

**COMBATTING CORRUPTION IN SOUTHERN AFRICA: AN  
EXAMINATION OF ANTI-CORRUPTION AGENCIES IN BOTSWANA,  
SOUTH AFRICA AND NAMIBIA**

By

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Submitted in accordance with the requirements for the Degree of  
Doctor of Philosophy

The University of Leeds  
Institute for Politics and International Studies  
August 2002

The candidate confirms that the work submitted is his own and that appropriate credit has been given where reference has been made to the work of others.

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## Acknowledgements

I have always been conscious of my debts to a lot of people in writing this piece of work. I wish to express my sincere thanks to all those who played important roles in producing this work. In particular, I am grateful to my supervisors, Dr. Morris Szeftel and Dr. Ray Bush for their professional and personal advice. This thesis would not have been possible without their constant encouragement and support. My thanks go also to the Institute for Politics and International Studies and Ms Caroline Wise for their support in many ways. I would also like to thank all those who cooperated with me during my fieldwork in Botswana, Namibia and South Africa; in particular, the Director of the Directorate on Corruption and Economic Crime (DCEC) in Botswana and his staff; the Ombudsman and her staff in Namibia; and in South Africa, The Public Protector and his Staff, The Director of the Investigating Directorate for Serious Economic Offences (IDSEO) and his staff, and the head of the Special Investigating Unit and his staff. I am grateful for their support and assistance. I would also like to thank the University of Botswana for funding and supporting me throughout my study period. Finally, many thanks to my wife Kedi and daughter Rona for their constant support and encouragement, despite my long absence from home.

David Sebudubudu

August, 2002

## Abstract

This thesis examines the work of anti-corruption agencies in Botswana, South Africa and Namibia. It argues that these agencies have produced disappointing results in terms of investigating and prosecuting high-level corruption. It suggests five main reasons for this failure. First, anti-corruption agencies have suffered from a lack of resources resulting from lack of political support and the general problem of economic underdevelopment. Second, there is a lack of political will to prosecute high-level corruption. Third, even if there was such a will, anti-corruption agencies, by their very nature, are unable to affect the underlying political pressures which promote corruption and, therefore, their successes need to be limited to individual cases. Fourth, the model on which such agencies have been based is inappropriate to the African setting and assumes conditions that cannot be replicated in the subcontinent. And finally, these factors suggest that the purpose of anti-corruption agencies in Africa might possibly have more to do with reassuring investors and aid donors in an age of globalisation than with actually attacking high-level corruption, an activity that would, after all, undermine the fragile political elites of these countries. The dissertation first evaluates the destructive character of corruption in Africa and attempts to control it through anti-corruption reform. It then proceeds to an analysis of the problem, and the agencies set up to deal with it, in each of the three country cases. The dissertation concludes with a comparison of the effectiveness of the anti-corruption agencies in the three countries.

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## Abbreviations

ANC	African National Congress
ARDP	Accelerated Rural Development Programme
ARAP	Accelerated Rainfed Agricultural Programme
ALDP	Arable Lands Development Programme
BDF	Botswana Defence Force
BDP	Botswana Democratic Party
BHC	Botswana Housing Corporation
BNF	Botswana National Front
BTC	Botswana Technology Centre
CEF	Central Energy Fund
CoD	Congress of Democrats
DCEC	Directorate on Corruption and Economic Crime
DTA	Democratic Turnhalle Alliance
FAP	Financial Assistance Policy
IDSEO	Investigating Directorate for Serious Economic Offences
IAC	Investigating Authority for Corruption
ICAC	Independent Commission Against Corruption
IACC	International Anti-Corruption Conference
IDOC	Investigating Directorate for Organised Crime
IMF	International Monetary Fund
IPM	International Project Managers
MEC	Members of the Executive Council
MLGL&H	Ministry of Local Government Lands and Housing
MPB	Mpumalanga Parks Board
MVIF	Motor Vehicle Insurance Fund
NDB	National Development Bank
NHE	National Housing Enterprise
OECD	Organisation for Economic Co-operation and Development
PSC	Public Service Commission
SAPs	Structural Adjustment Policies
SAPS	South African Police Service
SARS	South African Revenue Services
SADF	South African Defence Force
SHHA	Self Help Housing Agency
SIU	Special Investigating Unit
SRCCC	South African Regional Crime Combating Council
SWAPO	South West Africa People Organisation
TI	Transparency International
TI CPI	Transparency International Corruption Perception Index
TGLP	Tribal Grazing Land Policy
UDF	United Democratic Front
UNDP	United Nations Development Programme
UN	United Nations
UNICEF	United Nations Children's Education Fund
UNITA	National Union for the Total Independence of Angola
USAID	United States Agency for International Development
ZCB	Zachem Construction Botswana



### Note about currency

I have used local currencies where expressing values in the dissertation. Although there were fluctuations during my research, the rough equivalent for the currencies of Botswana, Namibia and South Africa were as follows:

*Botswana:*

Friday, 1 October 1999

(i)	1 Botswana Pula	=	0.13360 British Pound
	1 British Pound (GBP)	=	7.48526 Botswana Pula (BWP)
(ii)	1 Botswana Pula	=	0.22050 US Dollar
	1 US Dollar (USD)	=	4.53515 Botswana Pula (BWP)

*Namibia:*

Tuesday, 22 February 2000

(i)	1 Namibia Dollar	=	0.09886 British Pound
	1 British Pound (GBP)	=	10.11492 Namibia Dollar (NAD)
(ii)	1 Namibia Dollar	=	0.15813 US Dollar
	1 US Dollar (USD)	=	6.32400 Namibia Dollar (NAD)

*South Africa:*

Monday, 8 May 2000

(i)	1 South African Rand	=	0.09421 British Pound
	1 British Pound (GBP)	=	10.61481 South African Rand (ZAR)
(ii)	1 South African Rand	=	0.14394 US Dollar
	1 US Dollar (USD)	=	6.94750 South African Rand (ZAR)

Source: Oanda Corporation, New York: <http://www.oanda.com/convert/classic>



## **Chapter one: Introduction: combating corruption in Southern Africa**

This dissertation examines the work of anti-corruption agencies in Botswana, South Africa and Namibia. These agencies have produced disappointing results in terms of investigating and prosecuting high-level corruption. My thesis suggests five main reasons for this failure. Firstly, it argues that they have suffered from lack of resources resulting from lack of political support and the general problem of economic underdevelopment. Secondly, it argues that there is a lack of political will to prosecute high-level corruption. Thirdly, it suggests that even if there was such a will, anti-corruption agencies, by their very nature, are unable to affect the underlying political pressures which promote corruption and that, therefore, their successes can only be limited to individual cases. Fourthly, it argues that the model on which such agencies have been set up is inappropriate to the African setting and assumes conditions that cannot be replicated in the subcontinent. And finally, these factors suggest that the purpose of anti-corruption agencies in Africa might possibly have more to do with reassuring investors and aid donors in an age of globalisation than with actually attacking high-level corruption, an activity that would, after all, undermine the fragile political elites of these countries.

These factors are inextricably interrelated and interdependent. Take, for example, the question of anti-corruption agencies being under-resourced. In the first place, this is usually because there is lack of political support for anti-corruption agencies. In part this arises because there is lack of appreciation for the fact that an effective anti-corruption agency needs to be properly resourced. But political support is usually lacking, also, because anti-corruption agencies are victims of the pressures for personal accumulation which bedevil African politics. Moreover,

anti-corruption agencies lack adequate resources because of economic underdevelopment. Anti-corruption agencies compete for resources with other institutions of the state. Because of underdevelopment, the state is not able to provide adequate resources for any of its competing institutions, including anti-corruption agencies. Resources in this case refer not only to money but also institutional weaknesses and skills. In most developing countries, skills are in short supply and the institutions are generally weak. This manifests itself in weak support for anti-corruption activities from related institutions such as the judiciary and the criminal justice system. If say, the criminal justice system is bedevilled by problems of capacity, this will slow the process of bringing those accused before the courts. This may also be the case if there is a shortage of judicial officers or if the police service is corrupt. In this sense, establishing an anti-corruption agency is not adequate, there is also a need to build capacity for other institutions which support anti-corruption agencies.

Or take the question of political will. Anti-corruption agencies have also been limited in their success in combating high-level corruption because of a lack of political will to support investigation and punish high-level corruption. The lack of political will for combating high-level corruption arises because anti-corruption activities may threaten not only the positions of politicians but also the stability of the political system itself. By doing so, anti-corruption agencies “interfere with patterns of private accumulation and political patronage and threaten the privileges which state office bestows on political elites and their supporters and associates” (Szeftel, 2000a: 428). In this sense, anti-corruption agencies create problems for African states because they strike at the means of regime survival, at

the very nature of the African state which functions on the basis of political patronage. In part this explains why ruling elites often oppose anti-corruption activities. As a result, anti-corruption agencies do not get the resources they need to do their job and have also lacked independence from executive control or oversight as well as statutory autonomy. As Rose-Ackerman observed, "good ideas are useless unless someone is willing to implement them" (1999: 5). Although anti-corruption agencies have had some success in tackling lower-level corruption, there are grounds for arguing that their inability to tackle high-level corruption undermines not only their legitimacy but also their ability to contain low-level corruption as well. This is not only because they lack resources and autonomy from the executive but also because political patronage may protect lower-level officials. In this sense lower-level corruption may thus be linked to high-level corruption.

Then consider the problems posed by the nature of political corruption itself. Anti-corruption agencies in Africa have achieved limited success because such organisations are unable to tackle the political and socio-economic forces that promote corruption and undermine institutional reform in Africa. That is to say, anti-corruption agencies are equipped to address specific cases; the underlying political pressures which give rise to corruption are not part of their brief. Because of the very nature of development, people of ambition look to government as a locus of resources. As a result, there is pressure on public officials because a public office is seen as a source of wealth. Anti-corruption institutions in Africa are victims of the structural pressures on the political process for personal accumulation. Because they are not geared to deal with the structural factors

which promote corruption in Africa, anti-corruption institutions have in most cases treated the symptoms rather than the causes of the problem (Szeftel, 1998). In turn, by not tackling such underlying factors that promote corruption, anti-corruption institutions do not address the very factors which undermine institutional reform. As a result, “corruption has survived and prospered” (ibid. 238).

Again, the interdependence of these factors is seen when we consider the model on which such institutional reform is based. Anti-corruption agencies in Africa have been set up on a model which is inappropriate to the African setting and assumes conditions that cannot be replicated in the subcontinent. Such agencies are modelled on the Independent Commission Against Corruption (ICAC) in Hong Kong. Following the success of the ICAC in combating corruption in Hong Kong, the ICAC has been seen, cited and employed as a model which other countries should follow. The ICAC uses ‘a three pronged strategy’ of investigation and prosecution, corruption prevention and public education in its fight against corruption. This strategy is implemented by three departments which are interdependent. These are the Operations Department, Corruption Prevention Department and Community Relations Department (ICAC, 2001:<http://www.icac.org.hk/>; Camerer, 1999; Pope and Vogl, 2000). The ICAC has wide-ranging powers (Camerer, 1999:201). However, there are checks and balances to monitor the activities of the ICAC (ICAC, 2001:[http://www.icac.org.hk/eng/power/powe\\_acct\\_1.html](http://www.icac.org.hk/eng/power/powe_acct_1.html); Camerer, 1999). We examine the ICAC in detail in chapter three.



There is no doubt that the ICAC's strategy was successful in fighting corruption in Hong Kong from its establishment in 1974. However, as we shall see, the ICAC is a model designed for a colonial system with huge material resources. Despite this fundamental difference, the ICAC, as we shall show in our case studies of Botswana, South Africa and Namibia in the subsequent chapters, is seen as a model in the three countries in systems which operate on the basis of transparency and accountability. These are not authoritarian or non-democratic regimes. They are democratic regimes which are obliged to employ the rule of law in response to democratic demands from their citizens. Moreover, as we shall demonstrate, the application of the ICAC model to our case studies has had to take, of necessity, a very modified and diluted form. In our case studies, we find three different applications of the ICAC model. The experience of Botswana, South Africa and Namibia will suggest that more than a good model is needed to combat corruption successfully.

And finally, anti-corruption agencies have produced disappointing results in fighting high-level corruption because, as these factors suggest, the purpose of setting up anti-corruption agencies in Africa might possibly have as much to do with reassuring investors and aid donors in an age of globalisation as to actually tackling high-level corruption. Indeed, we might question whether or not anti-corruption agencies were ever set up to tackle high-level corruption. It would appear that anti-corruption agencies have sometimes been established with little expectation of reducing corruption at the highest level. This could be the case because attacking high-level corruption might undermine the fragile political elites of these countries, as well as the stability of the political system itself. Low

expectation also arises because of underdevelopment of resources. It seems at least in part that anti-corruption agencies were not created to rock the boat but to reassure foreign investors and donor organisations. Reassuring investors is very important for these countries because of the dependence of their economies on foreign investment. Because of a combination of all these factors, anti-corruption agencies in Africa have been limited in their success in fighting corruption, especially high-level corruption. These arguments are at the centre of the analysis that follows in the subsequent chapters.

### **The nature of this study**

Why study African anti-corruption agencies, especially given their limited success? We would suggest such a study is important for a number of reasons. Firstly, this study is the first of its kind. There is as yet no detailed, comparative study of anti-corruption agencies in Botswana, South Africa and Namibia nor any exploring why and how these institutions have emerged, how they function and how and why they evolved in the way that they did. This is the case despite the proliferation of anti-corruption agencies in Africa. There is a need for a study which will evaluate the nature of these agencies in combating corruption, and how they promote accountability in public administrations. To the extent therefore that this thesis informs on the historical trajectory of anti-corruption agencies in Botswana, South Africa and Namibia, it tackles an underresearched area of our knowledge of anti-corruption agencies. Moreover, the utility of the thesis goes beyond the particular account it offers of the work of anti-corruption agencies in Botswana, South Africa and Namibia. One of its key objectives is to provide an analysis of the broader picture about the dynamics of the politics of combating



corruption in Africa. To understand this dynamic, it is important and useful to examine the institutions that have been established to combat corruption. By conducting an evaluation of anti-corruption agencies in Botswana, Namibia and South Africa, we will contribute to the ongoing debate about how corruption can be regulated if not controlled.

Secondly, the study is important because the impact of corruption has been “catastrophic” in contemporary Africa (Riley, 2000). At the turn of the century, corruption has come to be associated with political instability and deep-rooted crises of economic development, poverty and spiralling public debt. Stephen Riley observed that “extensive high-level or large-scale corruption, as well as its petty or incidental forms, is linked to a wider set of systemic crises which now confront a number of African countries” (2000: 138). Moreover, he suggested, “corruption in Africa is universally perceived...as being ‘catastrophic’ in its impact on development, a major cause of economic crisis, authoritarianism, political instability and state collapse” (Riley, 2000 quoted in Szeftel, 2000a: 427). Thus, Riley argues that corruption in Africa “is often part of a syndrome of de-development or underdevelopment which destroys the life chances of the poor majority”. He suggests that it has “important transnational dimensions and both short-term and longer-term developmental effects, both of them catastrophic” and can lead to “very damaging consequences for public reputations and the integrity of state institutions” (ibid. 138). Similarly, John Mbaku asserts that corruption in Africa has become one of the major obstacles to “genuine development” as it “has failed to improve political and economic participation in the African countries” (1998: 35). Furthermore,

Mbaku contends that pervasive corruption in Africa is “a major constraint to effective institutional reforms” (ibid. 27).

In similar vein, many writers stress the destructive nature of corruption in Africa. Kpundeh argues that “corruption in African countries...poses a profound threat to all systems of government” (1995: 62), while LeVine asserts “that in a good many African countries political corruption is sufficiently pervasive that the public expect their politicians and public servants to be generally dishonest” (1975: 110). The President of the World Bank, James Wolfensohn, called for the need to tackle “the cancer of corruption” (The World Bank, 2002: <http://www.worldbank.org/html/prddr/trans/so96/art3.htm>). The Organisation for Economic Co-operation and Development (OECD) states that corruption is capable of threatening stability, development, and the values of democracy (OECD, 2001:<http://www.oecd.org/daf/nocorruption/initiatives.htm>). For the World Bank, corruption

hinders economic performance, increases the cost of public investment, lowers the quality of public infrastructure, decreases government revenue, and makes it burdensome and costly for citizens – particularly the poor – to access public services. Corruption also undermines the legitimacy of governments and erodes the fabric of society” (2000: 73).

Thus the consensus is that corruption has debilitating effects on democracy and development (Szeftel, 2000b). These views that corruption is damaging in Africa are also shared by Africans themselves (Szeftel, 2000a). The rising concern over corruption has not only raised awareness but has also created a demand for good governance amongst local reformers and donors. Thus, corruption has become an important theme for many conferences organised world-wide to try to cultivate and promote ethics and good governance.

Thirdly, the study is important because globalisation increasingly imposes universal standards of honesty and corruption. Globalisation creates pressures for the regulation of corruption. It requires countries to adhere to international standards of doing business if they are to attract foreign investment and aid. Countries perceived as having widespread corruption may find it more difficult to attract investment (World Bank, 2000). With the acceleration of globalisation, donors have tied aid and, especially, debt relief to political 'conditionalities' requiring political reform and 'good governance'. This includes the prevention of corruption. As an attempt to curb the problem of corruption, "donors have encouraged, through aid and political pressure, a number of strategies to further the governance agenda" (Szeftel, 2000b: 290). Thus, without substantive economic and political reforms, donors are able to withhold aid until the recipient country has met the criteria set by donor organisations. For instance, the World Bank has proposed cutting lending to a government that is reluctant to tackle corruption (Riley, 2000). Announcing a cut in aid to Kenya, a representative of the Dutch Government said "what is difficult to understand, in an age when governance is such a dominant theme in international discussions on development, is lack of action taken in Kenya on reports of looting of public funds" (*Panafrican News Agency*, 9 July 1999). For the World Bank and other aid donors, a successful anti-corruption strategy should curtail rent-seeking practices by public officials, reduce monopolies of power, and at the same time, promote accountability in government (Riley, 2000: 145-147). Szeftel argues that the demand that African governments tackle corruption demonstrates the desire to build "a world that is fit for doing business" in the post Cold War era (2000b:

288). Thus, there is a commitment on the side of Western governments “to promote market capitalism and the liberal democratic state as the only institutional arrangements” suitable for globalisation (ibid. 289).

This marks a profound change of approach compared with that of the 1980s when, as Riley noted, “many Western governments and international institutions failed to concern themselves with the levels of corruption in Africa” (2000: 137). Riley identified a number of reasons for this failure. He attributed it amongst other things to “an element of confusion”, characterised by rhetorical condemnation of corruption with little effort being made to ensure that recipient governments seriously tackled it. Emphasis was placed on other issues seen then as of more importance, such as the need for achieving higher economic growth. Moreover, the unwillingness to seriously tackle corruption in the past had to do with the Cold War (ibid.140). With the end of the Cold War, donors now contend that corruption is and has to be ‘a politically salient issue’ for reformers. As a result, nearly all of Africa’s main aid donors and trading partners put in place policies in the 1990s to counter the damaging effects of corruption (Riley, 2000). With the acceleration of post-Soviet globalisation, “donors now expect higher ethical standards” (ibid. 142). And in order to meet the expectations of donors, concerted efforts had to be made to put in place measures that promoted good governance and reduced corruption (ibid. 142). As we noted earlier, much anti-corruption reform was directed at meeting such donor and investor demands. In the eyes of donor organisations such as the World Bank and the Organisation for Economic Co-operation and Development (OECD), “a limited, legitimate, honest and transparent state ought to be at the centre of the development process” (ibid. 144).



Thus, we can say that globalisation has put democratic reform and anti-corruption reform on the agenda for Africa. Speaking of the need to tackle corruption in 1994, Baroness Chalker said that

where a government wants aid to help with a transformation to democracy, to strengthen its institutions, to weed out corruption and incompetence - we will give it. But where a government turns its back on democracy, ignores accountability, flouts human rights and allows corruption to flourish, our aid will only be of a humanitarian nature to help the people in real need. No taxpayer in any donor country should be asked to contribute to the Swiss bank accounts of corrupt third world politicians. There are courageous leaders undertaking difficult economic and political transformation without seeking personal gain. These are the countries Britain should help (ODA, News Release, 6 July 1994 quoted in Szeftel, 2000b).

This clearly demonstrates that donors are more concerned with political reform and the need to tackle corruption than ever was the case in the past. The new intolerance of corruption has to do with the high costs and threat corruption poses to the aid agenda and donor reforms. Moreover, Szeftel contends that the need to tackle corruption “reflects the dominant neo-liberal concern to promote ‘market friendly’ development”, and furthermore, “it reflects the economic crisis in the South and the former USSR and the need to ensure that governments in these regions repay their debts to their (Western) creditors” (2000b: 288).

For Riley, the growing concern with corruption is also “in part a product of the events of the ‘corruption eruption’” (2000: 140). This refers to major corruption scandals witnessed during the last ten to fifteen years in both the developed and developing world (Della Porta and Vannucci, 1999; Galtung and Pope, 1999; Riley, 2000). Galtung and Pope noted that “throughout 1992 and 1993, significant corruption scandals reaching the highest political echelons in countries as diverse

as Belgium, Spain, Italy, Japan, France, and Russia” (1999: 263). Although these scandals may have put into question “the cultural superiority of the North” (ibid. 263), donors nevertheless continued to preach and impose conditionalities on Africa. In turn, this concern over corruption has created pressures leading to the setting up of anti-corruption agencies in Africa and elsewhere. In turn, the process has been welcomed by African reformers. Hope (2000) holds that anti-corruption agencies are essential and need to be maintained if corruption is to be contained in Africa. It is in this sense that the control of corruption has become a high priority in recent years.

Fourthly, the study is important because regardless of external pressure, corruption frequently poses a threat to democracy and prospects for consolidating democracy in Africa. This threat emanates from the unaccountable and thus unchecked use of state power. Moreover, in the eyes of the donors “liberalization requires also a democratization strategy to restrain state power” (Szeftel, 1998: 226). LeVine (1993) argues that democracy helps to check corruption. LeVine notes that

while administrative corruption cannot be eliminated, it can be limited in [democratizing] states. The operative consensus, with which I agree, is that attempts at [limiting corruption] are more likely to succeed the further the country is along the democratization path. The more democracy, the more likely that mechanisms will have been put in place to monitor the performance of administrators and bureaucrats as well as incentives created to ‘nourish incorruptness’ and punishments mandated to discourage corrupt practices (1993: 271).

In this sense, “the persistence of corruption was an indication not of democratic failure but rather of incomplete democratization”, emanating “from the need to wipe out old states and eradicate old vested interests” (Szeftel, 1998: 226).



Democracy can limit corruption through greater accountability and transparency as well as by having an organised public opinion which can punish leaders through corruption scandals (LeVine, 1993). Riley, equally, observed that “the political and managerial will to control corruption, are more likely to be seen in democratic societies where pressures of political competition often force politicians to act” (2000: 153).

Markovits and Silverstein make a similar point. They argue that democracy is an effective tool against corruption because it has the capacity through checks and balances to expose corruption in the form of scandals. These checks and balances are in the form of the rule of law, separation of powers, a free press, political parties that are competitive and free and fair elections. Because public behaviour in a democratic order is transparent and accountable, a breach in one of these ingredients of liberal democracy would result in the “due process” taking its course (1988: 6). Thus, they observed: “it is only via the firm institutionalisation - almost sanctification - of due process that liberal democracies can legitimately curtail the randomness, secretiveness, and exclusive character inherent in the exercise of political power” (ibid. 6). In this sense, liberal democracy has the capacity to limit the abuse of state power because it has well defined “strict rules, procedures and public scrutiny” (ibid. 6). Similarly, Wraith and Simpkins noted that “in theory the self-regulating processes of democracy ought to banish bribery and corruption from public life” (1963: 196).

However, the issue of exposing corruption through scandals does not work well in Africa. Riley wrote that “there is a relative absence of scandal in Africa” (2000:

148). This is because 'the due process' is weak because institutions are weak (Appendix 1 shows how Markovits and Silverstein's due process functions). This explains why it is important for Botswana, South Africa and Namibia to prevent the widespread corruption from taking hold if their fragile democracies are to be defended and consolidated.

Alongside the argument that democracy can limit corruption, another opposite argument is also made, that corruption undermines and threatens democracy (Della Porta and Meny, 1997; Della Porta and Vannucci, 1999). Della Porta and Meny noted that by striking at the very heart of democracy, "political corruption endangers the very functioning of democracy" (ibid. 179). Johnston contends that

corruption does its most serious damage to the intangibles of democracy - to the values of trust, forbearance, and justice so essential to making our system work. A system with no corruption will not be perfectly democratic, of course, but significant corruption puts these essential democratic values under severe strain (1982: 177).

By attacking the essential aspects of democracy, Heywood observed that "widespread political corruption helped undermine one of the support structures - the claim to operate on the basis of public accountability - which had underpinned western democracies in the post-war world" (1997: 3). Similarly, Della Porta and Vannucci argued that "corruption undermines a number of democracy's fundamental principles" (Della Porta and Vannucci, 1999:9). And Della Porta and Vannucci quoted Pizzorno, who observed that

corruption tends to act upon those conditions of political activity without which democracy is not democracy at all: the principle of transparency, and what might be called equality of political rights, equal access to the state for all citizens (Pizzorno, 1992 quoted in Della Porta and Vannucci, 1999: 9).

Pizzorno's argument is important because it demonstrates that anti-corruption agencies are important and thus it is crucial that they function well, otherwise democracy itself is under threat. This is one more reason why anti-corruption agencies need to be examined and need to work properly.

Furthermore, anti-corruption is important because it legitimizes democracy (Szeftel, 2000a). As Szeftel has observed, "the control of corruption is an essential element in the legitimation of liberal democracy and in the promotion of global markets" (2000a: 427). Democracy functions on the basis of defined rules and regulations, fair and equal treatment before the law as well as a separation between public and private function. These principles are necessary to legitimize the use of state power because corruption is a threat. This is particularly the case for new states in Africa such as Botswana, South Africa and Namibia. It is in this sense that anti-corruption agencies became part of the democratic agenda. This is important because for democracy to survive, especially in new states, anti-corruption agencies need to function properly. This is why the study of anti-corruption agencies is important. Having considered the question of why we should study African anti-corruption agencies, we now need to turn to the question of why we study them in Botswana, South Africa and Namibia.

### **Cases**

The study examines the work of anti-corruption agencies in Botswana, South Africa and Namibia. There are a number of reasons why these three countries have been chosen as case studies. First of all, the three countries are in the same geographical region of Africa. Secondly, they have close historical, political and

economic links which mean that (a) they are more easily and relatively compared and (b) they influence each other in ways that make their choices of anti-corruption strategies interesting. Thirdly, all the three countries are stable and ruled by dominant ruling parties with only weak opposition parties facing them. Pressures for change emanate more from within ruling party and government than from the opposition benches in parliament. In addition to being dominant party states, all three countries have liberal democratic constitutions based on the rule of law.

Fourthly, none of the three countries face the same serious level of debt crisis found in much of the rest of Africa and therefore none are subject to the same levels of direct donor pressures for reform. Thus, although all must consider issues of foreign investment and aid, the process of reform comes as much from internal political considerations as from international pressures from donors and investors. Fifthly, the three countries are qualitatively different from much of Africa in the sense that anti-corruption agencies in all three were a response to internal political debates rather than being simply the mechanical adoption of donor models. And finally, the three countries are ranked as the least corrupt countries in Africa at the moment according to Transparency International Corruption Perception Index (TI CPI). In this sense, for all the three countries the problem is to prevent widespread corruption taking hold if democratic gains are to be consolidated and defended rather than to control a rampant corruption.



The section that follows introduces anti-corruption agencies examined in Botswana, South Africa and Namibia, as these agencies are the subject of the study.

### **Anti-corruption agencies in Botswana, South Africa and Namibia**

Botswana, South Africa and Namibia have established anti-corruption agencies in an attempt to tackle the problem of corruption. In Botswana, the Directorate on Corruption and Economic Crime (DCEC) was established in 1994 following the enactment of the DCEC Act. The DCEC Act provides “for the establishment of a Directorate on Corruption and Economic Crime; to make comprehensive provision for the prevention of corruption; and confer power on the Directorate to investigate suspected cases of corruption and economic crime and matters connected or incidental thereto” (Republic of Botswana, 1994: A.92). Its anti-corruption strategy involves investigation and prosecution, corruption prevention and public education. The DCEC is a government department with wide-ranging powers which is answerable to the President who appoints the head of the DCEC. However, it lacks independent powers to prosecute possible offenders.

In South Africa, uniquely, there are more than ten anti-corruption agencies. However, this thesis limits itself to the discussion of three such agencies, namely; The Public Protector of 1994, Investigating Directorate for Serious Economic Offences (IDSEO) of 1992 and Special Investigating Unit (SIU) of 1996. First, because at the moment these are the main anti-corruption institutions with the widest powers to curtail the problem of corruption in South Africa. Second, the other agencies are not as important and comprehensive as these three. These

agencies fight corruption mainly through investigation. The Public Protector was established

to investigate matters and protect the public against matters such as maladministration in connection with the affairs of government, improper conduct by a person performing a public function, improper acts with respect to public money, improper or unlawful enrichment of a person performing a public function and an act or omission by a person performing a public function resulting in improper prejudice to another person (Republic of South Africa, 1994: PREAMBLE).

The Public Protector is appointed by the president on a non-renewable seven year term, following a recommendation by the National Assembly. The Public Protector is answerable to the National Assembly. He or she has wide powers, but lacks independent powers to prosecute.

With regard to IDSEO, the principal objective of its Act was to “provide for the swift and proper investigation of certain serious economic offences” (Republic of South Africa, 1995). IDSEO is a branch of the National Prosecuting Authority. The President appoints the Director of IDSEO. Although IDSEO was granted full powers to prosecute in 1998, it continues to make recommendations to the National Prosecuting Authority. The SIU, in turn, was set up “for the purpose of investigating serious malpractices or maladministration in connection with the administration of the State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public” (Republic of South Africa, 2000: <http://www.heathsiu.co.za/act.htm>). The President appoints the head of the SIU. Moreover, the SIU operates on the basis of presidential proclamations. That is to say, for the SIU to investigate, the President has to give it the authority to do so. The SIU investigates cases from a civil perspective.



In Namibia, the leading anti-corruption agency which is constitutionally enshrined is the Office of the Ombudsman created in 1990. The Ombudsman is appointed by the President following a recommendation by the Judicial Service Commission and reports to the Speaker of the National Assembly. In Namibia, the Ombudsman Act of 1990 empowers the Ombudsman to investigate acts of maladministration and corruption, issues of human rights abuse, and issues of the environment or misuse of natural resources. The Ombudsman lacks independent powers to prosecute. He or she only make recommendations following an investigation.

Although the Ombudsman remains the leading anti-corruption agency in Namibia, in 2001 the National Assembly passed a Bill providing for the creation of a special anti-corruption agency. However, the National Council rejected this Bill by two-thirds majority, and noted that “the tasks of the anti-corruption agency it was supposed to set up could be carried out by the Ombudsman’s office” (*The Namibian*, 13 February 2002). The National Assembly can either accept or reject the recommendations of the National Council. At time of writing it has yet to react. If it accepts the recommendation of the National Council, “the Bill will be scrapped” (*The Namibian*, 13 February 2002). The main aim of the Bill is “to establish the Anti-Corruption Commission and provide for its functions; to provide for the prevention and punishment of corruption; and to make provision for matters connected therewith” (Republic of Namibia, 2001). The Bill provides for an anti-corruption strategy, which involves investigation, corruption prevention and public education.

In all the three countries, these agencies have produced disappointing results thus far in terms of investigating, exposing and punishing high-level corruption. We will argue that this is because of the combination of factors outlined at the beginning of the thesis. Before we do this, however, it is necessary to examine the problems of research.

### **The problems of research**

This study adopts a comparative method in order to understand why anti-corruption agencies have been established in Africa and why they have had such limited success in fighting corruption. The comparative method has not been fully utilised in explaining the work of anti-corruption agencies in Africa. The study uses a cross-country method of comparative analysis. The attempt to embed our exploration of anti-corruption agencies in a wider perspective influences the way we approach anti-corruption agencies analytically. The comparative approach has the utility of offering an interesting analysis of anti-corruption agencies which may not be answered by data from a single case study. May notes that comparative analysis “can allow those who are studying other countries to have a particular insight into their practices” (1993: 157). For Mackie and Marsh (1995), comparative analysis is important, first because it offers an opportunity to move beyond an analysis that is ethnocentric. Secondly, it leads to the development of theory and hypotheses that can be generally applied. However, there are problems with comparative research. May argues that one of the key problems with comparative analysis is “to generalize and explain social relations across societies and social contexts” (1993: 159). There are also problems as to how many cases to study, having too many variables and a limited number of countries to examine,

bias, and the problem of the same phenomena but having different meanings (Mackie and Marsh, 1995: 180-183).

In making a comparative analysis, we used a number of approaches. First, we used institutional analysis to consider the state and the way institutions operate. Second, we compared the nature of corruption in the three countries to understand how corruption is embedded and how the conduct of politics affects the nature of corruption. The third approach to this is the use of political economy to understand how corruption is embedded in each political economy of each country and how political economy affects corruption and resources to fight it.

The literature on corruption is generally dominated by single case studies (Riley, 1993; Ellis, 1996). As Ellis has observed, “the literature on corruption or on governance in Africa more generally tends to adopt a national perspective, investigating how national elites use corruption or manipulation of public policy to enrich themselves and maintain themselves in power” (1996: 165). The defining feature of this kind of research is that its analytic focus concentrates on either a single anti-corruption agency or elites amassing wealth in a particular country without paying adequate attention to contexts in which anti-corruption agencies function.

### **Collection and sources of data**

The data for the study was collected in the three countries of Botswana, South Africa and Namibia, which are the focus of the study, between the period September 1999 and July 2000. The fieldwork commenced with the application

for permits to conduct research in the three countries. For Botswana, the research permit was obtained from the Office of the President. And for South Africa and Namibia, research permits were obtained from their High Commissions in Gaborone, Botswana. Data collection started in Botswana, mainly in the capital city, Gaborone, where the headquarters of its anti-corruption agency, the Directorate on Corruption and Economic Crime (DCEC) is based, and in the DCEC office in Francistown, Botswana's northern city. This was followed by a visit to the Office of the Ombudsman in Windhoek, Namibia during February and March 2000. The last leg of the fieldwork was conducted in Pretoria, South Africa in May 2000 at the offices of the Public Protector and the Investigating Directorate: Serious Economic Offences (IDSEO). Although it was not possible to visit the Special Investigating Unit (SIU), in East London, due to financial constraints, interviews were held with the head of the SIU and one of his officials.

Although the thesis proceeds from an analysis of a wide range of general secondary work on corruption, much of the information presented in this thesis was obtained mainly from primary sources, official and unofficial, written and unwritten. Written primary sources of information collected from the three countries are listed in the bibliography.

Unwritten primary data was collected mainly through face-to-face interviews and, on three instances, through telephonic interviews using semi-structured interviews as a guide (see appendix 2, 3 and 4 for the questionnaires used). In all the three countries, those interviewed included; (1) officials working in anti-corruption agencies, (2) politicians, (3) senior civil servants working in government, (4)



journalists, (5) officials working in donor agencies and non-governmental organisations (NGOs), and (6) academics. In all, seventy-eight interviews were conducted, 35 in Botswana, 23 in South Africa and 20 in Namibia. The people targeted were chosen for their specialised knowledge and positions of authority. Questions were asked to gain perceptions of, or opinions on anti-corruption initiatives in the three countries in terms of how these agencies function and the difficulties they face in carrying out their functions. Data collected through interviews was recorded by taking field notes, as those interviewed preferred not to be tape-recorded. The notes were recorded in a personal diary. The data cannot be quantified because it is anecdotal and answers were often given in a variety of different ways by different respondents. As a result, data collected through interviews was managed anecdotally.

### **Problems of data collection**

Collecting data in Botswana, Namibia and South Africa presented a number of difficulties. One of the key problems faced was that certain officials who worked for these anti-corruption agencies tended to be concerned with presenting the performance of their agencies in the best possible light and understating the limitations or problems their agencies faced. They were often unwilling to accept that there were such problems despite the fact that official reports produced by the same agencies highlighted a number of difficulties faced by these agencies in their everyday operations. Moreover, anecdotal evidence collected through interviews with people not working for these agencies suggested that these agencies had produced disappointing results thus far. Another obstacle faced was that of suspicion. Because of the nature of the subject of corruption, people were often

unwilling to talk openly about it and they preferred not to be tape-recorded, despite assurances that their names would not be disclosed and their views would remain confidential. An equally pressing problem faced was that of inadequate funding. A research that entails crossing borders is expensive to undertake. Therefore, data collection in Namibia and South Africa had to be achieved within a very short period of time and fieldwork was complemented by the use of internet sources, which proved to be a valuable source of information.

### **Organisation of the thesis**

The thesis has eight chapters. Having set out the nature, objectives and approach of the study in this introduction, the dissertation then proceeds to an analysis of the general problem of corruption in Africa, analysing the political and socio-economic factors which have necessitated anti-corruption reform on the continent in some detail and the forms this reform effort has taken. In each case, the points of similarity and difference between the general process on the continent and the specific features of the three case studies, is explored. This is followed by specific and detailed examinations of the role of anti-corruption agencies in each country before a comparative assessment is made.

Chapter two is about socio-political forces and economic problems that drive corruption in Africa and give rise to anti-corruption agencies to combat corruption. The focus of this chapter is on the importance of corruption as a problem facing contemporary Africa. The question we are exploring in this chapter is why has corruption become an issue of critical importance to African politics in the last part of the twentieth century. This is in part because corruption

has destructive effects on the political system and the state in Africa. The chapter is important to the overall thesis in the sense that it leads to an understanding as to why corruption has devastating effects in Africa although the scale of corruption in Africa is not distinctively worse than in other parts of the world. The chapter argues that in order to understand why corruption is damaging in Africa, we need to understand the politics of the state in Africa. This is because corruption in Africa is embedded in the politics of the state. First weak state institutions, which are further undermined by economic problems, promote corruption for various reasons. Elites scramble for public resources as the economy contracts. Weak state institutions make corruption easy, lack of punishment of offenders encourages offences, and factional competition makes looting the state more likely. Secondly, corruption increases the decline of economic development and undermines democracy and thus stability. It also entrenches authoritarianism and the arbitrary use of power. This has led for pressures to curtail corruption. The chapter also shows how Botswana, South Africa and Namibia are different from much of Africa yet they have seen it fit to introduce anti-corruption agencies in order to prevent widespread corruption from taking hold in their countries. Moreover they want to assure foreign investment. In turn this chapter shows why anti-corruption agencies are important and need to be effective.

Chapter three sets out the broader context of reform more generally and in Africa. With the increasing concern over the problem of corruption over the past ten to fifteen years, there has emerged a new consensus in development circles that the problem of corruption and in turn, economic crisis need to be tackled through institutional reform. This chapter is concerned with the specific nature and content

of the institutional or governance reforms and the problems that attend them generally in Africa. Donor governments and agencies are pushing for a liberal democratic reform agenda, which entails economic liberalization and political democratisation in pursuit of good governance. Moreover, reform entails instituting anti-corruption measures and the establishment of a stable government that is accountable and transparent. In the eyes of the donors and Western governments, political and economic reforms are seen as necessary to curtail the devastating effects of corruption in Africa. As a result of donor and local pressures, African states have of late embarked on some political and economic reforms. This chapter will help us to understand why there is a sudden push for institutional reform in Africa. Despite a push for reform to curb the problem of corruption, this chapter demonstrates that anti-corruption reform has so far produced mixed results, which indicates that reform is not sufficient to curb the problem of corruption. The chapter also spells out the Hong Kong ICAC model in detail and its application to Africa. Botswana, South Africa and Namibia are not in the same economic crisis as elsewhere in Africa yet they have adopted the Hong Kong model. This is because the three countries are vulnerable and have learnt from what has happened elsewhere in Africa. The fact that the three countries have not yet travelled down the crisis road makes the control of corruption more hopeful and all more important to prevent the slide into post-colonial crisis. Therefore there is a need for effective anti-corruption agencies in order to strengthen their democratic credentials in the eyes of international investors, donors and their own voters.



Chapters four, five and six analyse anti-corruption reform efforts through our case studies of Botswana, South Africa and Namibia respectively. Although Transparency International regards Botswana, Namibia and South Africa as the least corrupt countries relative to Africa and elsewhere, they have of late embarked on anti-corruption reforms. This is important to prevent widespread corruption from taking hold in these countries. Therefore, chapters four, five and six analyse how anti-corruption agencies function in Africa's least corrupt countries. Chapter four offers a detailed exploration of our case study of Botswana. Botswana has also experienced some demands for reform to curb corruption following a series of corruption scandals in the early 1990s. The response to the problem of corruption was to create the Directorate on Corruption and Economic Crime (DCEC) in 1994, a specialised anti-corruption agency. The chapter discusses the problem of corruption in Botswana, followed by a detailed exploration of the DCEC, the reasons for establishing it as well as the nature of its performance. The chapter will help us to understand the nature of the problem of corruption in Botswana as well as the nature of the mechanisms that have been put in place to curtail corruption.

Chapter five offers an assessment of the nature of corruption and the institutional mechanisms to fight corruption in South Africa. The chapter explores how South African politics relates to corruption before it gives an examination of anti-corruption institutions in South Africa. Various institutional measures have been introduced to tackle the problem of corruption in South Africa. However, chapter five limits itself mainly to an examination of the Public Protector, Investigating Directorate for Serious Economic Offences (IDSEO), and the Special

Investigating Unit (SIU), commonly known as the Heath Unit, because these three are the leading anti-corruption agencies in South Africa. The main focus of this chapter is on why these institutions were established and as well as the nature of their performance. The chapter will help us to understand the roots of corruption in South Africa, the nature of anti-corruption institutions and the way they function in their attempts to combat corruption in South Africa.

Chapter six discusses the nature of corruption in independent Namibia and efforts to combat corruption in Namibia, in particular, the Office of the Ombudsman and recent efforts to establish a specialised anti-corruption agency in Namibia. The chapter will help us to understand the problem of corruption in Namibia as well as the nature of the institutional mechanism to combat corruption in Namibia. Chapter seven brings our case studies of Botswana, South Africa and Namibia together with the aim of obtaining a comparative analysis of anti-corruption institutions in the three countries. This chapter will help us to understand the similarities and differences in the nature of corruption and anti-corruption agencies in the three countries. Chapter eight gives a summary of the main arguments presented in the thesis as a whole.

## **Chapter two: The problem of controlling corruption in Africa**

Chapter one set out the overall argument of the thesis. It suggested, in introducing the argument of the thesis, that the perception of corruption as a central problem facing contemporary Africa had become widespread among Africans and donors alike. The focus of this chapter is on what, following Riley, we referred to as the 'catastrophic' nature of corruption and on the way corruption undermines democracy in Africa. The question we need to explore here is why corruption has become an issue of critical importance to African politics in the last part of the twentieth century. The destructive effect of corruption on political systems and states in Africa has become a general concern of scholars and policy makers alike. Corruption in Africa has come to be associated with deep-rooted crises of economic development, political instability and spiralling public debt. Because corruption has devastating effects in Africa (despite the scale of corruption not being distinctively worse than in other parts of the world), the creation and success of anti-corruption agencies becomes important and urgent.

In order to understand why corruption has such destructive effects in Africa, we need to understand the politics of the state in which corruption is embedded. First, weak state institutions, which are further undermined by economic problems, encourage corruption for various reasons. Elites scramble for public resources as the economy contracts. Weak state institutions make corruption easy as lack of punishment of offenders encourages offences, and factional competition makes looting the state more likely. Secondly, corruption encourages the decline of economic development and undermines political legitimacy, democracy and thus stability. It also entrenches authoritarianism and the arbitrary use of power. There

is, therefore, a destructive vicious circle in which corruption and institutional weaknesses feed off each other and the cost's of corruption becomes too great for poor countries to bear. This leads to pressures from donors, from within the local elite, and even from the masses for action to curtail corruption. This process is examined in this chapter in general terms and, in the last part in terms of our case studies of Botswana, South Africa and Namibia.

### **The context of corruption in Africa**

Although high-level corruption is a major problem in Africa, it is not greater in aggregate terms than in many other parts of the world (Szeftel, 2000a). However, its developmental consequences seem far worse. Khan argues that in some Asian countries such as South Korea, "widespread corruption has accompanied decades of very high growth" (1998: 15). Riley emphasises the same point. He notes that, historically widespread corruption was not an obstacle to rapid economic growth in many cases of successful development (Riley, 2000). Thus, in one instance in South Korea an inquiry into the Hambo Steel Company which went bankrupt in early 1997, found that at least two billion dollars disappeared from its account and concluded that this money most likely found its way into the pockets of business or political elites (Kang, 2002: 1). Compared with examples like this, the scale of high-level corruption in Africa is generally not that excessive apart from a few spectacular exceptions like the corruption of a few authoritarian rulers such as Abacha or Mobutu. The problem, however, is that corruption in Africa has not been accompanied by economic growth; rather it has come to be identified with economic stagnation and deep-rooted crises of development, political instability and spiralling public debt.



Indeed, it is widely considered to be a cause of crisis. Riley contends that corruption in Africa “is often part of a syndrome of de-development or underdevelopment which destroys the life chances of the poor majority”, and that its “short-term and longer-term developmental effects [are] both of them catastrophic”. This he notes, can lead to “very damaging consequences for public reputations and the integrity of state institutions” (2000: 138). For Hope, “corruption in Africa has reached cancerous proportions” and “is destroying the future of many societies in the region” (2000:17). Similarly, the United States Agency for International Development’s (USAID) Bureau for Africa states that “in Africa...corruption exacts a higher toll than in other regions of the world because the economies of African countries can least afford the economic consequences of corruption” (1998: 1). It is this perceived link between corruption and developmental crises that places anti-corruption efforts at centre-stage. As Williams argues, corruption in Africa deserves “serious attention not just because it appears prevalent [more than say in Europe], but because of the widespread perception that it has major consequences for political and economic development” (1987: 2).

Reducing corruption in Africa has thus become a matter of high priority for African governments (Riley, 2000). As a result, anti-corruption measures have become a key aspect in local democratic demands and of donor ‘conditionalities’ (Szeftel, 2000a). As Szeftel has noted, these views not only overestimate the degree to which corruption “is a cause of crisis in Africa” rather than a symptom of underlying problems of underdevelopment, but they also underestimate “both the depth of its roots in the very fabric of the post-colonial state and its resilience in the face of reform measures imposed from abroad” (2000a: 428). Instead, donors identify

corruption with weaknesses within state institutions. Donors have pushed for a neo-liberal agenda that entails liberalization and democratization. The pro-market policies perceive the state as a burden on economic development and instead calls for a small state that is transparent and accountable. The policy is not entirely internally consistent. On the one hand, the state is seen as prone to corruption and international pressures are aimed at reducing the role of the state so that its propensity to produce official corruption affects fewer parts of society and social life. This view is the logical underpinning of aid tied to reforms that promote democracy and liberalization as key weapons in combating corruption. On the other hand, the state is seen as requiring institutional strengthening so that it is less corruption prone and thus more effective. This is the view behind the idea of good governance, using aid to promote institutional reform. Inevitably, this has led to a focus by donors and local reformers alike on public accountability, which in turn has produced greater concern about corruption and greater emphasis on anti-corruption agencies. Thus, anti-corruption agencies have been set up in much of Africa to curb the problem of corruption.

However, the reform measures promoted by donors have so far produced disappointing results. There are a number of reasons for this failure. Firstly, as Szeftel has noted, reform measures rarely challenge the relationship between corruption and “patterns of private accumulation and clientelist political mobilization” (2000a: 428). Thus, anti-corruption agencies have found it difficult to investigate and prosecute high-level corruption because to do so would “interfere with patterns of accumulation and political patronage” and, as a result, “threaten the privileges which state office bestows on political elites and their supporters and associates”. Secondly, for these reasons, anti-corruption measures sometimes “create

problems in the relationship between donor and debtor governments and are bitterly resented and resisted by ruling elites” (ibid. 428). By not challenging or even addressing these political and socio-economic forces, anti-corruption agencies may not affect factors which give rise to corruption in Africa and undermine institutional reform in Africa and, as a result, these agencies may be limited in what they can achieve.

As Szeftel further argues, the donors reforms may even increase corruption and so weaken anti-corruption reforms: “far from arresting the upward spiral of corruption, the economic liberalization and attendant governance reforms imposed by the donors have sometimes intensified it beyond anything that government can manage or control” (2000a: 429). He asserts that the upward spiral of corruption has led scholars, including Riley (2000), to perceive corruption as a cause of ‘catastrophe’ in Africa.

However, emerging evidence suggests that corruption is a sign of a crisis rather than its cause. By failing to locate the roots of corruption in the fabric of politics, many observers conclude that corruption is the cause of Africa’s problems (ibid. 429). To understand the roots of corruption in Africa, there is a need to understand the way the post-colonial state functions and sustains itself in Africa in the context of underdevelopment. Corruption is not a malady that is unique to Africa (Harsch, 1999; Ayittey, 2000; Szeftel, 2000a). Therefore, corruption should not be understood as a monocausal explanation for Africa’s problems but, instead, as an outcome of underlying political and socio-economic structural factors (Szeftel, 2000a). To understand how these factors contribute to making corruption so

destructive, we need to understand how the politics of the post-colonial state work. As the following section demonstrates, corruption in Africa was built into the very nature of the post-colonial state from the outset (Szeftel, 2000a), through processes of clientelism, factionalism and corruption.

### **The roots of corruption in Africa**

Corruption in Africa is rooted in the politics of the post-colonial state as well as in the problems that confronted the post-colonial state after independence. As Szeftel has rightly observed, after independence the post-colonial state in Africa inherited underdeveloped economies that

were characteristically skewed and vulnerable to international economic changes and fluctuations. This extreme dependence on the expansion and contraction of the global economy was complemented by the level of unevenness in their economic and social development. Uneven development took many forms, among them: the combination of declining peasant subsistence economies with multinational export production; extreme inequalities of income; the differential incorporation of different regions and ethnic groups into different roles in the economy and the state; and the exclusion of vast numbers of the indigenous population from ownership of property, capital, skills and market opportunities through institutionalized racism (1999: 10-11).

John Mbaku makes a similar point:

the economies that the Africans inherited from the European colonizers were weak, potentially unstable and not particularly viable. In addition, the new economies were almost totally dependent on the metropolitan markets for trade and development assistance. Consequently, post-independence society in Africa became dependent on the industrial market economies, primarily those of Western Europe, for economic growth and development. Although the African countries were politically independent, domestic policy makers found themselves unable to effect independent development policies because their economies, which had been 'integrated' into, and made appendages of the European economies, had still not been successfully weaned from this one-sided dependency (1998: 237).



In the context of underdevelopment, the inherited colonial institutions and the nature of the post-colonial state, it was felt that the only institution best suited to tackle such problems was the state. The post-colonial state had to play a major role in development because of deep inequalities left behind by the colonial state coupled with the increasing problem of poverty (Mokoli, 1992). According to Tordoff “the state...had to assume a major entrepreneurial role” as “the private sector was under-developed” (1993: 3). In this sense, the state was assigned a central role in the economy (Young, 1991). The African state was seen “as an engine of socio-economic development” (Mokoli, 1992: 25). The post-colonial state assumed a central role because “historical experience made it unlikely that the market forces which had produced underdevelopment and exclusion would mysteriously reverse themselves once independence was attained” without the state playing a key role in forcing change (Szeftel, 2000a: 431).

It is against this background of underdevelopment that the state was imposed “as the key player in economic development” (Wiseman, 1997: 276). Thus, the state became “central to African aspirations”, and “political power was regarded as the mechanism by which development and individual opportunities for jobs and upward mobility would be achieved” (Szeftel, 1999: 11). Moreover, Szeftel adds, “the state was seen by many as the means to redress past discrimination and promote private wealth” (ibid. 11). In the light of economic underdevelopment, the general consensus in the 1960s and 1970s was that “the state ought to play a pivotal role in the post-independence period, both to promote rapid development and provide the basis for a unified national identity” (Healey and Robinson, 1994: 20). As a result, Berkester notes

the 1960s and the 1970s were decades of unprecedented nationalism, a growing role for the intervention in the economy, and experimentation with variants of socialism and self-reliance. Comprehensive development planning was widespread, and the prevailing model of development throughout...Africa was variant and statist, largely inward-oriented, import-substitution industrialisation. It was also socially redistributive, at least in rhetoric (1995: 174).

According to Thomas, states in peripheral societies do not expand their role in national economies out of choice but “the structural necessities of their internal social situations and the historically formed links between their economies and those of the centre” force them to do so (1984: 53-54). Thus “peripheral capitalism makes the African state far more central to its social formation than are the industrial states of the West” (Kasfir, 1987: 47). The centrality of the state in the economy dates back to the 1920s, when, following the Great Depression, J M Keynes argued in favour of control measures in the economy, which proved to be relatively stable from 1945 through the 1950s. By assuming the central role in the economy, the state in Africa became the fundamental source of resources. Szeftel wrote

the peculiar conjuncture of colonial state exclusion, nationalist promises and political independence produced almost limitless expectations of government to intervene in the economy, to redistribute entitlements and to provide jobs, loans, contracts and favours through political patronage (2000a: 431).

The independence promises resulted in an overly expanded state in terms of its functions. As a result, the state did not only become the largest employer, but it also emerged as the most powerful institution in society (Mokoli, 1992). Key welfare services such as education and health were provided for free. The state became both big in size and scale because of its political and economic priorities (Young, 1991). Thus, as Mokoli has observed

In socio-economic terms, the state emerged as the dominant force in African societies. It became the largest single employer of labor. It has access to domestic resources and investment funds from abroad. The state is not only an institution of administration, but also the most powerful economic force in society. Since the middle classes-traders and businessmen-have been relatively weak, economic success has been contingent on access to the resources of the state. Soon everyone realizes that the only road to prosperity runs through the state machine (1992: 24).

In turn, the centrality of the post-colonial state in economic development had some important ramifications for politics (Mokoli, 1992). As Mokoli further noted

civil servants and bureaucrats soon realized that employment in the public sector bestowed important privileges on them. Nationalist leaders understood that political influence was synonymous with economic power; without the backing of the state none could pursue a successful career in business. ...Every ambitious person fights desperately to carve out a place for himself inside the state apparatus. With so much at stake, none can afford to give up influence with the state machine. The loss of influence over the state means the loss of everything. The ruling class in Africa can not maintain its power and prestige without directly running the state (ibid. 25).

The expectations of the state to play a central role in directing economic affairs coupled with independence promises “placed a huge burden on the African state” (Szeftel, 1999: 11). However, as Kasfir noted “the expansion of the state apparatus provides the fundamental opportunity both to maintain political control and to achieve remarkable wealth amidst great and growing poverty” (1987: 45). The nature and character of the post-colonial African state needs to be understood in this context.

Although the post-colonial state was assigned such a central role in the economy, it “was not equipped to bear this burden” (Szeftel, 2000a: 431). It lacks the

capacity and sufficient resources to meet the demands placed on it. This is the case because “underdevelopment and dependence on primary exports gave it an uncertain revenue base which constantly undermined development strategies” which were pursued (ibid. 431). Moreover, the institutions that were inherited at independence were designed or organized to serve the economic interests of the colonial state (Mokoli, 1992). They were organized to maintain law and order and ensure the exploitation of export commodities, and “not to respond to the democratic demands grafted onto it or to expand the content of citizenship” (Szeftel, 1999: 11). They were not created to serve the new demands of the post-colonial state such that “in the immediate post-colonial period...the existing liberal democratic structures were strained by particularistic pressures, continued high birth rates, rapid urbanization, increased education, and expectations of rapid change generated by the ideological and policy pronouncements of the new nationalist leadership” (Callaghy, 1987: 94). Accordingly, Mbaku argues that “the relatively weak and inefficient institutions inherited from the Europeans were left intact and successfully used by bureaucrats, politicians and interest groups to enrich themselves, while imposing significant costs on society” (1998: 238).

These demands or pressures give rise to competition for scarce state resources even amongst the ruling elite. According to Mokoli, this explains why the one-party or military state was introduced immediately after independence. He wrote that “a one party system eliminates rivals for influence and consolidates the hold of the governing party over the state” (1992: 25). Szeftel makes a similar point. He notes that “the one-party state was the ultimate expression of attempts to regulate factional competition and conflict over the division of spoils” (2000a:



434). The introduction of one party or military rule meant the end of the limited pluralism for much of Africa. Kasfir links “the growth of authoritarianism...to an economic struggle to keep rival groups from enjoying these few available opportunities to become rich” (1987: 45).

The importance of the state in Africa as a source of resources as well as power has turned the state into ‘a battleground’, because success is tied to state resources. The state in Africa is not only a management tool, but it is also a place where the struggle amongst the various factions of the ruling elite and the antagonism between the ruling elite and the masses takes place. Scarcity of state resources makes it difficult for the state to meet the demands placed on it. As a result, competition for control of the state resources becomes fierce. In this sense, the state is the major centre of class antagonism and social transformation (Mokoli, 1992). In the light of the economic struggle and overwhelming societal demands, the state that emerged a few years after independence in most parts of Africa was centralized, authoritarian, prebendal and based on personal rule, patronage and clientelist politics (Tordoff, 1993; Allen, 1995; Szeftel, 2000a). Thus, after independence, ‘authoritarian personal rule’ came to be the key feature of the post-colonial state in Africa (Healey and Robinson, 1994). Its legitimacy was founded on the use of force (Robinson, 1993; Szeftel, 2000a). The growth of authoritarianism is linked to the concentration of political power in and around the presidency (Thomas, 1984). Szeftel (2000a) locates the origins of African presidentialism in the transition from colonialism to independence.

Pressures on the state led to the centralization of power. Soon after independence, most African countries moved away “from a bureaucratic administration that emphasized good governance to one that emphasized the sovereignty of politics” and this Hope argues, led to “a politicized bureaucracy in those countries which began to engage in centralized economic decision-making and patrimonialism” (2000: 18). The neo-patrimonial African state is characterised by highly frail formal institutions, personalised rule and widespread clientelistic networks (Lawson, 1999). Political power is centralized in and around the presidency, with a weak parliament, mostly dominated by the ruling party. Civil society is weak and lacks autonomy. Opposition parties are fragmented, and in some countries have become corrupt, and as a result, they are failing to hold the executive accountable. For instance, Makinda notes that in Kenya, one of President Arap Moi’s effective strategies is his ability to play around with opposition politicians. He has put in place institutions within which opposition politicians function. Sometimes he “buys them with cash”, and has been able to turn opposition politicians against each other. As a result they do not concentrate on the mistakes of government, and many are corrupt like those in government (1997: 264). The way the post-colonial state functions is best summarized by Bratton and Van de Walle who noted that

one individual often president for life, dominates the state apparatus and stands above laws. Relationships of loyalty and dependence pervade a formal political and administrative system, and officials occupy bureaucratic positions less to perform public service, their ostensibly purpose, than to acquire personal wealth and status. Although state functionaries receive an official salary, they also enjoy access to various forms of illicit rents, prebends, and petty corruption, which constitute sometimes important entitlement of office. The chief executive and his inner circle undermine the effectiveness of the nominally modern state administration by using it for systematic patronage and clientelist practices in order to maintain political order. Moreover, parallel and unofficial

structures may well hold more power and authority than the formal administration (1997: 62).

The new states, Hope adds “were not only bureaucratic autocracies but also political and economic monopolies now lacking in accountability, transparency and the rule of law” (2000: 18). Thus, “the post-independence governmental bureaucracy that emerged in most African countries contributed to institutional instability, the politicization of the state, and patrimonial economic management and incentives, whereby clientelism replaced moral and political legitimacy, and political and personal loyalty and obedience were rewarded more than merit” (ibid. 18). This is the root of corruption in Africa (Hope, 2000). In this sense, one party states were not just about keeping control of public goods but, they were also about managing competition between the rival factions.

Clientelism became a method of mobilising political support from the start (Allen, 1995). As Szeftel noted “support was exchanged for access to state resources and the citizens of the new state were integrated into electoral politics on the basis of the access to public resources that political competition afforded rather than on the basis of ideology or class interests” (2000a: 433). Because of underdevelopment, clientelism was not capable of meeting the demands of the competing factions and this in turn became a source of political instability as well as corruption. The state was not able to meet mass expectations because it lacked resources (Szeftel, 2000a). This is the case because the state is based on a weak economic foundation. Failure to meet factional demands led to intense competition amongst factions for patronage. As a result, “African governments became preoccupied with the need to manage patronage, making them intolerant of internal debate and

increasingly inclined to use presidential power to control and ration the distribution of patronage” (ibid. 433). However, the strategy of clientelist politics soon became unsustainable with the contraction of African economies starting from the mid-1970s (ibid. 434). In turn, economic crisis intensified corruption.

We are persuaded to argue and agree with Szeftel’s contention that corruption is “rooted in the contradictions of the post-colonial state rather than in any personal inadequacies of African leaders or any inappropriate cultural qualities” (2000a: 434). The problem of corruption in Africa is far deeper than an issue of poor leadership or poor governance. As Riley observed “the problem of corruption does not simply disappear with the removal of corrupt officials” (2000: 141). Zambia under Chiluba is a case in point. “Contrary to conventional wisdom, corruption, under the multiparty state, has become pervasive, uncontrollable, and unrestrained” (Chikulo, 2000: 161). Similarly, Cheushi wrote: “since the MMD accession to power in 1991, some 20 government ministers and deputy ministers have resigned or been sacked either after having accused their colleagues, or themselves being accused of corruption” (1995: 11). This shows that the change of leadership in Zambia did not reduce corruption, instead corruption has intensified to the extent that it is believed corruption is worse today in Zambia than it was under Kenneth Kaunda (Chikulo, 2000).

Factors such as poor leadership may have contributed to the malaise but they were not the decisive factors. Reducing corruption in Africa to a question of poor leadership seems to reflect a misunderstanding of the form clientelism and in turn corruption takes in Africa. To understand this, we need to understand the nature of



clientelism in Africa because it has destructive effects on the state. The section that follows shows how clientelist politics led to factions and competition for state resources.

### **Clientelism, factions and spoils politics**

As noted earlier in this chapter, the post-colonial state in much of Africa turned out to be centralized, authoritarian, prebendal, and was based on personal rule, patronage, spoils, clientelist politics and factionalism. According to Szeftel “post-colonial politics was characterized by intense factional competition for patronage and by conflicts between factions which frequently became public and acrimonious”, and in turn “producing governmental crises and intensifying communal rivalries” (1999: 14). For Jackson and Rosberg, politics in Africa was “often a personal or factional struggle to control the national government or to influence it” (Jackson and Rosberg, 1992 quoted in Wiseman, 1997: 276).

Given the importance invested in the state, politics focused on access. This was the case because the state holds the key for “import and export licences, access to foreign exchange, governments grants and loans, and reasonable treatment in relation to the payment (or in many cases non-payment) of duties and taxes” (Wiseman, 1997: 276). Doig makes the same point. He described the state “as a provider and allocator of services and functions” (1999: 21), such as education, health, licenses and contracts (Carino, 1985). The state was also a fundamental source of “money decisions” as well as “benefits that are vigorously pursued by many groups and individuals. The demands for government’s rewards frequently

exceeds the supply...” (Johnston, 1982: 3). This was acute in most of the developing world where resources are very scarce. In addition to these, “the state constituted the key source of employment, status and self-advancement” (Robinson, 1993: 86). This suggests that “to promote a successful economic enterprise it was necessary to hold an important position within the state or to acquire a patron who did” (Wiseman, 1997: 276). This is the case because the state in Africa is “run by elites, classes, factions or personal cliques” (Marenin, 1987: 66).

In Africa, a political or public office is an “investment” in which the occupants expect to harvest something in return (Allen, 1999: 377). It is a basis for economic advancement. Moreover, Mbaku noted that in Africa “corruption provides significant benefits to the incumbent regime”. Thus, “it generates resources that the government can use to purchase regime security and also provides the framework through which these resources can be channelled to the regime’s supporters and its potential competitors, especially those that have developed a significant level of violence potential” (1998: 42). Similarly, Marenin noted that in Africa “control over the state agencies can and should be used to enrich oneself and in, exchange relations, reward one’s followers and supplicants for favours” (1987: 66). A political office in Africa is highly valued because it brings with it considerable material wealth (Kpundeh, 1995). In this sense, “opposition politicians as well want to acquire those positions within the state apparatus, primarily to advance their own personal interests and further individual accumulation. Thus, the keys to transforming the petty bourgeoisie into a property-owning class were through state power and political office” (Tangri, 1985 quoted

in Kpundeh, 1995: 2). Ayittey observed that in Africa “the ruling elites acquire their wealth not in the private but in the state sector, by using the instruments of the state to enrich themselves” (2000: 117). Lodge (1998) underscores the same point. He noted that

in developing countries the state is usually the major force within the modern economy and in general conditions of economic scarcity and low levels of social stratification political and bureaucratic power brings unprecedented opportunities for control over material resources; in such circumstances, political office becomes the main route to personal wealth (1998: 160).

This explains “why politics is so hard fought in sub-Saharan Africa” (Lawson, 1999: 5). This is in part because political office carries with it not only power but great material wealth for the incumbents and their followers. In the context of underdevelopment, the state in Africa became the main source of resources and this gave rise to more demands and competition for state resources. However, the state is not able to meet these demands because its political economy is based on a weak foundation (Leys, 1994).

The strategy of spoils and patronage was effectively used in much of Africa. For instance, in Kenya, ethnic politics and patron-client networks are still prevalent (Makinda, 1997). In Botswana, a number of agricultural schemes and policies were introduced which effectively worked to the advantage of the ruling party. These in most cases coincided with elections. In much of Africa, employment in the bureaucracy is the main feature of spoils (Sandbrook, 1986). A Zambian minister said “if I don’t appoint people from my own region, who else will” (New Africa, June 1992 quoted in Chabal and Daloz, 1999: 39). This indicates that even

those in positions of leadership perceive the state as a resource that can be used to change the positions of their supporters.

Thus, political mobilisation in Africa was founded on a system of clientelist politics (Allen, 1995; Szeftel, 2000a). Szeftel argues that by using “house-to-house” contact, clientelism in Africa has been and continues to be an efficient method of mobilising communities in order to accumulate clients. Thus he adds, clientelism “among poor people or excluded from equal citizenship it thus constitutes an efficient, sometimes even an energising and empowering, method of political recruitment” (2000a: 435). There exists a system of clientelism that is based on a complex and informal interconnection of personal loyalties that connects communities to members of the ruling elite. As a reward for showing loyalty to the political elite, supporters received a variety of payoffs, including; favours, jobs, preferential loans and in extreme instances, bribes and embezzled property (Robinson, 1993). Clientelism thus became a source of corruption. Those who were part of the clientelist interconnections and showed loyalty to the ruling party and its leaders received something in return, they gained access to state resources. These resources could be extended to less important followers and voters as a way of strengthening their support, or they could be maintained and used as a source of wealth accumulation. The need to maintain state resources for personal use increased when parties in power started to depend on the use of force rather than popular support to remain in office. As a result, politics, politicians and their aides as well as the whole political system came to be more corrupt. Those who could not access the state at the national or local level exploited communal divisions to avoid permanent exclusion from the state (Allen, 1995).



As Szeftel noted “clientelism thus promotes a form of factional competition which encourages the plundering of the state” (2000a: 437).

These clientelist networks seemingly had a deleterious effect on the country’s development as well as on the state. Lawson (1999) argued that African political systems were crippled by the disturbing ‘coexistence’ of institutions and structures amongst others patrimonialism and patron-client system, that were suitable to pre-capitalist societies, as well as empty bureaucratic structures imposed by the colonial powers. Allen (1995) observed that although clientelism was effective in ensuring political support, it also destabilised the system. Szeftel (2000a) emphasises this observation. He noted that “given the underdevelopment of the economy, clientelism proved unable to meet factional demands and so became a source of instability as well as corruption” (2000a: 433). This he adds, was because “governments lacked the resources to deliver the development goods necessary to satisfy mass expectations” (ibid. 433). Allen (1995) asserted that clientelist politics in turn led to a ‘crisis of clientelism’. This he noted, came into effect when members of the opposition as well as the masses became opposed to ruling party factions which tried to ensure complete control over public resources as well as to the government’s failure to build popular support as clientelist resources are redirected from the masses to enrich ruling party activists (ibid. 305). As an attempt to avert clientelist crisis, partial reforms were introduced, with the sole objective of yielding stable but authoritarian regimes. These reforms retained clientelism, power was centralised in and around the presidency, the bureaucracy replaced the ruling party as a distributor of resources and in some instances, the party was incorporated into bureaucratic structures. The strategy of

centralised-bureaucratic governments worked well until the 1980s (ibid. 305-306). Allen further contended that where clientelist crisis could not be tackled with the introduction of centralised-bureaucratic reforms, it led to 'spoils politics' whereby the system totally collapses (1995: 307). As Allen observed

spoils politics occurs when the primary goal of those competing for political office or power is self-enrichment. Under these conditions, patronage politics, involving the exchange of material benefits for political support, occurs only when actual competition for office occurs or to protect the ruling group from a short-term threat (1999: 377).

According to Allen, 'spoils politics' could easily be identified by eight features, and these are, 'the winner takes all', 'corruption/looting of the economy', 'economic crises', 'lack of political mediation', 'repression and violence', 'communalism', 'endemic instability' and 'erosion of authority' (1995: 307-9).

Once a political system has reached the stage of spoils politics, it does not only experience high levels of corruption, but as Allen noted, was characterised by 'endemic instability'. Economic decline made it very difficult for the state to distribute clientelist resources, which is a way to ensure popular acceptance. Thus the state is unable to maintain popular support. As a result the state resorted to use of force to suppress mass discontent. It was in this sense that clientelism in Africa undermined the state as well as economic development.

However, the effects of corruption are not always easy to evaluate. In Asia, countries such as South Korea had been able to achieve unprecedented levels of development amid authoritarianism and high levels of corruption. Yet this has failed to replicate itself in Africa. This was because in Africa, clientelism and in

turn corruption worked against capital accumulation. According to Szeftel, clientelism in Africa does this in two ways

first, it rests on the need for patrons to distribute state resources to a wide communal base rather than simply to business cronies. And second, ...there is not much of a capitalist class from which politicians can extort resources. Instead, the flow of resources is all one way, from the state to the private sector; the looting of public resources, rather than the accumulation of capital (2000a: 439).

It was these two factors which put more pressure on state resources and in turn plunder of state resources. This was compounded by the fact that African economies were poor and underdeveloped. Lawson observed that "its economies remain not only poor, but largely pre-capitalist, with self-sufficient peasant communities predominating" (1999: 3). However, by the 1980s as Bratton and Van de Walle noted

the diversion of public surpluses into private consumption led to a prolonged economic downturn, chronic government budget deficits, and slumping mass living standards. Even larger numbers of citizens, including even previously privileged public sector employees and other segments of Africa's nascent middle classes experienced the trickling up of poverty (1997: 99-100).

The contraction of public resources created even more problems for the post-colonial state because clientelist networks became difficult to manage. A decline in clientelist resources meant that the ruling elites appropriated bigger shares of public resources. This limited the ability of the ruling elites to maintain popular support. As Bratton and Van de Walle observed

economic crisis undercut the material foundations of neopatrimonial rule: With fewer resources to distribute, political elites faced a growing problem of how to maintain control of clientelist networks....the contraction of resources at their disposal led those in power to appropriate ever larger shares. This narrowed their capacity to co-opt elites and maintain a measure of popular acceptance (ibid. 100).

Chris Allen makes a similar point. He argued that economic contraction and debt crisis compromised the ability of the “centralised-bureaucratic” state to concurrently provide for ruling elite demands, salaries for the public sector, and to dispense clientelist resources to local networks and to the masses (Allen, 1995: 312). As a result, the state faced “a crisis of political legitimacy” in the 1980s (Bratton and Van de Walle, 1997: 98). There was loss of faith in the African state “as the prime mover of development”. Rather, the state was seen as the main obstacle to economic development (Healey and Robinson, 1994: 20). Healey and Robinson noted that the consensus that emerged in the 1980s was that the state was no longer capable of fulfilling its functions of promoting political integration, social transformation and economic development. Bratton and Van de Walle wrote

by the 1980s, authoritarian rulers in Africa’s patrimonial regimes typically faced a crisis of political legitimacy. This crisis was manifest in a loss of faith among African citizens that state elites were capable of solving basic problems of socioeconomic and political development. Leaders had damaged their own claim to rule by engaging in nepotism and corruption, which led to popular perceptions that those with access to political office were living high on the hog while ordinary people suffered (1997: 98-9).

The decline in state resources available for clientelist distribution by the neopatrimonial state was aggravated by the demand for structural adjustment reforms in the 1980s as economic crisis worsened. This made it even harder for the neopatrimonial state. Bratton and Van de Walle further wrote

this problem [of resource contraction] was exacerbated when, during the 1980s, international donors and lenders demanded structural adjustment reforms to restrict the number of jobs in the public sector and curb the free availability of public services. The penetrative public capacity of central government,....was further undercut as key public services - especially in



education, health, and public security—deteriorated or collapsed (1997: 100).

For Allen, the effect of economic contraction and structural adjustment reforms was intricate; it weakened the ability of the state to combine the distribution of clientelist resources with autocratic management, and thereby compromising the stability of the centralised-bureaucratic state (1995: 312). Peter Lewis noted that in Nigeria structural adjustment involved an “unavoidable contraction of traditional outlets for state patronage, including a sharp reduction in government contracts and the withdrawal of rents from import licences and subsidised commodity distribution” for the neopatrimonial state (1996: 89). The neopatrimonial state needed significant resources to distribute clientelist resources as a way of accumulating clients to ensure regime acceptance. Thus, with the introduction of structural adjustment policies (SAPs) in the 1980s, the neopatrimonial state strategy of patronage soon became unsustainable. These reforms not only reduced the resources at the disposal of the neopatrimonial state to distribute to its followers, but also threatened its very means of survival.

Richard Joseph observed that

in Zambia and elsewhere the stabilization and structural adjustment programs that African authoritarian governments were forced to implement as conditions for loans from multinational agencies steadily eroded their popular support. They had to sharply devalue the currency, cut back the public sector, remove price controls on basic commodities, impose fees on a range of public services, and liquidate unproductive state enterprises (1997: 370).

These policies eroded the support for authoritarian governments in the sense that they affected the way the regime was able to reproduce itself by distributing spoils. The problem lies in the fact that “developed countries have pressed Third World

countries to adopt open economies without embedding these policies in the realities of domestic state-society relations” (Callaghy, 1989 quoted in Gadzey, 1992: 456). Although the architects of free market policies were calling for the withdrawal of the state in the economy, African governments were reluctant to do so because they were afraid of the negative effects these policies were likely to bring; their “political costs” (Graham, 1997: 85). For instance, in Zambia in the 1980s, structural adjustment policies resulted in riots. In Kenya, Arap Moi was against the introduction of multiparty democracy because he was of the view that it promoted ethnic rivalries.

Resource contraction meant that new tactics had to obtain to ensure regime survival. The neopatrimonial state resorted to repression and force, “at least insofar as they were able to retain the loyalty of the best-armed factions within the military” (Bratton and Van de Wall, 1997: 100). Thus, economic decline and debt crisis led to an increase in corruption as the different factions competed for the declining public resources and the use of force intensified as the ruling factions engaged in a ferocious fight to maintain control of public office (Szeftel, 2000b). In this sense, economic crisis served the interests of corrupt officials by allowing them to loot public resources. As institutions fell apart, this looting became easier. Thus chaos and disintegration suited such people (Chabal and Daloz, 1999).

As a result, for much of Africa those who held political office were committed to derailing Africa’s transition to democratic and more open governance and economic structures. This was because they perceived successful reforms as a threat to their positions and benefits. Incumbents were the major recipients of

corruption (Mbaku, 1998). Moreover, neo-liberal reforms threatened the political establishment as they “undercut the usual advantages of being the party in power and able to shape public policy and public spending in ways intended to mobilize electoral support” (Burnell, 1998: 13). Sandbrook noted that the World Bank and IMF policies “undercut the power and/or wealth of political insiders” (1986: 330). Donor policies and strategy not only threatened the positions of the African petty bourgeoisie but also the very nature of the post-colonial African state as well. As noted earlier, the post-colonial state functioned on the basis of patronage-client networks. Donor policies undermined the ability of the post-colonial state to distribute clientelist resources. As Mbaku asserted

incumbents, who now benefit from existing institutions and are able to use them to extort bribes from society for their own benefit see successful reform as a threat to their privileges. Entrenched interest groups whose relationship with the incumbent politicians and bureaucrats has allowed them to extract significant extralegal benefits from the economy also see changes in the status quo as detrimental to them. Throughout the continent, such groups have even hijacked the transition and are carefully managing it to make certain that change is undertaken on their own terms and designed to effect as little harm on their privileges as possible (1998: 27-8).

In this sense, neo-liberal reforms were ‘ahistorical’ because they did not recognize “the central role played everywhere today by governments in directing capitalist development” (Sandbrook, 1986:330). Given that politicians and public officials extort extra-legal benefits from the state, they were opposed to reforms that may harm their privileges. Szeftel wrote that “anti-corruption initiatives threaten the dependence of much of Africa’s petty bourgeoisie on state power and state resources for access to personal wealth, opportunities for accumulation and affluent lifestyle” (2000b: 301). He argued that underdevelopment made the process of accumulating capital in the open market not only risky but also

relatively unprofitable. National entrepreneurs were unable to venture into capital-intensive business because of the legacy of imperialism. This pushed them to the peripheral sectors of business. Thus, if they were unable to gain access to state resources, the possibility of future success was highly circumscribed. Where the bourgeoisie class has prospered in Africa, it has relied on state resources as well as on the ability of its individual members to embezzle or pocket state resources. Thus, public resources and power were central to the process of class formation in Africa. In this sense, exclusion from state resources threatens the process of accumulating capital. It is in this context that a political office is important and in many ways a source of corruption. Corruption was inextricably intertwined with the process of capital accumulation, abuse of power and the use of force. In this sense, the state became a resource as well as a means of maintaining support and control (Szeftel, 2000b). Khan observed that "accumulation and allocation of public resources in developing countries very frequently involves changes in established property rights and institutions or the creation of entirely new ones" (1998: 18). To this extent, the state or political office in Africa was a source of advancement, wealth accumulation and empowerment. Moreover, political office was used to reward one's followers and supporters with the sole aim of maintaining and retaining office through available means. "Thus to have power was to have the means to reproduce it; to lose power...was to risk never having the means to regain it" (Allen, 1995: 304). Since political power or office was so important in Africa, an electoral defeat or a loss of a political office not only marks the end of political influence or power for the office bearer, but it also ends the only means of accessing state resources (Mokoli, 1992).



The foregoing discussion showed why both old and new leaders have a tendency to hold on to power, and why reform was often bitterly resisted in Africa. This was because change or reform reduces the material basis or benefits of maintaining popular support. In this sense, “economic liberalization and privatization were unlikely to be implemented by governments that held tenuously on to power by systematic patronage and rent-seeking” (Van de Walle, 1999: 21). Thus Hope observed that “owing to the softness of African states, public officials are reluctant to uphold laws which would get in the way of their personal or sectional interests” (2000: 28). It is in this context that public officials are unwilling to support and enforce anti-corruption reform. In turn, anti-corruption reform has produced disappointing results. This was because reform undermined the capacity of the state to distribute clientelist resources, and thereby affecting the very nature of the state. By so doing, anti-corruption agencies not only threatened the positions of the politicians but also the political establishment itself. As a result, anti-corruption agencies became victims of the political process. There was lack of political support to such organisations and they lacked both independence and the means to do their job. Moreover, weak states lack resources to implement anti-corruption measures. This was exacerbated by economic crisis.

### **Corruption and politics in the three country cases**

The first half of this chapter has demonstrated that clientelism in Africa leads to instability and in turn became a source of corruption. It is the nature of African clientelism that makes Africa different from other regions that had been able to develop amid factions and corruption. At this juncture, we need to relate our case studies of Botswana, South Africa and Namibia to the above general discussion of

Africa by showing how different and similar the three countries were to the above pattern. Botswana, South Africa and Namibia are different from the rest of Africa although there is pressure to meet mass needs and elite aspirations. The three countries have rather different forms of crisis but nevertheless still have to cope with factionalism, social divisions and inequalities. Patron-client networks operate in Botswana, Namibia and less so in South Africa, but they have not yet degenerated in spoils politics.

### **Botswana**

Botswana is different from much of Africa. Since its independence in 1966, it experienced low levels of corruption compared to most states in Africa. The importance of the state, the pressure for public resources to be distributed and clientelism have not created corruption that is out of control in Botswana. We suggest a number of reasons for this. First, Botswana is ethnically homogenous. Its economy grew steadily since independence, and its population is also small compared to most African states (Holm, 2000). A small population means the size of the political class is small. As a result, there is less competition amongst elites in accessing state resources. Moreover, the size of the population meant that the state had relatively less political pressure or demands. Although the demands on the state had been moderate, mineral revenues strengthened the ability of the state to respond to demands placed on it (Wiseman, 1977). As a result “there is an absence of overloading on the input side of government which has also contributed to political stability and to the maintenance of the multi-party system” (ibid. 77). The state was able to satisfy elite demands and to some extent mass demands. Thus, “the government [of Botswana] has managed to spread the

benefits of [mineral led] growth widely enough to keep the population reasonably satisfied” (UNDP, 1997: 48). Riley asserts that Botswana possesses some unique features that are lacking in much of contemporary Africa. These features include amongst others “political stability, sustained high economic growth rates whose benefits are reasonably widely spread, and a relatively unified elite committed to foreign investment and maintaining public integrity” (2000: 153).

Second, Botswana has ensured a moderate reputation of good political and economic management since independence; a characteristic dissimilar to much of Africa. Corruption and patronage politics have not been at the heart of Botswana politics. Good management did not only limit corruption but also limited patronage and clientelism. For example, in most African states the public service was used as a major source of patronage and this was not the case in Botswana because entrance into the public service was mainly based on qualification and merit. However, the public service is not free of patronage especially when senior appointments are made and in devising policies which favoured the ruling class.

Third, reasonable levels of corruption in Botswana are attributed to the nature of the ruling elite that obtained political power at independence (Holm and Molutsi, 1992; Good, 1993; Lodge, 1998). They were relatively wealthy even before rising to power because they were engaged in cattle production. Therefore, rising to power was not a means of attaining wealth but of gaining influence. We examine the nature of the ruling class in detail in chapter four.

Nonetheless, Botswana can still be compared to other African states as far as the use of patronage and clientelism are concerned. As we demonstrate in chapter four, the state used patronage and clientelism in a number of ways. First, it used public resources to change the positions of the cattle based bourgeoisie. For example, besides benefiting from the land tenure system, rich cattle owners also took advantage of government policies such as agricultural subsidies and loans from NDB to enhance their economic positions and influence as shall be discussed in the Botswana case study chapter. Second, it used state resources to ensure public support by introducing agricultural programmes meant for the poor sections of the population, and ploughed part of its diamond wealth to improve the living standards of the general populace. It is in this context that the ruling party has been able to maintain itself in power without outlawing opposition parties. However, state policies have not created corruption that is out of control.

### **South Africa**

South Africa is the most singular of African countries. First, it is relatively highly industrialised with an economy which is domestically integrated and diversified. Its economy is the biggest in Africa, with a GDP approaching \$130 billion (*Overseas Trade*, October 2000). Therefore, South Africa is the dominant player in the Southern African region mainly because of its economic strength. It is a multiracial society with a population of approximately 50 million. In part because of the size of the population, there is more pressure on state resources than it is the case in Botswana and Namibia. Pressure on state resources is exacerbated by its history of social exclusion and racial conflict. This history acts to reproduce many



of the political pressures on the state found elsewhere in Africa, namely the intensity of demands on the state to redress poverty and social exclusion.

Second, South Africa differs from most African states because it had a large settler population. Thus, while other sub-Saharan African states were characterised by patrimonial institutions, the South African state had features of an exclusionary democracy as shall be discussed later in chapter five. Irrespective of these differences, there are still some similarities between the apartheid state in South Africa and other post-colonial states in Africa. The apartheid state institutionalised patronage and clientelism and thus corruption by limiting and using access to state resources to transform the positions of their supporters in the same way as factions did in spoils politics discussed earlier in the chapter. Among other things, the apartheid state used state patronage to change the circumstances of Afrikaners as compared to other groups, to keep Indians and Coloureds halfway between Whites and Blacks, to generate a large number of black dependents and through the rise of the security state which led to authoritarianism and lack of transparency. These factors promoted corruption in many ways. We discuss these factors in more details in the South African case study chapter.

Under the new South Africa, and the processes of clientelism and thus corruption are still in their infancy. However, there are indications that corruption and patronage have become part of the new state. Corruption in democratic South Africa is attributable to the need to redress apartheid policies and imbalances which facilitated corruption. For example, the introduction of affirmative action implies that public service appointments are not based on qualification and merit values; certain awards

of government tenders are not based on the capabilities of concerned companies but to appease emerging companies; and the pressure to reward those previously disadvantaged leads to the creation of clientelist benefits. Finally, there is tension between party loyalty and democratic principles. Instead of solving the problem, these factors lead to a vicious circle of corruption.

## **Namibia**

Namibia's political and socio-economic situations are different from other African countries. Namibia is a multiracial society, yet one ethnic group, the Ovambo dominates. Compared to other African nations, Namibia has a small population of approximately 1.7 million, which means there is less pressure on public resources although there is a need to attend to problems of social exclusion and inequalities.

While most other sub-Saharan Africa's politics was influenced by the key institutions of Africa's patrimonial states, Namibia's politics - as in South Africa - is a product of settler oligarchies. Namibia had a small and dependent white settler population. Thus although Namibia is not immune from the peculiar characteristics of patronage and clientelism, the path through which patronage is carried out is similar - but on a small scale - to that of the colonial master (South Africa). For example, patronage was practised to appease the few white settlers who acted as overseers for the South African state. Patronage was also used as a weapon of divide and rule. That is, blacks who collaborated or worked for the South African state were rewarded financially and otherwise. This was particularly shown by the privileges enjoyed by members of the DTA as opposed to the punishment endured by members of SWAPO.

In 1990 when Namibia received its independence it did not only inherit the legacy of socio-economic disparities from the white state but it also inherited their type of patronage. Under the new state patronage was used to appease those who fought for the independence of Namibia in a number of ways. For example, blacks were appointed to senior positions in government. There was a need to make these appointments at independence because the new state needed allies in government. Members of the Ovambo ethnic group were considered to have been more loyal during the liberation struggle and demanded favours and better treatment from the state. There is also tension between democratic principles and party loyalty and this leads to low levels of accountability in government. However, corruption and clientelism under the new state have not yet led to spoils politics as described earlier in the chapter.

The fact that Botswana, South Africa and Namibia have not yet travelled down the crisis road makes the prospects for the control of corruption all more hopeful, and the prevention of a slide into post-colonial crisis all more important. The three countries are different from the rest of Africa, and yet they are vulnerable. They have learnt from what has happened elsewhere, especially in Africa. The most important thing is not what they are but what might be. Therefore there is a need for effective anti-corruption agencies in order to strengthen their democratic credentials, including the reputation for honesty in the eyes of international investors, donors and their own voters. Reassuring foreign investors is very important because in the context of underdevelopment these countries are heavily dependent on foreign investment. A closer look at Transparency International Corruption Perception Index (CPI) shows that these countries are not completely

clean even though they are considered the least corrupt in Africa. In this sense, there is need for these countries to double their efforts in tackling corruption.

There is concern amongst these countries to tackle corruption. There is evidence to this effect. Presenting the Directorate on Corruption and Economic Crime (DCEC) Bill in the National Assembly for its second reading in 1994, the then Minister of Presidential Affairs and Public Administration, Lt. General Mompoti Merafhe, noted that

Government wishes it to become known, both within and outside Botswana, that ours is a country in which public and private business can be carried out honestly and fairly, and whose citizens do not tolerate abuses of the law by those with the power and financial resources to usurp them (Republic of Botswana, 1994: 37).

President Festus Mogae also echoed concern over the problem of corruption. Giving a keynote speech at the ninth International Anti-Corruption Conference (IACC) held at Durban, South Africa in 1999, with regard to Botswana's response to the problem of corruption, Botswana's President Festus Mogae noted that "we wanted our citizens to be confident that we supported their desire to have a Government, public and private institutions which could be trusted", and furthermore, "we wanted international investors to know that when they came to do business in our country there would be a level playing field which could not be influenced by the offer of bribes" (Mogae, 1999: 2). Moreover, speaking at a discussion on Anti-Corruption and Co-operate governance in Mexico on the 21<sup>st</sup> of March 2002, Mogae said "it was important for developing countries to recognise that they had institutional weaknesses, which needed strengthening, while developed nations must ensure that the briber did not go unpunished" (*Botswana Daily News*, 25 March 2002:<http://www.gov.bw/cgi-bin/news>).



In South Africa, the ninth International Anti-Corruption Conference (IACC) was held at Durban from 10-15<sup>th</sup> October 1999. This was the first International Anti-Corruption Conference to be staged in the African continent. It demonstrated the increasing concern over the problem of corruption in Africa amongst governments and civic organisations. The conference, which was hosted by South Africa's Minister of Justice, P. Maduna, was officially opened by President Thabo Mbeki, and officially closed by Deputy president Jacob Zuma. This conference is one notable example of how global processes influence the development of anti-corruption agencies. Earlier in 1997, when addressing a seminar in Midgard, Namibia, the former South African Minister of Water Affairs and Forestry, Kader Asmal observed that "corruption is potentially one of the greatest forces for the destruction of democracy throughout the world, but particularly in Africa where parliamentary democracy is still in a fledging and vulnerable state" (1997: 1). In Namibia, two national anti-corruption conferences were staged in 1997 and 1998, with the aim of devising a national integrity strategy for Namibia. The country's Prime Minister spearheaded the anti-corruption conferences.

These initiatives demonstrate that there is a declared intent to curb the problem of corruption. Through these initiatives these countries want to show foreign investors, donors as well as voters that they are concerned about the problem of corruption. Moreover, these countries want to protect their fragile democratic gains and strengthen their reputation for honesty. It is in this context that the control of corruption is important for these countries hence the establishment of anti-corruption agencies. For the donors, the problem of corruption needs to be

tackled through reform. Therefore, in the next chapter we deal with the issue of reform, and this will be followed in the subsequent chapters by reform in our cases studies of Botswana, South Africa and Namibia.

### **Conclusion**

This chapter has explored ways in which the central importance of the state to politics in Africa makes corruption a catastrophe in its effects on development and why the state is so vulnerable to corruption. Corruption in Africa was embedded in the politics of the state from the outset. First, class formation and the accumulation of private wealth are dependent on state power and access to state resources. Second, clientelism is used as a means of mobilising political support in Africa. These forces give rise to competition for public resources, which in turn leads to looting of public resources. The nature of clientelism and in turn corruption work against capital accumulation in Africa. In the context of underdevelopment, clientelism is unsustainable. As a result it leads to political instability and in turn becomes a source of corruption. It is in this sense that the state in Africa becomes vulnerable to corruption. In turn, the chapter has shown why anti-corruption agencies are important. It is in this context that the control of corruption in Botswana, South Africa and Namibia is all more important to prevent a slide into post-colonial crisis.

In the eyes of the donors, corruption can be tackled through reform. However, anti-corruption reform have had limited results. We identified a number of reasons why this is the case. First, anti-corruption agencies do not affect forces that give rise to corruption in Africa, and this in turn undermines institutional reform.

Second, anti-corruption agencies threaten or affect the ability of the state to distribute clientelist resources. By so doing, anti-corruption agencies threaten the very nature of the state. In the next chapter we discuss the broader context of reform more generally and in Africa. The chapter is concerned with the specific nature and content of the institutional or governance reforms and the problems that attend them generally in Africa. The chapter demonstrates that anti-corruption reforms do not necessarily curb the problem of corruption, rather they give rise to new forms of corruption. Thus corruption becomes privatised or decentralized.

### **Chapter three: The anti-corruption strategy**

Chapter two explored socio-political forces and economic problems that drive corruption in Africa and give rise to anti-corruption agencies. The focus was on the importance of corruption as a problem facing contemporary Africa, and why corruption became an important issue in African politics in the last part of the twentieth century. It sought to explain why corruption was seen as destructive to African development in terms of the politics of the state in Africa and to illustrate the factors that made anti-corruption agencies important and why they needed to be effective.

This chapter examines the broader context of reform policies in Africa and more generally. With the increasing concern over the problem of corruption in the past ten to fifteen years, there emerged a new global consensus that corruption had to be tackled through institutional reform. This chapter is concerned with the specific nature and content of institutional or governance reforms and the problems that attend them generally in Africa. Donor governments and agencies are pushing for a liberal democratic reform agenda, one which entails economic liberalization and political democratization underpinned by “good governance”. Moreover, reform entails instituting anti-corruption measures and the establishment of stable, accountable and transparent government. In the eyes of the western donors, political and economic reforms are necessary to curtail the devastating effects of corruption in Africa. As a result of donor and local pressures, African states have embarked on a range of political and economic reforms. This chapter will help us to understand why there is a sudden push for institutional reform in Africa. Despite a push for reform to curb the problem of corruption, this chapter



demonstrates that anti-corruption reform has so far produced mixed results especially in terms of tackling high-level corruption, which indicates that reform is not sufficient to curb the problem of corruption.

The chapter also spells out the Hong Kong Independent Commission Against Corruption (ICAC) model in detail and its application to Africa. We examine the organisation and structure of the ICAC, its anti-corruption strategy, powers as well as factors behind its success in fighting corruption. Botswana, South Africa and Namibia are not in the same economic crisis as elsewhere in Africa yet they have adopted the Hong Kong model. This is because the three countries are vulnerable and have learnt from what has happened elsewhere in Africa. The fact that the three countries have not yet travelled down the crisis road makes the control of corruption more hopeful and all more important to prevent the slide into post-colonial crisis. Therefore there is a need for effective anti-corruption agencies in order to strengthen their democratic credentials in the eyes of international investors, donors and their own voters. In the section that follows we discuss the call for reform in Africa.

### **The rationale of reform in Africa**

The last ten to fifteen years marked a fundamental departure in donor policies as donor agencies and governments linked economic aid to political reform, including the curbing of corruption, in pursuit of good governance. Internationally and locally, Africa's crisis and, in turn, the problem of corruption came to be perceived as one of governance; 'a governance crisis' (Hyden, 1992: 5). Chikulo observed that "Africa's problems were increasingly perceived to be of a political

nature, political reform was elevated to the top of the reform agenda” (1997: 25). According to the donors and western governments, Structural Adjustment Policies (SAPs) had failed to achieve their intended objectives because of intrinsic obstacles in the political system of the beneficiary states (Leftwich, 1994; Chikulo, 1997). Kpundeh (1995) attributes widespread corruption in the African continent to the overcentralized nature of African states, and lack of openness and accountability. For the donors, therefore, poor development performance and adjustment failures are a result of dictatorial rule and poor governance all stemming from too much concentration of economic and political power in the state and, especially, its executive (Leftwich, 1994: 369).

Partly because of this, donors and western governments moved a step further from supporting or encouraging economic liberalization and made good governance (and democracy) a prerequisite for development aid (ibid. 369). In the aftermath of the Cold War, western countries were “freed from the perceived need to turn a blind eye to the domestic excesses of Cold War allies” (Wiseman, 1995: 3). As a result, western governments as well as international financial institutions (IFIs) such as the World Bank, the International Monetary Fund (IMF) and most donor organisations became ever more persuaded that lack of democratic rule and political accountability in Africa was a fundamental cause of economic problems. Thus donors linked economic assistance and investment with political reform in Africa (Wiseman, 1995). This is the case because, as Szeftel observed “corruption, over-regulation and economic crisis were seen as characteristics of authoritarian regimes and their ultimate unpopularity had paved the way for political reform” (1998: 226). And as Chikulo noted, “since then political reform

has become a package deal linked to the structural adjustment programmes” (1997: 25). In this way, donors encouraged governance reforms through the use of aid and political reforms.

The linking of economic aid to political reforms came to be known as ‘political conditionality’ (Robinson, 1993; Baylies, 1995; Chikulo, 1997). According to

Robinson

political conditionality refers to the linking of aid to administrative and political reform in recipient countries, in the pursuit of what is termed ‘good governance’. There are four components to this: sound economic policies, that is adherence to market principles and economic openness; competent public administration; open and accountable government; and respect for the rule of law and human rights (1993: 90).

In this way, political conditionality marked a radical departure or shift from the Cold War politics in which serious shortcomings of dictatorial regimes were disregarded (Nwokedi, 1995), autocratic regimes befriended despite their poor human rights record (Sorensen, 1993), associations between covert activities and politicians of questionable character were supported and deals with criminals were struck (Ellis, 1996: 193). The end of the Cold War, as Nwokedi noted

ushered in a new mood in inter-state relations as it represented an opportunity for the Western donor nations to anticipate a review of the criteria on which aid had been accorded in the past to political regimes in Sub-Saharan Africa and elsewhere whose record on human rights had caused considerable disquiet (1995: 181).

The new criteria of according aid, it was envisaged, would lead to greater efficiency, accountability and transparency and thereby curtail corruption. This is the case because political reforms would result, on the one hand, in legitimate government, the rule of law, respect for human rights, competitive multiparty

elections which were free and fair, and checks and balances which would ensure openness and accountability. On the other hand, structural adjustment policies would reduce the size and role of the public sector (Sandbrook, 1986) and thus further help to curb rent-seeking practices and corruption.

Because of these donor pressures, and parallel local demands for reform, African states have embarked on economic liberalization and political democratization, as a way of acceding to the new criteria of obtaining international aid (Chikulo, 1997). These reforms were seen not only as a way of overcoming Africa's socio-economic crisis but in turn as strategies for curbing corruption: "economic liberalization, democratization and the battle against corruption, it was assumed, marched hand in hand" (Jones, 1996: 72). The section that follows examines reform strategies for combating corruption in Africa.

### **The general democratic reform strategy**

#### **Corruption and economic liberalization**

The most straightforward pressure for African states to liberalize in the early 1970s and 1980s came from the International Monetary Fund (IMF). Some 32 African states had adopted structural adjustment policies by 1990, marking a widespread shift from state-driven to market-driven development strategies (Chikulo, 1997: 27). As noted, liberalization was soon linked to democratization: "the attractions of the market and of legal-rational norms governing public administration were [considered to be] preferable to the caprice of authoritarian one-party and military regimes" (Szeftel, 2000b: 293-4).



Economic liberalization is about the reduction of government involvement in the economy. For the World Bank “liberalization involves freeing prices, trade, and entry from state controls” (1996: 22). In this way, economic liberalization decentralizes the decision-making structures in the economy. Thus in a market economy, the prices of goods and services are believed to be determined by the forces of supply and demand instead of by government officials who extract ‘rents’. It was envisaged that by embarking on economic liberalization, corruption will be reduced because economic liberalization would result in a detachment of the state from economic resources. Thus the incentive of public officials to conspire and extract rents or favours would diminish. As Yan Kong put it:

economic liberalization leads to the separation of government and business. The motivation for collusion, the exchange of financial favours for domestic monopoly, disappears with the competition that liberalization brings (1996: 52).

For the donors, corruption was an outcome of state interference in the economy (Heywood, 1997; Szeftel, 1998). As Rose-Ackerman noted, “corruption is taken as a signal that government has overextended itself” (1978: 9). Thus the donor’s point of departure was that corruption was prevalent because the state was playing a big role in the economy. The expanded role of the state in the economy “as a regulator, allocator, producer, and employer” coupled with “the widening of government power by increased economic activities” presented opportunities for corruption to flourish (Sun, 1999: 2). Opportunities for corruption occurred because public officials “have the power to allocate scarce benefits and impose onerous costs” (Rose-Ackerman, 1999: 39). The government’s monopoly of force allows it to become involved in economic affairs. This authority, together with the ability to gain access to information that is not open to members of the public,

opens up possibilities for state officials to further their personal interests, or those of their friends or associates, at the cost of the general public. In this sense, the opportunities for corruption and rent seeking are substantial (World Bank, 1997: 99).

To reduce the possibilities of corruption and rents, donors insisted that African states should reduce their role in the economy and increase that of the market. For the World Bank “corruption flourishes where distortions in the policy and regulatory regime provide scope for it” (1997: 102). Therefore, reform policies which intensify or improve the ability of the economy to compete globally will limit corruption (World Bank, 1997; Rose-Ackerman, 1999). The World Bank puts the case thus:

any reform that increases the competitiveness of the economy will reduce incentives for corrupt behaviour. Thus policies that lower controls on foreign trade, remove entry barriers to private industry, and privatize state firms in a way that ensures competition will all support the fight. If the state has no authority to restrict exports or to license businesses, there will be no opportunities to pay bribes in those areas. If a subsidy program is eliminated, any bribes that accompanied it will disappear as well. If the price controls are lifted, market prices will reflect scarcity values, not the payment of bribes (1997: 105).

Under the neo-liberal framework, the state should provide an ‘enabling environment’ for the private sector in Africa, despite the fact that that sector’s underdevelopment prompted state intervention in the first place.

### **Corruption and political democratization**

Political democratization has been tendered by donors as yet another effective strategy for curbing corruption in Africa. According to the donors, political

democratization needed to be implemented along with economic liberalization as one package. This is the case because for the donors, “economic liberalization requires also a democratization strategy to restrain state power: a liberal economy needs a liberal state” (Szeftel, 1998: 226). The need to implement economic and democratic reforms together was recently noted by U.S. Secretary of State Powell at a 2001 Annual Meeting of the Bretton Woods committee. He observed that political and economic reform had to be implemented as one package if each one of them was to be effective (USAID, 2001: <http://www.usaid.gov/democracy/dusni.html>). Even more important was the need for a stable good government because transparency, honesty and accountability in government were the foundation of a healthy investment climate (USAID, 2001: <http://www.usaid.gov/democracy/dusni.html>). Thus, Doig observed that

democratization is seen by Western governments, international donors, academics and commentators as a significant developmental step that could (or, more conjecturally, should) provide the impetus needed to resolve such countries’ political, economic and social problems and lead the way to the establishment and eventual consolidation of democratic governance, including universal political association and participation alongside a limited, transparent and responsive state and end to the debilitating impact of corruption, misappropriation and waste characterised earlier regimes (1999: 13).

Donor organisations and governments have since linked aid to democratic reforms. For instance, article 2 (2) of The Council of the European Union regulation which lays down the requirements for the implementation of development, states that the European Community will provide economic aid to processes of democratization which encourage and reinforce the rule of law, promote the separation of powers between branches of government, encourage pluralism, good governance, participation, electoral processes and the separation of military and civilian functions (Commission for the European Communities,

1999: 5-6). For Japan, the new criteria for aid allocation require a cut in military expenditure, economic liberalization, the promotion of democracy and respect for human rights. As Leftwich observes, donors contend that

democratic politics and a slim, efficient and accountable public bureaucracy are not simply desirable but also necessary for a thriving free market economy, and vice versa, for the two are inextricably implicated with each other. Neo-liberals thus regard an obese state apparatus with a large stake in economic life as being both inefficient from an administrative point of view and also incompatible with an independent and vibrant civil society which is held to be the basis of effective democracy (1994: 369).

Moreover, democracy is identified with liberal democratic norms. U.S. Secretary of State Colin Powell put the position of the Bush administration bluntly:

America stands ready to help any country that wishes to join the democratic world - any country that puts the rule of law in place and begins to live by the rule, any country that seeks peace and prosperity and a place in the sun. In that light, there is no country on earth that is not touched by America, for we have become the motive force for freedom and democracy in the world.

(USAID, 2001:<http://www.usaid.gov/democracy/dusni.html>)

Africa's response to these demands was a series of multiparty elections from 1989. It was hoped that the shift to political pluralism would also make African governments more efficient and less corrupt. This is captured by Chikulo who states that

concomitant with the liberalization of the economy have been moves to open up the political system by the adoption of reforms to permit greater pluralism, political competition and good governance within the polity.... It was assumed that pluralism would make African governments more responsive and hence better managers of their economies (1997: 27).

As much as economic liberalization is about reducing state intervention in the economy, political democratization is about limiting the role of the state in the political sphere. It is about restoring political pluralism or multiparty democracy, whereby different political and civic organisations participate in the political



process without hindrance. Political reform was consciously designed to limit the role of the state, as Bratton and Van de Walle make clear. Democratization, they suggest,

entails the reform of authoritarian regimes. It comes to pass when public authorities relax controls on the political activities of citizens. Often described as a political opening, political liberalization involves official recognition of basic civil liberties. In such openings, governments restore previously repudiated freedoms of movement, speech, and association to individual and groups in society. As an analogue of economic liberalization, political [democratization] reduces government intervention in the political market, breaking up monopolies of political authority and allowing a plurality of opinions and organizations. In short political [democratization] broadens political competition” (1997: 59).

By enhancing transparency and accountability, it was envisaged, political democratization would reduce or limit corruption as it puts the activities of the state and its officials under constant scrutiny through ‘due process’. Shleifer and Vishnky argued that “countries with more political competition have stronger public pressure against corruption - through laws, democratic elections, and even the independent press” (1993: 610). In this way, Transparency International (TI) notes that

democratization ...presents an opportunity to control systemic corruption by opening up the activities of public officials to public scrutiny and accountability. It has been suggested that democracies, more so than any other political system, are better able to deter corruption through institutionalised checks and balances and other meaningful accountability mechanisms. They reduce secrecy, monopoly and discretion (TI, 2001:[http://www.transparency.de/documents/source-book/b/chapter\\_5/index.html](http://www.transparency.de/documents/source-book/b/chapter_5/index.html)).

LeVine emphasises the same point:

[if] administrative corruption cannot be eliminated, it can be limited in [democratic] states. The operative consensus with which I agree, is that attempts at limitation are more likely to succeed the further the country is along the democratization path. The more democracy, the more likely that

mechanisms will have been put in place to monitor the performance of administrators and bureaucrats (LeVine, 1993, quoted in Szeftel, 1998: 226).

In this view, corruption flourishes “where institutions of restraint are weak” (World Bank, 1997: 102), and state power is not limited and controlled. Public accountability restrains political power and hence corruption; “public accountability is necessary for the control of corruption” (Rose-Ackerman, 1999: 143). Therefore, as Yan Kong notes, “in theory we should expect democratization ...to erode the conditions on which corruption thrives” (1996: 52). For neo-liberals, political democratization would result in what Schwarzmantel called the “core democratic values”, being “participation, accountability of the leaders and the idea of equality” (1994: 33).

### **Corruption and good governance**

Alongside democratization, donors and western governments called for ‘good governance’ to limit corruption. Donors soon came to realise that without good governance, democratization lacked substance. This gave rise to “a new will, or at least a proclaimed will, to make African governments more accountable both to their own population and to aid donors” (Chabal and Daloz, 1999: 117).

The concept of governance gained popularity and momentum at the turn of the twentieth century. This concept has been popularised mainly by donor agencies and governments, at the end of the twentieth century as part of ‘aid conditionality’. According to Gibbon, good governance refers to “forms of

political management” (1993: 52). For the World Bank, good governance essentially entails efficient management of resources, proper policy and executing functions in an effective way - all aimed at attaining good economic performance (Baylies, 1995: 326). Because of the poor record of neopatrimonial states in economic management, for the International Financial Institutions (IFIs), politically good governance refers to a slim state. And on the economic front, good governance means privatisation and deregulation, thus leaving the market forces of demand and supply to determine the prices of goods and services thereby promoting efficiency. Thus good governance embraces political as well as economic issues.

However, good governance is a long term goal. To facilitate it, there is need for good government. For Doig, a good government refers to

political legitimacy for the government through democratic elections and transfer of power, political opposition and representative government; accountability through the provision of information, separation of powers, effective internal and external audit, low levels of corruption and nepotism; official competency such as having trained public servants, realistic policies and low defence expenditure; and human rights as indicated by freedom of religion and movement, impartial and accessible criminal justice systems, and the absence of arbitrary government power (1995: 151-2).

Doig and Theobald echoed similar sentiments when they observed that

good governance requires that the state be both efficient and effective, which can be achieved only by the state limiting its activities to those which it is best qualified to perform. However, this slimmed state must also be generally perceived as legitimate. That is to say, the process of government should be open and honest as well as meeting the needs of its citizens. In order that these needs be met, the state must be constrained by, as well as work with, a vigorous civil society (1999: 9).

Good governance is about building state capacity, transparency and accountability. It is about building a competent public administration, an open and accountable state, as well as adherence to the rule of law. For the World Bank, good governance is built around a number of aspects which include; accountability, the legal framework for development, information and transparency (Moore, 1993; Leftwich, 1994). According to Leftwich, these aspects of good governance were defined as follows:

- (a) accountability; basically refers to holding public officials responsible for their actions.
- (b) a legal framework for development; means a structure of rules and laws which provide clarity, predictability and stability for the private sector, which are impartially and fairly applied to all, and which provide the basis for cabinet resolution through an independent judicial system.
- (c) information; means information about economic conditions, budgets, markets and government intentions is reliable and accessible to all, which is crucial for private sector calculations.
- (d) transparency; calls for an open government, to enhance accountability, limit corruption and stimulate consultative processes between government and private interests over policy development (1994: 372).

Wohlmuth argues that good governance is consists of six elements - which are; a legitimate government, a suitable legal framework, popular participation, where freedoms of expression and association are guaranteed, a bureaucracy which is accountable and transparent, and where organisational structures of government are based on rationality (1999: 7). Thus good governance entails “reinvigorating institutional capability” (World Bank, 1997). As the World Bank noted

this means designing effective rules and restraints, to check arbitrary state actions and combat entrenched corruption. It means subjecting state institutions to greater competition, to increase their efficiency. It means increasing the performance of state institutions, improving pay and incentives. And it means making the state more responsive to people’s needs, bringing government closer to the people through broader participation and decentralization (1997: 3).



For the donors, it was envisaged that good governance would curtail corruption through its principles of openness and accountability. Moreover, by laying down the legal framework for development and by reviving the capacity of state institutions, good governance would expose and thereby reduce the incentives for public officials to extract rents because their actions would be under constant scrutiny. More importantly, this would result in a government which was responsive to the needs of the electorate. It was in this context that good governance also came to be seen as necessary to combat corruption.

### **The anti-corruption element of democratic reform**

#### **Creating anti-corruption agencies**

With a recognition on the part of the donors that 'good governance' had made little progress towards curbing corruption, there had been a change or shift in donor policies. For the donors, good governance had not produced the necessary results because corruption was there. Donors called for effective measures to combat corruption, because corruption had come to be seen as a threat to good governance reforms. "As a result, almost all of Africa's principal aid donors and trading partners have recently developed policies on these issues" (Riley, 2000: 138). The basic idea was to channel aid to countries that were prepared to introduce reforms to tackle organized corruption (Klitgaard, 1997: 503). In this way, "action on corruption became yet another of the Bretton Woods institutions' conditionalities, on top of the long list of other economic and political conditions already attached to their lending criteria" (Harsch, 1999: 77). This came following

a 1996 joint annual meeting of the World Bank and the International Monetary Fund (IMF), at which James Wolfensohn, President of the World Bank, called for the “need to deal with the cancer of corruption” (Wolfensohn quoted in Harsch, 1999: 77). Since then, the World Bank and IMF “began to speak more explicitly and forcefully about corruption, both in their own procurement and aid programmes” (ibid. 77). According to the President of the World Bank, James Wolfensohn, corruption was never openly mentioned by the World Bank and the International Monetary Fund until in 1996, because it was regarded as a “politically sensitive issue”, which fell outside the remit of the Bank’s non-political mandate prior to the mid-1990s. This was the case even for many other bilateral and multilateral donor agencies (World Bank, 2001:<http://www1.worldbank.org/publicsector/anticorrupt/helping.htm>).

We argue that since the Bank started to tackle corruption directly, other donor agencies followed and, made combating corruption a matter of high priority. Donors have since linked economic aid to anti-corruption efforts. Thus donors were promoting and supporting institutional and legal reform, including the setting up of anti-corruption agencies. This was the case in part because corruption in Africa had come to be associated with political instability, deep-rooted crises of economic development, poverty and spiralling public debt. More recently, corruption had come to be seen as an obstacle or threat to the very reforms advanced by the donors. The concerns about the devastating effects of corruption in Africa were also shared by Africans themselves (Szeftel, 2000a).

As a result, donors were using aid and sponsoring a number of measures such as international conferences and seminars, which were aimed at advancing a global anti-corruption culture. This resulted in the publication of a wide range of literature on combating corruption. More importantly, there was the emergence of agencies, most notably Transparency International (TI), which encouraged and supported anti-corruption initiatives. TI does not investigate individual cases of corruption but fights corruption by raising awareness on the dangers of corruption. Other agencies which sponsor and play a significant role in the anti-corruption crusade include; The Organisation for Economic Co-operation and Development (OECD) and the United States Agency for International Development (USAID). For USAID, its approach to corruption entails promoting economic reforms that curtail the role of government in the economy, enhancing openness and accountability, strengthening the rule of law, supporting legal reform as well as civic organisations initiatives to combat corruption (USAID Bureau for Africa, 1998). The World Bank's new anti-corruption strategy entails four elements, which are: prevention of corruption in projects financed by the Bank, assisting countries curtail corruption, mainstreaming anti-corruption activities in the Bank, and supporting International efforts to fight corruption (Riley, 2000). To counter the devastating effects of corruption, the Bank suggested

eliminating policy "distortions" that provide opportunities for corruption, raising civil service salaries to the levels of those in the private sector, hiring and promoting civil servants on the basis of merit not patronage, mechanisms to enhance the monitoring and accountability of officials, the establishment of clear rules and an independent judiciary, the naming of ombudsmen to hear citizens' complaints, and anti-corruption commissions to investigate serious allegations (Harsch, 1999: 75).

The increasing concern over corruption on the part of donors created pressures on African states to tackle corruption. As a response to donor pressures, African states introduced a number of specific legal and institutional reforms, which included anti-corruption agencies, to counter the problem of corruption. The section that follows discusses the legal and institutional reforms that were introduced.

### **Legal and institutional reforms**

One reform measure that had been proposed to control corruption in Africa was the creation of an independent and effective judiciary through judicial reform. An independent judiciary was necessary to hold the other branches of government accountable for their actions. In this way, the judiciary would act as a check on the activities of the state and its agents. However, the judiciary can be able to perform this noble role only when it is independent, effective and possesses the power to enforce its decisions (World Bank, 1997: 100). An autonomous, neutral and knowledgeable judiciary plays an essential role towards the fulfilment of a fair, sincere, transparent and accountable government (Transparency International, 2000:<http://www.transparency.de/>). This is the case because an independent judiciary was necessary to ensure that the rule of law obtains. A judiciary that performed well was a fundamental basis of the rule of law (World Bank, 1997). The independence of the judiciary could be enhanced if its tenure of office and adequate remuneration were guaranteed. Moreover, the judiciary needs to be free from political interference.

The judiciary plays an important role in the fight against corruption because



judicial decisions help determine the distribution of wealth and power, judges can exploit their positions for private gain. A corrupt or politically dependent judiciary can facilitate high-level corruption, undermine reforms, and override legal norms. When the judiciary is part of a corrupt system, the wealthy and the corrupt operate with impunity, confident that a well-placed payoff will deal with any legal problems (Rose-Ackerman, 1999: 151).

Thus, a sincere and revered judiciary has a unique function to perform in countering corrupt governments and upholding the rule of law (ibid. 151). In a good number of countries in Africa, judicial institutions were not only weak and ineffective, but they were subject to executive influence. For instance, in Nigeria, a state governor used mobile police to detain the Chief Judge and his other judges who were in charge of an election case. The judges were not set free until after a supportive judgement had been tendered down (Transparency International, 2000:<http://www.transparency.de/>).

In order to enhance the effectiveness of the judiciary, donors called for judicial or legal reforms. As the World Bank notes

legal and judicial reform may include: amending a country's law to improve the business environment and improve investment, harmonizing law for internal consistency, or adapting law to contemporary conditions. The Bank may aid existing legal institutions by rehabilitating or building court buildings, training judges, funding the publication of judicial decisions, or buying law books for the court library. Legal and judicial institutions may also be created or reformed by, for example, establishing schools for judges, adopting improved case management techniques, or creating commercial courts (World Bank, 2001:<http://www1.worldbank.org/publicsector/legal/>).

Legal reforms seek to tackle problems within the administration of justice as well as change the parallel relationship between the judiciary and the other branches of government (Domingo, 1999). Thus, reform intended to improve horizontal

accountability would be perceived as compromising the rent-seeking ability of power holders as well as their patronage networks (ibid. 166). Legal reforms seek to enhance the running of legal institutions (World Bank, 2001: <http://www1.worldbank.org/publicsector/legal/>). This underscores the importance of an independent judiciary in controlling political power and in turn, corruption.

One other reform strategy that had been tried to control corruption in Africa was administrative and civil service reform. As Klitgaard pointed out

civil service reform and, more generally, the improvement of the functioning of the public sector are especially important where institutions have grown 'sick'- where salaries have plummeted, where information about performance is scant and unreliable, where corruption has become widespread (1997: 504).

Administrative and civil service reform entailed a number of aspects. One such aspect involved a significant reduction in the size of the public service (Klitgaard, 1997; Hope, 2000), which was the common remedy to corruption (Theobald, 1994). Downsizing of the public service was found to be necessary because

the civil service in most African countries is much larger than those countries require, much more costly than they can afford, and significantly less effective and productive than they should be. In many of the countries, patrimonialism and expanding state activity have contributed to a civil service which contains many who are superfluous and none who are paid well; and the ministries and agencies in which they work tend to be ill-equipped and poorly structured (Hope, 2000: 32).

In an attempt to clean up and invigorate the public service, African countries embarked on extensive reforms to curtail overstaffing in the public sector (World Bank, 1997). A variety of measures or initiatives were used to remove extra-employees from the payroll. These included

enforcing mandatory retirement ages, abolishing job guarantees for high school and university graduates, ensuring attrition through recruitment freezes, introducing voluntary departure schemes, making outright dismissals, and eliminating 'ghost' (fictitious) employees from the payroll. For example, Cameroon and Uganda significantly reduced civil service employment by removing 5840 and 20000 ghost employees, respectively, from their payrolls during 1981-1990 (Hope, 2000:33).

Similarly, in Zimbabwe, a major facet of Civil service Reform was a cut in the size of the Public Service. From 1992, the government of Zimbabwe used a number of initiatives to down size the public service. These included; eliminating posts which were vacant for more than 12 months, compulsory reductions and optional retirements. By 30 June 1994, Zimbabwe's Public Service was cut by some 12,700 (Kaul, 1996: 140-1). "A common measure of government size is the ratio of government expenditure to the economy's total expenditure or total output" (World Bank, 1997: 33). Theobald argued that the justification behind a cut in the size of the civil service was that not only would it reduce opportunities for favouritism, graft, and misappropriation respectively, but it would largely enhance the training and terms of service of the remaining public servants whose number had been decreased considerably (1994: 705).

The other aspect of public service reform entailed merit based recruitment and promotion. The World Bank noted that "cross-country evidence reveals that bureaucracies with more competitive, merit-based recruitment and promotion practices and better pay are more capable" (1997: 9). It was in the light of this, that the World Bank was calling for countries to establish

a rule-based bureaucracy with a pay structure that rewards civil servants for honest efforts, a merit-based recruitment and promotion system to

shield the civil service from political patronage, and credible financial controls to prevent the arbitrary use of public resources (ibid. 105).

These measures were necessary to ensure a well motivated and capable public service. Linked to merit-based recruitment, was the need for adequate compensation or better pay for civil servants. Most African public sectors are characterised by low wages, insufficient benefits, and fragmented labour markets (Cohen et al, 1997: 317). As the World Bank pointed out

in many countries, civil servants' wages have eroded as a result of expanding public employment at lower skill levels and fiscal constraints on the total wage bill. The result has been a significant compression of the salary structure and highly uncompetitive pay for senior officials, making it difficult to recruit and retain capable staff (1997: 9).

Thus, the World Bank noted that in order for governments in developing countries to employ staff of a high calibre, promote productivity and discourage corruption, they needed to pay their employees no less than a living wage (World Bank, 2001: <http://www1.worldbank.org/publicsector/civilservice/>). Moreover, better wages would make working in the public service more attractive (World Bank, 1997: 94). Low salaries were seen as a good recipe for corruption because poorly paid public servants would be more vulnerable to accept bribes than well paid employees. It is an open secret that insufficient salaries encourage state officials to engage in unethical forms of conduct (Wai quoted in Klitgaard, 1997: 489).

Therefore,

as a measure for controlling corruption, pay/grading reform generally has five objectives: (a) an increase in overall real pay levels; (b) the decompression of pay scales to improve the competitiveness of civil service pay at higher levels; (c) a new grading system based on job evaluations; (d) the introduction of performance-based pay; and (e) the improvement of pay policy-making and administration (Hope, 2000: 32).



The other aspect of public service reform involved training of civil servants. Training of public servants was not only seen as necessary but it was also of fundamental importance in improving service delivery. Training does not only improve the skills of public servants but it also gave to a public service that was effective and efficient. This is captured by Hope who states that

training is a very important element of the process of behaviour modification and instilling of values of moral accountability and ethical behaviour. Many African countries now have institutes of public administration or management, or administrative staff colleges, to train their civil servants. Many of these training activities are supported by donor agencies [such as the World Bank] because there is recognition of the importance of training in any attempt to reform a given civil service for improved performance. Training is intended to enhance the knowledge and skills of individuals as well as inculcate proper ethical attitudes toward and about work (ibid. 33).

The various aspects of civil service reform were intended to strengthen openness, accountability as well as efficiency and effectiveness in the public service, and thus in turn, curtail the problem of corruption. An effective and capable public service was necessary because for the government to be successful, the public service should spearhead the process of national transformation by leading, instigating, designing and overseeing the process of transformation (Kaul, 1996: 150).

Yet another reform strategy that had been tried to limit corruption in Africa was public campaigns, whose aim was to make the public aware of the damaging consequences of corruption, the punishments for taking part in corrupt acts and the kind of conduct that was expected of state officials (Kato; 1997; Hope, 2000). This is the strategy which Transparency International utilises in its anti-corruption

crusade. Transparency International seeks to make limiting corruption an issue of high priority in the agendas of international organisations and governments.

African states also embraced Codes of Conduct as an anti-corruption strategy. These may take different forms such as Codes of Ethics and Leadership Codes (Hope, 2000). A good example is Uganda's Leadership Code Statute of 1991, which requires

the annual declaration of income, assets, and liabilities by leaders. The Code specifies minimum behaviour and conduct standards for leaders regarding gifts and benefits in kind, conflicts and tenders, and use or abuse of public property. The Code also provides sanctions for violations of its provisions (Kato, 1997: 17).

Despite its good intentions, this Code has so far not had a major effect on corruption (Kato, 1997), as it came into force in 1997 (Hope, 2000). In some countries, political leaders subverted Codes of Conduct. President Robert Mugabe of Zimbabwe was one such leader who described the 1984 Leadership Code meant to curtail corruption, as a "despicable piece of paper" (ibid. 30). In South Africa there is a Code of Conduct and all office bearers are required to declare their assets (Transparency International, 2000:<http://www.transparency.de/>). Moreover, South Africa has an Ethics Code for its Members of Parliament, whose aim was to attain an accountable and transparent political order (Hope, 2000).

### **The influence of the Hong Kong model**

Given the growing concern over the problem of corruption, anti-corruption reform had also come to be pursued through independent anti-corruption agencies which

were a recent feature in the fight against corruption (Johnston, 1999). Johnston argued that independent anti-corruption agencies led to major and continued reductions of corruption in countries where it appeared improbable at one point. Moreover, these agencies proved to be efficient barriers against corruption (1999: 217). It was in this context that autonomous anti-corruption agencies were an admired or accepted reform proposition intended for developing countries (Rose-Ackerman, 1999: 161). Anti-corruption agencies were modelled along the famous Independent Anti-Corruption Commission (ICAC) in Hong Kong. Following the success of the ICAC in reducing corruption in Hong Kong, the ICAC has been seen, cited and used as a model which other countries should follow. It is necessary therefore, to examine the Hong Kong ICAC which has been so influential as an anti-corruption model for Africa.

### **The anti-corruption model: The Independent Commission Against Corruption (ICAC) in Hong Kong**

The Independent Commission Against Corruption (ICAC) in Hong Kong was established in February 1974 as a response to public outcry to the problem of corruption. At the time corruption was a major problem in Hong Kong especially in the Police Force. Corruption reached a crisis point in 1973, when Peter Godber, a Chief Police Superintendent with unexplained wealth of over HK\$4.3 million became the subject of an investigation. The Godber affair gave rise to protests led by students calling for government action against corruption and the extradition of Godber, who had fled Hong Kong. As a response to this, the government appointed a Commission of Inquiry. As a result, the Hong Kong ICAC was set up in 1974 (ICAC, 2002:<http://www.icac.org.hk/eng/about/index.html>). Its first priority was to ensure that Godber was brought to justice. Godber's successful

extradition and prosecution demonstrated that the ICAC was determined to fight corruption, and this case marked the beginning of 'a quiet revolution' against corruption (ICAC, 2002:<http://www.icac.org.hk/eng/about/index.html>). Today the ICAC in Hong Kong has not only become a popular focus of international attention but it was also widely held as a good example of the most effective anti-corruption agency. As Johnston noted, Hong Kong's ICAC "has become a model for anti-corruption activity elsewhere and is widely credited with significantly reducing corruption" (1999: 221).

### **Organization and structure of the Hong Kong ICAC**

From the outset, the ICAC in Hong Kong adopted a three pronged strategy in its fight against corruption, which entails investigation, corruption prevention as well as public education (Klitgaard, 1988; Theobald and Williams, 1999; ICAC, 2002:<http://www.icac.org.hk/>). This strategy, which continues to be the guiding principle of the ICAC, was important "to develop a new public consciousness. For it was recognised that prevention was as important as the deterrent prosecution, and the battle against corruption could only be won by changing people's attitude towards corruption" (ICAC, 2002:<http://www.icac.org.hk/>). The three-pronged strategy is carried out by three departments of the ICAC, which are interdependent. These are Operations Department, Corruption Prevention Department and Community Relations Department. The three departments report to the Commissioner, who in turn reports directly to the chief executive.

The Operations Department, which is the largest department of the ICAC, is responsible for investigating alleged cases of corruption both in the public and private sectors. The Corruption Prevention Department examines procedures of



public organisations that promote corruption with the aim of reducing opportunities for corruption. Upon request, the Corruption Prevention Department can also provide advice to private institutions. The Community Relations Department on the other hand educates the public on the dangers of corruption and fosters public support in fighting corruption. The three functions of the Hong Kong ICAC enabled it to develop a coherent and focused strategy that proved successful in reducing corruption, for which the Hong Kong ICAC is widely accredited for today. The Hong Kong ICAC is a big organization with a staff establishment of 1,314. Over half of the staff has been working in the ICAC for more than ten years (ICAC, 2002:<http://www.icac.org.hk/>).

### **The powers of the ICAC**

Given that corruption was difficult to investigate, the ICAC in Hong Kong was granted extensive powers to enable it to tackle the problem of corruption. These powers are enshrined in three specific laws, which are the Independent Commission Against Corruption Ordinance, Prevention of Bribery Ordinance and the Corrupt and Illegal Practices Ordinance. Section 3 of the Independent Commission Against Corruption Ordinance establishes the Hong Kong ICAC. Section 10 of the Independent Commission Against Corruption Ordinance gives the ICAC powers of arrest. In terms of this section, an ICAC officer may without warrant arrest a person if the officer reasonably suspects that such a person is guilty of an offence. Upon effecting such an arrest, an ICAC officer may use reasonable force. Section 10C of the Independent Commission Against Corruption Ordinance confers the ICAC with powers to search, seize and detain anything that an officer may believe to be or to contain evidence of an offence.

In terms of the Prevention of Bribery Ordinance, the ICAC has the power to search bank accounts, detain travel documents, and the power to restrict the disposal of property connected to an offence. More importantly, section 10 of the Prevention of Bribery Ordinance makes it an offence for a person to be in possession of unexplained property or assets. Section 10(1) states that any person who maintains a standard of living that is beyond his present or past official emoluments, or possesses resources or assets which are disproportionate to his present or past known emoluments, then such a person is guilty of a criminal offence unless such a person gives a satisfactory explanation to the court as to how he or she has been able to maintain such a standard of living or how he or she obtained such assets. This section has shifted the presumption of innocence until proven otherwise. The burden of proof rests with the accused person. Section 24 of the Prevention of Bribery Ordinance states that “in any proceedings against a person for an offence under this Ordinance, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused”. In terms of section 12 of the Prevention of Bribery Ordinance, penalties for offences under section 10, which makes unexplained wealth an offence, carry a fine of up to HK\$1,000,000 or a ten year prison sentence. Moreover, a person found guilty shall be directed to pay back an amount or advantage received by such person as the court may direct (ICAC, 2002:<http://www.icac.org.hk/eng/power/index.html>).

In order to prevent abuse of these wide ranging powers by the ICAC, an elaborate system of checks and balances was put in place to monitor the work of the ICAC in Hong Kong. These include; advisory committees, Legislative Council, ICAC Complaints Committee, Media, Internal Monitoring and Staff Integrity, Chief

Executive / Executive Council, Judicial Supervision as well as Separate Powers of Prosecution (ICAC, 2002:[http://www.icac.org.hk/eng/power/powe\\_acct\\_3.html](http://www.icac.org.hk/eng/power/powe_acct_3.html)).

A conjunction of factors enabled the Hong Kong ICAC to be effective and successful in reducing corruption. These included amongst others; the ICAC's unique strategy, broad powers, detailed system of checks and balances, political support and will amongst the leadership to tackle corruption. The effectiveness of an anti-corruption agency also depends on other institutions such as the judiciary and the criminal justice system, which support anti-corruption agencies. The question that arises is, can the Hong Kong model work in Africa?

Anti-corruption agencies in Africa have produced disappointing results especially in tackling high-level corruption because the Hong Kong model on which such agencies have been set up is inappropriate to the African setting and assumes conditions that cannot be replicated in the subcontinent. The Hong Kong model was designed for a colonial system with huge material resources. As Camerer noted, "the ICAC is a particular product of a particular environment" (1999:204). It also functioned "within a supportive political environment" (ibid. 216). Moran situates the effectiveness of the ICAC in tackling corruption in the context of a complex set of interrelated factors of the Hong Kong political economy. He attributes the effectiveness of the ICAC to "state capacity, favourable relations with the metropolitan power [Britain], the rule of law and the balance of power within the political economy" (1999: 112). Furthermore, Moran pointed out "the Hong Kong experience suggests that the absence of democracy is not necessarily a drawback to controlling corruption if there is a favourable political context and

functioning rule of law” (ibid. 113). As Camerer further observed, “the ICAC’s powers of search, seize and compel suspects and witnesses to divulge information are far in excess of that which is customary in liberal democracies” (1999: 202). We demonstrate in our case studies of Botswana, South Africa and Namibia in the subsequent chapters, that the Hong Kong model was applied in the three countries in systems that operate on the basis of transparency and accountability. These are not authoritarian regimes. They are democratic regimes that are obliged to employ the rule of law in response to democratic demands from their citizens. Moreover, as we shall show, the application of the ICAC model to our case studies has had to take, of necessity, a very modified and diluted form.

Moreover, the replicability of the Hong Kong model in these countries may not be easy because the Hong Kong ICAC has been in existence for many years, since 1974, and “is extremely well resourced; operates in an environment where legal and financial institutions are extremely well developed; and is subject to a demanding regime of external regulation” (Theobald and Williams, 1999:130). Camerer underlines the same point. He notes that the ICAC in Hong Kong functions “within a relatively well-regulated administrative culture alongside a large, well-resourced police force under a political and legal framework which supports anti-corruption activities” (1999: 204). In this sense, countries that have tried to reproduce the Hong Kong model have produced disappointing results in terms of investigating and prosecuting high-level corruption. This is the case because anti-corruption agencies are under-resourced resulting from lack of political support and the general problem of underdevelopment. Secondly, there is lack of political will to prosecute high-level corruption. Thirdly, apart from the



model used being inappropriate, anti-corruption agencies do not affect factors that promote corruption in these countries. And finally, the purpose of anti-corruption agencies in Africa might possibly have more to do with reassuring investors and aid donors in an age of globalisation than about actually attacking high-level corruption.

### **Anti-corruption agencies in Africa**

Following the successes of the Hong Kong ICAC, African countries have also established specialised anti-corruption agencies in an attempt to curb the problem of corruption. These have taken different forms. They may be in the form of independent anti-corruption commissions, ombudsmen or some specialised anti-corruption agency. Some examples of these institutions are; the Directorate on Corruption and Economic Crime (DCEC) in Botswana, The Public Accounts Committee and the Inspector-General of Government in Uganda, The Anti-Corruption Commission (ACC) in Zambia, The Ombudsman in Namibia, The Special Investigating Unit (SIU), the Independent Directorate: Serious Economic Offences (IDSEO) and the Public Protector (PP), all in South Africa, the Ombudsman in Zimbabwe, the Serious Fraud Office in Ghana, the Anti-Corruption Squad and the Permanent Commission of Inquiry in Tanzania.

The bottom line of establishing these institutions was to strengthen mechanisms for monitoring and punishment by providing permanent oversight. Hope observed that the collective objective of these watchdog organisations was to introduce major changes in attitudes and conduct of state officials with the aim of encouraging integrity and honesty in the public service, through watchdog powers

to reveal as well as probe every alleged acts of corruption (2000: 31). According to Transparency International, the reasoning behind the establishment of anti-corruption agencies was that as the corrupt became more complex, ordinary law enforcement organisations found it difficult to investigate and prosecute complicated cases of corruption (Transparency International, 2000:<http://www.transparency.de/>).

As we noted earlier, the success of the ICAC in Hong Kong was attributable to a number of factors. These included amongst others; political will, heavy penalties, its wide-ranging powers as well as the multi-pronged strategy it used in fighting corruption, which entails investigation and prosecution, prevention, and public education. Moreover, the success of an anti-corruption agency depends on the context under which it functions. In most African states, it would appear the fundamental limitation of anti-corruption agencies was lack of autonomy or independence from the executive. An independent and well resourced anti-corruption agency was seen not only as a threat to the positions of the politicians and their access to state resources but to the political establishment itself. This explains why in most African states, these agencies were accountable to the president. In such a situation, an anti-corruption agency risks being perceived as not immune from executive patronage, “perhaps protecting the machinations of kin and cronies” (Theobald, 1999: 151). Even if the anti-corruption agency faced low levels of political interference in its operations, without the proper measures to ensure openness in its activities, such an organisation risks being perceived by the general public as one that mainly targets the ‘small fish’ (Theobald, 1999). Moreover, given its broad powers, an anti-corruption agency that was answerable

to a dictator may be used to harass the opponents of the regime (Rose-Ackerman, 1999; Theobald, 1999). Some of the ways of checking on the activities of these agencies was by making them accountable to parliament and establishing an oversight body to review their operations (Rose-Ackerman, 1999).

The role of the political leadership was very important in combating corruption (Scott, 1972; Kpundeh, 1995). To date, “the activities of most of these institutions have produced mixed results which have been variously due to their lack of sufficient autonomy; their lack of demonstrable support from the political leadership; their vulnerability to changes in political regimes; and their susceptibility to bureaucratization” (Hope, 2000: 31). However, it should be noted that the war against corruption was not an easy one, and remarkable results should not be expected within a short period of time because corruption was ‘an adaptive process’ (Johnston, 1999). Although its “control, while often possible, may at times require political and social changes that are quite substantial particularly given that corruption is much harder to eliminate once established than to prevent in its formative stages” (Clarke, 1983: x). Similarly, Robin Theobald noted that

its elimination cannot be realistically anticipated until certain fundamental changes have taken place. The most important of these are the rise to predominance of universalistic norms, the emergence of new centres of power outside the bureaucracy and the development of competitive party politics. Such changes, however, can come about only after a long period of social and economic development (1990: 113).

Such characteristics “that could soften the destructive effects of corruption” seem to be lacking for most of the developing world, and where they existed they were particularly weak (Werlin, 1973: 84). However, the donor strategy presupposes that such centres of power outside the bureaucracy were in place. In this sense, the

donor anti-corruption strategy was bound to fail because institutional reforms “are imposed in environments where liberal democracy is not established and where crisis obliterates most of the conditions necessary for its existence” (Szeftel, 2000a: 429). For Lawson, “sub-Saharan Africa is perhaps least equipped to support democratic governance” (1999: 3). Thus, Szeftel argued that the donor’s strategy

tackles corruption as if it were the cause of democratic and development problems rather than a symptom or consequence of them. Thus it fails to address the deeper political and class forces which drive the politics of clientelism and corruption. And secondly, in their demonization of the state and determination to substitute themselves for the state to force adjustment through, the donors and international agencies undermine the institutional development needed to sustain a more democratic, transparent and accountable political system. The result is that the important institutional structures and principles they seek to mobilize against corruption are unlikely to take root (1998: 238).

Despite concerted efforts to fight corruption, corruption has in recent years flourished more than before mainly because such reforms have not tackled the structural factors that promote it, and in most cases, these reforms have not tackled corruption (Szeftel, 1998). We argue that the reduction of corruption would come through real democratization, accompanied by and leading on to the new institutional arrangements such as the Directorate on Corruption and Economic Crime (DCEC) in Botswana, the Ombudsman in Namibia, the Public Protector, Investigating Directorate: Serious Economic Offences (IDSEO) and the Heath Special Investigating Unit in South Africa. These institutions can only function if adequate resources and mandate back them. As all these bodies frequently say, they cannot clean up corruption without the assistance of an active public – again a democratic and active citizenry. We examine these anti-



corruption institutions in our case studies of Botswana, South Africa and Namibia in the subsequent three chapters.

However, as we demonstrate in the section that follows, anti-corruption reforms have not worked, much to the expectations of their proponents. Although institutional reforms (economic liberalization, democratic reforms and good governance) were seen as necessary to undermine corruption, corruption seems to have adapted and it appears to have done so with more vigour. Thus reforms have produced new incentives and opportunities for corruption. Whereas economic liberalization led to the privatisation of corruption, democratic reforms resulted in the weakening of state capacity to control corruption.

#### **Weaknesses of democratic reform and anti-corruption strategy**

By reducing the size of the state in the economy through programme elimination, deregulation and marketization, economic reforms were expected to prevent and limit corruption which was ravaging most African states. Thus, it was assumed that by reducing the size and power of the state, which was “traditionally monopolistic, over-powerful, inefficient, and unaccountable”, through downsizing, privatization and deregulation, the allocation of goods would be done in an open and effective way because the state survived by extracting corrupt rents from the private sector (Little, 1996: 65). On the other hand, political democratization was also, by definition, expected to limit corruption. This is the case because, by limiting state intervention in the political market through the restoration of political pluralism, democratization would reduce secrecy,

discretion as well as state monopoly of political power, and this in turn would lead to openness and enhance public accountability hence corruption would be curtailed. As Harriss-White and White noted, the foregoing arguments were based on the assumption that “in the long run, since competitive markets will destroy the bases of rent-seeking and democratic institutions will create the political constraints necessary to enforce accountability, corruption will wither away” yet this “took a very long time in the currently industrialized countries and corruption is far from withering away” (1996: 4). Thus, donors assumed that the envisaged democratic institutions would limit political power in every polity and this in turn limit corruption. That is, they “presuppose the existence of a functioning pluralism and an effective accountability” (Philip, 1999: 241), in which there “is a freely and regularly elected representative legislature, with the capacity at least to influence and check executive power” (Leftwich, 1994: 371). Donors and local reformers alike assume this proposition.

On the contrary, however, liberalization policies have contributed to an increase in openings for corrupt activities or behaviour, the very problem they were meant to solve (Della Porta & Meny, 1997; Szeftel, 1998; Rose-Ackerman, 1999). Thus “privatization and economic reform may easily open the door to new forms of corruption” (Jones, 1996: 72). Similarly, Szeftel observed that

it is ...clear that liberalization creates a set of new problems while not always eradicating the old sources of dishonesty. The use of patronage and bureaucratic ‘rent-seeking’ have not been ended by market reforms; rather they have been joined by new kinds of graft (1998: 233-4).

In this way “deregulation in one area may increase corruption elsewhere” (Rose-Ackerman, 1999: 40). It is worth noting that free market or privatisation policies have certain limitations to which they could produce good results. Corruption has since adapted to the new conditions. It has been established that economic reforms which were advocated for by the neoliberals and donor agencies in general led to new forms and patterns of corruption: “governmental policies that seek to promote economic development or a new economic class may themselves generate new problems” (Doig, 1995: 156). For instance

in China, the government’s immediate concern over the stagnant economy and therefore the necessity of revitalizing society’s as it relaxed its control over resource allocation, given great autonomy to local authorities to direct investment and decentralized its managerial power over enterprise in the economic sector, led not only to the revival of old patron-client networks but also new patterns of corruption (ibid. 156).

Thus economic liberalization and political democratization are not a panacea for the problem of corruption. Sun observed that “by loosening up the economy, market reforms have drastically increased both the opportunities and motivations for corrupt pursuits” (Sun, 1999: 2). In this way, marketisation and democratic reforms do not necessarily lead to a reduction in the possibilities or incentives for corruption as asserted by neoliberals. Jones was more categorical:

the current style of economic reform carries its own opportunities for corruption: first, through the emergence of private monopoly in sectors long reserved to the state because of their public sensitivity; second, and more subtly, by placing excessive concentration of executive power in the hands of small bands of technocratic reformers, confident that their fine ends justify dubious constitutional means, or worse (1996: 71).

By definition economic liberalization and democratization were expected to curb corruption by reducing the size and power of the state. However, evidence reveal

that a cut in the size and power of the state does not automatically limit corruption. Rose-Ackerman noted that “a general program to shrink the size of government will not necessarily reduce corruption” (1999: 41). This is the case because a reduction in the size of the state leads to scarcity, and scarcity in turn leads to corruption. Thus, as Rose-Ackerman observed

scarcity produces corrupt incentives, and...that reductions in government spending can produce scarcity when spending programs are cut or when regulatory budgets fall with no change in the underlying statutes. Even worse, if a government under fiscal pressure cuts back spending, it may at the same time seek to maintain its influence by increasing regulations and mandates. The result can be increased corruption (ibid. 41).

More importantly, these free market policies have through deregulation weakened the ability of the state to police corruption (Szeftel, 1998). Szeftel argued that

in particular, deregulation has weakened the capacity of the state to control corruption. Deregulation - almost by definition - reduces the capacity of government to tighten rules governing government-corporate relations. In Africa, where the rules have traditionally been poorly observed and enforced, deregulation reduces government capacity still further and makes it particularly difficult to control interactions between private interests and public officials (1998: 233).

Moreover, privatization generates a horde of openings for personal accumulation (ibid. 233). Rose-Ackerman also echoed similar sentiments. She observed that “privatization is both an anti-corruption reform and a new potential source of corrupt gains” (1999: 42). Similarly, Galtung and Pope observed that “the experiences of many countries over the past few years indicates that the privatization process can in itself be a significant source of corruption” (1999: 262). Nigeria and Uganda are cases in point. In Nigeria, economic restructuring provided public officials with a degree of control over emerging markets, offering new possibilities for corruption, and presenting economic elites who were hard-



pressed a safety valve (Lewis, 1996: 89). Similarly, Uganda's privatization in the 1990s was tarnished by mismanagement and manipulations linking government politicians and well placed individuals (Tangri and Mwenda, 2001: 117). Thus, Tangri and Mwenda observed that

discriminatory and corrupt privatizations have been common because political leaders have wanted public companies to be divested to their favoured clients. Privatized enterprises may no longer serve as patronage vehicles, as did the earlier parastatals, but incumbent governments have wanted them to be in the hands of political loyalists rather than political opponents, partly because this may help them to consolidate their political control (ibid. 132).

Russia is yet another case where privatization gave rise to new corrupt opportunities. Although there are many people at the World Bank who believed that the most suitable way of dealing with corruption was through extensive privatisation, in Russia this gave rise to substantial corruption: "to completely scandalous and fraudulent sell-offs" (LeMonde, quoted in Harsch, 1999: 74). Thus, instead of reducing corruption, liberalization policies resulted in a privatization or decentralization of corruption. Chabal and Daloz wrote that

it is increasingly plain that economic liberalization, and its attendant reduction in the resources available in the public sector, has not contributed to a lessening of corruption. The most recent studies on this subject would highlight the adaptation of corrupt practices to the new economic climate. What happened in Africa...is merely a change of strategy, moving away from the state and giving greater prominence to the market and to NGOs. Corruption, as it were, has been decentralized. Indeed, a closer examination of the evidence would reveal that a large number of key political actors have now shifted their operations to the local level, which currently enjoys wide international favour and receives substantial assistance (1999: 105).

According to Yan Kong, evidence from countries in which economic reforms were well ahead indicate that liberalization was to a greater extent a way of

ensuring efficiency in a limited scope than a curb of corruption (1996: 55). Richard Snyder argued that economic reform legitimizes rent-seeking. Rather than clearing the way for free market forces, neoliberal policies in Mexico gave rise to the emergence of new institutions for market governance (Snyder, 1999). Thus, instead of paving the way for market forces, Snyder noted that neoliberal policies

may trigger two-step reregulation processes: first, political entrepreneurs launch projects to build support coalitions by reregulating markets; second, societal actors respond to these projects by mobilizing to influence the terms of reregulation (1999: 174).

Similarly, experience suggests that multiparty democracy too is not a remedy for the problem of corruption. This is the case because “democracy, seen by many as the natural concomitant of economic liberalism provides strong temptations for corrupt behaviour” (Jones, 1996: 71). Thus, democratization is imperfect as a strategy of curtailing corruption. That is, democracy is a necessary but not a sufficient condition to curb corruption (Riley, 2000). According to Doig

seeking to encourage countries to undertake steps towards good government...may not be straightforward and will have to take account of the functions of the public sector, the complexities of economic development, and the roles of the existing political leaderships (1995: 154).

The foregoing analysis shows that it is too simplistic to regard corruption in Africa as a result of too much state interference in the economy, which was “easily to be dissolved by thoroughgoing liberal economic reform and democratization” (Jones, 1996: 71). Experience from elsewhere shows that a reduction in the size and power of the state does not necessarily reduce corruption. Instead it weakened the ability of the state through deregulation and public sector

reforms to curb corruption (Szeftel, 1998). Rather than curtailing corrupt opportunities, removing the regulatory capacity of the government may lead to other undesirable effects (Williams, 1987). Szeftel argued that a reduction in the size of the public sector with no corresponding fortification of state institutions and capabilities, changes “a bloated weak state into a small weak state, further reducing its capacity to check corruption” (1998: 234-5). Thus, combating corruption requires efficient regulation (Yan Kong, 1996: 55), demonstrating that corruption cannot be easily dealt with by a mere introduction of economic as well as political reforms, an indication that corruption is much more complex and deeper than it was understood by the donors.

Despite earlier claims that economic liberalization and democratic reforms were necessary to undermine corruption, there emerged a new claim that, market and democratic reforms were failing to produce the desired results because corruption undermined them. Corruption was seen as “a set of obstacles to the implementation of economic reform and democratization left over from the corporatist past” (Jones, 1996: 72), as well as a threat to the very reforms advocated by the donors. This is an admission on the part of donors that good governance made modest progress against systematic private accumulation of public resources (Szeftel, 1998: 227). This proposition has increased concern over the problem of corruption and in turn, created global pressures to tackle corruption through effective anti-corruption agencies. As a result

eradicating, or at least reducing, corruption has over the past couple of years become a more prominent element in the international discourse on development, with such weighty institutions as the World Bank and United Nations urging countries in Africa and elsewhere to carry out reforms to prevent the abuse of public office (Harsch, 1999: 66).

## Conclusion

This chapter examined the specific nature and content of institutional or governance reforms and the problems that attend them generally in Africa. Donor countries and agencies are pushing for a liberal democratic reform agenda, one which entails economic and political democratization underpinned by 'good governance'. Moreover, reform entails instituting specific anti-corruption measures and the establishment of stable, accountable and transparent government. In the eyes of the western donors, political and economic reforms are necessary to curtail the devastating effects of corruption in Africa. As a result of donor and local pressures, African states have embarked on a range of political and economic reforms.

This chapter helped us to understand why there was a sudden push for institutional reform in Africa. Nevertheless, as we noted above, the donor reforms have so far produced mixed results especially in terms of tackling high-level corruption. Despite reforms, corruption continued to grow and prosper more than ever before. The chapter has demonstrated that the donor strategy of controlling corruption was flawed because it did not address the factors that gave rise to corruption.

In the next chapter, we discuss the politics of controlling corruption in Botswana. Botswana has also experienced some demands for reform to curb corruption following a series of corruption scandals in the early 1990s. The response to these cases of corruption was to create the Directorate on Corruption and Economic



Crime (DCEC) in 1994, a specialised anti-corruption agency. The chapter that follows focuses on the DCEC, the reasons for its establishment and the nature of its performance.

## **Chapter four: Corruption and its control in Botswana**

Having examined the broader context of reform in chapter three, and having highlighted the limitations of what can be expected of governance reforms, this chapter examines the nature of corruption and efforts to curtail it in Botswana. Botswana is widely perceived as a successful, working democracy in Africa. It has remained a multi-party state for the past 36 years in a continent ravaged by political and economic crisis. What is striking about Botswana is that one party dominance over the past 36 years has not led to a proliferation of corruption as it did in most African countries. Indeed, Transparency International (TI) ranks Botswana as the least corrupt country in Africa.

In 1994, Botswana established a specialised anti-corruption agency, the Directorate on Corruption and Economic Crime (DCEC), following a series of corruption scandals. The DCEC combats both corruption and 'economic crime', which is "thefts and frauds perpetrated on the public revenue" (Milford, 1998: 1). The focus of this chapter is on the DCEC, the reasons for establishing it, and the nature of its performance. Before giving a detailed examination of the DCEC and the nature of its activities, the chapter explores the nature and political economy of corruption in Botswana.

### **Corruption and the state in Botswana**

"Botswana has not been plagued by the systemic corruption so prevalent elsewhere in Africa" (UNDP, 1997:48). Although cases of corruption have been reported in recent years, corruption does not affect the whole political system in

Botswana as is the case in most African countries. As already noted, Transparency International considered Botswana to be the least corrupt country in Africa in its 2001 Corruption Perception Index (CPI) which ranked the country 26<sup>th</sup> (with a score of 6.0) out of 91 countries assessed worldwide (Transparency International, 2001: <http://www.transparency.org/documents/cpi/2001/cpi2001.html>).

Although Botswana inherited a legacy of underdevelopment at independence (Pierre du Toit, 1995; Holm, 2000), the discovery of minerals, especially diamonds, in the late 1960s transformed its economic situation from one of the poorest to being a middle income country according to World Bank rankings. Since the sixties, Botswana has experienced rapid economic growth based on diamonds, the largest source of government revenue. However, many analysts also attribute its growth to good economic management (Lewis, 1993; Tsie, 1996; Theobald and Williams, 1999) and political stability (UNDP, 1997; Tsie, 1996).

#### Wiseman emphasis

the contributions to development made by the operation of an efficient and, despite a few recent blemishes, essentially non-corrupt state structure and sound policy choices made by an astute political leadership: economic success is due to a combination of good luck and good management (1995: 1).

Since independence, Botswana maintained a relatively good record of good governance (Tsie, 1996; UNDP, 1997). Unlike countries such as Kenya, Malawi, Nigeria, Zaire and Zambia, corruption, authoritarian rule, patronage and mismanagement have not consumed Botswana politics (Tsie, 1996). In this way, Botswana appears to many as a political and economic success story in Africa. It

has been dubbed “an economic miracle” (Chipasula & Miti, 1989: 116); “an exceptional case of democratic success” (Pierre Du Toit, 1995: 17); the oldest multi-party democracy in Africa (Wiseman, 1997); “an oasis in a desert of corruption” (Theobald and Williams, 1999: 117). “For many, Botswana is regarded as an island of stability in a sea of turbulence, a long-standing democracy which has never known military government” with an “administrative probity...unequaled in tropical Africa” (Doig and Theobald, 1999: 10). In consequence, Botswana has managed to curb corruption through the creation of institutions which promote democratic accountability (Holm, 2000). Tsie argues that the Botswana state

has been relatively successful in establishing a record of accountability, transparency and efficiency in managing the affairs of the state than governments in Sub-Saharan African countries like Gabon, Nigeria or Zimbabwe. Corruption has been restricted and Botswana is outstanding in creating and maintaining effective structures of control, including an independent audit (1996: 612)

The constitution empowers the Auditor General to inspect and report on the state and use of public accounts in all government departments and parastatals. Apart from ensuring the observance of all laws relating to the use of public funds, the Auditor General has the duty to ensure that all necessary precautions are put in place and any improprieties are reported to parliament. In addition to the Office of the Auditor General, there is the Internal Audit Unit in the Ministry of Finance and Development planning. The Unit which “is an integral part of the Ministry’s management and control of the public finances...acts to ensure that public finances are properly accounted for and utilised for the purposes authorised” (Republic of Botswana, NDP7: 482).



Moreover, Botswana “has the reputation of being the only major African state to have remained a multiparty democracy since independence” (Allen, 1995: 311). Unlike most African states, which moved “away from pluralism towards the centralisation of power in the hands of a single party” (Todorff, 1993: 4), Botswana has retained its formal multi-party democracy. It has, since independence, functioned as a dominant party system with observable features of pluralism by African standards. Since independence, eight multi-party elections have been held, the most recent in 1999. All have been won by the ruling Botswana Democratic Party (BDP). The survival of multi-party democracy in Botswana is ascribed by some to the small size of both the ruling elite and counter elite as well as the impressive performance of the economy (Wiseman, 1977).

Along with this reasonable level of stable democracy has come a low level of corruption. As Johnston notes

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

In part this has been ascribed to the nature of the ruling class that assumed power at independence (Holm and Molutsi, 1992; Good, 1993; Tsie, 1996; Lodge, 1998). This ruling class acquired its wealth *before* taking power (Lodge, 1998); it was involved in cattle production before independence (Good, 1993; Tsie, 1996). In this way, the ruling elite in Botswana “were not an elite of Nkrumahist “verandah boys”, or party militants, or military men; they were an elite with literally a real

stake in the economy” (Good, 1993: 15). That is, those who took over control of the state at independence were a group “of large cattle owners, an agricultural bourgeoisie” (Holm and Molutsi, 1992: 90). As such they “did not look to the state for income and status” (ibid. 81). Nevertheless

the post-colonial state has played a significant role in the transformation of Botswana’s cattle accumulators into a dependent national cattle-based bourgeoisie. Historically, the livestock sector has been heavily subsidised by government through investments in boreholes, vaccines and drugs, trek routes, fencing, bull subsidy schemes and so on. More importantly, the government has, through various agricultural development policies and programmes such as the Tribal Grazing Land Policy (TGLP), assisted this class to privatise grazing land and/or buy privately-owned ranches (Tsie, 1996: 610).

Thus, Botswana’s cattle owners were favoured by the land tenure system and benefited from government policies, subsidies of livestock products, and loans from the National Development Bank (NDB), which were at times rolled back. For instance, farmers, including politicians, “have not only enjoyed substantial grants, subsidies and soft loans but they have on two occasions, 1984 and 1988, had part of their debts with the Parastatal National Development Bank (NDB) written off by government” (Molutsi, 1989: 103). It is estimated that less than 20% of the households in the country, who are mainly politicians and senior civil servants, own around 80% of Botswana’s 2,5 million cattle (*The Botswana Guardian*, 4 September 1998). Drought has also contributed to this state of affairs. Apart from “decimating the national herd size, drought served to concentrate cattle ownership in large herds” (Valentine, 1993: 111). In addition to government-funded schemes, the government has been able to secure a lucrative market for the beef industry in Europe. Thus the European market “has also played an important role in the development of Botswana’s cattle accumulators into a national-based bourgeoisie” and “since 1975 it

has provided a lucrative market in which Botswana beef is bought at 30 per cent or more above world market prices” (Tsie, 1996: 611).

Although the post-colonial state played a central role in promoting cattle accumulation in Botswana, it did not develop into the one and only vehicle of amassing wealth as in Lesotho or Zaire (Tsie, 1996). To this extent, the ruling elite in Botswana “have not followed the path of many African political elites who seem to pursue relentlessly their selfish interests at excessive cost to the rest of the population” (Molutsi, 1989: 129). Thus,

instead of the cattle economy being plundered for private gain, it was deliberately nurtured, subsidized and supported for profitable gain by individuals within the state who along with private-sector elites, were entrepreneurs in their own right (Du Toit, 1995: 65).

“Botswana ... appears to ‘lack’ the period of development of clientelist politics followed by clientelist crisis” (Allen, 1995: 311). In Botswana, clientelism was used to support the propertied class, and members of the opposition often benefited. Clientelism was bound up with class formation and it does not have factional conflict. As the United Nations Development Programme noted, “economic pragmatism has always taken priority over political ideology or factional favouritism” (1997: 49). This is what distinguishes the Botswana state from many African states. Although patronage was not the foundation of the Botswana state, “political patronage has been observable in the nomination of MPs, councillors, and senior officials for appointed positions” (Healey, 1995: 20). The Constitution of Botswana gives the president the power of patronage e.g. to appoint public officials both in government and parastatals. It also gives the president the power to nominate four specially elected members of parliament. The current president of Botswana,

Festus G. Mogae and Vice President General Ian Khama, the son of Botswana's first President, are some of those who benefited from this provision.

Political patronage has also been extended to businessmen (Healey, 1995). For instance, in 1998, the government bailed out citizen owned construction companies, which were in financial difficulties with 50 million Pula. Relatives of Botswana's political leaders and senior civil servants own some of these companies. Yet another bail out, the Citizen Entrepreneur Mortgage Assistance Equity Fund has been put in place to assist Batswana who have invested in property and have since "fallen behind on loan re-payments" (*The Botswana Gazette Online*, 2001:<http://www.gazette.bw>). These bailouts have been criticised from certain quarters as measures aimed at assisting members of the ruling party and a few influential Batswana.

However, as much as the Botswana state facilitated programmes which promoted the interests of the dominant propertied classes, it also used part of its wealth to advance welfare programmes for the poorer sections of the populations (Molutsi, 1989: 126). The government launched a number of rural development programmes such as the Accelerated Rural Development Programme (ARDP), Accelerated Rainfed Agricultural Programme (ARAP) and Arable Lands Development Programme (ALDP). These programmes strengthened "the popularity of the BDP amongst the peasantry" (Tsie, 1996: 605). More importantly

these programmes not only cushioned the poorer sections of the peasantry from proletarianisation and the effects of drought but also went a long way toward 'demonstrating' the concern of the government with 'people's welfare'. They also served to mystify and hide the crisis of social



reproduction in that drought could be used as a scapegoat for growing inequalities and poverty in Botswana (ibid. 605).

The BDP government has effectively used policies such as the Drought Relief Programme to maintain its support in the rural areas. Through the Drought Relief Programme “many people are fed, subsidized, employed and assisted in so many ways, the ruling party has successfully resisted political inroads into its popularity, especially in the rural areas” (Molutsi, 1989: 128). Moreover, the Botswana state managed to use the benefits of the diamond-led economic growth in improving the standards of living for the majority of the people. This in part explains why the BDP continues to enjoy support amongst the rural dwellers where most of its support is based, despite problems of poverty, inequality and unemployment. The BDP enjoys the benefits of being the party in power (Healey, 1995; Wiseman, 1998). This gives it an edge over other parties. Healey observed that

BDP Members of Parliament can associate themselves with projects, which benefit voters (relief, clinics, schools etc.). Policy changes can be timed to coincide with elections. Because of generally buoyant revenues the government has been able to spend its way out of political trouble (e.g. the ARDP in the 1974 elections). Drought relief schemes have been extended unnecessarily before elections (1995: 19).

This demonstrates that the ruling party “has been compelled to utilise public policies to maintain political support” (Danevad, 1995: 393). Apart from agricultural schemes and loans, civil servants benefited from some reasonable salary adjustment e.g. the 1998 25% salary increase. These measures seem to have paid political dividends for the BDP. It seems all these measures were possible in part because of impressive economic performance. Moreover, the size of the population (1.7 million) meant that the state had relatively less political pressure or demands, compared to most African countries, which have bigger populations. Although

demands on the state have been moderate, the ability of the state to respond to demands were fairly strengthened (Wiseman, 1977: 77).

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

For all that has been said thus far, Botswana has its share of corruption. However, corruption is not yet a way of life. This has been acknowledged by the DCEC, which noted in its 1995 annual report that

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

Below we document the pattern corruption takes in Botswana. We seek to minimise any speculation: it comes in the form of fraud, bribes, sleaze, inflating government tenders, cost overruns, ghosting, fronting, inflating allowances, misleading tender boards, forging documents, obtaining money by false pretences, illegal sale of passports, embezzlement of trust funds, misappropriation of money, money laundering, unnecessary travel and travel claims, and general unethical behaviour.

The first prominent case of corruption in Botswana occurred in January 1975 when a case involving a Mr Kunz, who was an engineer in the Ministry of Works and Communications, was brought to the attention of the government following allegations of official corruption by the opposition Botswana National Front (BNF). Mr Kunz received an effective nine months jail sentence for each of the

two counts of official corruption (Republic of Botswana, 1994: 58). According to the United Nations Development Programme

several scandals in the 1980s involved Botswana's economically and socially important cattle industry. In 1985 the management of the Botswana Meat Commission, a parastatal, was accused of mismanagement and corruption. Earlier, another official was accused of illegally enriching himself through a cattle-related business, and a relative of a top official was accused of illegally obtaining cattle ranches under a government grazing-land policy (1997: 49).

Scandals of corruption in and around the cattle industry are no surprise in light of the role the industry has been playing to economic development especially in the early years of independence. Despite these allegations, no one was brought to book. More recently, however, a number of more serious and damaging scandals caused widespread concern. In what follows we will examine a number of these; including cases which led to the appointment of three Presidential Commissions of Inquiry to investigate corruption and misuse of public office in the early 1990s.

Healey notes that

the last few years has seen unprecedented exposure of corruption and mismanagement, largely as a result of informal and Presidential enquiries. It includes revelations on land allocation (Kgabo Report), the mishandling of contracts, bribery and allocation of housing and land in the Botswana Housing Corporation (Christie Report), and mismanagement in the procurement of primary school textbooks (1995: 46-7)

These Commissions documented some disquieting evidence of rules being defied and instances of misuse of office by some cabinet ministers including a Vice-President, and senior government officials who were forced to resign when the findings were made public. The three reports are briefly discussed below because of their political importance; they led to some scholars questioning the quality of Botswana's democracy (Theobald and Williams, 1999; Johnston, 1999). As Johnston noted "most disturbing was the fact that much of this corruption

involved not poorly paid, low levels bureaucrats, but prominent officials who were very well paid by Botswana's standards" (Johnston, 1999: 223).

### **Before the DCEC: Three Presidential Commissions of Inquiry**

The first major corruption scandal to become public involved the acquisition of school books for primary schools. On 16th April, 1991 a Presidential Commission of Inquiry, headed by Isaac R. Aboagye, presented its findings about the supply of school books and materials for primary schools by the International Project Managers (IPM) company. IPM was granted a tender to supply primary school books and educational materials during 1990 on behalf of the Ministry of Local Government Lands and Housing (MLGL&H). The commissioners discovered that regulations, which govern the award of tenders in government, were entirely ignored and that all senior officials who were supposed to check the award of tenders failed to do so. The IPM report also revealed that IPM was a company in an 'embryonic stage', and that its owner, 'lacked formal education' and had no experience in the acquisition of school books. IPM was allowed an 'initially open-ended' contract without any 'financial ceiling' (Republic of Botswana, 1991: 10). Moreover, the Central Tender Board did not approve the tender. As a result of defects in the tender, P27 million could not adequately be accounted for (Republic of Botswana, 1991). On this basis the commission concluded that

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



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

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

The involvement of supposedly 'responsible people' in controversial land acquisitions motivated residents in the area to engage in their own illicit land grabbings. This, the commissioners argued, put 'government credibility and integrity' at question in the area (Republic of Botswana, 1991: 43). The illicit acquisition of plots was a result of housing shortages in the city, due to the

internal growth of the villages; economic opportunities in the city; failure of Department of Surveys and Lands to deliver sufficient number of plots; failure of Botswana Housing Corporation to deliver enough houses; failure of Self Help Housing Agency (SHHA) to allocate; the freezing of plot allocations by Land Board and SHHA; easy access to land in rural areas; zero option; proximity to the city; failure of MLGL&H to provide proper guidance to the Land Board; high rentals for decent houses in the open market; and high prices for serviced plots in towns (Republic of Botswana, 1991: xi).

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

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

we find that Mr Mmusi should be absolved from any personal wrongdoing, but it is with him the buck stops at a political level, and he must take political responsibility for massive corruption and dishonesty which has been revealed at the BHC (Republic of Botswana, 1992: 205).

Peter Mmusi was not alone. Also implicated were two Assistant Ministers, Ronald Sebego and Michael Tshipinare; Joseph Letsholo the general manager until his death in February 1992, and G.F.Rabana a deputy General Manager, as well as the permanent secretary of the ministry, Ms Pelonomi Venson, whom the

commissioners held to be responsible for administrative failures of the BHC. There was a longer list of other, less prominent, miscreants. Sebege is said to 'have used his position for the benefit of his friends' whilst Tshipinare received a loan of P500,000 from Spectra Botswana (Pty), a company awarded a contract to build the offices of the BHC. As Tshipinare was one of the directors of Spectra, the Commissioners concluded that "the payment of P500,000 by Spectra Botswana Ltd to M. Tshipinare on 12 December 1991 was a bribe in connection with his assistance in obtaining the BHC headquarters building contract for the company" (Republic of Botswana, 1992: 88). Tshipinare was given a one year prison sentence for failing to disclose his personal share in the firm but his sentence was nullified following a successful High Court appeal.

The main BHC scandal however, centred around its general manager, Letsholo.

The Report observed that

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

The BHC debacle shows how misuse of positions of power led to "gross mismanagement and dishonesty resulting in the loss of tens of millions of Pula that should have been used for providing houses" (ibid. 8). According to Good the above cases of corruption "came to light through public controversy - fuelled by able investigative reporting in the independent newspapers - and not as a result of internal, governmental checking mechanisms. These throughout were absent or

ineffective” (1994: 504-505). It is worth noting that in Botswana reports of commissions of inquiry “are not automatically meant for public consumption” (*Mmegi/The Reporter*, 01-07 July 1999).

However, where there was no Presidential Commission of Inquiry, there was no one to pick corruption as was the case with the National Development Bank (NDB). In this case, some senior politicians including the former President (Masire) borrowed large sums of money from the bank but failed to service their loans. This ended in the NDB incurring huge losses and retrenching some of its employees. The ‘near ruination’ (Good, 1994) of the NDB puts the leadership of the BDP government in question. The NDB case was a combination of bad management and corruption. It undermined the popularity of the BDP resulting in the opposition winning 13 seats in 1994. Healey attributes corruption to new demands and argues that “growth in the scale of public expenditure and complexity of contracts have combined with the greater role and influence of outside companies in seeking these contracts” (1995: 47). Rather than growth in the scale of public expenditure scale, it is growth in personal fortune that drives corruption.

### **The DCEC and corruption**

The Directorate on Corruption and Economic Crime (DCEC) has dealt with a number of cases since its establishment in 1994. Perhaps the most sensational corruption scandal is the Nicholas Zachem case which many believe was a test for the DCEC. It led to the resignation of a cabinet minister and the conviction of the former Director of the Department of Roads. The case involved politicians, civil



servants, the private sector and a multinational company, Zachem Construction which operated in a number of countries in Africa. In this case, the former Director of the Department of Roads was charged with receiving a bribe of some P100,000 from Nicholas Zachem [contrary to sections 384 and 385 of the Penal Code]. The offence was committed a few days before the DCEC was established. The bribe was an inducement to award the multi-million Monametsana-Rasesa road project to Zachem Construction Botswana (ZCB). Nicholas Zachem was the former area manager of ZCB. Also charged was a senior roads engineer for allegedly receiving some US\$25,000 from Zachem. The roads engineer was cleared and the former roads director was sentenced to four years in jail.

At the time of writing, the former director was yet to face another charge of failing to give the DCEC a satisfactory answer for being in possession of property valued at over P300,000 (*The Botswana Gazette*, 27 May 1998). Zachem, 'a self confessed fraudster', told the court that "he was involved in a string of criminal activities, including bribery, fraud, money-laundering and the inflation of government tender certificates". These "cost him P700,000 to win his former employer, Zachem Construction, government tenders" (*Mmegi/The Reporter*, 27 August-02 September 1999) and "the money in question was used to bribe government officials and other influential people" (*ibid.*, 27 August-02 September 1999).

More worrying about this case was the involvement of a minister (*The Botswana Gazette*, 16 June 1999). The concerned minister obtained P10,000 for being a director in Zac Construction. Furthermore, it was revealed that Nicholas Zachem

while still working for ZCB in 1993 “spent an undisclosed amount of money to partly bail out at least one minister who was heavily indebted to the National Development Bank (NDB)” (*Mmegi/The Reporter*, 23-29 April 1999). “This was done at the height of the bidding for the Rasesa-Monametsana road project” and “the project was ultimately awarded to Zachem Construction” (*ibid.*, 23-29 April 1999). Zachem also “pumped some money into one minister’s cash strapped family company” and the minister’s wife “made numerous visits to Zachem Construction offices asking for favours” (*ibid.*, 23-29 April 1999). Nearly two weeks before Zachem Construction was awarded the Rasesa-Monametsana road project, another former cabinet minister received a cheque of P5,000 in 1994 from Zachem Construction (*ibid.*, 29 April-06 May 1999).

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

As a result of this, various sources in Botswana drew their own conclusions. The press for instance, observed; “some sources suspect that the involvement of the two ministers and other top government officials led to the withdrawal of a case

against Zachem, who had warned that should he be charged ‘heads will roll in the present cabinet’” (ibid., 23-29 April 1999). Although Nicholas Zachem admitted to inflating tenders whilst still working for Zachem Construction Botswana, his company, Zac Construction continues to win lucrative tenders from government (*The Botswana Guardian*, 12 March 1999; *The Botswana Economist*, 20-24 January 2000).

Another important case of corruption the DCEC has dealt with is that of John Stoneham. Stoneham was the General Manager of the Motor Vehicle Insurance Fund (MVIF) and previously Acting Permanent Secretary in the Ministry of Finance and Development Planning. Stoneham was jailed for one year with a further two years suspended ‘for fraudulently obtaining over P 16,000 from the fund’. When sentencing him, the Chief Magistrate, Leonard Sechele, called the matter “an embarrassment to the public service. This amount of money involved, though recovered, is substantial to government” (*The Midweek Sun*, 28 May 1997). There were three other charges Stoneham faced but were withdrawn by the state. In one of the three, it was alleged Stoneham ‘stole more than P200,000.00 by falsely claiming that he had ministerial approval for the refinancing of his mortgage’ (ibid., 28 May 1997). In another case, a University of Botswana Senior Business Officer was sentenced to three years, wholly suspended, and fined P5000 for corruptly obtaining P100 000 from an England based company, SMI Limited. It was alleged the officer used his position to expedite a payment for SMI Limited Company by the University of Botswana (*The Botswana Gazette*, 27 May 1998). The officer has been cleared following an appeal.

Cases of private attorneys who embezzle trust funds are common in Botswana. A private attorney was jailed for five years for conspiring to obtain R550,000 by false pretences from a bank. Another private attorney was found by the Court of Appeal “to be ‘a cog’ in a P62,000 fraud case” (*Mmegi/The Reporter*, 18-24 February 2000). In another case, a private lawyer was charged with embezzling more than P100,000. In yet another case a former General Manager of Botswana Technology Centre (BTC) challenged the constitutionality of section 34 of the DCEC Act. This section makes it an offence for one to live beyond his or her “present or past known sources of income” (*The Botswana Guardian*, 28 May 1999; *ibid.*, 22 September 2000). In another case, two managers of a parastatal organisation were charged for conniving to “steal a total sum of P53,000 and R1,000” (*Mmegi/The Reporter*, 18-24 September 1998). Finally, a managing director of a private company was charged for obtaining P98,000 from the government of Botswana by false pretences (*The Botswana Gazette*, 29 April 1998).

Other more important cases are built in and around the Financial Assistance Policy (FAP). A “total of 40 other FAP projects are under active investigation by the DCEC. The amount of money at risk is around P27 million” (*Mmegi/The Reporter*, 04-10 June 1999). New opportunities tend to open other avenues for corruption. With the expansion of FAP to cover tourism “several cases are now before the courts and they include charges such as faking the number of employees on the pay roll” (*ibid.*, 22-28 May 1998). FAP funds have been hit by what came to be known as ‘fly-by-night’ investors. Most of the cases the DCEC is handling involve fraud. One former Zambian businessman “was convicted of defrauding the



government of P2.5 million Financial Assistance Policy monies” (*The Botswana Gazette*, 3 December 1997). Two foreign nationals attempted to obtain a grant of P486,000 by false means from government through the Financial Assistance Policy. A warrant of apprehension for the two has been issued (Republic of Botswana, 2000).

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

Failure to disclose the source of the secret donation especially in a country which has been described as a model of democracy in Africa, clearly violates the principles of transparency and accountability discussed earlier. Asked if they were investigating the source of the P2.4m donation, the DCEC Director said “we do not know if the donation is soiled or not. We do not have any information that it is

soiled money. If anybody has that information let him come forth so that we can start our investigations on the basis of the bits and pieces of information that he would have passed to us” (*The Midweek Sun*, 26 May 1999). This partly explains why the DCEC was perceived as failing to catch the “big fish”. However, it was later revealed that the money “originated from a subsidiary of De Beers, the South African diamond mining giant which owns 50% of Botswana’s Debswana Mining Company” (*The Botswana Gazette*, 26 May 1999).

Other questionable practices include the use of a Botswana Defence Force (BDF) helicopter by Vice-President General Ian Khama in BDP political campaigns followed by his controversial and unusual one year sabbatical and the use of public funds to bail out businesses of party leaders and their close associates as noted earlier. In another case, “eyebrows have also been raised over the indemnity given to the wife of the newly appointed Minister, who was charged with selling driver’s licences”. Others who benefited from the indemnity grant include “business associate of deputy AG [Attorney-General] (Prosecutions)” and “a Gaborone attorney, who was facing criminal charges for allegedly defrauding a client of P45,000” (*Mmegi/The Reporter*, 19-25 November 1999). Granting indemnity to certain individuals gives rise to the perception that only “small” people can be investigated. In another case, a high-ranking government official was alleged to have entertained a girlfriend, then a student abroad, at the expense of the state. In the view of a senior opposition politician; this was the kind of corruption which often takes place in Botswana but was difficult to prove (Interview, 24 January 2000).

## Confronting corruption: the road to reform

In spite of these cases of corruption, Good observed that

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

The foregoing observation by Good was based on dubious grounds. Clearly corruption exists in elite and at lower levels. Evidence for elite corruption was the scandals discussed above and low-level corruption was evidenced by cases the DCEC has dealt with. This has been acknowledged by the DCEC Director who observed that: "a majority of cases involve petty corruption such as someone failing to pass a driver's (licence) test and finding a way around it" (*Business Day*, 8 April 1998). This was the case despite a warning by the founder Director of the DCEC that "some of those involved occupy very senior positions" (Republic of Botswana, 1996: 2). We are yet to witness the prosecution of those who hold very senior positions. However, the political and economic consequences of corruption were far less destructive in Botswana.

Corruption in Botswana did not start with IPM, BHC or Peri-urban land scandals.

Its roots seem to be decidedly deeper than that. Healey noted that

it seems likely that financial mismanagement and lax and corrupt practices have been 'creeping up' for some time at all levels. The discovery of malpractice in the 1990s shows no systemic pattern; it has come to light in an accidental ad hoc way and its real extent remains unclear (1995: 47).

In certain quarters, it was believed that the roots of corruption were traceable to the 1982 Presidential Commission on Economic Opportunities. Prior to this Commission, there was a prohibition of civil servants from taking part in business apart from traditional agriculture. The same prohibition applied to ministers (Interview, 21 January 2000). Following this commission, civil servants and ministers were

allowed to invest in business as long as they declared their interests. But they have never declared their interests. Since then there has been an explosion of ministers and senior civil servants involved in business. David Magang is a classic case. He was forced to resign as Assistant Minister of Finance for backing Phakalane Estates (Interview, 21 January 2000).

Prior to this commission, there were isolated cases of corruption. Following this commission, civil servants and ministers started forming consortiums and becoming shareholders. A development of these consortiums meant senior civil servants were involved in business with some private companies. As senior civil servants, they had access to critical information of government projects and policies. They also had access to ministers. Later in the 1980s, a lot of consortiums were going on, with construction boom and most came from South Africa. With companies like the First National Bank (FNB), which in the 1980s by definition were corrupt because of its association with apartheid, they found a fertile ground for corruption. South Africa was a very corrupt economic society and it is still is (Interview, 24 January 2000).

All these events, led to the BHC scandal. There was land shortage in Botswana, and this resulted in a circle of corruption in land. Strict regulations on land development still exist but the will to enforce these regulations is absent. A lot of



syndicates were formed in the 1980s with overlapping membership. The 1980s and 1990s saw the introduction of policies such as writing off debts in the National Development Bank, bailing out etc, which entrenched a culture of wiping out good business decisions (Interview, 24 January 2000). As Fombad noted “the political and administrative ethos of Botswana since the late 1980s has been characterised by its symbiosis with business and a controversial system of overlapping directorships” (Fombad, 2001: 62). According to Frimpong “corruption became a problem in Botswana as a result of political complacency” (Frimpong, 1997 quoted in Johnston, 1999: 224).

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

### **The Directorate on Corruption and Economic Crime (DCEC)**

Presenting the DCEC Bill in the National Assembly for its second reading on 11<sup>th</sup> July 1994, the then Minister of Presidential Affairs and Public Administration, Lt. General Mompoti Merafhe, elaborated the rationale for the bill as follows

the Corruption and Economic Crime Bill ... represents the Government’s resolute response to the rising problems of corruption and economic crime

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

As shown in chapter two, this demonstrates that; first, the government was keen to reduce corruption because it was a danger to social, political and economic development. Second, despite Transparency International Corruption Perception Index which considered Botswana as the least corrupt country in Africa, corruption was a danger to Botswana. Third, by introducing the DCEC, Botswana was addressing a legitimacy problem. Following the three Presidential Commissions of Inquiry, the government wanted to address the problem of public perception and apprehension. Fourth, it wanted to ensure business confidence including the reassurance of foreign investors and aid donors. That is, to make Botswana a place where investors can invest their money without any fear of losing it.

The DCEC Bill was enacted on the 25<sup>th</sup> of July, 1994. However, throughout its discussion in Parliament, the DCEC Bill met some opposition from a considerable number of MPs including those from the ruling party. The fact that the backbenchers of the ruling party were critical of the DCEC Bill was unusual in Botswana. For their part, opposition MPs were concerned with the independence of the DCEC. It has to be noted that some of the MPs who were critical of the

DCEC Bill were implicated by the Kgabo and Christie Presidential Commissions of Inquiry. They had mixed feelings about the Bill. Some vehemently expressed concern about the constitutionality of certain provisions of the Bill and its intentions whilst others labelled its powers as draconian. Some felt that not enough consultation had occurred; others wanted the government to give the police more resources rather than to establish a new agency because they saw the DCEC as nothing more than duplication of efforts. Their concerns were understandable.

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

additional burdens on existing law enforcement agencies” (Republic of Botswana, 1995: 8).

Prior to the setting up of the DCEC, issues of corruption were dealt with under sections 99, 100, 101, 384, 385 and 386 of the Penal Code. Section 99 deals with official corruption and extortion by public officers, whereas section 101 covers public officers who receive property in return for favours. On the other hand, section 384 covers corrupt practices and section 385 secret commissions on government contracts. According to section 387 of the Penal Code, prosecution for these offences is only with the consent of the Attorney-General. Under the Penal Code, the penalties for these offences range from three to six years. Thus, the existing legislation was inadequate in the face of emerging cases of corruption. Moreover, the Botswana Police lacked the capacity to combat corruption.

### **Organisation and staffing of the DCEC**

#### **Functions of the DCEC**

Botswana has adopted an approach that jointly fights corruption and economic crime. However, it should be noted that the distinction between corruption and economic crime is at times blurred, as they both constitute the misuse of office for personal gain. The DCEC is charged with three main duties as spelt out by section 6 of the DCEC Act. These are investigation, crime prevention and public education. This is known as the ‘three pronged strategy’, which has proved to be effective in Hong Kong. This is an all-encompassing strategy as it seeks to fight



corruption and economic crime by investigation, prevention and public education. The DCEC “has adopted the policy that anti-corruption work requires more than just investigation and prosecution. It also has a branch concerned with prevention, that is to say reducing the opportunities for corruption, and another whose task is to involve the public” (Palmier, 1983: 213). A strategy, which combats corruption by investigation without any preventative measures or without increasing public awareness, is unlikely to bring better results.

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

The DCEC also assists government departments to search for loopholes in the existing rules and regulations to ensure that the corrupt and would be corrupt find it difficult to exploit such laws. This would help to reduce the opportunities for corruption and economic crime. Prevention is better than cure. Williams observed that “trying to control corruption, without changing the conditions which generate

and sustain it, is like trying to change a car wheel when the vehicle is still moving; the remedial effort is overwhelmed by the momentum of the larger body of which the wheel is an integral part" (1987: 121).

### **Staffing**

The DCEC deals with complicated and time-consuming cases on corruption and economic crime. It therefore needs competent and honest personnel who have been trained and have the necessary experience to investigate such cases.

Theobald says

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

For any organisation to be able to fulfil its mission, the right people with the necessary experience and expertise have to be in place. The DCEC started its work with an establishment of 66 and out of this 49 posts were occupied. Some of these officers were secondees from various government departments notably police, customs and taxes, and others were either directly recruited or transferred permanently from other departments. At present, some of the secondees have returned to their respective departments with the exception of two from Customs and five police officers who requested to be transferred to the unit. It should be stated that at the time of writing, there were very few Batswana who have specialised skills in the areas of corruption and economic crime. The DCEC

Director in his 1994 annual report pointed out that the DCEC had to “import skills” and “it has been agreed...initially” that “14 posts” of its “establishment would be filled by expatriates” (Republic of Botswana, 1995).

Presently, the DCEC has an establishment of 116 and the staff compliment stands at 111. The crime prevention section and the public education section have five officers each. The investigation section has 49 officers. These were divided into six investigation teams with five based in Gaborone and one in Francistown (the northern office). Out of the 49, 15 are supervisors, 18 investigators and 16 assistant investigators. The Francistown office has eight investigators and was responsible for between half and three-quarters of the country geographically (Interview, 6 October 1999). It should be noted that Botswana is a big country in terms of size, and there should be a lot of travelling by officers of the DCEC if the DCEC is to be known in all the corners of Botswana. This means that there is a need for more resources in terms of personnel, finance, transport etc. to be allocated to the DCEC. This does not suggest that there is need for too many people to work for the DCEC as that would make proper supervision difficult. The World Development Report noted that “corruption is usually better fought by a combination of fewer, better paid officials controlling only what needs to be (and can effectively be) controlled in the full light of public scrutiny, than by occasional anti-corruption “campaigns” (The World Development Report, 1983: 117 quoted in Theobald, 1990: 157).

## Budget

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

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

The problems experienced by the DCEC in its daily work suggest that the financial resources allocated to the DCEC are inadequate. However, it should be noted that, it is difficult to budget for a problem without knowing its extent. It is still difficult to establish the extent of corruption and economic crime in Botswana because some of the corrupt acts may go unnoticed.



## **Powers of the DCEC**

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

Certain provisions of the DCEC Act are worth highlighting. According to section 4(1) of the DCEC Act, the President appoints the Director of the DCEC. Section 4(1) reads; "the president may appoint a Director on such terms and conditions as he thinks fit". The Director is in charge of the day-to-day administration of the DCEC and is also accountable and reports directly to the president. The powers of the DCEC are not absolute. Access into certain premises or documents may be denied under section 15(2) if the president is of the view that access may endanger national security. The issue of national security clearly increases executive control over the DCEC. In Spain the Supreme Court "held that public officials could not use state security as a defense if criminal activities are suspected" (Rose-

Ackerman, 1999: 152). In Botswana, the law presently overrides such a consideration.

Moreover, although under section 16(1) of the Act, the Director of the DCEC may apply to a magistrate for a suspect to surrender his or her travel documents to the Director, the problem of suspects fleeing the country continued to be a problem for the DCEC. The 1995 annual report of the DCEC observed

a number of ...concerns about the administration of justice in Botswana. Principal amongst these is the granting of bail to persons charged before the courts. Whilst the country's constitution emphasises, in effect, that bail is a right not a privilege, there have been a number of cases in the Directorate's short history where that right has been abused. This is particularly so in relation to a number of expatriates who, having been granted bail, have absconded from the country before trial (Republic of Botswana, 1996: 4).

For all that, the Act gives the agency wide powers along conventional ICAC lines.

Any person who corruptly offers a bribe is guilty of corruption under section 23.

The DCEC Act also makes conflict of interest an offence. According to section 31

(1)

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

The Hong Kong influence is seen, too, in section 34(1) of the DCEC Act which spells out that individuals are guilty of corruption if they fail to account for their assets. If a person's property or assets are questionable or they are living disproportionately to his or her known official emoluments, they can be called to

explain how they accumulated such assets. The onus is on the suspect to show that they did not accumulate assets through corrupt means. This section has been challenged in court as unconstitutional and the court is yet to pronounce on this.

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

However, the president is only immune from prosecution and not from liability. Once the President ceases to be the President, proceedings may be brought against him for offences he or she committed whilst in office. Section 92 of the Constitution of Botswana provides for a motion of no confidence, which is not that useful in policing the President or the executive. A motion of no confidence negatively affects Parliament in that Parliament will stand dissolved as well. But as long as he is still a president, Parliament cannot take away his immunity and therefore cannot be prosecuted unless the President consents. The logic behind these constitutional provisions is to protect the Office of the President. As matters stand, without impeachment provisions in the constitution, there is little sense in investigating the conduct of the presidency. In all other cases, the DCEC has

power to investigate limited only by the willingness, or otherwise, of the Attorney-General to prosecute.

Under the DCEC Act decisions to prosecute carry heavy penalties against corruption. Section 36 of the DCEC Act states that anyone found guilty of corruption could be sentenced to prison terms of up to 10 years or a maximum fine of P500,000, or both. The Act also has a provision for offences committed by Botswana citizens outside Botswana. Such people can be charged as if the act was committed in Botswana under section 46.

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



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

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

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

The DCEC Act did not make the DCEC an independent institution, which casts doubt on its legitimacy and public reputation. The Director of the DCEC is politically appointed (by the President) and is also directly accountable to him as a political appointee. The appointment of the Director by the President defeats the whole intention of the DCEC. Moreover, according to the Act, the President also determines the Director's terms and conditions of service 'as he thinks fit'. The other factor that is important and impacts on the independence of the DCEC is the tenure of office of its Director, a matter on which the Act is silent. This suggests that the Director of the DCEC is subjected to the whim of the President, which

further undermines its need to be seen to be free from political interference. As one senior DCEC official put it:

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

It was also reported that Stockwell, the founder Director of the DCEC, and a former official of the ICAC in Hong Kong, may have decided not to renew his contract because he was “disgruntled as a result of government’s interference in the department’s work. Apparently investigations involving high-ups were constantly being obstructed” (*Mmegi/The Reporter*, 24-30 January 1997). This view was confirmed by a DCEC line official who said: “with my little experience in the DCEC, I have come across cases where little has been done about them. They were not reported in the press. They were not treated like other cases” (Interview, 2 November 1999). DCEC investigators complained that “some cabinet ministers have been reported and investigated and no action was taken” (*Mmegi/The Reporter*, 28 April-04 May 2000). This suggests that the political will necessary for the DCEC to be effective is not always present. This does not suggest that the President interferes with the operations of the DCEC but that there is a possibility that he could do so. In turn, this could discourage action by the DCEC.

Another factor that impacts on the independence of the DCEC was that it referred its dockets to the Attorney-General. It was believed that this also eroded effectiveness of the DCEC. Following an investigation, a docket is sent to the Attorney General to decide whether to prosecute or not on the basis of the

evidence before him. In the view of an official of Transparency International, Botswana Chapter, it was considered not to be surprising that the DCEC has not been able to prosecute even a single minister. There was a belief that the executive controlled the DCEC in terms of its appointment, accountability, staffing, budget and prosecution. One reason for this belief was what was considered to be a cautious approach to prosecution (Interview, 4 February 2000). In theory, the Attorney-General is independent but in practice there is room to doubt the extent to which an advisor to government can be independent from it. The Attorney-General in Botswana wears many hats, which provide for serious conflict of interest. He is a legal advisor, advises cabinet, Director of prosecutions and advises parliament (Interview, 2 February 2000).

The independence of the DCEC should also be seen to exist in the area of finance - its budget. The DCEC needs to control its own finances and made accountable to the National Assembly. There is a need to link appointment, accountability and budget of the DCEC with the National Assembly. These need to be detached from the executive. The DCEC should not only be independent but it should be seen to be. Palmier observes that "without such intelligent independence those responsible for curbing corruption, even within the political limits set, have no way of knowing the true state of affairs, since their own officials are very prone to submit only favourable reports. For all these reasons, one cannot be sanguine about the likelihood of any lessening of corruption in the country" (1983: 218). The foregoing discussion shows how the DCEC can easily be controlled. The independence of the DCEC would be guaranteed if the Director was not only appointed by Parliament but also answerable to it, and his salary paid from the

Consolidated Fund. This would enhance the credibility of the DCEC. Its independence is important if it has to carry out its duties diligently. The above factors give rise to the perception that the DCEC was not immune from executive influence, and was as such seen as a toothless bulldog as far as fighting high-level corruption was concerned.

### **Problems faced by the DCEC**

In addition to the issue of autonomy, the DCEC faced some technical limitations. One such problem was shortage of trained personnel in the areas of combating white-collar crimes. The DCEC is a big organisation that lacked the internal support mechanisms. The questions that arise are: is the DCEC really tackling some of these problems or issues? Does it have the right skills? At the moment, the DCEC heavily relies "on expatriates (mostly retired) who are believed to be lacking the latest investigative skills. The feeling is that they have yesterday's skills. There are also problems of the leadership, which fails to understand the direction the DCEC is going. Obstacles within the DCEC (e.g. internal communication problems) prevent conversion of skills. Others are disillusioned and the brightest people soon resign. Older people ignorant of modern concepts are at the top with young and talented people at the bottom. This is a general problem in the Botswana Public Service" (Interview, 14 January 2000).

The other limitation or problem has to do with inadequate funding. For instance, its training budget for the year 1999/2000 was cut by about 66% (Interview, 10 January 2000). Botswana is such a vast country and the work of the DCEC involves a lot of travelling. There is shortage of transport and drivers. For



example, the Francistown branch of the DCEC is responsible to between half and three-quarters of the country (geographically). The DCEC lacks an independent budget. Generally the DCEC lacks the capacity to tackle the problems of corruption and economic crime. The Director of the DCEC notes that “the insufficiency of resources, financial and human, and the need to maintain operational capability, have meant that our ideal training targets have not been met” (Republic of Botswana, 2000: 5).

The DCEC also faced “continuing and worsening problem of delays” at the Attorney-General Office because of its inability to urgently prosecute cases. This was attributable to shortage of staff at the Attorney-General Office (Republic of Botswana, 1998). According to the Director of the DCEC

the creation of the Directorate has had a significant impact on the Attorney General’s Chambers and cases produced by the Directorate constitute over 50% of the work of the Prosecution Division. There has been no corresponding increase in the staffing levels of the Prosecution Division and the inevitable consequence is that cases are taking longer to be processed (Republic of Botswana, 1997: 6)

#### Delays at the Attorney-General’s Office

are compounded by the fact that the same counsel who examine DCEC dockets often have to prosecute the cases in court and counsel’s availability, especially when the Court of Appeal is sitting, becomes a critical factor in setting trial dates-delays are commonplace and in my view unacceptable (Republic of Botswana, 1998: 6).

Linked to this, was the problem of delays within the administration of justice. As further noted by the DCEC Director

the creation of the Directorate has had a major impact on the Magistrates Courts, particularly within Gaborone. At the end of the year under review, new contested cases were being set down for trial 6 to 7 months later. The problem is exacerbated by the fact that often unrealistic timetables for

cases are set with the result that when a trial eventually commences it proves impossible to complete it in the allotted time resulting in further lengthy adjournments (Republic of Botswana, 1997: 6).

The criminal Justice System has been overtaken by events. Botswana is a country undergoing rapid transformation. The population is growing, there is unemployment, rapid urbanisation etc. In the view of one respondent, the criminal justice system is not commensurate with these problems. There is shortage of magistrates and courts. The government is not able to keep judicial officers on the job. These have an immense impact in terms of output, in dealing with cases before the courts because of postponement. The prisons get clogged because of pending cases and at times witnesses die. These problems result in a chain reaction which slows down the administration of justice (Interview, 2 February 2000).

However, as one senior opposition politician put it:

some of the problems in the criminal justice system are self-created. It is the individual magistrates who create problems. It is not our system. Our system says a person should be tried within a reasonable time. It is the implementation part of the system that is problematic. There is shortage of courts and magistrates but magistrates are lazy and do not research. The criminal system is okay. It is the wheels of the system that are rotten (Interview, 24 January 2000).

Another respondent who is an attorney in private practice considers that

there is chaos within the criminal justice system. In the past it was believed that magistrates could supervise themselves but experience has shown that they need supervision. This also makes our life very difficult. They are disorganising us. We cannot properly plan our work. If you have a case in court you have to cancel your day's appointments (Interview, 10 January 2000).

Commenting on the inability of the Administration of Justice and the Attorney General's Office to expeditiously deal with the cases, the Director of the DCEC said

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

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

## **Conclusion**

This chapter has examined the politics of controlling corruption, the nature of corruption that is prevalent in Botswana as well as efforts to combat corruption. The chapter has discussed the powers, functions, organisation, staffing, budget and limitations of the DCEC. The DCEC has been given adequate powers to investigate, prevent and teach the public about corruption and economic crime. However, the effectiveness of the DCEC should be assessed in light of political and technical limitations. Whether or not it succeeds depends on a number of

factors such as the political will, resources (both financial and the right skills of its staff), and its independence, co-operation from other government agencies and the general populace, and the willingness to investigate and prosecute on the part of the DCEC. Therefore, establishing the DCEC is not enough. The DCEC needs to be supported with sufficient resources and its independence should not be questionable. The DCEC is widely accused of concentrating on the 'small fish'. If one looks at the cases the DCEC has dealt with so far, they are mainly petty stuff with the exception of a few. This is not the kind of corruption Batswana had in mind when the DCEC was first established.

However, evidence from elsewhere indicates that corruption seem to exist or flourish in areas where there are some restrictions and delays in providing goods and services such as passports, visas, permits (work and residence), licences etc. Such restrictions and delays in the bureaucracy tend to make the officials in-charge to feel important, and may start asking for bribes, and those looking for such goods and services may offer bribes. Such areas are a breeding ground for corruption. This suggests close monitoring of such areas. In the next chapter, we discuss the problem of corruption in South Africa both before and after 1994 and, assess efforts to combat corruption there. South Africa has numerous anti-corruption agencies. However, chapter five focuses on three agencies, namely the Public Protector, the Investigating Directorate for Serious Economic Offences, and the Special Investigating Unit, because these are the leading anti-corruption agencies in South Africa.



## **Chapter five: Corruption and its control in South Africa**

Having discussed the nature of corruption and institutional efforts to combat it in Botswana, this chapter now offers an assessment of corruption and institutional efforts to control it in South Africa, the second of our case studies. Various institutional measures have been introduced to tackle the problem of corruption in South Africa. However, this chapter will limit itself mainly to the Public Protector, Investigating Directorate for Serious Economic Offences (IDSEO), and the Special Investigating Unit (SIU), commonly known as the Heath Unit, because these three are the leading anti-corruption agencies in South Africa. Our main focus here is on why these institutions were established and the nature of their performance. It explores how corruption is embedded in South African politics before examining the work of anti-corruption agencies in South Africa. The chapter will help us to understand the roots of corruption in South Africa, the nature of these three anti-corruption agencies and the way they function in their attempts to combat corruption in South Africa.

South Africa differs from much of colonial Africa in that it attracted a considerable number of European settlers (Beinart, 1994; Beinart and Dubow, 1995). It was one of the few “settler oligarchies” which existed in Africa (Bratton and Van de Walle, 1997). “Settler oligarchies” differ from most African states because they do not possess the key facets or “institutions” of Africa’s neopatrimonial states. Instead they come closer to what have been termed exclusionary democracies (Bratton and Van de Walle, 1997; Bauer, 2001). Moreover, settler oligarchies with “their stronger, centralized state and military apparatus and their closer adherence to legal-rational administrative procedures”, more closely approximate the bureaucratic-authoritarian

states, which prevailed in Latin America and Southern Europe, than they do the post-colonial states of Sub-Saharan Africa. Thus settler oligarchies allowed for high competition with low participation in the political process (Bratton and Van de Walle, 1997: 77). As Bratton and Van de Walle noted, in settler oligarchies

the dominant racial group used the instruments of law to deny political rights to ethnic majorities, usually through a restrictive franchise and emergency regulations backed by hierarchically organized coercion....however, settlers reproduced functioning democracies within their own microcosmic enclaves, with features like elections, leadership turnover, loyal opposition, independent courts, and some press freedoms, all reserved exclusively for whites (ibid. 81).

The history of settler domination and racial conflict gives South Africa a distinctive character. Even then the way the apartheid state functioned can be compared to other colonial experiences in Africa (Mamdani, 1996). Southall and Szeftel noted

virtually from the beginning of a European presence in South Africa, racial domination defined political power. The National Party (NP) government, which took office in 1948, to defend and promote white (especially Afrikaner) interests, intensified this domination through its policy of apartheid” (1999: 207).

Thus, Afrikaner capitalist interests played a significant role in shaping the nature of apartheid in the 1950s (Posel, 1995: 227). It is indisputable that segregation and apartheid mainly promoted the interests of the whites (Beinart and Dubow, 1995); “the central issue in white politics was how to maintain control over the black majority” (Friedman, 1995: 534). Apartheid bestowed on South African society a distinguishing characteristic (Beinart, 1994), one which continued to influence politics even after the country changed from a settler oligarchy to a formal liberal democracy with the first non-racial multiparty elections in 1994 (Bratton and Van de Walle, 1997).

### **Corruption and the state in South Africa**

Transparency International Corruption Perception Index (TI CPI) considers South Africa to be the third least corrupt country in Africa. Even so, the perception is that corruption is widespread in South Africa. In a study conducted by Merchant International Group on 45 emerging countries, South Africa was “above average on the danger scale in terms of corruption in business dealings” (*Business Day*, 15 March 1999). It emerged “the 14<sup>th</sup> riskiest country for business” with a percentage score of 68%. The rankings were arrived at on the basis of percentages, the higher percentage the higher the risk. Singapore was considered the least corrupt with a percentage score of 19% (*ibid.*, 15 March 1999). In a study conducted by IDASA in 1996, 46 per cent of the respondents were of the view that the majority of the officials were involved in corruption (Lodge, 1999: 56). In 1997, corruption, unemployment, violent crime, theft, prison escapes, educational underperformance and overspending by provincial and local authorities were identified as the most serious problems facing South Africa (Editors Inc, n.d.,c.1999). Similarly, Hawthorne identified corruption, unemployment and crime as serious problems South Africa faces (Hawthorne, 1998: 49). The South African Regional Crime Combating Council (SRCCC) “estimates that white-collar crimes amount to more than R350 billion (about US\$95.5 billion) a year” (Khumalo, 1995: 12). Deloitte and Touche, an international accountancy firm suggested that in 1997, public sector fraud and mismanagement might have exceeded R10 billion (Lodge, 1999: 64).

According to the founder head of the Special Investigating Unit (SIU) Willem Heath, corruption and mismanagement worth R200 billion is yet to be uncovered in the public sector (*The Star*, 24 August 1998). Heath regards corruption in South Africa as “a national crisis” (*Sunday Times*, 22 November 1998). For him, the level of corruption that has been exposed “so far appears to be just a tip of a problem that has taken root through the entire administration” with some of the organised syndicates which drain public resources having been in operation for the past 20 years (*Sunday Independent*, 31 May 1998). The SIU has noted that

a shockingly large proportion of South Africans, including former and present government officials and politicians, appeared to regard public funds and assets as ‘fair game’ for corrupt schemes (*Business Day*, 13 November 1998).

The roots of corruption in South Africa are located in the structure and policies of the apartheid state. The apartheid state employed patronage in a systematic way to achieve two predominant objectives. Firstly, it was concerned to use public resources to redress the historic disadvantages of the Afrikaner population in relation to English-Speaking whites. And secondly, it used public resources to co-opt and reward conservative allies within the non-white communities in the hope that they would weaken the political opposition to white domination. The distribution of patronage came to be institutionalised through the structures of racial segregation in the apparatus of the Bantu Homelands, black urban councils and Indian and “Coloured” representative bodies. This use of patronage naturally fostered corruption. In some ways, the apartheid state even built in corruption into its Homeland policies, allowing the Homeland elites to line their pockets to a far greater extent than was permitted within the ‘white’ state (Friedman, 1995; Lodge, 1998). The nature of the apartheid state and its policies made corruption



more likely. The apartheid state not only facilitated the growth of corruption, but it also provided a favourable environment for corruption to flourish. As Skweyiya points out

the apartheid system was driven by a design that created the conditions and opportunities for corruption throughout society. Across the board, rewards and benefits were distributed on the basis of racial and gender discrimination. Because of the lack of accountability, public resources were used to buy political favour and entrench a dehumanising regime (1999: 13).

To this extent, the apartheid state functioned largely on the basis of patronage, in ways that presented a parallel, albeit distorted one, of the pattern found in most African states. The state was used to dispense rewards and favours to the white minority and its allies for a whole variety of reasons and in a variety of ways, all of which inevitably fostered corruption and even crime. Corruption in South Africa is thus structurally and politically rooted in its past (Balia, 1999). The analysis that follows elaborates this argument, focusing on key aspects of the apartheid state which were essential to the system of patronage and corruption, and relevant to the problem of controlling it.

First, the apartheid state used state patronage to improve the position of Afrikaners relative to other whites, through contracts, jobs, loans, bursaries. As Friedman notes

for much of its forty-six year reign beginning in 1948, the National Party - with no serious electoral challenge - acted primarily as an ethnic patronage network, using public resources for the economic advancement of Afrikaner nationalists. In addition to negating central principles of democratic government, such as the requirement that public benefits not be distributed in a partisan fashion, the NP packed the military and the bureaucracy with its supporters, increasingly blurring the divide between party and state (1995: 541).

Thus, the bureaucracy was intentionally used to promote the interests of Afrikaners. In the 1950s, the Native Affairs Department made a determined effort to ensure that as many administrative posts as possible were occupied by members of the National Party, whilst the penetration of the Land Bank and agricultural cooperatives by members of the Broederbond in the 1960s meant that political factors would dominate in credit distribution (Lodge, 1998: 164). As Posel observed “co-operatives played a key role in assuring farmer’s survival, by providing production loans needed by farmers to buy fertiliser, fuel, and seed” (Posel, 1991: 244). According to Nhlapo

Apartheid created a public sector culture which was bound to sustain the ethos and practices of corruption in the public sector. The fragmented nature of management structures – duplicate departments, bantustans and racially based local authorities – was conducive to the squandering of state resources and lack of accountability. For example, jobs for whites only in the public sector and puppet regimes in the townships and bantustans were all based on a corrupt system of ethos. During the negotiation process (1990-1994), there was an increase in government spending, most of which had nothing to do with service delivery, but involved ‘golden handshakes’ among the top echelons of the public sector, excessive retrenchments and severance packages for old-guard bureaucrats, protection of jobs, inappropriate promotions and manipulation of pension funds (1999: 64).

In this sense, the apartheid state had similarities to African nationalist parties elsewhere on the African continent in that they too sought to use politics and the state to change the position of their supporters. To this extent, the apartheid state can be compared with other colonial experiences, especially in Southern Africa, an issue to which we will return in chapter seven.

Second, the apartheid state used patronage and segregation policies to maintain Indians and Coloureds in an intermediate position between black and white, a form of divide and rule. One important instance of this was the creation of a

Tricameral Parliament in 1983. Worden (1994) argues that the aim of the Tricameral Constitution was to involve Indians and Coloureds who were previously excluded in government by establishing different parliamentary assemblies for whites, Indians and Coloureds. The Indian and Coloureds houses were allowed to discuss matters which were of community concern only while key national decisions remained under the control of the White Parliament. The Tricameral Parliament “was clearly a means of sharing power without losing control” (ibid. 124). As Jung and Shapiro noted

Pretoria hoped to draw in the ‘coloured’ and the Indian communities and separate them from the rest of the disenfranchised black majority by creating separate Parliaments (still subordinate to the white Parliament) in which they would be represented (1995: 283).

However, the majority of the Coloureds, Indians rejected these changes outright, demanding instead a non-racial South Africa in which they were represented in parliament (Jung and Shapiro, 1995).

Third, and related to the second factor, the apartheid state through its policy of “differential inclusion” (Friedman, 1995: 542-544) used state patronage to create a huge multitude of black dependents and beneficiaries who worked for the administration, the police, the Bantu Education system and, above all, the Homeland system. The aim of “differential inclusion” was to “offer some black people a stake in the system” by sharing power through the establishment of subordinate political institutions such as Homelands (ibid. 544). The apartheid policy of “differential treatment” was in many ways a source of corruption. As Friedman observed, these institutions

offered opportunities for patronage to those willing to assume office. Most of the conservative black elites who joined the system used the

opportunity primarily to enrich themselves and a small group of followers; they failed or did not build a popular power base (ibid. 544).

More importantly, because most Homelands lacked a commercial or manufacturing base, Friedman contends that the outcome of the Homeland system meant that

the most attractive patronage vehicle was the bureaucracy. This led to the creation of public services with almost half a million personnel. These services rewarded scores of officials with promotions for which they were unqualified and, in some cases, with benefits exceeding those paid to their senior equivalents in Pretoria. The route by which many homeland officials had acquired their status – and the reality that this was often nearly the sole source of salaried work in homelands – also ensured that they viewed the bureaucracy as a vehicle for personal advancement rather than as a public service (ibid. 545).

Thus, the nature of the Homeland structures institutionalised some forms of corruption. In the Homelands, “governance, administration and distribution of public goods and services was based on patronage” (*Business Day*, 12 June 2001).

A number of commissions of inquiry documented some disquieting evidence of corruption in the Homelands and in those departments which dealt directly with Homeland ‘states’ (Lodge, 1998; 1999). A few examples are in order. In KwaNdebele, the Parsons Commission exposed a kickback of R1million for work, which was never carried out. In Lebowa, the Tender Board bought cleaning chemicals valued at R15 million, enough for use by the whole government for a period of seven years, despite disapproval from three members of its tender board. In the Transkei, ministers and their associates bought farms, firms and houses at bargain prices. Bribery was also widespread in the Homelands especially in pension departments and magistrates courts (Lodge, 1999: 61). In 1988, the Heever Commission documented many cases of corruption, kickbacks, ‘ghosting’ and absence of accountability (Bauer, 2000). Similarly in 1991, the Pickard Commission



which was established to investigate the then Department of Development Aid exposed “a culture of corruption and irregularities, tender fraud, favouritism, nepotism and a lack of accountability” (ibid. 220). It appears cases of corruption especially in the dying years of apartheid were an inevitable outcome of the Homeland system. They were part of the core policy of apartheid. For Lodge

these occurrences in the final years of these administrations may have represented behaviour motivated by the realization among officials that their powers and privileges were shortly to be curtailed, but there are other reports dating from earlier periods which suggest, as in the case of the Transkei, that graft was entrenched and routine in the highest echelons of homeland administrations through much of their history. ...the Skweyiya Commission in 1996 uncovered a carnival of misconduct [in Bophuthatswana] dating from 1978, beginning with former President Mangope’s issue of irregular tenders, his application of state owned houses and farms, and his establishment of private businesses with public funds (ibid. 169).

These cases of corruption demonstrate that the Homeland administrations were in many ways a source of corruption. The public service in particular was a source of status and wealth. In this sense, politics in the Homelands was based on post-colonial pattern of patronage. Since 1994, the Homeland administrations have been incorporated into the regional administrations. This may have shifted corruption and in turn contaminated the regional administrations with Homelands patrimonial politics (Lodge, 1999). Secrecy and a lack of accountability provided a fertile ground for irregularities under the apartheid state. Ministers were allowed to “preside happily over corrupt, inefficient departments, safe in the knowledge that it is the officials who will take the blame when it is exposed” (Bauer, 2000: 227). Provincial administrations audits for the period 1992-93 revealed fraud worth R339,000, and bed linen valued R1 million was taken away from Groote Schuur hospital in Cape Province, while vouchers worth R64.2 million were fraudulently handed out in Transvaal (Lodge, 1998: 171).

Fourth, and more importantly, was the nature of unchecked executive power and the rise of the security state under P.W. Botha with the adoption of the Total Strategy (TS) in the 1980s as the official policy of the apartheid state. This was also in many ways a source of corruption and criminal behaviour. This is the case because the Total Strategy led to some of the key factors, which promote corruption, authoritarianism and lack of transparency. Attempts to repress dissent inside South Africa and in the whole of the Southern Africa in turn led to “a rapid escalation of corruption in South Africa itself” (Ellis, 1996: 192). Repression involved an illegal world in which the use of public money was intrinsic; “money to please, to bribe, to silence, to betray and to kill played a vital role in the pursuit of apartheid” (Van Maanen, 1999: 140). Ellis (1996) observed that the Department of Information was used by the apartheid state to secretly distribute government funds as bribes to solicit influence both within and outside South Africa. The Muldergate scandal is a case in point. In 1978, the Muldergate scandal led to the downfall of Prime Minister Vorster when the activities of the Department of Information were brought to light. It was revealed that the Information Department

had not only bribed journalists and secretly bought newspapers at home and abroad in a bid to secure better public relations, but that senior civil servants and politicians in South Africa had abused the Department’s lack of parliamentary accountability for purposes of personal enrichment – corruption (Ellis, 1996: 173).

By the 1980s, political corruption was prevalent both in the central and Homeland administrations. Corruption was firmly established particularly in areas of government which were of ‘strategic’ importance and which spent covert funds. The Department of Defence spent R4 billion per year on covert projects in the 1980s (Lodge, 1999: 59-60). A company established by the Military Intelligence

to generate funds for UNITA “became a conduit for ivory and mandrax smuggling” whose proceeds “were shared between UNITA and South African Defence Force (SADF) commanders” (ibid. 60). All these were possible because of an institutionalised lack of transparency and accountability.

Under the apartheid state, discussions of parliamentary committees were secretive or kept from the knowledge of most people (Southall, 1998; *Mail & Guardian*, 14 February 2001). Southall notes that “legislation was tabled behind closed doors, and MPs were forbidden to talk about what went on” (1998: 453-454). The apartheid state revealed as little information as possible on the operations of the state. “No information was publicised regarding corruption within the public service or by public representatives” (*Mail & Guardian*, 12 June 2001). Moreover, “there was a particularly low level of accountability where spending of public money was concerned” (ibid., 12 June 2001). As the system was shrouded with secrecy, it provided incentives for officials to engage in corrupt and criminal activities because secrecy curtailed accountability and transparency. Thus, the apartheid state facilitated “the creation of secret or covert networks, maintained with secret funds, inevitable attracts the attention of professional criminals and tempts otherwise honest people to steal, since the funds involved are publicly unaccountable” (Ellis, 1996: 11). As Lodge notes

covert operations inside South Africa undertaken by the military also supplied plenty of opportunities for private gain. Between 1985 and 1990, R10 million was paid over to five front companies established by the Eastern Cape Command. The companies were intended to organize youth camps and leadership training as well as other propaganda activities directed against the ANC and PAC (1998: 165).

The foregoing analysis demonstrates how South African politics, the structure of the apartheid state and the way it functioned institutionalised some forms of corruption. To this extent, “the strongest roots of corruption in South Africa lie in the policy of apartheid” (*Mail & Guardian*, 10 June 1997). Thus, South Africa in 1994 “emerged from a period of corruption, encouraged by politicians who used subtle, though usually legal means, of self-enrichment” (Khumalo, 1995: 12).

It is difficult (and still too early) to assess whether the apartheid state was more corrupt than the new democratic state or vice versa. However, since 1994 corruption scandals have become part of the political debates of the new state. Corruption has been widespread in government since 1994 and it appears to be growing at all levels of government (Bauer, 2000: 227). As Tom Lodge has pointed out

a major source of financial misappropriation in the old central government, secret defence procurement, no longer exists but corruption is stimulated by new official practices and fresh demands imposed upon the bureaucracy including discriminatory tendering, political solidarity, and the expansion of citizen entitlements. Though much contemporary corruption is inherited from the past, the simultaneous democratization and restructuring of the South African state makes it very vulnerable to new forms of abuse in different locations (1998: 157).

With the introduction of non-racial multiparty democracy in 1994, South Africa is undergoing massive social, political and economic transformation. There is a need to rationalise the state, from one which was authoritarian and exclusive, to one which is democratic, transparent, accountable and inclusive. In trying to redress past practices which were conducive to corruption, the new state would seem to have created new opportunities for corruption through some of its policies or practices such as affirmative action. Affirmative action is defined “as laws,



programmes or activities designed to redress past imbalances and to ameliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, gender and disability” (Republic of South Africa, 1998 in [http://www.polity.org.za/govdocs/white\\_papers/affirmative.html](http://www.polity.org.za/govdocs/white_papers/affirmative.html)). The analysis that follows identifies factors which create opportunities as well as pressures for corruption since 1994.

One factor which encourages corruption since 1994 is some types of affirmative action in the public service which disregard merit values (Good, 1997; Lodge, 1998). This has given rise to political appointments in the public service. “The temptation to swell the bureaucracy through reward-related jobs, and pay for loyalty packages is natural, with the victors in the struggle gathering to share the bounty” (Khumalo, 1995: 12). Since 1994, partisan or political appointments have been made to the main institutions where power is located. These include, amongst others the civil service, the security forces, and key organisations such as the Reserve Bank, and parastatals (Good, 2000: 50). Van Maanen emphasises the same point. Since 1994, he argues, thousands of new civil servants have been elected to some positions in government whose main qualities were not often the exact skills required for such positions. They were elected in part because the new government wanted partners in the public service who would appreciate and encourage its new priorities (1999: 149). Moreover, there is a desperate need for government to better reflect all people. For instance, the Department of Foreign Affairs introduced a twelve months programme to ensure that 80% of South Africa’s diplomats were black (October 2000 to October 2001). At the beginning of 2000, around 60% of South Africa’s ambassadors, high commissioners and

consuls-general were white, and at the lower level, around 80% of counsellors were white. The purpose of this programme was to ensure that South African Missions were representative of the general population (*Mail & Guardian*, 4 October 2000).

Although policies of affirmative action are necessary to ensure that the new state reflects all, they may give rise to new opportunities of corruption if they are not properly implemented. That is to say, such policies might be exploited in certain quarters to employ relatives, friends and fellow comrades even if they do not possess the necessary expertise or are of dubious character. There is evidence to this effect. For instance, the African National Congress (ANC) committee restored two Members of the Executive Council's (MEC) in Mpumalanga province in spite of them being suspended for corruption by the province's Premier. Likewise a discredited lawyer was appointed consul-general to Delhi despite a criminal conviction. When asked why the Department of Foreign Affairs was not able to identify the criminal conviction of the concerned lawyer while he was working in Parliament in 1996, the Deputy Minister of Foreign Affairs observed that "South Africa is a sick society. Corruption is endemic. We were busy on so many other issues it might not have come to our attention" (*Mail & Guardian*, 5 February 1999). Similarly, Lyndall Shope-Mafole, a former Independent Broadcasting Authority councillor was granted a senior government job in Geneva "despite having been caught with her snout in the public purse, for which she was sacked" (*ibid.*, 5 February 1999; in <http://www.mg.co.za>).

These appointments were made despite efforts at and talk of 'clean government' indicating that there is a struggle between pressures for patronage and efforts to clean government. The then Minister of Justice, Dullah Omar, claimed that two key principles of the ANC were "honesty and integrity", and suggested that "people who are engaged in corrupt practices should not be allowed to stand for election". Moreover, former President Nelson Mandela had earlier withdrawn the appointment of Allan Boesak as South Africa's ambassador to the United Nations even before he was convicted on allegations of fraud (*ibid.*, 5 February 1999). In KwaZulu/Natal Province, a Culture and Education MEC, Eileen KaNkosi Shandu, was dismissed for nepotism following the "appointment of her brother to a senior position [deputy director-general for education], which would have earned him in excess of R250,000 a year, over more qualified candidates" although her brother obtained the lowest marks of all those interviewed (*ibid.*, 23 August 2000; in <http://www.mg.co.za>). Moreover, affirmative action and nepotism led to job insecurity [as well as uncertainty] on the part of civil servants appointed under the apartheid state and as such believe they are justified to take advantage of the system whilst they still have access to state resources (Painter, 1999: 78). In this sense, affirmative action provides a fertile climate for corruption to take place.

Another factor which appears to facilitate corruption in the new state is tendering or procurement policies that give preference to small businessmen (Good, 1997). This is an area of corruption common to all states. What gives it different force in South Africa is a need to empower those previously disadvantaged and redress the deep historical socio-economic imbalances inherited by the new state in 1994. Because "the vast material and social inequalities in South Africa still largely

follow racial lines” (Van Der Berg, 1998: 255), the South African state is under pressure to deliver noticeable results within a short period (Van Der Berg, 1998). This is the case because the market changes racial inequalities too slowly to meet political demands and the public sector is where quick changes can be made. As Van Der Berg observed

improving the legitimacy of the economic dispensation would require visible intervention by the state to provide material benefits for blacks. Waiting for the market to restructure opportunities is not enough and ... is too slow. Thus the budget will be the major instrument of redistribution to the newly enfranchised (ibid. 263-4).

One way of advancing empowerment is through preferential procurement or tendering. The government’s procurement budget constitutes around R80bn, equal to about 13% of GDP or 30% of total government spending (*Mail & Guardian*, 16 October 2000:<http://www.mg.co.za>). The South African government has embarked on reform to ensure that the public tendering system is accessible to small, medium and micro enterprises (SMME’s) so as to favour black-owned enterprises. In the past, public tendering favoured big companies. Emerging companies had difficulties in accessing the public tendering system (Republic of South Africa, 1997:[http://www.polity.org.za/govdocs/green\\_papers/procgp.html](http://www.polity.org.za/govdocs/green_papers/procgp.html)). Thus, in line with its socio-economic objectives as one senior official in the Office of the Public Protector noted

the government has a macro policy of trying to empower people who were previously disadvantaged. For empowerment purposes, specific groups e.g. women, black contractors are given certain points, competing with well established companies and tendering on the basis of low price would not help emerging companies. Some tender boards allowed up to 30% preference. In South Africa, there is the state tender board and nine provincial tender boards. They are independent from each other on matters of procurement. There are lots of complaints on tender issues. At the moment, tender issues are not transparent. For instance, you do not know how you were compared to other tenderers and why you were unsuccessful. It is a very closed operation. Tender boards do not



automatically write to people. People come with lots of complaints suggesting bribery. Tendering corruption has always been with us in the provinces and parastatals (Interview, 8 May 2000).

This suggests that affirmative procurement is vulnerable to corruption if it is not efficiently implemented. According to Black South Africa Business, government procurement has been overshadowed by fronting so far (*Mail & Guardian*, 16 October 2000:<http://www.mg.co.za>). For instance, a hunting company, Wilmot Safaris was awarded a profitable government contract in the Eastern Cape after it had employed Nambita Stofile, the wife of Eastern Cape Premier Makhenkesi Stofile, as a partner and shareholder. Nambita Stofile became a member of Wilmot Safaris two weeks before the company was awarded a 42.5% share in hunting rights of state owned game reserves in the Eastern Cape. Wilmot Safaris became a black empowerment partnership with Moses Oomoyi and Nambita Stofile in December 2000. This was the second case, brought to public view in 2001, of companies which secured contracts with the regional government in which Nambita Stofile was working as a director. Nambita Stofile was also a director and shareholder in Masekhane Security, which secured contracts with a number of departments (*ibid.*, 23 March 2001). This is a clear case of conflict of interest. In Mpumalanga, it was revealed that the Minister of Housing granted a US\$42 million contract, Mpumalanga Rural Housing Project, in January 1997, the biggest under the government housing subsidy scheme so far, to a company which had not been registered and operated by one of the Housing Minister's friend, Thandi Ndlovu (*Mail & Guardian*, 23 May 1997; *ibid.*, 10 June 1997). Although, Mpumalanga Housing project was promoted as a black empowerment project, it was revealed that big companies stood to benefit from the project. Moreover,

questions were being asked in certain quarters regarding the benefits of the project to the rural community (ibid., 30 May 1997).

In yet another black empowerment scandal, the former chairman of the Central Energy Fund (CEF), Keith Kunene, and Moses Moloele, a director of High Beam Trading International were subject to an investigation by the Scorpions “for corruption involving a deal which in effect privatised South Africa’s oil purchases” (*Business Day*, 16 February 2001). Moloele was alleged to have paid a “bribe of \$60,000 to Kunene in exchange for a contract to conduct....the Strategic Fuel Fund’s (SFF’S) to sell South Africa’s crude oil...worth about R1.5bn and use the proceeds to buy better quality crude oil”. Kunene was pressurised to resign by the Minister of Minerals and Energy “after it emerged that he had awarded the contract to High Beam Trading International, a joint venture between black empowerment company High Beam Investments and commodity trader Trafigura, without government approval or calling for tenders” (ibid., 16 February 2001).

It is important to ask who are the winners and losers in the new policies. A report issued in 1999, by Wharton Economic Forecasting Associates, an international economic consultancy, shows that “a small black economic elite has benefited most from the democratisation of South Africa over the past 10 years”. The report shows that income of the richest 10% of black South Africans rose by 17%, whilst the income of the poorest 40% households declined by about 21% (*Mail & Guardian*, 28 January 2000). Good underlines the same point. An elite, he notes, made up of politicians, civil servants and business people, seems to have acquired considerable

material gains. In the period 1991 to 1996, black capitalists secured around 9 per cent of market capitalisation on the Johannesburg Stock Exchange and, by the middle of 1997, a small group of top black executives were earning an average salary package of around R1 million per annum, said to be substantially higher than their white counterparts (1997: 554). The substantial gains by the top 10% of the blacks in the past ten years seems to have been an outcome of the policies of the new state as well as of the way capitalism has developed since 1994. It has to be noted that the new democratic state nurtures the idea of forming 'a black capitalist class'. President Thabo Mbeki stated that "government must come to the aid of those among black people who might require such aid in order to become entrepreneurs" (*Business Day*, 23 November 1999).

In spite of this, the pressure for a more rapid empowerment process remains intense. For instance, Cyril Ramaphosa, one of the leading figures in the ANC over the last twenty years and now a leading businessman, insists that empowerment has not been successful because "black people remain at the periphery of the economy" (*Mail & Guardian*, 14 September 2000). Black South African Business has described the policy of affirmative action as "a practical joke" and called for "a review of the government's procurement policies and for more preference to be given to black suppliers" (*ibid.*, 16 October 2000). Ramaphosa warned government of "a possible backlash if black South Africans are unable to enjoy the economic fruits of democracy" and encouraged government to put into effect new legislation to bolster black empowerment (*ibid.*, 26 March 2001). In this sense, the state is the battleground for the allocation of public resources. Although the conditions for social transformation have been laid down following the democratic elections in

1994, income distribution remains highly skewed in favour of the whites who constitute about 10% of the population. The Human Rights Commission “found marked socio-economic inequalities and racism still divide the country” (*The Sowetan*, 18 March 1999:<http://www.africanews.org>). It is therefore likely that pressures, and opportunities, for such forms of corruption will increase rather than diminish.

Linked to the policy of empowerment, it seems the other source of corruption in the new state democratic is the emergence of “the culture of entitlement”, that is the feeling that “we have been kept down for so long, now we are entitled to our share and no one should blame us” (Van Maanen, 1999: 146). Painter underscores the same point. Black South Africans, he notes, have been excluded from top positions in the civil service for so long such that “some of them feel justified in ‘taking their turn in riding the gravy train’” (1999: 78). The chairman of the National Empowerment Corporation, Mashudu Ramano noted that “it is inevitable that some blacks will become super rich, and there is nothing to be ashamed of. Now is the time. If ever there was a chance, we have it now” (Good, 1997: 555). In this sense, those who were previously excluded now feel entitled to use the state to advance their interests.

The other factor that makes corruption more likely in South Africa is the dominance of the ANC. Since 1994, two multiparty elections have been held, the most recent in 1999. Both were won by the ruling ANC which obtained over 60% of seats in parliament. Moreover, Members of Parliament (MPs) in South Africa are answerable to their parties rather than their constituencies, an outcome of



elections being based on proportional representation according to a party list system. Party loyalty discourages MPs from criticising the government and, because they are answerable to the party rather than to a constituency, it is easy for the party to control them. In this sense, MPs have no choice but to toe the party line if they want to remain as such because they can be easily dropped from the party's electoral list. Thus, the ruling elite are "accountable to themselves" (Good, 1997). Southall observed that "not least of the reasons why the new drive for parliamentary accountability may be faltering is the determination of the leadership to make the parliamentary party toe the line" (1998: 455). MPs can easily be replaced without altering party ratios in parliament. For instance, "at the national level, the Assembly saw 70 of its elected MPs - more than 14% - leave Parliament by the end of 1996" (South Africa, 1998-99: 32).

The system not only frustrates capable, effective and independent MPs, but also makes it difficult for MPs to call the government to account for its actions. An example is the way in which a senior ANC MP, Andrew Feinstein, was silenced after he had demanded an investigation (and for the involvement of South Africa's fearless anti-corruption unit, the Heath Special Investigating Unit) into a controversial R43 billion arms contract awarded in 1999. The decision to probe the arms contract came following allegations of corruption by senior ANC politicians. Some members of parliament were alleged to have received bribes to influence the R43 billion arms procurement deal (*Mail & Guardian*, 30 January 2001). There were also allegations of conflict of interest and tendering procedures being disregarded when awarding the contract (*ibid.*, 9 November 2001). Moreover, there

were allegations that businesses with close connections to the ANC gained from the arms deal (ibid., 5 October 2001).

Andrew Feinstein was an outspoken ANC leader on the Parliamentary Public Accounts Committee which took a leading role in the arms investigation. He was critical of tender procedures and conflicts of interest involved in the arms contract. As a result, he was “demoted, silenced and replaced” by the deputy chief whip, Geoff Doidge. Moreover, the ANC “moved three of its heavyweight functionaries onto the committee, including ANC caucus chairman, Thabang Makwetla” (ibid., 30 January 2001). Feinstein was axed for failing to protect the interests of the ANC as well as for embarrassing the party (ibid., 30 January 2001), indicating that “no ANC member has a free vote” (ibid., 14 February 2001).

Although Feinstein was at first supported by ANC MPs in the Parliamentary Public Accounts Committee leading the investigation, they withdrew their backing when President Thabo Mbeki “publicly maligned the head of the unit, Judge Willem Heath, and said the committee was ‘wrong’ in assuming there were grounds for an investigation” (ibid., 30 January 2001). Both Mbeki and Deputy President Jacob Zuma castigated the Parliamentary Accounts Committee for calling for an inquiry into the arms deal (ibid., 30 January 2001). The President “froze the [Heath] unit out of the investigation and the government subsequently announced that it would be disbanded” (ibid., 30 January 2001). Mbeki stated that “it is ... clear that we cannot allow the situation to continue where an organ appointed by and accountable to the executive refuses to accept the authority of the executive” and to “run out of control”. Further he noted that “this situation of ungovernability

will not be allowed to continue” (ibid., 20 January 2001). The President insisted that the investigation would be properly conducted because the Public Protector, the Auditor General and the Investigating Directorate: Serious Economic Offences (IDSEO) would take part in it (*WOZA News*, 7 February 2001), with the Auditor General co-ordinating. Moreover, the President dismissed allegations of corruption in the arms contract as a campaign to damage the reputation of the government (*Mail & Guardian*, 31 January 2001). The President’s comments not only pre-empted the findings of the inquiry but also cast doubt on its autonomy (ibid., 31 January 2001).

Opposition MPs and political commentators alike were critical of the way the arms probe was conducted, noting that the ANC was inviting suspicions of a cover-up. Responding to these concerns M. Lekota, Minister of Defence, insisted that the ANC “inherited a culture of corruption and was on a huge crusade to eradicate it” (*Business Day*, 15 February 2001). Although there is truth in Lekota’s assertion, the way the ANC handled the matter and the decision to exclude the Heath Unit from taking part raised doubts about the ANC’s commitment to tackle corruption, especially high-level corruption. This incident demonstrated that the ANC was able to stifle opposition and silence critical and effective debate within its own ranks, thereby undermining democratic institutions such as the Public Accounts Committee. Moreover, the ANC was able to decide which organisations would take part in the probe. From the perspective of its critics, the episode showed that watchdog institutions such as parliamentary committees, which had been dubbed the “engine room” of the new democracy in South Africa, could bark but not bite (*Mail & Guardian*, 14 February 2001). This

underscores the importance of political will in controlling corruption, especially high-level corruption. It was believed, by one University of Pretoria academic that:

the ANC is not serious about fighting corruption. It preaches good governance on the one hand while on the other hand it is reluctant to address corruption, especially when its senior people are involved. We always read about senior ANC members involved in corruption in the private newspapers but we have not yet seen a single big fish brought to book. They have established so many organisations to fight corruption but they are all ineffective because they are controlled and not given adequate resources. You can establish as many anti-corruption organisations [as you like] but if they are not resourced, they will not be able to fight corruption. Most of these organisations are some kind of public relation exercise. The ANC leadership is soft on corruption. Corruption is widespread in government (Interview, 19 May 2000).

The failure to ensure transparent and autonomous anti-corruption procedures thus undermined confidence in the honesty of government.

Although corruption has become a feature of the new state since 1994, certain departments such as the Police Service, Department of Justice and the regional governments, were more affected than others. Usually, ministries like Works, Energy, Transport and Defence are most affected because that is where the big contracts are (such as the arms contract discussed above). That corruption was significant in the Police Service, Department of Justice and regional administrations as well “may reflect historically entrenched habits” (Lodge, 1998: 178).

With regard to the Police Service, “the Government is faced with a serious problem amongst the police as a large number of police officers are corrupt and they either actively or passively promote corruption” (Republic of South Africa,



2001:<http://www.heathsiu.co.za/>). “In 1995, 2,000 police officers defrauded their medical aid scheme of R60 million” (Good, 1997: 551), and “in 1997, 10,000 policemen (out of a national force of 140,000) were under investigation for charges of bribery, theft, fraud and involvement in crime syndicates” (Lodge, 1999: 62). In October 2000, three top policemen in Durban were implicated in vehicle hijacking syndicates. Another top police officer charged with the responsibility of investigating organised crime was found in possession of a stolen car in Durban (*Mail & Guardian*, 27 October 2000:<http://www.mg.co.za>). “In January 1997 an automatic teller machine containing R22, 000 was stolen from the fourth floor of police headquarters in Pretoria...without anyone noticing” (Good, 1997: 551). Corruption in the police force thus affects the police service’s ability to tackle crime.

Corruption in the Police Service and Justice Department has serious implications on the effectiveness of the criminal justice system. Police officers collude with officials of the Department of Justice resulting in an enormous increase of the cases of corruption “through the wholesale theft and deliberate loss of police dockets in return for bribes from criminals”. This results in “several thousands cases each year” failing to reach the courts (Good, 1997: 552). Although the government says those involved is a tiny fraction of the police force, they nevertheless present a big problem for the country. “Dishonesty in the main agencies of law enforcement and administration promoted the prevalence of corruption elsewhere” (ibid. 552). Selling of dockets by policemen, prosecutors and court interpreters is common in South Africa (Interview, 12 May 2000). Several officers have been charged with fraud, theft or misconduct in the

Department of Justice. "Hundreds of officials in the department of Justice are facing charges of misconduct, corruption or fraud and the backlog of cases keeps mounting up" (*Pretoria News*, 10 May 2000). Amongst those charged is the Financial Manager of the department following his investigation by the Public Protector on charges of nepotism and corruption for employing a relative to a position in his office. By the end of 1999 there were some 480 outstanding cases for officials of the Justice Department. (*ibid.*, 10 May 2000). A circular dated 8th October, 1999 "describes the level of misconduct and crime in the department as 'disturbing' and attributes it to a lack of proper supervision and control over personnel who deal with money". The same circular documented some 'serious cases'. A senior clerk received a 10 year sentence for stealing bail money amounting to R1.6million. A public prosecutor was convicted on fraud charges for making a false claim amounting to R48,760. In another case a public prosecutor and two clerks of the justice department were arrested for stealing vouchers valued at R892,940 from Elliotdale Magistrate Office. A senior clerk was sentenced for five years for stealing R209,000 (*ibid.*, 10 May 2000). In 1998, 23 officials were reported to have participated in a scheme that defrauded the Department of Justice cheques valued at more than R30 million (Lodge, 1999: 63).

Moreover, since 1994, corruption seems to have been concentrated in the regional administrations. This is the case in part because the integration of the Homelands into regional governments appears to have contaminated regional administrations with patronage politics. Some of the regional governments which are badly affected are Mpumalanga Province, Eastern Cape Province, Northern Province

and the Free State province (Interview, 29 May 2000). However, Mpumalanga regional government seems to be the most affected. In Mpumalanga Province, the Madhlopa Commission revealed “another web of corruption” in which “the province’s powerful Highveld District Council chief executive Charles Makola irregularly awarded multi-million Rand tenders to politicians and friends” (*Mail & Guardian*, 15 November 2000). In just one irregular tender, the state lost at least R1.5m. The tender was granted to Matrob CC, a shell company which is owned by HDC chairman Robert Matseke. Matseke was one of the five African National Congress politicians who were blamed for running shell companies aimed at securing government construction and water infrastructure tenders (*ibid.*, 15 November 2000:<http://www.mg.co.za>). Likewise, the province’s MECs expended some R1.3 million meant for low cost housing, to refurbish the state houses they stay in (Lodge, 1999: 63). Still in Mpumalanga Province, the former Premier was implicated in “R120m investment scam”. The government trust investment unit was subject to the Auditor General’s investigation “following indications that officials may have creamed at least R4.8m off ... in irregular commissions” in 1997 (*ibid.*, 1 September 2000).

Moreover, David Ngobeni Commission of Inquiry into allegations of self-enrichment by the Deputy Speaker of Mpumalanga, revealed what the former Premier of the Province described as “a devastating picture of the legislature, one of dishonesty, of collusion to defraud, of theft, of perjury, of maldaministration and corruption” (*Business Day*, 8 July 1998). The former deputy speaker of Mpumalanga Province plus three other officials of the provincial legislature faced charges of theft, for defrauding the state up to R1 million by using “front

companies and dummy bank accounts". The four admitted, "receiving R967, 602 ...as legal payment for services rendered to government by companies they secretly owned" (*Mail & Guardian*, 9 October 2000). Similarly, corruption has also been exposed in other regional governments. However, we will not be able to give an overview of corruption in all the regional governments due to space.

Parastatal organisations have also been a source of corruption. In Mpumalanga, the Heath Unit investigated Mpumalanga Parks Board (MPB) chief executive officer Alan Gray's conduct in illegally handing out "three promissory notes, worth \$50 million, in return for a one year R340 million loan to the cash strapped parastatal" (*The Star*, 8 September 1998). For the financial year 1995-1996, "Telkom and Post Office lost R201 million due to employee fraud" and a "third of the SABC's 1996 losses were attributable to corruption". "An audit conducted at Denel, the arms exporter in early 1997, revealed R5.6 million unauthorized payments to executives in an unauthorized profit sharing scheme" (Lodge, 1998:179). Moreover, other central government departments such as the South African Revenue Services (SARS) have also been affected by corruption. A joint operation of the SARS and the Scorpions (elite officers), confiscated computers, documents and other electronic equipment following a search into offices and homes of 26 customs officials suspected of taking part in corruption and fraud which goes into billions. The probe is linked to another investigation by SARS and the Office for Serious Economic Offences into Value Added Tax fraud in which "bribes in excess of R4.02 m (in cash) and luxury gifts were offered to directors and staff members". The gifts which dated as far back as 1992 were in the form of travel tickets, television sets, furniture, cellphones and mountain



bicycles (*Mail & Guardian*, 31 January 2001). In September 2000, the Investigating Directorate for Serious Economic Offences (IDSEO) “seized about 40 million Rand (5.7 million dollars, 6.7 million euros) worth of assets, including a jet and helicopter belonging to Zimbabwean billionaire Billy Rautenbach” for allegedly defrauding the South African Revenue Services some R60 million of customs duties by undervaluing Hyundai cars which were imported from Botswana to South Africa by 20 to 30 per cent (*Botswana Daily News*, 21 September 2000). These examples demonstrate that corruption is widespread in South Africa.

Another factor promoting corruption, one linked to the inability of the police to tackle crime and to police corruption, has been the growth of organised crime, often international in nature. The Chairman of the Central Drug Authority noted that South Africa is the biggest producer of mandrax in the world with its “international airports, porous borders and sophisticated banking and infrastructure” making it “a target for international drug syndicates”. Illegal drugs move freely since apartheid came to an end (*Mail & Guardian*, 8 February 2001). A World Economic Forum study warned that “South Africa by 1997 was in the grip of organised crime and ranked globally behind only Colombia and Russia” (Good, 1997: 551). Moreover, the collusion of police officers with criminal gangs provides a favourable environment for criminals to operate freely, and in turn provides difficulties in differentiating between corruption and organised crime. This in turn makes it even more difficult to combat corruption elsewhere. Government is concerned about organised crime as well as corruption in the police force. This is the case because corruption and organised crime are

interwoven. Addressing a news conference, the Minister of Safety and Security, Steve Tswete, said that

hundreds of organised crime syndicates from around the world have moved into South Africa in the past decade, spreading their tentacles across the country and even into the prisons... "We have identified 400 [organised crime groups] active in our country. Most of them have their origins outside our country." "We are being targeted by big drugs syndicates from Asia and Latin America," he said, adding that he also had evidence of organised car theft on a huge scale". However, in 2000 the "strong coordination between the police, intelligence, prison and justice ministries had enabled 200 syndicate leaders and more than 2 300 members to be arrested". Justice Minister Penuell Maduna said the syndicates covered all aspects of crime from drugs to prostitution, car theft and smuggling. He listed Chinese triads, East European mafia, Nigerian gangs as well as groups from Portugal, Mozambique and Zimbabwe as examples of the various origins of the criminals operating in South Africa. Correctional Services Minister Ben Skosana said he had evidence that the murder last year of Piet Theron, a leading judge investigating a series of bombings and shootings in Cape Town, had been organised from jail. ....The minister of Safety and Security noted that the police force is undergoing a major shake-up which would result in the merger of several "independent and often overlapping investigating agencies into just two - one tackling organised crime and the other violent crime". He further noted that corrupt police officers are being investigated. Although he says these "rogue elements" constitute a small number, he does admit that "The rogue elements are quite a problem. They are in collusion with criminal syndicates," and "prosecution files were known to disappear from the justice department, often ruining a case" (*Mail & Guardian*, 13 February 2001:<http://www.mg.co.za/>).

Although corruption in South Africa is historically rooted, this chapter has so far demonstrated that, in its attempts to transform the South African state, the new state has created new pressures for corruption through some of its policies and because of its institutional weaknesses. However, the government of South Africa perceives corruption as an issue of concern. Addressing a seminar in Midgard, Namibia, the South African Minister of Water Affairs and Forestry, Kader Asmal contended that "corruption is potentially one of the greatest forces for the destruction of democracy throughout the world, but particularly in Africa where parliamentary democracy is still in a fledging and vulnerable state" (1997: 1).

This is the case because as we observed in chapter one, corruption attacks the very foundations of democracy. As a result, corruption has become an issue of high priority for the new democratic state (Van Maanen, 1999).

The incidence of corruption in South Africa appears to have influenced the development of institutional measures to curb corruption. In 1994, it soon became evident that the new state did not have the capacity to combat corruption in government. As a response to this, a number of positive institutional measures were put in place “within two years of the transition” to fight corruption (Van Maanen, 1999). Today, South Africa has more anti-corruption institutions than ever before (*Mail & Guardian*, 31 May 1997). Moreover, a number of conferences have been held to examine ways of tackling the problem of corruption. In April 1999, a National Anti-Corruption Conference was held. This was a follow up conference to the Public Sector Anti-corruption Conference which was held in November, 1998. In October 1999, South Africa hosted the ninth International Anti-Corruption Conference. “The Public Service Commission has also hosted 6 anti-corruption workshops in the provinces. The intention was to hold them in all the provinces” (Interview, 11 May 2000). The section that follows examines some of the key institutional measures that have been put in place to curb corruption.

### **Anti-corruption agencies in South Africa**

South Africa has established a number of agencies to combat corruption. These include the Public Protector (PP), Investigating Directorate for Serious Economic Offences (IDSEO), the Special Investigating Unit (SIU), the Police Service, the Public Service Commission, the Auditor General, the National Intelligence

Agency, the National Crime Prevention Strategy, the National Directorate: Public Prosecutions and the Independent Complaints Directorate. It is not only the complexity of South Africa's economy and society but also the magnitude of the problem that explains why so many agencies have been created. It is beyond the scope of this chapter to examine all the anti-corruption agencies in South Africa. The chapter will limit itself to the discussion of three agencies, the Public Protector (PP), the Investigating Directorate for Serious Economic Offences (IDSEO) and the Health Special Investigating Unit (SIU), because these were the leading anti-corruption institutions in the nineties, each with wide ranging powers to combat corruption in South Africa. The chapter discusses the development of the three agencies, how they function, and how problems impact on their effectiveness.

### **The Public Protector**

The Public Protector, which was provided for in the 1993 interim Constitution of South Africa, was established in October 1995 following the enactment of the Public Protector Act in 1994. The establishment of the Public Protector was endorsed by the 1996 final Constitution of South Africa as an institution that supports constitutional democracy.

Before 1994, there existed the Office of the Advocate General established in 1979 following the 'Muldergate' information scandal. The Advocate General's office had limited powers. It dealt with financial and administrative matters and misappropriation of public funds and it lacked constitutional status. In 1991, the Office of the Advocate General was converted into the



Office of the Ombudsman. Unlike the Public Protector, the Ombudsman did not enjoy constitutional independence. Moreover, the credibility of the Ombudsman was questionable because the apartheid state did not represent the majority of the people in South Africa. The Ombudsman ceased to exist when the Public Protector came into effect in 1995 (Interview, 8 May 2000).

### **The functions and powers of the Public Protector**

The Public Protector has a wide mandate and enormous investigating powers. According to section 182 of the Constitution of South Africa, the Public Protector has the power to investigate any conduct in state matters or public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice, to report on that conduct, and to take appropriate remedial action. Additional functions and powers of the Public Protector are laid down in section 6 of the Public Protector Act of 1994. Section 6 (4) of the Public Protector Act empowers the Public Protector to investigate possible

- (a) maladministration in connection with the affairs of government at any level;
- (b) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;
- (c) improper or dishonest act, or omission or corruption, with respect to public money;
- (d) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

(e) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person.

Section 6 (5) of the Public Protector Act extends the powers and functions of the Public Protector to any institution in which the State is the majority or controlling shareholder of any public entity. This is a classic Ombudsman institution. Its mandate is limited to public officials and public institutions. The Public Protector may not investigate court decisions.

According to section 7 of the Public Protector Act, the Public Protector has wide powers of investigation, search and seizure. However, to enter any building or premises, the Public Protector has to obtain a warrant from a local magistrate or judge. Section 7A (1) says “the Public Protector shall be competent to enter, or authorise another person to enter, any building or premises and there to make such investigation or inquiry as his or her opinion has a bearing on the investigation”. Section 7A (5) (a) empowers the Public Protector to use reasonable force to overcome any form of resistance while entering such a premise or building.

More importantly, section 5(3) of the Public Protector Act provides immunity for members of the Public Protector for anything done in good faith. According to section 6(8), members of the Public Protector’s office shall not be forced to answer questions before a court of law or any body regarding any information that came to his or her knowledge during an investigation. This will ensure that members of the Public Protector’s office discharge their duties without fear of being prosecuted. This may also help to instil confidence in members of the Public Protector.

However, the Public Protector does not have any sanction other than reporting to the National Assembly. 'Normally, the Public Protector tries to solve problems or disputes by dealing informally with departments concerned rather than going to the National Assembly' (Interview, 7 May 2000). Its key weapon is mediation and negotiation in settling disputes or rectifying an omission. The Public Protector lacks independent powers to prosecute. Instead, if during an investigation the facts disclose the commission of an offence, it refers cases to the relevant agencies charged with the authority to prosecute. However, the Public Protector is answerable to Parliament. He or she is not accountable to the President, as in most African countries and thus is not dependent on executive patronage.

Moreover, any person or organisation may lodge a complaint with the Public Protector. This is important because it provides for a direct link with the office of the Public Protector. Direct accessibility to the office of the Public Protector by any person would ensure maximum use of his or her office. This would also ensure that complaints are not limited to certain categories of the population of South Africa. According to section 7(1) (b) of the Public Protector Act, the Public Protector shall determine the procedure to be followed when conducting an investigation depending on the nature of the case.

The problem posed for the credibility of the Public Protector is its inability to initiate prosecutions and the relatively light punishments specified for acts of corruption. Section 11 of the Public Protector Act spells out the penalties, which can be levied on anyone, found guilty in line with the Public Protector Act.

Section 11 (4) says “any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding R40, 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment”.

### **Independence of the Public Protector**

The independence of an anti-corruption agency such as the Public Protector is of critical importance to its success, credibility and integrity. In South Africa, section 181 of the 1996 Constitution guarantees the independence of the Public Protector, subject only to the constitution and the law. It further stipulates that no person or state organ may interfere with the way the Public Protector functions. Moreover, other state organs must assist and protect the impartiality, independence, dignity and effectiveness of the Public Protector. According to section 193, the President appoints the Public Protector on the recommendation of the National Assembly. The National Assembly must recommend persons who have been nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly and approved by at least 60 per cent of the members of the Assembly. Under section 181 of the Constitution and section 8 of the Public Protector Act, The Public Protector reports and is accountable to the National Assembly.

The other factor that guarantees the independence of the Public Protector in South Africa is that the tenure of office for Public Protector is laid down in the Constitution. Under section 183, the Public Protector is appointed for a non-renewable period of seven years. In addition to this, the National Assembly determines the terms and conditions of the Public Protector. Section 2 (2) of the Public Protector Act notes “the remuneration and other terms and conditions of



employment of the Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee". Moreover, the Public Protector may be removed from office only on the ground of misconduct, incapacity or incompetence; a finding to that effect by a committee of the National Assembly; and the adoption by the Assembly of a resolution calling for that removal which must obtain the support of at least two thirds of the members of the Assembly to pass. However, the President may suspend the Public Protector once the proceedings of the National Assembly committee for his removal have been initiated. Even so, the nature of the Public Protector's tenure and terms of appointment ensure that the Public Protector performs his or her functions without fear of being removed from office.

Although the independence of the Public Protector is guaranteed by the Constitution, certain factors give the executive a degree of influence in the office and affect public confidence. Firstly, as one senior official in the Public Protector's office put it: "the appointment of the Public Protector by the president creates the perception that the executive controls the Public Protector. That is to say, that the Public Protector is not immune from executive patronage" (Interview, 8 May 2000). Secondly, the appointment of the Deputy Public Protector by the Minister of Justice seems to confirm this suspicion. Section 3(2) of the Public Protector Act 1994 says "the minister shall, after consultation with the Public Protector, appoint one or more persons as Deputy Public Protector". Moreover, according to section 2(2) of the Public Protector Act, the Minister of Justice determines the terms and conditions of the Deputy Public Protector after consulting the Public Protector. In the view of another senior official in the Public Protector's office, "this arrangement is flawed. It

brings the credibility of the office of the Public Protector into suspicion. The Deputy Public Protector performs the functions of the Public Protector in his or her absence. The Deputy Public Protector needs to be appointed in the same way the Public Protector is appointed” (Interview, 8 May 2000). In this sense, he noted that

the Deputy Public Protector is likely to be subject to the influence of the Minister of Justice. All employees of the Public Protector are seconded from the Department of Justice. We only advertise and screen, and the Ministry of Justice appoints. This is not a comfortable situation because the people you are likely to investigate are the ones who assess you. This will change in 2001 when we will be managing our own funds and making appointments (Interview, 17 May 2000).

## **IDSEO**

The Office for Serious Economic Offences (OSEO) was established in 1992, following the enactment of the Investigation of Serious Economic Offences Act No.117 of 1991, to provide for the investigation of serious economic offences. OSEO was replaced by the Investigating Directorate for Serious Economic Offences (IDSEO) under the National Prosecuting Authority Act No. 32 of 1998. This Act provides for a single national prosecuting authority under the Department of Justice.

The National Prosecuting Authority has nine provincial directors responsible for prosecution in country’s nine regions. The National Prosecuting Authority Act also provides for the establishment of not more than three Investigating Directorates, of which there are presently two: IDSEO and the Investigating Directorate for Organised Crime (IDOC). IDOC, based in Johannesburg deals with syndicates such as organised crime, political violence and gangsterism. IDSEO has three branches - in Durban, Cape Town and Pretoria. All fall under

one Investigating Director, based in Pretoria. Although there is a fine line between corruption and fraud, combating corruption is not the speciality of IDSEO. An Investigating Authority for Corruption (IAC) was still in the planning stages in 2000 although its director had already been appointed. IDSEO for its part, tackles serious economic crimes. A serious economic offence is not defined, but it is considered to be an offence that is complex and of a serious nature; for example, theft and other large or high profile cases. The Commercial Branch of the South African Police Service handles small frauds (Interview, 12 May 2000).

### **Functions and powers of IDSEO**

Sections 26 to 31 of the National Prosecuting Authority Act 32 of 1998 define the functions and powers of IDSEO. Under section 27, any person who is of the opinion that an economic offence is being or is about to be committed may report the matter to IDSEO by way of an affidavit. On the basis of this, IDSEO may initiate an inquiry if the Investigating Director believes there are reasonable grounds to suspect that a serious economic offence is involved. Inquiries are to be conducted in camera.

IDSEO has wide-ranging powers. In terms of section 28 of the National Prosecuting Authority Act of 1998, it can question any person under oath and summon

any person who is believed to be able to furnish any information on the subject of the inquiry or to have in his possession or under his control any book, document or other object relating to that subject, to appear before the Investigating Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object (Republic of South Africa, 1998: S.28).

Furthermore, under section 29, IDSEO has extensive powers of entry, search and seizure. Moreover, IDSEO has the power to use 'reasonable force' against resistance to the entry and search of any premises with or without a warrant.

From 16 October 1998, IDSEO could also prosecute in terms of section 24 of the National Prosecuting Authority Act (prior to 1998, its powers to prosecute were limited). However, it continues to make some recommendations to the National Prosecuting Authority (Interview, 12 May 2000).

### **Independence of IDSEO**

For all this power, the National Prosecuting Authority Act does not make IDSEO an independent institution. IDSEO has a flawed structure. It is a government department under the Ministry of Justice. The President appoints its Director under section 13(1) (b) of the Act, in consultation with the Minister of Justice and the National Director of Public Prosecutions. Where the Director is unable to perform his or her duties or while appointment of the Director is pending, the Minister of Justice on the advice of the National Director of Public Prosecutions can appoint an acting Director. This gives rise to the perception that the Director acts subject to the control and directions of the executive (Interview, 19 May 2000).

The appointment of the Director of IDSEO by the executive defeats the intention behind the creation of IDSEO because IDSEO is subject to the very people it is supposed to investigate. Can IDSEO investigate the Minister of Justice or any of his colleagues? It seems highly unlikely under the current arrangement. This again casts doubt on the government's commitment to combat corruption and on the capacity of



IDSEO to investigate high-level corruption. According to section 33 of the Act, the final responsibility over the prosecuting authority lies with the Minister of Justice.

For an anti-corruption institution to be effective in fighting corruption at all levels in government, it needs to enjoy autonomy from the very people it is supposed to investigate. At the very least such an agency needs to be able to report to parliament, as, in theory parliament is independent from the executive. Moreover, such an agency needs to be well resourced. Although the Director of IDSEO must retire on reaching the age of 65, under section 17 the President otherwise determines the terms and conditions of the Director.

### **The Heath Special Investigating Unit (SIU)**

We now turn to another anti-corruption agency in South Africa, the Heath Special Investigating Unit (SIU). The Heath Special Investigating Unit has been described as the most successful anti-corruption agency in South Africa (Interview, 22 May 2000). However, we shall see later in the chapter, the Special Investigating Unit is also frustrated by government's reluctance to issue proclamations in order for the unit to carry out its mandate.

The Special Investigating Unit, commonly known as the Heath Unit, was established in 1996 following the 1995 Heath Commission of Inquiry into corruption in the Eastern Cape region, which successfully recovered state assets through civil proceedings. The Heath Commission was appointed by former Eastern Cape Premier Raymond Mhlaba (*The Star*, 5 October 1998). Its success 'caught the attention' of former President Nelson Mandela (Camerer, 1999). In

1996, in consequence, Parliament enacted the Special Investigating Units and Special Tribunals Act (No.74), extending the mandate of the Heath Commission to the whole country. The Act provides for the establishment of Special Investigating Units to investigate serious malpractices in connection with the administration of state institutions, public assets, public money and any conduct that 'may seriously harm the interests of the public'. Moreover, the Act provides for the creation of Special Tribunals to adjudicate upon civil matters which originate from the investigations of the Special Investigating Units (Republic of South Africa, 1996). In 1996, former President Nelson Mandela appointed Justice Willem Heath as head of the Special Investigating Unit.

### **Functions and powers of a Special Investigating Unit**

A Special Investigating Unit (SIU) has broad functions. In terms of section 2(2) of the Act, the SIU is entrusted "to deal with a whole spectrum of clean administration and the protection of the interests of the public with regard to public money and property" (*The Star*, 5 October 1998). The unit investigates maladministration, fraud, corruption, misappropriation, transfers of state assets and money, lack of administrative and financial control, and malpractices pertaining to public assets and funds.

Moreover, a SIU has extensive powers under sections 5 and 6 of the Special Investigating Units and Special Tribunals Act. These include wide powers of entry, search and seizure. The SIU can also attach any money or order the return of money or property. The Unit "has powers to go a lot further than simply investigate and recommend. It has the power to seize, interdict and subpoena"

(*The Sunday Independent*, 31 May 1998). Indeed, some critics feel that the powers of the unit are too wide (ibid., 31 May 1998; Camerer, 1999), and “object to what they see as an increasing tendency to bypass traditional policing and the courts, affecting a process that ought to operate within the legal system” (ibid., 31 May 1998).

Unlike most anti-corruption agencies, such as the Independent Commission Against Corruption (ICAC) in Hong Kong and the Directorate on Corruption and Economic Crime (DCEC) in Botswana which combat corruption from a criminal perspective, the SIU combats corruption from a civil perspective and institutes civil action in a Special Tribunal. As Camerer notes, the SIU “does not investigate crimes, arrest criminals or act through the criminal courts” (1999: 206). In terms of section 5(7) of the Special Investigating Units and Special Tribunals Act, matters which come to the attention of the SIU, and justify the institution of legal proceedings are referred to or brought to the attention of the relevant bodies. In this sense, the SIU is a distinct organisation of its kind.

Following an investigation by the SIU, “civil action is instituted before the Special Courts” (Camerer, 1999: 206). “The evidence is then presented before the Special Tribunal, which makes a ruling on the seizure of assets, bank accounts and even overseas funds and also determines just how much of this money has to be paid back to the state” (*The Sunday Independent*, 31 May 1998). “If civil action is successful, judgement is obtained from the Special Tribunal and full effect is given to the judgement including execution and attachment of assets” (Camerer,

1999: 206). A Special Tribunal has jurisdiction on any civil dispute brought before it by a Special Investigating Unit.

Special Tribunals or Courts are a separate organ from the SIU. A Special Tribunal is presided over by Judges. These judges are appointed along the same lines as those of the High Court; in terms of section 7 of the Special Investigating and Special Tribunals Act, a Special Tribunal has a President, who is a judge of the Supreme Court. The President appoints the Special Tribunal on the advice of the Chief Justice, and can also appoint or remove judges or acting judges, magistrates or advocates to serve as additional members of the Tribunal subject to certain criteria.

In terms of section 8(1), a Special Tribunal shall be independent and impartial, and perform its functions without any fear or favour. The hearings of Special Tribunals are held in public but there is a provision for certain proceedings to be held behind closed doors. Besides adjudication of civil disputes, the Tribunal has the power to subpoena any person, issue warrants of arrest and to decide if the information in question is privileged or not. It can also issue suspension orders and interdicts. Although, the Special Tribunals are not part of the SIU and are presided over by judges, they have been described as “kangaroo courts” by some critics (*Sunday Independent*, 31 may 1998).

### **Independence of the Special Investigation Unit**

The Act does not make the Special Investigating Unit an independent organisation. The head of the Unit is appointed by and accountable to the



President which creates a perception that the executive controls the Unit. Moreover, the SIU functions on the basis of presidential proclamations. Thus, for the Unit to investigate, the President has to give it the authority to do so; the Unit cannot function if the president does not approve or issue proclamations. However, Heath, the former head of the SIU argued that

we are completely independent from government. We are a statutory body, independent from government. I am happy with the appointment by the President. After we have received a case or report, we refer a proclamation to the Ministry of Justice then to the President to approve. This gives the impression that we are being controlled. The problem is that it takes long for proclamations to be approved or signed. Otherwise the Special Investigating Unit is successful and has never had problems with proclamations being signed by the president. Politicians co-operate with us (Interview, 11 May 2000).

Contrary to this view, anecdotal evidence suggests otherwise. There have been indications of “growing friction” between the Unit and government. Former President Nelson Mandela’s office accused the SIU “of preparing sloppy referrals” for investigations which “resulted in litigation or threatened litigation” (*Business Day*, 13 October 1998). In 1999, the Pan Africanist Congress (PAC) MP, Patricia de Lille, disclosed that 91 investigations initiated by the Heath Unit were still awaiting government approval. Some of these investigations were pending since 1997 (*Mail & Guardian*, 26 November 1999). The cases pending in 1999 included an investigation into the contents of the 1997 Semanya report regarding malpractices in the Northern Province Government. The Semanya Report, amongst others,

establishes prima facie evidence of the provincial Department of Public Works having paid R 18.6-million for a building worth only R 8-million; the unauthorised expenditure of R97-million for a government complex; the purchase of 19 luxury vehicles for government officials without proper

authorisation; and a housing scam where officials would occupy government-owned properties rent-free while receiving housing subsidies.

...Among those implicated in the scandals are many serving members of the African National Congress-led provincial government of Premier Ngoako Ramathlodi (*ibid.*, 26 November 1999).

Another case pending in 1999 was a request in September 1998 for the government to approve an investigation relating to

the issuing of a promissory note of R600 million by a Tribal Trust in KwaZulu-Natal to a company identified as Polokwane Trust with state assets illegally put up as security against which the trust could raise money. The proposed investigation has apparently been stalled by the failure of the KwaZulu-Natal premier to consent to the investigation and recovery of state funds (*ibid.*, 26 November 1999).

Furthermore, the *Mail & Guardian* claimed in 2000 that, “the state and the taxpayer ...lost at least R390m because government is preventing the Judge Willem Heath’s Special Investigative Unit from investigating cases of corruption” (*Mail & Guardian*, 24 January 2001). The amount of R390m was arrived at on the basis of 26 cases of potential corruption; the value of a further 33 cases of alleged corruption had not been established (*ibid.*, 24 January 2001). These examples indicate that the Unit depended on the goodwill of the President to investigate, and on Regional Premiers in cases where the matter concerned falls under a particular Region. In this sense, Premiers were unlikely to consent to the Unit’s requests for an investigation if such an investigation was likely to affect their positions, and those of their close associates in government.

The relations between the SIU and government appeared to deteriorate after Thabo Mbeki became President. Since the 1999 elections when Thabo Mbeki assumed the Presidency, practically no proclamations have been approved

“leaving the unit powerless” (ibid., 24 January 2001). The Ministry of Justice, which prepares proclamations before they can be submitted to the President for approval, “refused to prepare these proclamations”. For the year 1998/99, 53 proclamations were issued whereas in the year 1999/2000, only 15 were issued. For the period 1 April 1999 to 31 March 2000, “the unit has sent 83 motivations for investigation to the Justice Department, but not a single one was completed, bringing the number of outstanding cases to 127” (ibid., 24 January 2001). This was lower than what the unit recovered in the previous year (some R1.3b). Heath’s position was undermined fatally after the Constitutional Court ruled that “it was inappropriate for a judge to head such a unit” because it blurred the line between the executive and the judiciary (ibid., 24 January 2001). In January 2001, President Mbeki excluded the Heath Unit from taking part in an investigation into the controversial 1999 R43 billion arms contract. Mbeki “froze the unit out of the investigation and the government subsequently announced that it would be disbanded” (ibid., 30 January 2001).

President Mbeki observed that the arms probe would be ably conducted by the Public Protector, the Auditor General and IDSEO (*WOZA News*, 7 February 2001). The President made this claim despite an admission by the Minister of Justice that the Public Protector and the IDSEO “lack[ed] the necessary cohesion to produce satisfactory results”, and the Public Protector lacked powers “to enforce its findings” (Republic of South Africa, 2001:<http://www.polity.org.za>). For the President, however, the matter was one of government authority: “it is also clear that we cannot allow the situation to continue where an organ appointed by and accountable to the executive refuses to accept the authority of the

executive” and to “run out of control”. Further he noted that “this situation of ungovernability will not be allowed to continue” (*Mail & Guardian*, 20 January 2001). The President’s comments openly reject the idea of SIU independence in the conduct of its investigations; it was up to government to decide what ‘an organ appointed by the executive’ could and could not do. The arms investigation ultimately exonerated government of any corruption although it noted wrongdoing of certain government officials (Republic of South Africa, 2001). Its main casualty, however, was the integrity of SIU anti-corruption investigations and, ultimately, the Heath Unit itself.

Following the clash over the arms probe, Willem Heath resigned as head of the SIU and from the judiciary in June 2001. A number of the Unit’s staff also resigned. President appointed the Deputy National Director of Public Prosecutions, Willie Hofmeyr, as the new head of the Unit which fell under the control of the National Directorate of Public Prosecutions (*Mail & Guardian*, 27 July 2001). Under Heath, the Unit was regarded as ‘the most fearless’ (*ibid.*, 23 December 1998) and ‘the most effective’ anti-corruption organisation in South Africa (*ibid.*, 12 March 2001).

### **Problems faced by anti-corruption agencies in South Africa**

Anti-corruption agencies in South Africa face a number of problems, which impact on their effectiveness in combating corruption. According to Camerer (1999) a successful and effective anti-corruption agency should have; sufficient monetary resources, sufficient experts, special powers, independence, and coordination. In addition to these requirements as laid down by Camerer, governmental support is pertinent in the fight against corruption. Without such



support it would be difficult to ensure that the above criteria is met for anti-corruption agencies to function effectively. It is worth noting that fighting corruption takes a lot of resources and commitment. The question that arises is; do the various anti-corruption agencies in South Africa meet the above requirements?

In South Africa, the consensus is that anti-corruption agencies are under-resourced in terms of financial and human resources (Heath, 1999, Camerer, 1999). In 2000, a telephonically administered questionnaire by Markinor in which more than 150 experts were interviewed as part of the Institute for Security Studies survey on the causes and controls for combating corruption in South Africa found that “lack of resources are seen as the main problem with the government's fight against corruption, with 73% of experts holding the opinion that the government does not have sufficient resources to fight corruption”. The survey was sponsored by the European Union (*Mail & Guardian*, 12 March 2001). The difficult question to answer is whether anti-corruption institutions are *deliberately* starved of the resources to execute their mandates.

Insufficient funding seems to be a problem, which affects all the agencies in South Africa. Although South Africa today has many anti-corruption agencies than ever before, according to the Public Protector Selby Baqwa, most of them are “underfunded, and do not work together, duplicating each other's investigations and not really making an impact” (*Mail & Guardian*, 31 May 1997). For instance, in 1998/99, the Public Protector requested for R22 million but was awarded some R7.5 million (*Sunday Independent*, 22 March 1998; *ibid.*, 6 march 1998). For the financial year 1997/98, the office of the Public Protector received R5.8 million (*Business Day*,

18 March 1998). In 1998, the Public Protector of South Africa, Advocate Baqwa said “I sense the political will is still there to stop corruption. But this has not translated into resources” (Mail and Guardian, 6 March 1998). The Public Protector had to set aside a planned communications campaign because of shortage of financial resources (*Business Day*, 18 March 1998). Commenting on the budget, an official in the Office of the Public Protector said “we are not satisfied with our budget but we got an increase in the last two years” (Interview, 8 May 2000). As for the Special Investigating Unit, ‘it also faces the problem of underfunding’ (Interview, 11 May 2000). In 1998, its “annual budget was just over R16 million...but it wanted R32 million to start an expansion process” (*The Star*, 5 October 1998). Similarly, IDSEO was underfunded. A recommendation for the creation of an extra 29 posts could not be done because of shortage of funds (Republic of South Africa, 1997: 2). This suggests that funding is a big problem for these organisations.

With regard to human resources, “in 1999 the Special Investigating Unit had 95 members of which 50 of them were doing the actual investigation. The Unit needs about 200 investigators for it to do the job better. In 1999, the unit had more than 220,000 cases. The Unit used a sophisticated computer system which enables it to investigate many cases quickly. But others required physical investigation to collect evidence. The majority of these cases originated from Gauteng Province followed by Kwazulu Natal” (Interview, 11 May 2000). In 1997, IDSEO then OSEO took a decision not to undertake fresh investigations until the backlog “involving R 12bn” had been cleared (*Business Day*, 5 March 1998), and “staff become available” (Republic of South Africa, 1997: 6). “Neither OSEO nor the

Commercial Crime Unit of the SAPS (South African Police Service) nor the Attorney General and Senior Public Prosecutors have sufficient experienced staff to deal with commercial cases. OSEO does not have enough staff to investigate all cases that it could, let alone conduct prosecutions. The present system, in terms of which cases are handed over to the Attorney-General for decision and prosecution, which often results in long delays and duplication of work, will therefore have to continue" (ibid.). Similarly the Public Protector "has a huge backlog" and "can only handle half of the 200 complaints it receives each month, and says it needs more money to do its job properly" (*Business Day*, 5 March 1998). In 2000, the Office of the Public Protector had 61 investigators (Interview, 8 May 2000). Anti-corruption agencies needed to be backed by deeds, resources and a clearer mandate to be able to do their job better.

Moreover, in spite of "all ...the positive actions to combat" corruption in South Africa, anti-corruption agencies in South Africa "are too fragmented and lack a clear focus on who is doing what and how to go about it. The workload in some of the units is astronomical and will not be dealt with in the lifetime of the present operators" (Du Plooy & Hough, 1999: 27). And in some instances, one case is investigated by more than three agencies resulting in duplication and waste of resources (*The Star*, 8 October 1998).

With regard to the Special Investigation Unit (SIU), it also faced problems of significant delay in issuing or approving proclamations (Interview, 11 May 2000). The SIU operated on the basis of proclamations which are prepared by the Department of Justice and sent to the President for approval. Without any proclamations, the SIU became powerless. There was therefore a need for the SIU

to be able to launch its investigations at its own initiative, without having to seek presidential proclamations. Proclamations seemed to defeat the purpose of establishing the SIU. What concerned the former head of the SIU was that “official proclamations are required from the president, often acting on provincial premiers’ recommendation, before each investigation can proceed” (*Business Day*, 8 October 1998). This, it was believed compromised the independence of the Unit (*ibid.*, 7 October 1998). The proclamation process results in unnecessary delays. At times it takes up to six months before a proclamation can be issued (*ibid.*, 2 March 1998; *The Sunday Independent*, 31 May 1998). The appointment of its head by the President also gave rise to the perception that the SIU was subject to executive control and influence, a feeling confirmed by the intervention of the President in the investigation of the controversial R43 billion arms procurement deal. On the other hand, the Public Protector lacked independent powers to enforce its findings. IDSEO for its part lacked both independence from government and the cohesion needed to produce satisfactory results. In the light of these problems anti-corruption agencies in South Africa have produced disappointing results in terms of investigating high-level corruption. The problems faced by these agencies suggest that the purpose of anti-corruption agencies in South Africa might possibly have more to do with reassuring investors and aid donors in an age of globalisation than about actually attacking high-level corruption, an activity that would, after all, undermine the newly emerging political elites in South Africa.



## Conclusion

This chapter has offered a detailed exploration of the politics of controlling corruption in our case study of South Africa. Firstly, the chapter examined the way that the problem of corruption in South Africa is politically and structurally rooted. It locates the roots of corruption in South Africa in the structure and policies of the apartheid state. However, attempts by the new state to redress the practices of the past have created new pressures for corruption through some of its policies and because of some institutional weaknesses. That is to say, the new policies which have been in place since 1994 have shifted the location of corruption. As a result, corruption scandals have become part of the new politics of democracy. Corruption in South Africa appears to be widespread and diversified, and involves large sums of money. The form of corruption that is exhibited in South Africa is both qualitatively and quantitatively different from that found in Botswana and Namibia, an issue to which we will return to in chapter seven.

Secondly, the chapter has offered a discussion on the institutional mechanisms that have been put in place to combat corruption in response to the growing problem. The chapter examined the reasons for establishing anti-corruption agencies as well as the nature of institutional mechanisms that have been introduced. It has also discussed the problems that attend anti-corruption agencies in South Africa, which are lack of resources, independence from executive control and statutory autonomy. Where statutory independence exists, as is the case with the Public Protector in South Africa, independent powers to enforce their findings are lacking. There is paucity of support for anti-corruption organisations because

anti-corruption activities clearly threaten not only the positions of politicians but also the stability of the political system itself. In the next chapter we discuss the nature of corruption in independent Namibia and the efforts to combat corruption in Namibia, in particular, through the Office of the Ombudsman.

## **Chapter six: Corruption and its control in Namibia**

This chapter discusses the nature of corruption and efforts to combat it in independent Namibia. In particular, it examines the role of the Office of the Ombudsman and recent efforts to establish a specialised anti-corruption agency in Namibia. Since its independence in 1990 Namibia has functioned as a dominant party system with some observable levels of pluralism. Since the independence elections in 1989, three multiparty elections have been held. All (1989, 1994, and 1999) were won by the ruling South West Africa Peoples Organization (SWAPO). The Transparency International Corruption Perception Index ranks Namibia as the least corrupt country in Africa after Botswana. However, cases of corruption in recent years have created a need for an effective anti-corruption strategy. Before examining the institutional mechanisms set up to fight corruption, the chapter explores the political economy of corruption in Namibia.

### **Corruption and the state in Namibia**

Corruption is not yet a major political problem in Namibia. This is the case despite its history of colonial occupation, apartheid and social division. At independence, Namibia “inherited a formidable legacy of internal conflicts and contradictions, arising out of the colonial and apartheid history of subordination, disempowerment, land dispossession and discrimination” (Sidaway et al, 1993: 27). Thus, like many African countries, Namibia “inherited” a highly centralized administration complicated by the establishment of Homelands administrations within Namibia by South Africa (Forrest, 1998: 9).

Like South Africa, Namibia was one of the few 'settler oligarchies' that existed in Africa (Bratton Van de Walle, 1997; Bauer, 2001). As noted with the case of South Africa in chapter five, 'settler oligarchies' differ from most African states in the sense that they do not possess the key institutions of Africa's neopatrimonial states (Bratton Van de Walle, 1997; Bauer, 2001). In settler oligarchies, "the dominant racial group used the instruments of the law to deny political rights to ethnic majorities" (ibid. 81). The same apartheid laws that were enforced in South Africa also obtained in colonial Namibia (Cliffe et al, 1999). It is this colonial legacy which in part gives Namibia a "distinctive character" (ibid. 57). Compared to South Africa, Namibia has a tiny settler population.

Namibia was mandated to South Africa by the League of Nations at Versailles in 1919 and it then existed essentially as a South African colony for seventy years until independence in 1990. South Africa administered the mandate in the interests of a small settler population and neglected the indigenous population, most of which was confined to the margins of the country outside the Police Zone. There was criticism of this policy because it ignored the duties to the local population specified in the mandate. In 1945 and 1946, the South African government under Jan Christian Smuts applied to the United Nations (UN) to incorporate South West Africa into South Africa but this was refused (Innes, 1981; Enquist, 1990). Nevertheless, South Africa continued to control the territory and disputed the rights of the UN to have any say in the matter, the issue twice (1966 and 1971) becoming the subject of litigation in the International Court of Justice in The Hague. In 1966, Namibia was declared the responsibility of the UN, which South Africa decided to ignore and violate. This was the case until 1988



when South Africa agreed to Namibia's independence (Sidaway et al, 1993; Cliffe et al, 1999).

In 1948, the Nationalist party which came to power in South Africa under D.F. Malan effectively incorporated Namibia into South Africa in a number of ways. First, settlers in Namibia elected MPs to the South African parliament. Enquist observed that "ten white members from South West Africa were seated in the Union House of Assembly and Senate and South West Africa was declared to be no longer subject to the provisions of the League of Nations' mandate" (1990: 65). The settler oligarchy was, to a large extent, an appendage to another settler oligarchy, that of the colonial power – which practised segregation (and later apartheid in the 1960s) in its own territory. Namibia thus has elements of comparison with South Africa.

Second, in 1963 after the Odendaal Commission, South Africa set up a series of Homelands in the territory and applied the principles of apartheid to its administration. As Forrest notes

the apartheid system in both Namibia and South Africa involved the creation of ethnically segregated homelands - a regional policy which was meant to entrench the relative isolation of the black African majority (and so called 'coloureds') from the privileged white minority. The goal of the system was to assure the political impotence of the non-white majority while maintaining a steady supply of poorly paid wage labourers for these countries' mining, industrial and commercial agriculture sectors (1998: 3).

These Homelands administrations were not only used as a source of patronage but they were also built on patronage and were therefore susceptible to corruption. Thus, the Homeland system allowed the use of patronage to local chiefs and

collaborators in much the way in which it did in South Africa but on a more meagre scale. Cliffe et al argued that “separate administrations were established for the different ethnic groups (including whites) and, political leaders were groomed and enabled to set up local patronage networks” (1999: 58). Thus, the Homelands administrations which “functioned as corrupt, puppet mini-governments” were directly controlled by South Africa (Forrest, 1998: 9). Those who collaborated with South Africa were generously rewarded. For instance, blacks who were willing to collaborate and served as ministers in Homelands administrations were “provided with a significant personal largesse, courtesy of the central government - typically, a modern house, a car and a farm or grazing rights” (ibid. 37). Tapscott observed that the “collaborative elite” which was made of civil servants, politicians and professionals “earned salaries which were sometimes on par with those of their white counterparts” (1995: 157). However, these Homelands ministers were not provided with funds for development projects in their Homelands. Instead, “all the ten non-white ethnic administrations were all characterized by a similarly corrupt, make-believe government” (Forrest, 1998: 37). Tapscott argued that the creation of “second-tier” administrations in the 1960s provided

opportunities for high salaries and benefits for those wishing to collaborate. [And] the considerable autonomy exercised by the ethnic governments and a general lack of accountability also presented opportunities for some individuals to enrich themselves through corruption. Evidence from the Van Eeden and Thirion commissions of enquiry, for example, provided evidence of widespread misappropriation of public funds among second-tier governments. It is evident that corruption and inefficiency, while not endorsed, were nevertheless tolerated as necessary for retaining the support of the leadership of the second-tier authorities (1995: 157).

Moreover, these ethnic administrations or governments were not necessarily representative. A few elections were held and these were skilfully managed by South Africa to ensure that positions in ethnic administrations were only occupied by chiefs who were recommended by the South African government (Forrest, 1998: 37). African chiefs in the reserves were also bribed or forced to recruit young men in large numbers to provide temporary labour for the mines or farms located in the Police Zone (Forrest, 1994: 89). This patronage has some elements in common with post-colonial forms of patronage.

Another beneficiary of South African patronage which was generously rewarded for collaborating with South Africa was the Democratic Turnhalle Alliance (DTA) which was formed in 1977 following a decision by South Africa to hold elections and establish a multiparty government in Namibia but without losing control over it (Forrest, 1998). These elections were won by the DTA but this was boycotted by the South West Africa People's Organization (SWAPO) and other parties which did not wish to collaborate (Cliffe et al, 1994). The DTA, which survived on official South African patronage, enjoyed the support and backing of the South African apartheid state (*The Namibian*, 4 November 1998). For instance, in the 1978 constituent assembly elections, the DTA "spent more than U.S.\$5 million from sources it refused to disclose, although there were suggestions of West German as well as South African finance" (Cliffe, 1994: 38). However, it later came out that the DTA was funded by the former South African Ministry of Information (ibid. 38). The DTA also "received official backing ... to buy the two leading Windhoek newspapers, *The Windhoek Advertiser* and *Die Allgemeine Zeitung*" (Green and Kiljunen, 1981: 10). Likewise, in the 1989 independence

elections, the South African government covertly financed the DTA's 1989 electoral campaign and, used part of the N\$185.5 million which was put aside to underwrite secret "disinformation campaigns". The secret funds were used both to enhance the electoral chances of the Democratic Turnhalle Alliance (DTA) and to undermine those of SWAPO (*The Namibian*, 4 November 1998). It is against this context that Namibia can be explained.

Like South Africa, democratic Namibia is a new state and the political processes which give rise to patronage and clientelism are still in their infancy. However, there are signs that clientelism has developed in Namibia since 1990 but this has not degenerated into spoils politics. Since independence, there is a desperate need to transform and rationalise the new state to ensure that it reflects all. In trying to redress past imbalances, new policies such as affirmative action have given rise to political appointments. Affirmative action is a deliberate policy designed to remedy past imbalances and improve the conditions of those disadvantaged by the previous regime. Thus, since independence, political appointments were made to key institutions where power is concentrated. For instance, in December 1989, SWAPO appointed permanent secretaries for the new sixteen ministries (Cliffe et al, 1994). Politically, there was a need to restructure the civil service because almost none of the senior positions in the Namibian Government Service had been held by black Namibians. The changes were "set in motion by the civil service restructuring team" which tried to appoint a lot of blacks to senior positions (Cliffe et al, 1994: 216). As a result of these appointments, the size of Namibia's public service has almost doubled. Namibia's civil service "has increased from 46,600 employees at independence to about 80,000 at present, mainly for political reasons. Government



has been absorbing large numbers of former liberation war fighters into the civil service, primarily into defence and security forces" (*The Namibian*, 2 October 2000). Recently, SWAPO's Secretary General said "strategic positions in the public sector and at state-run parastatals will be given to rank-and-file SWAPO loyalists" (*ibid.*, 4 December 2000). These appointments were made in part because there is a need for the new state to have its allies who would appreciate and encourage its new priorities and the public sector is where quick changes can be easily made.

Although affirmative action is necessary to ensure that the new state reflects all, it may give rise to new opportunities of corruption. According to the Modernisation school of thought, countries or political systems in transition are characterised by rampant corruption and recurrent instances of violence (Huntington, 1968). However, this has not been the case in Namibia. Cases of corruption are "fairly isolated" (Geingob, 1997: 5). At independence, civil servants employed by the colonial government were guaranteed job security (Tapscott, 1993). Although, there was a sense of insecurity amongst these in the first months of 1990, they did not resign in large numbers a few weeks before independence (Cliffe et al, 1994). Moreover, the government of Namibia has treaded carefully "on issues of affirmative action, minimum wages and the question of land redistribution" (Tapscott, 1993: 33). This is in part because SWAPO controls political power but it does not control the economy.

Nevertheless, affirmative appointments have recently given rise to charges or accusations of nepotism, favouritism and discrimination. A United Democratic Front (UDF) Member of Parliament (MP) "accused the Ministry of Fisheries and

Marine Resources of nepotism and discrimination in the allocation of fishing quotas” during the debate of the Marine Resources Bill (*The Namibian*, 4 October 2000). The UDF MP said “everybody knows that so far only a selected few who are hand-picked on the basis of a strong party affiliation” benefited from quotas (ibid., 4 October 2000). The appointment of Namibian Ambassadors which is the sole prerogative of the President has also been criticised from certain quarters amongst others by the Public Service Union of Namibia and opposition parties. The Public Service Union said that “the fact that out of 18 missions abroad only two (Botswana and Brussels) were headed by Namibians from different ethnic groups was disturbing” (ibid., 4 December 1998). Similarly, “the DCN MP spoke of tribalism and sexism in the appointment of top diplomats. He pointed out that of the 20 Namibian mission chiefs only two were women and 18 were Oshiwambo speakers” (ibid., 11 March 1999). Oshiwambo is a language spoken by the Ovambo, the biggest ethnic group in Namibia. For the sake of national reconciliation, the Namibian Public Service needs to reflect the ethnic composition or diversity of Namibia.

Yet although the Transparency International Corruption Perception Index gave Namibia a relatively favourable rating, corruption is perceived as a problem. In a survey conducted by the National Democratic Institute of Namibia in 1998, in which 269 respondents participated, corruption was ranked “as the fifth most important issue facing the Namibian nation” (*The Namibian*, 8 October 1998). Other issues identified by the survey, as areas of major concern were land redistribution, education, unemployment and health care. 45% of the respondents felt that corruption was prevalent in government departments, with 20%

suggesting that corruption was common in the police service and courts of law. Moreover, “more than 30 per cent of the respondents said members of the Police are most likely to take a bribe (cash, gifts or favours) followed by civil servants (25 per cent), and Government Ministries (over 10 per cent)” (ibid., 8 October 1998). Furthermore, “almost 50 per cent of the respondents indicated that Namibia's economic growth is being severely affected by corruption, while unemployment is regarded as the second most affected at 10 per cent”. The respondents were taking part in 10 regional corruption consultative workshops, organised countrywide. The workshops were part of an anti-corruption drive initiated by the Office of the Prime Minister and, meant to cultivate ethical practices in government and private sector (ibid., 8 October 1998). Yet, despite these activities, there is a public perception which believes that corruption is prevalent in Namibia and, it is widely believed that many government ministers are involved in corruption (Interviews, 22, 24, 26, 28 February 2000). In fact, corruption has not reached a stage where public officials extort bribes, “whereby a traffic officer can stop you and say, you did not indicate; you give me N\$10 or I give you a ticket” (Interview, 24 February 2000). One senior civil servant in the Ministry of Water Affairs suggested that “the only way to solve the problem is by changing the party in power. This can be done through elections but the Namibian people do not express their dissatisfaction during elections” (Interview, 26 February 2000).

### **The nature of corruption in Namibia**

For all that has been said thus far, Namibia has its own share of corruption. Below we discuss some of the cases of corruption which have been exposed in Namibia.

In 1992, several Presidential Commissions of Inquiry were established to investigate corruption, abuse and misuse of government property and misappropriation of government funds (Republic of Namibia, 1993). These include the Frank Commission of Inquiry into the Abuse and Misappropriation of State Property, the O'Linn Commission of Inquiry into the Fishing Rights and the Levy Commission of Inquiry into Education in the Caprivi. Their findings have been kept away from public view (National Society for Human Rights of Namibia, 1995: 9). The Frank Commission revealed few cases of large scale fraud but widespread instances of petty corruption in various ministries such as misuse of travelling allowances. In all the cases, those found guilty were discharged, tried or investigated further (Forrest, 1994: 93). Nevertheless, attempts to publish the findings of these commissions have been dealt with accordingly. Two editors were charged on 22 June 1992 and later prosecuted for publishing secret documents of government against a presidential proclamation, which outlawed the publication of the findings of two such commissions (National Society for Human Rights of Namibia, 1995: 9)

In addition to these commissions of inquiry, a number of cases have been either brought before the courts or reported in the private newspapers. One such case involved the Katutura Single Quarters upgrading project by the National Housing Enterprise (NHE) - the Ministry of Regional and Local Government and Housing - from 1993 to 1996 which has come to be regarded as Namibia's "largest corruption trial" since independence (*The Namibian*, 5 May 1999). In this case, a Chief Executive Officer of the NHE received a three-year jail sentence for bribery but acquitted on charges of fraud (*ibid.*, 5 May 1999). Moreover, a former



Director of the Ministry of Housing, a Managing Consultant, Nouiseb and his former employee, a building contractor Bampton and his former employee were convicted on fraud charges for causing the NHE “to pay out N\$12,123 million on the project from February 1993 to March 1996” through misrepresentation (ibid., 3 May 1999). This was done “while they knew that all the work that was paid for had not been done, all the material paid for had not been used in the project and, the quantity surveyor’s certificates on which the Housing Ministry’s payments to contractors were based were not correct” (ibid., 3 May 1999). Delivering the judgement, the court noted that the whole project “was riddled with ‘complete negligence’ by all the participants” including the former Minister of Housing, Amathlia and her permanent secretary. The permanent secretary of the Ministry of Housing “had clearly committed perjury when he testified” (ibid., 3 May 1999). Moreover, “an investigation by the Office of the Ombudsman uncovered the alleged irregular use of benefits by some NHE managers” (ibid., 13 July 1998).

Another case involved “a wedding gift” for the Minister of Fisheries and Marine Resources, Abraham Iyambo. In 1999, Iyambo received “a wedding gift” of N\$140,000 from fishing companies to underwrite his wedding (ibid., 2 July 1999). This landed him in an embarrassing position. The minister’s wedding gift which was supposed to be “anonymous” (ibid., 3 June 1999), was “from businesses which depend on his judgement for their livelihood” (ibid., 22 June 1999). “Donations were solicited from at least 67 fishing companies to financially underwrite” the wedding Iyambo (ibid., 2 June 1999). One of the functions of the Ministry of Fisheries and Marine Resources “include allocating fishing quotas and even fishing rights worth tens of millions of dollars to fishing companies” (ibid., 2

June 1999). Iyambo's wedding donations came "at a time when existing fishing quotas which have run for seven years" were "due to come up for review" (ibid., 2 June 1999). This was a clear case of conflict of interest and corruption. However, Iyambo failed to accept this and, maintained that he did nothing wrong. Instead, he described his critics as "racists who cannot afford to accept that a young black man can have what they call a glittering wedding" and used "their power of the media to misinform the public under the so-called moral ethics and euro-centric outlook" (ibid., 22 June 1999). Further, he said that "they are jealous of a young black man who despite colonial suppression and being forced into exile at a "tender age" studied hard to achieve academic excellence" (ibid., 22 June 1999). Iyambo did not resign despite the calls and criticism from various quarters for him to do so.

At the height of the wedding scandal, some observers doubted if "Government will take any action even if impropriety is proven" because "in the past wrongdoers have either been promoted or shifted sideways without being punished". In some cases "the culprits were publicly defended by their superiors" (ibid., 11 June 1999). Apparently, the President Sam Nujoma defended the Iyambo saying "he has done nothing wrong" (Interview, 03 March 2000). Defending Iyambo, President Nujoma said "I am of the opinion that the fishing companies made donations to the wedding of Dr Iyambo on their own free will. Therefore, I want to make it categorically clear that Dr Iyambo remains innocent" (*The Namibian*, 30 June 1999). Moreover, President Nujoma said "Iyambo had not created a conflict of interest by accepting the funds despite the fact that the Fisheries Minister decides which companies should receive fishing quotas and rights" (ibid., 2 July 1999). Both the President and Iyambo saw nothing wrong in

accepting the wedding “gift” from fishing companies which depend on the Minister’s decision for their businesses.

However, an investigation by the Office of the Ombudsman found that the minister’s decision to receive the wedding gift from the fishing companies contravened section 42 of the Namibian Constitution. The Ombudsman stated that “by having accepted such donations, whether he knew about them or not, [Minister Iyambo] created a situation contemplated in article 42(1) of the Namibian Constitution to the extent that he exposed himself to a situation which carried with it the risk of a conflict developing between his interests as minister and his private interests” (ibid., 21 September 1999). Section 42 of the Namibian Constitution clearly stipulates that

during their tenure of office as members of the Cabinet, Ministers may not take up any other paid employment, engage in activities inconsistent with their positions as ministers, or expose themselves to any situation which carries with it the risk of a conflict developing between their interests as Ministers and their private interests. No members of the Cabinet shall use their positions....directly or indirectly to enrich themselves (Republic of Namibia, 1990: 28).

In another case of misconduct which led to the sacking of the former Minister of Agriculture, Anton Von Wietersheim, President Nujoma overruled the Public Service Commission (PSC) which had found a senior official in the Ministry of Agriculture, Otto Hubschle guilty of misconduct. Von Wietersheim was sacked “after pushing for disciplinary action against Hubschle in 1993” (*The Namibian*, 27 October 1998). Hubschle had “ignored appropriate regulations by not obtaining a permit to produce and sell a lung sickness vaccine which was sold through the private sector for distribution by the United Nations Children’s Education Fund (UNICEF) in Angola without approval from the treasury and his superiors” (ibid.,

11 June 1999). He had ignored the instructions from the Director of Veterinary Services to test the vaccine. Hubschle also “used state facilities and resources to produce hyperimmune parvo serum for dogs and then provided it to a private practitioner” (ibid., 11 June 1999). The PSC had recommended that Hubschle either be transferred or assigned another duty in the Ministry. Instead, Nujoma found “the recommended penalty too heavy” (ibid., 11 June 1999). Otto Hubschle was a close friend of President Nujoma (ibid., 11 June 1999).

Moreover, in June 1995, a Minister, Deputy Minister and a senior civil servant were embroiled in a borehole scandal. The National Assembly session which was about to discuss the borehole scandal report was adjourned swiftly (National Society for Human Rights, 1995: 10). Similarly, two Ministers were alleged to be involved in a drought relief scam. Cabinet dismissed the findings of an ad hoc Cabinet Committee into the drought relief scam. The two ministers were “exonerated” by Cabinet although they had embezzled around US\$56,000 of drought relief funds (ibid. 13). In 1994, an investigation by the Ombudsman found a senior ranking official in the Ministry of Foreign Affairs guilty of irregularities involving the acquisition of Mercedes limousines worth US\$3.8 million for Namibian missions abroad. The Ombudsman found out that the official who was responsible for the acquisition of Mercedes limousines “had received a kickback of some US\$4,400” (ibid. 12).

The Auditor General’s reports also reveal several cases of fraud, unauthorized expenditure and financial mismanagement. For instance, the Auditor General’s report for the year ending 31 March 1998 noted fraud totalling N\$486,785.21 in the



Ministry of Fisheries and Marine Resources, which was being investigated. The same Ministry also “failed to keep proper accounting records”. The report was also critical of unauthorized expenditure, noting that “exceeding approved budget limits represents disregard of the National Assembly’s powers to control and authorize the use of tax payer’s money for approved activities and up to specified limits” (Republic of Namibia, 1999: 3). Similarly, the Auditor General’s report published on July 1994 criticised “the Nujoma government for widespread financial mismanagement and accusing three ministries of criminal fraud” (Banks, 1999: 682). Likewise, the Auditor General referred another case to the Commercial Crime Investigating Unit of the Namibian Police in which the City Council “was defrauded of N\$512,650 by a security employee” (*The Namibian*, 26 September 2000). Similarly, for the financial year ended March 1999, overspending by seven ministries resulted in an unauthorised expenditure of almost N\$160 million. In the office of the President, the Auditor General “found that N\$253,593 was paid to a firm without obtaining the necessary Tender Board for approval” (*ibid.*, 28 September 2001).

Fraud appears to be the most prevalent form of corruption exhibited in Namibia. Around 90 people were arrested in connection with a medical fraud in which more than US\$270,000 was stolen. About half of those arrested were employees of the Department of Medical Aid in the Ministry of Finance. The leader behind the medical aid fraud received a five-year jail sentence (*ibid.*, 4 August 1998). In what was believed to be “a tip of the ice berg”, a fraud cheque scam amounting to “N\$332,613 in false salary and leave gratuity claims” was uncovered in the Ministry of Environment and Tourism (*ibid.*, 21 December 2000). In another case,

a court clerk received a one-year jail term “for accepting a N\$40 bribe in return for destroying a court control document” (ibid., 18 May 1998). In yet another case “concerning the provision of laundry services to the Ministry of Health and Social Services”, a Laundry Superintendent in the Ministry of Health together with the Managing Director of Lida Cleaning Services faced charges of “fraud totalling over N\$2.4 million”. Lida Cleaning Services “was contracted to wash sheets and blankets for the Ministry of Health and Services and the alleged fraud was committed by allegedly inflating the number of sheets and blankets paid for by the Ministry” (ibid., 3 February 1999). The Laundry Superintendent pleaded guilty to all charges of fraud and bribery and further “admitted that he received ‘various amounts of money’ from ... Lida Cleaning Services as consideration for forging laundry lists, issuing vouchers and invoices which indicated the number of sheets and blankets washed to the Ministry” (ibid., 3 February 1999). Similarly, a principal accountant in the Ministry of Works and Transport was “charged with fraud amounting to N\$3.2 million” (ibid., 26 April 1999). A former police detective claims he was pushed to resign from the Namibian Police Service after he had uncovered corrupt practices by senior police officers. The former detective claimed that a number of cases have been “covered up” among others “the diamond case” in which police detectives were ordered by a senior police officer to return N\$500,000 to a diamond dealer, “the sale of Government car parts worth more than N\$450,000 by a police mechanic at Tsumeb, the misappropriation of Police Tea Club money to the tune of N\$400,000 by a Regional Commander who used some of the money to buy cattle and, the selling of driving licences involving a Commissioner” (ibid., 15 May 2000).

Insurance companies, banks and parastatals were also affected by fraud. It was estimated that "Namibia's insurance industry loses about N\$5.7 million a year through fraudulent claims by unscrupulous clients who collaborate with dishonest insurance agents" (ibid., 24 July 2000). For instance, in 1999 the insurance industry uncovered 23 cases of dubious fraud claims which amounted to N\$150,000 combined. By 24 July 2000, 17 cases of fraud that amounted to N\$990,000 had been uncovered. It was reported that "in a separate case a Windhoek couple were charged with insurance fraud after they claimed over N\$1 million from three insurance companies basing their claim on an armed robbery allegedly faked by the couple" (ibid., 24 July 2000). A resident of Windhoek defrauded Old Mutual Insurance Company some N\$30,000 by "faking the deaths of three of his children to collect funeral insurance pay-outs" (ibid., 5 September 2000). Similarly, four people appeared in court on 13 March 2001 for defrauding the First National Bank, N\$3.3 million between 1994 and 1999 to finance "their gambling habits" (ibid., 14 March 2001). A former bank clerk was charged with fraud for stealing "N\$275,000 from the Roman Catholic Church bank account" (ibid., 2 June 1999). In 1998 "an attempt was made to defraud the City of Windhoek of N\$9 million. Three Bank Windhoek cheques belonging to the City of Windhoek, issued separately for N\$2.59 million, N\$3.61 million and N\$2.78 million were deposited into a Millennium Individual Trust's account....in South Africa using falsified signatures" (ibid., 26 September 2000). Moreover, an official of Namibia Post's banking and investment division was suspended following allegations of "forged signatures" in which the sum of N\$50,843,12 was stolen from customer's accounts (ibid., 30 January 2001). In another case "a former TransNamib manager was...sentenced to pay a fine of N\$5,000 after he pleaded guilty to 35 charges of defrauding the parastatal of almost

N\$1 million” (ibid.,2001:<http://www.namibian.com.na>). A former claims Manager of the Social Security Commission was sentenced to 15 years in prison for defrauding the Commission over N\$0.6 million over a period of seven years (ibid., 22 April 1998). The former Chief Executive Officer of the Indigenous People’s Business Council of Namibia, an organisation “which aims to advance indigenous business people” was sacked for defrauding the Council more than N\$15,000 (ibid., 16 November, 1998).

These cases of corruption created a need for the establishment of an effective anti-corruption strategy to combat corruption in Namibia. In the last four years, the government of Namibia published good “intentions to root out graft” (*Business Day*, 27 June 2000). That is to say, in addition to commissions of inquiries which were established to investigate corruption, there have been efforts to establish a comprehensive anti-corruption agency to combat corruption in Namibia. In Namibia, the country’s Prime Minister leads the anti-corruption crusade. The section that follows discusses the political process that preceded the introduction of anti-corruption reform in Namibia.

### **The process towards institutional reform in Namibia**

The process leading to anti-corruption reform has been underway for the past four years. It commenced with the staging of an anti-corruption conference. Anti-corruption conferences are part of a global agenda which was aimed at cultivating an international climate of intolerance to corruption. In June 1997, a conference on the Promotion of Ethics and Combating Corruption was held in Namibia. The anti-corruption conference was staged by the government of Namibia in



partnership with Transparency International (Szeftel, 1998). It brought together experts from within and beyond Namibia. In addition to making corruption an issue of public debate in Namibia, it also highlighted the effects of corruption on development. Furthermore, the conference looked at the existing anti-corruption legislation in Namibia, identified its weaknesses and ways of improving on it. It also examined anti-corruption legislation which had been introduced in Botswana, Uganda and elsewhere.

As a way of reinforcing the anti-corruption momentum, regional anti-corruption workshops were held countrywide from August 5-15 1998 (*The Namibian*, 14 August 1998). The purpose of these workshops was to try and cultivate “ethical behaviour and practices” both in government and in the private sector (*ibid.*, 19 August 1998). Some of the topics which were discussed at the regional workshops included permits and fishing quotas, freedom of information, watchdog agencies, whistle-blowing, awarding of tenders, double standards and the status of corruption in criminal law (*ibid.*, 19 August 1998). The basic message at all these workshops was that corruption has devastating effects on development, a message which is being emphasised by donor governments and agencies.

As a follow up to regional anti-corruption workshops, another National Consultative Conference on Combating Corruption and the Promotion of Ethics was staged in Windhoek from 7-9 October 1998. The anti-corruption conference once again brought together experts in the area of corruption. The aim of the conference was to devise a national integrity strategy for Namibia (Republic of Namibia, 1998). As one University of Namibia academic noted “the conference

concluded that Namibia should emulate Botswana and Uganda by establishing an independent or special anti-corruption commission to co-ordinate or deal with corruption” (Interview, 28 February 2000). Following this workshop, an official of the Legal Assistance observed that “the government of Namibia received funding from the United Nations Development Programme (UNDP) to draft an anti-corruption legislation” (Interview, 10 March 2000). Cabinet approved some of the recommendations that were adopted by the Technical Committee of the 1998 anti-corruption conference (*The Namibian*, 29 May 2001). It also accepted the idea of establishing an independent anti-corruption agency (*ibid.*, 23 June 2000). However, in 1999 cabinet “reached an impasse on whether the agency should be incorporated into the Prosecutor General’s office or operate on its own” (*ibid.*, 23 June 2000). It appears anti-corruption initiatives were “stalled” by the deadlock in Cabinet (*ibid.*, 29 May 2001). In March 2000, Cabinet agreed to establish an independent anti-corruption institution following months of “prevarication” (*ibid.*, 23 June 2000). Following this decision, the Namibian government declared that an anti-corruption legislation would be tabled in Parliament in 2000, and an anti-corruption unit will start functioning in 2001. This did take place (*ibid.*, 29 May 2001). In April 2001, President Nujoma when giving the State of the Nation speech in Parliament said that “there is no question of a new bill to come” (*ibid.*, 29 May 2001). A month later, at an international anti-corruption conference in The Hague, Namibia’s ambassador to the Netherlands and Belgium told the Namibian Newspaper that “the anti-corruption bill was being drafted” (*ibid.*, 29 May 2001). In June 2001, the Prime Minister also noted that the anti-corruption bill will be tabled in parliament in September 2001 (*ibid.*, 29 June 2001).

The government's delay in introducing the anti-corruption bill and the confusion that followed thereafter, in certain quarters reflected lack of government commitment to combat corruption. The Namibian Government's recent "well-publicised" aims to combat corruption have been repeatedly criticised as worthless because there has been an unwillingness on the part of government to take action on reported cases like those which were exposed by the Frank Commission (ibid., 23 June 2000; *Business Day*, 27 June 2000). According to a SWAPO MP, Ruppel, "Namibia was on the right track" of tackling corruption but "a lack of political will as well as scarce resources to implement anti-corruption programmes were slowing down progress" (*The Namibian*, 2001:<http://www.namibian.com.na>).

After almost four years since the 1998 National Consultative Conference on Combating Corruption and the Promotion of Ethics, the anti-corruption bill was tabled in Parliament on the 25<sup>th</sup> of September 2001 (ibid., 26 September 2001). Although Members of Parliament (MPs) welcomed the introduction of the bill, a number of MPs including those of the ruling party raised several objections during the political debate of the anti-corruption bill. Some were critical of the sweeping powers of the envisaged anti-corruption commission (*Republic of Namibia Government News*, 13 November 2001). For their part, opposition MPs especially those of the Congress of Democrats (CoD) felt that the bill was inadequate and flawed in the sense that it lacked a comprehensive definition of corruption. They also wanted the anti-corruption commission to be granted independent powers to prosecute (*The Namibian*, 15 November 2001; Republic of Namibia, 2001). They were also critical of the appointment of Special Investigators by the Director of the

anti-corruption commission with the concurrence of the Prime Minister (ibid., 18 October 2001). Opposition MPs also objected to a clause of the bill which exempted the President (ibid., 18 October 2001; ibid., 19 October 2001). They were also critical of the provision that gave the President the powers to appoint the director of the anti-corruption commission and made such a director answerable to the Prime Minister (ibid., 10 October 2001; ibid., 11 October 2001; Republic of Namibia Government News, 10 October 2001). Other MPs wanted the director of the commission to be appointed by the judiciary. They felt that the involvement of the executive in appointing the head of the commission would put the credibility of the anti-corruption commission into question (ibid., 18 October 2001). Some opposition MPs wanted the anti-corruption bill to be referred to a Standing Committee on Government Affairs for all the loopholes in the bill to be addressed (ibid., 11 October 2001). The Prime Minister objected to the request of referring the bill in light of the “long delay in introducing the draft law” (ibid., 19 October 2001). Following these objections, the clause that exempted the President was removed from the bill (ibid., 19 October 2001). Moreover, the clause that gave the President the power to appoint the commission’s director was changed slightly to allow Parliament to appoint the director following a nomination by the President (ibid., 15 November 2001).

The anti-corruption bill was finally passed by parliament on the 13<sup>th</sup> of November 2001, despite some reservations about it. Most SWAPO MPs and members of the leading opposition, the DTA-UDF coalition supported the bill. However, two Cabinet Ministers, the Attorney-General and the Minister of the Environment abstained from voting. MPs for the opposition, the CoD voted against it (ibid., 15



November 2001). The envisaged anti-corruption commission in Namibia will have wide-ranging powers. These include the power to investigate, obtain information, to enter and search. The power to search will be exercised with the authority of a magistrate or judge. It will also have the right to inspect suspect's financial accounts. It may also require any person who is the subject of an investigation to furnish the anti-corruption commission with a statement of his or her assets and how such assets were acquired (ibid., 26 September 2001).

The anti-corruption bill also carries severe penalties. Anyone found guilty of corruption can be sent to prison for a maximum of 25 years or a fine of N\$500,000 or both. It also protects whistleblowers. Furthermore, any person who gives wrong information to the anti-corruption commission could be sent to prison for a period of not more than five years or face a fine of not more than N\$100,000 or both (ibid., 26 September 2001). However, like most anti-corruption commissions in Africa, it lacks independent powers to prosecute. The decision to prosecute rests with the Prosecutor General (ibid., 26 September 2001). The Director and Deputy Director of the anti-corruption commission will be appointed by Parliament following a nomination by the President. The anti-corruption commission will submit its report to the Prime Minister. The bill also provides for a mandatory code of conduct and declaration of assets by MPs (ibid., 15 November 2001).

However, the National Council rejected the anti-corruption bill by a two-thirds majority and, noted that "the tasks of the anti-corruption agency it was supposed to set up could be carried out by the Ombudsman's office" (ibid., 13 February 2002).

The National Assembly can either accept or reject the recommendations of the National Council. At the time of writing it has yet to react. If it accepts the recommendation of the National Council, “the Bill will be scrapped” (ibid., 13 February 2002). The main aim of the Bill is “to establish the Anti-Corruption Commission and provide for its functions; to provide for the prevention and punishment of corruption; and to make provision for matters connected therewith” (Republic of Namibia, 2001). The Bill provides for an anti-corruption strategy that involves investigation, corruption prevention and public education. The envisaged anti-corruption commission is modelled on the Independent Commission Against Corruption (ICAC) in Hong Kong.

Since independence, the Office of the Ombudsman has been the main institution that investigates corruption in Namibia. The section that follows discusses the Office of the Ombudsman. It examines the reasons for its establishment and the nature of its performance.

### **The Ombudsman**

The Ombudsman in Namibia was established in accordance with section 89 of the Constitution of Namibia. The Ombudsman in Namibia is constitutionally emplaced and directly linked to Parliament. Since independence, the Ombudsman has been the key institution that investigates corruption in Namibia. The Ombudsman is mainly an investigatory organisation that recommends remedial action where appropriate. However, there is the Prevention of Corruption Act of 1985 which criminalizes corruption. According to section 2 of the Prevention of Corruption Act of 1985

Any person who

a) in the case of the agent, corruptly accepts or obtains or agrees to accept or attempts to obtain from any person, either for himself or for any other person, any gift or consideration as an inducement or reward for doing or omitting to do or for having done or omitted to do any act in relation to his principal's affairs or business, or for showing or refraining from showing favour or disfavour to any person in relation to his principal's affairs or business; or

b) corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to his principal's affair's or business; or

c) knowingly gives to any agent or, in the case of an agent, knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead his principal,

shall be guilty of an offence and liable on conviction to the penalties which may by law be imposed for the crime of bribery.

The Prevention of Corruption Act of 1985 appears to be inadequate both in comprehensiveness and reach in combating corruption amid the changing and complex forms of corruption. However, there is no evidence to suggest that this Act is insufficient. In the view of one senior official in the Office of the Ombudsman "the Prevention of Corruption Act is not in use or has largely fallen into disuse" (Interview, 22 February 2000). As an oversight institution, the Ombudsman needs to be effective and impartial in discharging its duties. However, as we demonstrate later in the chapter, the Ombudsman is a weak and ineffective institution.

### **Functions and powers of the Ombudsman**

The functions and powers of the Ombudsman are defined and prescribed by the Ombudsman Act of 1990. The Ombudsman Act gives the Ombudsman wide-ranging functions and powers. Its jurisdiction is not only limited to government and local government institutions. It also extends to individuals, enterprises and private

institutions. The Ombudsman in Namibia has four core functions. Although it is not exclusively an anti-corruption organisation, one of its key functions is to investigate corruption. According to the Ombudsman Act, the Ombudsman is empowered to investigate acts of maladministration, issues of human rights abuse, acts of corruption and issues of the environment or misuse of natural resources. Section 3 (1) of the Ombudsman Act empowers the Ombudsman to investigate

(a) alleged or apparent or threatened instances or matters of violations or infringements of fundamental rights and freedoms, abuse of power, unfair, harsh, insensitive or discourteous treatment of an inhabitant of Namibia by an official in the employ of any organ of Government (whether national or local), manifest injustice, or corruption or conduct by such official which would properly be regarded as unlawful, oppressive or unfair in a democratic society;

(b) the functioning of the Public Service Commission, administrative organs of the state, the defence force, the police force and the prison service in so far as such complaints relate to the failure to achieve a balanced structuring of such services or equal access by all to the recruitment of such services or fair administration in relation to such services;

(c) the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia;

(d) practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms have taken place;

(e) all instances or matters of alleged or suspected corruption and the misappropriation of public moneys or other public property by officials.

These functions can only be exercised on the basis of a complaint either from an individual or institution. The Office of the Ombudsman cannot institute an investigation on its own initiative. A lawfully detained person shall lay a complaint by way of writing in a sealed envelope and the person in charge of the place where such a person is being detained shall hand such an envelope to the Ombudsman.



Before the Ombudsman makes any enquiry into any matter which falls within its remit, a complainant is advised or asked to exhaust the available channels of communication before taking the matter to the Ombudsman's office. However, this does not stop the complainant from contacting the Ombudsman's office initially. Direct access with the office of the Ombudsman is of paramount importance to ensure maximum use of the Ombudsman's office. However, in terms of section 3(6) of the Ombudsman Act, the functions of the Ombudsman "shall not apply in respect of any decision taken in or in connection with any civil or criminal case by a court of law". The intention behind this provision is to preserve the independence of the judiciary.

The powers of the Ombudsman are defined by section 4 of the Ombudsman Act and article 92 of the Constitution of Namibia. The Ombudsman has wide powers of investigation, entry, search and seizure. He or she can administer an oath and has the right to decide who is to be present or not at any proceedings of any investigation. The Ombudsman may also decide the extent and nature of any investigation of any matter in question. He or she may also force or request any person to produce any material that in the opinion of the Ombudsman is necessary for any matter in question. And any person questioned is required to co-operate with the Ombudsman.

More importantly, section 11 of the Ombudsman Act limits liability for officials of the Ombudsman's office. It states that "the Ombudsman, his or her deputy or any member of the staff of the Ombudsman shall not be liable in respect of anything done in good faith under any provision of this Act". This will ensure members of the Ombudsman discharge their functions without fear of being

prosecuted. Furthermore, section 7(2) of the Ombudsman Act gives the Ombudsman the right to ask for the assistance or expertise of any person, if he or she feels that such expertise is necessary to conduct any investigation.

However, the Ombudsman does not have independent powers to prosecute. Rather, the Ombudsman recommends remedial action or refers the matter to the relevant body or authority following investigation. According to section 5(1) of the Ombudsman Act, the Ombudsman can take appropriate action to remedy the situation; by causing the two parties to negotiate and compromise, referring the matter to the Prosecutor General or Auditor general, bringing proceedings in a Court to terminate the offending action, and make the superior of the offending person aware of the complaint and the findings of the Ombudsman.

Section 10 of the Ombudsman Act stipulates the punitive measures that can be levied following an investigation by the Ombudsman. It states that the person "shall be guilty of an offence and liable on conviction to a fine not exceeding R2,000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment". Punitive measures are necessary for the Ombudsman to be taken seriously. This does not suggest that severe penalties alone can constitute a deterrent. But the above penalties are relatively light.

Although the Ombudsman in Namibia has such wide-ranging powers, the fact that the Ombudsman cannot initiate an investigation on its own largely limits the use of these powers. These powers can be effectively utilised if the Office of the Ombudsman pro-actively uses them. This can be the case if the Office of the

Ombudsman is empowered to initiate an investigation at its own initiative. The section that follows examines the independence of the Ombudsman.

### **The independence of the Ombudsman**

The independence of the Ombudsman is of major importance to its success.

Commenting on the independence of the office, the Ombudsman in her annual report of 1997 wrote that

the independence of the Ombudsman in the exercise and performance of his or her duties and functions is guaranteed by the Namibian Constitution. Independence is, however, a relative term and as long as one is mindful that the office cannot operate in a vacuum, it becomes essential to forge links with government and civil society organisations (Republic of Namibia, 1997: 7).

Furthermore, she observed that

the impression created of the Office is that it is a witch-hunt institution and we would like to take this opportunity to dispel any such impression. The Office of the Ombudsman is an indispensable organ in the search for good governance and the promotion and protection of the rights of people. It is not an advocate on behalf of anybody but rather an advocate for good administration. It does not replace the courts but rather act complimentary to the courts in its pursuit of justice (ibid. 8)

This demonstrates that an independent Ombudsman is necessary for people to have confidence in it and to enhance its credibility. In Namibia, section 89 of the Constitution guarantees the independence of the Ombudsman, subject only to the law and the Constitution. It stipulates that no member of Cabinet or the legislature or any other person shall interfere with the operations of the Ombudsman and, all state organs are required to assist the Ombudsman to ensure the independence, dignity and effectiveness of the Ombudsman. Under section 6 of the Ombudsman Act, the Ombudsman reports to the Speaker of the National Assembly. The Speaker shall in turn cause the report of the Ombudsman to be laid before the National Assembly.

Although the Constitution guarantees the independence of the Ombudsman, certain factors give the executive a degree of influence in the office and that affect public confidence. First, is the appointment of the Ombudsman. According to section 90 of the Constitution, the President appoints the Ombudsman on the recommendation of the Judicial Service Commission. Although section 89 of the Constitution guarantees the independence of the Ombudsman, the appointment of the Ombudsman by the president gives rise to the perception that the Ombudsman is not immune from executive interference. For instance, as one opposition politician noted “at one stage, following the death of the Ombudsman, the President appointed the Deputy Ombudsman as the Ombudsman without following the constitutional procedures. However, following public outcry that the president had violated the spirit and letter of the constitution of Namibia, the appointment was reversed” (Interview, 10 March 2000).

For an anti-corruption agency to be effective in combating corruption at all levels in government, it needs to enjoy autonomy from the very people it is supposed to investigate. At the very least the Ombudsman needs to be appointed by Parliament. Furthermore, the appointment process of the Ombudsman needs to be made transparent. In the view of one senior opposition MP “one of the ways to make it transparent would be to have more than one candidate short-listed followed by an interview by a panel of experts before Parliament makes the final decision” (Interview, 10 March 2000). Moreover, the Ombudsman’s office “is for budgetary and other institutional arrangements linked to the Ministry of Justice” (Republic of Namibia, 1997: 7). There is a need to de-link its budget from the Ministry of Justice and link it to Parliament.



Another factor which puts the independence of the Ombudsman into suspicion is the terms and conditions. Although the Ombudsman must retire on reaching the age of 65, under section 2 of the Ombudsman Act, the President otherwise determines the terms and conditions of the Ombudsman. Furthermore, according to article 94 of the Constitution of Namibia, the President may remove the Ombudsman from office acting on the recommendation by the Judicial Service Commission. The President may also suspend the Ombudsman pending an outcome of the investigation by the Judicial Service Commission. This arrangement once again gives rise to the perception that the Ombudsman is not immune from executive influence. For the Ombudsman to enjoy security of tenure, his or her removal from office also needs to be linked directly to Parliament. This could also go a long way towards enhancing the credibility and instilling confidence in the Ombudsman's office.

### **Problems faced by the Ombudsman**

The Office of the Ombudsman in Namibia faces a number of problems which impact on its effectiveness. One such problem is funding. In the view of one senior official in the Ombudsman's office "funding is the number one problem faced by the Ombudsman's office in Namibia. Funding is a big problem in Namibia. It has been and continues to be a serious problem faced by the Ombudsman in Namibia" (Interview, 28 February 2000). Generally, the Office of the Ombudsman in Namibia faces uncertainty regarding the availability of funds (Republic of Namibia, 1999). With regard to its finances, it is accountable to the Ministry of Justice, which is its parent ministry. Available evidence suggests that

the Ministry of Justice is also under-resourced. For example, for the financial year 1999/2000, the Ministry of Justice was allocated some N\$101 million. Speaking during the budget debate, the Minister of Justice said that

courts are overstretched with cases; training is required to improve the administration of justice; more magistrates are needed together with support staff and logistics; the establishment of Small Claims courts as well as the streamlining of administration at Community Courts have been on hold for over seven years, all due to financial constraints (*The Namibian*, 14 May 1999).

For the same period, the Office of the Ombudsman was allocated N\$2,822,000 (Tjiriange, 1999). For the financial year 1998/1999, it was allocated N\$2,371,000 (Tjiriange, 1998) whereas for the financial year 1996/1997, the Office of the Ombudsman had a budget of N\$1,977,000 (Tjiriange, 1996). Although its budget has increased gradually over the years, it remains inadequate.

The second major problem faced by the Office of the Ombudsman in Namibia relates to staffing. The Office of the Ombudsman is understaffed. It lacks the capacity to fully implement its mandate. Although there is a provision to bring on board expertise from outside its office, ideally it would be proper to have capacity within its own office. The Office of the Ombudsman has a staff compliment of 12 excluding the Ombudswoman of which four are investigators (handle complaints). It is very thin on the ground. This is captured in the strategic plan of the Office of the Ombudsman in Namibia for 1999-2003, which notes that

as it is now, the establishment comprises a total of 12 posts, of which only four are designated for complaint handling. It is thus no wonder that the Office has not been able to efficiently and effectively deal with complex and systemic investigations, while mechanisms for the establishment of a regional presence could also not be considered, even on a limited scale (Republic of Namibia, 1999: 2).

According to a senior official in the Ombudsman's office, the office "has no immediate plans to establish regional offices in the immediate future because of lack of capacity. Rather, mobile clinics or regular visits to other regions are in use" (Interview, 28 February 2000). The Ombudsman is largely concentrated in Windhoek. There is no doubt that the size of the country presents a problem to an already over-stretched Office of the Ombudsman in Namibia. Moreover, the Office of the Ombudsman has a flawed organisational structure with some limited promotional opportunities. Further, it faces a problem of lack of co-operation from institutions complained against. It also operates amid diminished political support (Republic of Namibia, 1999). In the view of an official of the National Society for Human Rights, the Office of the Ombudsman is perceived as being fearful of politicians even though it is protected by the Constitution (Interview, 29 February 2000).

Another main constraint faced by the Office of the Ombudsman is that the Ombudsman in Namibia only acts on the basis of receiving a complaint from an individual or institution. The Office of the Ombudsman in Namibia does not act or investigate at its own initiative. According to one senior official in the Ombudsman's office, "this is a serious constraint for us" (Interview, 22 February 2000). The Ombudsman needs not to act on the basis of a complaint alone. The Ombudsman also needs to institute investigations or inquiries at its own initiative. For it to be able to do this, it has to be well resourced both in terms of finance and expertise. Linked to this, the Ombudsman only makes recommendations following its investigations. This makes the Ombudsman a weak and ineffective institution in Namibia. Although section 92 of the Constitution of Namibia empowers the Ombudsman to cause any person contemptuous of any of its

subpoena to be prosecuted before a competent court, this is not adequate. The Office of the Ombudsman needs to be strengthened so that it can have independent powers to arrest and prosecute if it is to make any impact. Otherwise it risks reducing itself to a disciplinary committee. In addition to this, it needs an awareness unit within its ranks that will help to make the public aware of its role and mandate. Currently, the Office of the Ombudsman has some limited public outreach programmes in place.

The other deficiency of the Ombudsman Act is that it does not provide for an adequate mechanism for protecting whistle blowers. Section 8 of the Act states that

the Ombudsman and every other person employed in carrying out the provisions of this Act shall preserve and aid in preserving secrecy in respect of instances or matters that may come to his or her knowledge in the exercise of his or her powers or the performance of his or her duties and functions in connection with those provisions, shall not communicate any such instance or matter to any person whomsoever or permit a person to have access to any documents in his or her possession or custody, except in so far as any such communication is required to or may be made in terms of this Act or any other law (Republic of Namibia, 1990: S.28).

This is not adequate. Whistle blowers need to be protected otherwise the office would be denied the support it needs from such people. In light of these problems, the ombudsman has produced disappointing results in investigating corruption. Moreover, the Office of the Ombudsman does not affect factors that promote corruption in Namibia. This may suggest that anti-corruption agencies in Namibia have more to do with reassuring foreign investors than to tackle corruption.



## Conclusion

This chapter examined the politics of controlling corruption in Namibia. It demonstrated that although corruption is not a major political issue in Namibia, several scandals and cases of corruption which have been exposed since independence have created a need for institutional reform.

It also discussed the nature of and efforts to combat corruption in independent Namibia. In particular, it examined the role of the Ombudsman and recent efforts to establish a specialised anti-corruption commission. Since independence, the Ombudsman has remained the main institution that investigates corruption in Namibia. However, several problems make the Office of the Ombudsman a weak and ineffective institution. It is extremely underresourced in terms of personnel and funding. Moreover, the Ombudsman is largely an investigatory organisation. It lacks independent powers to prosecute and it is not empowered to initiate investigations at its own initiative. As a result, its impact is not felt in Namibia. As Rose-Ackerman (1999:172) noted, Ombudsmen “seldom uncover large-scale systemic corruption”. This suggests that the Ombudsman in Namibia is a necessary institution but not sufficient to effectively tackle the problem of corruption especially high-level corruption. In the next chapter we bring together the individual case studies of Botswana, South Africa and Namibia with the aim of obtaining a comparative analysis of anti-corruption institutions in the three countries.

## **Chapter seven: A comparative analysis of anti-corruption initiatives in Botswana, South Africa and Namibia**

Having assessed the nature of political corruption and of anti-corruption efforts in each of our case studies in turn, this chapter brings them together in order to compare the anti-corruption agencies in Botswana, South Africa and Namibia. Comparison is made in terms of their nature, powers, level of autonomy, resources and effectiveness in tackling corruption. Before evaluating these anti-corruption agencies, however, it is necessary to examine how the state and patterns of corruption differ in the three countries.

### **The nature of the state and patterns of corruption in the three countries**

We can identify different kinds of state in the three countries. In Botswana, the state takes the post-colonial form but with developmental elements. In contrast, in South Africa, there is a combination of surviving elements of settler oligarchy and an emerging post-colonial state. In Namibia on the other hand, although it functioned as a small settler oligarchy dependent on the South African state, affluent remnants of the apartheid state remain and co-exist with post-colonial features. In all three countries, corruption is moderate but patterns of corruption are fairly similar as we demonstrate in the analysis that follows and as shown by Figure 7.1 below.

In Botswana, corruption follows prebendal and clientelist patterns. Patterns of clientelist patronage politics characteristic of post-colonial states can be identified although this is less prominent in Botswana than in much of post-colonial Africa.

This includes corruption which typically involves appropriation or looting of public goods to reward clients or increase personal wealth. This can be exemplified in the case of the National Development Bank (NDB) where some senior politicians, including the former President Masire, borrowed large sums of money from the bank but failed to service their loans, resulting in the NDB incurring huge losses and retrenching some of its employees.

But alongside this is clientelism and corruption associated with class (as distinct from personal or factional) formation which promotes private capital accumulation and involves the use of state resources to further the growth of propertied strata. This kind of corruption fosters accumulation, not just consumption as in the first case. The cattle class is an obvious example. Tsie has argued that, to the extent that the cattle based bourgeoisie has developed in Botswana, it has depended on the state. However, in contrast with much of post-colonial Africa, the state did not develop into the one and only vehicle for amassing wealth (Tsie, 1996). Thus, "economic pragmatism" dominates over factionalist looting (UNDP, 1997: 49). In Botswana, the use of patronage to foster propertied classes has not confined rewards to particular factions or regions. Even opposition elites have shared in it. Hence, the process has not created as much political controversy - and has not been as destabilising - as in other post-colonial states (e.g. Zambia, Kenya and Zimbabwe) - at least at elite level. But there is some cynicism about honesty of the political system. Moreover, patronage was used to a lesser extent to reward political followers. The ruling party in Botswana "has been compelled to utilise public polices to maintain political support" (Danevad, 1995: 393). The state used part of its wealth to advance welfare programmes for the

poorer sections of the populations (Molutsi, 1989: 126). For instance, the government launched a number of rural development programmes which strengthened “the popularity of the BDP amongst the peasantry” (Tsie, 1996: 605).

Similarly, in South Africa corruption followed clientelist patterns under the apartheid state. Afrikaner nationalism used the apartheid state much as African nationalist parties elsewhere on the African continent, in that they too sought to use access to public resources to change the circumstances of their supporters. Apartheid allowed them to limit and monopolise the capacity to access and appropriate public goods - much as factions seek to do in spoils politics described in chapter two. Although the apartheid state was a white state, run and dominated by Afrikaner nationalists, it nevertheless needed to reward allies and supporters through state patronage and payoffs. Such patronage was used to reward not only Afrikaners or White but also Indian, Coloured and Black conservative allies. In some ways the apartheid state built-in corruption in its Homeland policies, allowing the Homeland elites to line their pockets to a far greater extent than was permitted in the white state (Friedman, 1995).

Such state patronage was used to dispense rewards and favours for a variety of reasons and in a variety of ways. The most noticeable and more important was the nature of unchecked executive power and the rise of the security state under P.W. Botha with the adoption of the Total Strategy (TS) in the 1980s as the official policy of the apartheid state. This was also in many ways a source of criminal behaviour and corruption because the Total Strategy created an environment in



which corruption, authoritarianism and lack of transparency flourished. Efforts to suppress those who opposed the apartheid state both within and the Southern Africa region, led to an increase in corruption within South Africa (Ellis, 1996). The apartheid state used money to reward those who supported it and kill those who opposed it (Van Maanen, 1999) Through the Department of Information, the apartheid state covertly distributed government funds as a way of soliciting influence and support both within and outside South Africa (Ellis, 1996). In this sense, the structure of the apartheid state and the way it functioned institutionalised some forms of corruption. Politics was based on the post-colonial pattern of patronage. In this way, South Africa is essentially similar to most African states, which used politics and the state to change the position of their supporters. Under the apartheid state, corruption was part of a wider and more serious system of discrimination which had low legitimacy from the start.

Equally, since 1994, as in most post-colonial states, corruption in democratic South Africa follows prebendal and clientelist patterns - although the process is still in its infancy. Since 1994, public resources were used to redress inequality through tendering or procurement policies that give preference to small businessmen (Good, 1997). This is an area of corruption common to all states. What gives it a different force in South Africa is a need to empower those previously disadvantaged and redress the deep historical socio-economic imbalances inherited by the new state in 1994. This in a way may not be termed as corruption but as a way of narrowing the gap between the privileged and less privileged. The only major noticeable problem is the way in which the strategy is being pursued by the new state. This is in part because there is pressure on the

new state to deliver noticeable results within a short period. Thus inequalities can not be left to market forces because the market changes inequalities too slowly. Van Der Berg (1998) observed that racial inequalities are still a major problem, however, what he fails to acknowledge is that these inequalities developed over many decades and therefore they can not be addressed within a short period.

As in Botswana, the new state in South Africa is using public resources to promote elite capital accumulation by favouring black owned-enterprises. However, as in Botswana and Namibia, there is less emphasis on rewards to rank-and-file followers. This has resulted in payoffs for some party members. As we discussed in chapter five, a small black economic elite benefited from the policies of the new state and the development of capitalism since 1994. Not only did their incomes increase but also made significant gains in the Johannesburg Stock Exchange.

Alongside black elite capital accumulation, as in Namibia, democratic South Africa seeks to redress inequality through some types of affirmative action in the public service which are not based on merit values because the new state wants allies in government who would support its policies. These policies in turn led to clientelism and corruption. However, corruption has not been as destabilising as is the other post-colonial states, but there is growing cynicism about public honesty which threatens democracy.

Corruption in Namibia on the other hand, is a replication of the South African apartheid model - although on a meagre scale - because South Africa applied the

principles of apartheid to its administration. For instance, South Africa established a series of Homelands administrations within Namibia which were not only used as a source of patronage but they were also built on patronage and in turn susceptible to corruption. The Homelands administrations were not only a source of patronage and corruption, but they were also directly controlled by South Africa (Forrest, 1998). Those who collaborated with South Africa were generously rewarded. Tapscott observed that the “collaborative elite” which was made of civil servants, politicians and professionals “earned salaries which were sometimes on par with those of their white counterparts” (1995: 157). Thus, the Homeland system allowed the use of patronage to local chiefs and collaborators in much the way in which it did in South Africa but on a more meagre scale.

As in South Africa, clientelism in democratic Namibia is still in its infancy. Public resources were used to redress past imbalances through affirmative appointments and the promotion of black empowerment. As we noted in chapter six, affirmative action has given rise to political appointments. Since independence, political appointments were made to key institutions where power is concentrated. As a result of political appointments, the size of Namibia’s public service has almost doubled (*The Namibian*, 2 October 2000). Recently, SWAPO’s Secretary General expressed the need to appoint SWAPO cadres to key posts in government and parastatal organisations (*The Namibian*, 4 December 2000). Politically these appointments are necessary because there is need for the new state to have allies who would appreciate and encourage its new policies, and the public sector is where quick changes can be easily made.

Alongside affirmative appointments, as in Botswana and South Africa, public resources are used to promote elite capital accumulation in Namibia with less emphasis on rewards to rank-and-file followers. One opposition politician remarked: “imagine having a business in an area you are responsible for as a minister” (Interview, 10 March 2000). In the view of another senior opposition politician, there is lack of clarity for the whole aspect of black empowerment which centres around people with good connections with politicians (Interview, 03 March 2000). An official of the Namibian Society for Human Rights noted that

in Namibia, corruption manifests itself at the highest level e.g. unfair granting of tenders, favouritism based on tribal or political party affiliation, with the ruling party establishing companies and granting them tenders. Stocks and Stocks is building blocks to be rented by government. This company is run by the president through his brother-in-law and SWAPO. Another SWAPO company, Namprint wins tenders to print ballot boxes in which SWAPO is one of the contestants. Moreover, unqualified people, friends and relatives are employed in the Public Service through the system of patronage (Interview, 29 February 2000).

Although corruption is not a major issue in Namibia because it is embedded in a wider system of discrimination which lacked legitimacy from the start, there is a growing cynicism about corruption and honesty of politicians. There is a public perception which believes that corruption is prevalent in Namibia and, it is widely believed that many government ministers are involved in corruption. For one respondent, the problem of corruption can be dealt with by bringing in a new party into power (Interview, 26 February 2000). Despite this cynicism, clientelism and the importance of the state as a source of resources have not degenerated into spoils politics. Figure 7.1 below summarizes the foregoing discussion on the nature of corruption in the three countries.



Fig 7.1 The nature of corruption in Botswana, South Africa and Namibia

	Botswana	South Africa	Namibia
<i>Form of state</i>	Post-colonial state with elements of developmental state	(1) Settler oligarchy (2) Non-racial democracy: surviving elements of settler oligarchy; emerging post-colonial state	(1) Colony; small settler oligarchy dependent on South African state (2) Post-colonial state
<i>Payoffs and corruption</i>	Corruption follows prebendal and clientelist patterns. Patronage used to promote local capital accumulation and, to lesser extent, reward political supporters	(1) Corruption follows clientelist pattern. Patronage used to promote white (Afrikaner) capital accumulation and make payoffs to black clients and allies (2) Corruption follows prebendal and clientelist pattern. Public resources used to redress inequality. Promotion of black capital accumulation; some payoffs to party members.	(1) Replication of SA apartheid model (small scale) (2) Corruption follows prebendal and clientelist pattern; Use public resources to redress past imbalances; Promotion of black capital accumulation; some rewards for political supporters.
<i>Political role of corruption</i>	Corruption spreads rewards throughout elite and promotes propertied strata. Less emphasis on rewards to rank-and-file followers	(1) Afrikaner empowerment; rewarding political clients & allies. (2) Black empowerment. Promotion of elite capital accumulation. Less emphasis on rewards to rank-and-file followers	(1) Promotion of foreign capital; rewarding political clients & allies. (2) Black empowerment. Promotion of elite capital accumulation. Less emphasis on rewards to rank-and-file followers.
<i>Level of corruption</i>	Moderate but growing number of scandals	Moderate but growing number of scandals and increasing incidence	Moderate but number of prominent scandals
<i>System consequences of corruption</i>	Corruption a problem but does not become subject of ethnic factional conflict as in much of post-colonial Africa. Some cynicism about honesty of political system	(1) Corruption part of wider and more serious system of discrimination; low legitimacy from start. (2) Democracy threatened by growing cynicism about public honesty	(1) Corruption not a major issue because embedded in wider system of discrimination lacking legitimacy from start (2) Democracy but growing cynicism about corruption and honesty of politicians
<i>Government responses to corruption</i>	Adoption of the ICAC model in form of DCEC	(1) Proliferation of agencies (2) Proliferation of agencies but also some reduction of their ability to probe political elite behaviour; Structures and powers reflect influence of ICAC.	Partial adoption of ICAC model; role of Ombudsman

The response to the problem of corruption in the three countries was to create anti-corruption agencies. The section that follows seeks to compare anti-corruption agencies in the three in terms of their functions.

### **Functions of agencies in the three country cases**

As shown in Figure 7.1 above and in Figure 7.2 below, anti-corruption agencies in Botswana, South Africa and Namibia are modelled directly or indirectly and, in different ways, on the Independent Commission Against Corruption (ICAC) in Hong Kong. Following the success of the ICAC in combating corruption in Hong Kong, the ICAC has been seen, cited and employed as a model which other countries should follow. This is the case although the ICAC was designed for a colonial system with huge material resources. In this sense, the model is inappropriate to the African setting and assumes conditions which cannot be replicated in the subcontinent. Botswana, South Africa and Namibia are democratic regimes which are obliged to employ the rule of law in response to democratic demands from their citizens.

In Botswana, the ICAC model was adopted in the form of the Directorate on Corruption and Economic Crime (DCEC). In South Africa, there is a proliferation of agencies but with some reduction of their ability to probe political elite behaviour. Although, there is no political discussion in setting South African agencies, the structures and powers of the agencies reflect the influence of the Hong Kong ICAC. Similarly, in Namibia, the broad mandate of the Ombudsman

and its powers reflect ICAC influence. There is also a partial adoption of the ICAC model in Namibia with the envisaged anti-corruption commission.

In Botswana, the DCEC as Figure 7.2 below shows was established in 1994 to combat corruption and economic crime following the enactment of the DCEC Act. Similarly, in South Africa, the Public Protector was created to investigate maladministration, abuse of power or improper conduct, corruption, unlawful enrichment and improper prejudice. The Investigating Directorate: Serious Economic Offences (IDSEO) is empowered to investigate serious economic offences and, the Health Special Investigating Unit (SIU) deals with maladministration, corruption, fraud and misappropriation of state assets. On the other hand, Ombudsman in Namibia tackles corruption, maladministration, human rights abuse and misuse of natural resources.

As in Hong Kong, the DCEC's anti-corruption strategy involves a three pronged strategy of investigation, corruption prevention and public education. In South Africa, the Public Protector, IDSEO and the SIU fight corruption mainly through investigation. The same applies to the Ombudsman in Namibia. However, the envisaged anti-corruption agency in Namibia would combat corruption through investigation, prevention and public education as in Hong Kong and Botswana.

**Fig 7.2 Comparison of anti-corruption agencies in Botswana, South Africa and Namibia**

	Botswana	South Africa			Namibia
<i>Name of Agency</i>	<i>DCEC</i>	<i>Public Protector</i>	<i>IDSEO</i>	<i>Heath Unit (SIU)</i>	<i>Ombudsman</i>
<i>Creation of agency</i>	1994	1995	1992	1996	1990
<i>Designated role</i>	Investigate corruption, prevention and public education	Investigate corruption, maladministration, improper conduct, unlawful enrichment	Investigate serious economic offences	Investigate corruption, maladministration, fraud	Investigate corruption, maladministration, human rights abuse and misuse of natural resources
<i>Level of autonomy</i>	A government department under President	Independent - terms & conditions determined by Parliament	Government Department under Ministry of Justice	Accountable to President	Guaranteed and reports to Speaker
<i>Nature of executive control or interference</i>	Director appointed by President and reports to President	Public Protector appointed by President & Deputy Public Protector appointed by Minister of Justice	Director appointed by President after consulting Justice Minister and National Director of Prosecutions	Head appointed by President after recommendation by JSC and to get approval from President to investigate	Ombudsmana ppointed by President
<i>Type of cases investigated / detected</i>	Mainly lower level	A variety of cases	Cases involving large sums of money	Major cases including political behaviour	Mainly matters to do with conditions of services
<i>Degree of effectiveness</i>	Limited – petty corruption	Limited – poorly resourced	Limited – poorly resourced	Limited – political interference	Limited – little done; poorly resourced
<i>Limitations on effectiveness</i>	Resources; lacks independent powers to prosecute	Resources; lacks independent powers to prosecute; lacks sanctions	Resources; lacks of independent powers to prosecute	Resources; Presidential proclamation	Resources; investigates on basis of complaint only; lacks independent powers to prosecute

In all three countries as shown in Figure 7.2 above, anti-corruption agencies are appointed by the executive as is the case with the ICAC in Hong Kong. In Botswana, the DCEC is politically appointed by the President and is directly answerable to him. In South Africa, the Public Protector is appointed on a non-



renewable seven year term by the President following a National Assembly recommendation of persons “nominated by a committee of the Assembly proportionally composed of members of all parties represented in the Assembly; and approved by the Assembly by a resolution adopted with a supporting vote - of at least 60 per cent of the members of the Assembly” (ibid. 105). With regard to IDSEO, its director is appointed by the President after consulting the Minister of Justice and the National Director of Public Prosecutions since October 1998. Prior to that, its director was appointed by the Minister of Justice. The head of the SIU is also appointed by the President.

Similarly, in Namibia, the Ombudsman is appointed by the President “on such terms and conditions as the President may determine” (Republic of Namibia, 1990: 3), following a recommendation by the Judicial Service Commission and reports to the Speaker of the National Assembly. In all three countries, these appointments by the executive give rise to the perception that these agencies are not immune from executive manipulation. For instance, in Botswana as one senior DCEC official noted, “the Permanent Secretary to the President, the Vice President and the President can be perceived to be giving instructions to the DCEC director, and *there is nothing that proves that this does not happen*” (Interview, 25 October 1999). The control of these agencies is fundamental to the political establishment because of the threat these agencies pose to the establishment.

### **Powers of anti-corruption agencies in the three countries**

As shown in Figure 7.3 below, anti-corruption agencies in Botswana, South Africa and Namibia have been granted wide-ranging powers as is the case with the Hong Kong ICAC. The powers of the ICAC are enshrined in three specific laws, namely the Independent Commission Against Corruption Ordinance, the Prevention of Bribery Ordinance and the Corrupt and Illegal Practices Ordinance. Section 10 of the Independent Commission Against Corruption Ordinance gives the ICAC powers of arrest. And section 10C confers the ICAC powers to search, seize and detain anything that an officer may believe to be or to contain evidence of an offence. More importantly, section 10(1) of the Prevention of Bribery Ordinance makes it an offence for a person to be in possession of unexplained property or assets. In Botswana, the DCEC Act conferred the DCEC with wide and sweeping powers to investigate corruption and economic crime according to section 6 of the DCEC Act. Like the ICAC, the DCEC has the power to arrest, search and seize with or without a warrant. It also has the power to obtain information and to use reasonable force. It also has the power to access suspect's bank accounts without their knowledge and its director is the one who decides whether or not to peruse a suspect's accounts. The DCEC can also institute extradition proceedings against fugitive suspects. Most of the DCEC's powers are exercised with the authority of a magistrate.

Similarly, in South Africa, the Public Protector has enormous investigating powers like those of the DCEC and the ICAC. According to section 7 of the Public Protector Act, the Public Protector has wide powers of investigation, search and seizure. However, to enter any building or premises, the Public

Protector has to obtain a warrant from a local magistrate or judge. Section 7A (5)

(a) empowers the Public Protector to use reasonable force to overcome any form of resistance while entering such a premise or building.

**Fig 7.3 Comparison of agencies in Botswana, South Africa and Namibia in terms of how they mirror the Hong Kong ICAC**

	Hong Kong	Botswana	South Africa			Namibia
<i>Name of Agency</i>	<i>ICAC</i>	<i>DCEC</i>	<i>Public Protector</i>	<i>IDSEO</i>	<i>Heath Unit (SIU)</i>	<i>Ombudsman</i>
<i>Role</i>	Investigate corruption, prevention and public education	Investigate corruption, prevention and public education	Investigate improper conduct, corruption, maladministration, unlawful enrichment	Investigate serious economic offences	Investigate maladministration, fraud, corruption	Investigate maladministration, corruption, human rights abuse and misuse of natural resources
<i>Powers</i>	Wide powers of entry, search and seizure	Wide powers of entry, search and seizure	Wide powers of entry, search and seizure	Wide powers of entry, search and seizure	Wide powers of entry, search and seizure	Wide powers of entry, search and seizure
<i>Place in political system</i>	Commissioner appointed by Chief Executive	Director appointed by President	Public Protector appointed by President	Director appointed by President	Head appointed by President	Ombudsman appointed by President
<i>Limits on use of powers</i>	No limits under colonial administration	Limited by nature of democracy – sensitivity to political protest at unchecked use of power	Limited by nature of democracy – sensitivity to political protest at unchecked use of power	Limited by nature of democracy – sensitivity to political protest at unchecked use of power	Limited by nature of democracy – sensitivity to political protest at unchecked use of power	Limited by nature of democracy – sensitivity to political protest at unchecked use of power
<i>Success in tackling high level corruption cases</i>	High – unchecked use of power	Minimal – focus on petty corruption	Minimal – very poorly resourced	Minimal – poorly resourced	Minimal – political interference	Minimal – little done to implement powers – very poorly resourced

Likewise, IDSEO also has some wide-ranging powers like the ICAC and the DCEC. In terms of section 28 of the National Prosecuting Authority Act of 1998, it can question any person under oath and summon

any person who is believed to be able to furnish any information on the subject of the inquiry or to have in his possession or under his control any book, document or other object relating to that subject, to appear before the Investigating Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object (Republic of South Africa, 1998: S.28).

Furthermore, under section 29, IDSEO has extensive powers of entry, search and seizure. Moreover, IDSEO has the power to use 'reasonable force' against resistance to the entry and search of any premises with or without a warrant. The SIU on the other hand, also has extensive powers under sections 5 and 6 of the Special Investigating Units and Special Tribunals Act. These include wide powers of entry, search and seizure. The SIU can also attach any money or order the return of money or property. However, unlike ICAC in Hong Kong and the DCEC in Botswana which fight corruption from a criminal perspective, the SIU combats corruption from a civil perspective and institutes civil action in a Special Tribunal.

Similarly, the Ombudsman in Namibia, like the DCEC in Botswana, Hong Kong ICAC and, the Public Protector, SIU and IDSEO in South Africa, has broad investigating powers under section 4 of the Ombudsman Act and article 92 of the Namibian Constitution. The Ombudsman has wide powers of investigation, entry, search and seizure. He or she can administer an oath and has the right to decide who is to be present or not at any proceedings of any investigation. The Ombudsman may also decide the extent and nature of any investigation of any matter in question. He or she may also force or request any person to produce any material that in the opinion of the Ombudsman is necessary for any matter in question. And any person questioned is required to co-operate with the Ombudsman.



Although anti-corruption agencies in the three countries have been granted wide powers to investigate corruption, however, like the Hong Kong ICAC, they lack independent powers to prosecute possible offenders. In Hong Kong, the power to prosecute rests with the Secretary for Justice. In Botswana, the decision to prosecute is vested with the Attorney-General who retains the right to decline to prosecute. Similarly, the Public Protector refers its cases to the Police Service following its investigations. IDSEO which falls under the Ministry of Justice has been granted powers to prosecute since October 1998 but it continues to make recommendations to the National Prosecuting Authority (Interview, 12 May 2000). With regard to the SIU, it institutes action before a Special Tribunal following an investigation. However, for the SIU to investigate, the President has to give it the authority to do so. Similarly, the Ombudsman in Namibia does not have independent powers to prosecute. Rather, the Ombudsman recommends remedial action or refers the matter to the relevant body or authority following investigation.

### **The problem of resources for agencies**

Unlike the ICAC, the anti-corruption agencies in Botswana, South Africa and Namibia are underresourced. The ICAC was designed for a colonial system with huge material resources. Theobald and Williams noted that the ICAC “is extremely well resourced (with 1300 staff)” and “operates in an environment where legal and financial institutions are extremely well developed” (1999: 130). Camerer observed that the ICAC functions “within a relatively well-regulated administrative culture alongside a large, well-resourced police force under a political and legal environment which supports anti-corruption activities” (1999: 204).

Compared to the ICAC, anti-corruption agencies in Botswana, South Africa and Namibia are under-resourced, because there is usually lack of political support for anti-corruption agencies. In part this arises because there is lack of appreciation for the fact that an effective anti-corruption agency needs to be properly resourced. But political support is usually lacking, also, because anti-corruption agencies are victims of pressures for personal accumulation which bedevil African politics. Moreover, anti-corruption agencies lack adequate resources because of economic underdevelopment. Anti-corruption agencies compete for resources with other institutions of the state. Because of underdevelopment, the state is not able to provide adequate resources for any of its competing institutions, including anti-corruption agencies. Resources in this case refer not only to money but also institutional weaknesses and skills. In most developing countries, skills are in short supply and the institutions are generally weak. This manifests itself in weak support for anti-corruption activities from related institutions such as the judiciary and the criminal justice system. Camerer (1999) noted that a successful and effective anti-corruption agency should have sufficient monetary resources, sufficient experts, special powers, independence and coordination. In addition to these requirements as laid down by Camerer, governmental support is pertinent in the fight against corruption. Without such support it would be difficult to ensure that the above criterion is met for anti-corruption agencies to function effectively. Fighting corruption takes a lot of resources and commitment.

Compared to the ICAC, the DCEC in Botswana faces some problems. One such problem was shortage of trained personnel in the areas of combating white-collar crimes. At the moment, the DCEC heavily relies

on expatriates (mostly retired) who are believed to be lacking the latest investigative skills. The feeling is that they have yesterday's skills. There are also problems of the leadership which fails to understand the direction the DCEC is going. Obstacles within the DCEC (e.g. internal communication problems) prevent conversion of skills. Others are disillusioned and the brightest people soon resign. Old people not knowledgeable with modern concepts are at the top with young and talented people at the bottom. This is a general problem in the Botswana Public Service (Interview, 14 January 2000).

Equally, in South Africa, anti-corruption agencies are under-resourced in terms of human and financial resources (Heath, 1999, Camerer, 1999), which impact on their effectiveness in combating corruption. In a survey conducted in 2000 by the Institute for Security Studies in which more than 150 experts were interviewed, shortage of resources was regarded as the major problem hampering the government's efforts to tackle corruption in South Africa. 73% of the experts interviewed were of the view that the government did not have adequate resources to combat corruption (*Mail & Guardian*, 12 March 2001).

For instance, the Public Protector which had a backlog of cases could only deal with half of the 200 cases it receives every month, and needed extra funding to do its job better (*Business Day*, 5 March 1998). In 2000, the Office of the Public Protector had 61 investigators, including supervisors (Interview, 8 May 2000). Similarly, in 1997, IDSEO then OSEO decided not to initiate fresh investigations until it had dealt with the backlog of cases in which R12bn was at stake (*Business Day*, 5 March 1998), and had more staff (Republic of South Africa, 1997). OSEO, the Commercial Crime Unit of the South African Police Service, the Attorney-

General as well as Senior Public Prosecutors do not have a adequate skilled and trained staff to handle commercial cases. OSEO does not only lack experienced staff to do the actual investigations but to prosecute cases. As a result, it continues to refer its cases to the Attorney-General to prosecute. This does not only result in lengthy delays but in work being duplicated (ibid. 7). During my visit in 2000, IDSEO had 44 investigators. With regard to the SIU, according to its founder head, it had 95 staff members out of which 50 were involved in actual investigations in 1999. The Unit required around 200 investigators to be able to do its job properly. It had over 220 000 cases in 1999. The Unit used a complex computer system which enabled it to deal with a lot of cases much faster. Most of its cases (Interview, 11 May 2000).

As in Botswana and South Africa, the Ombudsman in Namibia does not have adequate staff. It lacks the capability to execute its remit fully. The Office of the Ombudsman has a staff establishment of 12 posts save for the Ombudswoman, of which four do the actual investigations (handle complaints). It is very thin on the ground. As such, the Office was not able to handle complicated investigations, and has also failed to establish a regional office. In part because of this, the Office remains mainly concentrated in Windhoek, the capital city.

The other problem facing anti-corruption agencies in Botswana, South Africa and Namibia relates to inadequate funding. For example, in Botswana the DCEC's training budget for the year 1999/2000 was reduced by about 66% (Interview, 10 January 2000). Botswana is a big country and the work of the DCEC entails a lot of travelling. There is also shortage of transport and drivers (Interview, 10 January



2000). The Director of the DCEC observed that shortage of resources, both human and financial, and the need to ensure operational capability, meant that the DCEC could not achieve its required training targets (Republic of Botswana, 2000).

Similarly, in South Africa shortage of funds is a problem affecting all the three agencies. Despite the existence of many anti-corruption agencies in South Africa than ever before, according to the Public Protector Selby Baqwa, most of these agencies are not adequately funded and fail to work together resulting in duplication of investigations (*Mail & Guardian*, 31 May 1997). For example, in 1998/99, the Public Protector asked for R22 million but was granted some R7.5 million (*Sunday Independent*, 22 March 1998; *Mail and Guardian*, 6 March 1998). For the financial year 1997/98, the Office of the Public Protector got R5.8 million (*Business Day*, 18 March 1998). In 1998, the Public Protector of South Africa, Advocate Baqwa noted that although he could sense the political will to tackle corruption; this was yet to translate into resources (*Mail and Guardian*, 6 March 1998). The Office of the Public Protector had to put aside a planned communications campaign because of lack of financial resources (*Business Day*, 18 March 1998). Commenting on the budget, an official in the Office of the Public Protector observed that “we are not satisfied with our budget but we got an increase in the last two years” (Interview, 8 May 2000). Likewise, IDSEO faces the problem of funding. For instance, because of shortage of funds, a proposal to create an additional 29 posts could not be carried out (Republic of South Africa 1997). The Special Investigating Unit is also not adequately funded (Interview, 11 May 2000). For example, in 1998, it required R32 million to start an expansion process but it received a budget of just over R16 million

(*The Star*, 5 October 1998). This indicates that funding is a major problem for these agencies.

In Namibia, under-funding is also a major problem for the Ombudsman. According to a senior official in the Office of the Ombudsman, shortage of funds is the key problem faced by the Ombudsman in Namibia (Interviews, 28 February; 3 March 2000). Generally, the Office of the Ombudsman in Namibia faces uncertainty regarding the availability of funds (Republic of Namibia, 1999).

In Namibia, the Office of the Ombudsman is financially accountable to the Ministry of Justice. This Ministry also faces the problem of under-funding. For instance, it received N\$101 million during the 1999/2000 financial year. The problem of funding was highlighted by the Minister of Justice during the 1999/2000 budget. The Minister noted that because of financial problems, the creation of Small Claims Courts and the reorganization of Community courts were suspended for seven years. Thus because of shortage of courts and judicial officers, courts are currently stretched to the limit. Therefore, there is a need to train and employ more judicial officers and support staff in order to improve the administration of justice (*The Namibian*, 14 May 1999). For the same period, the Office of the Ombudsman was granted N\$2,822,000. In the financial year 1998/1999, it received N\$2,371,000 and N\$1,977,000 for the financial year 1996/1997. Nonetheless, the budget of the Office of the Ombudsman remains insufficient.

In addition to shortage of trained staff and inadequate funding, the DCEC also faced delays at the Attorney-General Office because of its failure to bring cases to

court immediately. Delays at the Attorney-General Office arise due to shortage of staff (Republic of Botswana, 1998). The Director of the DCEC acknowledges this. He observed that the establishment of the DCEC has created an extra work load for the Attorney-General's Office because cases emanating from the DCEC make more than 50% of the work of the Prosecution Division in the Attorney-General's Office. Despite the increase in the Prosecution Division's work load, the Division did not recruit more staff to deal with the increased work load. As a result, there are delays in dealing with cases (Republic of Botswana, 1997). Besides problems within the Attorney-General's Office, there are delays within the administration of justice. The Director of the DCEC further observed that the formation of the DCEC had a significant effect on Magistrates courts because it meant more cases are brought before them. As a result, it takes longer for the courts to deal with cases before them in time (Republic of Botswana, 1997: 6).

In Namibia, over and above shortage of staff and funds, the Office of the Ombudsman as noted in chapter six has an organizational structure which offers some restricted promotional opportunities for its members. This would make it difficult for the Office to attract the best brains in the country. Moreover, apart from diminished political support, the Office also faces lack of co-operation from institutions complained against (Republic of Namibia, 1999).

The other key problem which hampers the operations of the Office of the Ombudsman in Namibia is that it does not initiate its own investigations. It can only investigate when it has received a complaint either from an individual or an institution. This is regarded as a major limitation for the Office of the

Ombudsman in Namibia (Interview, 22 February 2000). The Office of the Ombudsman needs to be equipped so that it can initiate its own investigations without having to wait for a complaint to be made first. Related to this, the Office of the Ombudsman lacks independent powers to arrest and prosecute. Instead, it recommends some remedial action following an investigation. A combination of these factors makes the Ombudsman in Namibia a weak organization.

### **Effectiveness of agencies in the three countries**

Having examined the functions, powers, resources of anti-corruption agencies and their place in the political system in the three countries, we seek to examine their effectiveness in combating corruption. The Hong Kong ICAC, on which anti-corruption agencies in Botswana, South Africa and Namibia have been modelled on, has been successful in fighting corruption. Moran situates the success of the ICAC in the context of a complex set of interconnected factors of the Hong Kong political economy. He attributes its effectiveness to “state capacity, favourable relations with the metropolitan power [Britain], the rule of law and the balance of power within the political economy” (1999: 112).

Thus, the successes of anti-corruption agencies need to be understood in the context of their resources, the way they have been structured and the political environments under which they function. In Africa, anti-corruption agencies were seen to be failing in combating high-level corruption. This is because tackling high-level corruption threatened the political establishment. Thus, tackling high-level corruption was a question of political will. Giving a key-note address at the 9<sup>th</sup> International Anti-corruption Conference, Durban, South Africa on the 11<sup>th</sup> October



1999, President Festus Mogae emphasised the importance of political will in the anti-corruption crusade as follows:

for if an anti-corruption campaign is to succeed the Government of the day must be prepared to risk potential embarrassment to itself, and there must be an accompanying realisation that whatever mechanisms are put in place, they must be so organised and structured that the campaign and the campaigners have unfettered operational autonomy, subject only of course to the necessity to ensure strict observance of human rights and of course natural justice and the laws regarding the obtaining of evidence (Republic of Botswana, 2000: 29).

This underlines the fundamental importance of political will in fighting corruption especially in Africa where anti-corruption agencies were or have become victims of the political process.

Compared to the ICAC, anti-corruption agencies in Botswana, South Africa and Namibia have produced disappointing results in terms of investigating and prosecuting high-level corruption. In Botswana, the DCEC has dealt with a wide-range of cases since its creation in 1994. Some of the cases the DCEC has dealt with include tax evasion, illegal importation of the currency, stealing by servant, misappropriation of money collected in official capacity, perverting the course of justice, bribing and attempting to bribe public officers, forged documentation, buying of certificates, licences, passports and permits (both residence and work permits), ignoring tendering procedures, false claims and smuggling of goods.

However, what was striking about the DCEC was that the majority of the cases it has dealt with involved petty corruption of officials who received a few hundreds Botswana Pula of P100 - P500 or making false claims. The Director of the DCEC acknowledged this. He says "a majority of cases involve petty corruption such as someone failing to pass a driver's (licence) test and finding a way around it"

(*Business Day*, 8 April 1998). Likewise, the 1999 annual report for the DCEC noted that

a large number of investigations have concerned allegations concerning false claims made by public officers for subsistence allowance and travelling expenses. Although amounts involved in each case are relatively small, it does appear the problem is widespread, affects a number of Ministries and cumulatively involves a considerable amount of Government funds (Republic of Botswana, 2000: 15).

For the period 1994 to 1999, the DCEC received some 6,587 cases or complaints which resulted in investigations commencing in 1,994 cases as shown in Appendix 4. It should be noted that not all the cases received by the DCEC amount to corruption and economic crime. Out of the 6,587 complaints received in the period 1994 to 1999, 4,593 were either referred to other bodies or no action was taken. In 1999, the DCEC received fewer reports than in 1996, 1997, and 1998. This was attributable to the opening of the Office of the Ombudsman (Republic of Botswana, 2000) and, probably to the new referencing system that was introduced in January 1999. Prior to this, in the view of one senior DCEC official, the DCEC used a flawed referencing system (Interview, 12 October 1999).

The DCEC has been heavily criticised for targeting the 'small fish' or petty corruption and leaving the 'big fish' (high-level corruption) free. As one senior opposition politician put it:

There is a belief that at a lower-level corruption is being seriously fought. The majority of cases registered at court so far involve small sums of money. That is, corruption generated by economic factors. But corruption at a greater scale by big shots is not really being fought or is being ignored. And this is where Botswana expected something at that level, but Botswana have not seen that. At the big shot level, the DCEC has not yet achieved its objectives. We get big shots corruption in the papers, not in

court. The papers just simply reveal. I do not think that the papers will always write something without a basis. Minister Jacob Nkate's just simply resigned and that does not address the problem. A definition for big shots should be different because they are the ones who create the conditions for corruption. This is what I call silent corruption, behind the doors, make connections with some big guys, give them favours e.g. tenders, a loan etc, even though they do not qualify at times. Nkate pretended to be an attorney even though he did not pay to practice. So, on what basis was he acting? He obtained P10 000 for being a Director of Zachem Company. The big shot in this case is a sleeping partner. He is not active but still benefits (Interview, 24 January 2000).

Another opposition politician observed that the successes of the DCEC in combating corruption were questionable because "it does not focus its attention on all members of the community. There are those it regards as untouchable" (Interview, 10 January 1999). Allegations of corruption especially in tendering involving ministers and their close associates were rife in Botswana. There were also claims that the DCEC did not treat its suspects on an equal basis. It would appear there was a fear to investigate because the DCEC falls under the president's office. Partly because of this, and "the cautious approach in prosecution", it was not surprising that no single minister has been prosecuted (Interview, 4 February 2000). In the view of one University of Botswana academic, the DCEC was seen as a public relations unit (Interview, 20 January 1999).

Although the DCEC was perceived as fairly ineffectual in tackling high-level corruption, it has handled a few cases that were of interest as discussed in chapter four (see pages 122 – 128). As shown in chapter four, probably the most interesting and complicated case it has dealt with was the Nicholas Zachem case which led to the resignation of a cabinet minister and resulted in the conviction of the former Director of the Department of Roads.

Similarly, in South Africa, the successes of anti-corruption agencies should be understood in the light of its history and transition, and the nature of the agencies it has set up. The Special Investigating Unit (SIU) observed that if there is one area where there is a boom in the South African economy, it is in corruption, misappropriation and maladministration. This is an issue of serious worry for the business sector. The appalling reality is that a considerable section of the South African populace seems to consider public resources as “fair game” for corrupt practices. This mind-set goes into other areas and when doing business with the state, demanding payment from the state for services rendered and, when dealing with state assets. Members of the public and the private sector regularly collide with public officials in diverting a significant proportion of state resources meant for the general populace (Republic of South Africa, 2000:<http://www.heathsiu.co.za>). The SIU further observed that South Africa was “faced with a crisis, a national crisis, a problem far more serious than what the ordinary man in the street perceives it”, and “somehow internal controls, supervisors audits, the police and the ordinary courts have not been able to hinder the growth of this problem” (Republic of South Africa, 2000:<http://www.heathsiu.co.za>).

In 2001, the head of the SIU questioned the seriousness of the political leadership in fighting corruption in South Africa warning that if necessary action was not taken, South Africa might “go the same way” as other Third World countries in Africa (*Mail & Guardian*, 4 April 2001). According to the head of the SIU “corruption governs a South Africa led by people who are not serious about fighting it” and warned that “if government does not allow investigations or support investigations into corruption properly then it allows corruption to increase. Until and unless we



become enthusiastic and dedicated in the fight against corruption we will not make progress in this country” (*Mail & Guardian*, 4 April 2001). It appears the emerging perception was that “important public institutions such as the Public Protector and the Special Investigating Unit” were being “undermined by the readiness of African National Congress (ANC) leaders to defend its own members” (*Business Day*, 18 April 2001).

However, the establishment of the Public Protector, the Investigating Directorate: Serious economic Offences (IDSEO) and the SIU amongst others, were indicative of a declared intent to combat corruption. The Public Protector has investigated numerous cases since its creation in 1995. The Public Protector carried over 544 cases from the former Ombudsman when he took over office in October 1995. In the period, October 1 1995 and March 1 1996 and, April 1 1996 and June 1 1996, the Public Protector received on average 133 and 200 cases per month (Republic of South Africa, 1997). Appendix 6 shows how the cases for this period were finalised.

For the period October 1995 to June 1996, the nature of complaints involved pensions, conditions in prisons, corruption in approving building plans, tender irregularities and improper preference, police victimisation, passport refusals. Since October 1995, the Public Protector had by January 1999, in spite of the financial constraints, finalised 4,868 cases. “In 526 cases it was found that the complaint was not founded. The office has also provided advice or assistance in 3,262 cases. These exclude the telephonic assistance that is provided to thousands of complaints annually. The achievements of this office have been recognised internationally” such

that South Africa hosted the 2000 International Conference for the International Ombudsman Institute (Republic of South Africa, 2001:<http://www.polity.org.za>). Some of the cases of great public interest investigated by the Public Protector, include investigations of the Play Sarafina II and its Donor (1996), irregularities concerning the 1996 Matric Examinations, irregularities pertaining to the issuing of Degrees and courses at the University of Zululand (1997), the conduct of officials of the Ministry and Department of Health Statements regarding the prices of medicines in South Africa (1997), the Affairs of the independent Broadcasting Authority (1998), the awarding of a contract by the Mpumalanga Housing Board to Motheo Construction (pty) Ltd (1999), nepotism in government (1999), a public statement by Mpumalanga Premier, who declared that "it was acceptable for politicians to lie" (1999), and it has also investigated alleged irregularities into the Affairs and Financial statements of the Strategic Fuel Fund Association (SFF) Association (1999).

In the period July 1996 to December 1996, the Public Protector received on average 219 cases (Republic of South Africa, 1996). Appendix 7 shows how cases received during this period were finalised. And for the period January 1997 to December 1997, the Public Protector received and finalised cases as shown in Appendix 8. In spite of its staffing constraints, the above cases demonstrate that the Public Protector receives more cases than it can handle.

IDSEO on the one hand, has investigated many cases that involve large sums of money since it was established. Some of the cases it has investigated include; a pyramid scheme in which members of the public lost around R19m, a R95m

investment fraud, 6,000 tons gold bearing soil theft, fraud involving the diversion of the United Nations World Food programme from Angola to South Africa, the NBS bank fraud amounting to R135m, “fraud, reckless and insider trading in Crusader life Assurance Corporation Limited”, two cases of prime bank instrument frauds, “in which forged bank instruments were used to attempt to obtain credit or funds”. Numerous investigations by IDSEO have led to successful prosecutions. Appendix 9 shows some of the cases that have been handled by IDSEO, together with the amount of money involved. However, as we noted earlier, IDSEO was hampered by lack of adequate resources.

On the other hand, the SIU was regarded as the most successful anti-corruption agency in South Africa despite its resource constraints. In 2000, more than 150 experts were interviewed as part of the Institute for Security Studies survey on the causes of and controls needed to combat corruption in South Africa rated the SIU as the most effective anti-corruption agency in the country. It received an 85% approval rating compared with those of the Auditor General (74%), the Public Protector (62%), the Special Investigating Directorate on Corruption within the National Directorate of Public Prosecutions (47%) and the Public Service Commission (34%) (*Mail & Guardian*, 12 March 2001).

Since the Heath Unit started its operations in 1996, it “has recovered about R314m for the state” and the unit “is currently investigating 221,580 cases involving about 100 organs of state and extending over all nine provinces. About R3bn was at stake” (*ibid.*, 29 November 2000:<http://www.mg.co.za>). In 1999, it recovered state assets / money up to R1.3 billion (Interview, 11 May 2000). In

1998, the Special Unit “recovered 80 farms valued at R20 million, 372 state-owned vehicles worth R33 million and R23 million defrauded from the office of Eastern Cape Premier” (*The Star*, 24 August 1998), and “recovered R848 million”. “Between 1995 and 1996 the former Heath Commission saved or recovered R10 billion” (Republic of South Africa, 2001:<http://www.heathsiu.co.za>). In 2000, it prevented “R168m in potential corruption” (*Mail & Guardian*, 24 January 2001:<http://www.mg.co.za>).

The SIU was not only regarded as the most successful anti-corruption agency in South Africa, but it was the top and most able. Dismissing reports that the SIU was to be dissolved, the Minister of Justice and Constitutional Development noted that

when government took office in 1994, it soon became apparent that government did not have the capacity to act upon allegations of serious corruption, maladministration or misappropriation of State funds swiftly and decisively. Whilst institutions such as Commissions of inquiry, the Public Protector and the Office for Serious Economic Offences could be utilised to some extent to curb these kind of problems, they lack the necessary cohesion to produce satisfactory results. Commissions of inquiry generally do not have the teeth to enforce their recommendations whilst the Investigating Directorate: Serious Economic Offences is principally involved in the investigation of criminal offences and forms part of the National Prosecuting Authority. The Public Protector on the other hand does not have adjudicative powers so as to enforce its findings (Republic of South Africa, 2001:<http://www.polity.org.za>).

Nevertheless, the SIU was dependent on Presidential proclamations for it to investigate. In 2001, the SIU clashed with government following a Constitutional Court ruling which declared that it was improper for a judge to head such a unit as this blurred the line between the executive and the judiciary. The government was given one year to rectify the situation.



According to the founder head of the Special Investigating Unit, Judge Heath, since the Penuell Maduna took over as the Minister of Justice and Constitutional Development “little or nothing was referred to the Unit” (Republic of South Africa, 2001:<http://www.polity.org.za>). Responding to this, Minister Maduna declared that:

government was under no obligation to refer each and every case to the Unit for investigations. There are other agencies in place such as the Public Protector, the Scorpions, Asset Forfeiture Unit, the Auditor General and the Police who can also investigate similar cases. The question whether to refer a new case to the Unit or not is the president’s discretion (Republic of South Africa, 2001:<http://www.polity.org.za>).

Without the Presidential proclamations, the SIU becomes powerless. This was the case when President Thabo Mbeki refused to allow the SIU to take part in the controversial R43 billion arms contract as we demonstrated in chapter five.

In Namibia, the Ombudsman was generally regarded as ineffectual in combating corruption as it lacked the necessary coherence. As one senior official in the Office of the Prime Minister put it: “the Ombudsman lacks initiative, it does not prosecute but makes some recommendations. It is thin on the ground. It lacks resources such as experts and adequate funding. It is only based in Windhoek. Its presence is not felt, and its role is not yet appreciated” (Interview, 24 February 2000). In 2000, the Office of the Ombudsman had only three investigators. It was believed that the Ombudsman in Namibia faced two key problems, lack of capacity and political will. One University of Namibia academic noted that “the ombudsman lacks the investigative capacity and the capacity to follow up cases. These problems are quite considerable. At the moment the Ombudsman is a victim of executive influence. It has fallen into silence and is largely ineffective” (Interview, 28 February 2000). In the view of an official of the Namibian society for Human Rights, the Ombudsman

in Namibia “lacks credibility. It is a far cry. Although the Act of the Ombudsman is good, lack of funding, lack of institutional independence and under-staffing undermine the independence of the Ombudsman” (Interview, 29 February 2000).

Although allegations of corruption especially in high places were rife in Namibia, a closer look at the reports of the Ombudsman suggested that the majority of the cases it handled were matters to do with conditions of service for civil servants. Some of the issues it investigated include; unfair dismissals, remuneration, problems with the supervisor, pension fund, inappropriate actions, unfair labour practice, parole, citizenship and passports. For instance, in 1997 and 1998, of the cases dealt with by the Ombudsman, unfair dismissal and remuneration constituted 23% and 20%, and 21% and 13% respectively (Republic of Namibia 1997;1998).

### **Response to international governance concerns**

The ineffectiveness of anti-corruption agencies in Botswana, South Africa and Namibia, especially in tackling high-level corruption may suggest that the purpose of establishing these agencies might possibly have more to do with reassuring investors and aid donors in an age of globalisation than with actually combating high-level corruption. There is some evidence which supports this observation in all the three country cases. In Botswana, the Minister of Presidential Affairs and Public Administration, Lt. General Mompoti Merafhe at that time pointed out that by introducing the Directorate on Corruption and Economic Crime (DCEC) Bill, the government wanted to make it clear to the voters and investors that business in Botswana was done in a just and sincere manner, and that the voters do not put up with abuses of the law by those who possess wealth and are in positions of influence

(Republic of Botswana, 1994). This shows that the government was concerned with investor confidence in the country. The concern with investor confidence was also reiterated by Botswana's President Festus Mogae in 1999 when addressing the ninth International Anti-Corruption Conference (IACC) in Durban, South Africa. President Mogae observed that by introducing an anti-corruption agency, Botswana was sending a clear message to the international investors that business activities and decisions in Botswana were not determined by offering bribes or inducements. Moreover, Botswana needed to assure its citizens that the government encouraged their wish to have a government, public and private institutions which are reliable and dependable (Mogae, 1999).

Similarly, South Africa hosted the ninth International Anti-Corruption Conference (IACC) in 1999; the first such conference to be held in Africa. The conference showed that there was growing unease over the problem of corruption in Africa not only amongst governments but civic organisations as well. This conference was one significant instance of how international developments and pressures impact on the development of anti-corruption agencies in Africa and elsewhere. The development of these agencies shows that corruption was not only taken seriously but there was also a need to control it because corruption was perceived as a threat. Speaking in 1997 at a seminar in Midgard, Namibia, the former South African Minister of Water Affairs and Forestry, Kader Asmal warned that corruption was one of the major threats to democracy globally, especially in Africa where the development of democracy remains weak. Likewise, there is also concern about the problem of corruption in Namibia. Two anti-corruption seminars - led by the Prime Minister - were held in 1997 and 1998. The aim of these conferences was to formulate a

national integrity plan for the country. Following these seminars, an anti-corruption bill was tabled in Parliament in 2001 by the Prime Minister. The Bill which has been stalled by the political process is yet to be translated into law.

While Botswana, Namibia and South Africa were considered as the least corrupt countries in Africa by Transparency International, through these initiatives these countries want to show foreign investors, donors as well as voters that they were concerned about the problem of corruption. Thus, although the three countries were not subjected to the same levels of direct donor pressures as much of Africa, these countries wanted to protect their fragile democratic gains and strengthen their reputation for honesty. It was in this context that the control of corruption was important for these countries hence the creation of anti-corruption agencies.

### **Conclusion**

This chapter brought our case studies together in order to achieve a comparative analysis on anti-corruption agencies in Botswana, South Africa and Namibia. First, the chapter examined the nature of the state and patterns of corruption in the three countries. Second, it compared anti-corruption agencies in the three countries in terms of their functions, powers, resources and their effectiveness in tackling corruption. In all three countries, anti-corruption agencies have an extensive mandate and powers. However, in all three countries anti-corruption agencies have produced disappointing results in investigating and prosecuting high-level corruption.

The successes of anti-corruption agencies need to be understood in the context of their resources, the way they have been structured and the political environments



under which they function. In all the three countries, anti-corruption agencies have suffered from lack of resources resulting from lack of political support and the general problem of underdevelopment. There is also lack of political will to prosecute high-level corruption. Even if there was such a will, these agencies, by their nature, are unable to affect the underlying political pressures which promote corruption and that, therefore, their successes can only be limited to individual cases. Moreover, the model on which these agencies are based is inappropriate to the African setting and assumes conditions that cannot be replicated in the subcontinent. Therefore, the purpose of anti-corruption agencies in Africa might possibly have more to do with reassuring investors and aid donors in an age of globalisation than about actually attacking high-level corruption, an activity that would, after all, undermine the fragile political elites of these countries.

## Chapter Eight: Conclusion

This chapter gives a summary of the main arguments presented in the thesis. The thesis placed anti-corruption agencies in Botswana, South Africa and Namibia within the politics of the African state. It explored socio-political forces and economic problems that drive corruption in Africa and give rise to anti-corruption agencies. It sought to explain why corruption was seen as destructive to African development in terms of the politics of the state in Africa and to illustrate the factors that made anti-corruption agencies important and why they needed to be effective. The thesis has also examined the broader context of reform policies in Africa and more generally. Moreover, the thesis discussed the politics of corruption, the nature of corruption and anti-corruption agencies in our case studies of Botswana, South Africa and Namibia. Lastly, the thesis brought the individual case studies together in order to attain a comparative analysis on anti-corruption agencies in the three countries. To the best of my knowledge, this study is the first of its kind. Previous studies focused on single country studies.

For the past ten to fifteen years, Africa has been besieged by reform efforts (neo-liberal) aimed at reversing corruption and economic crisis which bedevil African economies. These are mainly perceived as a governance problem amongst others by international financial institutions such as the World Bank. Przeworski noted that the goal of the recent reforms “is to organize the economy that rationally allocates resources and which the state is financially solvent” (1991: 136). Although Bratton and Van de Walle appreciate that reforms which Africa embarked on in the 1990s “were shaped by the crippling effects of a structural

economic crisis and precipitated by democratic initiatives in Eastern Europe, China and South Africa”, they authoritatively contest that “African governments introduced governance reforms primarily in response to indigenous political demands” (1992: 27). The other factor that led to reforms is the disintegration of the former Communist block. The collapse of the Soviet Union gave rise to a new international political order which favoured not only the growth and promotion of democracy in Africa and elsewhere, but has also gave donor agencies and governments an opportunity to tackle the problem of corruption.

With the end of the Cold War, corruption came to be perceived as an issue of great concern because it was associated with economic crisis facing most African countries. Prior to this, authoritarian and corrupt regimes received aid from both Western countries and the Soviet Union because Western countries were mainly concerned with the spread of communism. The flexibility in aid has dried up partly because authoritarian regimes have lost their strategic importance. William Reno noted that “superpower rivals lost much of their interest in weak states with the end of the Cold War” (1997: 166). Economic aid has been tied to political reforms. The end of the Cold War has played a key role in shaping the nature of the state that emerged in the 1990s. Even former liberation movements such as SWAPO and the ANC which benefited from Soviet aid in their fight against the apartheid state, have abandoned their rhetoric socialist programmes since assuming power in Namibia (1990) and South Africa (1994). Nevertheless, as shown in chapter three, reforms are fraught with contradictions.

The post-colonial state in Africa assumed a central role in the economy mainly because the private sector was underdeveloped. As a result, the state was seen as an engine of development and the only means to acquire wealth hence it became the battlefield for resources (Mokoli, 1992). Although corruption was often perceived as a product of individual greed, lack of morals etc, the nature of the state was of paramount importance in understanding the dynamics of corruption in Africa. The nature of the post-colonial state made access to the state crucial because the state was the single most important entity which controlled vast amounts of resources than any other entity. As a result the state was seen as the source of education, health, employment and wealth in much of Africa. Carino (1985) observed that government manages the distribution of a huge number of services such as employment, health and education along with licences and contracts. Johnston underscores the same point, noting that “government is an important source of goods, services, money decisions, and authority in society – benefits that are vigorously pursued by many groups and individuals” and, in most cases “demand for government’s rewards frequently exceeds the supply” (1982: 3). This was acute in most of the developing world where resources were scarce. The majority of the populace in most of the developing world is heavily dependent on the state for their survival. As a result, the state was besieged with demands which it could not meet. However, by the 1980s

the economic situation in most countries that followed the state-oriented paradigm was deteriorating. State-directed development had led to the creation of bloated bureaucracies, inefficient management, loss of productivity, corruption, deterioration of services, the rise of new elites feeding off the public purse, and widespread public discontent. The notion that a strong state is the key to development had been discredited (Case, 2001:<http://www.case.org.za/html/civilsaf.htm>).



The World Bank attributed policy failure on patronage networks during the Cold War (Reno, 1997). Partly because of past state failures, neo-liberal reforms called for a minimal state which was both efficient and effective. For the neo-liberals, corruption existed because there was no democracy, and that the state interfered with the functioning of the market. Therefore they were putting pressure on Third World governments to institute political and economic reforms. These reforms perceive the market as the engine of economic development because the state was associated with corruption and past economic failures. Neo-liberal reforms were calling for right sizing, down-sizing, privatisation and deregulation amongst others. They contested that “radical privatization and deep cuts in state employment...subject state agents to the discipline of the market” (ibid. 170). Moreover, “private enterprise will undermine inefficient patron-client cliques as resources shift from state control to the private economy” (ibid. 170). Nevertheless, as we noted in chapter three, these reforms are not a panacea for corruption. Instead economic reforms may lead to the privatisation of corruption whereas political reforms may democratise corruption.

Recent history in Africa indicated that there was a move towards the development of anti-corruption agencies and ombudsmen mainly because of domestic and international democratic pressures. Domestic pressures included the press, interests groups and pressures from opposition parties. On the international front these included the International Monetary Fund (IMF), the World Bank, Transparency International and donor agencies in general which were concerned with the problem of corruption. Botswana, South Africa and Namibia were not exceptions in creating anti-corruption institutions. The global trend was to

establish specialised agencies with special powers to curb corruption. In Botswana, the DCEC was established in 1994, and in Namibia, an Ombudsman was created in 1990 and plans were under way to create a specialised agency. In South Africa, IDSEO was set up in 1992, and the Public Protector and the Health SIU were established in 1994 and 1996 respectively. The ultimate reason for establishing these institutions was to promote transparency and accountability. These agencies lack independent powers to prosecute. They investigate and refer cases to the prosecuting institution and/or recommend remedial action where appropriate. In Botswana, the DCEC investigates, prevents and educates the public on the dangers of corruption to the economy and the society at large, and in Namibia, the Ombudsman investigates corruption, administrative malpractices, abuse of human rights and misuse of natural resources.

In South Africa, the Public Protector must

investigate matters and protect the public against matters such as maladministration in connection with the affairs of government, improper conduct by a person performing a public function, improper acts with respect to public money, improper or unlawful enrichment of a person performing a public function and an act or omission by a person performing a public function resulting in improper prejudice to another person (Republic of South Africa, 1994: PREAMBLE).

IDESO, on the one hand, was established to provide for a quick and proper investigation of serious economic offences. The Health SIU, on the other hand, was set up "for the purpose of investigating serious malpractices or maladministration in connection with the administration of state institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public" (Republic of South Africa, 2001:<http://www.heathsiu.co.za/act.htm>). Anti-corruption agencies in the three

countries differ in terms of the strategies they use to combat corruption. In Botswana, the DCEC uses three pronged strategy of investigation, prevention and public education, a strategy it borrowed from Hong Kong. In South Africa, the three agencies, the Public Protector, IDSEO and the SIU, fight corruption mainly through investigation. The same applies to the Ombudsman in Namibia.

The creation of these institutions suggested that there was a declared intent to fight corruption in the three countries. However, despite efforts to fight corruption by Botswana, South Africa and Namibia in their public administrations, the results have so far been largely disappointing in terms of investigating and prosecuting high-level corruption. The problem facing these agencies goes beyond resources and the appropriateness of the model. The problem is that these agencies are unable to change the underlying political pressures which drive corruption. If they attempt to do so, their government hinder progress. The obvious example is the SIU which experienced difficulties when it wished to investigate the controversial R43 billion arms contract.

For all that, the development of these agencies is a hopeful sign that the struggle to contain corruption – and to prevent its destructive effects – is being taken seriously. Whatever the motives for their creation, they are indicative of a felt need to confront the problem and to be seen to be doing so. Perhaps, in time, they will be given the support and resources they need to develop sharper teeth.

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### **3. Interviews**

#### **(i) Botswana**

Interviews were conducted between September 1999 and February 2000 in Gaborone and Francistown with, among others,

The Director, DCEC

Deputy Director, DCEC

Assistant Director, DCEC

Assistant Director, DCEC

Assistant Director, DCEC

Assistant Director, DCEC

Principal Investigator, DCEC

Principal Investigator, DCEC

Principal Investigator, DCEC

Investigator, DCEC

Investigator, DCEC

Investigator, DCEC

Senior Lecturer, University of Botswana

Senior Lecturer, University of Botswana

Lecturer, University of Botswana

Executive Secretary, Botswana Democratic Party (BDP)

BDP MP

Lecturer, University of Botswana

Deputy Clerk, Botswana Parliament

Deputy Director, Directorate of Public Service Management

Leader, Botswana Alliance Movement

Leader, Botswana Congress Party (BCP)

Attorney in private practice

Leader, Botswana National Front (BNF)

Press Secretary, DFID

Consultant, DFID

Journalist, The Botswana Guardian, Gaborone

Journalist, Mmegi/The Reporter, Gaborone

Consultant, Tsa Badiri Consultancy

Senior BCP politician

Senior BCP politician

Deputy Attorney-General

The Ombudsman

Official of Transparency International, Botswana Chapter

Official of Ditshwanelo (Botswana Centre for Human Rights)

**(ii) Namibia**

Interviews were conducted during February and March 2000 in Windhoek with, among others,

Deputy Director, Office of the Ombudsman

Chief Control Officer, Office of the Ombudsman

Deputy Director, Office of the Prime Minister

Director, Ministry of Water Affairs

Public Relations Officer, Ministry of Home Affairs

Professor, University of Namibia

Lecturer, University of Namibia

Director, National Society for Human Rights

Auditor General

Assistant Auditor General

USAID Official, Windhoek

DFID official, Windhoek

European Union Official, Windhoek

Leader, Democratic Turnhalle Alliance (DTA)

Government Attorney

Under Secretary, Office of the Prime Minister

Editor, The Namibian Newspaper, Windhoek

MP, Congress of Democrats (CoD)

Legal Services Officer, Legal Assistance Centre

Editor, Die Republikein Newspaper, Windhoek



**(iii) South Africa**

Interviews were conducted in May 2000 in Pretoria with, among others,

The Director, Investigating Directorate for Serious Economic Offences (IDSEO)

Senior Advocate, IDSEO

Senior Advocate, IDSEO

Head, Special Investigating Unit (SIU)

Executive Assistant, SIU

Public Relations Officer, Office of the Public Protector

Chief Advocate, Office of the Public Protector

Registry Officer, Office of the Public Protector

Journalist, South African Broadcasting Corporation (SABC)

DFID official, Pretoria

Journalist, Pretoria News, Pretoria

African National Congress (ANC) politician

Senior Advocate, Department of Justice

Senior Advocate, Department of Justice

Democratic Alliance (DA) politician

Professor, University of Pretoria

Lecturer, University of Pretoria

Deputy Director, Department of Public Works

USAID official, Pretoria

Director, Public Service Commission

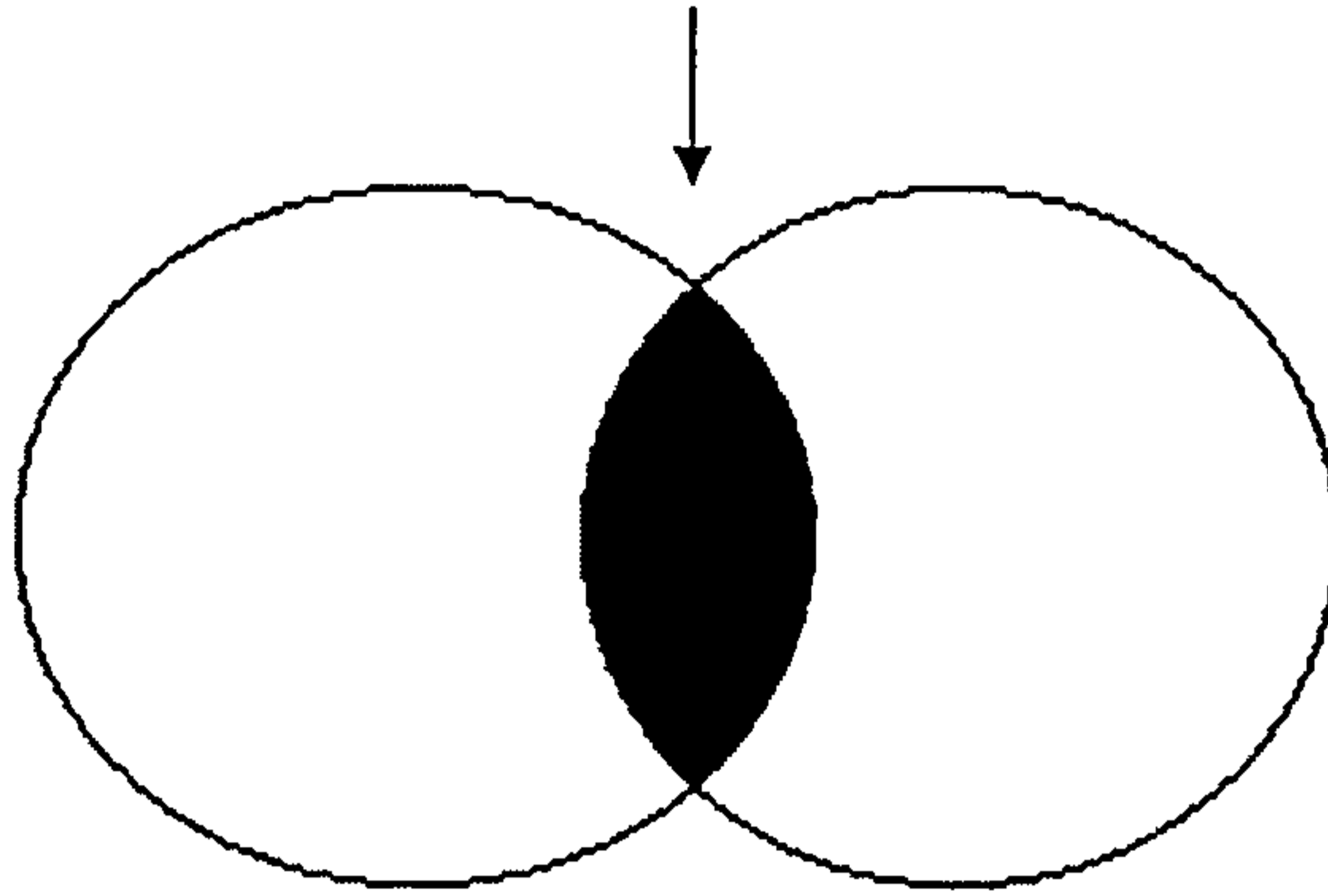
Member, Public Service Commission

Communication Officer, Department of Land Affairs

Legal Services Officer, Department of Land Affairs

## Appendix 1: Markovits and Silverstein's due process

The realm of scandals in liberal democracies



The logic of power

By its very nature:

- Privatizing
- Secretive
- Exclusive

The logic of due process

By its very nature:

- Public-oriented
- Open
- Inclusive

Reproduced from: Markovits and Silverstein (1988: 7)

## Appendix 2: Questionnaire for senior officers of anti-corruption agencies

The purpose of this questionnaire is to solicit information on the effectiveness of anti-corruption agencies in Botswana, Namibia and South Africa. Please note that all information will be treated in confidence. The information will be used in aggregate terms and not for individual cases. You are therefore assured complete confidentiality.

### a) Personal data

1) Gender a) M  b) F

2) Age group a) 21 – 30  b) 30 - 40  c) 40 - 50  d) 50 - 60  e) 60 +

3) Educational Background a) no schooling  b) Primary  c) Secondary  d) College  e) University  f) Others

4) Citizenship a) Citizen  b) Non-citizen

5) What office do you hold with the organisation? -----  
-----  
-----

6) What are the functions and responsibilities of your office / job? -----  
-----  
-----

7) Is your role in the organisation investigatory or managerial?-----  
-----  
-----

8) What is your previous employment? -----  
-----  
-----

### b) Organizational details

9) What is the name of your organisation?-----  
-----  
-----

10) When was it established?-----  
-----

11) By which statute?-----  
-----

12) What is your organisation charged to do?-----  
-----

-----  
 -----  
 13) How many individuals (establishment) are working for this organisation?-----  
 -----  
 -----

14) How many of these are; a) supervisors  b) investigators  c) back-up staff

16) Are there any vacant posts in your organisation? a) Yes  b) No

17) Why are they vacant?-----  
 -----  
 -----

18) How do you compensate for the vacant posts?-----  
 -----  
 -----  
 -----

19) Where is your organisation situated within government? a) Office of the President  b) Ministry of Justice  c) Ministry of Home Affairs  d) National Assembly  e) Police

20) How does your organisation work with this? -----  
 -----  
 -----  
 -----

21) Who appoints its chief officer(s)? a) President  b) Minister of Justice   
 c) Parliament

22) To whom do you report to? a) President  b) Minister of Justice   
 c) Parliament

23) What is the budget of your organisation? a) less than 10m  b) 10 - 20m   
 c) 20 - 30m  d) 30 - 40m  e) 40-50m  f) 50 - 60m  g) 60m+

24) What proportion of the budget is allocated for different functions?  
 a) equipment  b) Management  c) investigation  d) back-up administration

25) Is this enough? a) yes  b) No



26) If no, how much more do you really need? -----  
-----  
-----

27) Do you feel your organisation is adequately funded? a) Yes  b) No  c)  
Do not know

**c) Functions of the organisation**

28) Why was your organisation established? -----  
-----  
-----

29) What does it entail?-----  
-----  
-----

30) What are the expected outcomes?-----  
-----  
-----

31) How does the statute define corruption?-----  
-----  
-----

32) Do you think this is a useful definition? a) Yes  b) No  c) Do not Know

33) Is it an adequate definition? a) Yes  b) No  c) Do not know

34) What kind of expertise do people in your organisation need?-----  
-----  
-----

35) Do you have adequate expertise? a) Yes  b) No  c) Do not know

36) If no, what steps have you taken to provide the required training? -----  
-----  
-----

37) Do you have the necessary and adequate equipment? a) Yes  b) No  c)  
Do not know

38) What is the exact nature of your powers (specific) given to conduct your work?-----  
-----  
-----

39) What is the source of them?-----  
-----

40) Have there been amendments to your statute to reduce or increase your powers? a) yes  b) No

41) If yes, why were they changed? -----  
-----  
-----

42) Do you think these changes have made it easier for you to conduct your work?  
a) yes  b) No

43) Are these powers necessary? a) Yes  b) No

44) Why?-----  
-----  
-----  
-----

45) Is the way you exercise your powers subject to external review? a) Yes  b) No

46) What limits are put on the way you exercise your powers? -----  
-----  
-----  
-----

47) Do you think your organisation enjoys public support? a) Yes  b) No

48) If yes, what makes you say that? -----  
-----  
-----

49) If no, what do you think can make the public conscious and confident in your work?-----  
-----  
-----  
-----

50) Do you feel your organisation has the support of politicians? a) Yes  b) No

51) Which politicians? a) Government  b) MPs  c) both government and MPs

52) If yes, what makes you say that? -----  
-----  
-----

53) If no, what do you think can make the politicians conscious and confident in your work? -----  
-----  
-----

54) In what ways do politicians support your organisation? -----  
-----  
-----

55) With which departments do you cooperate closely?-----  
-----  
-----

56) Are there any where relations are difficult? a) yes  b) No

57) Why do you think that is?-----  
-----  
-----

58) What strategy do you use to combat corruption?-----  
-----  
-----

59) Is it adequate? a) Yes  b) No

60) What is the range of penalties offenders may get? -----  
-----  
-----

61) Are the penalties adequate? a) Yes  b) No

62) Do they act as a deterrent? a) Yes  b) No

63) To whom are you immediately accountable? a) President  b) Minister of Justice  c) Minister of Home Affairs  d) Parliament  e) Judge  f) Police

64) Is your organisation transparent? a) Yes  b) No

65) What kind of monitoring of your activities goes on? -----  
-----  
-----  
-----

66) Given the fact that your work is mostly confidential, to what extent are you open to the public about your investigations? -----  
-----  
-----

67) Do you publish the results of your investigations? a) Yes  b) No

68) In what form? How widely available? -----  
-----  
-----

69) Does Parliament scrutinise what you do? a) Yes  b) No

70) Are you subject to the Auditor General? a) Yes  b) No

71) In what way is your organisation independent?-----  
-----  
-----

72) Does it have statutory independence? a) Yes  b) No

73) Are you able to protect informants from victimisation? a) Yes  b) No

74) To what extent can you protect them? -----  
-----  
-----

75) Have there been attempts to intimidate one of your officials? a) Yes  b) No

76) If yes, what action did you take?-----  
-----  
-----

77) How do you relate to the press?-----  
-----  
-----



78) Who defines the specific tasks of your organisation?-----  
-----  
-----

79) How often do they do it? -----  
-----  
-----

80) Have you had success in limiting corruption? a) Yes  b) No

81) If yes, what makes you say that?-----  
-----  
-----

82) If no, why do you think you are not successful?-----  
-----  
-----

83) Have you successfully managed to implement the act(s) which established your organisation? a) Yes  b) No

84) If yes, what factors account for your success?-----  
-----  
-----

85) What is the yardstick for effectiveness?-----  
-----  
-----

86) What percentage of the cases you investigate result in prosecutions? -----  
-----  
-----

87) What percentage lead to conviction(s)? -----  
-----  
-----

88) Are there cases you investigate outside your remit? a) Yes  b) No

89) If yes, what is the nature of such cases? -----  
-----  
-----

90) What has your organisation contributed?-----  
-----  
-----

91) Why?-----  
-----  
-----

**d) Problems**

92) Is your organisation treated with respect by the government, civil servants and members of the Public? a) Yes  b) No

93) Which parts of government?-----  
-----  
-----

94) What problems do you encounter?-----  
-----  
-----

95) How can your problems be solved?-----  
-----  
-----

96) What has your organisation failed to do?-----  
-----  
-----

97) What additional resources would help you to do your job more effectively?----  
-----  
-----

98) Are you happy with the quality of staff? a) Yes  b) No

99) Who determines your conditions of service?-----  
-----  
-----

100) Are you adequately paid? a) Yes  b) No

101) How does the state control your organisation?-----  
-----

-----  
-----

102) What lessons have you learnt from other countries?-----

-----  
-----  
-----

### Appendix 3: Questionnaire for line investigators of anti-corruption agencies

The purpose of this questionnaire is to solicit information on the effectiveness of anti-corruption agencies in Botswana, Namibia and South Africa. Please note that all information will be treated in confidence. The information will be used in aggregate terms and not for individual cases. You are therefore assured complete confidentiality.

#### a) Personal data

1) Gender a) M  b) F

2) Age group a) 21 - 30  b) 30 - 40  c) 40 - 50  d) 50 - 60  e) 60 +

3) Educational Background a) no schooling  b) Primary

c) Secondary  d) College  e) University  f) Others

4) Citizenship a) Citizen  b) Non-citizen

5) What office do you hold with the organisation? -----  
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-----

6) What are the functions and responsibilities of your office / job? -----  
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-----  
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7) What is your previous employment? -----  
-----  
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#### b) Organizational details

8) What is the name of your organisation?-----  
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-----

9) What is your organisation charged to do?-----  
-----  
-----  
-----

10) Are there any vacant posts in your organisation? a) Yes  b) No

11) Why are they vacant?-----  
-----  
-----



12) How do you compensate for the vacant posts? -----  
-----  
-----  
-----

13) To whom do you report to? a) President  b) Minister of Justice   
c) Parliament

14) What is the budget of your organisation? a) less than 10m  b) 10 - 20m   
c) 20 - 30m  d) 30 - 40m  e) 40-50m  f) 50 - 60m  g) 60m+

15) What proportion of the budget is allocated for different functions?  
a) equipment  b) Management  c) investigation  d) back-up administration

16) Is this enough? a) yes  b) No

17) If no, how much more do you really need? -----  
-----  
-----

18) Do you feel your organisation is adequately funded? a) Yes  b) No   
c) Do not know

**c) Functions of the organisation**

19) Why was your organisation established? -----  
-----  
-----  
-----

20) How does the statute define corruption?-----  
-----  
-----  
-----

21) Do you think this is a useful definition? a) Yes  b) No  c) Do not Know

22) Is it an adequate definition? a) Yes  b) No  c) Do not know

23) What kind of expertise do people in your organisation need?-----  
-----  
-----  
-----

24) Do you have adequate expertise? a) Yes  b) No  c) Do not know

25) Do you receive the necessary training? a) Yes  b) No  c) Do not know

26) If no, what steps have been taken to provide the required training? -----  
-----  
-----  
-----

27) Do you have the necessary and adequate equipment? a) Yes  b) No  c) Do not know

28) What is the exact nature of your powers (specific) given to conduct your work?-----  
-----  
-----

29) What is the source of them?-----  
-----

30) Have there been amendments to your statute to reduce or increase your powers? a) yes  b) No

31) If yes, why were they changed? -----  
-----  
-----

32) Do you think these changes have made it easier for you to conduct your work?  
a) yes  b) No

33) Is the way you exercise your powers subject to external review? a) Yes  b) No

34) What limits are put on the way you exercise your powers? -----  
-----  
-----

35) Do you feel your organisation enjoys public support? a) Yes  b) No

36) If yes, what makes you say that? -----  
-----  
-----

37) If no, what do you think can make the public conscious and confident in your work?-----  
-----  
-----  
-----

38) Do you think your organisation has the support of politicians? a) Yes  b) No

39) Which politicians? a) Government  b) MPs  c) both government and MPs

40) If yes, what makes you say that? -----  
-----  
-----

41) If no, what do you think can make the politicians conscious and confident in your work? -----  
-----  
-----

42) In what ways do politicians support your organisation? -----  
-----  
-----

43) With which departments do you co-operate closely?-----  
-----  
-----

44) Are there any where relations are difficult? a) yes  b) No

45) And why do you think that is? -----  
-----  
-----

46) What strategy do you use to combat corruption?-----  
-----  
-----

47) Is it adequate? a) Yes  b) No

48) What is the range of penalties offenders may get? -----  
-----  
-----

49) Are the penalties adequate? a) Yes  b) No

50) Do they act as a deterrent? a) Yes  b) No

51) To whom are you immediately accountable? a) President  b) Minister of Justice  c) Minister of Home Affairs  d) Parliament  e) Judge  f) Police

52) Is your organisation transparent? a) Yes  b) No

53) What kind of monitoring of your activities goes on? -----  
-----  
-----

54) Given the fact that your work is mostly confidential, to what extent are you open to the public about your investigations? -----  
-----  
-----

55) Do you publish the results of your investigations? a) Yes  b) No

56) In what form? How widely available?-----  
-----  
-----

57) Does Parliament scrutinise what you do? a) Yes  b) No

58) Are you subject to the Auditor General? a) Yes  b) No

59) In what way is your organisation independent?-----  
-----  
-----

60) Does it have statutory independence? a) Yes  b) No

61) Are you able to protect informants from victimisation? a) Yes  b) No

62) To what extent can you protect them? -----  
-----  
-----

63) Have there been attempts to intimidate you? a) Yes  b) No

64) If yes, what action did you take?-----  
-----  
-----

66) How do you relate to the press?-----  
-----



-----  
-----

67) Who defines the specific tasks of your organisation?-----  
-----  
-----

68) How often do they do it? -----  
-----  
-----

69) Have you had success in limiting corruption? a) Yes  b) No

70) If yes, what makes you say that?-----  
-----  
-----

71) If no, why do you think you are not successful?-----  
-----  
-----

72) What is the yardstick for effectiveness?-----  
-----  
-----

73) What percentage of the cases you investigate result in prosecutions? -----  
-----  
-----

74) What percentage lead to conviction(s)? -----  
-----  
-----

75) Are there cases you investigate outside your remit? a) Yes  b) No

**d) Problems**

76) Is your organisation treated with respect by the government, civil servants and members of the Public? a) Yes  b) No

77) Which parts of government?-----  
-----  
-----

78) What problems do you encounter?-----  
-----

-----  
-----

79) How can your problems be solved?-----  
-----  
-----  
-----

80) What has your organisation failed to do?-----  
-----  
-----

81) What additional resources would help you to do your job more effectively?----  
-----  
-----

82) Who determines your conditions of service?-----  
-----  
-----

83) Are you adequately paid? a) Yes  b) No

84) How does the state control your organisation?-----  
-----  
-----

85) What lessons have you learnt from other countries?-----  
-----  
-----

**Appendix 4: Questionnaire for senior civil servants, politicians, leaders in NGOs, newspaper editors and senior reporters**

The purpose of this questionnaire is to solicit information on the effectiveness of anti-corruption agencies in Botswana, Namibia and South Africa. All information will be treated in confidence. The information will be used in aggregate terms and not for individual cases. You are therefore, assured complete confidentiality.

**a) Personal data**

- 1) Gender a) M  b) F
- 2) Age group a) 21 - 30  b) 30 - 40  c) 40 - 50  d) 50 - 60  e) 60 +
- 3) Educational Background a) no schooling  b) Primary  c) Secondary   
d) College  e) University  f) Others
- 4) Citizenship a) Citizen  b) Non-citizen

**b) Functions and organisational details**

5) Why was it established? -----  
-----  
-----  
-----

6) What is it charged to do? -----  
-----  
-----  
-----

7) Do you think it is doing a valuable job? a) Yes  b) No

8) Do you think it has it been successful in limiting corruption? a) Yes  b) No

9) If yes, what makes you say that? -----  
-----  
-----  
-----

10) If no, why has it not been successful in limiting corruption?-----  
-----  
-----  
-----

11) Do you notice it? a) Yes  b) No

12) How? -----  
-----  
-----  
-----

13) Do you have any knowledge of any of its investigations? a) Yes  b) No

15) Do you think it investigates trivial matters? a) Yes  b) No

16) Do you feel it interferes with your work / life? a) Yes  b) No

17) If yes, in what ways? -----  
-----  
-----  
-----

18) Do you have trust and confidence in this organisation? a) Yes  b) No

19) Why? -----  
-----  
-----  
-----

20) Do you think it enjoys public support? a) Yes  b) No

21) If yes, what makes you say that? -----  
-----  
-----  
-----

22) If no, what do you think can make the public conscious and confident in its work?-----  
-----  
-----  
-----

23) Do you think it enjoys the support of politicians? a) Yes  b) No

24) If yes, what makes you say that? -----  
-----  
-----  
-----

25) If no, what do you think can make politicians conscious and confident in its work? -----  
-----  
-----  
-----

25) Do you think it is independent from government? a) Yes  b) No

26) If yes, in what way is it independent? -----  
-----  
-----



27) If no, what do you think can be done to guarantee its independence? -----  
-----  
-----

28) Do you think it has adequate expertise? a) Yes  b) No

29) Do you think it is adequately funded? a) Yes  b) No

30) What additional resources do you think it needs to do its job better? -----  
-----  
-----

31) Do you think it should it be abandoned? a) Yes  b) No

32) If yes, why should it be abandoned? -----  
-----  
-----

33) Do you think it is an effective organisation? a) Yes  b) No

**c) Problems**

34) What problems does it encounter? -----  
-----  
-----

35) In what ways can these problems be solved? -----  
-----  
-----

**Appendix 5: Cases received by the DCEC in Botswana, September 1994 - 1999**

Report statistics	1994 (Sep-Dec)	1995	1996	1997	1998	1999	Total
Number of complaints received	254	896	1378	1511	1525	1023	6587
Number made in which complaints identified themselves	237 (93.31%)	734 (81.92%)	1003 (72.79%)	1132 (68.98%)	1052 (68.98%)	741 (72.4%)	4899 (74.4%)
Number made anonymously	17 (6.69%)	162 (18.08%)	375 (27.21%)	379 (25.08%)	473 (31.02%)	282 (22.6%)	1688 (25.6%)
Number of investigations commenced	170	411	417	316	318	362	1994
Number of cases either referred to other bodies or in which no action was taken	84	485	961	1195	1207	661	4593

*Source:* Republic of Botswana, 1999 annual report of the DCEC

**Appendix 6: Cases received and finalised by the Public Protector in South Africa, October 1995 - June 1996**

Period	New cases received	Cases finalised
Oct 1995	121	48
Nov 1995	155	42
Dec 1995	71	46
Jan 1996	135	68
Feb 1996	146	61
March 1996	169	54
April 1996	198	37
May 1996	202	100
June 1996	201	47
<b>Total</b>	<b>1398</b>	<b>503</b>

NB: 544 cases were carried over from September 1995 and, 1 439 cases carried over to 1 July 1996. *Source:* Republic of South Africa First half-yearly report 1996

**Appendix 7: Cases received and finalised by the Public Protector in South Africa, July 1996 - December 1996**

<b>Period</b>	<b>New cases received</b>	<b>Cases finalised</b>
July 1996	123	47
August 1996	292	34
September 1996	176	43
October 1996	340	74
November 1996	251	125
December 1996	129	73
<b>Total</b>	<b>1311</b>	<b>396</b>

NB: 1521 cases were carried forward from June 1996, and 2436 were carried to January 1997. *Source:* Republic of South Africa, second half-yearly report 1996

**Appendix 8: Cases received and finalised by the Public Protector in South Africa, January 1997 - December 1997**

<b>Period</b>	<b>New cases received</b>	<b>Cases finalised</b>
January 1997	239	7
February 1997	228	9
March 1997	237	7
April 1997	290	30
May 1997	367	98
June 1997	261	117
July 1997	241	186
August 1997	312	147
September 1997	313	173
October 1997	399	114
November 1997	290	197
December 1997	166	99
<b>Total</b>	<b>3343</b>	<b>1184</b>

NB: 1 248 cases were carried forward from 1996, and 3406 were carried forward to January 1997. *Source:* Republic of South Africa, Report No 14 for 1 Jan to Dec 1997

## Appendix 9: Investigations completed by IDSEO in South Africa, 1993 - 1997

	Case	Time taken		Months	Amount involved
		Period			
	<b>1993</b>				
1.	IPCL	7/7/92	- 4/2/93	7.0	Indeterminable
2.	Palm		- 30/10/93	?	Indeterminable
3.	Hatec	1/9/92	- 20/4/93	8.0	R60 m
4.	BTM	1/4/92	- 7/12/93	20.0	R17 m
5.	IMR	30/10/92	- 24/12/93	14.0	R28 m
6.	KPL Etsa	26/1/93	- 27/10/93	9.0	R200m
7.	Joubert	21/1/93	- 10/12/93	11.0	R50 m
8.	Fundstrust	1/4/92	- 29/1/93	10.0	R29 m
9.	Cape Municipal Fund	29/1/93	- 1/7/93	5.0	
		<b>Average</b>		<b>10.5</b>	
	<b>1994</b>				
1.	ASA Fasteners	7/9/92	- 23/3/94	6.0	R56m
2.	Two way	12/11/92	- 25/3/94	16.0	R100m
3.	Group 88	4/12/92	- 3/8/94	21.0	R423m
4.	Moutse	18/12/92	- 29/9/94	21.0	R40m
5.	Pam/Zaz	1/4/93	- 9/5/94	13.0	R23m
6.	Qualis Headquarters	30/11/92	- 19/9/94	22.0	R6m
7.	Deeds office	17/5/93	- 16/5/94	12.0	R0.1m
8.	Slade	21/5/93	- 9/9/94	16.0	R6.5m
9.	Bilrich	16/11/93	- 24/8/94	9.0	R11m
10.	Table Mountain Trust	1/3/94	- 17/10/94	9.5	R10m
11.	IEC	29/9/94	- 24/11/94	2.0	R2.8m
12.	CET	24/4/92	- 25/5/94	25.0	R490m
13.	Sure Group	7/12/92	- 25/5/94	18.5	R5m
14.	President Insurance	18/11/92	- 25/2/94	16.0	R20m
		<b>Average</b>		<b>14.8</b>	
	<b>1995</b>				
1.	Tollgate	2/2/93	- 12/6/95	16.0	R350m
2.	Escoffery	2/2/95	- 29/9/5	8.0	R18.6m
3.	Crest	2/11/92	- 2/2/95	27.0	R6m
4.	XR Sales	3/11/93	- 31/1/95	15.0	R0.5m
		<b>Average</b>		<b>16.5</b>	
	<b>1996</b>				
1.	Le Roux	18/10/93	- 6/96	32.0	R25m
2.	Harnex	4/3/93	- 24/5/96	38.5	R9m
3.	Alpha Bank	10/12/93	- 30/7/96	31.5	Indeterminable
4.	Rail Commuter Corporation	19/9/94	- 21/10/96	25.0	R25m
5.	Booyens/NedBank	17/11/94	- 24/1/96	14.0	R1 800m
6.	Rudolph	9/1/95	- 2/7/96	18.0	R5m
7.	Foundation for Peace & Justice	10/2/95	- 17/1/96	11.0	R3m
8.	National Tourism Forum	10/3/95	- 30/8/96	17.5	R4m
9.	Reyneke	16/4/93	- 9/1/96	21.0	R12.5m
10.	Emeralds	21/4/92	- 19/12/96	56.0	R350m
		<b>Average</b>		<b>26.5</b>	



**Appendix 9: Investigations completed by IDSEO (continued)**

	1997 (to date)				
1.	Fancourt	2/2/95	- 5/3/97	25.0	R100m
2.	Zhauns Textile	15/6/94	- 21/4/97	34.0	R6.3m
3.	Molyneux	6/11/95	- 5/6/97	19.0	R7m
4.	TPA/NPA Contracts	14/9/94	- 20/8/97	35.0	R3m
5.	Sivils Barnard	29/3/95	- 9/10/97	30.0	R9.8m
6.	Puma Sales	23/8/95	- 15/10/97	25.5	R12.6m
7.	Granagia Trust	30/3/95	- 16/10/97	30.5	R0.75m
8.	Owen Wiggins	16/1/95	- 4/11/97	33.5	R12m
9	MMF	20/5/92	- 10/12/97	66.5	Indeterminable
		<b>Average</b>		<b>33.2</b>	

NB: The names used above are convenient names. *Source:* Republic of South Africa, IDSEO Annual report: 1 July 1996 to 30 June 1997