidence that some of those involved occupy very senior positions (Republic of Botswana, 1996: 2).

Below I document the patterns of corruption in Botswana. Corruption comes in the form of fraud, bribes, sleaze, inflating government tenders, cost overruns, ghosting, fronting, inflating allowances, misleading tender boards, forging documents, obtaining money by false pretences, illegal sale of passports, embezzlement of trust funds, misappropriation of money, money laundering, unnecessary travel and travel claims, and general unethical behaviour.

The first reported case of corruption in Botswana occurred in January 1975 involving Mr Kunz, who was an engineer in the Ministry of Works and Communications. This case was brought to the attention of the government following allegations of official corruption by the opposition Botswana National Front (BNF). Kunz received an effective nine months jail sentence for each of the two counts of official corruption (Republic of Botswana, 1994: 58). Later, according to the United Nations Development Programme, 'several scandals in the 1980s involved Botswana's economically and socially important cattle industry. In 1985 the management of the Botswana Meat Commission, a parastatal, was accused of mismanagement and corruption. Earlier, another official was accused of illegally enriching himself through a cattle-related business, and a relative of a top official was accused of illegally obtaining cattle ranches under a government grazing-land policy' (1997: 49).

Scandals of corruption in and around the cattle industry are no surprise in light of the role the industry has been playing in economic development especially in the early years of independence. Despite these allegations, no one was brought to book. More recently, however, a number of more serious and damaging scandals caused widespread concern. In what follows I will examine a number of these including cases which led to the appointment of three Presidential Commissions of Inquiry to investigate corruption and misuse of public office in the early 1990s. These Commissions documented some disquieting evidence of rules being defied and instances of misuse of office by some cabinet ministers, including a Vice-President, and senior government officials who were forced to resign when the findings were made public. As Johnston noted 'most disturbing was the fact that much of this corruption involved not poorly paid, low levels bureaucrats, but prominent officials who were very well paid by Botswana's standards' (Johnston, 1999: 223).

The first serious corruption scandal to become public involved the acquisition of schoolbooks for primary schools. On 16th April, 1991 a Presidential Commission of Inquiry, headed by Isaac Aboagye, presented its findings about the supply of school books and materials for primary schools by the International Project Managers (IPM) company. IPM was granted a tender to supply primary school books and educational materials during 1990 on behalf of the Ministry of Local Government Lands and Housing. The commissioners discovered that regulations, which govern the award of tenders in government, were entirely ignored and that all senior officials who were supposed to check the award of tenders failed to do so. The IPM report also revealed that the IPM was a

company in an "embryonic stage", and that its owner lacked formal education and had no experience in the acquisition of school books. The IPM was allowed an initially open-ended contract without any financial ceiling (Republic of Botswana, 1991: 10). Moreover, the Central Tender Board did not approve the tender. As a result of defects in the tender, P27 million could not adequately be accounted for (Republic of Botswana, 1991). On this basis the commission concluded that:

Government has suffered considerable losses arising out of the IPM consultancy. Not only was the Government overcharged, but through the misdeeds of the IPM, the Government lost a minimum of P1.4 million due to wrong allocations in the tender. It is likely that the Government has suffered far more considerable but unascertained losses by way of short or unverified deliveries. The Government has had to bear the expense of trying to create order out of the chaos that resulted from the 1990 tender (Republic of Botswana, 1991: 56).

The second serious corruption scandal concerned land problems in Gaborone peri-urban areas. In December 1991 a Commission chaired by Englishman Kgabo found that positions of power were used to acquire land in Mogoditshane. Explicitly implicated were then Vice-President and Minister of Local Government, Lands and Housing Peter Mmusi and then Minister of Agriculture, Daniel Kwelagobe. Mmusi and Kwelagobe were Chairman and Secretary General of the BDP respectively. Kwelagobe was said to have used his position to avoid Land Board procedures in order to acquire land already marked for community projects. The Kgabo Report asserted that:

On October, 1989, Mr Kwelagobe wrote an appeal and personally handed it to the Minister of Local Government, Lands and Housing who later directed the Land Board to comply with Mr Kwelagobe's request. The appeal did not follow the normal channels. The Land Board granted Mr Kwelagobe a customary grant certificate that is, for a *tshimo* (field). This provoked a second protracted dispute since Mr Kwelagobe wanted the *tshimo* converted to a common law grant which enables the holder to initiate commercial activities on the property and again the Minister ruled in Kwelagobe's favour (Republic of Botswana, 1991: 44).

The involvement of supposedly responsible people in controversial land acquisitions motivated residents in the area to engage in their own illicit land grabs. This, the commissioners argued, put government credibility and integrity in question in the area (Republic of Botswana, 1991: 43). The illicit acquisition of plots was a result of housing shortages in the city, due to the internal growth of the villages, economic opportunities in the city and the failure of the Department of Surveys and Lands to deliver sufficient number of plots. The failure of the Botswana Housing Corporation to deliver enough houses and the freezing of plot allocations by Land Boards was also blamed (Republic of Botswana, 1991: xi).

Faced with all these problems, the Report concluded that people were left with no option but to resort to illegal means because government failed to provide shelter for them (Republic of Botswana, 1991). This case demonstrates that 'corruption among an elite not only debases standards popularly perceived, it forces people to undertake the underhanded approach out of self-defence' (Bayley, 1989: 943). However, Daniel Kwelagobe and Peter Mmusi challenged the Kgabo Commission for failing to grant them a hearing and the High Court set its report aside. The problem of land in the peri-urban areas continues to be a problem at the time of writing.

The third major (and perhaps most damaging) corruption scandal involved the Botswana Housing Corporation (BHC). On 30th November 1992 a Commission headed by Richard Christie handed in a report of its inquiries into the activities of the BHC. BHC is a semi-autonomous corporation charged with building public housing. The Christie report documented disturbing evidence of the misuse of high office. Peter Mmusi, the then Vice-President and Local Government and Housing Minister, under whom the BHC fell, was implicated once again. The Commission concluded that, 'we find that Mr Mmusi should be absolved from any personal wrongdoing, but it

is with him the buck stops at a political level, and he must take political responsibility for massive corruption and dishonesty which have been revealed at the BHC' (Republic of Botswana, 1992: 205).

Peter Mmusi was not alone. Also implicated were two Assistant Ministers, Ronald Sebege and Michael Tshipinare; Joseph Letsholo the general manager until his death in February 1992, and G F Rabana a deputy General Manager, as well as the permanent secretary of the ministry, Ms Pelonomi Venson, whom the commissioners held to be responsible for administrative failures of the BHC. There was a longer list of other, less prominent, miscreants. Sebege is said to 'have used his position for the benefit of his friends' whilst Tshipinare received a loan of P500,000 from Spectra Botswana, a company awarded a contract to build the offices of the BHC. As Tshipinare was one of the directors of Spectra, the Commissioners concluded that 'the payment of P500,000 by Spectra Botswana Ltd to M Tshipinare on 12 December 1991 was a bribe in connection with his assistance in obtaining the BHC headquarters building contract for the company' (Republic of Botswana, 1992: 88). Tshipinare was given a once-year prison sentence for failing to disclose his personal share in the firm but his sentence was nullified following a successful High Court appeal.

The main BHC scandal however, centred around its general manager, Letsholo. The Report observed that following Mr Letsholo's death, a cash sum of P8 530,00 was found in his car. Thereafter a further sum of P218 076,00 was recovered from his office safe, to which only he had access. 'In the light of all that has emerged in this inquiry,' the Report remarked, 'we have no option but to find that these unbanked sums were the fruits of corruption. Prior to his death Mr Letsholo had embarked upon a personal investment programme so far beyond his means that it is impossible to avoid the conclusion that he was and expected to be in receipt of large and regular bribes.' (Republic of Botswana, 1992: 192).

The BHC debacle showed how misuse of positions of power led to 'gross mismanagement and dishonesty resulting in the loss of tens of millions of Pula that should have been used for providing houses' (*ibid* 8). According to Good, the above cases of corruption 'came to light through public controversy—fuelled by able investigative reporting in the independent newspapers—and not as a result of internal, governmental checking mechanisms. These throughout were absent or ineffective' (1994: 504-505). It is worth noting that in Botswana reports of commissions of inquiry 'are not automatically meant for public consumption' (*Mmegi/The Reporter*, 1 July 1999).

However, where there was no Presidential Commission of Inquiry, there was no one to tackle corruption, as was the case with the National Development Bank (NDB). In this case, some senior politicians, including the former President (Masire) borrowed large sums of money from the bank but failed to service their loans. This ended in the NDB incurring huge losses and retrenching some of its employees. The near ruination of the NDB put the leadership of the BDP government in question (Good, 1994). The NDB case was a combination of bad management and corruption. It contributed to the undermining of the popularity of the BDP, resulting in the opposition winning 13 seats in 1994.

Out of moral panic the response of the Botswana government to these major cases of corruption was to create the DCEC (Theobald and Williams, 1999). According to Good, the DCEC was established in 1994 'largely as a result of the considerable malpractice just then revealed' (Good, 1996). Political reasons too may have worked as a catalyst towards the speedy creation of the DCEC. The scandals embarrassed the government which wanted to be seen to be doing something. The scandals also increased the popularity of the opposition, mainly the BNF. To clear itself, the government created the DCEC.

### **The DCEC and the control of corruption**

#### ***Formation of the DCEC***

Presenting the DCEC Bill in the National Assembly for its second reading on 11th July 1994, the then Minister of Presidential Affairs and Public Administration, Lt. General Mompoti Merafhe,

elaborated the rationale for the bill as follows

The Corruption and Economic Crime Bill . . . represents the Government's resolute response to the rising problems of corruption and economic crime in this country . . . Corruption and economic crime severely undermine the very fabric of society and, in consequence, are considerably more damaging in the long term than crimes of violence . . . Corruption and economic crime do exist here to an extent which not only justifies, but demands that the utmost effort be made to eradicate them from our public and business affairs. The danger exists that ordinary members of the public may develop the belief that it is not objectionable to pay a bribe for a service they are entitled to for free and that corruption and economic crime are acceptable . . . Government wishes it to become known, both within and outside Botswana, that ours is a country in which public and private business can be carried out honestly and fairly, and whose citizens do not tolerate abuses of the law by those with the power and financial resources to usurp them. It is recognised that the current laws and the resources devoted to the fight against corruption and economic crime are inadequate to achieve that aim (Republic of Botswana, 1994: 36-37).

The creation of the DCEC supposedly demonstrates that the government is keen to reduce corruption because it was a danger to social, political and economic development. Second, despite Botswana's reputation as the least corrupt country in Africa, corruption was seen as a danger to Botswana. Third, by introducing the DCEC, Botswana was addressing a legitimacy problem. Following the three Presidential Commissions of Inquiry, the government wanted to address the problem of public perception and apprehension. Fourth, it wanted to ensure business confidence, including the reassurance of foreign investors and aid donors, that Botswana is a place where investors can invest their money without any fear of abusing or losing it. Finally, the DCEC was introduced because the existing legislation and resources were inadequate in the face of emerging cases of corruption.

The DCEC Bill was enacted on the 25th July, 1994. However, throughout its discussion in Parliament, the DCEC Bill met some opposition from a considerable number of MPs, including those from the ruling party. The fact that the backbenchers of the ruling party were critical of the DCEC Bill was unusual in Botswana because they always usually support government bills. For their part, opposition MPs were concerned with the independence of the DCEC. Some of the MPs of the ruling party were critical of the DCEC Bill because the Kgabo and Christie Presidential Commissions of Inquiry accused them of corrupt practices. Some vehemently expressed concern about the constitutionality of certain provisions of the Bill and its intentions whilst others labelled its powers as draconian. Some felt that not enough consultation had occurred while others wanted the government to give the police more resources, rather than establish a new agency because they saw the DCEC as nothing more than a duplication of efforts.

Following enactment in July 1994, the DCEC was established in September 1994. The DCEC is modelled on the Independent Commission Against Corruption (ICAC) in Hong Kong because the ICAC has been successful in tackling the problem of corruption. But the ICAC and the DCEC were established under different backgrounds. The DCEC was set up following damaging reports of corruption and abuse of public office; the ICAC was created in the context of widespread police corruption and so was separated from the police force. There was some good justification for establishing the ICAC as a separate organisation but this was not the case in Botswana. The police force in Botswana was not noticeably corrupt; rather, it lacked the capacity to tackle complex white-collar crimes. Therefore, logic dictated that the government should have strengthened the role of the police service by establishing a specialised unit within the police. Instead, the DCEC was constituted as a quasi-police force in the Office of the President. It thus reflected the trend worldwide to establish specialised and independent agencies to fight corruption. The DCEC's 1994 annual report states that 'success had been enjoyed in countries which had established separate

bodies specifically set up and designed to deal with the problems rather than imposing additional burdens on existing law enforcement agencies' (Republic of Botswana, 1995: 8).

***Organisation of the DCEC***

The DCEC is charged with three main duties as spelt out by section six of the DCEC Act. These are investigation, crime prevention and public education. This is known as the "three pronged strategy", which has proved to be effective in Hong Kong. The DCEC 'has adopted the policy that anti-corruption work requires more than just investigation and prosecution. It has also a branch concerned with prevention, that is to say reducing the opportunities for corruption, and another whose task is to involve the public' (Palmier, 1983: 213). Such a stance is based on the notion that a strategy, which combats corruption by investigation without any preventative measures or without increasing public awareness, is unlikely to bring better results.

The prevention section assists government departments to search for loopholes in the existing rules and regulations to ensure that the corrupt and would be corrupt find it difficult to exploit such laws. This would help to reduce the opportunities for corruption and economic crime. The public education section is charged with the task of changing the attitude of the public towards corruption and economic crime. This is not an easy task. It has to be noted that corruption and economic crime have a lot to do with the peoples' attitudes. Public education on the dangers of corruption is seen as a key weapon in combating corruption internationally. This is the strategy used by Transparency International (TI) in its anti-corruption crusade. TI does not investigate individual cases but it simply sensitises the community on the effects of corruption. The DCEC public education section needs to give special attention to the youth in trying to convey the anti-corruption message. The public education section uses a number of strategies in trying to convey its message. These include amongst others posters, radio programmes, school talks and seminars.

***Powers of the DCEC***

The DCEC Act conferred the DCEC with wide and sweeping powers to investigate corruption and economic crime according to section 6 of the DCEC Act. It is a civilian organisation with powers like those of the police. The DCEC has the power to arrest, search and seize with or without a warrant. It also has the power to obtain information and to use reasonable force. It also has the power to access suspects' bank accounts without their knowledge. The DCEC, like the police, can institute extradition proceedings against fugitive suspects. Most of the DCEC's powers are exercised with the authority of a magistrate. Two reasons stand out for giving the DCEC these powers. First, these powers enable the DCEC to gather evidence in its investigations of corruption and economic crime without fear. Second, such enormous powers are necessary because corrupt acts are committed under the cover of secrecy.

The Act gives the DCEC wide powers along conventional ICAC lines. Any person who corruptly offers a bribe is guilty of corruption under section 23. The DCEC Act also makes conflict of interest an offence. According to section 31 (1):

A member or an employee of a public body is guilty of corruption if he or an immediate member of his family has a direct or indirect interest in any company or undertaking with which such body proposes to deal, or he has personal interest in any decision which such body is to make, and he, knowingly, fails to disclose the nature of such interest, or votes or participates in the proceedings of such body relating to such dealing or decision.

The Hong Kong influence is seen, too, in section 34(1) of the DCEC Act which spells out that individuals are guilty of corruption if they fail to account for their assets. If a person's property or assets are questionable or a person is living disproportionately to his or her known official emoluments, they can be called to explain how they accumulated such assets. The onus is on the suspect to show that he/she did not accumulate assets through corrupt means. This section has

been challenged in court as unconstitutional and the court is yet to pronounce on this.

As the law stands, the DCEC can investigate any person in Botswana including the President, but has no powers to decide who should be prosecuted or not. The power to prosecute rests with the Attorney-General to whom cases are referred following investigation. With regard to the President, it is entirely the prerogative of the Attorney-General to decide whether to prosecute him or not. But according to section 41 (1) of the constitution of Botswana the President is immune or is protected from legal proceedings. No criminal or civil proceedings may be brought against an incumbent president. Similarly, parliament has no powers to impeach the president. In all other cases, the DCEC has power to investigate, limited only by the willingness, or otherwise, of the Attorney-General to prosecute.

Under the DCEC Act decisions to prosecute carry heavy penalties against corruption. Section 36 of the DCEC Act states that anyone found guilty of corruption could be sentenced to prison terms of up to ten years or a maximum fine of P500 000,00 or both. The Act also has a provision for offences committed by Botswana citizens outside Botswana. Such people can be charged as if the act was committed in Botswana under section 46.

Section 21 of the Act also provides for the immunity of DCEC officials for actions undertaken in good faith so that they discharge their duties without fear of prosecution. More controversial has been section 44 of the Act, which sets out penalties for public disclosure that someone is under investigation for possible corruption. When the DCEC Bill was before Parliament, the Press was critical of Section 44, expressing fears that this provision would curtail its freedom. The reasons for section 44 are clear, to protect investigations and reputations during lengthy procedures which require care and fairness. Disclosure of the identity of the person under investigation would pre-empt and interfere with the work of the DCEC. As McMullan notes: 'there are plenty of reports, histories and trial records exemplifying corruption in different countries, but corruption is not a subject which can be investigated openly by means of questionnaires and interviews' (1996: 183).

Section 44 is designed to facilitate the gathering of evidence by the DCEC but also to ensure that unnecessary damage is not done to any suspect. The press is free to report on any case as long as it is before the courts. The Constitution of Botswana talks about the protection of the freedom of expression but that right is not absolute. To date, two journalists have been charged under section 44 of the DCEC Act and there is a clear tension between the two principles.

The Act also seeks to protect whistle-blowers from exposure. Section 45 talks about the protection of informers by not disclosing their names or identity. This is to ensure that anybody can report corrupt acts without fear of identification. The name of an informer can only be disclosed if one makes a report that he or she knows to be false, and then only on the finding by the court. Section 43 makes it an offence for one to make a malicious report.

Moreover, although under section 16 (1) of the Act, the Director of the DCEC may apply to a magistrate for a suspect to surrender his or her travel documents to the Director, the problem of suspects fleeing the country continues unresolved. The 1995 annual report of the DCEC observed 'a number of . . . concerns about the administration of justice in Botswana. Principal amongst these is the granting of bail to persons charged before the courts. Whilst the country's constitution emphasises, in effect, that bail is a right not a privilege, there have been a number of cases in the Directorate's short history where that right has been abused. This is particularly so in relation to a number of expatriates who, having been granted bail, have absconded from the country before trial' (Republic of Botswana, 1996: 4).

However, the powers of the DCEC are not absolute. Access into certain premises or documents may be denied under section 15(2) if the president is of the view that access may endanger national security. The issue of national security clearly increases executive control over the DCEC. In Spain the Supreme Court 'held that public officials could not use state security as a defence if criminal activities are suspected' (Rose-Ackerman, 1999: 152). In Botswana, the law presently overrides such a consideration.

### **Cases**

The DCEC has dealt with a number of cases since its establishment in 1994. Perhaps the most sensational corruption scandal was the Nicholas Zachem case, which many believed was a test for the DCEC. It led to the resignation of a cabinet minister and the conviction of the former Director of the Department of Roads. The case involved politicians, civil servants, the private sector and a multinational company, Zachem Construction, which operated in a number of countries in Africa. In this case, the former Director of the Department of Roads was charged with receiving a bribe of some P100,000 from Nicholas Zachem, contrary to sections 384 and 385 of the Penal Code. The offence was committed a few days before the DCEC was established. The bribe was an inducement to award the multi-million Monametsana-Rasesa road project to Zachem Construction Botswana (ZCB). Nicholas Zachem was the former area manager of the ZCB. Also charged was a senior roads engineer for allegedly receiving some U\$25,000 from Zachem. The engineer was cleared whilst the former roads director was sentenced to four years in jail.

At the time of writing, the former director was yet to face another charge of failing to give the DCEC a satisfactory answer for being in possession of property valued at over P300,000 (*The Botswana Gazette*, 27 May 1998). Zachem, 'a self confessed fraudster', told the court that 'he was involved in a string of criminal activities, including bribery, fraud, money-laundering and the inflation of government tender certificates'. These 'cost him P700,000 to win his former employer, Zachem Construction, government tenders' and 'the money in question was used to bribe government officials and other influential people' (*Mmegi/The Reporter*, 27 August-2 September 1999).

More worrying about this case was the involvement of a minister (*The Botswana Gazette*, 16 June 1999). The concerned minister obtained P10,000 for being a director in Zac Construction. Furthermore, it was revealed that Nicholas Zachem while still working for the ZCB in 1993 'spent an undisclosed amount of money to partly bail out at least one minister who was heavily indebted to the National Development Bank (NDB)' (*Mmegi/The Reporter*, 23-29 April 1999). 'This was done at the height of the bidding for the Rasesa-Monametsana road project' and 'the project was ultimately awarded to Zachem Construction' (*ibid.*, 23-29 April 1999). Zachem also 'pumped some money into one minister's cash-strapped family company' and the minister's wife 'made numerous visits to Zachem Construction offices asking for favours' (*ibid.*, 23-29 April 1999). Nearly two weeks before Zachem Construction was awarded the Rasesa-Monametsana road project, another former cabinet minister received a cheque of P5,000 in 1994 from Zachem Construction (*Mmegi/The Reporter*, 29 April-06 May 1999).

Moreover, 'during his bribery spree, Zachem maintained strong contacts with cabinet ministers, government officials and some members of the ruling Botswana Democratic Party (BDP) trading money and favours' (*Mmegi/The Reporter*, 23-29 April 1999). It was also alleged that Nicholas Zachem had links with 'cabinet ministers, as well as senior officials at Attorney General's chamber [sic], directorate on corruption and economic crime and administration of justice' (*ibid.*, 23-29 April 1999). At one point during the court case, Zachem claimed to have a list of influential people whom he had bribed. Nicholas Zachem became a prosecution witness in the above case and was given immunity from prosecution.

As a result of this, various sources in Botswana drew their own conclusions. The press for instance, observed, 'some sources suspect that the involvement of the two ministers and other top government officials led to the withdrawal of a case against Zachem, who had warned that should he be charged "heads will roll in the present cabinet"' (*ibid.*, 23-29 April 1999). Although Nicholas Zachem admitted to inflating tenders whilst still working for Zachem Construction Botswana, his company, Zac Construction continues to win lucrative tenders from the government.

Another important case of corruption the DCEC has dealt with is that of John Stoneham. Stoneham was the General Manager of the Motor Vehicle Insurance Fund (MVIF) and previously Acting Permanent Secretary in the Ministry of Finance and Development Planning. Stoneham was jailed for one year with a further two years suspended for fraudulently obtaining over P16,000

from the fund. When sentencing him, the Chief Magistrate, Leonard Sechele, called the matter 'an embarrassment to the public service. This amount of money involved, though recovered, is substantial to government' (*The Midweek Sun*, 28 May 1997). There were three other charges Stoneham faced but were withdrawn by the state. In one of the three, it was alleged Stoneham 'stole more than P200,000 by falsely claiming that he had ministerial approval for the refinancing of his mortgage' (*ibid*, 28 May 1997).

Cases of private attorneys who embezzle trust funds are common in Botswana. A private attorney was jailed for five years for conspiring to obtain R550,000 by false pretences from a bank. Another private attorney was found by the Court of Appeal 'to be "a cog" in a P62,000 fraud case' (*Mmegi/The Reporter*, 18-24 February 2000). In another case, a private lawyer was charged with embezzling more than P100,000. In yet another case a former General Manager of Botswana Technology Centre (BTC) challenged the constitutionality of section 34 of the DCEC Act. This section makes it an offence for one to live beyond his or her 'present or past known sources of income' (*The Botswana Guardian*, 28 May 1999). In another case, two managers of a parastatal organisation were charged for conniving to 'steal a total sum of P53,000 and R1,000' (*Mmegi/The Reporter*, 18-24 September 1998). Finally, a managing director of a private company was charged for obtaining P98,000 from the government of Botswana by false pretences (*The Botswana Gazette*, 29 April 1998).

Other more important cases are built in and around the Financial Assistance Policy (FAP). In 1999 it was reported that a 'total of 40 FAP beneficiaries are under active investigation by the DCEC. The amount of money at risk is around P27 million' (*Mmegi/The Reporter*, 4-10 June 1999). New opportunities tend to open other avenues for corruption. With the expansion of FAP to cover tourism 'several cases are now before the courts and they include charges such as faking the number of employees on the pay roll' (*ibid*, 22-28 May 1998). FAP funds have been hit by what came to be known as "fly-by-night" investors. Most of the cases the DCEC handle involve fraud. One former Zambian businessman 'was convicted of defrauding the government of P2.5 million Financial Assistance Policy monies' (*The Botswana Gazette*, 3 December 1997). Two foreign nationals attempted to obtain a grant of P486,000 by false means from government through the Financial Assistance Policy.

In addition to the above examples and cases of corruption, a number of questionable practices, have of late caused great concern. Perhaps the most interesting is the P2.4m secret donation to the BDP from an undisclosed source in Switzerland (*The Midweek Sun*, 26 May 1999), in preparation for the 1999 general elections. The BDP has refused to disclose the source of the donor except to label them as 'friends and business communities' (*The Botswana Guardian*, 23 July 1999). The BDP Executive Secretary observed that the BDP 'is not going to tell anybody the source of its funding because there is no reason to do so' and further stated that 'it is common practice elsewhere in the world for political parties to ask for donations and thereafter not divulging their sources of funding' (*The Midweek Sun*, 26 May 1999). According to the BDP Treasurer 'any political party has the freedom to raise money from whatever source' (*Mmegi/The Reporter*, 04-10 August 2000).

Failure to disclose the source of the secret donation especially in a country which has been described as a model of democracy in Africa, clearly violates the principles of transparency and accountability. Asked if they were investigating the source of the P2.4m donation, the DCEC Director said 'we do not know if the donation is soiled or not. We do not have any information that it is soiled money. If anybody has that information let him come forth so that we can start our investigations on the basis of the bits and pieces of information that he would have passed to you' (*The Midweek Sun*, 26 May 1999). This partly explains why the DCEC was perceived as failing to catch the "big fish". However, the Botswana Gazette later revealed that the money originated from a subsidiary of De Beers, the South African diamond mining giant which owns 50% of Botswana's Debswana Mining Company (*The Botswana Gazette*, 26 May 1999).

In spite of these cases of corruption, Good observed that:

Corruption and mismanagement in Botswana is relatively pale and restricted. It is almost an elite phenomenon, and when it extends to others, as in state-run financial organisations and over land in Mogoditshane, it is under conditions seemingly sanctioned by some participating government leaders and officials. It is not systemic to the whole of the political economy as in Zaire...Nor is it epidemic, afflicting the whole society, as in Nigeria, and there is decidedly no 'culture of corruption' as it exists in Brazil. Responsibility and accountability have been seriously reduced within the top-most levels of the government, but to-date many state institutions and most citizens remain untarnished (1994: 516).

However, it might be said that corruption exists at both elite and lower levels. Evidence for elite corruption was the scandals discussed above and low-level corruption was evidenced by cases the DCEC has dealt with. This has been acknowledged by the DCEC Director who observed that: 'a majority of cases involve petty corruption such as someone failing to pass a driver's (licence) test and finding a way around it' (*Business Day*, 8 April 1998), though as the founder Director of the DCEC remarked, 'some of those involved occupy very senior positions' (Republic of Botswana, 1996: 2).

Corruption in Botswana did not start with IPM, BHC or peri-urban land scandals. Its roots seem to be decidedly deeper than that. Healey noted that 'it seems likely that financial mismanagement and lax and corrupt practices have been "creeping up" for some time at all levels. The discovery of malpractice in the 1990s shows no systemic pattern; it has come to light in an accidental ad hoc way and its real extent remains unclear' (1995: 47). In certain quarters, it is believed that the roots of corruption were traceable to the 1982 Presidential Commission on Economic Opportunities. Prior to this Commission, there was a prohibition of civil servants from taking part in business apart from traditional agriculture. The same prohibition applied to ministers. Following this commission, civil servants and ministers were allowed to invest in business as long as they declared their interests. But they have never declared their interests. Since then there has been an explosion of ministers and senior civil servants involved in business. David Magang is a classic case, being forced to resign as Assistant Minister of Finance for backing Phakalane Estates.

Prior to this Commission, there were isolated cases of corruption, but afterwards civil servants and ministers started forming consortiums and becoming shareholders. The development of these consortiums meant senior civil servants were involved in business with some private companies. As senior civil servants, they had access to critical information of government projects and policies. They also had access to ministers. Later in the 1980s, a lot of syndicates or consortiums were formed with overlapping membership. The 1980s and 1990s saw the introduction of policies such as writing off debts in the National Development Bank, bailing out, which entrenched a culture of wiping out bad business decisions. As Fombad noted 'the political and administrative ethos of Botswana since the late 1980s has been characterised by its symbiosis with business and a controversial system of overlapping directorship's (Fombad, 2001: 62).

### **Hindrances to control of corruption**

#### ***The problem of DCEC autonomy***

The DCEC Act did not make the DCEC an independent institution, which casts doubt on its legitimacy and public reputation. The Director of the DCEC is politically appointed by the President and is also directly accountable to him as a political appointee. The appointment of the Director by the President, I would argue, 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 whim of the President, which further undermines its need to be seen to be free from political interference. As one senior DCEC official put it: 'under the current

arrangement, the DCEC is not in a position to address corruption among the high-ups. The current director is too loyal to the government' (interview, 5 October 1999).

It was also reported that Stockwell, the founder Director of the DCEC, and a former official of the ICAC in Hong Kong, may have decided not to renew his contract because he was 'disgruntled as a result of government's interference in the department's work. Apparently investigations involving high-ups were constantly being obstructed' (*Mmegi/The Reporter*, 24-30 January 1997). This view was confirmed by a DCEC line official who said: 'with my little experience in the DCEC, I have come across cases where little has been done about them. They were not reported in the press. They were not treated like other cases' (interview, 2 November 1999). DCEC investigators complained that 'some cabinet ministers have been reported and investigated and no action was taken' (*Mmegi/The Reporter*, 28 April-04 May 2000).

The independence of the DCEC should also be seen to exist in the area of finance, its budget. The DCEC needs to control its own finances and is made accountable to the National Assembly. There is a need to link appointment, accountability and budget of the DCEC with the National Assembly. These need to be detached from the executive. The DCEC should not only be independent but it should be seen to be. Palmier observes that 'without such intelligent independence those responsible for curbing corruption, even within the political limits set, have no way of knowing the true state of affairs, since their own officials are very prone to submit only favourable reports. For all these reasons, one cannot be sanguine about the likelihood of any lessening of corruption in the country' (1983: 218). The foregoing discussion shows how the DCEC can easily be controlled. The independence of the DCEC might be guaranteed if the Director was not only appointed by Parliament but also answerable to it, and his salary paid from the Consolidated Fund. This would enhance the credibility of the DCEC. Its independence is important if it has to carry out its duties diligently. The above factors give rise to the perception that the DCEC is not immune from executive influence, and is as such seen as a toothless bulldog as far as fighting high-level corruption is concerned.

#### ***Personnel/Skills***

In addition to the issue of autonomy, the DCEC faces some technical limitations. One such problem is the shortage of trained personnel in the areas of combating white-collar crimes. The DCEC deals with complicated and time-consuming cases of corruption and economic crime. It, therefore, needs competent and honest personnel who have been trained and have the necessary experience to investigate such cases. Theobald asserts that:

Staffing seems to present particular problems as investigatory officers must have exceptionally high levels of skill and motivation if they are to be effective and, most of all, constitute a deterrent. They must, first of all, be able to develop the investigative talents that will enable them to penetrate the often formidable defensive screens which departments under scrutiny typically throw up in self-protection. These screens will comprise such tactics as non-cooperation, withholding information, laying false trails, accusing investigators of victimisation, ethnic bias and so on. Agents must also be highly motivated because the task on which they are engaged is fairly unrewarding (1990: 142).

For any organisation to be able to fulfil its mission, the right people with the necessary experience and expertise have to be in place. The DCEC started its work with an establishment of 66 and out of this 49 posts were occupied. Some of these officers were seconded from various government departments notably police, customs and taxes, and others were either directly recruited or transferred permanently from other departments. Some of the seconded have returned to their respective departments while two from customs and five police officers requested to remain at DCEC. Recruitment of personnel has been hampered by the fact that there are very few Botswana who have specialised skills in the areas of corruption and economic crime. The DCEC Director in

his 1994 annual report pointed out that the DCEC had to import skills and it had agreed that a relatively large number of its establishment would be filled by expatriates (Republic of Botswana, 1995).

***Finance***

The other limitation or problem has to do with inadequate funding. The DCEC does not have an independent budget. Its budget forms part of the larger budget of the Ministry of Presidential Affairs and Public Administration. When the DCEC started its operations in September 1994, it had no budget. The first budget for the DCEC was in the 1995/1996 financial year with a recurrent budget of P4 million. For the 1996/97 financial year, its recurrent budget stood at P5,914 000.00, and there was no development budget. In the 1997/1998 financial year, the recurrent budget was about P6 million, and the development budget was P4.5 million. For the entire National Development Plan 8 (NDP 8) period (1997/8–2002/3), the development budget is P50 million. The question is, are the financial resources given to the DCEC adequate? The Director of the DCEC in the 1995 annual report noted that:

For the 1995/96 financial year, the Directorate prepared its own estimates and its finances are administered directly with the assistance of a Senior Accounting Officer seconded from the office of the Accountant General. The estimates had to be somewhat speculative as there was little historical data of expenditure trends upon which to base them. Overall provision has been adequate but it has been necessary to [transfer] funds from one vote to another in the light of expenditure trends (Republic of Botswana, 1996: 15-16).

The problems experienced by the DCEC in its daily work suggest that the financial resources allocated to the DCEC are inadequate. The Director of the DCEC notes that 'the insufficiency of resources, financial and human, and the need to maintain operational capability, have meant that our ideal training targets have not been met' (Republic of Botswana, 2000: 5). For instance, its training budget for the year 1999/2000 was cut by about 66% (interview, 10 January 2000).

***Delays at the Attorney-General's Office and within the administration of justice***

The DCEC is also faced with continuing and worsening problem of delays at the Attorney-General Office because of its inability to urgently prosecute cases. This is attributable to shortage of staff at the Attorney-General Office (Republic of Botswana, 1998). According to the Director of the DCEC, 'the creation of the Directorate has had a significant impact on the Attorney General's Chambers and cases produced by the Directorate constitute over 50% of the work of the Prosecution Division. There has been no corresponding increase in the staffing levels of the Prosecution Division and the inevitable consequence is that cases are taking longer to be processed' (Republic of Botswana, 1997: 6). Delays at the Attorney-General's Office 'are compounded by the fact that the same counsel who examine DCEC dockets often have to prosecute the cases in court and counsel's availability, especially when the Court of Appeal is sitting, becomes a critical factor in setting trial dates—delays are commonplace and in my view unacceptable' (Republic of Botswana, 1998: 6).

Linked to this, is the problem of delays within the administration of justice. As further noted by the DCEC Director, 'the creation of the Directorate has had a major impact on the Magistrates Courts, particularly within Gaborone. At the end of the year under review, new contested cases were being set down for trial 6 to 7 months later. The problem is exacerbated by the fact that often unrealistic timetables for cases are set with the result that when a trial eventually commences it proves impossible to complete it in the allotted time resulting in further lengthy adjournments' (Republic of Botswana, 1997: 6).

The criminal justice system has been overtaken by events. Botswana is a country under going rapid transformation. The population is growing, there is unemployment and rapid urbanisation. In the view of one respondent, the criminal justice system is not commensurate with these problems.

There is a shortage of magistrates and courts. The government is not able to keep judicial officers on the job. These have an immense impact in terms of output, in dealing with cases before the courts because of postponement. The prisons get clogged because of pending cases and at times witnesses die. These problems result in a chain reaction, which slows down the administration of justice (Interview, 2 February 2000). However, as one senior opposition politician put it, 'some of the problems in the criminal justice system are self-created. It is the individual magistrates who create problems. It is not our system. Our system says a person should be tried within a reasonable time. It is the implementation part of the system that is problematic. There is shortage of courts and magistrates but magistrates are lazy and do not research. The criminal system is okay. It is the wheels of the system that are rotten' (interview, 24 January 2000).

Commenting on the inability of the Administration of Justice and the Attorney General's Office to expeditiously deal with the cases, the Director of the DCEC said, 'only 29 cases arising from DCEC work were completed by the courts during 1998 and a further 66 are pending, some of which date back to 1994. 75 cases were referred by the DCEC to the Attorney General's Chambers during 1998 and at the year end we were awaiting responses on 37 prosecution dockets, which as will be seen, represents at least 1 year throughput for the courts. The overall position is deteriorating' (Republic of Botswana, 1999: 5-6).

This shows that the cases, which originate from the DCEC investigations, create an extra load for the already understaffed Attorney General's office and the judicial system. The DCEC needs to prosecute its own cases. However, the above problems, which bedevil the criminal justice system, should not be understood to suggest that the judiciary in Botswana is not independent. The other problem the DCEC is facing is that of dealing with the problem of perception. It is generally believed that it only concentrates on the "small fish" and the "big fish" remain untouchable. This is a serious challenge, which the DCEC needs to address.

### Conclusion

This article has examined the nature of corruption that exists in Botswana, the politics of controlling corruption and efforts to combat corruption. The DCEC has been given adequate powers to investigate, prevent and teach the public about corruption and economic crime. However, the effectiveness of the DCEC is compromised by political and technical limitations. To be effective at controlling corruption, the DCEC needs sufficient resources and independence. The fact that the DCEC has mainly concentrated on small and unimportant cases undermines its credibility and utility in enhancing democracy through the control of malpractices / corruption.

### References

- Chipasula, J C and Miti, K (1989) *Botswana in Southern Africa: What lies ahead*, Delhi: Ajanta Publications (India).
- Doig, A and Theobald, R (1999) 'Introduction: Why corruption?' in *Commonwealth & Comparative politics* Vol.37 No.3 (November).
- Du Toit, P (1995) *State Building and Democracy in Southern Africa: Botswana, Zimbabwe and South Africa*, Washington, D, C: United States Institute of Peace Press.
- Fombad, C, M (2001) 'The Enhancement of Good Governance in Botswana: A Critical Assessment of the Ombudsman Act, 1995' in *Journal of Southern African Studies*, Volume 27, Number 1, March, pp57-77.
- Good, K (1994) 'Corruption and mismanagement in Botswana: a Best-Case Example?' in *The Journal of Modern African Studies*, 32,3, pp499-421.
- Good, K (1996) 'Authoritarian Liberalism: A Defining Characteristic of Botswana' in *Journal of Contemporary African Studies*, 14,1, pp29-51.

- Healey, J (1995) 'Botswana: A Case Study in Political Accountability' in Healey, J and Tordoff, W (eds) *Votes and Budgets*, Macmillan Press.
- Holm, J D (2000) 'Curbing Corruption through Democratic Accountability: Lessons from Botswana' in Hope, R K and Chikulo, B C (eds) *Corruption and Development in Africa: Lessons from country case-studies*, Hampshire: MacMillan Press Ltd.
- Johnston, M (1999) 'A Brief History of Anti-corruption Agencies' in Schedler, A et al (eds) *The Self-Restraining State: Power and Accountability in New Democracies*, Boulder: Lynne Rienner Publishers.
- Palmier, L (1983) 'Bureaucratic corruption and its remedies' in Clarke, M (ed) *Corruption: Causes, Consequences and Control*, London: Frances Pinter (Publishers) Ltd.
- Republic of Botswana (1994) *Directorate on Corruption and Economic Crime Act*, Gaborone: Government Printer.
- Republic of Botswana (1995) *Directorate on Corruption and Economic Crime Annual Report 1994*, Gaborone: Government Printer.
- Republic of Botswana (1996) *Directorate on Corruption And Economic Crime Annual Report 1995*, Gaborone: Government Printer.
- Republic of Botswana (1997) *Directorate on Corruption and Economic Crime Annual Report 1996*, Gaborone: Government Printer.
- Republic of Botswana (1998) *Directorate on Corruption and Economic Crime Annual Report 1997*, Gaborone: Government Printer.
- Republic of Botswana (2000) *Privatisation Policy for Botswana* Government Paper No.1 of 2000, Gaborone: Government Printer.
- Republic of Botswana (1998) *Report of the Auditor General on the accounts of the Botswana government for the Financial year ended 31 March 1997*.
- Republic of Botswana (1999) *Report of the Auditor General on the accounts of the Botswana government for the Financial year ended 31 March 1998*.
- Republic of Botswana (1991) *Report of the Presidential Commission of Inquiry on the Supply of School Books and Materials to Primary Schools for the 1990 School Year* (The IPM Consultancy), Gaborone: Government Printer.
- Republic of Botswana (1991) *Report of the Presidential Commission of Inquiry into Land Problems in Mogoditshane and other Peri-urban Villages*, Gaborone: Government Printer, December.
- Republic of Botswana (1992) *Report of the Presidential Commission of Inquiry into the Operations of the Botswana Housing Corporation*, Gaborone, Government Printer, November.
- Rose-Ackerman, S (1999) *Corruption and Government: Causes, Consequences and Reform*, Cambridge: Cambridge University Press.
- Theobald, R (1990) *Corruption, Development and Underdevelopment*, London: MacMillan Press Ltd.
- Theobald and Williams, R (1999) 'Combating Corruption in Botswana: Regional Role model or Deviant Case?' in *Journal of Commonwealth and Comparative Politics* Vol.37 No.3, pp117-134.
- Transparency International (TI), 2001 in <http://www.transparency.del>.
- Tsie, B (1996) 'The Political Context of Botswana's Development Performance' in *Journal of Southern African Studies*, Vol 22, No 4 (December), pp599-616.
- United Nations Development Programme (1998) *Botswana Human Development Report 1997: Challenges for sustainable Human Development*, Gaborone: TA Publications (Botswana) Pty Ltd.
- Wiseman, J A (1977) 'Multi-partyism in Africa: The Case of Botswana' in *African Affairs* vol 76, no 302 (January), pp70-79.
- Wiseman, J A (1995) 'Notes on Recent Elections, The October 1994 elections in Botswana' in

*Electoral Studies* Vol 14 No 1, pp1-00.

Wiseman, J A (1995) 'Introduction' in Wiseman, A (ed) *Democracy and Political change in Sub-Saharan Africa*, London: Routledge.

Wiseman, J A (1997) 'The rise and fall and rise (and fall?) of democracy in Sub-Saharan Africa' in Potter, D et al (eds) *Democratisation*, Cambridge: Polity Press.

Wiseman, J A (1998) 'The slow evolution of the party system in Botswana' in *Journal of Asian and African Studies*, vol 33 No.3 (August), pp241-264