

National Integrity Systems



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AUTHORS

Zibani Maundeni, Geoffrey Barei, Onkemetse Tshosa, David Sebudubudu, Mogopodi Lekorwe, Zein Kebonang, Mpho Molomo, Zitha Mokomane, Lucky Mokgatlhe, Thabo Seleke, Kaelo Molefe, Tachilisa Balule, Jairos Josiah, Onkutlwile Othata, Adam Mfundisi, Dorothy Mpabanga, Oleosi Ntshebe and Kaboyaone Hiri-Khudu

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TABLE OF CONTENTS

List of Acronyms	4
About the National Integrity System [NIS] Country Studies	5
Executive Summary	5
Country Profile.....	8
Corruption Profile	8
Corruption Activities	8
The National Integrity Systems	10
Executive	10
Legislature	15
Political Parties	19
Electoral Commission	22
Auditor General	25
Judiciary	28
Civil Service/Public Sector Agencies	32
Law Enforcement Agencies	36
Public Contracting System	40
Ombudsperson	44
Anti-Corruption Agencies	47
Media	50
Civil Society	54
Business Sector	57
Local Government	61
International Institutions	66

List of Acronyms

BAM	Botswana Alliance Movement
BCP	Botswana Congress Party
BDP	Botswana Democratic Party
BNF	Botswana National Front
BOCCIM	Botswana Confederation of Commerce, Industry and manpower
BONELA	Botswana Network on Ethics, law and HIV/AIDS
BPP	Botswana Peoples Party
BPS	Botswana Police Service
BOTEC	Botswana Technology Centre
CSO	Civil Society Organisation
CTB	Central tender Board
DCEC	Directorate on Corruption and Economic Crime
DPSM	Directorate of Public Service management
JSC	Judiciary Service Commission
IEC	Independent electoral Commission
MELS	Marx, Engels, Lenin Stalin Movement
MP	Member of Parliament
NDF	New Democratic Front
OAG	Office of Auditor General
PMS	Performance Management System
PAC	Public Accounts Committee
PEEPA	Public Enterprise evaluation and Privatisation Agency
PPADB	Public Procurement and Asset Disposal Board
PSP	Permanent Secretary to the President
SDP	Social Democratic Party
SIS	Security Intelligence Services
SSG	Special Support Group

About the National Integrity System [NIS] Country Studies

Executive Summary

Botswana is internationally recognised as less corrupt, enjoying good governance and democracy. The country has enjoyed sustained political stability and economic growth since attaining its independence in 1966. However, incidents of corruption do occur, necessitating Presidential inquiries many of whose reports have been published. Areas that need improvement are the handling of central government tenders, political party expenditure during campaigns, local government tenders, private-private corruption and civil society accountability.

This report on the Botswana National Integrity System has focused on over a dozen areas, ranging from central governmental institutions (the Executive, parliament, judiciary, Ombudsperson, the auditor general, the police, the independent electoral commission, the directorate on corruption and economic crime), to local government institutions, business, media and civil society. The core values of the national integrity is well founded structures with clear rules of accountability, transparency open communication lines with outside stakeholders, robust integrity rules and their application in practice. The current report has mapped a comprehensive picture of the strength and weaknesses inherent in the structures of the different sectors and institutions, the robustness of their rules on accountability, transparency and integrity, and the actual application of those rules. The findings are based on data that is diverse in nature, ranging from interviews with retired and serving officials in the concerned institutions, official records and newspaper articles, laws and completed court cases, reports by international organisations and published material. The findings are interesting.

The pillar on the Executive notes that Botswana operates within a parliamentary democracy. The Executive is accountable to parliament, and this has, resultantly, compelled the President to institute commissions of inquiry into suspected misconduct or wrongdoers. The pillar has also noted the establishment of rules on integrity for the Executive and their observance in practice.

The pillar on the Legislature notes that it has, thus far, effectively played its oversight role of holding the Executive accountable. Through the Public Accounts Committee and other parliamentary committees, it has been able to provide checks on the Executive to account for public funds, and on related acts of malpractice. Parliament also has regulations (Standing Orders) governing its operations aimed at ensuring its integrity.

The pillar on the Judiciary notes that it has played a significant role in ensuring that there is the rule of law and respect for human rights and fundamental freedoms, good governance and general government accountability. It also highlights certain areas within

the judiciary which require improvement in order to firmly entrench democratic principles.

The pillar on political parties notes their peaceful nature, their openness through congress, where party leadership is elected and policies adopted, and the absence of the rules of integrity. The pillar on Public Contracting notes its centrality in the country's development. The country's development budget is channelled through the Public Procurement and Asset Disposal Board, (PPADB). The PPADB is transparent, accountable and has robust rules of integrity. However, many of its decisions have been constitutionally challenged in court, with some being set aside.

The pillar on the Public Service notes that rules exist for regulating the Public Service and for promoting integrity, transparency and accountability. However, the pillar also notes that accountability and integrity are often violated.

The pillar on the Ombudsperson notes that it operates in a transparent and fair manner. However, the Ombudsperson is constrained by limited financial resources, inexperienced managers and investigation officers, as well as restrictive powers to enforce compliance. The pillar on Supreme Audit institutions notes the transparent manner in which audits are done, the accountability of the agency and its strict rules of integrity.

The pillar on the anti-corruption Agency notes its centrality in combating corruption, its role in educating the public about corruption, its transparency and accountability and its rules of integrity and its role in instilling the same throughout all other pillars. The pillar on the Electoral Agency notes the participatory manner in which election commissioners are appointed, the separation between the commission and the secretariat, and the failure to monitor political expenditure during campaigns.

The pillar on Law Enforcement Agency, the Police Service, provides an overview of oversight mechanisms which hold it accountable and transparent in its duty of maintaining internal security. The police service has achieved high levels of integrity and accountability.

The pillar on Local Government notes its closeness to the communities, and the wide range of essential services it provides. It assesses the difficulties related to accountability and the frequent violation of rules of integrity.

The pillar on the Media notes that it is a key player in Botswana's national integrity system. It has played its informative and watchdog roles fairly well despite facing a number of challenges. The absence of an access to official information law seriously impedes its role. In addition, there is a high level of self-censorship due to political pressure on the government media and economic pressure on the private media.

The pillar on Civil Society notes that the government of Botswana has ratified a number of conventions that give space to civil society organisations to operate. There has been an increase in the number of NGOs and noticeable contribution in the national integrity

system, including making significant contribution to the change of government policies. Their role, however, is still hampered by financial and skilled human resources.

The pillar on the Business Sector observes that the government plays a major role in awarding business contracts to the private sector. It also notes that Botswana boasts of one of the strongest emerging stock exchanges in Africa and that the conduct of public companies listed on the stock exchange is one of the most transparent and maintains high standards of integrity. The pillar on the international organisations notes their reluctance to reveal their practices and their refusal to participate in this exercise.

Country Profile

Botswana is situated in Southern Africa, and shares its borders with South Africa, Namibia, Zimbabwe and Zambia. Its population is estimated to be 1.7 million (2001 census estimates). It is a large diamond producing country. The country is a constitutional parliamentary democracy. It has a President who is indirectly elected by a legislature whose members are directly elected every five years. There is a Parliament consisting of the President and the National Assembly and the House of Chiefs. The latter consists of traditional leaders. The discovery of diamonds in the late 1960s has sustained the country's socio-economic development over the last forty years of its independence, although agriculture has been declining.

Corruption Profile

Allegations of corruption or misuse of position are not common and appear to be systematically pursued by the independent Directorate for Corruption and Economic Crime. Botswana ranks 25th worldwide and highest in Africa, in terms of the "corruption perception index", which means that Botswana is the least corrupt country in Africa. The poster on the wall in the arrivals hall at Gaborone Airport is a clear pointer;

"Botswana has ZERO tolerance for corruption. It is illegal to offer or ask for a bribe," it reads.

Corruption Activities

Corruption cases in Botswana are few and far in-between, as shown in the following;

Corruption	Botswana	Region	All countries
Unofficial payments for typical firm to get things done (% of sales)	0.84	2.14	1.42
Firms expected to give gifts in meetings with tax inspectors (%)	4.47	20.78	29.77
Value of gift expected to secure government contract (% of contract)	1.16	4.09	2.29

Source :

<http://www.enterprisesurveys.org/ExploreEconomies/Default.aspx?economyid=27&year=2006>

CALENDAR OF IMPORTANT ANTI-CORRUPTION LEGISLATION AND OTHER EVENTS

1. 1977. Finance and Audit Act passed.
 2. 1991. *Report of the Presidential Commission of Inquiry on the Supply of School Books and Materials to Primary Schools for the 1990 School Year* (The IPM Consultancy).
 3. 1991. *Report of the Presidential Commission of Inquiry into Land Problems in Mogoditshane and other Peri-urban Villages.*
 4. 1992. *Report of the Presidential Commission of Inquiry into the Operations of the Botswana Housing Corporation*, Gaborone, Government Printer, November.
 5. 1994. Corruption and Economic Crime Act.
 6. 1994. Directorate on Corruption and Economic Crime established.
 7. 1995. the Ombudsperson Act passed
 8. 1997. The Ombudsperson appointed by the President in consultation with the leader of the opposition.
 9. 1999. The opposition BCP requests the Ombudsperson to investigate the vice President for flying army helicopters.
 10. 2000. Amendments of the Proceeds of Serious Crime Act.
 11. 2002. Public Procurement and Asset Disposal Act passed.
2004. National Anti-Corruption Conference: Ten Years of Fighting Corruption in Botswana. Gaborone.

Assessment of The National Integrity Systems Pillars

Executive

Role of Institution as a Pillar

The notion of separation of powers is implied, even though not expressly stated, in the Botswana Constitution. ‘The Constitution of Botswana implicitly recognises the separation of powers by dealing with each organ in separate and distinct provisions’¹. For instance, the Executive is covered in Sections 30-56, the Legislature from Section 57 to 94, and the Judiciary from Section 95 to 107. On the one hand, the Botswana model mixes the British Parliamentary system with elements of the US Presidential system, by mixing Executive and legislative powers. ‘A number of persons form part of both the Legislative and Executive branches. In addition, the President is also an ex-officio Member of Parliament, with the power to speak and vote in all parliamentary proceedings [Section 57, 58 (1)]. Other principal officers of the Executive, consisting of the Vice President, ministers, and assistant ministers, are appointed by the President and are Members of Parliament (see Section 39, and 42 (3))’².

It should be noted that the Executive is created by the Constitution. Section 44 (1) of the Constitution provides that ‘there shall be a Cabinet which shall consist of the President, Vice President and the ministers’. The President appoints cabinet and can accept or reject its advice. Cabinet is legally bound to follow him, and those who strongly disagree have the option to resign. Thus, the President is authorised to differ with the seemingly consensus view of cabinet. Commonly, the President allows cabinet to decide.

In addition, the Executive operates under a Constitutional Presidential two terms of office. Section 34 (1): reads – ‘The President shall, subject to the provisions of this section, hold office for an aggregate period not exceeding 10 years beginning from the date of his first assumption of Office of the President after the commencement of this Act.’ President Masire retired in 1998 following that provision and President Mogae is scheduled to retire in 2008 following the same provision.

Structures/Resources

The Executive or the Office of the President has a staff complement of 150 (starting with the permanent secretary to the President – PSP and three other permanent secretaries, down to drivers and messengers). The President appoints the PSP, who is the head of the Public Service. He also appoints permanent secretaries, who are the accounting officers of ministries; chief justice who is the head of the judiciary; secretary of the Independent electoral commission’ the Ombudsperson; the commissioner of police; the commander of the army; and the director of the Directorate on Corruption and Economic crime. The President also appoints ministers, who are political heads of ministries. He deploys them, redeploys and drops them from cabinet. In contrast, the PSP appoints all deputy permanent secretaries and directors in all ministries. The cabinet secretary comes from the Office of the President.

The Executive has a budget of its own, which is read out openly in parliament with the rest of the government budget. The budget of the Executive incorporates that of the army, police, Ombudsperson, Electoral Commission, judiciary, and directorate on corruption and economic crime. The Minister of Justice, Defence and Security coordinates budgetary matters for the judiciary, the army and the police. In contrast, the Executive in Botswana has no direct linkages with local government, which is coordinated through the ministry of local government.

Accountability

Ministers are bound by the principle of collective responsibility and loyalty to the President. According to interviews with officers at the Office of the President, the principle of collective responsibility compels individual ministers to submit to cabinet for scrutiny, memorandums proposing new policies, or proposing policy reforms or changes. In turn, cabinet then submits to the President. On the other hand, Botswana has a strong Executive arm of government which plays a prominent role in law making, thus performing a legislative role. 'The extent of Executive influence over the legislative branch is particularly evident in the lawmaking process. Although the parliament's principal function is to make laws, as in all parliamentary democracies, the whole of this process – especially the most decisive pre-legislative stages – is controlled and driven completely by the Executive...Almost all bills are discussed in cabinet meetings chaired by the President and are presented in parliament by a cabinet member, who, along with the whips, ensures the bill goes through without significant modifications. Because of the Executive's ability to ensure that desired legislation is passed, it is fair to conclude that, to all intents and purposes, the Executive controls parliament'³.

Officially, the Executive is accountable to parliament. 'Section 50 of the constitution states that the cabinet shall be responsible to parliament for all things done by or under the authority of the President, Vice President or any minister in the execution of his office'⁴. The principle of Executive accountability obliges the President to deliver 'a state of the nation' address to parliament every year, exposing him to parliamentary review and compelling him to account for all the actions and omissions of his government. The Executive is obliged to respond to questions by the back bench and opposition bench in parliament. Question time has been used effectively to reveal any other obscure information that is not readily available to the public or administrative lapses.

Other measures of accountability entail delivery of the national budget speech in parliament, by the Minister of Finance, including reading out the actual budgetary allocations by ministry. President Mogae informally makes himself accountable to the business community by attending most of their conferences. For instance, he attended the 9th National Business Conference on 7th August 2006.

Integrity Mechanisms

The Executive in Botswana operated without rules of integrity for many years. To date, no minister has been required to declare his interests to the President⁵. While it can be argued that ministers then were too poor to declare anything, another school of thought thinks otherwise⁶. There is neither recollection of any minister resigning from any company directorship during his time, nor recollection of the existence of integrity rules

requiring ministers and permanent secretaries to declare their interests to the President, or to resign in case of conflict of interest. Thus, declaration of interests was not a requirement in the Botswana political system until recently.

Rules on integrity for the Executive are a new phenomenon. In fact, the Green Book containing conditions of service for the President and others is dated 2004 and has not been updated ever since. The integrity of the Executive is governed through regulations, even though it is not clear if these are followed. Under 'additional functions of ministers and assistant ministers' in the Green Book, 8 (4) provides that 'a minister and assistant minister is expected to resign from any company directorship which would be likely, or might appear to conflict with his or her official duties, other than the directorship of a company in which the minister or assistant minister or his or her immediate family owns at least 51 percent of the total shares, and to declare any interest in the prescribed form'.

In a *Sunday Standard* headline in 2006, it was reported that President 'Mogae was forced to stay out of a cabinet meeting!' that considered applications in which his brother-in-law was an applicant⁷. However, it was the first time that a Botswana President did so, either for personal interest or for other reasons.

Transparency

The Green Book (a forty-one page booklet)⁸, is not readily accessible to parliamentarians, to the media and to members of the public. In its preface, it is provided that the booklet should be distributed to 'the President, the vice President, ministers, speaker of parliament, deputy speaker, leader of the opposition, assistant ministers, permanent secretaries, attorney general, director of Public Service management, auditor-general, accountant general, clerk to the cabinet, private secretary to the President, and accounting units. In addition, copies will be made available to the public at a cost'⁹. Parliamentarians are not amongst those who are entitled to receive free copies. In addition, the booklet is neither available on the market nor in libraries, even though there is such authorisation. This manner of concealing public information limits transparency. An official in the Office of the President acknowledges that government information system does not work as effectively as it is supposed to¹⁰.

The press secretary to the President, Dr. Ramsay, publishes an electronic weekly newsletter known as the *Tautona Times*. In it is published the weekly Presidential schedule showing the activities and meetings the President will be involved in. It also publishes all the speeches by the President, Vice President and Minister of Presidential Affairs. The weekly newsletter also publishes the press secretary's response to newspaper allegations concerning the presidency. The newsletter is distributed electronically through the e-mail system¹¹. In addition, the Ministry of Foreign Affairs publishes a quarterly newsletter known as *Moemedi*, where interaction between the Executive and representatives of foreign countries is published. The newsletter is also documented electronically by its editor¹².

The Executive has also launched a website¹³ where government information on the relocation of the Basarwa (San) is published. The website contains official speeches on the relocation of the Basarwa from CKGR, provides background information on the

relocation, question and answer Section, allegations and mining and rural development issues. It should be noted that all Botswana Government Ministries can be accessed at www.gov.bw. Newsletters and websites promote transparency and help researchers and the public to access basic information without having to go through bureaucratic hurdles.

Complaints/Enforcement Mechanisms

Members of the Executive are not immune from prosecution, except the President. They can be prosecuted and they have been prosecuted before. In practice, however, the general observation is that it is rare to prosecute a minister or high-level public official when they are still in office, unless they have fallen out of favour with the President. However, ministers have resigned before when Presidential power personally targeted them over issues of integrity. For instance, former Vice President Peter Mmusi and former Minister Daniel Kwelagobe resigned their cabinet positions in the early 1990s after they felt personally targeted and opted to take the government to court over a Presidential report that had implicated them in corruption. Another minister, Jacob Nkate also resigned when the media revealed that he was earning money from a company that was known to have corrupted government officials. But Kwelagobe and Nkate later returned back into cabinet while Mmusi died. Thus, three ministers resigned when they felt personally targeted and when the integrity of the Executive was at stake. However, they later returned.

Many times, it is only when these people have been dismissed from the system that suddenly the law enforcement agencies pounce on them and begin investigating them. For example, the ACC and DEC only pounced on former Lands Minister Gladys Nyirongo and former Lands Commissioner Frighton Sichone after the duo were sacked and the President instructed the law enforcement agencies to do so.

Relationship to Other Pillars

The Executive is a pivotal pillar in the fight against corruption. Because the Executive interacts with every other pillar, it has direct influence on all of them. The Executive basically forms Government; hence, there is also significant interaction with the International Institutions (donors) who fund a significant portion of the national budget and several other social and developmental projects in the country.

Recommendations

- Appointing powers should be decentralised; the Ombudsperson should be appointed by parliament and the Secretary of the Electoral Commission should be appointed by the Commission itself. It has been noted that too much appointing powers are bestowed on the President who does not have to consult anyone.
- Staff of the Executive should be sensitised on the need for transparency. The pillar has shown that transparency is promoted and compromised at the same time.
- Rules of integrity of the Executive should be made public. The current ones are of recent origin and covered travels, directorships in companies, assets disclosure to the President, accommodation in private homes and so on.
- Ministers should declare their assets publicly and not just to the President.

Legislature

Role of Institution as a Pillar

The legislature occupies a key position in the government machinery of administration. It acts as a national debating chamber and has oversight over the whole government machinery. Section 57 of the Constitution states that “there shall be a Parliament of Botswana which shall consist of the President and a National Assembly.” There is a Leader of the House who is a senior minister. There is also a Leader of Opposition. The presiding officer is the Speaker. Parliament exercises legislative powers as one of its main functions. Section 86 of the Constitution states that “Parliament shall have power to make laws for the peace, order and good governance of Botswana.” There is no doubt that this is the case as all bills, policies, development plans and budgets, are debated and approved in parliament. The legislature also plays a “watchdog role” through Parliamentary Committees. However, the powers of Parliament are restricted by the Special Procedures under Section 89 of the Constitution which, for certain issues, require a Referendum.

Resources/Structure

One of the key features of any political system is the relationship between the Executive, parliament and the Speaker. This relationship is at times characterised by friction which indicates that each party is constraining the other. For instance, parliamentarians did not take kindly to what they perceived to be a unilateral decision by the Speaker of Parliament to suspend deliberations on the Revised National Policy on Incomes, Employment, Prices and Profits of 2005. In another instance, in 2006, there was tension when MPs felt that Cabinet wanted to use Parliament to rubber-stamp its decisions without thoroughly debating and scrutinising policies and bills, such as the Security and Intelligence Bill which was rushed through the Legislature for the second reading.

There is no fixed annual budget for the legislature and its committees. In other words, no single committee has a stand-alone budget. Like all other government departments, the legislature derives its budget from the line ministry (Presidential Affairs and Public Administration) budget estimates. The support staff of the legislature has its offices within the Parliament buildings in Gaborone. However, the legislature has various departments which facilitate its day to day business. One of the most important departments is that of Research, Editorial Services and Library Services which undertakes research and produces the *Hansard* (verbatim record of debates) and other House publications such as, *The Bencher Newsletter*. The *Hansard* is normally distributed to various departments and national libraries in the country. The *Bencher*, which is produced on a quarterly basis, is distributed to various schools in the country. Through such publications, the legislature is able to reach out to the society. In addition, in order to enhance the link between parliamentarians and their constituents, offices have been established throughout the fifty-seven constituencies in the country. These offices are expected to be non-partisan; hence, are utilised by everyone who wants to access the area MP or information on the legislature and its business. This is one way in which a member of the public can participate in the democratic dispensation of Botswana.

Accountability

The legislature is accountable to itself and to the public. It hears presentations and submissions from its own committees, government departments and government ministries. It further publicly debates policies, and makes resolutions and refers recommendations to the government (Executive) and the judiciary for necessary action. For example, the legislature makes laws. That is, it promulgates new laws, amends existing ones and repeals old laws.

The Botswana legislature uses the committee system to effectively scrutinise the Executive, thus providing a system of checks and balances. Some of the committees have been very robust in carrying out their oversight functions. The Public Accounts Committee (PAC), for instance, has enjoyed cross party support, at times choosing its chairperson from the opposition Members of Parliament. The Committee has sometimes been viewed by the Executive as releasing reports critical of its financial mismanagement. One such report was of the financial year 2004/2005 which unnerved or unsettled some members of the Executive. The result was a short-lived “coup” that removed the chairperson of this committee. He was, however, reinstated after persistent pressure from other parliamentarians.

Integrity Mechanisms

MPs enjoy certain privileges which enable them to fulfil their responsibilities and to comply fully with all resolutions and conventions of the House relating to matters of conduct. The actions of MPs have a profound impact on the lives of the populace. As a result, MPs are required to commit themselves to the highest ethical standards. They are not to undertake actions which conflict with their duties in Parliament. Like all law abiding citizens, MPs may not steal, rape, pillage, plunder, *et cetera*. Parliament also uses its rules of procedure as a basis for promulgating a code of conduct.

MPs are not above the law. For instance, in 1987, Dennis Mosielele, an MP for the opposition, Botswana National Front (BNF), had to vacate his seat after being found guilty of involvement in stealing a vehicle. In another instance, in 1992, MP Michael Tshipinare of the ruling Botswana Democratic Party (BDP) faced corruption charges and was convicted by the Magistrate Court in Gaborone, but acquitted by the High Court in Lobatse on Appeal. However, MPs do have temporary immunity from apprehension by the police for minor civil cases, but only when they are en-route from their residence to Parliament or returning from Parliament to their residence when Parliament is sitting. Also, MPs cannot be apprehended (for minor offences) whilst within the precincts of Parliament, other than through the express permission of the Speaker. There have been no cases, to date, where parliamentary immunity interfered with the prosecution of corrupt MPs.

Transparency

In 1996, Parliament passed a motion that called on MPs to disclose their assets. To date, Parliament is yet to pass the law on disclosure. As such, no registers of disclosed assets or gifts exist. The lack of urgency on this matter is demonstrated by the Minister of Presidential Affairs and Public Affairs as quoted in *The Botswana Guardian* newspaper of 23 March 2007 as saying that bringing the Declaration of Assets Bill before the House for final approval into law is not a priority for him.

Parliamentary sessions are open to the public. The budget of Parliament is in the public domain as it is passed by parliament during the budget session. The budget can be accessed from the Government Printer, through public and institutional libraries, or through MPs' Constituency Offices. The Public Accounts Committee presents its report to Parliament, and this can be accessed through the same route as the budget. Furthermore, there are other structures, such as the party parliamentary caucuses, which should enhance transparency. Whereas parliamentary sessions are open to the public, party caucuses are not; neither the agenda nor their meeting times are in the public domain, and therefore remain secret. In addition, the public feel that there is a great deal of secrecy within Government. For example, Commissions of Inquiry, such as the Boswaen report on allocation of ranches in the Southern part of the country in the early 1980s, and the Scotland Yard report on the ritual murder of a school girl in Mochudi in 1995, just to mention a couple, have not been made public. This secrecy is compounded by the absence of the Freedom of Information Act.

Complaints/ Enforcement Mechanisms

There are provisions for whistle blowing on misconduct within parliament. Whistle blowing can be done through the Directorate on Corruption and Economic Crime (D.C.E.C.) or through direct access to an MP. Members of Parliament can initiate commissions of inquiry into any matter. For instance, a Commission of Inquiry on the allocation of State Lands in Gaborone was set up in April 2004 when an opposition Member of Parliament had successfully tabled a motion before the House, after this was highlighted to him by members of the public. Another Commission of Inquiry was set up early in 2006 to investigate the Botswana Technology Centre (BOTEC) after a parliamentary motion with general public input or briefing.

Relationship to Other Pillars

The legislature works with the Executive, on a day-to-day basis, on issues of national interest. It also engages NGOs on various issues of public concern. This relationship is also extended to other organs of society. For instance, the media, both state-owned and private, are allowed to cover parliamentary proceedings. MPs returning from various international assignments usually brief the media on their trips. Given that the country practises a free market economy, parliament provides a platform where business-friendly policies and laws can be debated and enacted. It is hoped that a thriving economy is good for both government and the business sector. Parliament's oversight role, as mentioned earlier on, covers a broad range of areas, such as checking public accounts and related acts of malpractice. Select Parliamentary Committees enhance this oversight role, though there is need for the strengthening of these committees by enhancing their mandates.

Recommendations

This pillar has shown that the legislature performs the functions such as legislation, representation, scrutiny and oversight. The Executive-Parliament friction is evident in Botswana, and the legislature has always striven to assert its independence.

- The status of the legislature should be enhanced. It must be treated equal to the Executive, with its own budget and human resources.
- The legislature should have live radio and television debates as this would enhance both accountability and transparency.
- It is recommended that other indigenous languages be introduced in parliamentary debates, as this would further improve its accountability and widen interest in its activities to a larger audience. Currently, only Setswana and English language are used in debates.
- The legislature should establish portfolio committees as these would do most of the work on Bills and discuss and make changes. Portfolio committees could also consult the public on Bills through public hearings.
- The legislature should enact a Freedom of Information Act as a matter of urgency. Having such an Act would allow the public to have access to government information and records, where national security is not compromised.

Political Parties

Role of Institution as a Pillar

Political parties shape the political culture of Botswana. Their performance in elections defines the type of democracy in the country. For instance, based on the strength, or weaknesses, of political parties and performance in the last nine elections, it is appropriate to refer to Botswana as a 'one party state' since only one party, the BDP, has won all the elections since the country attained independence in 1966. Only in the 1994 elections was the BDP effectively challenged at the polls; the opposition BNF won 13 of the 40 parliamentary seats. Apart from these elections, the BDP has won every election by a landslide victory.

The political contest in Botswana not only presents a dominant party system, but also renders Botswana, to use Ake's (2000) term, a 'choice-less' democracy; where the electorate have no alternative policies and no possibility for a turnover of political power. The political outcomes of elections are as much a function of the strength and organisation of political parties as they are of the electoral system. Botswana's electoral law provides for the First-Past-The-Post (FPTP) electoral system. The FPTP system in Botswana operates the single member constituency system and provides an effective link between the electorate and government. This 'winner-takes-all' phenomenon has bred a sense of complacency and disillusionment amongst the losing candidates and political parties in Botswana.

Structures/Resources

Botswana has a well established political party system. Political parties are generally stable, except for regular division in the main opposition BNF. Botswana operates a multiparty system with about ten registered political parties. Only eight of them contested the 2004 elections and these were; the Botswana Alliance Movement (BAM), Botswana Congress Party (BCP), Botswana Democratic Party (BDP), Botswana National Front (BNF), Botswana Peoples' Party (BPP), MELS Movement of Botswana (MELS), New Democratic Front (NDF), Social Democratic Party (SDP) and independent candidates. Other registered political parties are affiliated to the BNF and BAM and did not contest elections as separate entities. Although it may be misleading to judge the significance of political parties by the number of parliamentary and council seats, it appears reasonable to use it as a yardstick.

Botswana's political parties are at liberty to raise funds through many avenues that include concerts, party membership subscriptions and are even allowed to ask for external funding. The law does not regulate permissible ways of fundraising. All the major parties (including the ruling party) enjoy undisclosed external funding. However, the BCP has established a pattern of disclosing its external funding, most of which came from the British Labour Party.

Botswana's electoral system provides for a competitive electoral system but does not provide for political party funding. Each party raises money for itself and the ruling party, because of its dominance on the political landscape, is able to raise more than any other political party. As a result, political competition is not evenly balanced because other political parties, due to budgetary constraints, are not afforded equal chances to compete

for votes. Although there is a ceiling of how much a political party could spend in a political campaign, this ceiling is never observed since there are no enforcement mechanisms. The ruling party enjoys the advantage of political incumbency and uses its strategic position in government to effect programmes that would enhance its popularity and visibility, whilst opposition parties are often constrained by resources.

Accountability

Botswana political parties hold regular congresses where they openly elect leaders and adopt policies. The large parties also hold primary elections where they select parliamentary and council candidates. However, finances of parties are not audited and donations are neither regulated nor declared.

Integrity Mechanisms

There are no laws outside the Electoral Act that govern the conduct of political parties. There are no bodies that audit the books of political parties which are regarded as private matter and are never put in the public domain. There are often allegations across the political spectrum that political parties benefit from secret funding from local and international concerns and these sources of funding are not in any way regulated. Unlike government funds which are audited by the Auditor General and scrutinised by the Public Accounts Committee, party funds are treated like private funds. Although these funds are generated through membership subscriptions, the public does not have the right to redress when these funds are misappropriated. Nor are these funds subjected to any oversight or accounting procedure. Politicians and political parties do not have codes of conduct to guide them and are also not bound by any disclosure laws. There are effectively no rules to guard against conflict of interest.

The law provides that if a person was ever convicted of an offence and served more than six months in prison, that person would be disqualified from standing for political office. There are effectively no post-employment restrictions to serve in political office. There have been instances where individuals, who served in the army, or as civil servants, were allowed to contest for, or appointed into, a political office. In the past, there was a requirement that people who had served as chiefs should wait for five years before they contest political office but in the case of Ian Khama, that requirement was not invoked. In addition, Khama entered politics, but continued to pilot army helicopters, prompting the BCP to appeal to the Ombudsperson who investigated and recommended that the practice should cease. The BCP has also threatened to take the Executive to court over the continued negotiations between government and a South African company over the privatisation of Air Botswana, contrary to a parliamentary motion which called for talks to be halted. So, opposition political parties play a leading role in anti-corruption activities.

Transparency

The large political parties in Botswana hold party congresses every two years where they elect their leadership. The BDP and BNF commonly invite the Democracy Research Project of the University of Botswana to conduct their congress elections. Thus, there is now transparency in the conduct of leadership elections in the large parties. In contrast, the small parties conduct their own elections without oversight by outside bodies. Party

congresses also allow the party delegates to approve policies and programmes proposed by the party. The BDP invites to its congresses observers from all ruling parties in the SADC region.

However, the selection of candidates is still controversial. Primary elections are held by the BDP, BNF and BCP. While this is a transparent way of choosing candidates, the outcome of such elections has previously led to splits and defections. Moreover, these processes have failed to empower women and the youth, and have marginalised them from decision making structures of the parties.

Complaints/Enforcement Mechanisms

There are no provisions for whistle blowing within political parties in Botswana, although each party has its own internal measures of dealing with complaints, such as the setting up of disciplinary hearings. These are, however, weak in practice.

Relationship to Other Pillars

Although opposition parties are constrained by their small numbers in the legislature, they are assisted by the ruling party backbench to hold the government accountable. They have been able to sponsor motions that parliament adopted. The ruling party draws support from the business community, women and the rural population. The main opposition party, BNF, draws sympathy from the labour movement and men. The labour unions are informal historical allies with opposition politics in Botswana. For instance, individual members of the Manual Workers Union have been elected under the BNF ticket, into the Gaborone City Councils. However, unions have not formally affiliated to political parties. Even civil society organisations do not affiliate to political parties. On the other hand, opposition parties have historically tried to form coalitions which either collapsed before elections or afterwards. The BNF has entered into several coalitions which did not last long. Thus, coalition politics has not been sustainable on the Botswana political scene.

Recommendations

- Party finances should be audited and accessible to the public.
- External funding of political parties should be regulated. State funding of electoral campaigns for all registered parties should be introduced.
- There should be more research undertaken on the lack of sustainability of coalition politics in Botswana.

Electoral Commission

Role of Institution as a Pillar

Botswana has since 1965 consistently held nine successive multi-party elections, thus making it Africa's longest running democracy. Although elections are high-tension events, they have not sparked violence in Botswana, a rare feature in African politics.

The Independent Electoral Commission (IEC) is created by Section 65A of the Constitution. The functions of the Commission, in terms of Section 65A (12), entail the conduct and supervision of elections, conduct of referendum, give instructions and directions to the Secretary of the Commission, ensure that elections are conducted efficiently, properly, freely and fairly, and to perform other functions as may be prescribed by an Act of Parliament. The IEC does not issue a writ of elections; this is issued by the President, although it is not the best practice. The best practice is whereby an election date is fixed; which is currently not the case in Botswana.

The Commission is composed of seven members; a Chairman, who is a High Court judge; and a legal practitioner, both of whom are directly appointed by the Judicial Service Commission (JSC) and five other members, who are required to be fit, impartial and proper, and are appointed by the JSC from a list of names recommended by the All-Party Conference in terms of Section 65A (1) of the Constitution of Botswana. The All-Party Conference is a loose and unique structure in Botswana's democratic process that brings all registered political parties together to promote inter-party dialogue and plays a part in the appointment of the IEC, that of recommending the names of persons to be appointed as commissioners of the IEC. The last All-Party Conference was held in July 2004 to propose names of persons to be appointed as election commissioners. This meeting was riddled with controversy as it was boycotted by the main opposition parties. Nevertheless, Section 65A(2) gives the JSC the power to appoint election commissioners where the All-Party Conference fails to reach an agreement on all or any number of persons up to dissolution of parliament. Election Commissioners hold office for two successive lives of parliament.

In addition to the Commission, Section 66 of the Constitution provides for the Secretary of the Commission as commissioners work on a part-time basis. The Secretary is appointed by the President and is also accountable to him. This is not the best practice; the best practice is for the Secretary to be appointed by the Commission and also to be answerable to it. The Secretary is responsible for the general supervision of the registration of voters and the conduct of elections.

The terms and conditions of the Secretary (Section 66 (7) of the Constitution) stipulate that the Secretary shall vacate office on attaining the age of 65 years or such other age as may be prescribed by an Act of Parliament. Moreover, the Secretary in terms of Section 66 (8) may be removed from office only for inability to perform the functions of his/her office or for misbehaviour (The first secretary is still in office). However, where the President considers removing the Secretary from office, then he shall, in terms of Section 66 (9) (a), appoint a tribunal which shall consist of a Chairman and not less than two members who hold or have held high judicial office. Following an investigation by the tribunal, it will submit a report to the President and advise him or her whether the

Secretary ought to be removed from office for inability to perform the functions of his/her office or for misbehaviour. In this way, the security of tenure for the Secretary is protected by the Constitution (Republic of Botswana Constitutional Amendment Act 1997).

Structures/Resources

The IEC has a staff complement of 135, with three of these in senior management and another 33 in middle management. Its budget follows the normal government budgetary process. In the view of an official of the IEC, the commission's budget is not an issue; what is important is to plan and make a request. Apart from government funding, the IEC also receives financial assistance and support to conduct surveys and workshops from, amongst others, the British High Commission in Gaborone, the Embassy of the United States, Friedrich Ebert Stiftung (FES), as well as from International Institute for Democracy and Electoral Assistance (IDEA)¹⁴. For instance, the IEC conducted an audit of the 2004 elections with the assistance from the International Institute for Democracy and Electoral Assistance (IDEA)¹⁵. The Embassy of the United States in Gaborone also sponsored two workshops in 2005 to evaluate the 2004 general elections¹⁶. While there is a feeling that the IEC is adequately funded, the best arrangement is whereby parliament deals with the IEC directly.

Accountability

The Commission is expected, in terms of Section 65A (13) of the Constitution of Botswana, to submit a report on the exercise of its functions to the minister responsible for elections who in turn shall present it before the National Assembly. Government Notice No.356 of 2002, which sets out various ministerial portfolios, places the IEC under the Ministry of Presidential Affairs and Public Administration. Even then, the IEC affirms that it does not report to anyone, nor is it compelled by anyone into taking certain decisions. It only asks the Minister of Presidential Affairs and Public Administration to table its motions and reports to the National Assembly in line with past practice¹⁷. The Commission takes decisions and the Secretary implements them. Moreover, the Commission is in constant contact with the public, as they are its main clients. It engages in voter education, takes public opinion seriously and consults the public through *kgotla* meetings; holds seminars and workshops, including special workshops for the faith sector¹⁸.

Integrity Mechanisms

The commission has no rules on conflict of interest. However, usually members of the commission declare their interests if they are an interested party in line with the Directorate on Corruption and Economic Crime Act. With regard to gifts and hospitality, the staff of the Commission - with the exception of the Secretary of the Commission who is a Presidential appointee - is governed by the General Orders Governing the Conditions of Service of the Public Service of 1987 and the Public Service Act which require them to declare gifts. Moreover, there is no post-employment restriction for the Commission. The staff of the Commission is, however, transferable.

Transparency

The IEC is committed to promoting transparency lest it is accused of partisanship. Even the opposition parties have since started appreciating the Commission's good stewardship, although the President's appointment of the Secretary remains the sticking point¹⁹. The Commission conducts its mandate in accordance with the Electoral Act. The IEC, to a large extent, puts most of the information it produces, such as the election's reports, into the public domain. In addition to election reports, the Commission also reports on its work every six months. These reports are also circulated. The Commission also appears before the Public Accounts Committee (PAC) to account for its budget in case there are any budget queries.

Complaints/Enforcement Mechanisms

The IEC has no whistle-blowing mechanisms as there is no code of conduct for political parties. However, it is empowered to start its own investigations where a member of staff is concerned in terms of the General Orders. In the past, some officials of the IEC have been dismissed. The sanctions are spelt out in the Public Service Act. However, the Constitution is silent on the removal of members of the Commission. The IEC has not, to date, dealt with any case of corruption within its ranks. However, cases of corruption in Botswana are dealt with in terms of the Directorate on Corruption and Economic Crime Act which spells out punitive measures insofar as such cases are concerned. Although there have been reports/allegations of vote-buying in the recent past, the IEC is handicapped as there is no law to address vote-buying.

Relationship to Other Pillars

The Commission is a key part of the country's national integrity system. In Botswana, the Commission perceives itself as an oversight institution that continues to preside over free and fair elections, hence contributing to integrity. Even election observers have commended the Commission for delivering credible elections. In addition to involving election observers in Botswana's political process, the IEC actively interacts with parliament, political parties and the media. It also actively interacts with the DCEC and civil society organisations as they too help to disseminate information on elections. Civil society organisations, such as Emang Basadi and the Council of Churches, play an active role in voter education.

Recommendations

- The IEC should take criticism by stakeholders seriously in order to maintain transparency and ensure accountability and integrity in Botswana's political process.
- The country should review its electoral laws and embrace best practices in line with international trends. This is particularly important as a way of enhancing the integrity of its electoral process and the quality of its democracy. This will go a long way towards promoting the country's relative stability; a feature that has eluded most African countries.

Auditor General

Role of Institution as a Pillar

The role and functions of the Auditor General (OAG) of Botswana are set out under Section 124 of the constitution of the Republic of Botswana, as well as the Finance and Audit Act (1977), Local Government Act (District Councils) Cap 40:01), Section 104 of the Townships Act (Cap 40:02) and Section (32(3) of the Tribal Land Regulations (Statutory Instrument No. 91 of 1999). In terms of Section 124 of the constitution, the Auditor-General is a public officer who is appointed by the President. To ensure his or her independence, his/her removal from the office is not within the prerogative of the Executive and the retirement age is 60 years or such other years as may be prescribed by Parliament (Section 114). The office holder can be removed by Parliament following an intricate procedure after establishment of a charge of incapacity and incompetence. This can be both an advantage and a disadvantage. For example, if the Auditor General is appointed at the age of 45 years of age and is of no high moral standing, then this means the office will have to carry the person until retirement age. On the other hand if the person is of high calibre then this would be a bonus for the office.

The OAG conducts the following audits; financial audits, performance audits, local government audits and Information Technology (IT) audits. Under financial audit, the OAG examines the financial statements and expresses an opinion as to whether the accounts show a true and fair view of the financial affairs of the entity. It satisfies itself that the accounts are free from misstatements. OAG also undertakes performance audit. This audit examines the economy, efficiency or effectiveness with which any officer or authority has utilised public money at his or its disposal. The reports are issued upon completion. The value for money audit includes, among others, the following;

- a) Audit of the economy of administrative activities in accordance with sound administrative principles and practices, and management policies;
- b) Audit of the efficiency of the utilisation of human, financial and other resources, including examination of information systems, performance measures and monitoring arrangements, and procedures followed by audited entities for remedying identified deficiencies; and
- c) Audit of the effectiveness of performance in relation to the achievement of the objectives of the audited entity, and audit of the actual impact of activities compared with the intended impact.[progressive]

The OAG further conducts local government audits for the councils, land boards and local authorities. Although reports are expected within a period of 12 months following the financial year-end, in practice the audited statements of the councils are lagging behind. The fourth and last audit conducted by the office is information technology audits which are primarily focused on the activities of the IT units within the audited entities. These are often used to complement other types of audits.

According to the Constitution, the OAG has formal independence. Section 112 of the constitution lists all the designated officers who are appointed by the President. The Act does not specifically mention the Auditor General, but instead uses Subsection (f) as a reference point. Like all government departments, the OAG has to account for its

operations to the Permanent Secretary to the President, who is the Head of the Public Service in Botswana. The independence of the OAG is also undermined by the fact that his/her appointment is political. That is, the merits of who should be the Auditor General are not specified. As a result, his/her appointment is made based, to some extent, on the interests of or the criteria known only to the appointing authority. The incumbent Auditor General has signed a performance agreement contract with the Permanent Secretary to the President (PSP), even though there is no law authorising this. This practice naturally makes it difficult for the OAG to exercise its independence.

Structures/Resources

The OAG has not escaped the problem of inadequate finances. Staffing has been a recurring problem within the department due to government's increased business and expenditure without corresponding increase in audit staff. Currently the office has 127 auditors but, because of the huge demand at local authorities, a staff complement of 200 auditors would be considered sufficient for the office. At the time of conducting the research the office has just had an increase of staff from 142 posts to 174 positions which are filled mostly by locals. This represented an increase of 32 posts (22.54%) from the previous year.

Accountability

The OAG works closely with an oversight body known as Public Accounts Committee of Parliament (PAC). The standard procedure is for Parliament to refer reports issued by the office of the auditor general to the PAC. It is this committee which examines documents and calls for evidence from public servants. The PAC conducts hearings where permanent secretaries of different ministries appear before it with their finance officers to answer queries (Sharma, 1998). It then reports its investigations and recommendations to Parliament. The OAG is accountable to the Ministry of Finance and Development Planning whom it also audits. All the audit reports are addressed to the Minister of Finance instead of the Speaker of the National Assembly. As a result, this tends to dilute the accountability that is expected of the office. In other countries, like South Africa, the OAG is directly accountable to the National Assembly because it directly presents its reports to the National Assembly and is answerable to the same.

Integrity Mechanisms

The OAG ensures that auditors are beyond reproach at all times and in all circumstances. This notion is encapsulated under the mission statement which says they exist "to promote accountability and provide quality in the public sector and assure the nation that public resources are applied for purposes intended" (OAG Report, 2005). The office has put in place a code of ethics which is outlined under the Audit Standards of the OAG, which have to be followed by all auditors. The Code of Ethics put emphasis on the values of the office which guide the behaviour of all staff members, both audit and support staff.

Transparency

The OAG is required in terms of Section 35 of the Finance and Audit Act to submit the report to the Minister of Finance within 12 months after the end of the financial year. The office has consistently met this requirement in previous years. There have been delays with audit reports of local authorities as will be reported elsewhere in this document. The

OAG conducts its business in a transparent manner to the extent that when the report is released, the Auditor General addresses the media. Members of the public also have access to the report through general distribution and sale from the government bookshop. The report is also available from the government website.

Complaints/Enforcement Mechanisms

By and large, the public plays little or no role in the operations and/or proceedings of the OAG, because there are no ways or channels in place for the public to seek redress whenever aggrieved by the performance of OAG in ensuring proper care of public funds. Successive reports of the OAG have raised concern at the manner in which public funds are used and how things can be improved²⁰. However, the public and tax-payers have no formal way of lodging a complaint against the failure to implement those recommendations that can ensure proper use of public finances. The OAG has some relationship with the media, but has no direct interaction with civil society, Ombudsperson, political parties and International Institutions.

Relationship to Other Pillars

The OAG works closely with the police and the DCEC. It should, however, be noted that in their day-to-day task of auditing, if they discover fraud, the office does have the power to report the matter directly to the above institutions, but only report to the Minister responsible who then takes up the matter with them.

Recommendations

- The OAG should be assisted to retain staff by offering competitive remuneration to staff.
- There should be an Audit Act separate from the Finance Act that gives powers to the audit institution to enforce punitive measures against non-compliance.
- The law should be reformed to allow the OAG to report directly to Parliament through the Speaker of the National Assembly, rather than through the Minister of Finance.
- The OAG should have an independent Board of Directors that will employ the Auditor General and be able to charge government fees for audits performed. Such funds may then be used to determine competitive salaries of the staff in order to address retention problems.

Judiciary

Role of Institution as a Pillar

The role of the judiciary²¹ is to adjudicate cases and interpret the law. In doing so, the judiciary should be independent from the other branches of government, especially the Executive. However, in Botswana, neither the Constitution nor legislation guarantees judicial independence. But, in practice, the judiciary has largely been independent. Judicial officers, judges and magistrates alike, decide cases without interference from other organs of government or pressure groups. However, there are some issues that the judiciary should address, such as the lack of resources, accountability, integrity systems, transparency and provision of legal aid to indigent persons.

Structures/Resources

The Judicial structure consists of the Superior Courts (High Court and Court of Appeal); Subordinate Courts (Regional Magistrate, Principal Magistrate, Senior Magistrate, and Magistrate Grades I, II, III). There are also specialized courts which deal with specialised matters (Court Martial, Land Tribunal, Industrial Court and Juvenile Courts)²². Additionally, there are customary courts which apply customary law (Customary Court of Appeal, Higher Customary Courts and Lower Customary Courts)²³. The courts have influenced the shape and direction of legal developments²⁴. Thus, they have outlawed, repealed and delayed corporal punishment as being inhuman and degrading. They have also outlawed gender-based discrimination in the highly celebrated *Attorney-General v. Unity Dow* case²⁵.

The High Court has original and unlimited jurisdiction²⁶. It can hear any kind of cases across the country²⁷. However, judges have not received any formal training for deciding corruption cases. They mainly use the penal code and relevant legislation. In practice, courts in Botswana have heard cases involving corruption; mainly official corruption.

The appointment of members of the judiciary is governed by the Constitution. The Chief Justice²⁸ and the President of the Court of Appeal²⁹ are appointed by the President. All other judges and magistrates are appointed by the President on the advice of the Judicial Service Commission (JSC)³⁰. Two points are worth mentioning here. Firstly, the appointment of the Chief Justice and the President of the Court of Appeal solely by the President without anybody advising him raises the question of their independence, especially in relation to the Executive. This is because the President is the head of the Executive and the appointment is likely to compromise the independence of both the Chief and President of the Court of Appeal. Secondly, the composition of the JSC compromises the independence of the judiciary. The Commission consists of the Chief Justice, who is the Chairman, President of the Court of Appeal, the Attorney-General, the Chairman of the Public Service Commission, a member of the Law Society and a person of integrity and experience not being a legal practitioner appointed by the President³¹. Clearly, apart from the member of the Law Society, all other members have close connection with the Executive in terms of their appointments and functions. Thus the JSC is not absolutely autonomous or insulated from other organs of government, especially the Executive.

Although the judiciary has, for a very long time, maintained its independence, recently it has suffered serious setbacks. Judges have had to resign their positions in circumstances which are likely to threaten its independence. For instance, early 2006, Justice Moatlhodi Marumo dramatically resigned as judge of the High Court of Botswana. His resignation is reported to have come about after his decision to grant Professor Kenneth Good, who was a Professor of Political Science at the University of Botswana, leave to challenge a Presidential order which declared him a *persona non grata* or prohibited immigrant. Hitherto, no judge of the High Court had granted an application challenging the Presidential powers declaring an individual a *persona non grata*. It was widely reported in the papers, locally and internationally, that the resignation of Justice Marumo was pressured by the decision to grant Professor Good leave to challenge Presidential orders. To underscore newspaper reports, early October 2006, the Guardian Newspaper carried an article entitled “Ex-judge suing government,” and noted that “there is every likelihood that former High Court judge Moatlhodi Marumo may take government to court over circumstances that led to his resignation five months ago.”³² Further, Justice Peter Collins was reportedly forced to resign as judge of the High Court due to pressure from the Executive³³.

On the one hand, the issue of recruitment of judges also compromises the independence of the judiciary. Currently, there is no clear-cut recruitment procedure of members of the judiciary. The Constitution is silent on the matter. There is also no legislation that regulates the process. Furthermore, the JSC has no code of procedure for the appointment of judges. Thus, there are no guidelines for the recruitment of judges. The process is arbitrary and exposes itself to Executive influence.

On the other hand, judges have security of tenure. The Constitution states that a judge of the High Court shall vacate office on attaining the age of 70 years or such other age as may be prescribed by Parliament³⁴. Thus a judge may not be retired before he reaches 70 years. However, he may be removed from office for inability to perform the functions of his office due to infirmity of body or mind or from any other cause or for misbehaviour³⁵. If the judge is to be removed from office, the President shall appoint a tribunal consisting of the chairperson and two other persons, who shall have held or hold a high judicial office, to investigate and write a report advising him whether or not to remove the judge from office³⁶. If the advice of the tribunal is that the judge ought to be removed, the President shall remove the judge accordingly. Therefore, except for the above reasons, judicial officers are protected from unjustified removal from office. In practice, no judge in Botswana has been subjected to any kind of unjustified removal from office.

As regards financing, the judiciary it is not independent. It does not have its separate budget from which to finance its daily operations. Since independence, its budget, together with other smaller departments such as the Electoral Commission, has always been part of the budget of the Office of the State President. Once parliament has approved the budget of the Office of the State President, part of this budget will be allocated to the judiciary. However, this situation compromises the independence of the judiciary. The judiciary has also received off-the-books funds for training staff and conducting of workshops for members of the judiciary from donor agencies and private companies, such as Irish University, to hold training workshops for its staff and P100,

000 from Debswana Mining for the purchase of books for the High Court library. Although the Chief Justice indicated that such funding will not compromise the independence of the judiciary, one interviewee graphically said that “The Debswana donation may be problematic in view of the current on-going CKGR case against the government and Debswana Union cases against Debswana Mining Co. These funds should be given via the government.”³⁷ Clearly, these were two high profile cases where there could be conflict of interest.

There is also the issue of backlog of cases in the judiciary. This has been a concern in the department for a very long time and shows that there is, indeed, serious lack of resources, especially magistrates and judges, in the department to dispose of cases speedily. One way of trying to resolve the problem has been the employment of acting magistrates. However, this is only a stop-gap measure and the problem is yet to be fully resolved for the long term.

Accountability

Another issue that arises is that of judicial accountability. The judiciary should be accountable to the public for its actions and decisions, although there is no law which calls for the judiciary to be accountable. However, it is guided by the common law ethical standards which require the judiciary to be professional, fair, independent and impartial. In one of his speeches during the opening of the legal year, the Chief Justice, His Lordship Julian Nganunu, underscored the need for judicial accountability by applying its mind to duty, deciding cases in public and expeditiously, which is a major issue in the judiciary, lest the public loses confidence in the administration of justice. At the Magistrates Courts level, the Magistrates submit monthly returns of the cases they have decided for a particular month, which is some form of accountability.

Integrity Mechanisms

There are common law rules that regulate judicial integrity and ensure professionalism and honour in the system. One such rule is recusal. In cases of conflict of interest in any particular case arising either from pecuniary or proprietary interest on the part of the presiding officer, the rule requires that the presiding officer should recuse himself from the case due to a likelihood of bias. This happens in practice³⁸. Further, members of the judiciary are generally not expected to accept gifts and hospitality, especially from parties or their friends and relatives to the case before them, because they are likely to compromise their independence. However, there is no law that prohibits this. Generally, members of the judiciary are not expected to accept any employment after they served as judges. This may also compromise their independence and impartiality, where parties to any dispute may want to solicit for the judge’s leverages in their favour. It is for these reasons that judges should be adequately remunerated and given better retirement packages. Judges are not legally required to disclose their assets or property. Their lifestyle is not monitored.

Transparency

The judiciary is expected to be transparent and be open so as to instil public confidence in the administration of justice. By and large, the judiciary in Botswana has been transparent. Cases are heard in public. They are also reported both in official law reports

and the media, except where it is *sub judice*. The office of the Registrar and Master of the High Court has in the past granted, and continues to give, newspaper interviews, exhibits at the Gaborone International Trade Fair and conducts radio programmes on judicial matters. This ensures that justice is brought to the people and the public is informed about various programmes and activities undertaken by the judiciary.

Complaints/Enforcement Mechanisms

There is no law on whistle blowing on the misbehaviour of members of the judiciary. Misconduct by judges is not reported to the authorities, hence, no judicial officer has ever been prosecuted for corruption and related practices. Further, there are no rules for the protection of witnesses in corruption cases.

Importantly, in Botswana, although individuals have the right to legal counsel³⁹, there is no legal aid system to assist indigent litigants. However, there are the University of Botswana Legal Clinic and Ditshwanelo, which assist indigent litigants. They do not, however, have adequate funding to render a comprehensive legal assistance programme to the people on a large scale.

Relationship to Other Pillars

The law guarantees the independence of the judiciary from organs such as the army, police, media, Executive, parliament and civil society. These organs do not interfere in the daily judicial activities of the judiciary. This independence has ensured some measure of respect for the judiciary. In fact, both parliament and the Executive have implemented the decisions of the judiciary. By and large, the working relationship between the judiciary and other state pillars, including the media and civil society, has been good. There are no reported cases of acrimony between these pillars and the judiciary.

Recommendations

- The appointment of the members of the judiciary should be made more transparent and by autonomous and non-partisan bodies.
- The JSC should be re-constituted so as to reduce government domination in its composition.
- The judiciary should have its own separate budget that is detached from the Office of the President.
- The judiciary should be exposed through training to enable them to deal effectively with new forms of corruption, especially non-official corruption.
- The judiciary should not directly receive off-the-books funding. The funding should be channelled through the government and later be designated to the judiciary as part of its regular budget.
- The judiciary should develop a code of conduct for its members regulating issues such as judicial ethical behaviour, both in and out of court, acceptance of post-judicial employment and gifts, and any conduct that may undermine the whole administration of justice in the country.
- There should be provision for legal aid system within the general administration of justice.

Civil Service/Public Sector Agencies

Role of Institution as a Pillar

The role of the Public Service in Botswana is to implement government policies, to provide public services, to draft government policies, laws and programmes, to provide public education, to assess tenders and recommend winners, to employ, train and promote civil servants, to provide secretarial services to cabinet and parliament, to collect taxes, to draft development plans, to prepare government budgets, and so on. The operations of government heavily rely on the Public Service.

Structures/Resources

At the apex of the Public Service is the Permanent Secretary to the President (PSP)⁴⁰. The PSP has power to make rules and regulations or give instructions for controlling the conduct of the Public Service and conditions of service of the Public Service⁴¹. In the exercise of powers and duties the PSP is subject, nonetheless, to the general directions of the President⁴². The power to appoint, remove or exercise disciplinary control over public officers at the level of Director or Permanent Secretary, lies with the PSP⁴³.

Officers below the position of Director are subject to the supervision and direction of the Director of Public Service Management (DPSM)⁴⁴. On the other hand, the role of Cabinet Ministers heading different ministries is a supervisory one only. Although subject to the directions and control of the Minister for the supervision of their Ministries⁴⁵, Permanent Secretaries remain administratively accountable to the public for the performance of their Ministries. Permanent Secretaries ultimately report to the PSP who has the overall supervisory powers and responsibility for how the Public Service functions. Permanent Secretaries, on the other hand, have supervisory functions over their deputies, assistants and directors. Collectively, they constitute the ministry management. The exercise of power in all ministries is vertical rather than horizontal. Instructions come from the top and go downwards. Dispute resolution processes also follow this vertical process upwards. Appeals against dismissal may either be directed to permanent secretaries, the PSP, or the Public Service Commission.

The government's share of employment has been dwindling steadily. The Botswana Government adopted a deliberate policy of curtailing the expansion of the Public Service, freezing the creation of new posts in the Public Service and non-replacement of retiring officers. While technological developments could offset the non-expansion of the Public Service, computerisation (particularly in administrative functions and licensing) has been slow in the Public Service. This means that officers on posts carry a heavier workload to meet the demands of a larger population.

Accountability

There exists a Public Service Commission to whom public servants can appeal to for redress. In terms of Section 111 of the Constitution of Botswana; "Any public officer, other than a member of the Botswana Police Force or the Prison Service, who has been removed from office or subjected to any punishment by the exercise of any powers conferred on any person under the provisions of Section 110 of this Constitution, may appeal to the Public Service Commission who may dismiss such appeal or allow it wholly or in part". In addition, an aggrieved public officer may directly approach the High Court

for redress. In contrast to a direct approach to the High Court, the other avenues are inexpensive and, therefore, accessible to all officers. While the High Court is usually reluctant to order a reinstatement of an employee, the Public Service Commission is usually able to do so. Thus, there are effective accountability checks on the Public Service.

Integrity Mechanisms

The General Orders contain elaborate provisions which attempt to deal with conflict of interests. For instance, paragraph 39.3 provides as follows; “An officer may not, in his private capacity, be a director or manager of a company, but may hold a minority of shares in a public or private company carrying on non-exempt activities, provided that he has fully paid for such shares and, in the case of a private company, he has notified the Director through his Permanent Secretary”. Although public servants are expected to declare their business interests, such declarations are not registered and remain *ad hoc*. There are also no audits done to verify the information supplied. Too much faith is placed on officers to make unprompted declarations of their business interests. Given that issues of conflict of interest and corruption may be difficult to detect, one way of dealing with it is to criminalise “unexplained lifestyles”.

Transparency

The principle of transparency dictates that members of the public are entitled to have access to non-confidential information on the operation and activities of the Public Service⁴⁶. On the other hand, the principle does not entitle “Public Officers to breach their normal duty of confidentiality under the Public Service Act, nor does it entitle members of the public to have access to private information concerning others which is to be found in Public Service files”⁴⁷. This is aimed at balancing access to information and protection of confidential information. While public servants make visits to different areas of the country, sharing government information with the public, the private media, on the other hand, feels constrained by the excessive secrecy of the government system. The system is really designed to ensure that government has control over what information to share and not to share, doling it out piecemeal as it wishes, and not in the interest of promoting access to information.

Promotion issues expose the Public Service to charges of secrecy and unfairness. Because promotions are not simply dependant on one’s academic qualifications, competence, efficiency and length of service⁴⁸, but are intractably tied to the recommendations made by one’s immediate supervisors, an unhealthy relationship between the parties may lead to either suspicions of victimisation or favouritism. Annual Staff Performance Appraisals done in terms of the General Orders⁴⁹ do not always offer the necessary safeguards as the supervisor’s assessment is not normally externalised. The recent case of *Bokhabe Motlhala v Attorney General* provides a classical illustration in this regard.

To guard against victimisation, particularly on issues of promotion, lessons may be drawn from the Botswana Police Service. To be considered for promotion, Police Officers from the rank of constable to inspector are subjected to an internal police examination. While the passing of the examination does not in itself guarantee promotion, it has been easier

for officers to accept the process as a legitimate way of effecting promotions. To curb uncertainties relating to promotions in the Public Service, public officers could, in addition to other requirements, be subjected to Public Service promotion examinations which would constitute part of the formal appraisal in determining one's suitability to promotion.

Complaints/Enforcement Mechanisms

The Public Service has benefited from the creation of the Ombudsperson Office in 1997. Public servants can lodge their complaints with it over perceived injustice or complain against maladministration in the Public Service⁵⁰. The PSP and the President often enforce the recommendations of the Ombudsperson that affect public servants. However, the intervention of the Office of President in matters affecting or relating to other government ministries or departments has created shimmering tensions and resentment. Although helpless to do anything about it, privately, many government departments see this intervention as an unlawful usurpation of power. Members of the public, however, see the Office of the President as their only hope in dealing with "inflated egos and petty jealousies" in the Public Service⁵¹.

Relationship to Other Pillars

The Public Service relates closely with the Public Accounts Committee of Parliament, whose principal functions are outlined in Article 95.3 of the Standing Orders, to include the duty to examine after the end of each financial year;

- (i) the accounts and statements prepared and signed by the Accountant General in accordance with the provisions of the Financial and Audit Act
- (ii) the accounts prepared and signed in accordance with the provision of the Finance and Audit Act, by any officer (other than the Accountant General) who is by virtue of any law responsible for the administration of any Special Fund
- (iii) the report of the Auditor-General on the accounts specified in (i) and (ii), and to report the results of such examination to the National Assembly
- (iv) the accounts of every statutory body which are required by any written law be laid before the National Assembly
- (v) such other accounts laid before the Assembly as may be referred to it by the Assembly, and report the result of such examinations to the Assembly.

Thus, the Accounts Committee of parliament reviews audits of government ministries. The Public Accounts Committee has power to hold public hearings and to summon and quiz accounting officers on expenditures in their respective departments. Through such hearings, the Committee may expose incidences of corruption in the Public Service. Officers who fail to adequately account for funds in their trust may either be prosecuted for corruption or be surcharged.

In summary, the structure of the Public Service connects it to the Executive through ministers, PSP and the President. On the other hand, there are rules meant to promote transparency and institutions to enforce accountability in the Public Service. Furthermore, rules of integrity are also enforced.

Recommendations

- | |
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| ➤ There should be a register of assets for public servants. |
|---|

- More objectivity should be formulated and introduced to enhance credible promotion of civil servants.

Law Enforcement Agencies

Role of Institution as a Pillar

The framework for police accountability also includes the Ombudsperson (Public Prosecutor), Attorney General Chamber, and the public (see figure 1 below). Prosecution of bigamy and unnatural offences is handled by the police with consent from the Attorney General. The Police public prosecutors (who are appointed by the Divisional Commanders) are independent from Government interference, but report to Divisional Commanders who in turn report to the Commissioner of BPS. The Police public prosecutors are representatives of the Attorney General, who delegates duties to them through Section 13 of the Criminal Procedure and Evidence Act. The Sergeant and the ranks above are the only officers who can prosecute. The Ombudsperson handles complaints of corruption, and can investigate allegations of maladministration within the police services, which are not under police investigation. During the year 2006, for example, there were six cases of corruption within the prosecution agencies vis-à-vis 11 prosecutions for corruption within the BPS in 2005.

Structures/Resources

The hierarchical structure of BPS comprises the Commissioner of Police, three Deputy Commissioners (Operations, Support Services, and Security Intelligence Services), 12 units of; Special Support Group (SSG), Criminal and Investigation Division (CID), 3 Divisions (North, South-Central and South), Forensic Science Services, Traffic, Training, Transport and Telecommunication Branch (TTB), Security Intelligence Services (SIS), Performance Management System (PMS) and Departmental Management Services (DMS). The Commissioner of Police is appointed by the State President and his three deputies are appointed by the Permanent Secretary to the State President after consultation with the Commissioner of Botswana Police Service (Botswana Police Act Section 3, 8a). It, therefore, follows that the Commissioner is accountable to the State President and to the Minister of Presidential Affairs and Public Administration, while his deputies account to him.

All the police officers from the rank of Assistant Commissioner are appointed by the Commissioner of Police. These include Directors, Divisional Commanders, and Officer Commanding, Station Commanders as well as the rest of the police personnel. Presently, the staffing of Botswana Police Service is 6226, comprised of 81.9 percent males, with the rest being females.

Accountability

There are a number of ways in which the BPS is held accountable. This includes oversight mechanisms which are internal and external (see figure 1). The main oversight of the BPS is the Constitution of Botswana, the Botswana Police Act and the Criminal Procedure Act. The Botswana Police Act Section 21 outlines the kind of offences and disciplinary actions to be taken on police officers who commit such offences. Since 2001, nine (9) police officers have been prosecuted; seven were convicted and dismissed while two were discharged by the courts and reinstated.

Other internal accountability mechanisms include the police complaint body, which is the Police Council. The Police Council considers complaints made against the police, such as

disciplinary matters within BPS (Botswana Police Act Section 64:1). The police officers are entitled to appeal to the High Court if they are not happy with the ruling of the Police Council. The present Police Council comprises four members from the public (including ex-members of BPS) and one member from BPS. Members of the Police Council are appointed by the Executive (Commissioner, and his deputies), and Advisory council of the BPS. There is, however, no independent unit within the police service which investigates and prosecutes corruption and crime cases amongst the police officers.

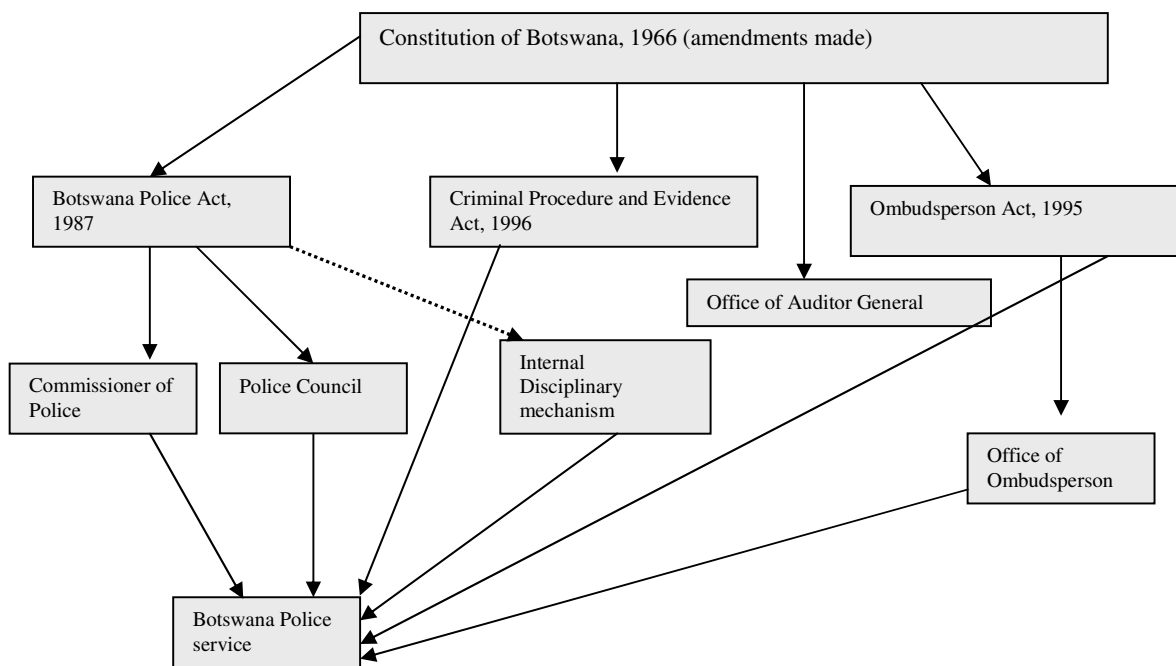


Figure 1: Structure of Oversight Mechanisms for the Accountability of the Botswana National Police Service

Source: http://www.policeaccountability.co.za/File_Uploads/docs/File_Download.asp

Integrity Mechanisms

The BPS has expressed its wish to the Directorate of Public Service Management (DPSM) to enhance the Police Council and to expand its mandate to deal with other issues, such as the welfare, and performance issues within BPS. BPS has also proposed to DPSM to be given two more divisions and three more districts to the current setup, in order to ensure improved service to the nation. However, there are no clear rules on conflict of interest for the police. What are in existence are broad general statements, like putting the force into disrepute. Examples are not given to clearly explain what these broad statements mean as policy statements.

Transparency

The Botswana Police Service is supportive of scrutiny from external bodies, including the public, and is devoted to reinforcing formal partnerships at all levels of the society in their endeavour to developing solutions and addressing causes of crime in Botswana. Since, 1997 the BPS has gone through several transformations aimed at improving its internal and external oversight mechanisms, as well as execute its activities in the open and increase public confidence in the police force. Currently, the police service is implementing the second BPS Corporate Development Strategy (2003-2009) which comprises of measures which have formed part of attaining transparency, accountability and integrity within BPS. The BPS is subject to transparent budget management through annual audits by the Auditor General and internal auditing by the Finance department at the BPS headquarters.

There also exist measures on reporting expenditures and procurements by the various units within the police service. The Botswana Police Service budgetary processes are monitored and supervised by an Internal Finance Unit. In allocating the funds, the Finance Unit requests for the estimates of all police units and these will be allocated based on the total funds received from the Ministry of Finance and Development Planning for the period under consideration. The estimates are compiled every September for the following year. All the districts in the country have an accounting officer at the police stations to handle the finances, and they follow the financial instructions and procedures guidelines. The revenue collectors are appointed by Commissioner of Police and every Friday they have to report at Government revenue offices to submit funds collected, and get the books checked. The Finance Unit is accountable to the Commissioner of Police and submits its financial performance annually. For transparency, the Finance Unit also works with the Public Procurement and Asset Disposal Board (PPADB) and Ministerial tender bodies for expenses exceeding one million Pula.

Appointments and promotion within the BPS are based on merit. Both male and female police officers have to be competent to take on the roles and tasks assigned to them. Termination of appointment within the BPS is justifiable under the law⁵². The police officers and prosecutors are not required to disclose their assets, but an officer who is perceived to be living beyond his means and has accrued assets via corrupt means can be charged with Proceeds of Serious Act Crime CAP 08:03. Section 23 d (iv) shows that to some extent there is lifestyle monitoring in the police service in that a police officer who may be suspected of living beyond his/her means may be called upon by the Commissioner of Police to give a full and true statement of his financial position, and failure to do so results in a disciplinary charge of discreditable conduct.

Complaints/Enforcement Mechanisms

In handling complaints and enforcement mechanisms, BPS has an open-door policy whereby anyone can report to the Police acts of misconduct by police officers. The members of the public can also judge the BPS based on its values of customer focus, team work, honesty, confidentiality, impartiality, and respect for human rights, human resource and professionalism. Furthermore, BPS involves civilians through community policing activities such as stakeholders' conferences and crime prevention initiatives. The BPS have also set up toll-free numbers throughout the country for members of the public

to report domestic violence and crimes, and it has carried out public opinion surveys on perceptions of their service⁵³. This approach has helped to build a relationship, as well as trust and co-operation with the members of the public.

Relationship to Other Pillars

The BPS operates in collaboration with all the stakeholders; Government Ministries and departments, business community, non-governmental organizations (NGOs, and the public. The framework for police accountability, transparency and integrity includes the Ombudsperson, Attorney General Chamber, and members of the public. The National Criminal Justice consultative forum which began in 1997 is also one of the forums which bring all the law enforcement agencies in the country such as Administration of Justice, Botswana Police Service, Botswana Defence Force, DCEC, Local government, Law society to reflect on issues of national safety and security. This forum meets every three months, or as deemed necessary (if they are urgent matters to be attended to).

Recommendations

- The police service should be afforded more personnel and resources in order for them to carry out their mandate effectively.

Public Contracting System

Role of Institution as a Pillar

Public contracting, procurement and disposal in Botswana are governed by the Public Procurement and Asset Disposal Act, Cap 42:08 of the laws of Botswana. The Act established the Public Procurement and Disposal Board (PPADB) on 2nd July 2002. PPADB is charged with a primary mandate of management of effective public procurement asset disposal system. That is, all government procurement and disposal activities have to be performed through the PPADB, except the transactions for local authorities. The PPADB replaced the Central Tender Board (CTB) which was within the Ministry of Finance and Developing Planning. The CTB was said to have lacked capacity to cope with the volume and complexity of modern public contracting and, therefore, had to be replaced. Members of the PPADB are elected by the Minister of Finance and they are accountable to Government through him. The board consists of seven members; three full time members, three part time members and a full time Executive. The part time members are nominees of the associations of contractors, professional bodies and the private sector.

The tendering system is such that the procuring entity evaluates the bids and then makes recommendations to the PPADB which then adjudicates and approves or rejects the recommendation, or awards the contract to the most compliant bidder. All tender adverts have a closing date, and if the closing date passes without bidders, a re-advert is issued.

Structures/Resources

The PPADB effectively presides over the government development budget because the majority of significant projects, at least beyond P100 000, can only be effected after adjudication by PPADB. These projects include physical infrastructure (construction) ICT, vehicles and other services. For instance, the Botswana Budget speech for 2007/2008 recommended a development budget expenditure of P7.2 billion. Almost 90% of this fund would be disbursed through the tendering process presided over by the PPADB. It shows how significant the PPADB is in the economy of Botswana. The PPADB, as a central procurement agent for government, is funded by government to carry out its activities. It has a staff complement of about forty made up of various professionals to assist in the adjudication process. The PPADB activities are still highly manual and the forty-member board is required to handle all large tenders throughout the country. This indicates that the PPADB is overwhelmed with work and this prevents it from making thorough reviews of bids, which ultimately exposes it to litigation and suspicions of corruption.

Government has, however, put forward proposals to move the board towards electronic procurement. In the recent budget speech, government states that “The PPADB is also undertaking a pilot computerisation project for the registration of contractors in the works, services and supplies disciplines, for the Government and the Local Authorities”. This may not be the e-contracting as practised in countries such as Brazil, Canada, Chile, USA and Singapore, but it is the beginning of recognising the importance of computerisation in such transactions.

Privatisation has recently been on the agenda in Botswana. The role of the PPADB in this matter has been rather obscure. It is the Public Enterprise Evaluation and Privatisation Agency (PEEPA) which has been spearheading privatisation but even PEEPA has somewhat been overshadowed by the parent ministries in the privatisation exercise. Parliament does play a watchdog role in assessing whether PPADB has followed the Act in the execution of its functions.

Accountability

The PPADB reports directly to the Minister of Finance and Development Planning. The performance of the board, both in terms of functions and conduct, are monitored by the Minister. The Minister, as per the Act, can terminate (Section 15) membership of any member from the board. Other stakeholders such as contractors can sue the Board if they are not satisfied with its conduct or any other outcome as shall be shown below. The board regularly holds press or media briefings to update members of the public on its operations. The board also has an Independent Complaints Review Committee to resolve disputes. Members of this committee are appointed by the Minister and not by the board. That way some level of independence of the committee is assured.

Integrity Mechanisms

The legitimacy of PPADB as a public board is dependent on its credibility and integrity, both collectively and individually. Its members are required to uphold high standards of ethics and confidentiality in their adjudication duties. They are also required to declare their interests and have those registered with the board. This is to avoid any conflict of interest in their adjudication process. There is also a code of conduct for contractors to follow and this was emphasised by the Minister on the 5th February, 2007 budget speech “[...., the PPADB has also developed a Code of Conduct for contractors, which highlights the standard of business practice that registered contractors are expected to adhere to, with a view of deterring professional misconduct. The code of conduct helps to streamline the relationship between the main contractors and the sub-contractors.” If a member has vested and declared interest in a matter to be adjudicated upon, the member shall recuse themselves from the process and meeting. This is followed in practice. Members are also required not to become insolvent or bankrupt.

Transparency

Notwithstanding some moments in the short life of the PPADB indicating some shortcomings to the attainment of its values resulting in disputes and court cases, the PPADB is a transparent and accountable organisation with clear rules for upholding integrity.

The procurement rules and regulations are publicly available. Tenders are issued by the procuring government department or ministry and are published in the official Government Gazette on a weekly basis. Thus, information on tendering is disseminated without restriction. Where restricted tenders are to be made for strategic reasons, such tenders will be advertised as such. Any adjustments that are made to the tender bid or changes in such documentation will clearly be communicated directly to the bidders and through the Government Gazette. The law also requires that all bidding and participating contractors be registered with the PPADB and that they should continuously update their

profile. The tender results are publicly available and can be viewed at the PPADB offices or website.

Complaints/Enforcement Mechanisms

The PPADB, as per Section 10, Cap 42:08, is a “body corporate with a common seal, capable of suing or being sued in its own name.” This means if there are any disputed tender procedures or outcomes they can be settled by courts of law. There have been a number of such cases brought before the courts by aggrieved parties. There is also an Independent Complaints Review Committee. This committee seeks to resolve issues in-house, however if it does not succeed then cases may be taken to court for resolution, as shown in the example below.

AST BOTSWANA (PTY) LTD v THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BOARD AND OTHERS 2005 (1) BLR 504 (HC)

The applicant applied for an order reviewing and setting aside the award of a tender by the first respondent. The application was dismissed with costs.

RESEARCHED SOLUTIONS INTEGRATORS (PTY) LTD (FORMERLY KNOWN AS AST BOTSWANA (PTY) LTD v THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BOARD AND OTHERS 2005 (2) BLR 493 (HC)

In this instance, the decision of the first respondent to award to another respondent was hereby reviewed and set aside. The first respondent was ordered to award the aforesaid tender to the applicant. There are many such cases that demonstrate that contractors can seek recourse in the courts if they are aggrieved.

Relationship to Other Pillars

The public contracting system, through the PPADB, is a key component of the National Integrity System. The system disburses the national development fund, hence is a vital cog. Within the national system there is the Directorate of Corruption and Economic Crime. These organisations work closely together to stamp out crime in the contraction system. Though PPADB does not account directly to Parliament, members have the right to demand accountability and performance from this board. Members can summon the Minister through questions or motion to account for actions of the board. Besides, these development projects take place in the constituencies of members; as a result, the constituents will push the members to represent them fully on such important matters.

The PPADB is required to cooperate with other governmental structures. The Act establishing it states on Section 53(2) that ‘no public entity shall undertake any enquiry into alleged or actual breach in procurement or disposal process (excluding Oversight Agencies, the Botswana Police Service and Commissions of Enquiries) without the prior written concurrence and participation of the Board’. This recognises the importance of immediate cooperation with oversight agencies in the event that issues are to be investigated. The PPADB also recognises the importance of the media as a stakeholder in pursuit of its values. In that regard, the board regularly holds press conferences to update its stakeholders.

Recommendations

- Computerisation of handling bids should be speeded up to improve the capacity of the PPADB.
- For its credibility to remain intact, the PPADB should strive to reduce the number of court cases before it.
- Much of the cases are due to lack of understanding on the part of contractors and, therefore, education programmes, flyers, brochures and TV broadcasts might help in reducing court cases.
- The PPADB should be encouraged to work closely with other stakeholders, such as civil society, in order to fight corruption.

Ombudsperson

Role of Institution as a Pillar

The office of the Ombudsperson was established under the Ombudsperson Act No. 5 of 1995. Its mandate is to conduct investigations in accordance with the provisions of this Act. The major mandate of the Ombudsperson 'is to implement and administer the act with a view to preventing maladministration in connection with the affairs of Government'⁵⁴. The role of the Ombudsperson starts with investigation and ends with a recommendation on how to remedy the situation through implementation by the affected institutions. According to the Ombudsperson Act, the functions of the Ombudsperson are not to be directed or controlled by any other person, or authority, and no proceedings of the Ombudsperson shall be called in question in any court of law.

The Act states that the Ombudsperson is appointed by the President after consulting the leader of the opposition in the National Assembly and this has been followed on the last two occasions when such appointments had to be made. The appointment is based on merit and is done on a contract basis. The leadership of the Ombudsperson is supposed to be changed every four years once the contract expires in order to promote good governance and accord the office a diverse vision and leadership⁵⁵. However, the first Ombudsperson served two terms. He left office in 2006 when his second contract expired and after having served for eight years. The second Ombudsperson was appointed in 2006. This was an internal appointment as the current Ombudsperson had worked in the office of the Ombudsperson since 1998.

Structures/Resources

The office of the Ombudsperson has three major sections comprising the Legal Section, the Human Resource Management Section and the Support Staff Section. The office of the Ombudsperson has its head office in the south and a branch office in the northern part of the country. In addition, circuit investigations are held on a quarterly basis in order to promote access to the Ombudsperson by the under-privileged communities throughout the country⁵⁶. However, this system shows that the Ombudsperson does not have the capacity to be continuously present in the rural areas of the country, an indication of shortage of resources.

The Ombudsperson has a computerised case management system to facilitate data management and coordination. It has shortage of trained staff, particularly in the areas of law and experienced managers. Efforts are made to improve the quality and competencies of staff at the Ombudsperson through training and development programs, for example, post-graduate training in law and management, modernising government and change management. The budgetary process followed by the Ombudsperson is similar to that followed by other government ministries and independent departments. Botswana has a five-year National Development Plan. The Ministry of Finance and Development Planning is responsible for allocating funds according to ceilings to all government ministries and departments including the Ombudsperson. Budgetary allocations to the Ombudsperson are utilised by the department according to their planned activities and programs. The Ombudsperson does not receive funding from any other source other than government budgetary allocations.

Accountability

The Ombudsperson is accountable to the President, National Assembly and the public. Accountability to Parliament stems from the requirement by law that the Ombudsperson should submit to the President detailed annual reports regarding its roles, remedial action and recommendations for debate by Parliament. According to Section 9 (2) of the Ombudsperson Act No. 5 of 1995, the Ombudsperson reports to the President and the National Assembly. The idea behind this arrangement is to ensure transparency, accountability and to evaluate government ministries and departments' adherence to Ombudsperson's remedial recommendations.

Integrity Mechanisms

Regarding issues of conflict of interest, the office of the Ombudsperson follows provisions and guidelines contained in the Public Service Charter, Public Service Act and the General Orders.⁵⁷ The provisions state that all gifts and items of hospitality should be declared to the public officer's immediate supervisor and the supervisor will decide regarding what to do with such gifts. For example, the officer receiving the gifts might be required to return gifts to the owner or display such gifts in the boardroom. The provisions are meant to promote transparency and good governance, as well as to ensure that public officers' decisions are not influenced by gifts or items of hospitality. There are currently no restrictions regarding post-employment of officers from the office of the Ombudsperson. For example, officers resigning from the Ombudsperson are not required to sign any documents regarding restrictions on future employment.

Transparency

The office of the Ombudsperson communicates with the public regarding its roles and activities through the public media, such as the national radio, television, quarterly newsletter and the annual report. The public can ask their representatives in local councils or Members of Parliament to request the Ombudsperson to account through questions/sessions.

Complaints/Enforcement Mechanisms

The office of the Ombudsperson interacts with all government ministries and departments when attending to complaints from the public. The type of complaints lodged with the Ombudsperson entails matters of maladministration relating to neglect, inattention, delay, incompetence inaptitude, adversity, turpitude and arbitrariness⁵⁸. The main issues outlined under maladministration include, 'Rudeness; unwillingness to treat complainant as a person with rights; knowingly giving advise which is misleading or inadequate; offering no redress whether because of colour, sex or any other grounds; and faulty procedures'.

Some people doubted the worth of the Ombudsperson even before it was created. They were particularly concerned that the Act establishing it authorised the President to single-handedly appoint the Ombudsperson, hence the general apprehension on impartiality. However, the Ombudsperson has handled high profile cases, including recommending against Vice President Khama who flies army helicopters. It should be noted that the non-implementation of its recommendations comes from the President who insisted that he

authorised the vice President to fly army helicopters, and not because the Ombudsperson is a toothless institution.

Relationship to Other Pillars

The major government institutions that the Ombudsperson interacts with the most are the Ministry of Presidential Affairs and Public Administration, Office of the President and Parliament. The Ombudsperson interacts with the President and Parliament when reporting its functions, recommendations and remedial actions for debate. The office of the Ombudsperson also works closely with other government institutions such as the Directorate of Public Service Management (DPSM) for manpower and other organizational needs and the Botswana Productivity Centre (BNPC), for productivity improvement needs. The Ombudsperson works closely with the Directorate on Corruption and Economic Crime (DCEC), the Police department, Prisons, and the Vice President in terms of sharing information regarding cases under investigation. The partnership is aimed at reducing duplication of efforts. On the international scene, the office of the Ombudsperson collaborates with other Ombudspersons such as the African Ombudsperson. The Ombudsperson in Botswana is recognised internationally for success in areas of good leadership qualities, staff participation, creativity and innovation. The former Ombudsperson served as President of the African Ombudsperson Association and was Vice President of the International Ombudsperson (Ombudsperson 2003/04).

Recommendations

- The Ombudsperson should be allocated more resources to maintain a continuous presence throughout the whole country.
- There should be a Parliamentary Committee to review and enforce the implementation of the recommendations of the Ombudsperson.
- The Ombudsperson should be granted adequate enforcement power in order to complement its efforts at fulfilling its key role of timeously resolving public complaints.

Anti-Corruption Agencies

Role of Institution as a Pillar

Anti-corruption agencies constitute one of the core institutions in the fight against corruption. The Botswana anti-corruption agency (DCEC) was established in September 1994 subsequent to the enactment of the Corruption and Economic Crime Act in July 1994. The act conferred powers on the DCEC to make comprehensive corruption prevention and to investigate allegations of corruption. A second legislation in 2000 (Amendment of the Proceeds of Serious Crimes Act) mandated the DCEC to act on offences involving money laundering. Furthermore, the Banking Act also empowers it to act on issues of money laundering. Thus DCEC is a government anti-corruption agency with its tasks outlined in the Act.

There is currently no clear distinction between corruption and maladministration. The current Act does not attempt to make a definitive distinction between *corruption* and *maladministration*. For instance, in 2005 a mere 33% of all cases reported to the directorate were referred for investigation while 43% were referred to other bodies like Police and Ombudsperson because they were not corruption related. The inability by the public to distinguish between cases of corruption from those of maladministration is therefore serious and requires concerted public education

Structures/Resources

From a humble beginning, with a complement of 49 staff members mostly seconded from various departments, today the DCEC boasts of a staff complement of 150 people. DCEC is fully funded by the government. Its budget has grown by more than three-fold from P5million in 1995/96 to P16, 627,600 in 2006⁵⁹ The President appoints its director while the Directorate of Public Service Management (DPSM), in conjunction with the Permanent Secretary, appoints all its other top management positions. The Director subsequently appoints all other lower positions within the Directorate.

Accountability

The directorate has a clear reporting line in that the director reports to the Office of the President. This procedure undermines the autonomy of the institution⁶⁰. Information pertaining to the day-to-day activities of the Directorate, in the form of flyers, posters and supporting acts, is easily available to all interested members of the public. The production of yearly reports details how the directorate spends public funds. These reports have been timely submitted to the Office of the President en-route to Parliament and these are readily accessible to the public at no cost.

Integrity Mechanisms

Corruption and Economic Crime Act Section 31 alludes that a person who has conflict of interest must declare in writing to the board and should not be allowed to take part in the adjudication or evaluation, unless granted permission to do so. In addition, employees of DCEC are still civil servants, hence are governed by the same regulations as other members of the civil service. Thus the orders governing the public officers on gifts and hospitality are applicable to them as well.

Botswana continues to be ranked amongst countries with low corruption in Africa⁶¹. Other independent research institutes, like Afrobarometer⁶² have revealed the same trend, reporting perceptions of corruption as low as 10% amongst the population surveyed. Perhaps this can be attributed to the high integrity pillar in the form of the anti-corruption agency.

Transparency

The DCEC has unwavering support for the Media Institute of Southern Africa (MISA) which happens to be very vocal on the issue of declaration of assets by political leaders. It firmly believes that if the political leaders can reveal to the public their assets and prove that these were acquired through legitimate avenues, then this may cascade down to the ordinary citizen, resulting in reduction in corrupt practices. Actually the DCEC recognize and acknowledge the media's role in their investigating and exposing corrupt practices in the country.

The Directorate holds regular workshops through its public education sector. These are meant to sensitize the public on issues of corruption. The Directorate is still developing a website but in the meantime it can be accessed through the government website, although it is not that much useful as the information contained is very limited. Also, the Newsletter for the Directorate still circulates in-house; this does not offer the general public sufficient information about the Directorate.

To enhance transparency, the Directorate established an internal vetting process by instituting an internal board that meets on a weekly basis to classify and approve reported cases for investigation. The board is composed of a management team of DCEC and is chaired by the Director. The decision thereof on which cases to investigate is not the sole prerogative of the Director but a collective task. Thus, there are a number of cases where the Directorate has intervened, including current investigations on Debswana, Gaborone City Council vs. Daisy Loo and State vs. Kemokgatla. These cases involved prominent companies and senior government officials and all these have been investigated without undue influence from interested parties.

Complaints/Enforcement Mechanisms

The DCEC adopted three-pronged strategies: *Corruption investigation*: this is a punitive measure intended to inflict pain on those who are corrupt. In as much as DCEC is aided in its functionality by existence of the Corruption and Economic Crime Act, it is also governed by an array of other government acts. These include, among others, the Criminal Procedure and Evidence Act, Proceeds of Serious Crime Act, the Mutual Assistance in Criminal Matters Act, the Penal Code, the Public Service's Act, the Public Procurement and Asset Disposal Act and must also abide by the judges' rules. The aforementioned legislation provides an enabling environment for combating corruption and economic crime in Botswana⁶³. *Prevention*: another form of investigation but not at individual level. Instead, it seeks to interrogate the system by streamlining management procedure system. Recall that the corruptor explores opportunities that exist in the system and take advantage of those opportunities. This is to make it difficult for corruption to take root. This is accomplished by training managerial cadres from different organisations in corruption prevention techniques. *Public education*: this seeks to enlist

public support with an ultimate goal of changing the mindset of the public towards corruption and economic crime. There are regular consultations with the public to sensitize them on understanding what constitute corruption, reporting process, etc.

Relationship to Other Pillars

It is clear that DCEC, as an anti corruption agency, must have a symbiotic relationship with other pillars for its success in combating corruption and money laundering. The DCEC has forged a close working relationship with Bank of Botswana in the fight against money laundering hinged on the Banking Act, which requires all money laundering cases to be reported to the Directorate. The Directorate, through its prevention sector, has drafted a code of conduct for politicians, public servants and political parties funding because it is in these sectors that corruption may permeate. The code of conduct was prepared with input from all stakeholders.

Recommendations

- The independence of the DCEC should be expressly guaranteed. The current enabling legislation does not categorically state the independence of the Director of DCEC the way the Ombudsperson's Act asserts the position of Ombudsperson, a sister directorate with similar standing.
- A clear distinction should be made between corruption and maladministration, something which the current Act fails to do.
- More stringent punitive measures should be enforced against corrupt people. Presently, the punishment meted on the transgressors is thought to be inadequate to be deterrent enough. Section 36 of the Act provides that a person guilty of any of the above offences is liable to imprisonment for a term not exceeding 10 years or a fine of half a million Pula. There is a call henceforth, that stiffer penalties should be imposed. Furthermore, other Acts like Section 3 of Proceeds of Serious Crime Act should be used in conjunction with the Corruption and Economic Crime Act to have proceeds of the offender confiscated.

Media

Role of Institution as a Pillar

The right to freedom of expression is expressly guaranteed by the Constitution under Section 12 (1). Media freedom however is subsumed under the guarantee of freedom of expression as has been affirmed by the High Court, which has held that media freedom is an aspect of freedom of expression.⁶⁴ The guarantee of the freedoms of expression and media under the Constitution is regulated by Section 12 (2) which provides for permissible restrictions on the exercise of these freedoms. It provides that restrictions aimed at protecting the following interests may be imposed: defence; public security; public order; public morality and public health. In addition, restrictions may also be imposed on freedom of expression and media freedom to protect the reputations and rights of others; prevent disclosure of information disclosed in confidence; maintain the authority and independence of the courts; and regulation of the technical administration of broadcasting. Restrictions on the freedoms of expression and media must satisfy the following two conditions: first, a restriction must be 'contained in or done under the authority of any law' and secondly, it 'must be shown to be reasonably justifiable in a democratic society'.

In the private media, journalists generally enjoy editorial freedom.⁶⁵ Most private media outlets have editorial charters that clarify the relationship between the editor and the board of directors thereby ensuring editorial independence. However, there have been instances of interference with editorial independence by some owners. Some journalists have had to quit their jobs due to interferences by owners.⁶⁶ There is no direct censorship of the private media by the state. But there is a considerably high level of self-censorship in the sector. This is mainly due to two factors. First, there are a number of laws in force in the country that regulate the media that are either couched in vague terms or give very wide discretionary powers to government officials or impose harsh penalties on the media when they fall foul of these laws.⁶⁷ This induces self-censorship on the media. The second factor is economic.

Since its emergence in the 1980s, the private media in Botswana has generally played its watchdog role satisfactorily. By resorting to investigative journalism, it has in the past exposed corruption in government, mismanagement, human rights abuses and other miscarriages of justice.⁶⁸ Investigative reporting in the media today is, however, lacking. A number of reasons are attributed to this decline. One of the reasons is that experienced journalists have been promoted to managerial positions and are no longer writing, while others tend to leave the profession for greener pastures in the public relations field.⁶⁹ Another reason is that the increased competition and commercialisation in the sector also discourages the media to cover stories that may rub their major advertisers the wrong way, thereby risking the loss of their patronage.

Resources/Structures

There is one state-owned daily newspaper, the *Daily News*. The paper reports mainly on development issues, such as agriculture, economics, education, environment, health and national and rural development. It is published in English and Setswana. There are over a dozen private newspapers in the country.⁷⁰ Only one of these papers, *Mmegi*, is a daily. All the papers are published in English. With the exception of *Mmegi*, *Monitor*, *Guardian*

and *Midweek Sun*, which are owned by the same or associated companies,⁷¹ the papers are owned by different companies. While one may argue that there is some diversity in the ownership of newspapers in the country, it is important to observe that the four associated papers are the oldest and well established and thus command wide readership in the country. There is no political control or ownership of the print media even though the law does not forbid it. All the publications, except, the *Sunday Standard*, are tabloids. The latter is the only broadsheet. Newspapers in the country generally lack diversity in both editorial style and content. News content in most of the papers is largely the same. Furthermore, the content and distribution of these publications is biased in favour of the more affluent urban audience.

The broadcasting industry is dominated by the state-owned broadcasters. In the radio broadcast sector, there are two national radio stations owned by the state and two privately-owned regional stations. While the *Broadcasting Act, 1998*⁷² empowers the National Broadcasting Board (NBB) to issue three types of broadcasting licences: public, private and community broadcasters, there is only one public broadcaster, two private broadcasters and no community broadcaster. This clearly demonstrates the lack of diversity both in terms of ownership and content in the sector. The situation in the television broadcast sector is the same. It is dominated by the state-owned *Botswana Television*, which was launched in July 2000. There is no political control or ownership of the broadcast media. The *Broadcasting Act, 1998* and *Broadcasting Regulations, 2004* do not prohibit ownership or control of broadcasting entities by political parties. However, broadcasters are prohibited from broadcasting programmes that have been sponsored by political parties.⁷³

The private media relies heavily on advertising revenue. It therefore has to ensure that its reportage does not antagonize major advertisers, which may result in the loss of their patronage. The vulnerability of the industry is demonstrated by the government's decision in March 2001 to withdraw advertising from the *Guardian* and *Midweek Sun* newspapers. The decision was punitive and intended to put pressure on the two papers to conform to a reportage that falls within what the government considered to be the parameters of acceptable editorial freedom. Although the government's decision was later declared unlawful by the High Court, the papers maintain that they are no longer getting the same amount of advertisements from the public sector as before.⁷⁴ It is not only the public sector that applies undue pressure on the private media by threatening to withdraw adverts, but the private sector too. There have been instances where some private companies have withdrawn advertising from certain media outlets because they thought such outlets had not reported on them in good light.⁷⁵

Accountability

Accountability in the media is specifically addressed in the Press Council's *Code of Ethics* and *Broadcasting Regulations (2004)* which provides that media practitioners must maintain the highest professional and ethical standards and disseminate accurate and balanced information.⁷⁶ Furthermore, it spells out some journalistic practices that would promote accountability in the media. The *Broadcasting Regulations (2004)* also impose some obligations on broadcasters to instil a measure of accountability in their reportage. Like the *Code of Ethics*, it requires that broadcasters shall report news and

information accurately, fairly and impartially.⁷⁷ It further requires broadcasters to give a right of reply to persons who have been criticised in a controversial programme concerning political, industrial or other issues of public interest.⁷⁸ Even though there are some measures in place to promote accountability in the media, there is a general feeling that the level of accountability in the media is low. It is argued that the media does not do enough to get the other side of the story and there is little analysis and in-depth coverage of issues of national interest.⁷⁹

Integrity Mechanisms

There are no licensing requirements for the printed press. Broadcast media must be licensed by the NBB under the *Broadcasting Act, 1998*.⁸⁰ There are no rules that specifically address political advertising in the news media, rather, all the regulations in place address advertising in general. The Botswana Press Council *Code of Ethics* prohibits the media from distorting or suppressing information because of pressure or influence from advertisers who have corporate, political or advocacy interest in the media institution concerned.⁸¹ Similarly, the *Broadcasting Regulations, 2004* require broadcasters to ensure fairness in advertising by ensuring that they do not unreasonably discriminate against or in favour of any advertiser.⁸²

Transparency

There is no other law in force in the country, apart from the Constitution, that guarantees the freedoms of expression and media. The government generally respects the freedoms of expression and media. Despite some occasional harsh criticisms of the media by government officials, a form of co-existence between the government and the media seems to have been achieved in the country. Botswana has maintained an environment where the freedoms of expression and media are freely exercised.⁸³ The Constitution guarantees a limited right of access to information. Section 12 (1) provides for 'freedom to receive information without interference'. This provision prohibits the government from restricting a person from receiving information that others wish or are willing to impart to him/her, but does not impose positive obligations on the government to gather and disseminate information.

Despite frequent interferences with their editorial freedom by government ministers, the public media has always enjoyed some freedom to criticise government policies, furnishing airtime and coverage to members of functioning opposition parties.⁸⁴ According to a media monitoring report by MISA-Botswana on the general election held in 2004, the public media played its role very well by providing balanced and fair coverage of all contesting political parties.⁸⁵ The report further found that the public media gave all political parties almost equal chance of coverage. Although statistically it appeared that the ruling party received the largest share of media coverage, it was not due to favouritism or its control over the public media. This was due to the fact that it had more candidates contesting the elections and was facing criticism from all six opposition parties and therefore had to defend itself.⁸⁶ The private media also gives free and proportional coverage of political parties in the country. The coverage, perhaps not surprisingly, shows some bias against the ruling party. This, however, does not mean that the private media does not carry critical articles on the opposition.

Complaints/Enforcement Mechanisms

There are laws and regulations in force that make access to official information very difficult. The *Public Service Act*⁸⁷ prohibits public servants from disclosing any information or the contents of any document that has come to their notice in the course of their duties unless authorised by the minister in writing.⁸⁸ In addition, the *General Orders* require all public servants, upon appointment, to sign a declaration acknowledging their obligations under the *National Security Act*.⁸⁹ In terms of Section 4 (1) of this Act, it is unlawful for any person who has obtained official information as a result of his/her present or former position as a public servant to reveal that information without authorisation. This prohibition is enforced by the possibility of up to thirty years imprisonment. In addition, the editorial independence of state-owned media is not guaranteed by law. The government has made it clear that it would not allow state-owned media to operate like the private media because they are vehicles through which it communicates with the people that brought it to power. Consequently, there are many instances of interference with the editorial independence of state-owned media by government ministers. For example, in November 2003, Cabinet instructed the then Minister of Communications, Science and Technology to suspend a *Radio Botswana* morning show, *Masa-a-sele*, saying the programme was not accountable.⁹⁰ And in 2004, the same Minister ordered the Department of Broadcasting Services to submit its new programmes or reviews of existing programmes to him for ‘consultation and consensus’.⁹¹

There are no recorded incidents of physical harm to media practitioners investigating cases of corruption in the last five years. But at least two incidents of assault per year on journalists have been recorded in the last three years. People who were not happy with the stories that the journalists have written about them carried out these assaults, mainly football players and suspects in criminal cases.

Relationship to Other Pillars

In a country that is characterised by an overly secretive Public Service, media-unfriendly laws and a de facto one-party state, the media is a key part in Botswana’s national integrity system and have over the years reasonably played its role satisfactorily to ensure accountability. This has been the case despite that there is no law that gives media practitioners a right to keep their sources confidential.

Recommendations

- An ‘Access to Information’ law should be enacted in order to enhance the media’s role as a pillar of Botswana’s national integrity system.
- State-owned media should be guaranteed editorial independence in practice.
- There should be some form of public support for the private media to reduce their dependence on advertising revenue.
- A law that protects journalists’ confidential sources must be enacted.
- There should be more efforts to promote diversity in the broadcasting sector.

Civil Society

Role of Institution as a Pillar

Although Botswana has, since independence in 1966, made great strides in the provision of basic services, such as education and health, as well as in terms of general socio-economic development, civil society emerged, and still exists in the country, to strengthen the democratic process and to supplement state efforts in providing sustainable development and social services and programmes to the people. The main legislation that provides a basis for the existence and operation of Civil Society Organisations (CSOs) in Botswana is Article 13 (1) of the Constitution which guarantees individuals 'right to freedom of assembly and association'. Complementary to the Constitutional provision are the Companies Act which regulates the incorporation of companies, the Societies Act and the Trade Union and Employers Organisations Act. Botswana has also ratified a number of international conventions that facilitate the formation and operation of CSOs. These include the Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

CSOs are increasingly becoming actively involved in political issues, calling for government transparency, accountability and for inclusive socio-political processes in the country. Notable among these organisations are Emang Basadi Women's Association, the Ditshwanelo Centre for Human Rights, the Botswana Network on Ethics, Law and HIV/AIDS (BONELA) and the trade unions. As testimony to CSOs milestone achievements, Emang Basadi's advocacy efforts have contributed to the steady increase of women's representation in decision-making positions, including political office, senior management (in both public and the private sector) and in traditional male domains, such as chieftaincy and priesthood. Other achievements include the enactment of tougher laws against rape and the 2004 abolition of Marital Power Bill which abolished the common law rule that gave a husband power over his wife. Through the support of Ditshwanelo, the voices of vulnerable and marginalized groups, such as domestic workers and gays, lesbians and bisexuals, are being increasingly heard. Ditshwanelo was also an active player in the San indigenous peoples' demands for their rights to land and their traditional way of life. This conflict between the San and the Botswana government was eventually resolved in early 2007 when the High Court of Botswana ruled in favour of the San. BONELA, on the other hand, continues to provide legal aid to individuals who have been discriminated against based on their HIV status.

Structures/Resources

Despite its notable presence, paucity of comprehensive research on civil society in Botswana means that little is currently known about the precise size, composition and general dynamics of this sector in the country. What is perhaps known is that the sector has developed rapidly in size since the late 1980s and that, at the end of 1999, it was estimated to include 150 indigenous Non-Governmental Organisations (NGOs), around 50 Community Based Organisations, about 23 Trade Unions and a handful of business associations. CSOs in Botswana were traditionally funded by private sources and international donors. However, as the country's economy grew, donor funding began to decrease and this exacerbated when the country was classified as a middle-income a few years ago. Consequently, donor funding has become an extremely scarce resource and the government is increasingly becoming the main sponsor of non-political activities of

several CSOs, such as the Botswana National Youth Council and the Botswana Council of Non-Governmental Organisation, the umbrella body of NGOs in the country. Many of the civil society organisations that are engaged in HIV/AIDS related activities also receive their funds through the National AIDS Coordinating Agency - the government entity charged with coordinating and facilitating the nation's response to the HIV/AIDS epidemic.

This direct and indirect dependence on government for funding has the potential to severely compromise civil society's direct or public condemnation and attack on corruption, lack of transparency and lack of accountability, especially within government. As Olsen (1994:44)⁹² pointed out, CSOs may fear victimisation because if "they 'step too far out of line' government can easily reduce the flow of money or turn the tap off completely".

Accountability

To ensure accountability, CSOs generally have a requirement that the Board of Directors and the management call at least one general meeting a year where they update members of the organisation on its overall status. In particular, projects and activities undertaken in the preceding year and those that are planned for the following year are outlined and evaluated. Accountability, however, seems to be more pronounced in umbrella bodies and in those organisations that are relatively well-established and have higher and/or steady funding than elsewhere. It is these few CSOs that almost invariably hold their annual general meetings and present annual reports with audited accounts. Another form of accountability is through constant and effective communication between organisation and their members. To the extent that many CSOs in Botswana lack accountability-enhancing resources such as regular newsletters and/or briefings and well-maintained, up-to-date websites, it can be concluded that accountability is still largely compromised within the sector.

Integrity Mechanisms

CSOs in Botswana generally follow good governance practices and their members and management of organisations recognise conflict of interest situations when they arise. However, due largely to the lack of rules on gifts and hospitality for CSOs, the recognition of a conflict of interest situation depends on the knowledge and understanding of concerned parties. Integrity mechanisms within the sector can, therefore, be described as fluid.

Transparency

As discussed above, CSOs in Botswana are almost invariably required to call annual general meetings for all members and to present, *inter alia*, audited accounts to the meetings. Given that it is only a few organisations that manage to fulfil this requirement, it can be concluded CSOs in Botswana are not adequately transparent. Even those that do present reports and audited accounts tend to be, in the words of one key informant, "as transparent as they want to be". Implicit in this statement is that the management and the boards choose what they want to report and it is highly probable that potentially controversial issues may be avoided or played down. The lack of rules on disclosure of

assets, the poor reporting and publishing mechanisms and access to documentation discussed earlier also hamper the sector's transparency.

Complaints/Enforcement Mechanisms

Notwithstanding some of its successes, civil society in Botswana still faces a number of problems and limitations in its efforts to make the government more accountable and transparent in its operations. For example, although the sector exists and operates freely in the country, its activities can be inhibited by the very legislation that facilitates its existence. To illustrate this, the Societies Act and the Trade Union and Employers Organisations Act lay down basic financial and administrative rules and regulations which the government can potentially use to limit and control the activities of civil society organisations. In the same vein, the state's domination of political communication and control of the mass media, as well as the lack of internal democracy within CSOs themselves as reflected, for example, by the absence of regular, free and fair elections of decision-making bodies such as boards, further demonstrates this. Lack of financial and skilled human resources are also consistently cited as factors that hamper the role of civil society in the national integrity system and the power of CSOs in facilitating or calling for good governance and service delivery in other sectors, especially within government

Relationship to Other Pillars

To the extent that civil society in Botswana is recognised by law, it has cordial relationships with most other NIS pillars in the country such as the media, the IEC, the DCEC and the private sector. For example, the IEC used many CSOs as the basis for its voter education programme in the last elections and the DCEC has been invited by several CSOs to help mainstream transparency, accountability and integrity mechanisms into the activities of the organisations. Through umbrella bodies, such as BONELA, Botswana Network of AIDS Service Organisation (BONASO), Botswana Network of People Living with HIV/AIDS (BONEPWA+), Botswana Business Coalition on HIV/AIDS (BBCA), civil society has a visible presence and representation in the National AIDS Council (NAC). Chaired by the President, the NAC is the country's highest HIV/AIDS policy and decision-making body embracing representatives from all sectors, except donors.

Recommendations

- To further enhance its role in the country's national integrity system, it is recommended that civil society in Botswana should adopt a Code of Ethics.
- CSOs should make the Directorate on Corruption and Economic Crime (DCEC) a key partner. Working closely with the DCEC, particularly its public education unit, can help mainstream transparency, accountability and integrity mechanisms into the activities of all CSOs regardless of mandate or primary interest.
- CSOs should improve their financial and strategic management. This can go a long way in preventing and dealing with corruption, as well as in promoting good governance within the sector. It can also enhance the ability and confidence of members of CSOs to advocate for these in other sectors or pillars.

Business Sector

Role of Institution as a Pillar

The business environment consists of both government and privately-owned businesses. The laws provide for private businesses to operate free from government interference. This is consistent with observed practices which entail that private businesses are largely left to their own devices as long as they do not contravene any legal requirements and provisions. In fact, some citizens, the private media, politicians and employees complain that private businesses are accorded too much independence such that some are even able to 'abuse' employees. Businesses in the tourism and construction sectors are the ones commonly accused of this malpractice⁹³. The conduct of business, at least as far as good governance and reporting are concerned, is influenced by the Stock Exchange listing requirements and conditions⁹⁴. The Botswana Stock Exchange (BSE) has an elaborate set of rules governing the conduct of listed Companies. Unfortunately however, these rules only apply to the listed companies, whilst hundreds of unlisted companies are not affected. The number of domestic listed companies, as at the end of December 2006, stood at 19⁹⁵. Though the absence of major corporate scandals (such as ENRON and Parmalat for example) in Botswana may provide indicators that these regulations are effective, the fact that they have not been updated or amended, especially in light of the said corporate collapses, may be a weakness. The United States of America, for example, passed the Sarbanes-Oxley Act in the aftermath of the ENRON scandal. Though the business and financial environments are less complex in Botswana than in those countries where the above-mentioned scandals occurred, the lack of new or amended regulations, such as those mentioned above, means that Botswana is not up to date as far as international trends in corporate governance and business conduct are concerned. .

As at the end of March 2007, privatisation was still in its 'embryonic' stage since none of the targeted organisations had been privatised. It is, therefore, not possible at present to assess the extent to which privatised businesses are free from Government interference. The conduct of individual companies in Botswana is largely governed by the Companies Act (Cap. 42:01). The Companies Act covers all aspects, starting from company formation to liquidation or winding up. These laws are complemented by requirements of, most notably, financial institutions, utility companies and government agencies⁹⁶. The PPADB also require proof of registration as one of the conditions for doing business with the government.

The anti-money laundering regulations of 2003, in particular, require financial institutions to demand certain information, behaviour and conduct from customers (including corporate bodies). The regulations also require commercial banks to have anti-money laundering policies, programs and procedures, which include monitoring customers' use of banking services with the objective of detecting and reporting suspected money laundering activities. The regulations provide for penalties to be imposed on banks and bank employees who fail to meet the requirements of the regulations. The control of money laundering in practice is however, proving difficult because it is a new phenomenon which is not adequately understood by the general public, prosecutors, magistrates and other law enforcement officers (DCEC, 2004, 2005).

The DCEC, alongside the Botswana Police Service, are charged with investigating corruption and economic crime. The Corruption and Economic Crime Act (Cap 08:05), however, focuses mainly on corruption involving a public body and or officers. This is perhaps a weakness in that private-to-private corruption appears secondary, at least as far as the Act goes. However, Section 34 of the same Act appears to cover private-to-private corruption in that it provides for people who are suspected to be 'living beyond their means' and those in possession of 'unexplained property' to be investigated. The extent to which this is effective is difficult to determine since no information on the frequency, outcome and other details of such investigation was available.

Some companies, however, have realised the dangers posed by corruption and have started developing their own anti-corruption initiatives. The few companies who reported having such initiatives are mainly those whose operations make their staff more vulnerable to being corrupted by customers and other third parties, for example, security service companies. Such initiatives include training workshops on corruption and the inclusion of anti-corruption in induction programs for new staff. However, none of the company annual reports analyzed included any reports or statements on anti-corruption.

Structures/Resources

The mining sector (mainly diamonds) is the dominant contributor to the country's GDP which stand at 30%, representing 90% of the country's total export⁹⁷. Diamonds are the major foreign exchange earner that contributes 70% to the foreign exchange earnings and 50% of government revenue. Diamond mining is carried out by Debswana Diamond Company, whose shareholding consists of the Government of Botswana and De Beers Pty Ltd. Debswana has so far managed to avoid major governance scandals although they have been inadvertently linked to the case in which Basarwa, a tribe in Botswana, and the Government are at loggerheads on the relocation of the former from the Central Kalahari Game Reserve (CKGR). Allegations by the Basarwa, and their sympathizers, were that the Government was forcefully relocating them so that Debswana could mine diamonds in the CKGR⁹⁸. The allegations were, however, never substantiated. On the other hand, the Company's HIV/AIDS initiatives are generally regarded across the country as exemplary.

Accountability

The absence of a stock market oversight body and the absence of whistle blowing provisions in many companies together combine to make fighting improper conduct in the business sector difficult. It also fosters the culture of secrecy surrounding business operations. The operations of private (unlisted) companies are a 'closed book' and as such, any anti-corruption initiatives that they may have remain largely unknown to the public. Any anti-corruption initiatives of trade associations are also largely not reported to the public. This closed book and care-free approach to fighting corruption and bribery by businesses makes it difficult for improper and corrupt practices in the business sector to be uncovered and known. As such, no significant cases of whistle blowing and corruption allegations against companies have been in the public domain in the last two years.

Integrity Mechanisms

Analysis of contents of company reports does not reveal strong anti-corruption concerns. Instead, there was strong evidence of concerns with corporate social responsibility in general and HIV/AIDS in particular. Directors' statements largely outlined the corporate social agenda and HIV/AIDS initiatives for staff. Most companies reported having some sort of anti-corruption and anti-bribery initiatives. Banks in particular have specific initiatives for sensitising and training staff to adopt anti-corruption and anti-bribery positions. Other companies report having codes of conduct/ethics, which include, aspects of anti-corruption and anti-bribery. Interesting though is that such anti-bribery and anti-corruption initiatives are solely for staff and not for members on Boards of Directors, sub-contractors and other third parties. None of the 'small' unlisted businesses (including micro business enterprises) have any written codes of conduct, anti-corruption and anti-bribery initiatives. Instead, they rely on personal values to guide staff to shun corruption and bribery.

A key concern is that business associations in general do not have any explicit mandatory anti-corruption and anti-bribery rules. For example, information contained in the Botswana Confederation of Commerce Industry and Manpower (BOCCIM) website makes no reference to anti-corruption and anti-bribery⁹⁹. Another observation is that the BOCCIM membership application form does not enquire about the applicant's anti-bribery, anti-corruption and governance initiatives and practices. Regarding corporate governance, most of the listed companies surveyed follow or comply with specific corporate governance recommendations, such as the King Code, Cadbury Code and Turnbull Recommendations¹⁰⁰.

Transparency

Access to company information in Botswana is generally difficult. Companies listed in the BSE appear comfortable discussing information which is already in the public domain such as information contained in the annual reports. Unlisted companies on the other hand largely find it difficult to disclose similar information. Other than filing annual returns with the Registrar of Companies, there are no legal requirements on these companies to publicly disclose information. However, for a small fee, the general public can inspect data on registered companies at the Registrar of Companies office. The data that can be accessed includes, most notably, annual returns, directors' names and their professions, the number of shares in circulation, company members and the registered offices. Companies listed in the BSE also disclose the same information in their published annual reports which are available for public consumption. In addition, the BSE has detailed disclosure requirements for listed companies, but these do not include anti-corruption and corporate social responsibility (CSR). For non-listed companies, information disclosure is regulated by the Companies Act which requires them to submit annual returns for filing with the Registrar, which can also be accessed by interested members of the public for a small fee. There are no requirements, however, for the annual reports to contain information on CSR and anti-corruption initiatives. Information contained in the individual company websites and media reports in general, however, reveals that many of the non-listed companies do engage in CSR activities. For example, the two mobile phone operators in the country are actively involved in sponsoring football as part of their CSR.

Complaints/Enforcement Mechanisms

Unfortunately there is no financial services authority or similar stock market oversight body in Botswana. The establishment of such a body is crucial, especially in light that 'whistle blowing' is not a common phenomenon in Botswana. For example, all the companies surveyed, except one, reported having no whistle blowing procedures and provisions. The one company with whistle blowing procedures utilized a South African based toll-free phone number. Whistleblowers can call the toll-free number and file a report anonymously. It was not, however, possible to determine the extent to which the service is effective and also how whistleblowers are protected because such information is only available in South Africa.

Relationship to Other Pillars

The business sector interacts mostly with and relies to a great extent on public sector agencies, public contracting and law enforcement agencies. In particular, the government, through public sector organizations maintains relations with the business sector and as such certain requirements promulgated by agencies such as the PPADB influence integrity in the business sector. For example, private firms wishing to do business with the government have to register with the PPADB and registration depends on fulfilling the requirements set by the government.

Certain Laws and regulations foster interaction between the business sector and law enforcement agencies. The Banking (Anti-Money Laundering) Regulations of 2003, for example, require cooperation between the Botswana Police Service and the Directorate on Corruption and Economic Crime in the fight against corruption and money laundering. Commercial Banks in particular are required to have procedures for detecting money laundering and to report suspicious transactions to the law enforcement agencies. The media also plays a critical role here in that some of the allegations that they report have led to law enforcement agencies conducting investigations (Directorate on Economic Crime and Corruption, 2004, 2005).

Recommendations

- BOCCIM should insist on members having clear anti-corruption and anti-bribery policies and programs.
- BOCCIM should encourage members to freely disclose information about their operations to the general public.
- The Companies Act should be amended to include sections compelling private companies to disclose more information to the public.

Local Government

Role of Institution as a Pillar

The role of local government is "... to secure and promote the health, order and good governance of the area for which it has been established"¹⁰¹. In pursuance of this mandate, councils are responsible for a variety of statutory functions; provision of primary education, health care, rural water and roads, and social and community development.

Structures/Resources

Councils have two major sources of revenue; internal and external. Internal sources are derived from local taxation, rates, rents, licenses or permits, royalties and investments. All these sources account for less than 20% of councils' total recurrent expenditure. The external sources are mainly made up of central government grants which amount to between 80% - 90% of funds. Councils have been deprived of local taxation since 1973 when a local government tax was abolished. Since then, councils have relied on subventions from the centre that come with stringent controls¹⁰². Various Local Government Acts provide for sourcing of revenues, their management, and accountability of local officials.

As of April 2007, there were fifteen (15) Local Councils; ten (10) District Councils and five (5) Town/City Councils. District and Town Councils do not recruit their own workers. They are only authorised to employ non-professional employees, called industrial class. The removal of human resource management from councils has created conflict of interests on the part of local officials. They have double loyalty to the council which they serve and to the central government institution which appoints them¹⁰³. This has contributed to conflict between councillors and local staff. This has also led to poor delivery of Public Services by a local bureaucracy that has little allegiance to councils¹⁰⁴. Local officials do not feel obliged to account to council and to local communities¹⁰⁵.

Accountability

Core legislative framework for local government is contained in the following laws and statutory instruments: Local Government (District Councils) Act, 1965; Townships Act, 1965; Unified Local Government Act 1977; and Town and Country Planning Act, 1980. To a certain extent, these laws are effective in that councils have existed for a long time and are being taken seriously by both central government and local people. On the other hand, there are complaints that councils are not delivering quality public services to the local communities.

Councils are accountable to the Ministry of Local Government for policy matters and to the local people for delivery of local services. In practice, councils have been more accountable to the Centre than to the local people due to their heavy dependence on Central Government resources. The demise of Local Government taxation has denied citizens the right to demand accountability from their councils.

In Botswana, there is no law that requires councils to consult local people on matters of policy. It is assumed that as representative bodies they will consult local people on policy affecting their lives. Councillors do hold consultative meetings with their electorate

through the “Kgotla” system which is the traditional forum for public consultation although they are not obliged to do so by any legislation. Most councillors are elected through local elections for a period of five years. Town mayors and/or council chairpersons in rural areas hold public meetings as well as mayoral addresses. Nevertheless, they are not obliged to take into consideration the views expressed by local people in formulating policy.

Integrity Mechanisms

Both Local Government (District Councils) Act and Townships Act allude to pecuniary interests of members, requiring council officials to declare their interests on matters under discussion to avoid conflict of interests. Members are expected to recuse themselves from consideration of a contract or matter where a conflict of interest may arise or has potential to arise. Councillors have the power after individual disclosure to the council by a majority of Councillors voting to permit a member to vote or take part in deliberations. Unified Local Government Service Act and rules governing local staff have provisions on nepotism, conflict of interest, integrity and confidentiality of information derived from one’s membership of the service. The Act requires that appointments, training and promotion be made on merit. Even the recruitment of industrial class employees is done by the Chief Executive Officer not Councillors. All these rules and regulations have not been effective due to lack of enforcement.

Corruption in councils is ‘evident’ in the Daisy Loo saga¹⁰⁶ where senior management officers of the Gaborone City Council (GCC) entered into an irregular tendering and contract process with a private cleaning company. Other serious but unproven allegations were exposed in the court proceedings relating to the same officers having falsely misled councillors in the award of other tenders to private companies¹⁰⁷. Section 12 of the Local Government (tender) Regulations requires that tenders over a certain threshold be presented to a Finance Committee of Council for endorsement. Additionally, only the Council Chair or the Chair of the Finance Committee and the Chief Executive Officer has the authority to sign contracts on behalf of Council. Only the minister may waive the requirements of the provisions.

While these regulations were violated, the Court of Appeal established that this did not nullify the contracts. The Gaborone City Council lost the case at the Court of Appeal which set aside the ruling of the Chief Justice¹⁰⁸. It acknowledged that the award of these contracts to Daisy Loo were all controversial, with allegations of illegality, corruption and fraud by at least one, and possibly more council officials, lurking behind them. But the Court of Appeal observed that these allegations had not been proven. The President of the Court of Appeal referred to undisputed findings made earlier by Chief Justice Nganunu that: an agreement was signed by the Assistant City Clerk on behalf of the Council awarding the Broadhurst tender, Daisy Loo was requested to perform cleaning services in Segoditshane Valley and that the work was done satisfactorily as reflected in the minutes of the Council¹⁰⁹.

Regarding allegations that the Segoditshane and government enclave tenders were awarded by unauthorised persons, the President of the Court of Appeal observed that, ‘that may be so, but as the work was required to be done urgently (because of a looming

visit by some dignitaries), Sithole (the concerned officer who wrote the letter awarding the tender) may have considered it necessary for him to give the required go-ahead to have it carried out¹¹⁰. The council was ordered to pay the company over P21million, including costs of the case and interest. Thus, while there may be allegations of corruption at local authorities, they need to be proved in courts of law, and this has not been done to date.

There is no code of conduct for both political leaders and council employees. Seemingly, there is no law demanding that gifts and hospitality be declared in a public register. Therefore, local officials are not obliged to declare their interests. There is a provision in the local government legislation that requires members to disclose their pecuniary interests in awarding of contracts or other matters under consideration. This provision has not always been enforced. Councillors and staff members are not tacitly prohibited by law from bidding or awarded a tender to provide goods and services to a council that they serve. This compromises financial governance which demands transparency, accountability and integrity of local government bids. Section 10 of the Local Government (District Councils) Act only provide for declaration of interest on matters before the council and for the concerned member to recuse himself or herself from deliberation and decision on the matter. It does not, in any way, prohibit such member's company from bidding or being awarded a contract to provide goods and services to the same council. Contractors supplying goods and services are not required by law to declare illegal rewards, and gifts to employees of localities.

Transparency

Full council meetings are open to the press and public. Under Section 19 of the Local Government Act 1965 ordinary meetings of council are to be open to the press and public, or held in camera. It is provided in the law that a council can, by a resolution passed by majority of councillors present, forbid the press and public from a meeting. It is not specified what circumstances or situations can result in council meetings being held in private. Councillors are given the prerogative to decide on the matter. However, all committee meetings are to be held in private. Councils have held the majority of their meetings in public. They have public chambers from where the press and public can view deliberations of council. Council budget is to be open to public scrutiny. Every council is required to prepare a budget annually which will be presented to the full council in the presence of the press and public. Budgetary documents are to be deposited in a manner that allows the press and public to have access to them. Failure to make the budget accessible by the press and public is not an offence and, hence, officials do not deposit in places where they could be accessed by public.

Section 44 of Local Government Act 1965 provides for presentation of audited accounts of council to the Minister of Local Government. Majority of councils in Botswana have failed to present audited accounts on time. They have serious backlogs of un-audited accounts; some in arrears of up to six years. The Auditor General has jurisdiction over councils. The major challenge is lack of sanctions for failure to abide by the legal requirement to produce audited reports in a timely manner as stipulated by the Act. Most of the councils have been violating these provisions of the law with impunity despite their reliance on Central Government for revenues to manage their services. Failure to present

audited accounts and statements in a timely manner is an affront to accountability of local government to electorate and Central Government.

Councils are required (by the Local Government (District Councils) Amendment Act of 1999) to submit their accounts for audit by the Auditor General within three months after the end of the financial year. Reports from the Auditor General on the status of local government financial management are damning. The 2000 report noted that most local authorities' accounts were not in order. Most rural councils were in arrears of between four and six years, and that the worst was the Central District Council. Urban councils fared better but were still in arrears of at least one year. The backlog of accounts for local authorities is worrisome for government and other stakeholders. In 2002 the Auditor General's report observed that "... the standard of accounting prevailing in the local authorities leaves much to be desired"¹¹¹.

Complaints/Enforcement Mechanisms

There are several institutions charged with investigating allegations of corruption at the local government. Prominent amongst them is the DCEC which has been discussed in other pillars. Members of the local bodies are subject to the anti-corruption laws applicable in the country. No politician or bureaucrat at a local level is immune from prosecution for involvement in corruption. On the other hand, local councils are quick to disown their officials who may have erred in their administrative duties, accusing them of corruption without proof.

The Ministry of Local Government has the highest number of corruption cases and in 2004 it had 14 percent of recorded cases of corruption concerning councils. Fraud is presumably rampant in councils. From 2001 to 2005, most of the alleged corruption cases involving Local Government operatives revolve around bribery, embezzlement, fraud, theft and official corruption. Gaborone City Council seems to lead in the number of cases in the aforesaid timeline. In the DCEC 2002 Annual Report, Gaborone City Council had four (4) recorded cases of stealing and official corruption. However, all alleged suspects were acquitted and discharged by the courts. There is widespread perception of rampant corruption in the tendering and procurement of council services. The Director of DCEC reports in his annual overview of 2005¹¹² that there are "... serious weaknesses in the procurement systems within local authorities". He added that "... tendering procedures and regulations governing the entire Local Authority procurement system have become ineffective and are easily exploited by some employees".

Relations to Other Pillars

Local government system has an ongoing relationship with the Executive and Legislative branches of government. Local government is a product of the law enacted by Parliament at the behest of the Executive branch of government. Councils have to operate within the legal and policy framework set by the Central Government. An agent-principal relationship is evident in the relations between the two tiers of government.

There exist competition and collaboration between different local government bodies operating at the local level. Councils interact and compete against the district administration, tribal administration and land boards. Relations have never been smooth.

There has been mistrust and indignation between the institutions. Tribal land boards have a cordial relationship with councils as land administration has not been contentious issue between the two. All in all, there is no policy on the type of relationship that should exist between these different local bodies.

Recommendations

- Local councils should be assisted to handle tenders with the deserved professionalism that can withstand challenges in the courts of law.
- Local councils should be assisted to audit their books on time.
- Ministerial interference in local councils should be minimised.

International Institutions

Role of Institution as a Pillar

International organisations were extremely unfriendly to the research, refusing to divulge any useful information. However, it should be noted that organisations such as the Friedrich Ebert Stiftung (FES) fund projects carried out by civil society organisations such as the Botswana Local Authorities Association (BALA), governmental organisations such as IEC and even those at the University of Botswana such as the Economics Society. NGOs and other organizations submit proposals to FES which either directly pays the service provider (e.g. conference facility owner or consultant) or deposits the money in the NGO's bank account and ask for receipts for every payment. FES also works with consultancy companies and individuals who are required to submit their accounts to the tax department for tax purposes. FES accounts to its mother body in Germany, and follows international accounting procedures set by the mother body. It does not account to anybody in Botswana, but to its mother body.

FES works closely with other pillars such as NGOs, IEC, political parties to enhance their capacity in various areas. It has funded local democracy workshops, women empowerment (including women wings of political parties), human rights, democracy forum (panel discussions on topical political issues), economy forum, and so on. Significantly it funded the focus group meeting for this NIS study. It is very visible in Botswana.

Other international organisations, such as United Nations Development Programme (UNDP) and UNICEF, were extremely reluctant to share information with researchers. As a result, very little is known about their operations. While it is common knowledge that international procedures promote transparency, accountability and integrity at that level, they do not do so at the local level. This does not augur well for transparency in the developing countries in which they operate in the Botswana set up.

Recommendations

➤ International organizations should open up their systems to local researchers.
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¹ Charles Manga Fombad. 2005. 'The Separation of Powers and Constitutionalism in Africa: The case of Botswana, Boston Collage Third World Law Journal, Vol. XXV, Number 2 : 301-342 (319-320). This professor of law acknowledges that in Botswana 'the mixing of Executive and legislative functions is integral to the process of providing checks and balances. Although this mixing has, at times, led to the same persons forming part of the Executive and legislative branches, the system also contains mechanisms by which the two branches can control and thus check each other' (p319). Fombad concludes that 'the separation of power, whether in the American, British, or French sense, does not, as some critics suggest, require a rigid separation of the different organs of power into watertight compartments, but rather sufficient separation to forestall the dangers that are inherent in the concentration of powers'(p341).

government

² Ibid, p320.

³ Ibid, p322)

⁴ (Fombad, 2005: 325)

⁵ Interview with the author, Archibald Mogwe, at Pitsane on the 14th September 2006. Mogwe did not recall either President Seretse Khama or Sir Ketumile Masire recusing themselves from cabinet meetings due to personal interest.

⁶ David Magang recalls that there were big businessmen who were also ministers (such as Jimmy Haskins - former assistant Minister of Finance and Development Planning, and owner of Phakalane estate) who supplied government with different kinds of equipment, and Presidents, ministers and permanent secretaries who were big cattle ranchers who supplied the parastatal Botswana Meat Commission.

⁷ (Sunday Standard, 20 August 2006: www.sundaystandard.info)

⁸ Republic of Botswana. 2004. 'The President, The Vice President, Ministers, Speaker, Assistant Ministers, Deputy Speaker and leader of the Opposition: Functions, pay and Privileges, with Annexure on Salaries, Allowances and other Benefits

⁹ Republic of Botswana, 2004:p 7

¹⁰ Interview with official at the Office of the President, 16th May 2006.

¹¹ by jramsay@gov.bw Office of the President

¹² at cmaribe@gov.bw

¹³ www.gov.bw/basarwa/index.html

¹⁴ (Interview, 5 October 2006)

¹⁵ (Dundas, Maundeni and Balule 2004)

¹⁶ (Sebudubudu and Lekorwe 2005)

¹⁷ (Interview, 5 October 2006)

¹⁸ (Interview, 5 October 2006)

¹⁹ (Interview, 5 October 2006)

²⁰ (OAG Reports 2000, 2001, 2004)

²¹ The judiciary is one of the three organs of government. The other two organs are the Executive and the Legislature. See Constitution of Botswana, Chapter IV, V and VI, Laws of Botswana. Cap. 01:01. See generally Nsereko, *Constitutional Law in Botswana*, 2001, Morula Press, Gaborone. Office of the President

²² See generally Fombad, CM and EK Quansah, *Introduction to the Botswana Legal system*, 2006, pp, 93-147. Executive

²³ Magistrates Court Act, Cap. 04:04. See also Fombad, CM and EK Quansah, *Ibid*, at pp. 119-127.

²⁴ Interview with Mr. Dikgang Tlhowe, Deputy Director responsible for Management Division at the High Court in Lobatse.

²⁵ [1992] BLR 119

²⁶ The Constitution of Botswana, Section 95(1).

²⁷ Currently corruption is regulated by the Directorate of Corruption and Economic Crime Act, Cap. 08:05, Laws of Botswana. See generally Fombad, C.M. and E.K Quansah, *The Botswana Legal System*, p102.

²⁸ Constitution of Botswana, see Section 96(1).

²⁹ *Ibid.*, Section 100(1)

³⁰ See Sections 96(2) for judges of the High Court; Section 100 (2) for judges of the Court of Appeal; and Section 104 (2) for Magistrates.

³¹ Section 10(3). See Generally Nsereko, *Op. cit.*, pp 190-222.

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- ³² The Botswana Guardian Newspaper, Friday 6 October, 2006, p.1.
- ³³ Justices Unity Dow and Maruping, both citizen judges, sued the government on the same basis that they too wanted to be employed on contract terms. However, the government decided to settle their cases out of court.
- ³⁴ Section 97(1). Previously the retirement age for judges was 65 years. But following a referendum in 2002 which recommended 70 years, the age limit was increased from 65 to 70 years.
- ³⁵ The Constitution of Botswana, Section 97(2)
- ³⁶ The Constitution of Botswana, Section 97(3)
- ³⁷ The Constitution of Botswana, Section 10 (10)
- ³⁸ See Ali Khan and Another v State 1968-70 BLR 4.
- ³⁹ The Constitution of Botswana, Section 10(1) (d).
- ⁴⁰ Section 4.1 of the Public Service Act
- ⁴¹ Section 4.2 of the Public Service Act
- ⁴² Section 3 of the Public Service Act
- ⁴³ Section 6.1a of the Public Service Act
- ⁴⁴ Section 6.1b of the Public Service Act
- ⁴⁵ Section 2.2 of the Public Service Act
- ⁴⁶ The Public Service Charter 1996: 4
- ⁴⁷ The Public Service Charter 1996: 4
- ⁴⁸ Paragraph 11.4 General Orders
- ⁴⁹ Paragraphs 10.1; 10.2; 10.3 of the General Orders
- ⁵⁰ Section 3 of the Ombudsperson Act
- ⁵¹ Interview 17th November 2006 Ombudsperson
- ⁵² Section 14 of the Police Act stipulates that termination of an officer can be done if proven to be inefficient, has committed an offence and gone through disciplinary hearing.
- ⁵³ www.policeaccountability.co.za
- ⁵⁴ Botswana Government, 2003:408
- ⁵⁵ Ombudsperson 2004
- ⁵⁶ Ombudsperson 2004
- ⁵⁷ Interview with the Public Relations Officer, 10th October, 2006.
- ⁵⁸ Ombudsperson pamphlet
- ⁵⁹ Annual Report, 2005
- ⁶⁰ Radipati and Sebudubudu, 2004
- ⁶¹ Transparency International Index (2006)
- ⁶² <http://www.Afrobarometer.org/botswana.htm>
- ⁶³ Kiggundu, 2005
- ⁶⁴ *Media Publishing (Pty) Ltd v Attorney General of Botswana and others* [2001] 2 BLR 485 at 494.
- ⁶⁵ 'Africa Media Barometer: Botswana 2005 – Civil Society Perceptions on the State of Media Freedom & Freedom of Expression' in Z. Titus (ed.), *So This Democracy? State of Media Freedom in Southern Africa 2005* (MISA, 2006) p. 190, 204.
- ⁶⁶ Ibid.
- ⁶⁷ For a detailed discussion of laws that impact negatively on media freedom in the country, see T. Balule and B. Maripe, *a Quick Guide to Laws and Practices that Inhibit Freedom of expression in Botswana* (MISA-Botswana, 2000).
- ⁶⁸ See S.T. Sechele, 'The Role of the Press in Independent Botswana', in W.A. Edge & M.H. Lekorwe (eds.), *Botswana: Politics and Society* (J.L. Van Schaik Publishers, 1998) 412, 416.
- ⁶⁹ 'Africa Media Barometer: Botswana 2005 – Civil Society Perceptions on the State of Media Freedom & Freedom of Expression' *op. cit.* p. 204.
- ⁷⁰ For the full particulars of these papers, see W. Chirambo (ed.), *Southern African Media Directory 2006/7* (MISA, 2006) p. 17.
- ⁷¹ *Mmegi* and *Monitor* are owned by the same company, which also has a controlling shareholding in the company owning *Guardian* and *Midweek Sun*.
- ⁷² Act No. 6 of 1999, [Cap. 72:04].
- ⁷³ Regulation 7 (5).

⁷⁴ See B.T. Balule, 'Manipulating Media Content: Public Sector Advertising in the Press in Botswana: A Comment on *Media Publishing v Attorney General of Botswana*' (2004) 20 *South African Journal of Human Rights Law* 653,659.

⁷⁵ See 'Africa Media Barometer: Botswana 2005 – Civil Society Perceptions on the State of Media Freedom & Freedom of Expression', *op. cit.* p. 203.

⁷⁶ Paragraph 1.

⁷⁷ Regulation 13.

⁷⁸ Regulation 16.

⁷⁹ 'Africa Media Barometer: Botswana 2005 – Civil Society Perceptions on the State of Media Freedom & Freedom of Expression', *op. cit.* p. 203.

⁸⁰ Section 10 (2).

⁸¹ Paragraph 6.

⁸² Regulation 5 (4).

⁸³ See <<http://freedomhouse.org>>

⁸⁴ See J. Zaffiro, *From Police Network to station of the Nation: A Political History of Broadcasting in Botswana 1927 – 1991* (Botswana Society, 1991) p. 33.

⁸⁵ See *MISA Botswana Elections Media Monitoring: September to November 2004* (MISA-Botswana, 2005) p. 84.

⁸⁶ *Ibid.* p. 89.

⁸⁷ [Cap. 26:01].

⁸⁸ See Section 34 (1).

⁸⁹ General Order 206 (1).

⁹⁰ Z. Titus (ed.), *So This Democracy? State of Media Freedom in Southern Africa 2003* (MISA, 2004) p. 29.

⁹¹ Z. Titus (ed.), *So This Democracy? State of Media Freedom in Southern Africa 2004* (MISA, 2005) p. 46.

⁹² *Botswana Guardian*, "Assets Bill divides cabinet," 23 March 2007 Executive.

⁹³ See for example, www.thevoicebw.com November 3, 2006.

⁹⁴ See www.bse.bw .

⁹⁵ See www.bse.bw .

⁹⁶ such as the Unified Revenue Service and the Public Procurement and Asset Disposal Board (PPADB).

⁹⁷ Statistical Bulletin, 2006.

⁹⁸ www.iwantogohome.com

⁹⁹ See www.bocim.co.bw

¹⁰⁰ See for example, RPC Data, 2006 annual report

¹⁰¹ Local Government (District Councils) Act 1965

¹⁰² Picard, 1979; Reilly, 1987; Tordoff, 1988; Wusch, 2004

¹⁰³ Botswana Daily News, 6 November 2006

¹⁰⁴ Mmegi, 23 November 2001

¹⁰⁵ Mmegi, 25 July 2006; Botswana Guardian, 23 March 2006

¹⁰⁶ Mmegi, 16 February 2006

¹⁰⁷ The Botswana Gazette, 02-08 August 2006

¹⁰⁸ Mmegi, 27 July 2007

¹⁰⁹ Mmegi, 27 July 2007: 2

¹¹⁰ Mmegi, 27 July 2007: 2

¹¹¹ 2002 Auditor General's report; page 86

¹¹² DCEC Annual Report, 2005: 3