



## **THE DIRECTORATE ON CORRUPTION AND ECONOMIC CRIME (DCEC): BOTSWANA'S ANTI-CORRUPTION AGENCY**

### **HISTORICAL OVERVIEW**

Botswana's Directorate on Corruption and Economic Crime (DCEC) was established in 1994 by an Act of Parliament, the Corruption and Economic Crime Act (Cap 08:05, hereafter referred to as "The Act") of 1994, last amended in 2013. DCEC is thus a statutory body created to combat corruption and economic crime. Although corruption in Botswana dates as far back as the 1970s, the true catalyst to the creation of the DCEC can be traced back to the 1990s, when three Presidential Commissions were established and mandated to investigate corruption allegations that had caused a national concern due to their grave nature and implications therein. The findings of the Commissions implicated high profile officials such as ministers, senior government officials and even the Vice President at the time, for corruption and misuse of public office at the cost of taxpayers (Sebudubudu)<sup>1</sup>. The findings of the Commissions inevitably threatened the international accolades that Botswana had received up to that point as the star child of Africa, "the least corrupt country in Africa." More significantly the rise in corruption threatened the positive economic trajectory that Botswana was on, having taken itself from a low to a middle income country at the time of DCEC formulation ; corruption would cause a regression in the economic development if not stopped. It was paramount that Botswana's financial sector not be compromised as this would repel investors and slow down the flow of foreign investment thus negatively affecting the overall development prospects of the country. There was pressure to create an agency to combat corruption and economic crime to strengthen the financial sector and prevent the adverse effects of corruption on the nation and its prospects.

### **ESTABLISHMENT OF THE DCEC**

The Corruption and Economic Crime Act (Cap 08:05) provides for the establishment of a Directorate on Corruption and Economic Crime, which shall consist of the Director General, Deputy Director General and such other officers of the Directorate as may be appointed; to make comprehensive provision for the prevention of corruption. The Act further confers power on the Directorate General to investigate suspected cases of corruption and economic crime and matters connected or incidental thereto<sup>2</sup>. The Act commenced in August 1994, and was amended by The Corruption and Economic Crime (Amendment) Act of July 2013.

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<sup>1</sup>Sebudubudu, D. (2003). Corruption and its Control in Botswana. Botswana Notes and Records, 125-139.

<sup>2</sup>Government of Botswana. (1994). Corruption and Economic Crime Act. Gaborone: Government Printer.



## **POWERS AND FUNCTIONS OF THE DCEC**

The DCEC was modelled from the Independent Commission Against Corruption in Hong Kong due to its success in tackling corruption (Sebudubudu). The DCEC, in carrying out its functions, has adopted the internationally recognised tool for effectively fighting corruption this is the “three-pronged strategy,” which are investigation, corruption prevention, and public education (Mbao and Kombani)<sup>3</sup>. The three-pronged strategy creates an obligation on the DCEC to educate the public, recognising that to fight corruption is a collective effort, the culture of anti-corruption must be cultivated in the public. The office of the DCEC is not created to work in solitude from the public but it is rather obligated to capacitate the public on combating corruption and highlighting the reporting mechanisms that exist. The Act provides under Section 4(3), that any decision, including investigations by the Director General shall not be subject to the direction and control of any person or authority. This clause purports to protect the independence of the DCEC.

The functions of the DCEC as stipulated under section 6 are as follows:

- (a) to receive and investigate any complaints alleging corruption in any public body;
- (b) to investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
- (c) to investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;
- (d) to investigate any conduct of any person, which in the opinion of the Director, may be connected with or conducive to corruption;
- (e) to assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public revenue;
- (f) to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Director, may be conducive to corrupt practices;
- (g) to instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- (h) to advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such public bodies which the Director thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- (i) to educate the public against the evils of corruption; and
- (j) to enlist and foster public support in combating corruption.

The DCEC is also empowered by the Act to appoint officers to arrest, search and seize with or without warrant; to obtain information and use reasonable force; surrender of travel documents by a person under investigation; to institute extradition proceedings against fugitives. In addition the Act stipulates the type of offences DCEC is mandated to investigate, these offences are listed from Section 23 to section 38 of the Act. A public officer is guilty of an offence if they accept, or agree or offer to accept for himself, or for any person a valuable

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<sup>3</sup> Mbao, M., & Komboni, G. (2008). Promotion of Good Governance and Combating Corruption and Maladministration: The Case of Botswana. Journal of UWC Faculty of Law.



consideration as defined under section 23, as a reward or inducement for an action in their position as public officer. Furthermore, a person is guilty if he gives or agrees or offers to give valuable consideration to a public officer to induce such public officers actions. Notably there are other legislation that criminalise acts of corruption such as the Penal Code, Proceeds of Crime And Corruption Act, Extradition Act and Customs and Excise Duty Act.

## **LIMITATIONS AND CHALLENGES OF THE DCEC**

The Act confers on the DCEC various powers to enable it to carry out its mandate and does so by enabling the DCEC to carry out its functions without fear of prosecution by providing immunity to the DCEC official's actions undertaken in good faith<sup>4</sup>. It is however imperative to analyse the limitations that the Act imposes on the DCEC to deduce whether it is reasonable or contrary to democratic standards.

- I. The Directorate and its officers under the Permanent Secretary of the President, and the Minister.

As stipulated in Section 3(2) of the Act, The Directorate shall be a public office; and accordingly, the provisions of the Public Service Act shall apply mutatis mutandis to the Directorate and the officers thereof. This provision has come under scrutiny by many scholars. The Director General and his staff are thus administratively accountable and under the supervision of the Permanent Secretary to the President, as per the Public Service Act, this has been argued to undermine the independence of the DCEC (Mbao and Kombani pg.64). Furthermore, when the Act was amended, an addition of section 5A(1) was made which stipulates that the Minister shall prescribe service of the Directorate, this includes the designation and grades of officers and support staff; the scale of salaries and allowances of officers and support staff; and the promotions, resignations and termination of appointments of officers and support staff. Furthermore, the Minister shall prescribe the disciplinary code for the Directorate, this includes issues of dismissal and suspension. All of the above mentioned are capable of influencing the effectiveness of the DCEC, and as such, autonomy is thus compromised by the Executive supervision over the DCEC.

- II. The Director General's appointment

An extremely controversial provision of the Act is found in Section 4 which stipulates that the appointment of the Director General shall be made by the President on such terms and conditions as he thinks fit. This undoubtedly raises great concern on the autonomy of DCEC, as the provision confers the President, on his own accord without being compelled to use recommendation from a body or committee, power to appoint the highest ranking officer of the DCEC. Due to this provision, the influence that the President will thus have on the DCEC is undeniable, hence compromising the integrity and capability of the DCEC to carry out its mandate effectively.

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<sup>4</sup> Section 21 Corruption and Economic Crime Act



In light of the allegations and reports of corruption involving high level government officials that have been coming to light over the past years; for instance the recent conviction of the former Permanent Secretary to the President on corruption charges<sup>5</sup>; there is a clear indication that there is a great need for the independence of the DCEC to be secured. The President's sole appointment right is undemocratic and counter effective to the goal of fighting corruption. Systems have to be put in place that ensure that the country's anti-corruption mechanisms function regardless of whomever is in the seat of Presidency. Making the President the sole decision maker leaves the country at mercy of the President using his appointing powers to serve his/her interests as opposed to advancing the fight against corruption. From a democratic standpoint, it would be better placed for Parliament to be conferred with the powers of appointment to create the people's Director General instead of one solely appointed by the President. Notably, no tenure is stipulated in the Act, which creates a lack of security of the position of the Director General, tenure of the Director General should be statutorily protected to create security of position when carrying out duties and functions.

### III. Lack of jurisdiction to investigate corruption in private entities

Taking into consideration that the DCEC is the anti-corruption agency of the country, one would assume that its jurisdiction would also encompass private entities within the country, but it would seem that the Act does not purport to do so (Mbao and Kombani Pg. 64). The Act defines "public body" as any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment, and includes any company in which the government has equity shares or any organisation or body where public moneys are used. The definition of "public body" was amended in the 2013 amendments to the Act to remove the requirement for a 51% government shareholding and now includes any percentage of shareholding; this is commendable. However, at the time of amendment, the opportunity was lost to expand the jurisdiction of the DCEC to private entities.

Section 6 of the Act which stipulates the functions of the DCEC, notably only speaks of its powers in relation to the public body. It can be argued using the literal interpretation when reading section 6(a),(f),(h), that the legislator intended that DCEC functions apply only to public bodies by only specifying the latter; for instance section 6(a) stipulates that "the Directorate shall receive and investigate any complaints alleging corruption in any public body," making no mention of private entities. This would mean DCEC would be able to investigate a private entity *only* if it is involved in corruption involving a public body. This fails to recognise that fighting corruption is as important in relation to private entities as it is to the public because it affects the integrity of the country's financial sector. Thus it is important that the Act be amended to broaden the scope to private entities.

<sup>5</sup> <https://dailynews.gov.bw/news-detail/69978>



IV. Limitation on the DCEC power to access premises or documents may endanger national security.

Section 15(1) confers on the DCEC the power of search, seizure and detention, furthermore, the power to enter into any premises, vessel, boat, aircraft or other vehicle as the case may be. Section 15(2) states that notwithstanding the provisions of sections 7, 13 and 14, the Director General, or any other officer of the Directorate shall not have access to any books, records, returns, reports or other documents, or data stored electronically, or to enter upon any premises, place, vessel, boat, aircraft or other vehicle if, in the opinion of the President in writing, such access or entry is likely to prejudice national security. This provision adds to a wider conversation on the legislative framework of Botswana, where national security is often provided for as a caveat that can essentially be used to hamper certain activities, usually those that are useful towards democratic accountability. Transparency is a fundamental element of democracy, although it is recognised that there are some matters that need to be kept from the public domain as a matter of national security, corruption should not be seen to be aided or legitimised, under the guise of national security.

V. Relation to Directorate of Public Prosecutions (DPP) on Prosecution of Corruption

The DCEC is an investigative body and is thus not empowered to see through a corruption case to the court judgement. Instead, section 39 provides that if, after an investigation of any person under this Act, it appears to the Director that an offence has been committed by that person, the Director shall refer the matter to the Director of Public Prosecutions (DPP) for his decision. It further states that no prosecution for an offence shall be instituted except by or with the written consent of the Director of Public Prosecutions. Under section 37, application for confiscation order and Section 38, application for a restraining order are both placed on the DPP as well. This is due to the DPP being the state prosecution authority, thus they carry the obligation to prosecute the cases investigated by the DCEC. Various scholars have argued that in the creation of the DCEC, the DPP was not adequately capacitated through human and technical resources to prosecute the load of cases that are brought by the DCEC. As David Sebudubudu puts it, the delays in Attorney General administration of justice are caused by the lack of correlation of the DCEC, AG and administration of Justice as there was no increase in manpower and resources to deal with the investigations from the DCEC (Sebudubudu). The other concern that was raised is that the DPP discretion to prosecute is open for political interference and is therefore, not advisable. Recommendation was made to establish an internal prosecution within DCEC for cases within a certain value, after careful assessment, those cases will be sent to courts for trial to lessen the burden on DPP and to avoid delay of cases being taken to court (Rudolph and Moeti-Lysson pg. 12).



## **THE POLITICAL SIDE OF BOTSWANA'S ANTI-CORRUPTION FIGHT: THE DCEC'S INTEGRITY**

Botswana's politics have gone through developments and setbacks as is expected in a functioning democracy. The issue of institutional integrity has gained prominence in recent times, as the lines have seemingly been blurred between the public administration and politics. Academically speaking, politics and public administration are supposed to be kept separate at all times, to preserve the values of public service. The expectation is that public servants, especially managers and directors, resist and denounce all forms of political influence while basing all their official decisions on considerations of the public good and not any individual interests<sup>6</sup>. As it stands currently, the integrity of a lot of Botswana's institutions is in question, from the viewpoint that they are being used to serve specific individual or group interests, as opposed to working for the national good.

The development of Botswana's political landscape in recent times has unfortunately meant politics have made their way into public administration. The independence of a lot of the country's institutions and offices has been lost or is in question. DCEC has not been exempted from this unfortunate democratic regression as it now features the country's headlines mostly in the negative<sup>7</sup> and has seemingly also lost public trust. Because of the inadequacies of the founding act of DCEC discussed above, the directorate has found itself being used to fight personal battles of and between the country's ruling elite. The most recent and arguably most damaging of such instances is the breakdown of the directorate's relationship with the country's intelligence service, DISS. In 2022, it was alleged that DCEC was investigating corruption cases involving some of Botswana's top politicians and civil servants, including those of the DIS. Following his revelation, the DCEC Director was suspended from duty and the DIS subsequently raided the DCEC office and collected material which to date cannot be confirmed as to its nature nor the motive of DIS in confiscating it, although the DIS has attempted to calm down the public outrage over it<sup>8</sup>.

Another cause of the loss of integrity for the DCEC has been the frequent change of Directors over a short period of time (5 Directors in a space of 5 years, with the current Director being on acting appointment). Having highlighted above that the Director's tenure is not sufficiently protected, this inadequacy has indeed been used to ensure that the office is occupied by people that are seemingly in good favour with the office of the President, the President being the appointing authority. This trend compounds reasons for

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<sup>6</sup> O'Toole Jr., L. J. (1987). Doctrines and Developments: Separation of Powers, the Politics-Administration Dichotomy, and the Rise of the Administrative State. *Public Administration Review*, 17-25.

<sup>7</sup> <https://thepatriot.co.bw/dis-dcec-directors-not-under-investigation/>  
<https://www.mmegi.bw/news/dis-dcec-turf-wars-irk-civil-society/news>  
<https://thepatriot.co.bw/country-dumps-rule-of-law-adopts-rule-of-man/>  
<https://www.weekendpost.co.bw/36144/news/dis-confronts-dcec-over-magosis-docket/>

<sup>8</sup> <https://www.mmegi.bw/news/dis-seals-off-dcec-dgs-office-others/news>



the mistrust that Batswana have, regarding decisions and actions of the agency. This is unfortunate, considering that any formidable fight against corruption needs the participation and support of the ordinary citizens.

In spite of the seeming obstacles stacked against DCEC, there is a glimmer of hope. In 2021, a motion to amend the corruption and economic crime act was tabled in parliament. Central to its provisions was the need to make DCEC more independent by making it a parastatal, with appointing powers of the director general conferred to an independent board<sup>9</sup>. Although the motion did not ultimately succeed to become law, its very existence points to the fact that some of the country's leaders are intentional and genuine regarding the country's fight against corruption.

## **CONCLUSION**

There is a need to amend Botswana's Corruption and Economic Crimes Act. The law has multiple inadequacies that constrain the fight against corruption and continued protection and use of these inadequacies suggests that they were by design, which lessens public trust on the institution and the government. Politics has seemingly taken over the work of the DCEC and regardless of the factuality or extent of such a take over, the government will have to work towards restoring integrity of the organisation in the public eye. It is imperative that conversation be had about how intentional and committed Botswana is towards the fight against corruption and how institutional reforms, if any, fit into the present and future of the country's efforts.

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<sup>9</sup> <https://dailynews.gov.bw/news-detail/68221>