

National Integrity Systems

Country Study Report

Botswana 2001

Report Author

Kwame Frimpong, University of Botswana, Botswana

Botswana

Botswana's Political and Judicial System

Botswana is a unitary and operates a written constitution with separation of powers between the executive, legislature and the judiciary. The Constitution in section 47 vests the executive power of the country in the President.

The Executive consists of:

- The President
- The Cabinet
- Ministries and Departments
- The Police
- The Botswana Defence force; and
- Parastatals

The President is both the Head of State and Head of Government. He operates with the assistance of his Vice-President. The President is *ex officio* a member of the National Assembly. All bills from the National Assembly have to go to the President for assent in order to become law.

There is one Police Force for the country and headed by a Commissioner. The same goes for both the Botswana Defence Force and the Botswana Prisons Service.

The Legislature is made up of the President and the National Assembly, constituting Parliament. The National Assembly consists of the following:

- 40 Elected Members, including the President and the Vice President
- 4 Specially Elected Members
- The Attorney-General; and
- The Speaker of the National Assembly, where the person elected to that Office was not a member of the National Assembly at the time he was elected the Speaker. The current Speaker is not an Elected Member of the National Assembly.

As an *ex officio* member of National Assembly, the President is entitled to speak and vote "in all proceedings before the National Assembly". This aspect blurs the whole concept of separation of powers. However, in debates of bills the practice that has evolved is to make it the function of the National Assembly.

The National Assembly operates as a Single Chamber. There is, however, a provision for House of Chiefs. This is made up of 8 *ex officio* members, four Elected Members and three Specially Elected Members. The role of the House of chiefs is purely advisory. However, any Bill that has the effect of amending the Constitution or affecting the powers of Chiefs cannot be proceeded upon before the National Assembly unless it has been referred to the House of Chiefs after it was introduced before the National Assembly (*section 88(2) of the Constitution*).

Currently there are five political parties: the Botswana Democratic Party (BDP), the Botswana National Front (BNF), the Botswana Congress Party (BCP), the Botswana People's Party, and the Botswana Independence Party.

The parties with any significant position in Parliament are the BDP and the BNF. The BDP has been the ruling party since independence in 1966 and has dominated the Botswana political landscape since then. The BNF has been in opposition since independence and offered any credible opposition only in the 1994 elections when it won 13 out of the 40 Parliamentary seats. The BNF now has 6 seats and the BCP has one seat from the 1999 elections.

The Judiciary consists of superior and inferior courts. The superior courts are:

- The Court of Appeal;

- The High Court, and
- The Industrial Court.

The inferior courts consists of:

- Magistrates Courts, and
- Customary Courts.

The President appoints the Judicial Officers, but upon recommendation from the Judicial Services commission. Once appointed, the superior judges enjoy security of tenure. This may be true in the case of citizens who are appointed judges. However, in practice this may be limited. For instance, there are many foreigners who occupy senior judicial positions on contract, thereby compromising the concept of security of tenure. The Court of Appeal, for instance, is made up eminent judges from the Commonwealth countries, who sit twice in a year, June and December. Nevertheless, the Judiciary has been very independent and dispensed justice without fear or favour. Executive interference in the functions of the judiciary has not arisen.

Both the government and the private sector contribute to the media. There is only one Television Station that was launched in October 2000. There are three radio stations. Two are private and came into operation a little over a year ago. These are FM stations and do not have wider coverage. Their operations are mainly within the capital, Gaborone. The other is state owned radio station and has national coverage.

Botswana enjoys the circulation of nine newspapers. These are:

- The Daily News
- The MMEGI/The Reporter
- The MMEGI MONITOR
- The Botswana Guardian
- The Midweek Sun
- The Botswana Gazette
- The Mirror
- The Voice, and
- The Sunday Tribune

The Daily News is a mouthpiece of the government. The rest are privately owned. The Daily News is published daily, but the private newspapers are weekly publications.

Summary of the National Integrity System in Botswana

Democratic Accountability

Democracy is fully practised in Botswana. The country operates a written constitution to which all organs of government are subjected. Elections are held on regular basis. The Government is accountable to the people. Executive actions are subject to review. Citizens can sue the government in the courts to get redress (Dow v. Attorney-General [1992 BLR 119]).

The Rule of Law

A predictable legal environment operates in the country. All persons and institutions are subject to the laws of the country.

Judicial System

The independence of the judiciary is not only guaranteed by the Constitution, but is also practised. The Courts have established the precedent that they will review executive actions if there is abuse of power: Peloeuwetse v. Permanent Secretary to the President and Others (unreported, Civil Appeal No 26/99).

In practical terms, access to the courts does, however, has some constraints. It can be expensive and also slow in bringing about justice.

Free Media

The media has relatively been free in Botswana both in theory and in practice. It operates under the general constitutional provision of freedom of speech and expression. There has never been a case where a journalist has been physically assaulted in the discharge of his duties. The media has been active in exposing and fighting corruption and abuses in government.

The government has, however, in some isolated cases tried to muzzle the private newspapers by particularly deporting the foreign journalists. In a more open manner the government acted against some newspapers that were found to be acting to its displeasure. In April 2001 a directive from the Office of the President instructed all Government Ministries/Departments, parastatals and private companies in which the Government is a shareholder "to cease advertising in the Guardian and Sun Group of papers". This directive was issued because the said publications had been too critical of the government and some leaders of the country, including the President and the Vice President. In the Government's view the publications fell within the realm of irresponsible reporting and the exceeding of editorial. It is however worth noting that the two newspapers challenged the Government's action in court and were granted an injunction in September 2001 preventing the government from implementing the directive until the substantive issue that the directive is declared null and void is decided upon. At the time of publication the substantive issue had not been resolved.

Civil Rights

The Constitution in Article 12(1) protects civil and human rights of the people.

This provision guarantees freedom of movement, association, and religion. The same provision also caters for the peaceful demonstrations by the people. The government has tried to honour the provisions. But in some instances this has not been the case. Peaceful demonstration has been subjected to the need to obtain police permit, which can be used to deny citizens the right to march at will.

Civil Society

Civil Society is still in its infant stages in Botswana. A few have, however, been active. Among them are the Kalahari Conservation Society, Emang Basadi, Metlhaetsile, the Student Representative Council (SRC) at the University of Botswana, and the Trade Unions.

Ombudsman

The Office of the Ombudsman, since its inception in 1995, has been making serious impact on the lives of ordinary Batswana (the People of Botswana). Its two Reports, (1997/98 and 1999), have exposed some injustices in the public service and made recommendations for remedying them. The Ombudsman, under the current set up, does not have the right independence and autonomy to discharge his functions effectively. There is the need to amend the Act to create that independence and autonomy.

The Public Service

The Public Service in Botswana has the largest number of employees in the country. It operates under the Public Service Act and its Regulations of 1998, as well as the Government's General Orders.

Appointments and promotions are on merit, but there have been instances where abuses have been recorded. Aggrieved parties have the right to appeal and if not satisfied with the outcome, have not been hindered from going to the courts for relief. The courts have not hesitated to review such decisions where injustice has been identified: *Peloewetse v. Permanent Secretary to the President and Others* (unreported, Civil Appeal No 26/99).

Public Prosecutors

Both section 51(3) of the Constitution and section 7 of the Criminal Procedure and Evidence Act (Cap. 08:02) vest in the Attorney-General the sole power to prosecute offences committed in the country. He, however, operates through public prosecutors, using his staff and the members of the police force. The prosecution of corruption offences are also part of the Attorney-General's portfolio.

Private prosecution is allowed under the Criminal Procedure and Evidence Act. Public bodies, such as city councils, town councils and district councils are empowered as private prosecutors to prosecute offences committed against their bye-laws.

By exercising his powers and discretion under both the Constitution (s.51 (3)(c) and the Criminal Procedure and Evidence Act (s.10), the Attorney-General may decide to stop the prosecution of any offence before conviction. He does not have to give any reason for stopping or discontinuing any such prosecution and no authority can question his decision (section 51(7) of the Constitution). This can be abused as absolute discretion is involved.

Office of the Auditor-General

The Auditor-General is required by the Constitution to audit the use of all public funds. The Office of the Auditor-General is a public office (section 124 (1) of the Constitution). The President under the Public Service Act appoints him. He is, however, protected by the Constitution to be independent and cannot be removed unless he is guilty of any misconduct or is unable to discharge the functions or reaches the retiring age of 60.

He has been very regular in submitting his Annual Reports as the Constitution demands. But it appears that the National Assembly has not been acting on the Auditor-General's Report, as he tends to complain about the recurrence of most of the wrongdoings identified in previous reports.

Public Procurement

All major public procurements are handled by the Central Tender Board (CTB), which operates under the Ministry of Finance and Development Planning. All government procurements are subject to tender, even if it is at the district level. The only exception, for security reasons, is the case of defence procurement. The Central Tender Board relies on Chapter 4 of the Supplies Regulations, a public document, in processing all cases of tender. CTB decisions can be reviewed in court by an aggrieved party: *A.V. Communications (Pty) Ltd v. The Attorney General* (unreported, Misc No 18/94; *Attorney-General v. Kgalagadi Resources Development Company (Pty) Ltd t/a Solar Power* (unreported, Civil Appeal No 20/94).

A company that acts fraudulently can be blacklisted, as has been the case with Wade Adams.

Anti-Corruption Agencies

The Directorate on Corruption and Economic Crime has been established since 1994 to combat the growing trend in corruption cases. In theory the Directorate seems to be independent and therefore free to investigate any case of corruption. However, its independence is limited by the fact that it is under the Office of the President and reports directly to the President. It would be better for it to be autonomous and to report directly to Parliament. Furthermore, there should be a provision for security of tenure for the Director so that he cannot be removed through the normal public service regulations.

It appears the Directorate has investigated and prosecuted only the "small fishes" and avoided the "big fishes".

Overall, Botswana has a very well established democratic process that ensures regular elections after every five years to choose a President and a National Assembly. The country operates a written constitution that recognises separation of powers between the executive, the legislature and the judiciary. The rule of law operates fully in the country. The independence of the judiciary is assured. Citizens are free to initiate actions before the courts and even institute legal action against the members of the executive. The right political and legal environment therefore exists to fight against corruption, as there is transparency at various levels of government.

In spite of these favourable situation corruption seems to becoming part of the way of life of many Batswana (*the people of Botswana*). The early 90s witnessed some major corruption cases involving cabinet ministers and top civil servants. These came about through three Presidential Commissions. These confirmed the long suspected view that the corruption was gaining ground in the country. To counteract this threat the government established in 1994 a Directorate on Corruption and Economic Crime (DCEC) and also gave it power under the enactment of the Corruption and Economic Crime Act in that same year. The high-level types of corruption involving top personnel in the society and substantial amounts of money that confronted the nation in the early 90s seem to have disappeared. What has emerged is petty corruption involving junior civil servants and small amounts of money. However, what is particularly worrying is the widespread nature of this type of corruption. It seems to

affect all sectors of the political and economic landscape of the country: civil servants, the police and even the army.

While the DCEC is making major progress in the fight against corruption, especially through its educational policy, it has not succeeded in the zero tolerance approach to solving the problem. There are a number of factors militating against success in the fight against corruption:

- The DCEC itself lacks the necessary personnel to carry out its mandate. For instance, it relies on the Attorney General's Chambers for the prosecution of cases. The AG's Chambers itself is burdened with too many prosecution cases.
- Delays in prosecuting of cases are also experienced within the courts. All these seriously affect the outcome of cases investigated by the Directorate.
- The Directorate's independence is compromised by the fact that it reports directly to the President and not to Parliament
- The Auditor-General is discharging his responsibilities faithfully but his efforts are being frustrated, as Parliament is not acting on his recommendations.
- The Ombudsman's independence is limited by the fact that its existence and establishment are part of the public service.
- The Executive and National Assembly have shown very little commitment to the declaration of assets. This is inconsistent with the concept of transparency and ethical behaviour. It creates the perception in the minds of the general public that the members have something to hide.
- There are not many trained personnel within the local government and district council structures, thereby paving the way for abuses as there are not sufficient personnel to provide the necessary supervisory roles.

The Components of the National Integrity System of Botswana

Constitutional Government

Botswana has been operating a written constitution since independence and supremacy of the Constitution over both the Executive and Parliament has been upheld by the courts, which have occasionally declared enactments by Parliament unconstitutional (*Dow v. Attorney General*, [1992] B.L.R. 232; *Desai & Others v. The State*, Criminal Appeals Nos 9, 21 & 23.1986).

Democratic Accountability

Botswana still remains one of the few countries in Africa that can boast of the practice of democracy (Amoako, 2000). Elections are held on regular basis. It must however, be conceded that Botswana's practice of democracy has its own flaws. Since independence 34 years ago, the same party has been in power. The same ruling party has therefore constantly controlled the Legislature. In spite of this the opposition has been very forceful in compelling the government to take some concrete measures. It is even not uncommon for the government's own backbenchers to side with the opposition to defeat government's proposal. As an example, when the government proposed to privatise state-owned businesses, a large number of members of parliament from the ruling party sided with the opposition to win concessions on the government proposal. In that sense it can be said that the legislature has occasionally been the mouthpiece of the people.

The Rule of Law

The rule of law has been a feature of Botswana's system of democracy and is respected to a greater extent. This has ensured that every person and all institutions are subject to the laws of the land. Actions of the executive are subject to review and citizens' access to the courts is not hindered.

Judicial System

The independence of the judiciary is an aspect of the rule of law and has been respected and fully practised in the country in terms of the non-interference of functions of the courts, access of the

citizens to the courts, and the fact that their decisions have always been accepted by the Executive. There are many instances that individuals have sued the government or officials of government and won in court. In the case of *Dow v. Attorney-General* [1992 BLR 119] a female citizen challenged the constitutionality of the citizen law on the ground that it discriminated against her children. She won and the Court of appeal ruled that the law was unconstitutional and has since been repealed. At the time of writing some former Members of Parliament had brought a suit before the courts claiming that their retirement benefits had not been properly quantified (Mmegi/The Reporter, 01 – 07 October 2000, p.1). The case was decided against the applicants.

The Judiciary has decisively taken a firm position on the review of executive and other administrative decisions. In a recent case, *Peloewtse v. Permanent Secretary to the President and Others* (unreported, Civil Appeal No 26/99) the court of Appeal, the highest Court of the Land, stressed the importance of judicial review within the democratic governance:

In a democracy, the government of the people is for the people. Where conduct of the government on the face of it appears questionable, it is the right of the people to question it. Knowledge by a government that its actions are subject to question contributes to the promotion of good governance. As indicated, one of the mechanisms developed in recent years by which executive action can be tested against standards of fairness, predictability and transparency, is the procedure for judicial review.

Access to the courts, however, has some constraints. First, the cost of litigation is very expensive and therefore deters many from even attempting to litigate. Second, court cases take too long to the extent that many litigants may even lose interest in furthering their claims, thus supporting the old adage that “justice delayed is justice denied”. In an article captioned “Justice denied or justice system in disarray?” the Mmegi/The Reporter in the Issue of 22 December 2000 to 11 January 2001 (p. 12) reported on the case of a person accused of murder since 1997 and still languishing in jail. Many judges have lamented on this and have had the occasion even to exercise the discretion to discharge some accused persons in criminal trials where the delay is caused by the prosecution, see *State v. Williams* [1993] BLR 69. In the recent case of *Kebakile Matere* (Mmegi/The Reporter, 27 October– 02 November 2000), a High court Judge threw away the charge of corruption and treason against a former police officer whose case has been pending since 1993.

Free Media

There is no constitutional provision that specifically protects freedom of the press. However, the Constitution in Article 12(1) guarantees freedom of expression and it can be argued that the freedom of the Media falls under this wide umbrella provision. In relative terms the media in Botswana have enjoyed some measure of freedom of operation. However, the official press have often been accused of being biased in favour of the ruling party.

The private newspapers have been in the forefront as the voice of the people. They have now become the watchdog over executive actions. These are manifested in some areas, such as exposure of corruption: corruption involving an Assistant Minister who eventually resigned but was brought back into government after the 1999 elections; corruption at the Immigration Department in the issue of work/residence permits (Mmegi/The Reporter, 07 – 13 July 2000)

There are, however, limitations on the freedom of the media. Section 12(2) puts limitation on the freedom of the media. Here any law that seeks to put the interest of the nation above that of individuals in terms of defence, security, or common good cannot be limiting the freedoms provided in section 12(1).

Furthermore, under some other laws the government can limit the freedom of the press. Among them are the National Security Act, the Police Act, the Presidential Privileges Act, and Corruption and Economic Crime Act. 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 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”. The section was used to prosecute Professor Malema in 1996 (Sechele Sechele (1998). Sechele Sechele sees this provision as depriving “pressmen their constitutional rights and freedom to hold their own opinions, freedom to receive ideas and information without interference, freedom to freely communicate ideas and information to the public generally or to any person or class of persons”.

In some instances the conduct of the government can be interpreted as attempting to muzzle the private newspapers. The recent action by the government to stop advertising in the Guardian and Midweek Sun Newspapers offers an example of government's attempt to silence the private press that is seen to be too critical of the government. In the case of the government employees this may be seen as the norm as they are expected to tow government line. The most recent example is the case of Botswana Television Presenter, Reginald Richardson. Richardson challenged the President and other leaders to voluntarily test for AIDS. The Guardian Newspaper of Friday December 8 2000 carried at the front page the caption: "Reporters gagged after call for Mogae AIDS test". It went on to expand:

The New Information and Broadcasting boss, Andrew Sesinyi has ordered government journalists to "stop imposing our will on national leaders to disclose their HIV status."

It went further to explain:

Sesinyi last week circulated a memo to all information and broadcasting staff members giving "... an unequivocal instruction that no member of this Department should pursue any individual with the intent to use the power of the media to coerce individuals of any position in the society into publicly pronouncing their HIV status."

It is also not uncommon for the government to resort to deportation of foreign journalists as a way of silencing the private media. Good (1997) has argued that since 1985 five journalists and two editors have been deported. For instance, he cited the case of a Zambian Journalist, John Mukela, was deported in August 1987, only two months after being named editor of the Guardian newspaper.

Civil Rights

The Constitution in Article 12(1) protects civil and human rights of the people. This provision guarantees freedom of movement, association, and religion. The same provision also provides for the peaceful demonstrations by the people.

The practice in some instances is not consistent with the legal position. For instance, the police insist on the granting of a police permit before peaceful demonstration or a march can be lawful. The recent attempt by the students of the University of Botswana to deliver a petition to the President was met by the use force by the police to prevent the march on the ground that they did not have a police permit to march to town.

Civil Society

Civil Society has not been very active in Botswana. There are a few, the Kalahari Conservation Society and women groups such as Emang Basadi and Metlhaetsile, that have made significant contribution to the change of government policies on the environment and gender issues, respectively. Ditswanelo has also been very active in the areas of human rights and the fight against the death penalty. The Student Representative Council (SRC) at the University of Botswana has also challenged the Government on a number of issues. Trade Unions also active, but their role is limited by the fact that the government has been slow in granting full union rights in the country. Since 1997 the government has ratified a number of ILO Conventions, thus granting more freedom to unions.

Ombudsman

The Office was established by the Ombudsman Act (No. 5 of 1995). The office was set up after a series of complaints from the public about the bureaucratic manner in which the public service operated, particularly in service delivery.

The Ombudsman receives complaints of injustices resulting from "maladministration" within the public service. The Office has approached its responsibility from three angles. First, it has publicised its role by educating the public. Initially, brochures in the English language were distributed nation-wide. This was subsequently translated into Setswana, the local language and also widely circulated. Secondly, it received complaints and investigated them. This was followed by the third step where specific recommendations were made, when necessary, about how to remedy the injustice. It has so far issued two Reports (1997/98 and 1999). The 1999 Ombudsman's Annual Report states that it "has indeed an impressive compliance rate (in excess of 90%)" (p.6).

The Office Ombudsman nevertheless has some shortcomings that require remedies. The Ombudsman himself has complained about the lack of autonomy and independence. Even though

section 9(1), read in conjunction with section 13, gives some measure of independence to the Ombudsman, the Office is still controlled by the government, directly or not. Section 9(1) provides that

In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

Section 13 also provides:

The administrative expenses of the office of the Ombudsman including such expenses and allowances as are authorised by the provisions of this Act shall, to such amount as may be sanctioned by Parliament be paid out of the Consolidated Fund.

In spite of these provisions that give apparent operational independence to the Office, the Ombudsman himself and his staff are still part of the public service. On the issue of independence the Ombudsman has argued in the two Reports issued so far that there is the need to amend the Act to remedy this anomaly. He pointed this out in the first Annual Report in the following words:

The essential characteristics of the Ombudsman offices worldwide are that they must be impartial, independent and objective. These three principles cannot indeed be overemphasised. A key and central element to any Ombudsman operation must be its independence from the Government and the agencies it is mandated to investigate. In order to put this independence into correct perspective, the Ombudsman Act must be amended to make the institution a juristic person. It is important in my view that the independence of the office be clearly demonstrated in the statutory basis on which it is established (The Ombudsman Annual Report, 1997/98, Para. 6, pp. 6-7).

This position was reiterated in the second Annual Report:

In my first Annual Report I made the point that the Ombudsman Act must be amended to make the Office independent from Government. This assertion I repeat. This Office needs to be established outside of the Public Service to make it independent of any other Government Ministry. Apart from all else this is international practice. It is important that the office be seen by the public and particularly all government departments as not being in competition with them. Neither the Ombudsman nor any member of the staff should be in competition for a higher post within the government promotional hierarchy. There is indeed in my respectful submission, a manifest conflict of interest where either the Ombudsman or an investigator investigates an officer or department when he or she may aspire for a higher position in that department. Indeed an investigation officer is put in an invidious position if they are expected to investigate the Directorate of Public Service Management, make adverse findings about the department and still expect the same department to objectively assess their prospects for promotion (Ombudsman Report, 1999, Para. 2.pp. 3-4).

The 1997/98 Annual Report also recommends the establishment of a Parliamentary Committee so that it could be approached from time to time with any matters relating to its functions. He cites the example of the estimates of the Office that require Parliamentary approval.

The Public Service

The Public Service in Botswana can boast of some measure of openness, accountability, transparency and good governance. Since independence there has been a gradual and consistent effort to operate a system of open government. An example is the case of the establishment of the office of Independent Electoral Commission. From independence the Office of the President was responsible for the administration of elections. This was seen as lack of independence and transparency in conducting elections. After complaints from the opposition and civil society an office of the Supervisor of Elections was created and housed away from the Office of the President. But the Opposition saw this as a cosmetic approach and therefore intensified its insistence on the need to create an independent electoral commission. The leading opposition party, the Botswana National Front, (BNF), even threatened to boycott the 1994 elections. Eventually a referendum was held and in 1998 the office of Independent Electoral commission was established. It is this body that is now responsible for administering elections in the country.

The performance of the Botswana public service must be understood within the right historical context. At the time of independence the number of graduates was about 22 (Somolekae, 1998). Botswana was one of the least developed countries in the world. But the subsequent discovery of diamond shortly after independence has changed the fortunes of the country. However, the discovery of

diamond alone cannot be the basis for the good fortunes. Much is attributed to the “conscious and pragmatic approach to the management of the resources, both human and natural”.

The government has operated over the years through a system of centralised national development planning that has always had the duration of 5 years. The current plan period is the 8th and is in its last stages. The projects to be carried out are well documented in the plan period and the implementation is solely the responsibility of the Ministry of Finance and Development Planning. This has helped with the elimination of waste. No project is ever carried out that is not in the plan period and approved by Parliament, unless it is incorporated after a mid-term review. The centralised planning and implementation of government projects has also facilitated proper co-ordination, monitoring and accountability and prevented unnecessary “proliferation of stand-alone projects” (Somolekae, 1998).

The public service is under the jurisdiction of the Directorate of Public Service Management (DPSM) that is headed by a Director. However, the ultimate head is the President of the country who acts through the Permanent Secretary to the President (PSP). Within the Ministries, the Cabinet Ministers are the heads and they act through their Permanent Secretaries (PMs). The Public Service Act and its Regulations of 1998 and the Government General Orders govern the Public Service.

The structure of the public service is such that on the surface it has all the hallmarks of good governance and transparency. For instance, under section 111 of the Constitution one has the right of appeal all the way to the Office of the President, and in fact there have been some instances where this has taken place. But a critical examination of what actually takes place in practice reveals a number of injustices and abuses. The Auditor General's Reports, (1998 and 1999), as well those of the Ombudsman (1997/98 and 1999), show instances of incompetence, insensitivity, injustice and corruption committed within the operations of the public service.

Prior to the 1990s the Botswana public service prided itself to be free from corruption. However, the image was to change after some major revelations. A former head of the Public Service, Modisi (1993), lamented on the situation:

For many years, Botswana Civil Service was considered to be corruption-free and to be among the best civil service in the world. The civil service relied mainly on the commitment of its officers to do the right things. However, Botswana's phenomenal economic growth over the past 20 years and the attendant temptations of the boom years of the late 1980s and early 1990s have seen the efficient and corruption-free image of the civil service tarnished by revelations of maladministration and corruption. (Ayeni & Sharma, 2000, pp.9-10).

As pointed out by Frimpong (1997) this view was supported by the Directorate on Corruption and Economic Crime in the 1995 Annual Report:

As I have said on many occasions corruption and economic crime are serious problems within Botswana. Earlier hypotheses that corruption existed in many spheres and at all levels in both Government and Local government as well as the private sector have proved correct.

Three major corruption cases involving top civil servants, among them even Ministers, had serious repercussions throughout the country. In all three cases it required Presidential Commissions to unravel the extent of the corruption. The first case involved the supply of textbooks for the 1990 school year. The Presidential Commission (1991a) that was set up to investigate the circumstances surrounding the supply of the textbooks and materials to primary schools “discovered that laid-down procedures had been blatantly flouted, especially in the area of tender and financial regulations” (Frimpong, *ibid*).

Another Presidential Commission (1991b) addressed corruption in the distribution of land in the outskirts of Gaborone. The Commission found that there had been serious abuses in the distribution of land resources. The third major corruption case involved the Botswana Housing Corporation (BHC), a parastatal set up to provide housing for the public. Again, it was a Presidential Commission (1992) that discovered the scale of corruption involved.

Subsequent revelations have established that the public service has serious cases of corruption. As Sharma (2000) points out:

There have been other revelations uncovered by internal audits, Auditor General and the Investigations Unit of the Department of Taxes. These revelations have led to court cases against the culprits, forced retirements, dismissals and resignations of senior civil servants, parastatal executives and ministers.

This view is supported by an editorial in the Mmegi/The Reporter of 28 January – 03 February 2000 that was entitled: “Culture of corruption grows”.

In order to improve efficiency the Government has now introduced Performance Management System (PMS) to ensure that the retention and promotion of staff within the public service is based on performance appraisal. The Botswana Productivity Centre (BNPC) has been established to inculcate the culture of productivity among the people.

Public Prosecutors

Under section 51(3) of the Constitution the power to prosecute any person before any court (except court martial) for the commission of any offence is vested solely in the Attorney-General. The Criminal Procedure and Evidence Act (Cap. 08:02), in section 7 reinforces this power:

The Attorney-General is vested with the right and entrusted with the duty of prosecuting in the name and on behalf of the State in respect of any offence committed in Botswana.

The Attorney-General may delegate his powers of prosecution to any person or authority. State Attorneys undertake most prosecutions under this authority by acting as Public Prosecutors within the Prosecution Division of the Attorney-General's Chambers. The Attorney-General also delegates to the police as Public Prosecutors the power to prosecute some of the offences. The majority of prosecutions take place at the Magistrates' Courts.

Private prosecution is allowed under the Criminal Procedure and Evidence Act. Public bodies, such as city councils, town councils and district councils are empowered as private prosecutors to prosecute offences committed against their bye-laws.

Under both the Constitution (s.51 (3)(c) and the Criminal Procedure and Evidence Act (s.10), the Attorney-General has the power and the discretion to stop the prosecution of any offence before conviction. This is also referred to as *nolle prosequi*.

The A-G has exercised this power on a number of occasions and has been conceded by the courts without questioning. In the case of State v. Seeletso [1991] BLR 195, the A-G entered a *nolle prosequi* and the Judge pronounced on the fact that the accused had to be discharged and that the discretion could not be reviewed. It was, however, pointed out that *nolle prosequi* is not a bar to the accused being charged again for the same offence.

The Attorney-General does not have to give any reason for stopping or discontinuing any prosecution and no authority can question his decision. The Constitution is emphatic on this in section 51(7):

In the exercise of the functions vested in him by subsection 3 of this section, the Attorney-General shall not be subject to the discretion or control of any person or authority.

Even where a private person has initiated a prosecution, the Attorney-General may intervene at any time to conduct the prosecution on behalf of the state.

The discretion exercised by the Attorney-General not to prosecute cases seems to be too wide and can therefore be subject to abuse, especially since it cannot be questioned. His independence is also compromised by the fact that he is principal legal adviser to the Government.

Office of the Auditor-General

The Office of the Auditor-General is a public office (section 124 (1) of the Constitution). As a public officer the President appoints the Auditor-General. His appointment is therefore in line with the Public Service Act and its Regulations. Strictly the appointment has been based on merit, because the incumbent and his predecessor have proven to be capable in the discharge of the functions of the office, in terms of auditing and reporting on the use of public funds. In spite of being a public officer, and therefore appointed by the President, the Auditor-General is protected by the Constitution to be independent once he has been appointed:

In the exercise of his functions the Auditor-General shall not be subject to the direction or control of any person or authority (section 124 (5) of the Constitution).

His tenure of office is also secured. He remains in the office until the retiring age of 60. If not, then he can only be removed by the National Assembly for misbehaviour or inability to perform the functions of his office, whether from infirmity of the body or mind (Constitution, section 114 (1) and (2).

This security of tenure has been an important tool in the hands of the Auditor-General in the discharge of functions. Under the Constitution and the Finance and Audit Act, (Cap. 54:01) he is required to audit all the public accounts of the country and submit a report to the Minister of Finance and Development Planning who has to lay the same before the National Assembly. The Auditor-General has consistently fulfilled this obligation and the National Assembly has also always debated his report.

In all the past four Reports, the Auditor-General has been complaining about the shortage of staff, which in his opinion hinders the effective discharge of his functions. In the 1998 Report he writes:

The need for optimum manpower for my Office has been a long felt need and the manpower requirements were highlighted in my previous reports. Justification continues to exist in abundance for the request due to the increases in the volume and pattern of public sector revenue and expenditure over the years as a result of significant increases in the budgetary allocations and new programs which warrant close monitoring (para. 7, p.2)

The shortage of staff seems to pose a problem for the Office of the Auditor-General as he points this out in his 1998 Report: "Whilst the problem of shortage of experienced staff to form audit teams continued to be a serious hindrance, the Office was nevertheless able to send teams to various outstations (para. 6, p.2).

The Auditor-General's Office has been very active in exposing cases of corruption and misuse of public funds. Particularly, in the area of travelling imprests, he has consistently pointed out their misuse, dating back to the 1980s. In the 1999 Report, again he brought this out:

The timely retirement of travelling imprests drawn by public officers still remains a problem in the Ministries and Department of Government. The outstanding imprests as at 31st March, 1999 stood at P9 366 135... This problem persists despite the assurances given by the Permanent secretary of the Ministry of Finance and Development Planning to the Thirty-Sixth Meeting of the Public accounts Committee that he would, with effect from September 1998, deduct summarily any outstanding imprests, unless that office demonstrates beyond doubt that he had earlier retired the imprest. There are still many outstanding imprests going back many years, some dating back to the mid-1980s and early 1990 (para. 10, p. 7).

As evidence of the seriousness with which the Auditor-General undertakes his responsibilities the office during the 1998/99 Financial Year undertook 46 audit inspections of government departments and 14 parastatals in which various frauds, irregularities, corruption, and mismanagement were discovered.

But it appears that the National Assembly does not act on the Auditor-General's Report, as he tends to reiterate some of his earlier concerns. The Mmegi Monitor of 04 – 10 July 2000 carried a report captioned Auditor General's Report Ignored". It stated:

There is this good citizen called A.B. Masi a.k.a. the Auditor-General. Year in year out his office churns out reams of reports detailing instances of theft, fraud, and abuse within Government. But who cares. The behaviour of the authorities would suggest that he holds a meddling and toothless docket."

Public Procurement

Mainly the Central Tender Board handles public procurement. It operates under the Ministry of Finance and Development Planning. All government procurements are subject to tender, even if it is at the district level. For national security reasons, in the case of defence procurement, they are not subject to the normal tender procedures. The Central Tender Board (CBT) relies on Chapter 4 of the supplies Regulations in processing all cases of tender. This document is a public document and is therefore available to the general public.

After the Presidential Commission on the supply of textbooks, the Central Tender Board has since operated in an open and transparent environment. A lot of the procedures have been streamlined to ensure fair and open competition. All public procurements are advertised publicly and published in the Government Gazette and other local newspapers through which tenders are invited. An exception to this is where the subject matter of procurement is from a donor-funded project. In that case the condition of the funding may determine the mode of procurement, and this will be complied with.

Even though the results of the bidding are not opened in the public, they are made public in the sense that they are easily verifiable. Furthermore, through the practice of judicial review of administrative decisions, the courts have reviewed cases where aggrieved parties have sought the intervention of the courts. For example in the cases of *A.V. Communications (Pty) Ltd v. The Attorney General* (unreported, Misca No 18/94; *Attorney-General v. Kgalagadi Resources Development Company (Pty) Ltd t/a Solar Power* (unreported, Civil Appeal No 20/94) the review of Tender Board decisions were challenged before the courts.

Normally the Central Tender Board does not permit sole-sourcing. But it may be allowed where the subject matter of the procurement is under the control of a sole manufacturer. In that situation the burden on the CTB is to ensure that the government pays a fair and reasonable price, otherwise the use of monopolistic power may inflate the price.

Anti-Corruption Agencies

After the exposure of major corruption cases involving top public servants the government took bold steps to stamp out corruption as it was convinced that corruption posed a serious threat to the development of the nation. These culminated in the establishment of the Directorate on Corruption and Economic Crime in 1994. This has been seen as evidence of the government's political will.

The Directorate was established by the Corruption and Economic Crime Act, 1994 (section 3 (1)). The Directorate is expected to be independent and therefore free to investigate any case of corruption. However, its independence is limited by the fact that it is under the Office of the President and reports directly to the President. The ideal situation is for it to be autonomous and for it to report directly to parliament. Furthermore, the President appoints the Director as a public officer. There is no provision of security of tenure for the Director and it therefore follows that he can be removed through the normal public service regulations.

Even though the Directorate has investigated and prosecuted a number of corruption cases since it came into existence, the commonest complaint against it is that it has been avoiding the "big fishes" and rather concentrating on the "smaller fishes".

Corruption in Botswana

The Genesis of Corruption in Botswana

Corruption was relatively unknown in Botswana politics until the early 1990s (Good, 1994; Frimpong, 1997). Prior to this period Botswana had always been seen as a country that was free from corruption. There was, however, the underlying suspicion that corruption existed in the country. The DCEC Report (1995) stated:

As I have said on many occasions corruption and economic crime are serious problems within Botswana. Earlier hypotheses that corruption existed in many spheres and at all levels in both Government and Local government as well as the private sector have proved correct

In the early 1990s the country was rocked by major corruption scandals that revealed that corruption was a serious problem than had been reported. The revelations came about through the appointment of three Presidential Commissions of Inquiry: two in 1991 and a third one in 1992. The first Presidential Commission (1991a) investigated the circumstances surrounding the supply of textbooks to the primary schools for the 1990 school year. The findings of the Commission indicated that laid-down procedures, especially in the tender and financial regulations had been blatantly disregarded. The result was the loss of P27 million (about US\$15 million) to the government.

The second Presidential Commission (1991b) dealt with the distribution of land in Mogoditshane, a suburb of Gaborone, the capital. The Commission discovered that there had been abuses in the distribution of land in the area. Some Cabinet Ministers were involved in this scandal and led eventually to their resignations.

In 1992 the country was exposed to another major corruption scandal. This involved the Botswana Housing Corporation (BHC), a parastatal that was set up to provide housing for the public sector. The

Presidential Commission (1992) that was set up to investigate the scandal discovered that the Chief Executive and his deputy were involved in a corruption on a grand scale.

The Nature and Types of Corruption in Botswana

The types of corruption identified in Botswana these days are very different from those that rocked the nation in the early 1990s. The cases of corruption that emerged in the early 1990s were systematic and at the highest levels of government (Good, 1994; Frimpong, 1997; Mahlanza 1999). What was so serious about most of the cases was that those involved were top politicians, senior civil servants, senior executives or senior banking officials (Good, *ibid*; Mahlanza, *ibid*). Furthermore, there appeared to be an attitude of cover-up or complacency on the part of the government either in the failing or in refusing to take any serious actions against those senior personnel involved (Good, *ibid*; Mahlanza, *ibid*). In the debate in Parliament over the Report involving the land distribution the general attitude of the Government Backbenchers was to criticise the Report, and even attacked the credibility of the Chairman of the Commission. In two cases involving Cabinet Ministers, it was only after public outcry through the private newspapers that the two were forced to resign (Good, *ibid*). After less than two years they were returned into Government, thereby creating the impression that they had been exonerated from any wrongdoing.

Mahlanza (*ibid.*) stresses that the same trend took place within the Botswana Cooperative Bank (BCB) and the National Development Bank (NDB). These were parastatals set up to assist the public with loans for development projects. By 1992 the BCB was virtually bankrupt. The NDB found itself in the same situation by 1993. In a number of cases top politicians, including a number of Cabinet Ministers, had been given huge amounts of loans and had interests in arrears totalling in millions. When the issue was debated in Parliament the Members showed no serious concern in addressing the problem (Good, *ibid.* Mahlanza, *ibid.*)

Of late it seems that the high level types of corruption witnessed in the early 1990s have disappeared or subsided. Since the inception of the Directorate on Corruption and Economic Crime (DCEC) none of the high level cases of corruption has emerged in a systematic manner. All the major cases of corruption that have resulted in conviction, such as *State v. Kemokgatla* (2000), pre-dated the existence of the Directorate. Kemokgatla was convicted of receiving P100, 000.00 from one Nicholas Zakhem in order to reverse a tender award in favour of Zakhem Construction. The systematic nature of the earlier corruption cases has also disappeared. Instead, we have low-level types of corruption involving junior officers and administrators, clerks, and small sums of money (DCEC Reports, 1994-1999). On the average the amount of money involved is about P600 (about US\$150). This is evident from all the reports issued by the Directorate since its inception (1994-1999). The 1999 Report (p.15) highlights this:

A large number of investigations have concerned allegations concerning false claims made by public officers for subsistence allowance and travelling expenses. Although the amounts involved in each case are relatively small, it does appear the problem is widespread, affects a number of Ministries and cumulatively involves a considerable amount of Government funds.

The view is supported by Briscoe and Hermans (2000: 10):

Analysis of the data published by DCEC over the past six years reveals that many of the cases of corruption and fraud which have been prosecuted by the Directorate have common characteristics...most of the acts of corruption or fraud were committed by very junior central or local Government officials such as accounts clerks, vehicle examiners, district council technical staff, security guards, storekeepers, and school teachers. Low-ranking BDF and police personnel were also involved in several cases.

There are, however, a few isolated cases of corruption involving a senior officer. The conviction of Nalid Midha, a Water Engineer in the Water Affairs, in September 2000 in trying to collect a bribe of P85, 000 is an example where a senior officer is involved.

The Cost of Corruption

It is not easy to quantify the actual cost to the nation, either in monetary terms or from the human side. The DCEC itself concedes that this has not been statistically established. There are, however, a few instances where figures are available. In the 1999 Report, for instance, it is provided:

In the 21 cases in which a guilty verdict was obtained, a total of 80 years imprisonment was imposed by the courts. In addition a total of P24, 700.00 was imposed by the courts in fines. In two cases, compensation orders totalling P44, 608.74 were granted in favour of the Government.

The Botswana Guardian in the Business Report section of September 8, 2000 carried a heading, "Government loses P200 million in tax evasion". The report pointed out that in spite of an amnesty given to tax payers they still owed the government about P200 million. It went further to disclose that the Directorate was investigating some of the cases, especially those involving the evasion of tax payment by some foreign investors.

In some cases, the cost to the nation can be attributed to poor or shoddy work when the one gets the contract or the tender through bribery and corruption. Such cases may not have any monetary value. The more difficult situation is where those involved in the corruption are not caught. The cost involved in such cases does not come to light.

The NIS and the Fight Against Corruption

Botswana has some of the most key components that inhibit the culture of corruption. The question is whether they are put into effective use to prevent abuses and corrupt practices.

Democratic Governance

Democracy is practised within the country, at national, local government and district council levels. The Office of Independent Electoral Commission exists to conduct elections to ensure free and fair elections. The general belief, however, is that the IEC is not sufficiently independent. Nevertheless, elections are held on regular basis to choose the government of the people and for the people. It can be deduced that good governance is practised in the country (Somolekae, 1998).

Separation of powers between the Executive, Legislature and Judiciary is provided for in the Constitution and practised. The Executive is not above the law and citizens have been able to challenge its actions (Peloewetse v. Permanent Secretary to the President (unreported), Civil Appeal No 26/99).

The Legislature is supposed to be separate from the Executive, but because of the ruling Party's majority in Parliament, enjoyed since independence in 1966, it has become virtually the wing of the Executive. Its effectiveness is therefore weakened. There are, however, some key areas that, because of the constitutional requirements, Parliament still wields sufficient power to control any possible excesses by the executive. For instance, Parliament has to approve the national budget that has to be presented to the National Assembly by the Minister of Finance and Development Planning (s. 119 of Constitution). Even if it is a matter of mere formality the National Assembly (NA) does debate the budget and offers criticisms and makes concrete suggestions.

Parliament has on some occasions challenged the actions of Ministers. In March 2001, in response to public outcry against the billing system from the Botswana Telecommunications Corporation, Parliament passed a motion calling for the institution of a Committee of Inquiry into the billing system. The Committee was formally established and began its hearing into the billing system in March 2001. It submitted its findings in June 2001.

There are, however, some instances where the conduct of the members of Parliament has raised concern among the public. For instance, early in 2000 the majority of the Members of parliament voted in favour of a motion calling for an increase in their salary. This did not go well with the general public who felt the MPs were better paid. The Vice President took an unusual stand and referred to those calling for higher salary as "vultures". In July the Botswana Gazette carried a story entitled: Speaker adjourns parliament as MPs play hookey". The Paper reported:

Angry Speaker, Mr. Ray Molomo, adjourned Parliament one and half hours after it started last Friday because there were not enough members in the House.

At the time of adjourning the Speaker is reported to have told the few remaining MPs: "We look as if we are playing – start, adjourn, start, adjourn and stop".

Democratisation and its Impact on Corruption

At the national level, it can be argued that the democratic system has had a positive impact in the fight against corruption. This is explained on the grounds of supervision and checks and balances. A simple illustration provides an explanation. Let us take the case of a particular Ministry requiring a new building. The Ministry submits its budget-proposal for approval as part of the government estimates for the given year. Once approved other Ministries take over in terms of implementation of the project. The Ministry of Works, Transport and Communication will submit the proposal for tender. The tender Board will handle the tender and once approved will submit the project to the Ministry of Finance and Development Planning for funding. In this process, the incidence of corruption is minimised. But it is not always that procedure is followed. In the Kemokgatla case, the procedure was not followed when the Roads Director reversed a tender decision in favour of a different body because of the offer of bribe.

But this is not the case at the local government and district council levels where tender procedures can be easily ignored. This happens primarily because of the lack of proper supervision. Supervision is also insufficient because the personnel are simply not available. So, while democracy is supposed to bring about accountability, because of the insufficient number of trained personnel at the local government and district council levels, the opposite is the case. Botswana has done the right thing by decentralising responsibilities to the lowest levels of government, but the consequences are rather the breeding ground for corruption. Most of the corruption cases at the low levels of government reported by DCEC (1995-1999) arise in the local government or district council areas where a junior officer is given greater responsibility but without any direct supervision from the central government. In such cases, the temptation is great, especially when the culprit is a lowly paid officer, but has to deal with matters of interest and importance to the public, such as the issuing of licences, allocation of land and the granting of certain benefits.

Rule of Law

The rule of law has been a feature of Botswana's system of democracy and is fully respected. This has ensured that every person and all institutions are subject to the laws of the land. Actions of the executive are subject to review and citizens' access to the courts is not hindered: *Peloewetse v. Permanent Secretary to the President and Others* (unreported, Civil Appeal No 26/99). There is therefore a predictable legal environment that creates confidence among all citizens that they can have redress within the courts in the event of their rights being abused. This creates the right environment for the possible exposure of abuses of power, corruption and any kind of wrongdoing.

Independent Judiciary

The judiciary is fully independent and discharges its responsibilities without fear or favour. There is the respect for the rule of law to the extent that the government does not interfere with the functions of the judiciary. The result is that there is a predictable legal environment under which the public has faith in the judicial process that, in the event of an abuse they can go to court to seek redress. There have been many instances that the citizens have sued the government and won: *Dow v. Attorney General*, [1992] B.L.R. 232; *Desai & Others v. The State*, Criminal Appeals Nos 9, 21 & 23.1986), and *Peloewetse v. Permanent Secretary to the President and Others* (unreported, Civil Appeal No 26/99).

The courts have not been wanting when it comes to the prosecution of corruption cases. Because of their independence, the judiciary has not shirked its responsibility in convicting and sentencing accused persons for corruption cases. There are however, instances where the delay in the trial of cases has affected the conviction rate of the cases brought by the DCEC. The 1999 Report highlighted this problem:

The previous reports of this Directorate highlighted the problems being experienced due to cases being delayed at both the Attorney General's Chambers *and the courts*. *Unfortunately the situation did not improve during 1999, and in fact got worse and more and more of our cases are being held up in the judicial system* (p.16) (emphasis added).

The Report went further to indicate that:

At the end of 1999, this Directorate still had a total of 61 cases before the courts.

The delays in trials appear to be so serious that a Staff Writer of the MMEGI/The Reporter to write on a caption "Justice denied or justice system in disarray?" In this piece he cited several instances where

cases on appeal, after conviction, had dragged on for several months. In some instances the convict continued to serve the sentence in jail.

Public Prosecutors

The Attorney General's Chambers and the Police constitute the public prosecution. The DCEC itself does not have the personnel to prosecute corruption cases. After investigation the case is referred to the Attorney General's Chamber's for advice/and prosecution. Problems in the delay in the prosecution of cases have arisen. The Directorate's 1999 Report noted:

...the number of cases at the Attorney General's Chambers for advice or consent to prosecute as required by section 39 of the Corruption and Economic Crime Act, increased considerably to 50 cases (at p.16).

The delay in the handling of cases by both the Attorney General's Chambers and the courts has been attributed to the lack of personnel in both sectors:

This is not entirely the fault of the Attorney General's Chamber's or the courts as both are understaffed and working under great pressure to complete their ever increasing case load (*ibid*).

The Attorney General himself acknowledged the existence of the problem and at the opening of the 2001 legal year he commented on the state of affairs and promised to take some remedial measures:

"Because there have been complaints about the delay in the disposal of cases, particularly criminal cases where some of the rights of the accused are taken away, my office, represented by the Deputy Attorney General (Prosecutions), the Registrar of the High Court, the Commissioner of Prisons and Rehabilitation now meet on a monthly basis to discuss issues of common interest relating to the investigation, prosecution and adjudication of cases. We think the forum is useful and it has resulted in the removal of certain practical hurdles.

We also need to dialogue with the private practitioners to deal with the issue of postponement of cases. State counsels are under instruction not to ask for a postponement of a case unless they can clearly justify it; and it is really not acceptable that counsel was unable to consult the investigating officer to have all the witnesses and exhibits ready.

The Auditor General

The Office of the Auditor-General is a public office (section 124 (1) of the Constitution). The Auditor-General is protected by the Constitution to be independent once he has been appointed:

In the exercise of his functions the Auditor-General shall not be subject to the direction or control of any person or authority (section 124 (5) of the Constitution).

The Office of the Auditor-General is the one body that has been very vigilant in terms of the fulfilment of its obligation under the Constitution, by the regularity in reporting and the exposure of corruption and the misuse of public funds within the public sector. The Office has been very active in exposing many cases of corruption and misuse of public funds. Particularly, in the area of travelling imprests, he has consistently pointed out their misuse, dating back to the 1980s. In the 1999 Report, again he brought this out:

The timely retirement of travelling imprests drawn by public officers still remains a problem in the Ministries and Department of Government. The outstanding imprests as at 31st March, 1999 stood at P9 366 135...This problem persists despite the assurances given by the Permanent secretary of the Ministry of Finance and Development Planning to the Thirty-Sixth Meeting of the Public accounts Committee that he would, with effect from September 1998, deduct summarily any outstanding imprests, unless that office demonstrates beyond doubt that he had earlier retired the imprest. There are still many outstanding imprests going back many years, some dating back to the mid-1980s and early 1990 (para. 10, p. 7).

But the Auditor-General's Office does not get the relevant support from either the Government or the Legislature. Its work is hampered for lack of personnel. The 1998 Report highlights this:

The need for optimum manpower for my Office has been a long felt need and the manpower requirements were highlighted in my previous reports. Justification continues to exist in abundance for the request due to the increases in the volume and pattern of public sector revenue and expenditure over the years as a result of significant increases in the budgetary allocations and new programs which warrant close monitoring (para. 7, p.2)

The Office faces the same difficult situation regarding the implementation of its recommendations. Sharma (2000) comments on this state of affairs:

The effectiveness of the Auditor General's contribution to financial control is limited not because of lack of freedom or authority but due to the fact that public servants as well as Parliament have not taken this office as seriously as one would expect. This can be discerned from the fact that the report of the Auditor General every year points out the same weaknesses related to loss of public money, accidents involving public vehicles, violations of proper procedures, failures in retiring imprests, etc. and there is no convincing evidence that serious action is taken to rectify such weaknesses. Parliament, which devotes limited time to the debates on the Auditor-General's report, does not appear to be alarmed at the continuing weaknesses.

The Auditor-General himself in his 1993 Report raised the concern:

I wrote to the Accounting Officer expressing my concern about the inordinate delay in responding to audit reports and correspondence emanating from my office. I reminded the Accounting Officer of his obligation under the provisions of the Financial Instructions and Procedures to reply promptly and fully to audit correspondence. Despite repeated reminders some of the audit reports had still not been replied to at the time of writing this report while others had been partially answered (*1993 Audit Report, p.38*).

In a satirical manner the MMEGI Monitor of 04 – 10 July 2000 carried a report captioned Auditor General's Report Ignored":

There is this good citizen called A.B. Masisi a.k.a. the Auditor-General. Year in year out his office churns out reams of reports detailing instances of theft, fraud, and abuse within Government. But who cares. The behaviour of the authorities would suggest that he holds a meddling and toothless docket."

The Auditor-General is thus frustrated in the effort to ensure probity in accounts and to control corruption and misuse of public funds.

The Public Accounts Committee

The Public Accounts Committee is a Parliamentary Committee that operates to monitor and control public accounts. The Committee is assisted in its work by the Auditor-General's Reports. It "has a wide mandate and authority to examine documents and call for evidence from public servants" (Sharma, *ibid.*). Even Permanent Secretaries of Ministries appear before the Public Accounts Committee with their Finance Officers to answer queries. It reports cases of financial impropriety to Parliament. Unfortunately, Parliament does not take the Committee with the seriousness that it deserves.

Its role as public watchdog over government finances has therefore not been very effective.

The Public Service

The Botswana Public Service had an enviable record in its early stages of development. But this image was seriously tarnished in the early 1990s as a result of major corruption scandals. A former head of the Public Service, Modisi (1993), explains:

For many years, Botswana Civil Service was considered to be corruption-free and to be among the best civil service in the world. The civil service relied mainly on the commitment of its officers to do the right things. However, Botswana's phenomenal economic growth over the past 20 years and the attendant temptations of the boom years of the late 1980s and early 1990s have seen the efficient and corruption-free image of the civil service tarnished by revelations of maladministration and corruption. (Ayeni & Sharma, 2000, pp.9-10).

The Government is concerned about the situation. In order to improve efficiency the Government has now introduced Performance Management System (PMS) to ensure that the retention and promotion of staff within the public service is based on performance appraisal. The Botswana Productivity Centre (BNPC) has been established to inculcate the culture of productivity within all sectors of government.

The Ombudsman

The Office of the Ombudsman has been set up since 1995 to receive complaints of injustices resulting from “maladministration” within the public service. In its full operation the Ombudsman can contribute to the reduction in abuses that might lead to corruption and injustice. However, its independence that will enhance its effectiveness is more in theory than in practice. The Ombudsman sees this as weakening its role as a public protector institution:

The essential characteristics of the Ombudsman offices worldwide are that they must be impartial, independent and objective. These three principles cannot indeed be overemphasised. A key and central element to any Ombudsman operation must be its independence from the Government and the agencies it is mandated to investigate. In order to put this independence into correct perspective, the Ombudsman Act must be amended to make the institution a juristic person. It is important in my view that the independence of the office be clearly demonstrated in the statutory basis on which it is established (The Ombudsman Annual Report, 1997/98, Para. 6, pp. 6-7).

The importance of the independence of the Ombudsman need not be emphasized.

Public Procurement

The Central Tender Board (CBT) handles public procurement. It operates under the Ministry of Finance and Development Planning. All government procurements are subject to tender, even if it is at the district level. Tenders at the CBT level are more transparent after the distribution of textbook scandal and the attendant Presidential Commission of Inquiry. Tenders at the district levels are, however, open to abuses because of lack of supervision, and thereby creating a breeding ground for corruption.

Civil Society

Civil Society in Botswana has not been active in the area of the fight against corruption. Its presence has been mainly in the areas of human rights, gender issues and environmental concerns. With the recent establishment of the Botswana Chapter of Transparency International (TIBOT) it is hoped that the situation will change. But there are many who are sceptical about the seriousness of the body. They argue that its membership consists more of elitist people in the upper class and that it has all the hallmarks of an exclusive club. It is, however, too early to determine its likely contribution to the fight against corruption.

The Media

The media, especially the private newspapers, has played an important role in the fight against corruption. The media has a number of occasions been in the forefront in exposing actual or perceived corruption. For instance, in 1991, through vigorous and sustained coverage the media exposed corruption in the distribution of land (Good, *ibid*). In 1998 some of the private newspapers, particularly the Guardian, consistently published stories on the Assistant Minister of Finance and Development Planning about his involvement in an alleged corruption. It went as far as publishing a copy of a cheque that he was alleged to have received from one Nicholas Zakhem. This Zakhem was eventually charged with corruption. Mahlanza (1999) catalogues instances where the private newspapers have exposed corruption in the public financial sector.

In the issue of 01 – 07 September 2000 the MMEGI/The Reporter carried a report captioned, “Botswana Passports for sale”. The report claimed that it had uncovered evidence within the Department of Immigration and Citizenship that Botswana passports were being sold to foreigners for about P500. The same paper earlier in the year had reported about corruption within the same Department where false work permits were being issued.

The Fight Against Corruption

The three major cases of corruption in the country at the highest level of government in the early 1990s forced the nation to rethink its policy on corruption. The level of corruption and the publicity attendant to it was not in the best interest of Botswana:

Over recent years Government had become increasingly concerned about the growing problems of corruption and economic crime in Botswana. The concerns were two fold. Firstly there was the size of the problem. It was seen that corruption and economic crime, both that which was known about and that that which was suspected, were not only limiting Botswana's development, affecting its social structures and depriving it of considerable revenue but also damaging the country's reputation abroad. The second concern arose from a recognition that existing legislation and resources were not coping with the problems and in consequence, even when corruption and economic crime came to notice, little was being achieved. Government resolved to do something about it (*DCEC Annual Report, 1995, p.8*).

This led to the establishment of the Directorate on Corruption and Economic Crime (DCEC) in 1994 and the enactment of Corruption and Economic Crime Act (Act 13) also in the same year.

The Memorandum that was presented to the National assembly proposing the establishment of the Directorate on Corruption and Economic Crime also re-echoed the Government's concern about the rapid growth of corruption in the country:

Recent events had revealed that corruption and economic crime are increasing on a large scale especially involving the Public Service and other public institutions. The main object of the [Act] is to establish a Directorate to investigate alleged and suspected offences of corruption and offences against fiscal laws of Botswana, to assist any law enforcement agency of the government in the investigation of offences involving dishonesty or cheating of the public revenue and to assist the Attorney-General in the prosecution of the offenders, including those instigating and abetting in such offences.

It is, however, worth noting that the Government has not come out with a clear policy of anti-corruption strategy. The only possible policy on corruption is contained in the memorandum presented to Parliament proposing the establishment of the Directorate on Corruption and Economic Crime and the eventual establishment of the Directorate. What is however clear is the political will on the part of the government to rid the nation of any traces of corruption; hence the slogan, "zero tolerance of corruption".

Since the establishment of the Directorate the Government has shown a serious commitment to its effectiveness. It has, for instance, provided an impressive modern building to house the staff and their operations. There is still the need for the Government to do more than providing a physical structure.

The DCEC's strategy in its fight against corruption is based on a "three-pronged attack". These are:

- investigation and prosecution
- public education
- prevention

The Directorate has been active in all three areas. However, the investigation and prosecution unit tends to receive more public attention because of the practical outcome of its activities. By 1996, after only two years of existence, it had dealt with 536 cases. Out of this number 141 were prosecuted and 59 were convicted (representing 79%) (*DCEC Annual Report, 1996, paras. 3.3.1 & 3.3.2*).

At the end of September 1997 the Unit had received 3,468 cases and conducted investigation into 1,197. Between 1994 and 1997, 173 cases were prosecuted. The conviction rate was 85.71% (*DCEC Paper, 1997*).

In 1999, 30 cases involving 35 defendants were completed before the Courts. Out of this 23 were convicted. The remaining 7 were either acquitted or the cases were withdrawn by the Attorney General's Chambers for various reasons.

While corruption at the high level of government has gone down, the contrary is the case with low-level cases of corruption. It is rather on the increase (DCEC Reports, 1994-1999). If there has been public awareness campaign both by the DCEC and the media and has resulted in the reduction of corruption

at the highest places in government, then how do we justify increases in corruption at the lower levels of government? Different explanations must be offered.

The DCEC Reports (1998 and 1999) indicate that the corruption cases are most frequent in the Government Financial Assistance Policy (FAP). The 1999 Report (p. 15) highlights the case of FAP:

Frauds against the Financial Assistance Policy (FAP) have again predominated the case load of Investigations Branch during 1999...

DCEC is investigating cases in all areas and the total sum at risk in these cases exceeds P35 million.

Mahlanza (supra.) sees the FAP as "[O]ne of the government subsidies, which is abused by the public through corrupt practices".

Most of the current corruption cases involve activities in which delegation of authority has taken place with no direct supervision or very little supervision. It is therefore legitimate to attribute the high incidence of corruption at the low levels to lack of proper supervision and accountability. That explains why corruption is so rife at the local government and district council levels.

From the DCEC point of view, the low level types of corruption currently operating in the country may be explained on two grounds. First, it may have to do with the establishment of the Directorate. It is possible that the existence of the Directorate is having a deterrent effect on the population. There is, however, no empirical data on that assumption. It may also have to do with the educational campaign mounted by the Directorate to make the people aware of the nature and consequences of corruption. The Director in the 1999 Report discloses:

My personal view, based only on anecdotal evidence is that DCEC has had a major impact on the problems of corruption and economic crime since it became operational in September, 1994. Certainly there is an increasing awareness of DCEC's role and objectives and suggestions that those who continue to indulge in these illegal and debilitating activities do so in a heightened sense of fear of detection and judicial retribution (pp.4-5).

It is possible that both the existence of the Directorate and its educational policy are having positive results. For instance, in a public awareness survey conducted by the Directorate in 2000, the findings showed that over 50% of the population is aware of the existence of the Directorate and its operations. This type of awareness is an important component in the fight against corruption. From its very humble beginnings in 1994, when only 253 cases were reported by the public to the Directorate, the number had risen to 1023 in 1999. The Directorate in its 1999 Report points out the increase in reporting of alleged corruption cases by the public usually immediately after a public campaign:

Analysis has shown that surges of reports being made to DCEC follow straight after intensive public education efforts, particularly radio discussion programmes (DCEC Report, 1999: 5).

It must be noted that the public awareness is not attributable to the efforts of the DCEC alone. The media has been waging a vigorous campaign against corruption within the high levels of government by exposing any slightest abuse of power or any incidence of mismanagement within the public service. For instance it was the media that campaigned relentlessly and exposed the corruption case involving the land distribution in the suburb of Gaborone and led to the second Presidential Commission in 1991. This may itself compel persons in high positions to think twice in indulging in any activity that might be perceived as corrupt.

It is, however, worth noting that not all reported cases are necessarily corruption cases. As the DCEC Report (1999) and its Director (March 2001) point out a sizeable number of reported cases are "perceived" corruption rather than actual corruption cases. This is more prevalent among the ordinary members of the community, whose concept of corruption is far wider than the legal meaning. The positive interpretation of this trend is the public awareness and the vigilance that have emerged. As the education progresses the "perceived" cases of corruption is going to decline. There is evidence of this already as the 1999 DCEC Report has shown that the number of the reported cases in 1998 dropped from 1525 to 1023.

Another positive outcome of the DCEC educational campaign is that people in senior positions and are perceived to by the public to provide leadership are more careful in making pronouncements on corruption. As the Director explains (ibid.) such people, especially those in Parliament, used to make wild allegations of corruption against others who were perceived to have done anything wrong. But

whenever they were called upon to substantiate the allegation the proof was not forthcoming. With both the media and public interest in corruption now so heightened such allegations, according to the Director (*ibid.*) have subsided substantially.

There is, however, the growing public scepticism about the progress in the fight against corruption. Many people hold the view that corruption is on the rise in Botswana and has permeated all aspects of life in the country. The private newspapers, which have been waging a campaign against corruption, hold the same view. This prompted MMEGI/The Reporter to write an editorial entitled: "Culture of corruption grows" (28 January – 03 February 2000). Among other things the paper argued:

The rate at which the culture of corruption is growing in this country is more than ever becoming a matter of concern.

Some of the things Botswana could only read and hear about happening in other African countries are now becoming part of life here.

The Way Forward

With the establishment of the Directorate on Corruption and Economic Crime and the enactment of the Corruption and Economic Crime Act in 1994 the Government has demonstrated its commitment to eradicate corruption from the country. As the Director of DCEC points out:

Government has acted resolutely in enacting the Corruption and Economic Crime Act, 1994 and establishing this Directorate". (*DCEC, Report 1994*).

The Directorate itself is very much committed to the task assigned to it. In my interview with the Director he comes out very sincere and committed about the Directorate's mission. In a Botswana Gazette publication of 20 September, 2000 he was reported as saying: "There will be no hiding place anywhere in the world for those who commit corruption". According to the Paper this was a promise from the Director aimed at "corrupt public officers". This involved a case in which a foreign national working with the Water Affairs was arrested at Heathrow International Airport trying to collect P85, 000 bribe in order to influence a tender.

However, as the earlier analysis has revealed there are some areas that need serious attention if the fight against corruption is to succeed. There is therefore the need to adopt some concrete measures. Among them are the following:

- The DCEC's independence must be strengthened to ensure that it is free from Executive control. In particular, it should not be reporting to the President but directly to Parliament.
- The personnel of the DCEC should be increased to deal with the ever-mounting corruption cases. Currently, it has only two branches in the country. It needs other branches for its presence to be felt throughout the country. With the increase in staff it is envisaged that the current individual caseload within the investigation unit of 8.3 will decline to reach the optimum number of 5.
- The Directorate should be given special powers and the personnel to prosecute its own cases. The current practice of relying on the Attorney General's Chambers is delaying the prosecution of cases.
- The Auditor-General's Reports should be taken more seriously by Parliament.
- The Public Accounts Committee should be given serious recognition by Parliament
- The Office of the Ombudsman should be given full independence from the Executive.
- The Attorney General's Chambers should be strengthened with more personnel and the necessary logistical support in the discharge of its responsibility to the nation.
- The Courts should be strengthened to control the delay in the handling of cases.
- The Police should be given more resources to strengthen its investigative functions.
- Parliament should be more active as the greatest defender and watchdog over the affairs of the nation, particularly in the area of accountability, transparency and ethical behaviour. Its recent action in ordering an inquiry into the billing system at the Botswana

Telecommunications Corporation as a result of public outcry was the step in the right direction and is commendable.

- The Executive should be seen to be transparent and accountable in its actions. The decision by the President to ensure that Declaration of Assets Bill will be adopted in the next session of Parliament is commendable.
- Decentralisation should also be accompanied by trained and experienced staff at all levels of government with full responsibility and accountability.
- Civil Society should play a more active role of vigilance over the conduct of all sectors of government.
- The media should continue to be very vigilant as the watchdog over the performance within all sectors of the political, economic and social affairs of the nation.

It should be borne in mind that the fight against corruption is not to be limited to the confines of the Directorate's magnificent building. Many stakeholders within the entire society should be involved and it requires concerted efforts from all sides.

References

- A.V. Communications (Pty) Ltd v. The Attorney General (unreported, Misca No 18/94).
- Amoako, K.Y. (2000). "Economic Reforms in Africa: Lessons Learned". Paper presented at the University of Botswana, 23 October 2000.
- Attorney-General v. Kgalagadi Resources Development Company (Pty) Ltd t/a Solar Power (unreported, Civil Appeal No 20/94)
- Auditor-General, 1996 Annual Report. Gaborone: Government Printer.
- Auditor-General, 1997 Annual Report. Gaborone: Government Printer.
- Auditor-General, 1998 Annual Report. Gaborone: Government Printer.
- Auditor-General, 1999 Annual Report. Gaborone: Government Printer.
- Ayeni, V. & Sharma, K.C. (2000). *Ombudsman in Botswana*. London: Commonwealth Secretariat.
- Briscoe, A. & Hermans, H.C.L. (2001). *Combating Corruption in Botswana*. Gaborone: Friederich Ebert Foundation.
- Constitution of Botswana, Chapter 1. Gaborone: Government Printer.
- Corruption and Economic Crime Act, (No. 13) of 1994. Gaborone: Government Printer.
- Criminal Procedure and Evidence Act, Cap.08:02. Gaborone: Government Printer.
- Desai & Others v. The State, Criminal Appeals Nos 9, 21 & 23.1986).
- Directorate on Corruption and Economic Crime, 1994 Annual Report. Gaborone: Government Printer.
- Directorate on Corruption and Economic Crime, 1995 Annual Report. Gaborone: Government Printer.
- Directorate on Corruption and Economic Crime, 1999 Annual Report. Gaborone: Government Printer.
- Dow v. Attorney-General [1992] BLR 119. Gaborone: Government Printer.
- Frimpong, K., 1997. "An Analysis of Corruption in Botswana". Paper presented at a Workshop on Corruption and Integrity Initiatives in the Context of Developing Economies, held in Paris, 24-25 October 1997.
- Gazette, The Botswana, 20 September 2000.
- General Orders, Government of Botswana. Gaborone: Government Printer.
- Good, K. (1997). *Realizing Democracy in Botswana, Namibia and South Africa*. Africa Institute of South Africa.
- Mahlanza, T. (1999). "Financial Institutions and Corruption: Botswana in a Global Perspective". In, Frimpong, K. & Jacques, Gloria (eds.), *Corruption, Democracy and Good Governance in Africa: Essays on Accountability and Ethical Behaviour*, Gaborone: Lentswe La Lesedi.
- Mmegi Monitor. 2000. Issue of 04 – 10 July 2000. Gaborone: Printing and Publishing Company Botswana (Pty) Ltd.

Mmegi/The Reporter. 2000. Issue of 28 January – 03 February 2000. Gaborone: Printing and Publishing Company Botswana (Pty) Ltd.

Mmegi/The Reporter. 2000. Issue of 27 October – 02 November 2000. Gaborone: Printing and Publishing Company Botswana (Pty) Ltd.

Modisi, M. (2000). "Maladministration in the Botswana Civil Service. In, Ayeni, V. & Sharma, K.C. (2000). *Ombudsman in Botswana*. London: Commonwealth Secretariat.

National Security Act, (Cap. 23:01). Gaborone: Government Printer.

Peloewetse v. Permanent Secretary to the President and Others (unreported, Civil Appeal No 26/99).

Police Act, (Cap. 21:01). Gaborone: Government Printer.

Presidential Privileges Act. Gaborone: Government Printer.

Public Service Act, No. 13 of 1998. Gaborone: Government Printer.

Public Service Regulations of 1998. Gaborone: Government Printer.

Sechele Sechele. (1998). "The Role of the Press in Independent Botswana. In Edge, w. & Lekorwe, H.M. (eds.). *Botswana: Politics and Society*. J.L. Van Schaik: South Africa.

Sharma, K.C. (1993). "Public Service Ethics and Accountability in Botswana. In, Ayeni, V. & Sharma, K.C. (2000). *Ombudsman in Botswana*. London: Commonwealth Secretariat.

Somolekae, G. (1999). *Democracy, Civil Society and Governance in Africa: The Case of Botswana*. Proceedings of the Second Development Management Forum (DPMF) Annual Conference on "Democracy, Civil Society and Governance in Africa II, held in Addis Ababa, Ethiopia, 7-10 December 1998.

State v. Seeletso [1991] BLR 195.

The Guardian Newspaper, 2000. Issue of December 8, 2000. Gaborone: Printing and Publishing Company Botswana (Pty) Ltd.

The Ombudsman/Public Protector, 1997/98 Annual Report. Gaborone: Government Printer.

The Ombudsman/Public Protector, 1999 Annual Report. Gaborone: Government Printer.

The Report of the Presidential Commission of Inquiry into IPM Consultancy, 1991(a). Gaborone: Government Printer.

The Report of the Presidential Commission of Inquiry into Land Problems in Mogoditshane and Other Peri-Urban Villages. 1991(b). Gaborone: Government Printer.

The Report of the Presidential Commission of Inquiry into the Botswana Housing Corporation, 1992. Gaborone: Government Printer.

Index

A

Aid. *See* Donors
 Anti-corruption strategy. *See* Government anti-corruption strategy
 Assets, declaration of. *See* Disclosure provisions
 Attorney-General, 3, 5, 6, 7, 12, 17, 18, 21, 23
 Auditor-General, 6, 7, 11, 12, 18, 23. *See also* Supreme audit institution

B

Blacklisting, 6
 Botswana Chapter of Transparency International (TIBOT), 20
 Botswana Congress Party (BCP), 3
 Botswana Cooperative Bank (BCB), 15
 Botswana Defence Force, 3
 Botswana Democratic Party (BDP), 3
 Botswana Gazette, 4, 16
 Botswana Guardian, 4
 Botswana Housing Corporation (BHC), 11, 14
 Botswana Independence Party, 3
 Botswana National Front (BNF), 3, 10
 Botswana People's Party, 3
 Botswana Prisons Service, 3
 Botswana Productivity Centre (BNPC), 12, 20
 Botswana Telecommunications Corporation, 16, 24
 Broadcasting. *See* Media

C

Central Tender Board, 6, 13, 20
 Civil rights, 5, 9
 Civil service. *See* Public sector
 Civil society, 5, 9, 20
 Level of activity, 5, 9, 20
 Role in anti-corruption, 20, 24
 Conflict of interest, 10. *See also* Disclosure provisions
 Constitution. *See* Law; Laws
 Conventions, international. *See* International law
 Corruption, cost of, 15
 Corruption, definition of, 22
 Corruption, presence of
 Army, 7
 Banking, 15
 Executive, 8, 11, 14, 15, 20
 Finance, 20
 Housing, 14
 Immigration, 8, 20
 Land distribution, 11, 14, 20
 Local government, 17, 22
 Police, 7, 8
 Public procurement, 11, 14
 Public sector, 7, 11, 19, 21

Corruption, types of, 15
 Grand corruption, 7, 15, 21
 Petty corruption, 7, 15, 21
 Systematic, 15
 Court of Appeal, 3, 8
 Culture of corruption, 23
 Customary Courts, 4

D

Daily News, 4
 Decentralisation, 17, 24
 Democratisation, 4, 7, 16–17
 Department of Immigration and Citizenship, 20
 Directorate of Public Service Management (DPSM), 11
 Directorate on Corruption and Economic Crime (DCEC), 6, 11, 14, 15, 17, 18, 21, 22, 23
 Disclosure provisions, 24
 Ditswanelo, 9
 Donors, 13

E

Economic crime, 14
 Education, 21, 22
 Elections, 4, 7, 10, 16
 Electoral commission (EC)
 Independence, 10, 16
 Emang Basadi, 5, 9
 Executive, 3, 24

F

Freedom of speech, 5
 Freedom of the press, 5

G

Gifts. *See* Disclosure provisions
 Government anti-corruption strategy, 21–23
 Government Financial Assistance Policy (FAP), 22
 Government Gazette, 13
 Government procurement. *See* Public procurement

H

High Court, 4
 HIV status, 9
 Hospitality. *See* Disclosure provisions
 Human rights, 5, 9

I

Immigration Department, 8
 Independence, 7
 Independent Electoral Commission, 10, 16
 Industrial Court, 4
 International law

- ILO Conventions, 9
 - Investigations Unit of the Department of Taxes, 11
 - Investigative/watchdog agencies, **6, 14, 16, 21**
 - Capacity, 23
 - Effectiveness, 7, 14, 15, 21
 - Independence, 6, 14, 23
 - Prosecutions, 15, 18
 - Rules and procedures, 6, 14
- J**
- Judiciary, 4, **7, 17**
 - Capacity, 23
 - Effectiveness, 4, 8, 17
 - Independence, 4, 7, 17
 - Prosecutions, 17
 - Rules and procedures, 4
- K**
- Kalahari Conservation Society, 5, 9
 - Kebakile Matere, 8
- L**
- Law
 - Constitution, 7
 - Investigative/watchdog agencies, 6, 14
 - Judiciary, 4, 7, 17
 - Media, 5, 8
 - Ombudsman, 5, 9
 - Police and prosecutors, 5, 12
 - Public procurement, 6, 13
 - Public sector, 5, 11
 - Supreme audit institution, 6, 18
 - Laws, Botswana
 - Cases
 - A.V. Communications (Pty) Ltd v. The Attorney General (unreported, Misca No 18/94), 6, 14
 - Attorney-General v. Kgalagadi Resources Development Company (Pty) Ltd t/a Solar Power (unreported, Civil Appeal No 20/94), 6, 14
 - Desai & Others v. The State, Criminal Appeals Nos 9, 21 & 23.1986, 7, 17
 - Dow v. Attorney-General [1992 BLR 119], 4, 7, 8, 17
 - Peloewetse v. Permanent Secretary to the President and Others (unreported, Civil Appeal No 26/99), 4, 5, 8, 16, 17
 - State v. Kemokgatla (2000), 15
 - State v. Seeletso [1991] BLR 195, 12
 - State v. Williams [1993] BLR 69, 8
 - Constitution
 - Article 12(1), 5, 8, 9
 - Section 111, 11
 - Section 114(1-2), 12
 - Section 119, 16
 - Section 124 (1), 6
 - Section 124(1), 12, 18
 - Section 124(5), 12, 18
- Section 47, 3
 - Section 51(3), 5, 12
 - Section 51(3)(c), 6, 12
 - Section 51(7), 6, 12
 - Section 88(2), 3
 - Corruption and Economic Crime Act, 6, 21
 - Section 3(1), 14
 - Section 44, 8
 - Criminal Procedure and Evidence Act
 - Section 10, 6, 12
 - Section 7, 5, 12
 - Declaration of Assets Bill, 24
 - Finance and Audit Act, (Cap. 54:01), 13
 - Government General Orders, 5, 11
 - National Security Act, 8
 - Ombudsman Act (No. 5 of 1995), 9
 - Section 13, 9
 - Section 9(1), 9
 - Police Act, 8
 - Presidential Privileges Act, 8
 - Public Service Act, 5, 6, 12
 - Regulations of 1998, 5, 11, 12
 - Supplies Regulations
 - Chapter 4, 6, 13
 - Legislature, 3, 7
 - Effectiveness, 24
 - Independence, 16
- M**
- Magistrates Courts, 4
 - Maladministration, 9, 20
 - Malema, Professor, 8
 - Masisi, A.B., 13, 19
 - Media, 4, 5, **8, 20**
 - Coverage of corruption, 5, 8, 20
 - Journalists, 5, 9
 - Ownership, 4
 - Restrictions, 5, 8
 - Role in anti-corruption, 24
 - Rules and procedures, 8
 - Sanctions, 5, 8
 - Methaetsile, 5, 9
 - Midha, Nalid, 15
 - Midweek Sun, 4
 - Ministry of Finance and Development Planning, 11, 13, 17
 - Ministry of Works, Transport and Communication, 17
 - Mirror, The, 4
 - Misuse of public funds, 13
 - MMEGI Monitor, 4
 - MMEGI/The Reporter, 4
 - Molomo, Ray, 16
 - Mukela, John, 9
- N**
- Names of individuals, Botswana
 - Malema, Professor, 8
 - Masisi, A.B., Auditor General, 13, 19

Midha, Nalid, water engineer, 15
 Molomo, Ray, Speaker, 16
 Mukela, John, Zambian journalist, 9
 Richardson, Reginald, Botswana Television presenter, 9
 Sesiny, Andrew, Head of Information and Broadcasting, 9
 Zakhem, Nicholas, 20
 National anti-corruption strategy. *See* Government anti-corruption strategy
 National Development Bank (NDB), 15
 National integrity systems, discussion of, **16–20**
 National integrity systems, summary, 4–7
 Newspapers. *See* Media
 NGOs. *See* Civil society

O

Ombudsman, 5, **9**, **20**
 Effectiveness, 5, 9, 20
 Independence, 5, 9, 20, 23
 Reporting, 5, 9
 Rules and procedures, 9
 Organisations, Botswana
 Botswana Chapter of Transparency International (TIBOT), 20
 Botswana Congress Party (BCP), 3
 Botswana Cooperative Bank (BCB), 15
 Botswana Defence Force, 3
 Botswana Democratic Party (BDP), 3
 Botswana Gazette, 4, 16
 Botswana Guardian, 4, 9
 Botswana Housing Corporation (BHC), 11, 14
 Botswana Independence Party, 3
 Botswana National Front (BNF), 3, 10
 Botswana People's Party, 3
 Botswana Prisons Service, 3
 Botswana Productivity Centre (BNPC), 12, 20
 Botswana Telecommunications Corporation, 16, 24
 Central Tender Board, 6, 13, 20
 Court of Appeal, 3, 8
 Customary Courts, 4
 Daily News, 4
 Department of Immigration and Citizenship, 20
 Directorate of Public Service Management (DPSM), 11
 Directorate on Corruption and Economic Crime (DCEC), 6, 11, 14, 15, 17, 18, 21, 22, 23
 Ditswanelo, 9
 Emang Basadi, 5, 9
 Government Gazette, 13
 High Court, 4
 Immigration Department, 8
 Independent Electoral Commission, 10, 16
 Industrial Court, 4
 Investigations Unit of the Department of Taxes, 11
 Kalahari Conservation Society, 5, 9
 Magistrates Courts, 4
 Magistrates' Courts, 12

Metlhaetsile, 5, 9
 Midweek Sun, 4, 9
 Ministry of Finance and Development Planning, 11, 13, 17
 Ministry of Works, Transport and Communication, 17
 Mirror, The, 4
 MMEGI Monitor, 4
 MMEGI/The Reporter, 4
 National Development Bank (NDB), 15
 Public Accounts Committee, 13
 Student Representative Council (SRC) at the University of Botswana, 5, 9
 Sunday Tribune, 4
 University of Botswana, 9
 Voice, The, 4
 Wade Adams, 6
 Zakhem Construction, 15
 Overview, country, **3–4**

P

Parliament. *See* Legislature
 Performance Management System (PMS), 12, 20
 Police and prosecutors, 5, **12**, **18**
 Capacity, 18, 23
 Effectiveness, 18
 Independence, 12
 Rules and procedures, 5, 12
 Political parties. *See* Politics, Political parties
 Politics
 Political parties, 3
 Presidential Commissions, 6, 11, 14
 Press. *See* Media
 Public Accounts Committee, 13, 19
 Public awareness campaigns, 22
 Public procurement, 6, **13**, **20**
 Effectiveness, 13, 20
 Rules and procedures, 6, 13
 Public sector, 5, **10–12**, **19**
 Effectiveness, 10, 19
 Independence, 10
 Recruitment and career development, 5
 Reforms, 12, 20
 Rules and procedures, 5, 11
 Public sector reform, 12, 20
 Public service. *See* Public sector

R

Recommendations, 23–24
 References, 25–27
 Registers. *See* Disclosure provisions; Conflict of interest
 Richardson, Reginald, 9
 Rule of law, 4, 7, 17

S

Service delivery, 9
 Sesiny, Andrew, 9
 Sole sourcing, 14

Standards of conduct. *See* Codes of conduct
Student Representative Council (SRC) at the
University of Botswana, 5, 9

Sunday Tribune, 4

Supreme audit institution, 6, **12**, **18–19**

Capacity, 13, 18

Effectiveness, 12, 13, 18

Independence, 12, 18

Reporting, 13, 19, 23

Rules and procedures, 6, 12, 18

Surveys, 22

T

Tax evasion, 16

Trade Unions, 5

Treaties. *See* International law

U

University of Botswana, 9

V

Voice, The, 4

W

Wade Adams, 6

Z

Zakhem Construction, 15

Zakhem, Nicholas, 20

Zero tolerance, 21