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RECORDS MANAGEMENT AS A MEANS TO FIGHT CORRUPTION AND ENHANCING ACCOUNTABILITY IN BOTSWANA

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Abstract

Botswana is the only country in sub-Saharan Africa to have sustained uninterrupted record of liberal democracy and political stability as well as good governance since independence. However, as observed by Transparency International, there is evidence to suggest that even the most democratic countries are prone to corruption. This article, therefore, contends that corruption of various kinds does exist in Botswana and that efforts should be made to fight it if the country is to uphold its democratic stability and good governance and retain its accolades as an “African success story” and “An African Miracle”. The article discusses fundamental flaws in Botswana’s anti-corruption strategy and argues particularly that proper recordkeeping, albeit important, is not recognized as essential to the country’s anti-corruption strategy. Further, the article argues that inappropriate records management aid corruption and non accountability and that proper records management is imperative in corruption prevention and accountability. It is recommended that Botswana’s anti-graft strategy should be revamped to inter alia include proper recordkeeping and new legislation. The article particularly proposes stringent measures to modernize record keeping in the public sector as this would aid accountability and prevention of corruption.

Keywords

Accountability, corruption, good governance, records management, transparency

Introduction

Corruption is a highly contested concept with no universally agreed definition. Corruption is defined by Martin and Law (2006:132) as “[o]ffences relating to the improper influencing people in certain positions of trust”. McLean and McMillan (2003:124) define it as obtaining when an officer transfers a gain to an individual who may or may not be permitted to the gain, in exchange for an illicit payment or the bribe. Corruption is also defined as the misuse of public office or public responsibility for private (personal or sectional) gain (Szeftel 1998:1). While the above definitions are useful, the Asian Development Bank’s definition is all-encompassing; “the abuse of public or private office for personal gain”. Corruption, therefore, involves inappropriate and illegal actions on the part of officials in the public or private sectors, in which they inappropriately and unlawfully enrich themselves and/or their associates, or entice others to do so, by misusing the position in which they occupy.

Records and information play a critical role in fighting corruption; protecting citizens’ rights; in ensuring transparency; accountability and good governance. As such governments should recognise sound records management as one of the priority areas. In spite of their significance, studies by Chebani (2005), International Records Management Trust [IRMT] (2003), Keakopa (2006), Mnjama (2007) and Tough (2004:2009) among others, suggest that recordkeeping systems in Botswana in particular and in Africa generally have either collapsed or are in a state of disarray. Neglected records in these countries have become a major barrier to development. Poor

record keeping systems as argued by the IRMT and the World Bank has led to corrupt practices and lack of accountability and poor governance structures. There are numerous studies on corruption and lack of accountability by governments in Africa and how that has impacted negatively on socio-economic development.

While reports by the corruption watchdogs, Transparency International (Transparency International 2009) and World Economic Forum, rank Botswana among the least corrupt countries in Africa, there are concerns that corruption is becoming endemic. Recently very important citizens including ministers, public enterprises chief executives, lawyers and top civil servants have been prosecuted for corruption and economic crime. Focusing on Botswana and citing general research and cases in a number of African countries, the article argues that corruption and poor accountability is influenced by lack of proper record keeping in the public sector. The article argues that improper records management aid corruption and non accountability and that appropriate records management is imperative in corruption prevention and accountability.

Corruption in Africa

Max Weber's requirement of a legal-rational bureaucracy is that 'Public monies and equipment are divorced from the private property of the official.' This has not been the case in Africa. While corruption occurs all over the world, there can be little doubt that it is prevalent in Africa (Thomson 2000:193). Corrupt practices have pervaded the civil service in most African countries (Le Vine 1975). Officials require bribes before they reach favourable official decisions; public resources are drawn off for private use; and individuals are nepotistically employed and promoted on the basis of clientelism rather than merit. In most African countries, petty corruption is a daily phenomenon: police extort bribes from hawkers and motorists; clerks require payments for issuing licenses, permits, or passports; chiefs receive presents from their communities; and politicians use official cars to conduct private affairs and national air lines for private holidays. Elite corruption (often associated with patron-client linkage arrangements) involving clandestine networks, dubious dealings of fraud, bribery, embezzlement, and theft - on a grand scale, detour state resources from public coffers to private hands (Leff 1964:8-14).

The propensity of the economic loss suffered by Africa from the evils of corruption are substantiated by the African Union and the African Development Bank, which estimate that it costs the continent US\$ 148 billion each year, leads to a loss of 50% in tax revenue, increase the cost of African goods by as much as 20% and eats away 25% of Africa's GDP. As further observed by the United Nations (UN), in 2009 political corruption costs governments about \$1.6tn (BBC News 2009). This money, as argued by the UN is often lost in public assets moved across borders through money laundering or undeclared holdings. Yet governments are in disagreement on how best to implement the tracking of money because of tax haven and secretive banking codes in some nations. Kemoni and Ngulube (2008) argued that civil servants lacking the core values and principles of accountability, honesty, impartiality and professionalism often engage in corrupt practices. Citing Kenya as an example, the authors argued that the public service in Kenya is characterized by wastage of resources and delays resulting in poor public service delivery. This, however, seems to be a trend in most African countries as will be shown subsequently in the discussion.

The nature and state of corruption in Botswana

Botswana has been able to maintain continued economic growth and development (Samatar 1999; Leith 2000; Acemoglu, Simon & Robinson 2001) and a steady record of liberal democracy and political stability since independence (Thomson 2000:92). The first democratic elections were held in 1965, and similar free and relatively fair polls have been repeated every five years ever since that date. This continuous record of liberal democracy endured by Botswana in a continent largely characterized by undemocratic regimes and bad governance is noteworthy. Much of the literature on Botswana is characterized by these laudatory positions. The country has been internationally praised for good governance and low levels of corruption. Samatar (1999) labelled the country as “An African miracle” and Acemoglu, Simon and Robinson (2001) dubbed it “An African Success Story”. Botswana’s accolades on democracy include its good record of good governance. Corruption has been said to be rare in Botswana (Hope & Chikulo 2000:1). Samatar (1999:4) argues that Botswana has “...eluded rampant corruption and mismanagement that bedevil Third World states...” The country has also had relative good governance (Raphaeli, Roumani & MacKellar 1984; Wescott 1994). However, delving beneath the façade reveals a fairly different story and renders the aforesaid observations unpersuasive.

There is contention that Botswana’s democracy is not as shining as it appears above the façade. More profound measures of democracy reveal blemishes on Botswana’s democracy. Given that the elections in the country are yet to give way to an alternation in ruling party, Holm (1998) describes the political process within which Botswana’s elections are held as ‘paternalistic’ democracy. Picard (1987) contends that Botswana is a *de facto* one party state, that notwithstanding the fascia of multiparty democracy, only one party has won all the elections since independence in 1966. This view is shared by Huntington (1991:20-25), who contends that Botswana’s democracy is still brittle as it has not passed the test of alternation of political power, in which the ruling party loses elections and becomes an opposition party. Horowitz (1991:270) states that “Botswana’s opposition is acscriptively limited...ascriptive minorities cannot become majorities, so elections are safe”.

One aspect of Botswana’s political economy that taints its democracy is the growing incidents of corruption, mismanagement, non accountability and unethical conduct in governance (Good 1994; 2004; 2009; 2010). The genesis of the story of corruption in Botswana can be traced from a series of scandals in the early 1990s. The 1991 Presidential Commission of inquiry discovered that no tender competition was conducted, no adequate assessment was made to find experienced suppliers in the educational procurement and that the Central Tender Board did not approve the tender in the supply of teaching materials for primary schools. The consequence of the violations of tender procedures and financial regulation resulted in disbursement of 27 million Pula to an inexperienced and an insolvent company and an individual (Good 1994:501). Another Presidential Commission of Inquiry revealed in December 1991 that illegal land transactions in peri-urban villages near the capital city Gaborone had occurred and implicated the Vice-President, Peter Mmusi and a Minister of Agriculture, Daniel Kwelagobe. In November 1992, Christie Commission, appointed by the President found 'gross mismanagement and dishonesty' in the public enterprise Botswana Housing Corporation 'resulting in the loss of tens of millions of Pula'. In 1993, the state bank, National Development Bank, was near bankruptcy and the leading debtors, it was revealed, were the President, his brother and senior officials including Ministers (Good 1994:511).

Different types of corruption exist in Botswana. Cases of both bureaucratic and/or administrative corruption and political and or grand corruption have been reported with some

cases brought before the courts. Cases relating to bribery, conflict of interest, fraud, embezzlement, theft of government assets, money laundering, tax evasion, and abuse of office have been investigated and suspects prosecuted (DCEC 2010). In 1998, the then Director of the Roads Department, Kebonyekgotla Kemokgatla, was found guilty by a magistrate's court of conspiring with Nicholas Zakhem, a Lebanese private contractor, after accepting a bribe of 100, 000 Pula to award a road construction tender. The case revealed skeletons in the largely subterranean tendering process. Under cross examination in court, Zakhem confessed that he and others in the industry have bribed powerful officials in local and central government. He admitted that high-ranking government officials used their power to favour his bid. A cabinet Minister, Jacob Nkate, resigned as a result of that case. As shown by Figure 1, in 2009/10, the Directorate on Corruption and Economic Crime (DCEC) investigated and charged suspects in corruption and economic crime related offences such as bribery, fraud, money laundering and possession of unexplained property (DCEC 2009:25).

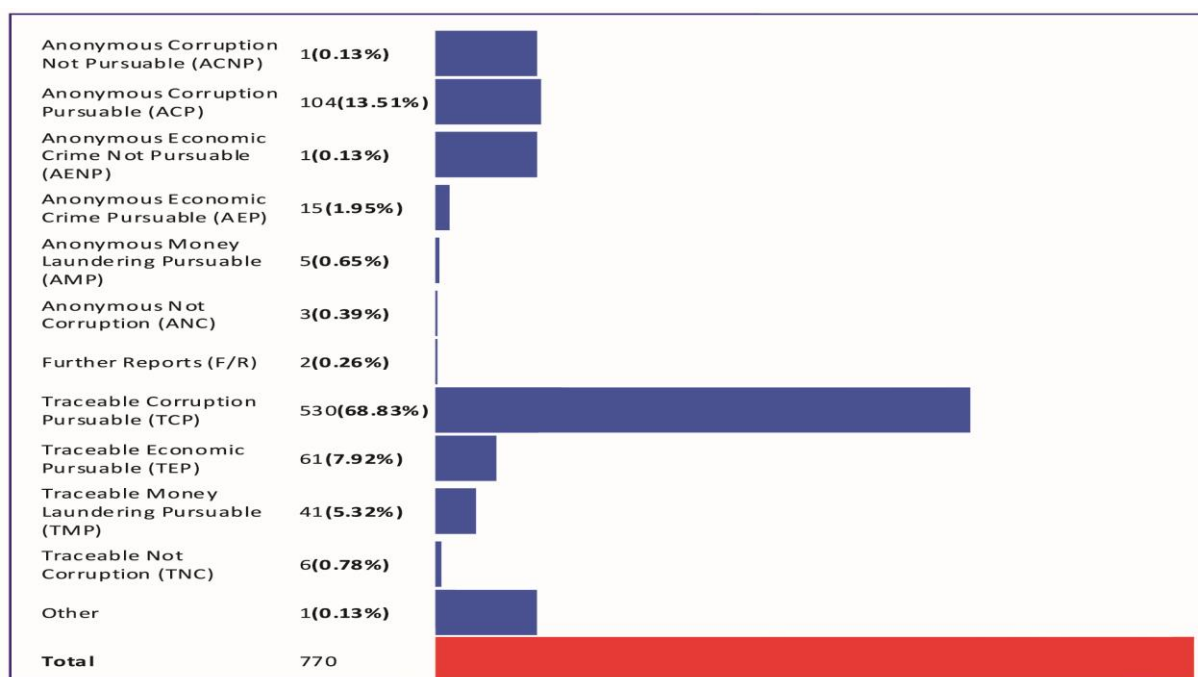


Figure 1: Corruption and economic crime related offences (DCEC 2010)

In the year 2010, the DCEC received a total of 1851 reports, 770(41%) were referred for investigation, 634(82.34%) were cases dealing with corruption, 90(11.69%) were economic crime cases and 46(5.97%) were money laundering (DCEC 2010:7). The most common offences investigated, according to the report, related to procurement, unlawful land allocation matters, soliciting and acceptance of money as bribe. Figure 2 shows statistics of court cases between 2008 and 2010. Among the latest prominent cases are those of Mr. Kenneth Mathambo, the Minister of Finance and Development Planning, who was charged with a single count of corruption-conflict of interest (Mmegi 2010c) and Dikgakgamatso Ndelu Seretse, former Minister of Defence, Security and Justice, who resigned from Cabinet, after being charged with conflict of interest by the Directorate of Public Prosecutions (Mmegi 2010b). On 26 October 2010, Pearl Matome, former Director of the Directorate of Public Service Management, appeared in court to answer charges of failing to disclose her interest in the matter relating to the employment and subsequent promotion of her close relative (Morewagae 2010:1). Other cases include that of the former Executive Chairman of the Public Procurement and Asset Disposal Board (PPADB), who won his appeal after being found guilty of corruption by the Magistrates Court and that of former Permanent Secretary in the Ministry of lands, who also mounted a

successful appeal after being convicted of abuse of office and perjury in a land allocation. The aforementioned cases reveal the enormity of corruption in Botswana.

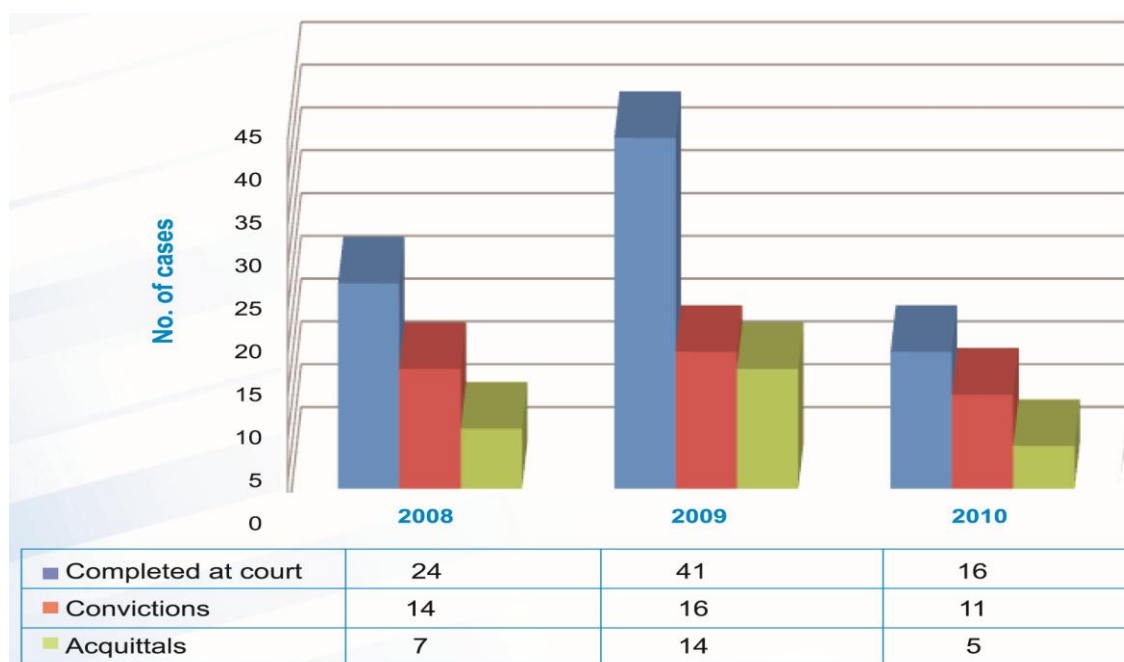


Figure 2: Statistics of court cases between 2008 and 2010 (DCEC 2010)

Botswana's anti-corruption strategy

The Anti-Corruption Agency (ACA) model is heavily promoted by western interests as an integral part of the prescribed response to African corruption (Meagher 2005:69; Doig & Williams 2005:36; De Maria 2007:11). The inaugural Africa Forum for Fighting Corruption held in Gauteng in March 2007 has asked African states without ACAs to move quickly to set up such institutions. Proliferation of such bodies in Africa bears testimony to the claim that African countries took heed of these suggestions. It is important to mention that Western pressure, through International Financial Institutions of International Monetary Fund (IMF) and the World Bank, for clean governance and fight against corruption in Africa has led to proliferation of ACAs. It is through stringent donor stipulation and or conditional lending that this was possible in many Africa countries and often the recommended model is the Singapore and Hong Kong ACAs.

The DCEC, like other ACAs in Africa is also modelled along Singapore and Hong Kong ACAs. It was created in 1994, albeit not out of coercion by Breton Woods Institutions, to combat corruption and economic crime. The institution works closely with other law enforcement agencies and other institutions such as the police, intelligence and security services, the central bank, the Botswana Unified Revenue Services and the Financial Intelligence Agency. Numerous laws in Botswana are essentially utilized in the fight against corruption. These include, albeit not limited to, Corruption and Economic Crime Act, 1994, Penal Code, Criminal Procedure and Evidence Act, Banking (Anti-Money Laundering) Regulations, 2003, Mutual Legal Assistance in Criminal Matters Act, 1990, Directorate of Intelligence and Security Service Act, 2007, Financial Intelligence Act, 2009, and the Proceeds of Serious Crime Act, 1990.

DCEC autonomy has been numerously raised (Good 2004:121; Radipati & Sebudubudu 2004:102-4; Mokgathe & Molefhe 2008: 101). It is argued that DCEC does not operate in a milieu of high level of political commitment, operational independence and sufficient capacity in

terms of investigatory powers, resources (both material and human) and integrity. It is susceptible to the politicized appointments and termination by politicians of their most senior officers and staff. The agency is located in the Ministry of Justice, Defence and Security (previously office of the President), its Director reports to and is appointed by the President and his or her terms and conditions of service are determined by the President (CEC Act). In a media brief by the Director of DCEC, Tymon Katlholo, on the findings of a Public Consultation in Relation to the Review of Botswana's Anti-Corruption Strategy, revealed that: an overwhelming majority of respondents-98% want corruption to be dealt with firmly; 93% of the respondents believe the government should put more resources than previously. On independence of DCEC, 96% believe DCEC should be free from outside influence; 72% feel that it should cease to be part of the civil service, 12% think it should be a parastatal, 85% think it should be an independent body like the Auditor General; 92% feel that the Director's position should be secured by law in the same way as the Auditor General's or the Director of Public Prosecution; and 71% feel that the staff of the directorate should have terms and conditions of employment separate from the civil service. These findings clearly show that the DCEC operates in a limited environment and something has to be done to capacitate it and emancipate it from executive domination. DCEC should be given more resources to enable it to deal with sophisticated corruption cases.

Conspicuously missing in the list of laws relating to corruption and economic crime are laws on disclosure of assets/interests and liabilities, insider trading, targeted lifestyle audits, freedom of information, whistle blowing legislation and public funding of political parties. The non-existence of these laws and appropriate institutions show in part the inadequacy of the anti-corruption strategy. There has been a lingering suspicion that the DCEC is targeting small-scale offenders (Good 2004:123; Fombad 1999:251). However, lately the directorate is nailing the "big guns". Among high profile figures charged with corruption are Permanent Secretaries, Directors in the civil service, public enterprise chief executives, cabinet Ministers, prominent lawyers and business people (DCEC 2010).

Records management as a means of combating corruption

Proper recordkeeping practices can help in controlling corruption, fraud, embezzlement and negligence by public officers. In spite of this, poor recordkeeping practices in a number of African countries including Botswana, Sierra Leone, Gambia and Kenya have hindered access to government records and this has led to failure to keep trail of fraud and corrupt practices. Poor recordkeeping in the Gambia, for example, was found to be one of the factors which contributed to lack of transparency in the revenue collection process (IRMT/World Bank 2001). On the other hand, Sierra Leone has a history of misrule, endemic corruption and abuse of human rights and the state archive has not been used to promote good governance. The chaotic state of records and collapsing recordkeeping systems in most African countries makes it impossible to determine responsibility for official actions and to hold individuals accountable for their actions. In most of these countries, much of the information required by civil servants to carry out their duties is inaccessible because of the huge backlogs of non-current paper based records which are found in most government ministries and departments. Failure to manage records from creation to disposition not only weakens accountability but also has serious consequences for good governance.

In sub-Saharan Africa, it is common to find financial records in a chaotic state and this is undermining the ability to audit accounts efficiently and to provide evidence to detect or prosecute fraud. In many countries, government payrolls are inflated with ghost workers due to the poor state of personnel records. A study by Barata, Bennett, Cain and Routledge (2001)

established that the financial systems with the weakest controls are those that are traditionally key targets for fraud in most countries such as payments, payroll and subsistence and travel systems (Barata *et al.*, 2001:1). A study by the Ministry of Education in Kenya has also blamed poor accounting records in schools for the rise in corruption. According to the study, public schools have not been maintaining good records of how money allocated to books has been used, resulting in malpractices. The major weaknesses highlighted included: failure to use government receipts to acknowledge funds received; unavailability of bank statements and audit reports (Daily Nation 2010). One of the biggest challenges facing Kenya is the elimination of corruption, an issue which they argue donors have raised with the government (Kemoni and Ngulube 2008). Poor recordkeeping systems are a barrier to institutional, legal and regulatory reform; and anti-corruption strategies; poverty reduction and economic development (IRMT 2003). Failure to manage records has undermined the governance process in many African countries (Wamukoya 2000: 28). Court clerks, registry clerks, police officers and insurance agents often use the excuse of missing files or incomplete records to solicit bribes from unsuspecting members of the public before services can be rendered

Clearly emerging from the discussions above is the fact that corruption cannot be prevented without reliable records. Citing examples from Kenya, Kemoni and Ngulube (2008) argued that following the 2002 elections in Kenya, the government officials turned to records in an attempt to eliminate corruption in government. However, efforts to repossess land and commercial properties illegally allocated were frustrated by poor recordkeeping. The need to manage records and information for accountability is important in any organization. Elimination of corruption can be hampered by lack of or limited access to public records. The public needs information to monitor how public money has been spent on services (Svärd 2007).

Proper maintenance of records and the provision of information empower citizens to exercise their civil rights, providing them with information and data that they can use to question and government actions and hold government officials accountable. Trustworthy and accessible records are sources of information and evidence that support and sustain democratic values, including: the protection of human rights; accountable and transparent government processes and leadership; and wide public participation in government decisions. Further, provision of accurate and reliable information helps them to detect and prevent corruption or other fraudulent dealings which undermine the efficient and effective provision of services by public servants (Wamukoya 2000:26).

While recordkeeping has emerged as an important tool in fighting corruption and enhancing accountability, it is still one of the difficult professions to sell and most undeveloped in the African region. On facing difficulties in selling records management, Mazikana (2007) argues that a catalyst is in most cases needed to draw attention to records management. It is often necessitated by the need to operationalize other systems unless in industries like mining which have to be ISO certified.

Records and information play a crucial role in ensuring transparency, accountability and good governance which are now the key issues in the archival and records management profession. Records are basic administrative tools which organizations use to accomplish their mandate as they contain evidence of financial and legal commitments that must be preserved to protect organizational operations. They also help in decision making and strategic planning so that organizations are able to define their strategic direction, identify factors that need development, formulation and implementation of policies (Wamukoya 2000).

In organizational structures and business processes, governments need to know what it does and how it is done. This is only possible when they have records which will help them account for their actions and this can only be achieved through good recordkeeping practices which Kemoni and Ngulube (2008) argued are essential tools underpinning good governance and are key to public sector management (Kemoni & Ngulube 2008). In fact, presentations during the East and Southern Africa Regional Branch of the International Council on Archives (ESARBICA) conference held in Tanzania in 2009 focused on accountability and records management with most presenters arguing that the state of public records in many countries in the region was in a chaotic state and that recordkeeping systems were collapsing.

Accountability is about doing things right, ensuring that public property and funds are used honestly and protected from being drained off for private gain. Without records there can be no accountability and no rule of law (Wamukoya 2000). As observed by Lyaruu, accountability is critical to a responsible government and the foundation for accountability is well managed records (Lyaruu 2007). Fines, obstruction to justice findings, independent investigations and even complete organizational collapses have been traced to failures to abide by records-based accountability requirements (Wamukoya 2000). Records management can facilitate accountability by eliminating problems associated with corruption. Laws, regulations, standards, best practice, policies, and compliance and audit mechanisms all provide records-based frameworks and opportunities for healthy societies and polities.

Effective recordkeeping is essential for curbing corruption as much as it is important in ensuring successful implementation of freedom of information legislations. Sebina (2009:148) found that Promotion of Access to Information Act (PAIA) in South Africa has exposed poor recordkeeping and this underscores the importance of recordkeeping.

The nature and state of records managements in Botswana

A number of authors among them Thompson (1970), Kukubo (1986), Chebani (2005) and Maakwe (2006) have traced the development and state of records management in Botswana and have reported that these like in other commonwealth countries were shaped by the British registry system. As observed by Tough (2009), recordkeeping systems in British colonies before independence were built around the concept of the registry (Tough 2009). During this period, accountability was a serious concern and theft of public funds was not tolerated hence proper records management was a priority.

In Botswana, the management of records in the public sector is the responsibility of the Botswana National Archives and Records Services (BNARS) which is mandated by legislation to provide guidelines to government bodies. BNARS derives this mandate from the provisions of the National Archives and Records Services Act of 1978 as amended in 2007. Through this mandate, BNARS is supposed to coordinate, monitor, advice and issue policies and procedures (Keakopa 2006). However, most registries still have low status in government structure and are managed by untrained personnel who cannot take full responsibility for the management of public records. They also lack proper policies, procedures and other guidelines. In fact, BNARS has to date not been able to come up with a national records management policy from which government bodies can derive their own specific policies.

One of Maakwe's (2006) recommendations was the need for development a national records management policy and a task force to deal with implementation of policies, procedures and legislation. The lack of such a policy has hampered development of total records management programmes in the public sector which would otherwise ensure security and protection of public

records in government offices. Since implementation of the records management programme in Botswana is still fragmented, government offices are not obliged to adhere to available procedures. As a result, this has created a back log of records that need appraisal and disposition which until now have not been cleared in most government offices. This poor state of records may have contributed to breeding of corruption as records were not well managed for accountability of officers' actions. This has also led to loss of important records including those needed in corruption charges. Other countries in the region like Tanzania and South Africa have policies and procedures needed to guide records management programmes.

Records are important in criminal justice system particularly prosecution of corruption suspects. It is common for dockets, records or exhibits (Mmegi 2010a) to go missing at criminal justice offices like police, prison and public prosecutions. Lack of records and incomplete or improper records can be impediments in the prosecution of graft suspects. The former Minister of Defence, Justice and Security referred above was charged with one count of corruption for failing to declare that his company was involved in the tendering process. The minister had pleaded not guilty and only proper records can prove innocence or guilt. In this particular case, the state has already been accused by the defence of being unprepared for the case and not willing to share relevant information which includes minutes of a cabinet meeting and a declaration of interest document (Pheko 2010). In another case, a prominent lawyer, Lyndon Mothusi who was accused of obtaining money by false pretences and money laundering was acquitted and discharged on appeal because of delayed justice due to failure by the state to submit a case record (Mmegi 2010b). However, the Court of Appeal has ordered fresh appeal of the case (Mmegi 2010c).

In a related case in Sweden, Svärd (2007) asserts that two ministers were forced to resign after the media had retrieved old records that revealed that they were not morally suitable to hold the portfolios they had been given. If records are scrutinized to establish the truth, they can help in holding government officials responsible for their actions. However, a solution cannot only be on sensitizing government ministries and departments on the issue of corruption but proper records management practices are also needed to ensure the evidence is available to investigate such corrupt practices.

Conclusion and way forward

Corruption in Botswana is becoming ominously widespread and has the potential to reverse the country's gains on democracy and good governance. Although the country still ranks among the least corrupt countries in Africa, it should not be complacent. Perpetual reports on allegations of corruption in the news media, tied with past and ongoing court cases relating to corruption, show that corruption is an issue of concern. Both petty and grand corruption cases have been before the courts of law. The country has to patch up its anti-graft strategy. It is recommended that records management be recognized as imperative in the fight against corruption. There is a need to revamp national records management systems and build capacity in the area. It is vital to review existing legislation relating to corruption with a view to improve the nation's anti-corruption strategy. Botswana should consider enacting new legislation on disclosure of assets/interests and liabilities, insider trading, targeted lifestyle audits, freedom of information, whistle blowing, and public funding and regulation of private funding of political parties. The anti-corruption agency should operate within an environment of high level of political will, operational autonomy and adequate aptitude in terms of investigatory powers, resources and integrity.

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