



**UNODC**

United Nations Office on Drugs and Crime

## **Country Review Report of the Republic of Botswana**

Review by Sri Lanka and Guinea of the implementation by Botswana of articles 5-14 and 51-59 of the United Nations Convention against Corruption for the review cycle 2016-2021

## I. Introduction

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1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## II. Process

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5. The following review of the implementation by Botswana of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Botswana and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Sri Lanka, Guinea and Botswana, by means of telephone conferences and e-mail exchanges or any further means of direct dialogue in accordance with the terms of reference and involving Ms. Erica Ndlovu, Ms. Thembele Dihela and Ms. Esther Kazondunge from Botswana, Ms. Ayesha Jinasena and Ms. W.M. Thanuja Bandara of Sri Lanka, and Mr. Sekou Mohamed Sylla of Guinea. The staff members of the secretariat were Tanja Santucci, Felipe Freitas Falconi and Livia Krings.
6. A country visit, agreed to by Botswana, was conducted in Gaborone from 2 to 4 May 2018.

## III. Executive summary

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### ***1. Introduction: overview of the legal and institutional framework of Botswana in the context of implementation of the United Nations Convention against Corruption***

*Botswana acceded to the Convention on 27 June 2011. The Convention entered into force for Botswana on 27 July 2011.*

*The implementation by Botswana of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was published on 28 May 2014 ([CAC/COSP/IRG/I/4/1/Add.1](#)).*

*Botswana has a dual legal system, comprising customary law and received (or common) law, which consists of English and Roman Dutch law, as amended by the statutes and developed through case law by the High Court and the Court of Appeal, the highest court in Botswana.*

*The national legal framework against corruption includes, principally, the Corruption and Economic Crime Act (as amended) (CECA), Proceeds and Instruments of Crime Act (as amended) (PICA), Financial Intelligence Act (FI Act), Public Service Act, Electoral Act, Public Finance Management Act (PFMA), Penal Code, Whistleblowing Act, Mutual Assistance in Criminal Matters Act (MACMA), and related government regulations, orders, circulars and instructions.*

*Relevant authorities in preventing and countering corruption include the Directorate on Corruption and Economic Crime (DCEC), Directorate of Public Service Management (DPSM), Office of the Ombudsman, Independent Electoral Commission, Office of the President, Auditor General, Public Procurement and Asset Disposal Board (PPADB), Ministry of Finance and Economic Development (MFED), Financial Intelligence Agency (FIA), Bank of Botswana, Botswana Unified Revenue Services (BURS), Non-Banking Financial Regulatory Authority (NBFIRA), Police Service, Administration of Justice, Directorate of Public Prosecutions (DPP), Attorney General's Chambers and Competition Authority.*

## **2. Chapter II: preventive measures**

### **2.1. Observations on the implementation of the articles under review**

#### *Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

*Botswana has not adopted a written national anti-corruption strategy. At the public sector level, a Public Service Anti-Corruption Strategy (2010) exists, which was developed by DPSM in collaboration with DCEC. Further, public institutions have policy statements on anti-corruption. At the national level, a draft National Anti-Corruption Policy for the country has been prepared (December 2015) under the leadership of DCEC through consultations with stakeholders, including the private sector and civil society. In the context of coordination, the draft proposes to establish a new National Anti-Corruption Commission, among other critical objectives, with monitoring and evaluation of the policy to be done by the Government through DCEC.*

*A Presidential Directive requires all ministries and independent departments to mainstream corruption prevention, report performance on anti-corruption indicators to the President's office twice yearly, and establish corruption prevention committees to conduct risk assessments and sensitize personnel. Integrity monitoring is also carried out by anti-corruption units established in 17 government departments, which conduct preliminary investigations, monitor transactions and contribute to implementing recommendations arising from audits and corruption assessments.*

*DCEC is Botswana's lead agency in the prevention and fight against corruption. It conducts corruption audits in public institutions, reviews methods of work in public bodies, identifies corruption opportunities and devises corruption mitigation measures. DCEC coordinates all anti-corruption initiatives through corruption prevention committees, anti-corruption units, and partnerships. It also promotes public awareness-raising and educational programmes in schools, colleges and villages.*

*Provisions on the independence of DCEC are established in CECA (sections 3 and 4). The Act does not elaborate on the tenure of the Director-General. The necessary material*

*resources and specialized staff are provided for, although continued capacity-building and development of skilled personnel emerged as a priority.*

*Botswana reviews and revises laws, regulations and administrative measures against corruption, as required. The Revision of the Laws Act No. 16 of 2002 provides for the periodic revision of the laws of Botswana.*

*Botswana is a member of and participates in the activities of the Southern African Development Community (SADC), Southern African Forum against Corruption (SAFAC), African Union, Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG), Asset Recovery Inter-Agency Network for Southern Africa (ARINSA) and International Criminal Police Organization (INTERPOL). Botswana is a member of the Commonwealth and hosts the Commonwealth Africa Anti-Corruption Centre. DCEC and other institutions also collaborate with foreign countries on staff exchanges, training and capacity-building.*

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

*The recruitment, retention, promotion and retirement of civil servants are regulated mainly in the Public Service Act No. 30 of 2008, General Orders of 1996 and circulars and directives. The appointment, discipline and termination of public officers is provided for in the Constitution, PSA and relevant regulations. Training is available to public officials commensurate with their duties of service, including on integrity and anti-corruption. Pay scales, which are publicly available, are determined by DPSM.*

*For public positions deemed vulnerable to corruption, the recruitment procedure is the same, though additionally background and integrity checks are conducted for some positions.*

*There is a system for the periodic promotion of public officials to other positions. However, there does not exist a government-wide structured system for periodic rotation. Some public bodies, such as PPAD and anti-corruption units at some ministries, have established rotation requirements. A draft transfer policy on the rotation of public servants is under development.*

*The Constitution contains provisions on candidatures for and election to public office. Civil servants cannot stand for elections to public office, and the provision of false information is an offence under the Penal Code. Apart from this and the general offence under CECA, section 19, there are no provisions on conflicts of interest of candidates for office.*

*The Electoral Act No. 38 of 1968 contains provisions on electoral expenses, including the declaration of expenses. Failure to declare or declaration of false information may constitute serious misconduct. Otherwise, there is no requirement for elected officials to declare their assets. A blueprint on political party funding is under development by DCEC, and a Bill on Declarations of Assets and Interests (circulated to all ministries for comment in 2016) is also before parliament, which would consolidate a disclosure requirement for all public officials, appointed or elected.*

*Botswana promotes integrity, honesty and responsibility among its public officials primarily under the framework of the Public Service Charter, which defines the basic principles of public service, and the Public Service Anti-Corruption Strategy, although its principles are not enforceable.*

*While there is no central code of ethics for public servants, some ministries and departments have established internal standards. A draft code of ethics for the Botswana Public Service, prepared by DPSM in 2009, has not yet been adopted.*

*Botswana has established mechanisms to facilitate the reporting of complaints and assist in dealing with corruption in public bodies, including through DCEC, Office of the Ombudsman, as well as corruption prevention committees and anti-corruption units. The Whistleblowing Act contains provisions to protect those reporting acts of corruption through designated channels.*

*Judicial appointments of High Court Judges are made by the President on the recommendation of the Judicial Service Commission (Constitution, section 96), except the appointment of the Chief Justice and the President of the Court of Appeal (section 100). The Administration of Justice has developed a Judicial Code of Conduct; however, no specific integrity or ethics training is provided for.*

*All cases, unless it is specifically stated otherwise, are heard in open court and court judgments are accessible to the public. Moreover, a Court Records Management System allows for a random automatic assignment of cases. There is one judge specialized to hear corruption cases.*

*DPP is appointed by the President and is subject to administrative supervision by the Attorney-General (Section 51A, Constitution). Section 113 of the Constitution provides for the removal of the Attorney-General, but not DPP. The Public Service Act governs the appointment and removal of prosecutors.*

*An anti-corruption unit, staffed by specialized prosecutors, is established in the office of DPP. A Code of Conduct for Prosecutors has also been finalized. All prosecutors attend an induction training programme, while ethics and integrity training is also available.*

#### *Public procurement and management of public finances (art. 9)*

*Section 26 of the PPADB Act provides that public procurements shall be based on the principles of accountability, transparency, integrity and fairness. The Act prescribes the functions and powers of PPADB and establishes procurement principles, such as competition and fair treatment.*

*Botswana promotes transparency in public procurement through procurement procedures (including selection and award criteria and conditions of participation) contained in the PPADB Act, PPADB Regulations and PPADB Circulars published on the PPADB website. Detailed information, including standardized bidding packages, forms, pricing guides, bidding manuals, PPADB decisions and annual reports, are available online. Tender notices are published weekly in Botswana's Daily News, the government gazette, and on the government website, pursuant to PPADB Regulations, 2006.*

*PPADB conducts tender audits, contract audits and performance audits (section 52, PPADB Act). An administrative complaints review procedure is also established under Part X of the Act and subsidiary regulations. Contractors may challenge procurement decisions to an Independent Complaints Review Committee established under the Act, with further possibility of appeal to the courts, including the High Court of Botswana.*

*The Integrated Procurement Management System (IPMS) automates Botswana's public procurement procedures, with the objective to improve public procurement processes and improve service delivery.*

*The recruitment and selection of PPADB personnel is done through IPMS. Members of the PPADB Board are subject to conflict of interest requirements and an obligation to*

*disclose potential conflicts of interest (section 88, PPAD Act). Procurement personnel who fail to follow the procurement laws and regulations may be subject to disciplinary action under the PSA.*

*Botswana's Constitution provides for procedures on the adoption of the national budget. In practice, MFED is responsible for coordinating the preparation of the annual budget and the budget speech.*

*Accountability in the management of public finances is provided through a system of financial management, control and expenditure, pursuant to provisions in PFMA, the Financial Instructions and Procedures and other regulations. The Government Accounting and Budgeting System (GABS) centralizes all payments and records, including budgeting.*

*Botswana institutes risk-based internal and external audits and has developed a national risk policy and a medium to long-term implementation plan, following piloting in six public organizations in 2017. The Public Audit Act No. 15 of 2012 establishes a system of auditing standards and related oversight.*

*Public reporting; participation of society (arts. 10 and 13)*

*In line with its Vision 2036: Prosperity for all, access to information is a priority for Botswana. Anti-corruption information is shared using various methods and media, while administrative procedures are available through General Orders and Government directives.*

*Information on government processes is mainly accessible through the Government gazette, Daily News (a government newspaper), Hansard (a government publication), national radio, television and Department of Broadcasting services, and the Government portal ([www.gov.bw](http://www.gov.bw)).*

*While DCEC conducts corruption risk assessments and audits, identifies systemic weaknesses and recommends procedural reforms, its Strategic Report identifies a lack of tools for measuring corruption and inadequate research on corruption. DCEC, like other agencies, publishes annual reports summarizing its operations. A draft Access to Information Bill is pending.*

*Private sector (art. 12)*

*A number of measures have been taken to encourage ethical business practices and promote cooperation with the private sector in the fight against corruption. For example, DCEC and Business Botswana developed a Code of Conduct for the Private Sector, and PPADB developed a Code of Conduct for Contractors. DCEC also signed a Memorandum of Understanding with Business Botswana and the University of Botswana in 2015 to promote good corporate governance and enhance knowledge and skills in business ethics. DCEC conducts workshops on anti-corruption in sectors such as construction, IT and procurement. Nonetheless, officials report that there is inadequate participation by private sector entities in anti-corruption programmes.*

*A number of laws govern the conduct of private sector professionals, including legal practitioners, engineers, accountants and quantity surveyors. The DPSM 2013 Guidelines on Declaration of Interest restrict the activities of former public officials in terms of their employment by the private sector.*

*Botswana's FI Act, Part IV provides for financial record-keeping, while the Companies Act, Part XIII stipulates requirements for accounting records, audits and disclosures by*

companies. These laws establish sanctions for companies that do not register in the commercial register or fail to maintain proper books and accounts. Criminal provisions on forgery and falsification of documents, fraud and false accounting in the Penal Code also apply. The Botswana Institute of Chartered Accountants (BICA) regulates the activities of accountants, while the Botswana Accountancy Oversight Authority (BAOA) sets auditing and financial standards.

Under Botswana's Income Tax Act, an expense, to be tax-deductible, must be "wholly, exclusively and necessarily incurred" in the production of income (section 39). However, neither the Act nor related legislation specify the non-deductibility of unlawful expenses such as bribes.

#### Measures to prevent money-laundering (art. 14)

Botswana has taken steps towards establishing a domestic regulatory and supervisory regime for banks and non-bank financial institutions (NBFIs). However, there are a number of significant deficiencies in the legal and regulatory framework, which the authorities are in the process of addressing. In particular, the FI Act and regulations have major deficiencies arising from the absence of risk-based requirements and the limited scope of the obligations. The deficiencies include beneficial ownership identification (including by persons and entities involved in the formation and registration of legal persons and for cross-border electronic transfers), Customer Due Diligence (CDD), politically exposed persons (PEPs), record-keeping, correspondent banking and new technologies. Sanctions under the FI Act appear also to be low. Botswana is yet to adequately license money-value transfer providers (MVTs) and monitor the sector for compliance. Botswana adopted the Financial Intelligence (Amendment) Act in June 2018, to address the above deficiencies.

While the FI Act and its regulations have expanded the list of specified parties (financial institutions and designated non-financial businesses and professions/DNFBPs), awareness of these requirements seems to be low. The DNFBP sector is yet to be supervised and not all regulated entities are filing suspicious transaction reports. The reporting requirements for banks with regard to suspicious transaction reports should also be clarified.

FIA serves as the national centre for receiving, analysing and disseminating STRs and is authorized to cooperate, also through agreements, and exchange information with relevant investigatory and supervisory bodies. While NBFIRA is responsible for supervising NBFIs, the supervisory authorities for DNFBPs are not clearly specified. Moreover, supervisors do not apply a risk-based approach when conducting inspections.

Policy direction and national coordination in this area is led by MFED through the multi-agency National Coordinating Committee on Financial Intelligence (NCCFI).

In 2017, Botswana completed a National Money Laundering Risk Assessment, which resulted in a national AML/CFT Assessment Report and Action Plan (a national strategy is pending). The risk-based approach to AML/CFT activities, including risk-based supervision, is not currently implemented.

There are ongoing efforts to raise awareness of the PICA 2018 and its regulations and of the recent changes to the AML regime, as well as to provide training.

Illegal cross-border cash transactions have been identified as high-risk for money-laundering in Botswana. The movement of cash and bearer negotiable instruments is regulated under the FI Act, with records of transactions exceeding 10,000 pula being

reported to BURS. The provisions of the NBFIRA Act are also relevant for NBFIs. An electronic reporting system was being piloted at the time of the country visit.

## **2.2. Successes and good practices**

- *The establishment of corruption prevention committees (art. 5(2)).*
- *Specific frameworks of the Public Service Anti-Corruption Strategy and Public Service Charter to promote integrity, honesty and responsibility among public officials (art. 8(1)).*
- *Efforts to establish an integrated electronic procurement system, as well as the PPADB website providing detailed and current guidance and information (art. 9(1)).*
- *Botswana's Court Records Management System, to enhance equity and transparency in case distribution (art. 11(1)).*

## **2.3. Challenges in implementation**

*It is recommended that Botswana:*

- *Take concrete measures towards the adoption and implementation of the draft national anti-corruption policy, including through the development of implementation action plans and clarification of responsibilities, time frames and resources required, in consultation with all relevant public and non-public stakeholders; attention should be given to ensuring adequate coordination, oversight, as well as awareness-raising and the allocation of sufficient resources; and to specifying the monitoring and evaluation framework, including the proposed establishment of a new national anti-corruption commission (art. 5(1)).*
- *Continue to strengthen inter-agency coordination and cooperation in the implementation of anti-corruption policies and measures; and engage in outreach and consultation with relevant public and non-public stakeholders to ensure their participation in anti-corruption efforts (art. 5(1)).*
- *Continue to assess the effectiveness of prevention activities undertaken by DCEC and other institutions, especially in identified priority areas, in order to strengthen the effectiveness and impact of such activities (art. 5(2)).*
- *Take steps to strengthen the DCEC's independence, resources and operations, by addressing recommendations made during Botswana's first cycle review, including to elaborate on the tenure of the Director General in the law or regulations (art. 6(2)).*
- *Continue to invest in capacity-building, including through international cooperation, exchange programmes and benchmarking with other countries on best practices (art. 6(2)).*
- *Finalize and promulgate the draft transfer policy on the rotation of public servants and consider adopting a more structured, formalized system for the selection, training and rotation of public officials in positions considered vulnerable to corruption (art. 7(1)).*
- *Consider adopting legislation to regulate conflicts of interest of candidates for elected office; amend legislation to expand the definition of conflicts of interest across different laws, including CECA and the Penal Code, based on international best practices (art. 7(2), 7(4)).*
- *Consider adopting appropriate legislative and administrative measures on the funding of political parties, including monitoring and oversight (art. 7(3)).*

- *Establish a mechanism to enforce the Public Service Anti-Corruption Strategy (art. 7(4)).*
- *Adopt effective disclosure systems for public officials (including members of the judiciary) in respect of conflicts of interest, assets and gifts, as well as systems and mechanisms for verification and sanctions for non-compliance, based on international best practices, and provide guidance to officials in this regard (arts. 7(4), 8(5–6)).*
- *Adopt a code of ethics for the public service, and implement the disciplinary code for the DCEC (art. 8(1–6)).*
- *Continue efforts towards implementing a clearly defined, centrally developed system of risk analysis and management, devote adequate resources to risk-based audit procedures, and train officials involved in budgeting and expenditure management (art. 9(2)).*
- *Take steps to adopt the Access to Information Bill (art. 10).*
- *Continue conducting research and investing in the development of tools and systems for measuring corruption and analysing the impact of measures to address audit recommendations (art. 10).*
- *Continue investing in the development of specialized expertise and skills of prosecutors and members of judiciary on anti-corruption and asset recovery, and consider conducting training courses, including integrity training, for judicial officers (art. 11).*
- *Consider making necessary statutory amendments to ensure the independence of the post of DPP, including to clarify his removal and any disciplinary action (art. 11(2)).*
- *Strengthen cooperation with the private sector in preventing and countering corruption (art. 12(2)).*
- *Amend legislation to clearly prohibit unlawful expenses such as bribes from being tax deductible (art. 12(4)).*
- *Consider strengthening collaboration between DCEC and civil society on anti-corruption; take steps to implement the Whistleblowing Act and issue relevant instructions for this purpose; and continue awareness-raising of corruption and reporting channels to relevant authorities (art. 13).*
- *Implement the results of the 2017 National Risk Assessment (NRA), with all supervisors using its findings to promote understanding of the risks facing their regulated entities and applying risk-based supervisory frameworks commensurate with the risks identified. Supervised entities should be required to apply the risk-based approach and CDD requirements, commensurate with the risk profile. The AML obligations should be extended to all financial institutions and DNFBPs, including MVTPs. Supervisory bodies should implement sanctions for non-compliance by their regulated entities. The results of NRA should further be used to inform the development of a National AML/CFT Strategy (art. 14(1)(a)).*
- *Amend the FI Act to address the deficiencies on AML/CFT obligations, provide for a risk-based approach to implementing these obligations, and provide more dissuasive and proportionate sanctions (art. 14(1)(a)).*
- *Establish legal requirements to obtain and retain information on beneficial ownership, in particular relating to legal persons and PEPs (art. 14(1)(a)), 52(1)).*
- *Continue efforts to raise awareness of PICA, the FI Act and its regulations, and of recent changes introduced by the NRA, across the financial sector (art. 14(1)(a)).*

- Amend the FI Act and its regulations to clarify reporting requirements for banks with regard to suspicious transaction reports and specify supervisory authorities for DNFBPs; and finalize the application for EGMONT membership (art. 14(1)(b)).
- Continue efforts by BURS towards implementing the cross-border declaration regime, including adequate sanctions for non-compliance and rollout of the electronic referral system (art. 14(2)).
- Adopt measures to adequately license or register MVTPs and monitor the sector for compliance with AML/CTF requirements; address deficiencies in the legal framework relating to cross-border electronic transfers, including by amending the FI Act (art. 14(3)).
- Continue to strengthen the capacity of FIA in areas of human resources and operations (art. 14(5)).

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

Botswana indicated that it required technical assistance in the following areas:

- Legislative assistance, inter-agency coordination (art. 5).
- Institution-building, facilitating international cooperation (art. 6).
- Developing procedures for receiving and verifying disclosures or declarations of interests, assets and gifts (art. 7).
- Training on risk-based audits (art. 9(2)).
- Developing indicators to assess the impact of audit results; developing a national corruption index (art. 10).
- Capacity-building of the judiciary and prosecution (art. 11).
- Best practices in engaging society in the fight against corruption (art. 13).
- Capacity-building of FIA (art. 14).

### **3. Chapter V: asset recovery**

#### **3.1. Observations on the implementation of the articles under review**

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The provision of mutual legal assistance (MLA) by Botswana is limited to States where an arrangement has been made for mutual assistance in criminal matters (section 3, MACMA). To date, no countries have been designated under MACMA. Botswana provides assistance in the absence of a treaty to designated countries, in accordance with section 3, or on the basis of multilateral treaties, provided their provisions have been incorporated into national legislation. The process of domestication of the Convention is ongoing.

Botswana has published proposed amendments to MACMA in order to address gaps identified in the mutual evaluation conducted by ESAAMLG. Corresponding amendments have been drafted to PICA and to CECA (the latter would allow DCEC to share information without a request). Amendments were passed during the July 2018 Parliament sitting but did not form part of the review.

Botswana has never refused a request for international cooperation on asset recovery.

*Botswana is a member of ESAAMLG, ARINSA and INTERPOL. It also participates in programmes run by the UNODC/World Bank Stolen Asset Recovery (StAR) Initiative and the International Association of Anti-Corruption Agencies (IAACA). Other cooperation channels include SADC, SAFAC, the African Union and the Commonwealth.*

*Spontaneous information-sharing is possible under SARPCCO, INTERPOL and ARINSA, as well as FI Act, section 31(3).*

*Botswana has ratified or acceded to several international instruments on MLA in criminal matters, notably the SADC Protocol and the Commonwealth (Harare) Scheme. No bilateral treaties on MLA have been signed.*

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

*Specified parties are required to verify the identity of their customers under Section 10 of the FI Act and relevant Regulations. Botswana currently does not have beneficial ownership identification requirements, except for Financial Intelligence Regulation 9 in relation to trusts. The FI Act and Regulations do not provide for enhanced due diligence on PEPs.*

*Although the FI Act (sections 11, 12, 15) and regulations establish record-keeping requirements for specified parties, these do not apply to beneficial owners.*

*There is no specific law in Botswana prohibiting the establishment or existence of “shell banks” or correspondent banking relationships with relevant entities.*

*Botswana does not have provisions on financial disclosures for public officials. There is no requirement for public officials to report foreign financial accounts and to maintain appropriate records.*

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

*Botswana does not have provisions allowing other States to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence.*

*Section 316 of the Criminal Procedure and Evidence Act (CP&E), read together with the definition of “person” in the Penal Code, provides a basis for the court to order an accused to pay compensation to another State party that has been harmed. However, the law does not specifically recognize the rights of foreign States as legitimate owners of property or primary claimants in confiscation proceedings.*

*MACMA, section 29(2) provides for the enforcement of foreign restraining orders in respect of “serious offences” (defined in section 2 by reference to the definition in PICA, as an offence punishable by a minimum fine of P2,000 or 2 years’ imprisonment, or both). The procedure is by registration of the order through the High Court. Section 31 further allows for requests to obtain the issuance of a restraining order, in accordance with provisions of PICA (the same threshold for serious offences applies). A PICA Amendment Bill would lower the threshold for serious offences, to cover offences established under this Convention.*

*Freezing of accounts and transactions by FIA is possible for up to 10 days (section 24, FI Act), which period may be extended by court order until the final court*

disposition. Other interim measures may be requested under sections 12, 30–32 of MACMA.

PICA provides for non-conviction based civil penalty orders (section 11), civil forfeiture orders (section 25) and pecuniary penalty orders (section 3).

No requests for confiscation have been received under MACMA to date, and there are no cases where the courts have ordered the enforcement of foreign confiscation orders. All requests received by Botswana relate to the restraint of property, and none of these have been refused by Botswana to-date. Authorities in Botswana consult with requesting States as a matter of practice before refusing assistance.

The preservation of property is addressed in Sections 46 and 68 of PICA and Section 58 of CP&E. Steps to enhance the preservation of assets pending confiscation are underway review through the PICA Amendment Bill.

#### Return and disposal of assets (art. 57)

Botswana's competent authorities can return confiscated property, upon requests made by other States parties, based on CP&E in cases involving offences of theft and receiving stolen property. MACMA contains no provisions addressing the return of forfeited or confiscated property. The MACMA Amendment Bill would allow for sharing of confiscated property with foreign countries and for the return of such property to other countries.

Under PICA, confiscated property is forfeited to the Government (sections 19(1) and 22(1)). Those measures neither establish an obligation to return and dispose of assets in accordance with the Convention, nor refer to returning property to requesting States.

The law does not establish an obligation to return and dispose of assets in accordance with the Convention in cases of embezzlement of public funds or of laundering of embezzled public funds or in cases involving proceeds of offences under this Convention.

There is no law, policy or practice on the issue of costs related to asset recovery.

Botswana has not entered into any asset sharing agreements or arrangements.

### **3.2. Challenges in implementation**

It is recommended that Botswana:

- Adopt the proposed amendments to MACMA and PICA, subject to the observations made under article 57(3), in order to bring the legislation more closely in line with the requirements of the Convention and to harmonize the legislation (arts. 51, 57(3)).
- Consider extending the scope of application of MACMA also to those States with which no arrangement for MLA exists (art. 51).
- Continue to invest in capacity-building to develop specialized expertise and skills of prosecutors and members of the judiciary on mutual assistance in criminal matters, as well as asset forfeiture and recovery (art. 51).
- Amend the gaps in the legislation to fully implement the requirements of article 52, including beneficial ownership identification (including by persons and entities involved in the formation and registration of legal persons), PEPs, record-keeping, correspondent banking and new technologies (arts. 14, 52(1–4)).

- *Take steps to adopt effective financial disclosure systems for public officials that include systems and mechanisms for verification and sanctions for non-compliance, based on international best practices (arts. 8(5) and 52(5)). Further, consider adopting a reporting requirement for foreign financial accounts (art. 52(6)).*
- *Specify in the law recovery mechanisms for injured parties to establish title or ownership of property by explicitly granting legal standing to permit them to initiate civil actions in the domestic courts (art. 53(a)). Specify in the law recovery mechanisms for States parties to establish title or ownership in confiscation proceedings (art. 53(c)).*
- *Adopt relevant amendments to MACMA and PICA to lower the threshold for serious offences (arts. 54(1)(a-b), (2)(a-b) and 55(1-2)).*
- *Amend MACMA to cover non-conviction based orders and the return of assets (art. 54(1)(c)).*
- *Continue to strengthen mechanisms for the preservation of property pending confiscation, including through the implementation and amendment of PICA, and consider adopting comprehensive asset management guidelines (art. 54(2)(c)).*
- *Consider amending MACMA to allow for the provision of assistance in the absence of a treaty or regulation and continue efforts towards the full implementation of the Convention (art. 55(6)).*
- *Specify the consultation procedure with requesting States in the law or procedure (art. 55(8)).*
- *Continue to strengthen measures for the spontaneous exchange of information with foreign counterparts (art. 56).*
- *Take measures to enable the return of confiscated property, when acting upon the request of another State party in accordance with the Convention (art. 57(1-2)).*
- *Consider developing an asset recovery guide, with relevant practical guidance (art. 57(1-2)).*
- *Take legislative and other measures to provide for the return of property as specified in article 57(3) of the Convention.*
- *Clarify the matter of costs in the context of ongoing revision of the legislation (art. 57(4)).*
- *Consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation on asset recovery (art. 59).*

### **3.3. Technical assistance needs identified to improve implementation of the Convention**

*Botswana indicated that it required technical assistance in the following areas:*

- *Capacity-building of the international cooperation unit in DPP (arts. 51, 54, 55).*
- *Sharing of best practices (arts. 51, 54).*
- *Capacity-building for law enforcement and prosecution (art. 53).*
- *Facilitating international cooperation, including law enforcement cooperation (arts. 56, 59).*
- *Capacity-building (arts. 57, 59).*

## **IV. Implementation of the Convention**

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### **A. Ratification of the Convention**

**Please provide information on the ratification/acceptance/approval/accession process of the United Nations Convention against Corruption in your country (date of ratification/ acceptance/approval of/accession to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accession to international conventions etc.).**

Botswana acceded to the Convention on the 27 June 2011. The Convention came into force for Botswana on 27 July 2011.

The procedure to be followed for ratification/acceptance/approval of/accession to international conventions is as follows: Government Ministries develop Cabinet Memoranda with a view to soliciting a decision from Cabinet and the Executive. The Cabinet Memorandum is circulated to all ministries for consultative purposes and for government accounting officers to comment and have an input on the stated convention within a set time frame. Subsequent to the responses a submission is made to the Cabinet Business Committee which is a Standing Committee of senior officials comprising of the Permanent Secretary to the President, Permanent Secretary, Ministry of Finance and Economic Development, Attorney General, charged with the responsibility of vetting all submissions and ensuring adherence to set standards prior to onward transmission to the Economic Committee of Cabinet (ECC). The ECC facilitates wider consultation and in-depth discussion of issues of interest to Cabinet preceding cabinet deliberations. Then finally the proposed convention is submitted to Cabinet, which is the supreme policy making body in the country comprising of the President, Vice President, Ministers and Assistant Ministers and finally the Permanent Secretary to the President and Attorney General as the Ex Officio members of Cabinet.

### **B. Legal system of Botswana**

**Please briefly describe the legal and institutional system of your country.**

Botswana has a dual legal system, comprising customary law and what is usually termed received law (or common law). Customary law is the law of any particular tribe or tribal community in so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice. Customary law is not written and has variations among different communities. The received law consists of English law and

Roman Dutch law as it was in force at the Cape of Good Hope on 10 June 1891, and as amended by statutes from time to time and interpreted by the Courts. The two systems coexist although there are differences in the law and its application.

The highest court in Botswana is the Court of Appeal. It is the superior court of record to which appeals can be made from the High Court. The High Court has original jurisdiction to hear and determine civil and criminal proceedings. It acts as an appellate body for the Magistrate Courts and the Customary Court of Appeal. The common law is made up of statute and precedents, which are cases upon which the High Court and Court of Appeal have ruled.

The Customary Courts derive their authority from the Customary Courts Act. The Customary Law Act also lays down rules which are meant to guide the courts in deciding whether customary or common law applies. The Customary Courts have jurisdiction to deal with a wide variety of matters of civil and criminal law such as financial disputes, petty theft, marital disputes, divorce (where the couple is married under customary law), livestock theft, insults and defamation, among others. The jurisdiction of the Customary Court is limited by the potential penalties or fines to be imposed, or the particular types of crimes or disputes to be adjudicated. When dealing with criminal matters the courts follow the Customary Court Procedure Rules.

Lawyers have no right of audience before Customary Courts. However, a person has the right to have a case transferred to another court (a common law court) where they have the right to legal representation if the permission to transfer is given by the Customary Courts of Appeal. If, however, an accused person instructs a lawyer to represent him, and the lawyer informs the courts that they wish to have the case transferred, then the court is obliged to transfer the case so that the accused can access his right to have legal representation.

The Botswana Police Service tend to use Customary Courts on offences of lesser gravity. The High Court may refer matters to the Customary Court on issues involving divisions of the joint estate and married persons or where the Court finds that it will be equitable for such division of the joint estate to be dealt with by Customary Courts.

The Customary Court of Appeal deals with appeals from the Customary Courts. Decisions of the Customary Court of Appeal may be appealed to the High Court. On issues which involve land claims, appeals can also be made to the Land Tribunal.

**In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.**

Provided.

**Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.**

1. Review of Botswana's Anti-Corruption Strategy and its Implementation, Study conducted by Mr. Bertrand de Speville under a project supported by the European Commission (December 2007) (copy provided)<sup>1</sup>
2. A Code of Conduct for the Private Sector (Business Botswana, formerly Botswana Confederation of Commerce Industry and Manpower/BOCCIM and DCEC) (August 2006) (copy provided)
3. Mutual Evaluation Report of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) on Botswana's anti-money laundering and counter-terrorist financing measures (May 2017) (copy provided)
4. Anti-corruption audits conducted by the DCEC in various public institutions (copies provided).
5. In 2016 Botswana conducted a survey of the effectiveness of Corruption Prevention Committees, Anti-Corruption Units and audits through the work of an external consultant. The assessment, which covered the period 2006 to 2016, revealed that the interventions are perceived as effective, despite challenges arising from impact of training, inadequate resources, and unsatisfactory implementation and enforcement of penalties. In addition, the assessment contained recommendations in order to address these challenges, namely, (i) define methods to ensure that the achieved high level of awareness is maintained and sustained; and (ii) ensure that adequate ministerial annual budgets, staff allocation and training are provided to enhance proper implementation of anti-corruption interventions. Observed successes include improved awareness, corruption reduction and investigation of reported cases in the public sector (see DCEC 2016 annual report, page 9).

**Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.**

1. Conduct of a meeting between all stakeholders including civil society and the focal point in a 2016 workshop conducted by the DCEC with the secretariat personnel as facilitators.
2. Relevant articles assessed and responsible stakeholders to provide information identified.
3. Sources of information remain the statutes mentioned in this document, as well as the documents and statistics provided by stakeholders from both private and public sectors.

**Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.**

1. Corruption audits conducted by the Corruption Prevention Division of the DCEC in

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<sup>1</sup> Review of Botswana's overall legal and institutional framework against corruption

public institutions.

1.1 Performance assessment reports are made to the President at intervals, so accounting officers are answerable for their performance in relation to anti-corruption initiatives.

2. Infusion of anti-corruption material into school syllabi and curriculum

3. The establishment of anti-corruption units (ACUs) at the ministry level to look into issues of suspected corrupt conduct and make reports to the DCEC (Transaction Monitoring). In-depth investigations are done on administrative issues by ACU personnel but reports on these are still made to the DCEC.

4. Prudent public funds management under the Ministry of Finance and Economic Development (MFED), then the Ministry of Finance and Development Planning.

**Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.**

More involvement of the private sector and non-governmental organizations on corruption related issues. Already the initiating process has begun, since the Corruption Prevention Division has engaged the private sector on a Code of Conduct. Further, non-governmental organizations were engaged during the first review cycle and the relationship continues.

**Institutions consulted in preparation of the review:**

Directorate on Corruption and Economic Crime (DCEC)

Commonwealth Africa Anti-Corruption Centre (CAACC)

Directorate of Public Service Management (DPSM)

Office of the Ombudsman

Independent Electoral Commission (IEC)

Office of the President

The Auditor General

Public Procurement and Asset Disposal Board (PPADB)

Competition Authority (CA)

Botswana Accountancy College

Ministry of Finance and Economic Development

Botswana Chartered Institutes of Accountants

Financial Intelligence Agency (FIA)

Ministry of Foreign Affairs and International Cooperation

Bank of Botswana (BOB)

Botswana Unified Revenue Services (BURS)

Non-Banking Financial Regulatory Authority (NBFIRA)

Botswana Police Service (BPS)  
Botswana Prisons Service  
Administration of Justice (AOJ)  
Directorate of Public Prosecutions (DPP)  
Botswana Council of Non-Governmental Organisations (BOCONGO)  
Business Botswana  
Attorney General's Chambers.

## C. Implementation of selected articles

### II. Preventive measures

#### Article 5. Preventive anti-corruption policies and practices

##### *Paragraph 1 of article 5*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*

##### *(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Botswana has adopted a three-pronged strategy of combating corruption through prevention, public education and investigation. However, a single, written national anti-corruption strategy has not been adopted. Rather, the country addresses corruption and its implications at the policy level in various criminal, civil, administrative and institutional laws, rules and regulations to protect public law and order, uphold integrity, and promote transparency and accountability in government and the private sector.

An external assessment of these measures was conducted in December 2007 by an external

consultant under a project supported by the European Union.

With a view to implementing the country's anti-corruption policies and addressing the findings of the external assessment, the Directorate on Corruption and Economic Crime (DCEC), as the lead agency in the prevention and fight against corruption, has developed Strategic Plans to guide its work for the periods 2010--2016 and 2016-2021, which stipulate the direction of the anti-corruption discourse. The DCEC is allocated a combined recurrent and development budget amounting to USD 7,000,000.00 on an annual basis in order to implement the country's anti-corruption policies.

Botswana has established several other bodies intended to maintain effective, coordinated anti-corruption policies and to promote the participation of society. These include:

- The Directorate on Corruption and Economic Crime (DCEC) (Lead agency);
- Office of the President of the Republic;
- Botswana Police Services;
- Public Procurement and Asset Disposal Board;
- Directorate of Intelligence and Security Services; and
- Financial Intelligence Agency.

For more information on the relevant anti-corruption bodies, see article 6 below.

At the sectoral level the Directorate of Public Service Management (DPSM) in collaboration with DCEC has developed a **Public Service Anti-Corruption Strategy** in 2010, the purpose of which is to “establish standards of ethical and anti-corruption responsibility by all Government employees and stakeholders doing business for and with Government”. All public institutions have also developed anti-corruption policy statements. Please see article 7(4) for further detail.

#### *Draft National Anti-Corruption Policy (December 2015)*

In addition to the country's anti-corruption policies described above, a draft National Anti-Corruption Policy (December 2015) for the country has been developed under the leadership of the DCEC through consultations with various stakeholders, including the private sector and civil society. The draft Anti-Corruption Policy is in an advanced stage but has not been adopted by Cabinet and is not currently operational. It is hoped that the draft would be approved by Cabinet before the end of 2018. Its approach is premised on the national integrity system, bringing together eight pillars of integrity, as described below.

The main aim of the draft National Anti-Corruption Policy is to enhance Botswana's capacity to fight corruption by setting a framework for legal, institutional and social reforms. In order to achieve this main goal, the draft policy sets out a number of objectives, among others: (i) to advocate for laws that enhance transparency and for the revision of the existing laws to ensure relevance to new complexities; (ii) to ensure harmonization of all laws dealing with corruption; (iii) to ensure Botswana enters into extradition treaties and to advocate for the domestication of important anti-corruption conventions; (iv) to facilitate efficient coordination of all institutions involved in anti-corruption; (v) to promote and guide anti-corruption activities in all organisations; (vi) to promote anti-corruption capacity building across the private, public and not profit sectors; (vii) to ensure robust oversight roles in the fight against corruption; (viii) to promote impactful use of monitoring and evaluation systems to improve anti-corruption strategies; (ix) to promote and foster an anti-corruption culture in the society; and (x) to promote the building of anti-corruption capacity

in civil society and communities in Botswana.

In terms of its scope, the draft Policy aims to “provide a broad-based fight against corruption through coordinated participation of all eight pillars of integrity, namely Executive, Parliament, Judiciary, private sector, media, civil society, law enforcement and oversight bodies, working closely with the general public in the fight against corruption.” The draft policy sets out critical objectives to be undertaken by specific actors from the integrity pillars and provides a monitoring framework to ensure adherence.

In terms of coordination of anti-corruption measures, the draft Policy notes that “coordination of anti-corruption efforts is not efficient, and some key players such as the public sector, civil society and business can improve their contribution to anti-corruption. In furtherance of the attainment of Botswana’s international obligations, under article 5(1) of the United Nations Convention against Corruption, this policy advocates for effective coordination of the fight against corruption for the realization of the following goals:

- Good governance;
- Improved and well-coordinated anti-corruption framework;
- Improved and efficient coordination of anti-corruption efforts;
- Improved citizen’s access to public goods and services;
- Efficiency, effectiveness and economy in the delivery of social services;
- Promotion of socio-economic and political development; and
- Enhanced global anti-corruption indices for Botswana.”

In the context of coordination, the draft proposes to establish a new National Anti-Corruption Commission, to broaden the fight against corruption, provide strategic direction and oversee implementation of the Policy. The main responsibilities of the new body would be to oversee the implementation of the draft policy and to provide oversight and corporate general governance to the DCEC.

The Implementation Plan for the draft policy specifies the activities to be done, the expected outputs and means of verification and their timeframes (i.e., short: 1-3 years; medium: 3-6 years; or long term: 6-10 years), as shown below. The plan further presents the estimated costs for the various activities and identifies the lead agencies and cooperating partners for each activity in the implementation plan.

ACTIVITIES	OUTPUT(S)	MEANS OF VERIFICATION	TIME FRAME	IMPLEMENTING AGENCY	
				Lead Agency	Collaborating Agency
<b>LEGAL MEASURES</b>					
Redefine corruption in CECA	Corruption redefined to cover the private sector and not-for-profit organisations	The Corruption and Economic Crime Act amended with a redefinition of corruption	Short Term	DCEC	Parliament, AG, Business Botswana & Bocongong, OAG
Amend the Penal Code to be consistent with	Stiffer sanctions	Penal Code amended	Short Term	Ministry of Defence,	Parliament, Police, DCEC

the CECA and to impose stiffer penalties against corruption	against corrupt conduct			Justice and Security	
Laws establishing parastatals standardised to address corruption	Parastatals laws revised to be consistent with regard to corruption	All parastatal laws amended	Medium Term	DCEC	All Parastatals, AG
Professional self-regulatory statutes	All recognised professions have self-regulatory bodies	All recognised professions in Botswana legally organised into professional associations	Long Term	NBFIRA	DCEC, Legislature, All recognised professional associations/institutions
Measures of rigorous oversight of self-regulatory bodies instituted	Regulated and professional self-regulatory 'landscape'	Reports tabled publicly before Parliament	Medium Term	NBIFIRA	Parliament, Registrar of Societies, DCEC
Domestication of international anti-corruption protocols	All international anti-corruption protocols domesticated into national law	AU Convention Against Corruption, SADC Protocol Against Corruption and UN Protocol Against Corruption domesticated	Medium Term	DCEC	Ministry of Foreign Affairs and International Cooperation, Parliament.
Sign extradition treaties	Extradition treaties signed with all major trading partners	Extradition treaties with at least 5 to trading partners signed	Short Term	Ministry of Foreign Affairs and International Cooperation DPP	Ministry of Defence, Justice and Security
All laws of agencies that fight corruption must be synchronised with the CECA	Intelligence and Security Act, FIA, PPAD Act, BURS Act, Banking Act, Revenue Act	All the concerned Acts amended	Long Term	DCEC	Competition Authority. Commercial Banks
Enact laws that engender transparency	Whistleblower protection law, freedom of information law, declaration of assets and liabilities law enacted	Laws passed by Parliament	Short Term	DCEC	Ministry of Defence Justice and Security, Office of the President

Regulate party funding and electoral activities	Electoral financing law passed	Parliament adopts law	Short Term	IEC	DCEC, All major political parties represented in Parliament
<b>INSTITUTIONAL MEASURES</b>					
Establish a Parliamentary Anti-Corruption Portfolio Commission	A Parliamentary portfolio committee to oversee anti-corruption policy and DCEC funding	A Parliamentary Anti-Corruption Commission established	Medium Term	Parliament	Office of the President, OAG, Office of the Ombudsman
Establish a National Anti-Corruption Commission	A Commission consisting of members drawn from the eight pillars of integrity established	A National Anti-Corruption Commission established	Medium Term	DCEC	OAG, Office of the President, Office of the Ombudsman, Competition Authority
Introduce a legal framework to facilitate prosecution guided investigations	Investigations and prosecution against corruption performed in close collaboration	DCEC and DPP working closely by seconding investigators and prosecutors to work on the same cases simultaneously	Medium Term	DCEC	Botswana Police Services, FIA, NBFIRA, Competition Authority
Establish Anti-Corruption Court	The adjudication of corruption cases executed efficiently	Anti-corruption court established	Short Term	AOJ	DCEC, Judicial Service Commission Office of the President
Judicial resources for anti-corruption availed	Enhanced judicial capacity to fight corruption	Library resources availed, increased funding	Short Term	AOJ	Judiciary Administration of justice
Mainstream corruption prevention in the public sector	Zero tolerance for corruption in the public service	Corruption Prevention Committees established in all public institutions	Medium Term	DCEC	All Government Ministries, parastatals and publicly funded bodies

Mainstream corruption prevention in the private sector	Corruption becomes a high – risk low pay venture	All companies that tender for public procurement subscribe to the PPPADB code of conduct and/or Business Botswana anti-corruption code	Medium Term	DCEC	Ministry of Trade and Industry, Registrar of Companies, Business Botswana, PPADB
<b>SOCIAL MEASURES</b>					
Promote anti-corruption culture in the society	A society that has a strong anti-corruption culture	Anti-corruption community clubs established in all urban and rural settlements	Short Term	DCEC	Ombudsman, Bogosi District Administration , Village Development Committees
Promote an anti-corruption culture among the young	A youth population that has a strong anti-corruption culture	Anti-corruption clubs established in schools and for out of school youths	Short Term	DCEC	Ministry of Education and Skills Development, all public and private tertiary institutions
Mainstream anti-corruption in tertiary education	Ethics modules taught in all tertiary courses	Educational courses with anti-corruption or ethics modules taught at least to all first-year students	Short Term	DCEC	Ministry of Education and Skills Development, all public and private tertiary institutions
Encouraging civil society to participate in anti-corruption activities and programmes	Organised civil society taking a lead in anti-corruption fight	Civil society organisations that fight corruption established, and BOCONGO also taking part in the fight against corruption	Short Term	DCEC, BOCONGO	Ministry of Labour and Home Affairs (Registrar of Societies)
Provide an enabling environment for civil society organisations to join the fight	Anti-corruption capacity building efforts for civil society designed and	Civil society organisations gain better knowledge on anti-corruption	Short Term	DCEC,	DIS, Ombudsman, FIA, Competition Authority, PPADB, LAPAC, IEC,

against corruption	financed publicly				Auditor General
Provide an enabling environment for individuals to join the fight against corruption	Increase the number of reports made on corruption	Toll free number that is manned regularly	Short Term	DCEC, BOCONGO, Ministry of Labour and Home Affairs	Parliament
Coordinate anti-corruption reporting between DCEC, DIS, Police, FIA and other organisations	Increased level of coordination of reporting	Toll free number that can be simultaneously managed by all interested agencies	Medium Term	National Anti-Corruption Commission	DIS, Ombudsman, FIA, Competition Authority, PPADB, LAPAC, IEC, Auditor General
Factual information about corruption disseminated to the public	The public informed in a fair and objective manner about corruption	The media reports in a professional manner on corruption	Short Term	MISA, BOPA, BTv, Botswana Press Council, Libraries, BNYC, BNSC, Village Reading Rooms.	DCEC, Office of the President, Parliament.

The Government through the DCEC will be responsible for monitoring and evaluation of the policy. The foreseen activities for this are the following: (i) the development of the monitoring and evaluation system for the implementation of the policy; (ii) the adoption of a standard monitoring and evaluation system for all activities implemented under the policy; (iii) ensuring that all entities implementing the policy adopt the monitoring and evaluation framework; and (iv) the provision of adequate financial and material resources towards the monitoring and evaluation framework.

The review of the policy will be done regularly according to the following terms: (i) Short Term – 3 years after the initial implementation activities have been started; (ii) Medium Term – 5 years after implementation; and (iii) Long Term – 10 years after implementation in order to gauge the overall success.

A number of programmes, initiatives and activities have been undertaken to strengthen corruption prevention measures under Botswana's existing anti-corruption policies. Please see paragraph 2 of this article below.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The former President of the Republic (April 2008 – March 2018) has outlined five Government priority areas for his last five years in office, which have come to be known as the government’s “pledge card”. The pledge outlines fighting crime and all its manifestations as one of five key government priorities in office. See President’s pledge (14 November 2016)<sup>2</sup>.

The following documents have been provided:

Study conducted by Mr. Bertrand de Speville under a project supported by the European Commission reviewing Botswana's National Anti-Corruption Strategy (2007)<sup>3</sup>

National Anti-Corruption Strategic Plans –DCEC (2010-2016 and 2016-2021)

Draft National Anti-Corruption Policy (2015)

Public Service Anti-Corruption Strategy (2010)

Risk assessment reports conducted by DCEC in various ministries/sectors

*(b) Observations on the implementation of the article*

**It is recommended that Botswana take concrete measures towards the adoption and implementation of the draft National Anti-Corruption Policy (December 2015), including through the development of relevant implementation action plans and clarification of responsibilities, timeframes and resources required, in consultation with all relevant public and non-public stakeholders. Attention should be given to ensure adequate coordination, oversight, as well as awareness raising, and the allocation of sufficient resources for implementation.**

In terms of monitoring and evaluation, the draft policy does not set out a lot of detail, but states that “the Government, through the DCEC, will be responsible for monitoring the implementation of the policy,” including by ensuring that “all entities implementing the policy adopt the monitoring and evaluation framework.” **Accordingly, it is recommended that Botswana further specify the monitoring and evaluation framework in the draft policy, including the proposed establishment of a new National Anti-Corruption Commission in order to strengthen the fight against corruption.**

In terms of Botswana’s existing anti-corruption policies, the reviewers note that relevant measures exist in different sectors, laws, institutions and policy documents, but there is no single coordinated framework or system of implementation. Coordination of anti-corruption efforts seems to be a challenge, as noted in the draft Anti-Corruption Policy. In this regard, the DCEC’s Strategic Plans (2010-2016 and 2016-2021) note the “Inadequate and outdated policies and loss of public confidence” as a threat to Botswana’s anti-corruption efforts. **Accordingly, it is recommended that Botswana continue to strengthen inter-agency**

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<sup>2</sup> <http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Local-Government-MLG1/News/PRESIDENTIAL-PLEDGE/>

<sup>3</sup> Review of Botswana’s overall legal and institutional framework against corruption

**coordination and cooperation in the implementation of anti-corruption policies and measures. Botswana has requested technical assistance in this regard.**

In terms of inclusiveness, the reviewers observe that collaboration through partnerships and dialogue with local and international stakeholders, information sharing, exchanging good practices and joint initiatives appear to be a key priority for the country, to improve public education and corruption prevention. This is also noted in the DCEC's 2016-2021 strategic report. **Accordingly, it is recommended that Botswana continue to engage in outreach and consultation with relevant public and non-public stakeholders, to ensure their participation in anti-corruption efforts. Botswana has requested technical assistance in this regard.**

*Paragraph 2 of article 5*

*2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

All Ministries and independent departments are required, following a presidential directive<sup>4</sup>, to mainstream corruption prevention and based on that, have to report on the level of their interventions as regards anti-corruption. Ministries are as such required to complete Performance Review Tools (PRT) to report performance on anti-corruption.

Further, Ministries have Corruption Prevention Committees whose mandate is to educate and sensitize Ministry personnel on corruption and other related issues, and to conduct Risk Assessments within their respective Ministries. Their responsibility is to:

- Keep a constant check on organizational operations and procedures and ensure that there are no opportunities for corruption.
- Ensure prioritization, integration, coordination and implementation of corruption prevention programmes.
- Receive and review reports on corruption and take appropriate action.

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<sup>4</sup> PPO 2/6 XX1X (153) of 14 October 2010 concerning the establishment of Anti-Corruption Units in ministries that are susceptible to corruption

- Sensitize public servants on causes and consequences of corruption.
- Develop positive attitudes and behaviour in public servants.

Still within Ministries there are Anti-Corruption Units whose mandate is to conduct preliminary investigations with a view to forwarding their results to law enforcement agencies. The Anti-Corruption Units also conduct monitoring of transactions intended to improve the integrity of the system. PPO 2/6 XX1X (153) of 14 October 2010 provides for the establishment of Anti-Corruption Units in ministries that are susceptible to corruption: “Anti-Corruption Units in Ministries: His Excellency the President has directed that due to the involvement of some Public Officers in fraud and corruption, Ministries experiencing a significant problem in this regard should consider setting up an internal audit unit of two or three officers whose sole purpose will be to investigate all processes, procedures and transactions within the Ministries. The unit will then report any unlawful activity to appropriate authorities such as the Police and DCEC for prosecution.”

The Corruption and Economic Crime Act was amended in 2013 (**Corruption and Economic Crime Act No. 6 of 2013**) (CECA) and introduced some notable changes in the law to strengthen anti-corruption measures.

As envisaged under the National Anti-Corruption Strategy a number of programmes, initiatives and activities have been undertaken to strengthen corruption prevention.

The Directorate recently launched a primary school initiative in Gaborone, in the form of a Mascot called Boammaruri (Truth) Mascot. This is aimed at introducing primary school pupils to the concepts of morality and corruption at an early age as a means to instil honesty amongst them.

Outreach educational campaigns in villages with engagement of youth drama groups to provide edutainment through drama, song and poetry, has been a strategy which has effectively helped disseminate anti-corruption education. This activity has proved to be a very effective public education strategy to use when educating the community, Community Anti-Corruption Clubs, Schools Anti-Corruption Clubs (Junior and Secondary schools).

They are a useful platform in so far as engaging members of the public and civil society in the fight against corruption. However, they seem to lack ownership from members of the community and are not widely spread to cover the breadth of Botswana. Enhancing their capacity to run with little support from the DCEC would be necessary going forward.

Infusion of anti-corruption modules in curricula for secondary schools and colleges:

The fight against corruption can be greatly enhanced when children are targeted at an early age through education. The DCEC together with other role players such as the Ministry of Education has endeavoured to ensure curriculum includes teachings on anti-corruption at secondary schools and colleges.

Dissemination of anti-corruption publicity materials to the public and dissemination of anti-corruption messages through presentations, fairs and exhibitions etc.:

Mall Campaigns-The campaigns have been carried out at shopping malls and bus terminals. This gave the DCEC the opportunity to educate vendors who are entrepreneurs and work throughout the year and are often left behind when implementing various public education

strategies.

- The Office of the Ombudsman has partnered with DCEC to educate the public on corruption
- The Public Procurement and Asset Disposal Board (PPADB), Competition Authority and the DCEC have a Tripartite Agreement where coordination efforts are made in the fight against corruption and economic crime
- Financial Intelligence Agency - The **Financial Intelligence Act** requires the Agency to assess financial statements and report any suspicious transaction to relevant bodies where there is suspicion of money laundering

In addition, the DCEC has secured the cooperation of other institutions of accountability by signing memorandums of understanding with the offices of the Auditor-General and Ombudsman in 2010, with the Competition Authority and Public Procurement and Asset Disposal Board in 2012 and with the University of Botswana in 2015.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The following documents were provided:

- DCEC Annual Reports
- Presidential directive PPO 2/6 XX1X (153) of 14 October 2010 establishing the Anti-Corruption Units in ministries that are susceptible to corruption

*(b) Observations on the implementation of the article*

A number of efforts have been made in the field of corruption prevention and the revision of laws, in cooperation with various stakeholders. For example, a Presidential directive requires all Ministries and independent departments to mainstream corruption prevention and to report performance on anti-corruption indicators using a Performance Review Tool (PRT). Reports are made to the President twice per year based on certain corruption indicators, so accounting officers are answerable for their performance in relation to anti-corruption initiatives and must report on remedial measures taken to address the gaps identified in the previous Presidential report. The reports are internal to government and not made public.

Reports are also followed up on by the DCEC, which issues recommendations to the relevant institutions to prevent incidences of fraud and corruption. Examples of recommendations issued by the DCEC are for ministries to carry out corruption risk assessments, to implement anti-corruption tools and systems, and to raise awareness of corruption in the ministry.

Corruption Prevention Committees in the Ministries are mandated to educate and sensitize personnel on corruption and related issues, and to conduct risk assessments within their respective Ministries. It was confirmed by the authorities that all Ministries in Botswana have established Corruption Prevention Committees, and more than 100 CPCs are in place.

Some examples of their work were discussed during the country visit. Further, Ministries that are susceptible to corruption are encouraged to establish Anti-Corruption Units, which conduct preliminary investigations and monitoring of transactions intended to improve integrity. At the time of review 17 Ministries had established such Anti-Corruption Units.

DCEC is the main institution tasked with preventing corruption, including public awareness raising. It has carried out several measures in this area, and a specific focus has been promoting integrity in education and awareness raising. There are initiatives with the Ministry of Education and other partners such as the Office of the Ombudsman, the Public Procurement and Asset Disposal Board (PPADB), Competition Authority and the Financial Intelligence Agency.

Various measurements and surveys of corruption have been carried out. In addition to the corruption risk assessments conducted by Ministries themselves, the DCEC has conducted risk assessments in various ministries and sectors, for example a Performance Assessment of Ministries on Anti-Corruption, Financial Management and Human Resource Practices. In 2016, the DCEC facilitated the conduct of 37 corruption risk assessments, as compared to 13 conducted in 2015 and 12 in 2014 (see DCEC 2016 annual report, page 30). A survey of the effectiveness of Corruption Prevention Committees has been conducted, as described above. Corruption surveys have also been conducted by Afro Barometer. See article 10(c) below for further details.

**In light of the above, it is recommended that Botswana continue to assess the effectiveness of prevention activities undertaken by the DCEC and other institutions, especially in identified priority areas, with a view to strengthening the effectiveness and impact of such activities.**

#### *(c) Successes and good practices*

Botswana's corruption prevention committees could be seen as positive measures in the fight against corruption.

#### *Paragraph 3 of article 5*

*3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

A review of the Corruption and Economic Crime Act uncovered gaps in the following areas; amendments and/or promulgation of the relevant statutes was made:

1. The **Corruption and Economic Crime Act** was amended in 2013 to cater for offences that were initially not addressed.
2. The need for whistleblowing legislation was recognised, and therefore the Whistleblowing Act No. 9 of 2016 (**Whistleblowing Act**) was promulgated in 2016. At the Second Session of the Eleventh Parliament on 5 August 2016, Parliament passed the Bill into law. The date of commencement of the Act is 9 December 2016.
3. Gaps in the law addressing money laundering and asset recovery were noted, and in 2015 the Proceeds of Serious Crime Act was repealed and the **Proceeds and Instruments of Crime Act, 2014 (PICA)** was promulgated. The law is in force and implementing regulations, the Proceeds and Instruments of Crime Regulations, 2017 (published on 15 December 2017) have been issued (copies were provided to the reviewers). However, some provisions of the Act have not yet been implemented. The office of the Receiver was established in September 2017 but is not yet fully operational. More specifically, the commencement date of the Act is 1 January 2015.

The Committee on Subsidiary Legislation sits as and when it is necessary to consider whether statutory instruments submitted by responsible Ministers are consistent with the provisions of the parent Act. Statutory instruments come in the form of regulations and by-laws. Further, the Committee would consider whether the said Statutory Instrument is within the jurisdiction of the Minister concerned. The Committee is established under authority of the Parliamentary Standing Orders made in terms of Constitutional provisions. The composition of the Committee is 3 members from the opposition and 5 members from the ruling party. Two of the members of the opposition are well versed in legal matters as practicing attorneys.

In regard to the periodic review of legislation, Botswana adopted a Revision of the Laws Act No. 16 of 2002, entitled, “Act to provide for the revision of the Laws of Botswana; and for matters connected therewith and incidental thereto”. Notably, the Act:

- Designates the Attorney-General as Law Revision Commissioner, tasked with preparing and publishing the Laws of Botswana containing “all the enactments required to be included therein”.
- Provides for the periodic revision of the Laws of Botswana, “to the intent that the Laws shall contain all the written laws which are required or authorized by the Act to be included therein and are in force on the relevant revision date”.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Parliament passed the Whistleblowing Act No. 9 of 2016 (Whistleblowing Act) whose objects are “protection against victimization of persons who blow the whistle” to institutions such as the DCEC. Implementation of the Act is the responsibility of all ten (10) oversight institutions listed under section 8 of the Whistleblowing Act. A stakeholder workshop is at planning stage to ensure a uniform application of the Act. It is envisaged that such will be achieved by way of developing regulations for the Act following deliberations at the workshop.

The DCEC gave publicity to the new legislation by making appearances on both national television and radio on 4 May 2017 and 27 February 2017 respectively. A panel discussion was also held on 9 July 2018, under the strategic collaboration of the University of Botswana and DCEC through the Botswana Business Ethics Forum body. Civil society, the media, academia, practicing private sector lawyers and DCEC legal representatives promoted an understanding of the legislation through the debate.

Further, Section 45(1) and (2) of the Corruption and Economic Crime Act of 1994 seeks to protect informers. Witnesses are not obliged during court proceedings to disclose the name or address of informers. Further, any documents produced before court which contain the identity of any informer are to be concealed or obliterated.

The legal and institutional framework has been strengthened with the amendment of the CECA in 2013 widening the scope and mandate of the DCEC as an investigatory and preventative body. The amended Act also brings the clerk of court and the Public Procurement and Asset Disposal Board (PPADB) into the preventive arena by providing for registration of companies and individuals involved and convicted of corruption so they do not have dealings with government in relation to tenders. This has both a punitive and preventative aspect to it.

#### *(b) Observations on the implementation of the article*

Botswana appears to have taken steps to implement paragraph 3 of Article 5. This is evident by the Committee on Subsidiary Legislation, which sits as and when necessary in order to consider whether statutory instruments submitted by responsible Ministers are consistent with the provisions of the principal Act. Statutory instruments come in the form of regulations and by-laws. The Committee would consider whether the said statutory Instruments are within the jurisdiction of the Minister concerned.

More generally, there are no requirements or procedures that require ministries/agencies to periodically review laws, regulations and administrative measures against corruption. Laws are reviewed and amendments are proposed by the different Ministries, as and when there is a need or gap identified. The Revision of the Laws Act No. 16 of 2002 further provides for the periodic revision of the Laws of Botswana.

The revision of laws also occurs on the basis of issues identified in the reports of the Parliamentary Accounts Committee (PAC).

During the country visit, authorities in Botswana explained that a Criminal Justice Forum has been established to consider challenges to the criminal justice system.

*Paragraph 4 of article 5*

*4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Botswana is a member of the Southern African Development Community (SADC). Botswana has signed, and processes are underway to ratify the SADC Protocol Against Corruption. The Cabinet Memorandum is currently circulating for ministerial/departmental comments.

Botswana is a member of, and participated in meetings of, the Southern African Forum Against Corruption (SAFAC).

Botswana is also a member of the African Union and has acceded to the African Union Convention on Preventing and Combating Corruption in 2014.

Botswana is a member of the United Nations and has acceded to UNCAC in 2011. Botswana completed its own first cycle UNCAC review in May 2014 and also participated as reviewer in the UNCAC country reviews of Lesotho and Swaziland. It is also reviewing Djibouti in the second UNCAC review cycle.

Botswana is a member of the Commonwealth and also houses the Commonwealth Africa Anti-Corruption Centre.

Botswana is a member of the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG).

Botswana is a member of the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA).

Botswana is a member of INTERPOL.

Botswana has participated in programmes run by the International Association of Anti-

Corruption Agencies (IAACA).

Botswana participated in the UNODC/World Bank Stolen Asset Recovery (StAR) Initiative training programmes.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The DCEC has entered into Memorandums of Understanding with Tanzania's Prevention and Combating of Corruption Bureau, African Development Bank, and the anti-corruption agencies in South Africa and Lesotho.

The DCEC also participates in the meetings of the UNCAC Conference of States Parties and its working groups.

The reviewers were interested in hearing some examples of how DCEC and others cooperate on corruption prevention with other countries (South Africa, Lesotho, Namibia, Tanzania). One example provided by the DCEC is the exchange of staff of DCEC, who were sent in 2009 to Tanzania's PCCB to collaborate on the topic of anti-corruption strategies. On an annual basis DCEC officers are sent to South Africa to participate in ethics training, especially on prevention. In the last five years, the Directorate has also collaborated with the South African Special Investigation Unit and through such partnership, DCEC officers have undertaken training on investigations and issues of security (bank document analysis, financial statement analysis and financial profiling) as well as training development/training needs analysis and skills audit. Several other DCEC officers, mainly from the Operations area, have been attached at a reputable forensic auditing firm and have undergone training on forensic accounting and forensic investigations. In order to keep abreast with international standards on project execution, DCEC Prevention and Operations officers have attended regional, continental and international anti-corruption bodies FIDIC conferences.

In 2017, staff from DCEC were sent to Belize to strengthen capacity on anti-corruption. In May 2016, Botswana officials attended the 5<sup>th</sup> Session of the Joint Permanent Commission for cooperation between Mozambique and Botswana. As a result, Botswana sent a draft MoU on combating corruption to Mozambique for analysis. Also, in November 2016, in Pretoria, South Africa, a bi-national Commission was held, and subsequently in Botswana in November 2017 and early 2018.

Examples of DCEC cooperation with other countries also include trainings, such as (i) a training in Hungary on Basic Investigation (Computer & Evidence Protection); (ii) a training in Namibia on Cybercrime; (iii) a training in Malaysia on intelligence led investigation; (iv) a training in Uganda on anti-corruption; (v) a training in Kenya on anti-corruption, financial crimes & asset recovery; (vi) the participation in an Anti-Corruption Policy Forum in the United States.

*(b) Observations on the implementation of the article*

Based on the information provided and the discussions during the country visit, the provision is implemented.

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

1. Inter-agency coordination;
2. Society participation to be enhanced. The law currently does not provide or make it mandatory for civil society to be engaged except where its support is sought under the CECA and in monitoring reports that are made available to members of the public, such as the Auditor General's Annual reports on public expenditure. More involvement is necessary.
3. The current national Vision 2036 makes compelling aspiration for society participation as integral to the national developmental process and refers to such stakeholders as “legitimate actors” to the improvement of the socio-economic process, which will promote the rule of law, anti-corruption and the principle of democracy within the country. Therefore, the community approach is pivotal to the sustainability of the country.

*(d) Technical assistance needs*

Legislative assistance: Best practice on how society can be more involved than just by fostering its support.

Others: Inter-Agency coordination.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

**Article 6. Preventive anti-corruption body or bodies**

*Paragraph 1 of article 6*

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:*

*(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;*

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

### **Directorate on Corruption and Economic Crime**

The Directorate on Corruption and Economic Crime, as the lead agency in the prevention and fight against corruption, is established by an Act of Parliament, the **Corruption and Economic Crime Act (Cap 08:05) (CECA)**, as amended in 2013, to combat corruption and economic crime in Botswana.

Section 6 of the Corruption and Economic Crime Act provides for the functions of the Directorate. It provides as follows:

#### **“Corruption and Economic Crime Act PART III**

##### **6. Functions of Directorate**

The functions of the Directorate shall be-

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

The powers of the Director-General are cited in Part III, Sections 7-8 of the Act.

## **“Corruption and Economic Crime Act (Cap 08:05)**

### **7. Powers of Director**

(1) For the performance of the functions of the Directorate, the Director may-

(a) authorise any officer of the Directorate to conduct an inquiry or investigation into any alleged or suspected offences under this Act;

(b) require any person in writing to produce, within a specified time, all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents relating to the functions of any public or private body;

(c) require any person, within a specified time, to provide any information or to answer any questions which the Director considers necessary in connection with any inquiry or investigation which the Director is empowered to conduct under this Act.

(2) Any person who fails-

(a) to produce any matter required under subsection (1)(b); or

(b) to provide any information, or to answer any questions, or wilfully provides any false information or makes any false statement in answer to a question, under subsection (1)(c), shall be guilty of an offence and shall be liable to the penalty prescribed under section 18(2).

### **8. Power of Director to obtain information**

(1) If, in the course of any investigation into any offence under Part IV, the Director is satisfied that it would assist or expedite such investigation, he may, by notice in writing, require-

(a) any suspected person to furnish a statement in writing-

(i) enumerating all movable or immovable property belonging to or possessed by him in Botswana or elsewhere or held in trust for him in Botswana or elsewhere, and specifying the date on which every such property was acquired and the consideration paid therefor, and explaining whether it was acquired by way of purchase, gift, bequest, inheritance or otherwise;

(ii) specifying any moneys or other property acquired in Botswana or elsewhere or sent out of Botswana by him or on his behalf during such period as may be specified in such notice;

(b) any other person with whom the Director believes that the suspected person had any financial transactions or other business dealing, relating to an offence under Part IV, to furnish a statement in writing enumerating all movable or immovable property acquired in Botswana and elsewhere or belonging to or possessed by such other person at the material time;

(c) any person to furnish, notwithstanding the provisions of any other enactment to the contrary, all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person, which is in the possession or under the control of the person required to furnish the information;

(d) the manager of any bank, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies, of the accounts or the statements of account at the bank of any suspected person.

(2) Every person on whom a notice is served by the Director under subsection (1) shall, notwithstanding any oath of secrecy, comply with the requirements of the notice within such time as may be specified therein, and any person who without reasonable excuse fails to so comply shall be guilty of an offence and shall be liable to the penalty prescribed under section 18(2).

(3) Where in any proceedings for an offence under Part IV, it is proved that the person

charged with the offence refused to furnish a statement required under paragraph (a) of subsection (1) when requested to do so, his refusal shall, unless reasonable cause thereof is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence as regards the manner of his acquisition of the properties mentioned in the said paragraph (a).”

In order to function optimally, the Public Education Division of the DCEC requires a total of 32 officers to carry out its mandate, as follows:

- Research unit = 4 officers
- Multimedia unit = 4 officers
- Awareness creation unit = 20 officers (includes conducting presentations, outreach campaigns etc.)
- Public Relations Unit = 4 officers.

Whilst the Corruption Prevention Unit requires at least 40 officers to optimally prevent corruption under the six (6) distinctive Units, skills needed for corruption prevention officers to conduct corruption prevention work are:

- Research skills
- Analytical skills
- Investigation skills
- Audit skills
- Forensic skills.

DCEC’s Research Unit is charged with the responsibility of collating critical information to the discourse of corruption, conducting surveys and studying trends to inform strategies for the prevention of corruption. A monitoring and evaluation framework has been developed to facilitate ministries (public institutions) to review their anti-corruption efforts, following recommendations from a survey report entitled “Assessment of the Effectiveness of Corruption Prevention Initiatives in the Public Sector.”

DCEC’s Quality Assurance Unit has established a quality management system and documented a Quality Manual, which sets out quality policies, objectives, principles, procedures and resources required to implement the Quality Management System (QMS). The scope of the QMS covers the Corruption Prevention Unit.

DCEC’s Partnership Unit creates and strengthens strategic collaborations with both civil society and the private sector. The Directorate and the University of Botswana collaborated under a Memorandum of Understanding of 2013 to successfully launch a body, Botswana Business Ethics Forum in 2016. Ethics symposia have been held since 2017, bringing together representatives from private, public and civil society organizations, including academics, to promote active dialogue on issues related to governance and organizational ethics. Advocacy for the Private Sector Code of Conduct of 2011 continues to take center stage at various fora.

The Directorate is working towards mainstreaming anti-corruption in civil society, following numerous engagements with the civil society umbrella organization, Botswana Council of Non-Governmental Organisations (BOCONGO). DCEC has entered into Memorandums of Understanding (MoUs) with Botswana Tourism Organisation (BTO) and

Tonota, Tutume and Masunga (TOTUMA) Farmers Association.

## **Office of the Auditor-General**

The Office of the Auditor-General is established under the **Constitution of the Republic of Botswana**, Section 124. The office is established as the chief auditor of public accounts and its reports are made public, thereby encouraging transparency and accountability in relation to public accounts.

Performance audits have been carried out on matters such as: “Impact of PPAD Board and its Committees (2011)”, “Delivery of the Office of the Ombudsman Mandate (2010)”, “Management of Clinical Health Care Services by the Department of Primary Care Services (DPHCS) (2010)” and others.

## **Constitution of Botswana**

### **Section 124. Auditor-General**

- (1) There shall be an Auditor-General, whose office shall be a public office.
- (2) The public accounts of Botswana and of all officers, courts and authorities of the Government of Botswana shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorized by him or her in that behalf shall have access to all books, records, reports and other documents relating to those accounts: Provided that, if it is so provided by Parliament in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.
- (3) The Auditor-General shall submit his or her reports to the Minister responsible for finance, who shall cause them to be laid before the National Assembly.
- (4) The Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any Act of Parliament.
- (5) In the exercise of his or her functions the Auditor-General shall not be subject to the direction or control of any other person or authority.

The Directorate of Public Prosecutions (DPP) is established under the **Constitution** at section 51A. Although not principally a preventive authority, the DPP is mandated to prosecute all offences brought from investigative agencies such as the DCEC and the Police, which has a significant deterrent effect.

Prosecution duties have been placed on the Director of Public Prosecutions under the Constitutional amendment. Section 51A establishes the office of the DPP and provides that the appointment of the DPP shall be by the President of the Republic.

## **Constitution of Botswana**

### **Section 51A. Director of Public Prosecutions**

- (1) There shall be a Director of Public Prosecutions appointed by the President whose office shall be a public office and who shall be subject to the administrative supervision of the Attorney-General.
- (2) A person shall not be qualified to be appointed to the Office of

Director of Public Prosecutions unless he or she is qualified to be appointed to the Office of a Judge of the High Court.

(3) The Director of Public Prosecutions shall have power in any case in which he or she considers it desirable to do so-

(a) to institute and undertake criminal proceedings against any person

before any court (other than a court martial) in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under subsection (3) may be exercised by him or her in person or by officers subordinate to him or her acting in accordance with his or her general or special authority.

(5) For the purposes of this section any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court shall be deemed to be part of those proceedings: Provided that the power conferred on the Director of Public Prosecutions by subsection (3)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such person.

(6) In the exercise of the functions vested in him or her by subsection (3) of this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that-

(a) where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority, and with the leave of the court; and

(b) before exercising his or her powers in relation to cases considered by the Attorney-General to be of national importance, the Director of Public Prosecutions shall consult the Attorney-General.

The **Office of the Ombudsman**, established under the Ombudsman Act of 1995, is mandated to investigate complaints of injustice or maladministration in the Public Service received from the public (including bodies corporate), and if such complaints are valid, to make recommendations to the appropriate authority for compliance therewith. In the event of non-compliance the ombudsman is obliged to make a Special Report to the National Assembly. The Office of the Ombudsman also has jurisdiction over human rights violations, as well as complaints from persons in both legal custody and those in hospitals. The office has the power to summon witnesses where necessary to give evidence under oath or affirmation. The ombudsman is prohibited from investigating any state-related action or investigating crimes.

Section 15, **Competition Authority Act** states:

**“Competition Act, 2009**

**15. Conduct and disclosure of interest**

(1). A member of the Commission shall not

- (a) engage in any activity that may undermine or undermines the integrity of the Commission;
  - (b) unless the Commission otherwise directs, participate in making any decision of the Authority in respect of which the member has a direct or indirect financial or other personal interest in a private capacity; or
  - (c) use any confidential information obtained in the performance of the member's functions as a member to obtain, directly or indirectly, a financial or other benefit for that member or any other person.
- (2) Every member shall —
- (a) forthwith after the member's appointment, disclose in writing to the Minister, any direct or indirect financial interest which the member has in any business carried on in Botswana or elsewhere;
  - (b) disclose in writing to the Minister, any direct or indirect financial interest which the member acquires in any business carried on in Botswana or elsewhere, as soon as is practicable after the member acquires such financial interest;
  - (c) at any meeting of the Commission at which any matter which is the subject of consideration and in which matter the member is directly or indirectly interested in a private capacity, the member shall forthwith upon the commencement of the meeting, disclose such interest and shall not, take part in any consideration or discussion of, or vote on, any question concerning that matter.
- (3) A disclosure of interest made under subsection (2) (c) shall be recorded in the minutes of the meeting at which it is made.
- (4) Where a member fails to disclose his or her interest in accordance with subsection (2) and the Commission makes a decision which benefits that member, that decision shall be void to the extent to which it benefits the member.
- (5) A person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P30000 or to a term of imprisonment not exceeding two years, or to both.”

### **Public Procurement and Asset Disposal Board**

The functions of the Public Procurement and Asset Disposal Board (PPADB) are to ensure integrity, transparency, fairness and service excellence in public procurement. The **Public Procurement and Asset Disposal (PPAD) Act** provides:

#### **“PART III. PPAD Act**

#### **Establishment, Constitution and Membership of the Board (ss 10-17)**

##### **10. Establishment of the Board**

There is hereby established a body to be known as the Public Procurement and Public Asset Disposal Board (hereinafter referred to as "the Board"), which shall be a body corporate with a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of doing or performing all such acts or things as bodies corporate may, by law, do or perform.

##### **11. Composition of the Board**

The Board shall consist of:

- (a) a full time Executive Chairperson;
- (b) three full time Members; and
- (c) three part time Members.

##### **12. Appointment to the Board**

- (1) The Minister shall appoint the Executive Chairperson and members of the Board.
- (2) The part time members of the Board shall be appointed from among nominees of the associations of contractors and professional bodies and the private sector.

#### 13. Conditions of service

The Minister shall determine conditions of service and remuneration of Members of the Board.

#### 14. Tenure of Board members

All Members of the Board, including the Executive Chairperson, shall be:

- (a) appointed for a period not exceeding four years; and
- (b) eligible for re-appointment for only one further term, not exceeding four years.

### **Section 88. Disclosure of interest by members of the Board**

(1) Every member, on receipt of the Agenda of the Meetings of the Board, or on notification of a matter being brought to the attention of the Board shall-

- (a) sign a standard declaration form of the Public Procurement and Asset Disposal Board indicating whether he has, or intends to acquire, a direct or indirect personal interest in any specific agenda item or matter requiring the Board's consideration and decision; and
- (b) in the event of such interest, the member in question shall not participate in the deliberation or decision making process of the Board in relation to the agenda item or the specific matter in question.”

### **Independent Electoral Commission (IEC)**

The Constitution of Botswana provides for the appointment of an Independent Electoral Commission (IEC), in Section 65A.

The Botswana Electoral Commission is a 7-person Commission. It comprises a Chairperson, who is a judge of the High Court, a Deputy Chairperson who is a legal practitioner and five members chosen from a list recommended by the All-Party Conference. The Commissioners are appointed by the Judicial Service Commission. The Secretary is appointed by the President, according to Sections 65A(1)-(4) and 66(2) of the Constitution.

According to Section 65A(12)), the functions of the Commission are to:

- Conduct and supervise elections and referenda
- Ensure that elections are conducted efficiently, properly, freely and fairly;
- Direct and supervise the work of the Secretary of the Commission.

### **Constitution of Botswana 1966**

Section 65A. Appointment of Independent Electoral Commission

- (1) There shall be an Independent Electoral Commission which shall consist of—
  - (a) a Chairman who shall be a judge of the High Court appointed by the Judicial Service Commission;
  - (b) a legal practitioner appointed by the Judicial Service Commission; and
  - (c) five other persons who are fit, proper and impartial, appointed by the Judicial Service Commission from a list of persons recommended by the All Party Conference.
- (2) Where the All Party Conference fail to agree on all or any number of persons referred to in subsection (1)(c) of this section up to dissolution of Parliament, the Judicial Service

Commission shall appoint such person or persons as are necessary to fill any vacancy.

(3) For the purposes of this section, “All Party Conference” means a meeting of all registered political parties convened from time to time by the Minister.

(4) The first appointments of the Chairman and the Members of the Commission shall be made not later than 31st January, 1999, and thereafter subsequent appointments shall be made at the last dissolution of every two successive lives of Parliament.

(5) The Chairman and the members of the Commission shall hold office for a period of two successive lives of Parliament.

(6) A person shall not be qualified to be appointed as a member of the Independent Electoral Commission if—

(a) he has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or

(b) he has been convicted of any offence involving dishonesty in any country.

(7) A person appointed a member of the Commission shall not enter upon the duties of the office of Commissioner until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by an Act of Parliament.

(8) The Commission shall regulate its own procedure and proceedings.

(9) The Chairman shall preside over all proceedings, and in his absence, the legal practitioner referred to in subsection (1)(b) shall preside over the proceedings.

(10) The quorum shall be four members, one of whom shall be the Chairman or the said legal practitioner.

(11) All issues shall be decided by the decision of the majority of the members present and voting.

(12) The Commission shall be responsible for—

(a) the conduct and supervision of elections of the Elected Members of the National Assembly and members of a local authority, and conduct of a referendum;

(b) giving instructions and directions to the Secretary of the Commission appointed under section 66 in regard to the exercise of his functions under the electoral law prescribed by an Act of Parliament;

(c) ensuring that elections are conducted efficiently, properly, freely and fairly; and

(d) performing such other functions as may be prescribed by an Act of Parliament.

(13) The Commission shall on the completion of any election conducted by it, submit a report on the exercise of its functions under the preceding provisions of this section to the Minister for the time being responsible for matters relating to such elections, and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the National Assembly.

### **Financial Intelligence Agency (FIA)**

The Financial Intelligence Agency (FIA), established under Part II of the **Financial Intelligence Act** (see article 14 below), allows for public officers employed and deployed to the FIA to analyse financial transactions and report to the relevant authority where any offence is suspected.

Name and address of the authority that may assist other States parties in developing and implementing specific measures for the prevention of corruption (contact details):

Directorate on Corruption and Economic Crime

Private Bag 00344  
Telephone: +2673914002  
Fax: +2673913508 or +2673907825  
Plot 1212, Old Industrial Site  
Molosiwa Road, Gaborone West  
Gaborone  
Botswana  
Southern Africa

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

1. DCEC annual reports
2. Auditor General's annual reports
3. PPADB annual reports
4. Financial Intelligence Agency annual reports

The Directorate on Corruption and Economic Crime, through the Corruption Prevention Division, conducts corruption audits in public institutions. It is through these audits that the DCEC makes recommendations to the relevant institutions to prevent incidences of fraud and corruption. In 2016, audits were completed on the following institutions:

- (i) Botswana Power Corporation (BPC): The audit focused on process and procedures of macro procurement and submitted 10 findings to BPC management for comments;
- (ii) Attorney General's Chambers (AGC): The audit was conducted on Procurement Processes and Procedures and AGC. Findings included inconsistent declaration of interest and frequent failed bids leading to direct procurements;
- (iii) Sector Based Corruption Audit in the Education Sector: The audit, which was sponsored by the United Nation Development Program, through its Programme on Anti-Corruption Development Effectiveness, covered delivery of quality education by private tertiary institutions and Government sponsorship loan recovery;
- (iv) Department of Lands: The Audit aimed at examining areas of exposure to corruption and system weaknesses in the allocation of state land;
- (v) Tawana Land Board: The audit findings and recommendations were largely similar to those of other Land Boards (Tati and Ngwato) where audits were conducted and included poor record management, high demand for land, delay in land servicing and allocation, under staffing and illegal land allocation practices;
- (vi) Botswana Unified Revenue Services: The audits focused on the Processes and Procedures for Goods Exportation and importation.

In addition, the following audits commenced in 2016: (i) Ministry of Agricultural Development and Food Security on the Integrated Special Programme for Arable Agricultural Development; (ii) Botswana Housing Corporation on Property Sales and Housing Scheme; (iii) Ministry of Infrastructure and Housing Development on Contract Management; (iii) Ministry of Basic Education – Procurement of feeds for students at primary and secondary schools; (iv) Ministry of Local Government and Rural Development – Operations of Bye-Law offices in Councils and other Local Authorities.

The following joint audits were also conducted pursuant to the MoU executed between PPADB, DCEC and the Competition Authority: (i) Poverty Eradication Programme; (ii) Facilitates Management at Ministry of Health; (iii) Procurement of Radiology Equipment for Academic Hospital at University of Botswana; (iv) Procurement at Thune and Ntimbale Dams; (v) Procurement of Supplies and Services at BIUST.

*(b) Observations on the implementation of the article*

The DCEC's Corruption Prevention Division is primarily tasked with reviewing methods of work in public bodies by examining processes, procedures and policies in public bodies to identify corruption opportunities and devising corruption mitigation measures. The Division has two main sections: Public Sector Integrity (PSI) and Research & Policy, Audits and Quality Management (RPAQA). RPAQA comprises research and policy, audits and quality management. The responsibility of the Public Sector Integrity Section (PSI) is to coordinate all anti-corruption initiatives in the public sector, through Corruption Prevention Committees, Anti-Corruption Units and Partnerships. The Corruption Risk Management unit has been newly created. This newly established unit, through the Corruption Prevention Committees in various Ministries, has made it possible to conduct 37 Corruption Risk Assessments in various operational areas across the Public Service.

The Anti-Corruption Units (ACU) within ministries have brought improvements in regard to tracking, monitoring and implementing recommendations arising from audits and corruption risk assessments, as evidence for instance by Ministerial performance reviews on anti-corruption interventions. They have also assisted DCEC's Investigation division in early detection of corruption-related activities in Ministries.

Based on the information provided and the discussions during the country visit, the provision is implemented.

*Paragraph 2 of article 6*

*2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The independence of the Directorate on Corruption and Economic Crime is espoused in sections 3 and 4 of the **Corruption and Economic Crime (Amendment) Act, 2013 (CECA)**. The CECA stipulates at section 4(3) that the Director-General shall not, in the conduct of his/her duties, be subject to the direction or control of any person or body.

The appointment of the Director-General is provided for in the Act, Part II, Sections 3-5. The Director-General is appointed by the President in terms of Section 4. However, the Act does not elaborate on the tenure of the Director-General.

UNODC

“PART II – *Establishment of Directorate (ss 3 – 5C)*”

Establishment of Directorate	<p>3. (1) There is established a Directorate to be known as the Directorate on Corruption and Economic Crime (in this Act referred to as “the Directorate”).</p> <p>(2) The Directorate shall consist of the Director-General, Deputy Director-General, other officers and support staff of the Directorate as may be appointed.</p> <p>(3) The Directorate shall be a public office; and accordingly the provisions of the Public Service Act shall apply <i>mutatis mutandis</i> to the Directorate and the officers thereof.</p>
Cap. 26:01	
Appointment of Director-General	<p>4. (1) The President shall appoint the Director-General on such terms and conditions as the President deems fit.</p> <p>(2) The Director-General shall be responsible for the direction and administration of the Directorate.</p> <p>(3) Any decision, including investigations by the Director-General shall not be subject to the direction and control of any person or authority.</p>
Acting Director-General	<p>5. (1) If the office of the Director-General is vacant or the Director-General is absent from duty, the Deputy Director-General shall, except where the President otherwise directs, act as Director-General.</p> <p>(2) If the Director-General and the Deputy Director-General are absent from duty, the President may appoint another person to act as Director-General until the return to duty of either the Director-General or the Deputy Director-General.</p>
Conditions of service of Directorate	<p>5A. (1) The Minister shall prescribe such conditions of service of the Directorate setting out the terms and conditions for the appointment of officers and support staff.</p>



Disciplinary  
code by  
Minister

- (2) The conditions of service prescribed under subsection (1) shall provide for —
- (a) the designation and grades of officers and support staff;
  - (b) the scale of salaries and allowances of officers and support staff; and
  - (c) the promotions, resignations and termination of appointments of officers and support staff.

5B. (1) The Minister shall prescribe a disciplinary code for the Directorate, which disciplinary code shall provide for —

- (a) disciplinary offences;
- (b) the investigation, hearing and determination of disciplinary offences and the hearing of any appeals; and
- (c) the delegation, by the Director-General, to officers and support staff, of such disciplinary powers as he or she may consider appropriate.

(2) The disciplinary code prescribed under subsection (1) shall provide for the following disciplinary penalties or any combination thereof —

- (a) dismissal from the Directorate;
- (b) reduction in rank or grade;
- (c) suspension from duty for a specified period;
- (d) reprimand;
- (e) admonition; and
- (f) recovery of the cost or part thereof in respect of any loss or damage to the property of the Directorate caused by the default or negligence of any officer subject to disciplinary proceedings where such recovery has not been effected through any other Government procedure.

Conduct of  
officers and  
support staff

5C. An officer of the Directorate shall not become a member of any trade union, or any body or association affiliated to a trade union, or any body or association the object of which or one of the objects of which is to control or influence conditions of employment in any trade or profession:

Provided that an officer may become a member of any such body or association which may be constituted and regulated pursuant to this Act.”

The powers of the Director-General are cited in Part III, Sections 7-8 of the Act (quoted under paragraph 1 of article 6 above).

The necessary material resources and specialized staff of the Directorate, as well as training of staff to be able to carry out their functions, is provided. However, due to new and emerging trends and complexity of corruption, training and new skills and competencies are

required to keep up with such changes on a continuous basis.

Recruitment and training of staff for the Directorate is coordinated by the Corporate Services Division and the Training and Development Division, respectively, and is done in consultation with user departments/divisions. All the government institutions mostly would require Diploma or Degree holders on any given relevant field and depending on the level of responsibility.

Relevant provisions pertaining to the other authorities are cited above.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The independence, freedom from direction and control of the Auditor-General have been evidenced numerous times in the reports submitted, which have been objective, have often indicated failures by government accounting officers to adhere to the regulations on public finance, and have provided remedial measures and/or direction on the failures.

Annual Reports of the DCEC (copies provided)

*(b) Observations on the implementation of the article*

The reviewers note that during Botswana's first cycle UNCAC review, several recommendations were made regarding the DCEC's independence, resources and operations<sup>5</sup>. Notably, it was recommended that Botswana:

- “strengthen the independence of the DCEC, including the appointment and dismissal of the Director-General and independence from the Public Service;
- consider establishing a Constitutional anchor for the Directorate; continue to dedicate, within existing means, sufficient resources for the operations of the agency;
- strengthen expertise and development of skilled personnel, especially for complex matters;
- continue awareness-raising on corruption and methods to report complaints to relevant authorities.”

All public officers (including DCEC officers) who fall under the Senior Management Cadre (E scale and above) are appointed by the Permanent Secretary to the President, in accordance with Section 15(1)(a) of the Public Service Act of 2008. All other officers who are junior to the above-mentioned cadre are appointed by the Director of Public Service Management (DPSM), or by such other person to whom the Director has delegated such powers, in accordance with Section 15 (1) (a) of the Public Service Act of 2008. The power to appoint, remove or exercise disciplinary control over the officers mentioned above is

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<sup>5</sup> (Document CAC/COSP/IRG/I/4/1/Add.1), available at: <https://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=BWA>

vested either in the Permanent Secretary to the President (for senior officers) or the Director of DPSM or delegated person (for all other officers).

The only person appointed by the President in DCEC is the Director-General, in accordance with Section 4(1) of the Corruption and Economic Crime Act which reads as follows: “The President shall appoint the Director General on such terms and conditions as the President deems fit”.

The Deputy Director General is appointed by the Permanent Secretary to the President.

However, the tenure and removal of the Director-General are not specified.

**Accordingly, it is recommended that Botswana take steps to address the above-mentioned recommendations, including to elaborate on the tenure of the Director General in the law or regulations, with a view to strengthening its independence.**

**Furthermore, it is recommended that Botswana continue to invest in capacity building and the development of anti-corruption skills and expertise, including through international cooperation, exchange programmes and benchmarking with other countries on best practices. Botswana has requested technical assistance in this regard.**

*Paragraph 3 of article 6*

*3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.**

Directorate on Corruption and Economic Crime  
Private Bag 00344  
Telephone: +2673914002  
Fax: +2673913508 or +2673907825  
Plot 1212, Old Industrial Site  
Molosiwa Road, Gaborone West  
Gaborone

Botswana  
Southern Africa

*(b) Observations on the implementation of the article*

Botswana has notified the United Nations, as prescribed in this provision.

The relevant contact information is included in the on-line directory of Competent National Authorities (CNA) under the United Nations Convention against Corruption.

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Limited expertise and skills.

*(d) Technical assistance needs*

**Institution-building: Skills and expertise need to be enhanced**

Facilitation of international cooperation with other countries: Exchange programmes and benchmarking with other countries on best practices

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

Yes. Technical assistance has been provided before. There have been UNODC and StAR Initiative training programmes conducted in Botswana after the first UNCAC review cycle.

Botswana has also benefited from capacity building through the Commonwealth Anti-Corruption Centre, based in Gaborone, as well as the International Anti-Corruption Academy in Laxenburg, Austria.

Botswana has also benefited both technical and financial assistance from the United Nations Development Programme through its local office, during the development of sector reports and the National Anti-Corruption Policy.

**Article 7. Public sector**

*Paragraph 1 of article 7*

*1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the*

recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The Government of Botswana has adopted through the **Public Service Act No. 30 of 2008**, the **General Orders of 1996** and from time to time Circulars and Directives, a standardised process of recruitment, retention, promotion and retirement of civil servants.

The authority for the appointment, discipline and termination of service of public officers is contained in the **Constitution of Botswana**, the **Public Service Act**, and in the **Regulations made under the Act**.

A. Recruitment, hiring:

According to section VI (15) of the **Public Service Act 2008**, the power to appoint, remove or exercise disciplinary control over any public officer shall be vested-

“(a) in the case of any public officer on the super scale (other than an officer to whom section 110 of the Constitution does not apply), in the Permanent Secretary to the President; and  
(b) in any other case, in the Director in accordance with this Act.”

Section VI (17) stipulates the following:

**“Section 17 Criteria for appointment**

- (1) In selecting candidates for appointment, the appointing authority shall have regard primarily to the efficiency of the public service.
- (2) Where any public office is vacant, the following persons shall be qualified for appointment to such office in the following order of priority-
  - (a) a citizen;
  - (b) any other person who is a non-citizen but whose appointment to such office is approved under section 21 or deemed to be approved under section 21(3).
- (3) The persons mentioned in subsection (2) shall be qualified for appointment if they satisfy any competency requirements or qualifications specified by the Director by order published in the Gazette in respect of that public office.
- (4) The provisions of subsection (2) may be waived with the written approval of the Minister if it facilitates the localisation of the public service or is otherwise in the interests of the public service.”

Part III of the **Public Service Regulations 2011** reads as below:

“PART III - Appointments

5. Notification of vacancies

- (1) Where a vacancy occurs or is expected to occur in relation to a public service post, the Permanent Secretary shall notify their appointing authority stating whether –
  - (a) the vacancy may be filled by the promotion or transfer of an officer serving in the Ministry or Department in which the post exists;
  - (b) a suitable candidate is likely to be found in some other Ministry or Department; or
  - (c) a suitable candidate may be found by advertisement in Botswana or elsewhere.
- (2) Where the Permanent Secretary recommends the promotion or transfer of an officer serving in the Ministry in which the post exists, the Permanent Secretary shall furnish the appointing authority with the record of service of the officer recommended, together with the names of any officer in the Ministry or Department who is likely to be superseded and the reasons for recommending the supersession.

**(3) Where the Permanent Secretary is unable to recommend the promotion or transfer of an officer to fill the vacancy, the Permanent Secretary shall report, to the appointing authority, the names of the officers serving in the cadre or grade from which promotion would normally be made, together with the reasons for not recommending those officers for promotion.**

**(4) When the Permanent Secretary determines that a suitable candidate is not likely to be found by advertisement in Botswana, he or she shall notify the appointing authority of the arrangements which exist for the training of a local officer to fill the vacant post.**

**(5) An appointment to fill a vacancy through a promotion or transfer shall be based on the competency of the employee.**

**(6) The Director of Public Service Management shall undertake external recruitment of all employees.**

**General Orders of 1996 governing the 'Conditions of Service of the Public Service of the Republic of Botswana'**

“3.1 The authority for the appointment, discipline and termination of service of Public

Officers is contained in the Constitution of Botswana, the Public Service Act, Cap. 26:01, and in the Regulations made under the Act.

3.2 Any powers that may be conferred on Officers in these respects and any obligations that may be laid upon Officers in the execution of their official duties are derived from those enactments, as amplified by the General Orders.

3.3 The provisions of the General Orders relating specifically to appointment, discipline and termination of service do not apply to those Officers for whom separate provision is made in these respects in the Constitution of Botswana.

3.4 The authority for pensions and other retirement benefits is contained in the Pensions Act Cap.27:01, and in the Regulations made under that Act.

3.5 General Orders are to be read in conjunction with Financial Instructions, Supplies Regulations and any other regulations or instructions which may be issued from time to time by Government. These are equally binding on all Public Officers, and also form part of their conditions of service.”

## AUTHORITY FOR APPOINTMENT

8.1.1 Subject to the Constitution the authority for appointment to the Public Service of Super-scale Officers other than those referred to in Section 112 of the Constitution, is vested in the Permanent Secretary to the President.

8.1.2 The authority for the appointment of all other Officers in the Public Service is vested in the Director. With the written consent of the President, the Director may delegate any of his powers in this respect to any Officer designated by him. The Director retains the power to vary or set aside at any time any decision made by an Officer to whom these powers have been delegated.

8.1.3 Currently authority for the appointment of all Public Officers up to and including the B.4 level has been delegated by the Director to the Permanent Secretary of each Ministry.

8.1.4 The Appointing Authority requires the approval of the Speaker of the National Assembly before making appointments or effecting transfers or promotions of Officers to posts in the National Assembly and to consult the Chairman of the House of Chiefs before making an appointment to the post of Secretary to that House.

8.1.5 No person shall be appointed to the personal staff of the President except with the approval of the President.

## 8.2 CATEGORIES OF APPOINTMENT

8.2.1 Appointment to the Public Service may be made

8.2.1.1 on permanent and pensionable terms; or

8.2.1.2 on contract terms; or

8.2.1.3 on temporary terms.

8.2.2 Appointments on permanent and pensionable terms are made subject to probation in terms of G.0.9, and entitle the Officer to benefits provided in the Pensions Act Cap. 27:01.

8.2.3 Appointments on contract terms are normally made for a period of between 24 and 36 months, but may embrace more than one tour. Financial benefits of Contract Officers are governed by the terms of contract, including these General Orders.

8.2.4 Appointments on temporary terms are made for such periods and subject to such conditions as the Appointing Authority may determine.

### 8.3 QUALIFICATIONS FOR APPOINTMENT

8.3.1 No person shall be appointed to any public office unless:

8.3.1.1 a provision exists for that office in the approved Estimates or has been made by a Finance or Establishment Authority;

8.3.1.2 the office is vacant, except where Section 13 of the Public Authorities (Functions) Act Cap. 02:09 and Section 18 of the Interpretation Act, Cap 01:04 applies; and

8.3.1.3 he satisfies the qualifications set out for the office in the appropriate Scheme of Service.

8.3.2 In selecting candidates for appointment, the main consideration is the efficiency of the Public Service.

8.3.3 No person who has been convicted of an offence involving moral turpitude, and no person who has been dismissed from the Public Service may be appointed to any public office without the approval of the President.

8.3.4 No person who is not a citizen of Botswana may be appointed to any public office unless the Director is satisfied that there is no citizen of Botswana who is qualified and suitable for appointment and unless the President is satisfied that it would not be in the public interest for the office to remain vacant.

8.3.5 Subject to the provisions of this General Order, the following categories of persons are qualified in the order of priority given for appointment to vacancies in the Public Service:

8.3.5.1 serving Officers who are citizens of Botswana;

8.3.5.2 other citizens of Botswana;

8.3.5.3 serving Officers who are not citizens of Botswana;

8.3.5.4 non-citizens of Botswana.

8.3.6 If two or more serving Officers have similar qualifications and experience, preference will be given to proven merit and suitability for the office in question rather than seniority.

8.3.7 In exceptional circumstances, the Permanent Secretary to the President may waive any of the requirements of G.O. 8.3.1 or G.O. 8.3.5 in the interests of the efficiency of the Public Service, or, in the case of G.O. 8.3.1.3, to facilitate localisation of the Public Service.

### 8.4 PROCEDURE IN THE EVENT OF A VACANCY

8.4.1 When a vacancy occurs or is expected to occur in a public office of grade B3 or above, the Permanent Secretary shall inform the Appointing Authority giving full particulars of the post, accompanied by a Vacancy Report on Form DPSM 1 Rev.94 (Annexure 1) and stating whether in his opinion the vacancy should be filled by an Officer in his Department or Ministry, or whether it is likely that a suitable candidate will be found in some other Department or Ministry.

8.4.2 If the post is one that can be filled by the promotion of a serving Officer within the Ministry or Department, the Permanent Secretary will include in his report the name of the Officer he recommends for promotion to the post and will furnish to the Appointing Authority his record of service. He will also forward the names of any other Officers who would be passed over if his recommendation was accepted and he will give in full the reasons for his recommendation.

8.4.3 If the Permanent Secretary is unable to recommend the promotion of any Officer in

his Ministry or Department, he will forward to the Appointing Authority a list of the Officers in the grade or class from which the promotion would normally be made and his reasons for not recommending any of these Officers.

8.4.4 If the post is one that may be filled by direct recruitment, the Permanent Secretary will state whether in his opinion a suitable candidate for the post can be found in Botswana. If he considers that no such candidate can be found he will inform the Director of possible areas of recruitment and will state the arrangements which exist for the training of a Local Officer to fill such post.

8.4.5 When a vacancy occurs or is expected to occur in a public office of Grade B.4 or below, the Permanent Secretary shall proceed to fill the vacancy following the guidelines set out in this General order and ensuring that a vacancy form is completed and filed.

## 8.5 ADVERTISEMENT OF VACANCIES

8.5.1 If a post is to be filled by direct recruitment, applications for the post will be invited by advertisement in Botswana in such manner as the Appointing Authority may determine. In appropriate cases external advertisements may be placed by the recruiting Officer with the consent of the Appointing Authority.

8.5.2 No vacant post will be publicly advertised where the Appointing Authority is satisfied that such post can be filled by a serving Officer.

8.5.3 No post will be advertised outside Botswana unless the Appointing Authority is satisfied that there is no reasonable likelihood of recruiting a suitably qualified local candidate.”

### **Botswana - Employment Act 1982 (Cap 47:01)**

#### **PUBLIC SERVICE: SUBSIDIARY LEGISLATION**

##### **“5. Notification of vacancies**

...

(3) Where the Permanent Secretary is unable to recommend the promotion or transfer of an officer to fill the vacancy, the Permanent Secretary shall report, to the appointing authority, the names of the officers serving in the cadre or grade from which promotion would normally be made, together with the reasons for not recommending those officers for promotion.

(4) When the Permanent Secretary determines that a suitable candidate is not likely to be found by advertisement in Botswana, he or she shall notify the appointing authority of the arrangements which exist for the training of a local officer to fill the vacant post.

(5) An appointment to fill a vacancy through a promotion or transfer shall be based on the competency of the employee.

(6) The Director of Public Service Management shall undertake external recruitment of all employees.

##### **6. Advertisement of vacant posts**

(1) Subject to sub-regulation (2) and to any directions of the President, an application for appointment to a vacant post which is pensionable shall be invited by public advertisement in Botswana in a manner determined by the appointing authority.

(2) A vacant post shall not be advertised where the appointing authority is satisfied -

(a) that the post should be filled by the promotion, transfer, or re-engagement of a serving

officer or the continued employment of an officer on temporary terms;  
(b) that there is no reasonable likelihood of any application being received in response to an advertisement.

## 7. Selection of candidates

As between officers having the same degree of preference, qualifications and experience, proven merit and suitability for the office in question shall be given greater weight than seniority.”

Part VI of the **Public Service Act (PSA) of 2008** determines appointment to the Public Service: Section 14 of the PSA states that:

“Entry into and advancement in the public service shall be based on a proven record of performance and skills and competencies. However, the academic requirements and price of admission competencies, as determined from time-to-time, shall apply for entry-level posts.”

**General Order 8** acts as a supporting legislation for the above section in PSA. Issues relating to who has the power to appoint, when can the appointment be done are stipulated in the General Order.

Section 17(1) of the **Public Service Act, 2008** cited above states the criteria of appointment to the public service and requires the appointing authority to have regard primarily to the efficiency of the public service.

Part V of the Botswana Defence Force Act determines appointment into the force.

## **PART V**

### **Appointment of Officers (ss 12-15)**

#### **12. Lieutenant-Colonel and above**

Officers of the rank of Lieutenant-Colonel and above shall be appointed by the President.

#### **13. Major and below**

Officers of the rank of Major and below shall be appointed by the Commander.

#### **14. Posting and transfer of officers**

(1) Every officer upon being appointed shall be posted to one of the components of the Defence Force specified in section 4(1).

(2) The President may, upon such terms and conditions as may be prescribed, transfer any officer between the Regular Force and the Reserve Force.

#### **15. Power to make regulations for this Part**

Subject to the provisions of this Act, the President may make regulations for the better carrying out of this Part and, without prejudice to the generality of the foregoing, such regulations may make provision with respect to the appointment of officers, their terms of service, transfer, promotion, retirement, resignation, removal from office, and such other matters concerning officers as may seem necessary.

Part III of the Botswana Police Act determines appointment in the police service.

## **8. Appointment of police officers**

(1) Subject to this Act-

- (a) the Permanent Secretary to the President shall, after consultation with the Commissioner, appoint fit and proper persons to hold the rank of Deputy Commissioner;
- (b) the Commissioner shall appoint fit and proper persons-
  - (i) to hold any rank up to and including Senior Assistant Commissioner;
  - (ii) to hold any civilian office in the Botswana Police Service, of a Grade up to and including Grade D1,

whether or not the person appointed is already a member of the Service:

Provided that the first two years of the service of any person appointed to be a member of the Service, or such longer period as the appointing authority shall direct, shall be on probation and any service spent in a prescribed organisation may count towards this period.

(2) A police officer appointed on probation shall, subject to this Act, be confirmed in his appointment, and admitted to the permanent and pensionable establishment of the Service only on the authority of the relevant appointing authority.

(3) An appointing authority may appoint a police officer to act in a rank senior to his substantive appointment, and where the period of such acting appointment exceeds 28 days such officer shall, during such acting appointment, receive salary at the scale applicable to the senior rank at such incremental level as the appointing authority may decide.

## **9. Declaration on attestation**

(1) Every person on joining the Service shall make and sign a declaration before a senior officer in such form as may be prescribed, and at the same time shall acknowledge his appointment as a member of the Service on such form as may be prescribed.

(2) Every person shall, before making the declaration required by subsection (1), answer truly any questions put to him as to his previous service, academic qualifications, career and employment and as to whether he has at any time been convicted of any offence punishable by the laws of Botswana or the laws of any other country.

(3) Any person who makes a false statement in reply to any question put to him under subsection (2) to obtain or to attempt to obtain admission to the Service shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or to both.

(4) The Commissioner may dismiss from the Service any person who contravenes subsection (2).

For public positions deemed vulnerable to corruption, the recruitment procedure is the same. However, candidates for some positions (for example, revenue collectors or the Heads of Anti-Corruption Units) are subject to background and integrity checks.

There is a system for the periodic promotion of public officials to other positions. However, there is no government-wide structured system for the periodic rotation of public officials. Some ministries have established rotation requirements, such as PPADB and the Anti-Corruption Units in some ministries. Furthermore, on a monthly basis ministries have to report to DPSM on “overstays” and a draft transfer policy is also under development that would establish a limit of 5 years of service by any officer at a single duty station. The draft is at an advanced stage, and Guidelines for its implementation have already been issued.

## **B. Promotions, Retention:**

There is a template used for recommendations of promotion of employees. The decision to promote is based on objective selection as per the stipulated requirements, which are: There must be a vacancy for which the employee is being recommended. The employee must have performed satisfactorily in the current position. Of significance is the requirement that when supervisors recommend an employee for promotion they should ensure that they show a comparison with other officer within the same section that would ordinarily also qualify for such a position. They should also indicate if the recommended employee does not supersede others. In the event they do supersede others the supervisor should state the reasons why the employee should be considered above the others. In order to promote transparency, Appointment Boards sometimes refer candidates for promotion for a Competency Based Interviews (CBI).

The Permanent Secretary to the President issued a Circular savingram that requires that appointments into executive positions should by and large be based on results from Assessment Centres. In line with this the government has established an Assessment and Development Centre at the Botswana Public Service College.

It is worth noting that the Directorate of Public Service Management (DPSM) is developing retention strategy. Currently there is no strategy in place; however, DPSM has implemented some measures such as the use of the scarce skills allowance (Public Service Management Directive No. 2 of 2008) to augment salaries for certain professionals with the hope that they will not leave the service. The Remote Area Service Allowance is to encourage and retain government employees in areas where amenities are not available, and development of employees to close efficiency gaps by equipping them with the relevant skills.

The pieces of legislation given below govern entry into the public service for various institutions. Most processes are the same for the different institutions except in some cases on how they are executed. For the disciplined forces promotions are done periodically and in most cases in large numbers.

Ø Public Service Act, 2008

Ø Public Service Regulations, 2011

Ø General Orders

Ø Periodic Directives

Ø Circular Saving rams

Ø Botswana Defence Force Act

Ø Botswana Police Service Act and its Regulations

Ø Conditions of Service

Ø Acts for various parastatals (Water Utilities Corporation, Botswana Power Corporation, Local Enterprise Authority etc.)

### C. Retirement of Public Officials

**General Order 18-20** outlines the reasons for and how an employee may be retired. An employee governed by the PSA may retire voluntarily at the age of forty five (45) whilst compulsory retirement is set at the age of sixty (60) for most positions. Certain professions such as teaching, have in the past before the amalgamation of the PSA, Teaching Service Act, local Government Service Act and Land Board Service Act had their retirement age set at 65. When the PSA of 2008 came into effect these employees were given a waiver to retire at 65 whereas those who joined after the new Act would retire at 60. Judges, Secretary for Independent Electoral Commission also retire at the age of 65.

In some rare cases an officer may be offered employment beyond compulsory retirement age on a contract basis. This is usually done where the employer is of the view that the officer's skills are still needed or are not readily available in the service or in the market.

The compulsory retirement age for Regular Forces as defined in the Botswana Defence Force Act ("BDF Act") is forty five (45) years for the lowest rank and fifty five (55) years of age for the highest rank in the regular forces.

#### **18. Terms of enlistment**

(1) A soldier enlisted in the Regular Force shall be under a short term enlistment for an initial period not exceeding a period of ten years after which he shall apply for re-enlistment on a permanent basis.

(2) A soldier of the rank listed in the first column hereof shall retire from his employment in the Force upon attaining the age specified in the second column in relation to the rank-

Rank	Retirement age
Private	45 years
Lance Corporal	47 years
Corporal	49 years
Sergeant	51 years
Warrant Officer II	53 years
Warrant Officer I	55 years.

(3) Notwithstanding subsection (2), a soldier may-

- (a) in such manner as may be prescribed and with the agreement of the Commander, resign from the Force at an earlier age than 45 years; or
- (b) retire at any time on or after completing 20 years pensionable service or on or after attaining the age of 45 years, other than a soldier belonging to the rank of Private, by giving three months notice in writing to the Commander of his intention to do so.

The Early Exit Policy of 2008 was formulated to facilitate retirement of government employees where it is necessary to embark on a programme of staff reduction arising out of:

1. Organisational changes or developments which directly result in staff reduction at a particular level, category, skill or occupation
2. The cessation of a function resulting in a reduction, or total abolition of office for employees of a particular category, occupation or level
3. The introduction of technologies and working practices which impact directly or indirectly on the number, skills or competencies of employees etc.

In line with this policy the Department of Water Affairs was restructured and some employees given early exit package in 2012. The operational functions of the Department of Water Affairs were transferred to the Water Utilities Corporation, The Department of Civil Aviation was also abolished to create the Civil Aviation Authority. Employees with redundant skills were given early exit packages.

Government has a Training Manual followed to the letter when decisions are to be made on training of individual officers. Training may be within government training facilities, in external stakeholder facilities and even outside the country depending on the training needs and plan of the particular organization. Locally, public institutions for training are the Botswana Public Service College and the Botswana National Productivity Centre. Further, depending on the need, private universities are also places where public officers are taken for training at government expense.

As regards pay scales, the Public Service Act established the Bargaining Council where decisions on pay scales and increments are made through negotiation with employee organizations. Previously, there would be directives on the review of salaries and pay scales.

Botswana's Public Service College provides training to public servants on the grievance mechanism whereby complaints can be filed through DPSM against human resources decisions, including in the recruitment process. The training is offered on a monthly basis, by government directive.

Through quarterly ministerial performance reviews conducted by the President of the Republic, ministries are held to account to ensure that corruption is addressed and grievances are resolved in a timely manner.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

- Ø Transparency is ensured through a number of initiatives put in place by the government such as:
  - o Through advertising of vacant positions as per Part III (Appointments) of the Public Service Regulations of 2011 (quoted above).
  - o Introduction of Performance Management System that requires that every

employee should enter into an agreement with the supervisor on their deliverables. These deliverables are checked periodically on quarterly basis through performance reviews,

- o Appointment Boards have been established as per Directive No. 9 of 2003. The boards have a minimum of at least three board members excluding the secretary. Inclusive in the board is the officer who makes the recommendation for promotion.
- o The use of independent recruitment agencies for higher posts where rigorous interviews are conducted

Ø Specialized integrity training/training on anti-corruption:

- o Public officials are trained at intervals by the DCEC on Corruption Prevention. For internal training in the DCEC, some DCEC staff are certified ethics officers, and 18 officers of DCEC are accredited by BQA as trainers of trainers (TOT). The PPADB also trains public officers on Corruption in Procurement.
- o The Botswana Accountancy College trains public officers on Risk Assessment.
- o There is also general training on ethics by the Botswana National Productivity Centre and the Botswana Public Service College (3-day training offered on a monthly basis to public officials at different levels).
- o On an annual basis DCEC officers are sent to South Africa to participate in ethics training. Training has also been conducted by Ethics South Africa in Botswana.
- o The “Smart Work Ethics” training programme, led by Botswana’s National Productivity Centre (BNPC), is aimed at addressing inefficiencies in national productivity standards and poor work ethics. Over 957 people were trained in smart work ethics, 895 from the public service and 62 from the private sector.

*(b) Observations on the implementation of the article*

Botswana has implemented the provision, as evidenced by the comprehensive and detailed measures and procedures governing the advertisement of vacant positions, as well as for the recruitment, selection, appointment, promotion, retention, and retirement of civil servants.

During the country visit, the rotation system for public officials in positions deemed vulnerable to corruption was discussed further. Despite the lack of a government-wide, structured periodic rotation system, the Public Procurement and Asset Disposal Board (PPADB) and anti-corruption units at some ministries have established rotation requirements to other positions. The Head of State decides on the appointment, rotation (at the same grade level) and termination of persons holding positions at the level of permanent secretaries. Persons holding positions at the level of deputy permanent secretaries and other public officials are subject to appointments for limited terms of office and may be subject to rotation.

The pay scales are determined by the Directorate of Public Service Management (DPSM) on the basis of the Paterson Job Grading System. The information on pay scales for public servants is made publicly available through a so-called “white paper”, which is subject to

yearly reviews.

**It is recommended that the draft transfer policy on the rotation of public servants, which was under development at the time of the review, be finalized and promulgated. Botswana could also consider adopting a more structured, formalized system for the selection, training and rotation of public officials in positions considered vulnerable to corruption.**

*Paragraph 2 of article 7*

*2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 61 of the **Constitution of Botswana** states qualifications for persons to be elected into the National Assembly, while section 62 states disqualifications for election thereto.

**Constitution of Botswana**

“Section 61. Qualifications for election to National Assembly

Subject to the provisions of section 62 of this Constitution, a person shall be qualified to be elected as a Member of the National Assembly if, and shall not be qualified to be so elected unless-

- (a) he is a citizen of Botswana;
- (b) he has attained the age of 18 years;
- (c) he is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered; and
- (d) he is able to speak, and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.

**Section 62. Disqualifications for membership of National Assembly**

- (1) No person shall be qualified to be elected as a Member of the National Assembly who-
- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or

adherence to a foreign power or state;

(b) has been declared insolvent or adjudged or otherwise declared bankrupt under any law for the time being in force in Botswana and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;

(c) is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;

(d) is a Member of the House of Chiefs;

(e) subject to such exceptions as may be prescribed by Parliament, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months;

(f) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

(g) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the Assembly or the compilation or revision of any electoral register for the purposes of such elections.

(2) Parliament may provide that a person shall not be qualified for election to the National Assembly for such period (not exceeding five years) as may be prescribed if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

(3) For the purposes of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms, and no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.”

For the office of the President, the relevant provision is section 33 of the Constitution. To be qualified for election, the candidate must also be qualified to be elected as a Member of the National Assembly.

### **Section 33. Qualification for election as President**

(1) A person shall be qualified for election as President if, and shall not be qualified unless, he—

(a) is a citizen of Botswana by birth or descent;

(b) has attained the age of 30 years; and

(c) is qualified to be elected as a Member of the National Assembly.

(2) Notwithstanding any other law to the contrary, for the purposes of this section and section 39—

(a) the term "citizen by birth" shall be understood to include only those persons who became citizens of Botswana prior to the amendment of the law relating to citizenship by the Cap. 01:01 Citizenship Act;

(b) any person who, although his father was a citizen of Botswana at the time of that person's birth, had, by virtue of his having been born outside Botswana, to be registered as a citizen of Botswana, under the law relating to citizenship in force at that time, shall be regarded as a citizen by descent.

### **Tribal Land Act (Ch. 32:02)**

“PART II Land Boards (ss 3-11)

### 3. Establishment of land boards

(1) There is hereby established in respect of every tribal area set out in the first column of the First Schedule a land board having the name or title set out in relation thereto in the second column thereof.

(2) Subject to the provisions of this section, the membership of each land board and the period of office of members elected or appointed thereto shall be as provided in the third column of the First Schedule in relation thereto.

(3) A person shall be disqualified from being appointed as a member of a land board or from continuing as a member of the following grounds-

(a) he has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in Botswana or elsewhere and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;

(b) has been sentenced to imprisonment without the option of a fine for any offence, whether in Botswana or elsewhere;

(c) he is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;

(d) he is a member of the National Assembly or the Ntlo ya Dikgosi;

(e) he holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months.

(4) A land board may perform the functions vested in it under this Act or under any other law, notwithstanding any vacancy in its membership.

(5) The Minister may, by order published in the Gazette, amend any of the entries set out in the third column of the First Schedule in order to vary the membership of any land board or the period of office of members thereof.

### 11. Disqualification from appointment

(1) No person who has been convicted of an offence involving moral turpitude or who has been dismissed from the public service or from the land board service shall be appointed to an office in the land board service without the approval of the Minister.

(2) No person shall be appointed to an office in the land board service unless he or she holds such qualifications as have been prescribed for appointment to that office.

(3) No person who is not a citizen of Botswana shall be appointed to any office in the land board service unless the appointing authority is satisfied that no citizen of Botswana is qualified and suitable for appointment thereto.”

## **Local Government (District Councils) Act**

### “Section 7. Qualification for membership of council

(1) A person shall be qualified to become a member of a council if he is qualified, in terms of section 15, to vote in any election for members of the council and does not possess the disqualifications for membership of the National Assembly referred to in section 62 of the Constitution:

Provided that-

(i) the order establishing a council may provide that for the purposes of this section no person shall be deemed to possess those disqualifications merely because he has applied for or has been granted a passport issued by or under the authority of the Government of any country prescribed for such purpose in the order; and

- (ii) no person shall be disqualified to become a member of a council other than an elected member merely because he is a member of the House of Chiefs.  
(2) Subsection (1) shall not apply to any ex officio member.”

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Not available.

*(b) Observations on the implementation of the article*

During the country visit, it was noted that, in Botswana, civil servants could not stand for election for public office. It was also reiterated that the provision of false information was established as an offence in the penal code of Botswana, which would apply to persons who supplied false information to government concerning their background or qualifications for public office. At the same time, it was clarified that the national legislation of Botswana did not contain any provisions dealing with conflicts of interest in relation to elected public officials (although there was a plan to carry out work on this regard).

It was also clarified that no provisions were in place, either on candidates for office and their actual or potential conflicts of interest or on whether candidates could hold positions in government while also having responsibilities in the private sector.

**Based on the discussions during the country visit, Botswana is encouraged to consider adopting legislation that would regulate conflicts of interest of candidates for elected office.**

*Paragraph 3 of article 7*

*3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The Electoral Act of Botswana (Act No. 38 of 1968) contains the following provisions:

- (i) Section 80 of the Act defines election expenses as all the money expended or expenses incurred on account of or in respect of the conduct or management of election by a candidate on his behalf or in his interests. The money should be spent after the issuance of a writ in relation to a particular election. The maximum amount spent in this regard should not exceed 50,000 Pula as per Section 81 of the Act.
- (ii) Section 87(1) of the Act allows a period of 3 months (90 days) after elections for the submission of election returns to the returning officers.
- (iii) Section 87(3) of the Act disqualifies any elected member to sit or vote in the National Assembly until such returns have been rendered.
- (iv) Section 87(4) further pronounces a fine for candidates who make false statements of account to be liable to a fine of 40,000 Pula.
- (v) Section 87(6) of the Act empowers the returning officer to report defaulting candidates to the Attorney-General.

Furthermore, the Independent Electoral Commission has developed a form to facilitate the submission of election returns as required by the Electoral Act (section 86(1)). The election expenses returns and accompanying documents are kept in the office of the returning Officer or at another place identified by him and they are open for inspection by any person, in accordance with Section 89 of the Electoral Act.

There is currently no requirement for elected officials to declare their assets. The promulgation of an Asset Declaration law would consolidate a disclosure requirement for all public officials, appointed or elected, in one Act. See paragraph 4 of this article below.

In regard to political parties, Botswana has developed a blueprint on political party funding with the intention to appoint an Ethics Officer who will administer and regulate the funding of all political parties. The document was developed by the DCEC in consultation with representation from political parties.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Currently no examples can be provided as the blueprint is not yet adopted.

*(b) Observations on the implementation of the article*

Botswana indicates that it is partially in compliance with the requirements of paragraph 3 of Article 7. During the country visit, it was clarified that the blueprint on political party funding was still under development. During the discussions, reference was made to sections 80 to 89 of the Electoral Act (Act No. 38 of 1968) (on electoral expenses, including the declaration of expenses). It was noted that no public funding was provided to political parties. It was also noted that, although political parties could seek funding from any sources (the Electoral Act was not specific in this regard), they were required to provide an

accounting for such funds. Officers were appointed on a temporary basis to follow-up on declarations of expenses submitted by political parties. Furthermore, all candidates have 90 days after the result of any election to declare their expenses and those in breach of this provision could not sit or vote in the National Assembly.

**In view of the discussions during the country visit, Botswana is encouraged to consider adopting appropriate legislative and administrative measures on the funding of political parties, including relevant monitoring and oversight.**

*Paragraph 4 of article 7*

*4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

1. Section 31 of the **Corruption and Economic Crime Act No. 6 of 2013** provides for the offence of conflict of interest.

The provision is quoted below.

consideration. .

8. The Act is amended by substituting for section 31, the following new section —

**“Conflict of interest** 31. (1) A member or employee of a public body is guilty of corruption if —

- (a) he or she, the immediate member of his or her family has a direct or indirect interest, in any company or undertaking with which such body proposes to deal; or
- (b) he or she has a personal interest in any decision which such body is to make,

and he or she, 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 without disclosing the nature of his or her interest.

(2) It is a defence to a charge under this section if the member or employee of a public body having an interest, has first made, in writing, to his or her appointing authority, the fullest disclosure of the exact nature of his or her interest and has been permitted thereafter to take part in the proceedings relating to such dealing or decision.

(3) For the purposes of this section —

(a) “direct interest in a company or undertaking” means a member or employee of a public body or the immediate member of the family of the member or employee of a public body —

- (i) holds a position in,
- (ii) is an employee of,
- (iii) is a shareholder in, or
- (iv) gives services for remuneration or reward to,

a company or undertaking referred to in subsection (1);

(b) “immediate member of the family” means the spouse, son, daughter, sibling or parent of the member or employee of a public body; and

(c) “indirect interest in a company or undertaking” means an employee, agent or nominee of a member or employee of a public body or his or her immediate member of the family has a direct interest in a company or undertaking referred to in subsection (1).”

“36. Penalty

Any person who is guilty of corruption or cheating the revenue under this Part shall, upon conviction, be liable to imprisonment for a term not exceeding 10 years or to a fine not exceeding P500 000, or to both.”

2. The Directorate of Public Service Management (DPSM) in collaboration with DCEC has developed the **Public Service Anti-Corruption Strategy** in 2010, the purpose of which is to “establish standards of ethical and anti-corruption responsibility by all Government employees and stakeholders doing business for and with Government”. The main objectives of the Public Service Anti-Corruption Strategy are to: “1) maintain public confidence in the Public Service, 2) eliminate issues of corruption in the Public Service, and 3) improve the

quality of service of the Public Service.” The Strategy further provides:

#### “5.0 Principles of the Strategy

5.1 Fighting corruption in the Public Service shall be underpinned by a holistic approach, which focuses on the legislative approach, human resources, systems and processes together with leadership commitment and establishes anti-corruption structures.

5.2 The strategy is anchored on mainstreaming approaches to combat corruption. These include preventative measures, education and training on anti-corruption initiatives and monitoring and evaluation. It is an overarching expression of areas where Ministries/Departments can draw inspiration and guidance to fight corruption and improve governance. It also proposes the need to have structured strategies to link and include stakeholders and recognized trade unions as partners in promoting governance, transparency and accountability.”

The Strategy identifies corruption risk prone areas and calls upon corruption prevention committees to exercise key functions of prevention, together with education and investigation. Monitoring and independent evaluation are also provided for, including through quarterly reporting by public service committees to the DPSM (paragraph 13). However, there is no enforcement mechanism, as the principles in the Public Service Strategy are deemed aspirational rather than mandatory.

DPSM in collaboration with DCEC has also developed guidelines on the acceptance of gifts and declaration of interest in 2013. The **Guidelines on Declaration of Interest** are used across the public service and state that “Public Service employees are duty bound to act with integrity, impartiality and honesty when conducting Government business at all times. To this end, public service employees shall at all times ensure that no actual, perceived or potential conflict of interest arises between their official duties and private interests. Where an actual, perceived or potential conflict of interest arises, employees shall declare to their Appointing Authorities for determination in accordance with established procedures”. A Declaration of Interest Form is attached to the guidelines. The Guidelines provide the following definition:

#### **2. CONFLICT OF INTEREST**

- 2.1. Conflict of interest is when the private interests of a Public Service employee compete or conflict with his/her official duties.
- 2.2. A fundamental rule for maintaining public service and employee’s integrity is to avoid situations which may give rise to a conflict of interest, thus bringing the service into disrepute.
- 2.3. For purposes of these guidelines, conflict of interest relates to, but not limited to the following areas; recruitment, procurement, project management, etc.

The following reporting procedure is established:

## **4. DECLARING A CONFLICT OF INTEREST**

The process of declaring a conflict of interest shall be conducted in the following manner;

### **4.1. Employee Obligation**

- 4.1.1. All employees shall on appointment, declare their business interests to their Appointing Authorities within a month of their employment, and annually thereafter by filling the prescribed DPSM form.
- 4.1.2. Employees shall bring to the attention of their Appointing Authorities, any such conflict or potential conflict of interest prior to the engagement on an assignment associated with the perceived conflict.
- 4.1.3. Declarations should be processed through immediate supervisors, who will advise Appointing Authorities on the nature of the conflict.

The Appointing Authority in a Ministry is usually the Permanent Secretary or Director-General. Ministers declare to the President of the Republic. The term is defined in the Public Service Act, 2008: "appointing authority" means any person in whom the power to appoint, remove from office or exercise disciplinary control in terms of this Act vests;

Consequences for conflict of interest are as follows:

### **4.2. Employer Obligations**

- 4.2.1. Appointing Authorities should within fourteen (14) days of notification, discuss the matter with an employee should they be satisfied that the nature of the conflict could affect his/her impartiality.
- 4.2.2. Establish whether such employee could be re-deployed, re-assigned or transferred to a suitable responsibility or position, where no such conflict would arise.
- 4.2.3. Give the employee the option to relinquish or dispose of the conflict occasioned by himself, spouse or child.
- 4.2.4. Where no option exists in line with 4.2.2 and 4.2.3 above, the employee should be required to resign or retire from the Public Service within thirty (30) days of notification.
- 4.2.5. Failure to comply with 4.2.4 above will result in the concerned employee being liable for disciplinary action in line with established procedures.

## 5. FAILURE TO DECLARE

- 5.1. Employees' failure to declare any conflict of interest; potential or perceived, will be liable to disciplinary action.
- 5.2. Where disciplinary action is to be instituted against an employee, it shall be in line with established procedures governing the conduct of employees.

Regarding the gravity of the disciplinary action that may result from a failure to declare or a declaration of false information, such cases would normally be considered serious misconduct. Moreover, in the case of actual conflicts of interest the provisions of section 31 of the Corruption and Economic Crime Act may be applicable.

Sections 88 and 90 of the **Public Procurement and Asset Disposal (PPAD) Act** provide as follows:

### **“88. Disclosure of interest by members of the Board**

- (1) Every member, on receipt of the Agenda of the Meetings of the Board, or on notification of a matter being brought to the attention of the Board shall-
- (a) sign a standard declaration form of the Public Procurement and Asset Disposal Board indicating whether he has, or intends to acquire, a direct or indirect personal interest in any specific agenda item or matter requiring the Board's consideration and decision; and
  - (b) in the event of such interest, the member in question shall not participate in the deliberation or decision making process of the Board in relation to the agenda item or the specific matter in question.

### **90. Code of ethics and declaration of business interests**

All members of the Board, its Committees, Sub-committees and contracted advisors involved in public procurement and asset disposal shall sign-

- (a) a code of ethical behaviour; and
- (b) a declaration of business interests form where necessary.”

During tender evaluations all evaluators have to sign a declaration of interest form, whether conflicted or not. Consequent to this, the Ministry of Finance and Economic Development (MFED) has gone a step further by ensuring that they constitute an evaluators pool whereby all those who are eligible for evaluating are vetted.

In addition to the PPADB, conflict of interest declarations are also required in other ministries, such as the Office of the Auditor General and the Botswana Qualifications Authority (see article 8(5) below).

Government employees are allowed to engage in private business, as per **Directive No. 8 of 2014**, but in doing so they have to abide by certain principles. First and foremost, the employee has to seek authority from the Accounting Officer. Such private business venture must not conflict with their line of work either perceived or real. Any employee requesting to venture into private business signs a Declaration on Conflict of Interest form.

Conflict of Interest declarations are also signed during Promotions Boards, Tender Evaluation and Adjudication meetings across the public service.

As alluded to, the Directorate of Public Service Management has developed guidelines on declaration of interest, which are used across the public service in declaring various interests and gifts. Registers of such gifts are kept as a record and there is a uniform reporting template, DPSM 2013 Form 23A.

Sensitization and training on the rules regarding interest declarations is part of the corruption prevention training carried out by the DCEC. Notice of the requirements is given by government orders.

A Bill on Declarations of Assets and Interests was circulated to all ministries for comment in 2016 and is currently before parliament. The bill was not available during the review. See articles 8(5) and 52(5) for more detail.

Relevant documents and measures:

Ø Public Service Anti-Corruption Strategy

Ø DPSM Guidelines on Declaration of Interest

Ø Creation of awareness through sensitisation of employees on acceptance of bribes, or gifts in exchange for service

Ø Public Procurement and Asset Disposal Act and Regulations

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The following case statistics on investigations of conflicts of interest by public servants from 2013-2016 were provided by the DCEC and DPP's Office, respectively (Section 31, CECA).

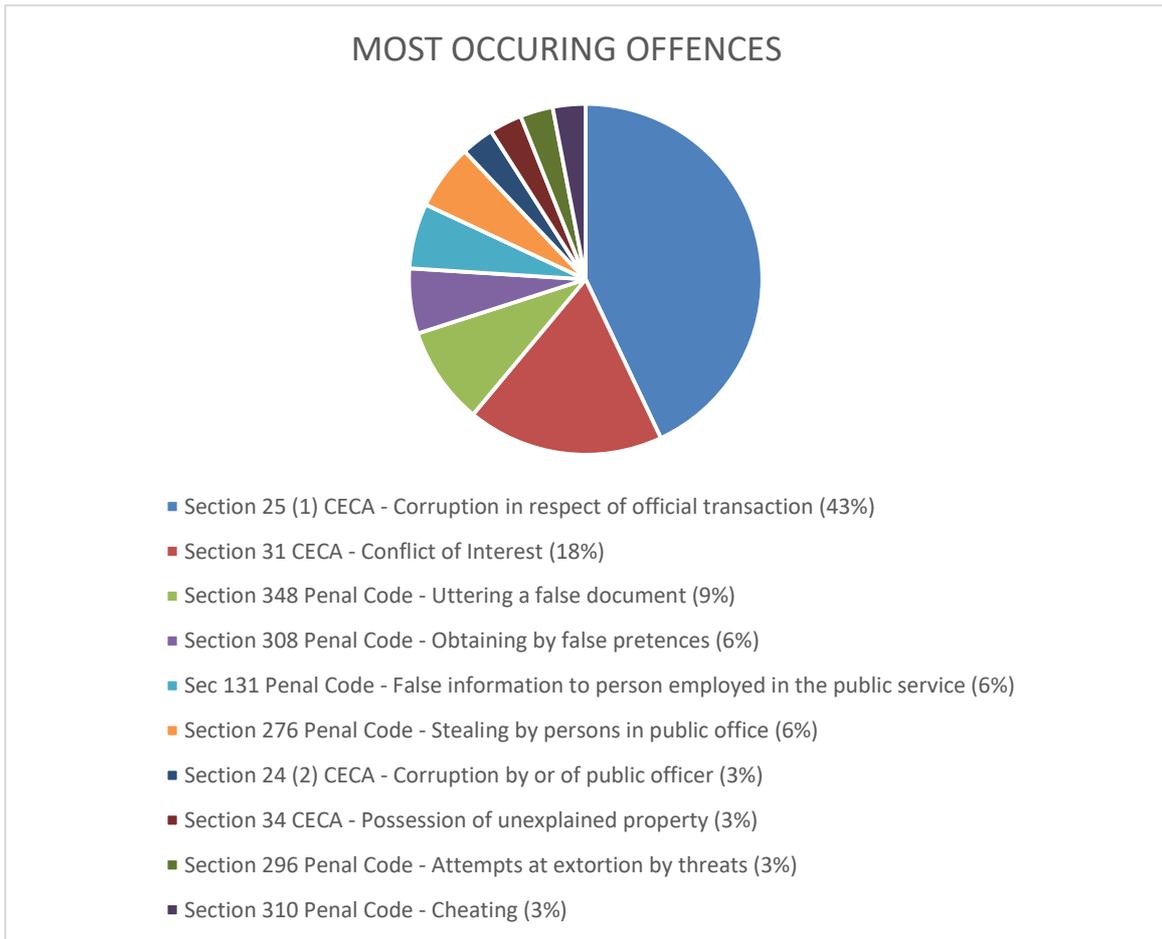
**DCEC STATISTICS ON INVESTIGATIONS OF CONFLICTS OF INTEREST BY PUBLIC SERVANTS FROM 2013 TO 2016**

<b>YEAR</b>	<b>NO. OF CASES</b>
<b>2013</b>	8
<b>2014</b>	4
<b>2015</b>	5
<b>2016</b>	30
<b>TOTAL</b>	<b>47</b>

The DPP's Office provided statistics on 2 concluded prosecutions under Section 31 of CECA, one which was closed in 2016 and one which resulted in acquittal in 2010. 14 cases were pending at the time of review.

Botswana also provided a copy of a judgment in the case LIONJANGA v THE STATE, 2011 2 BLR 110 HC (Lobatse High Case No: Crim App No. 36 of 2009, judgement date: 4 June 2009). The appellant in the case was convicted in a magistrate's court of corruption contrary to Section 31(1) as read together with Section 36 of the Corruption and Economic Crime Act (Cap 08:05) in that he, being a public officer, namely the Executive Chairman of

the Public Procurement and Asset Disposal Board (PPADB), and his nephew had a direct interest in a company, namely Eastgate Enterprises, with which PPADB proposed to deal, knowingly failed to disclose the nature of such interest and participated in the proceedings of the PPADB board relating to such dealing. Under the circumstances of the case, the appeal succeeded and the conviction and sentence were set aside.



According to the DCEC Annual Report 2013, 1471 reports were received by the DCEC in 2013, out of which 520 cases were opened for investigations. The most problematic areas were cheating of public revenue, abuse of office, recruitment and appointment, as well as conflict of interest. This trend scaled down a bit in 2014 when the number of reports received reduced to 1246, with 395 being investigated for various violations including conflicting of interest.

*(b) Observations on the implementation of the article*

Botswana indicates that it is partially in compliance with paragraph 4 of Article 7.

It is noted that a prior disclosure of a conflict of interest is a defence to a charge under section 31 if the relevant conduct has been authorized in advance (section 31(2), CECA). Nonetheless, the possibility of a criminal conviction for an offence of corruption shows that

Botswana has adopted rigorous and enforceable measures to address conflicts of interest among public officials.

However, it was confirmed by officials during the country visit that the definition of conflicts of interest in the CECA was too narrow; for example, the definition was limited to certain public officers as defined under CECA and did not include other public bodies. As noted in the DCEC 2016 annual report, “The narrowness of the definition of conflict of interest in the Corruption and Economic Crime Act has come as a setback to the DCEC. Public officers engage in conflict of interest that is not prosecutable. There is need to expand the definition of the section on conflict of interest.” (page 8). **Accordingly, it is recommended that Botswana amend its legislation to expand the definition of conflicts of interest across the different laws, including CECA and the Penal Code, based on international best practices.**

Under the DPSM Guidelines on Declaration of Interest, interests must be disclosed to the Appointing Authority through immediate supervisors, and disciplinary penalties may be imposed in cases of non-declarations. During the country visit, it was explained that disciplinary penalties for non-disclosures of conflicts of interest and gifts were enforced through the accounting Officers in the relevant government departments and agencies, with no specific oversight of the enforcement by those departments of the rules through the DPSM or any other public body. **As noted under article 8(5), Botswana is encouraged to consider adopting a more clearly defined procedure for receiving and verifying disclosures or declarations of interests, assets and gifts, and providing guidance to officials on this concept. Botswana has reported challenges and technical assistance needs in this regard.**

Furthermore, it was noted that the Public Service Anti-Corruption Strategy was not enforceable and did not provide for any enforcement mechanism. **Botswana is encouraged to establish a mechanism to enforce the Public Service Anti-Corruption Strategy.**

The observations under article 8(5) in respect of declarations of conflicts of interest and article 52(5) in respect of financial disclosures are referred to.

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

The promulgation of an Asset Declaration law is still pending. Declarations are contained in several regulations, which need to be consolidated in one Act for all public officials, appointed or elected. The Bill on Asset Declaration is currently before Parliament.

*(d) Technical assistance needs*

Others: Assistance was requested through the UNODC Secretariat after the first review cycle and proposed countries for bench-marking in the area of asset declarations were visited.

Best practices have been obtained and the process of law making is on-going.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

Yes, see above.

## Article 8. Codes of conduct for public officials

### *Paragraph 1 of article 8*

*1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The **Public Service Charter** as defined in the General Orders “sets out the basic principles of the Public Service, by which officers are guided, both in their relation with each other and in their dealings with the public which they serve”.

These principles include:

1. Regard for the public Interest;
2. Neutrality;
3. Accountability;
4. Transparency;
5. Freedom from Corruption;
6. Continuity;

7. The duty to be informed;

8. Due Diligence.

Copy of the Public Service Charter:

### **“THE PUBLIC SERVICE CHARTER**

The Constitution of Botswana provides the legal foundation of the Republic, while the Public Service provides its administrative foundation. Elections may pass, and political power may ebb and flow, but the Public Service stands firm. Career officers, serving the Government of the day without fear or favour, provide the continuity that is essential for stability and public confidence.

This Public Service Charter sets out the basic principles of Public Service, by which Officers are guided, both in their relations with each other and in their dealings with the public which they serve. It is the application of these principles over the years which has fostered a proud tradition of public service, that every Officer is expected to uphold.

The Eight Principles which chart the course of Public Service are set out hereunder:

#### **A. REGARD FOR THE PUBLIC INTEREST**

The Public Officer is a servant to the Public, and his conduct must be characterised by courtesy, humility, respect for every person, regardless of station in life, and regard for the public interest. Broadly speaking, the public interest demands respect for the law and immediate compliance with Court Orders, adherence to the principles of natural justice, full consideration of both long-term and short-term effects of administrative action, adherence to previous commitments, including international obligations, avoidance of personal interests, and the consideration of all matters relevant to any issue.

#### **B. NEUTRALITY**

The principle of neutrality encompasses not only political neutrality, but also fairness to fellow Officers and to the public, and equality of treatment. Political neutrality demands that Public Officers give of their best regardless of the government in power. It is the function of politicians to attack or defend policies. It is the function of public servants to understand these, to explain them to the public, and to implement them on behalf of the Government. Equality demands fair and equal treatment of all persons without discrimination on the grounds of religion, gender, status, place of origin, tribe, colour or religious affiliation.

#### **C. ACCOUNTABILITY**

Cabinet Ministers are politically accountable to the public for the successes or failures of the Ministries they supervise. Permanent Secretaries are administratively accountable to the public for the performance of their Ministries. Every Public Officer is, however, accountable for the due performance of his duties and for the general successes and failures of those he supervises. Accountability carries with it the right to share the credit for successes of the Ministry, the department, or the Public Officers themselves, but also the responsibility to share or shoulder the blame for their failures. Public accountability demands that Officers should freely and promptly admit and correct their mistakes or failures.

#### D. TRANSPARENCY

The principle of transparency dictates that members of the public are entitled to have access to non-confidential information on the operation and activities of the Public Service. Those interested in administrative decisions or actions are entitled to be heard before decisions adverse to them are made, and to be informed of the reasons for such decisions and of any avenues of appeal which may be open to them. This applies equally to members of the public and to Public Officers. Transparency does not, however, entitle Public Officers to breach their normal duty of confidentiality under the Public Service Act, nor does it entitle members of the public to have access to private information concerning others which is to be found in Public Service files. Transparency demands that where possible full information on matters of public interest should be made available by Public Officers authorised to do so to the press and to the public at large. Members of the public should also have free access to Public Officers at all levels. Finally, it is a requirement of the principle of transparency that user groups and interested sections of the Public should be consulted in advance, when laws or decisions affecting their well-being are contemplated.

#### E. FREEDOM FROM CORRUPTION

Public confidence in the Public Service requires that the behaviour of all Officers must be above reproach. Corruption comes in many guises, and once it takes root, it is extremely difficult to eradicate. Bribery consists in the giving or receiving of improper benefits in relation to the duties of Public Officers. Rewards or inducements may include cash bribes, free participation in businesses, sexual favours, improper promotions or appointments, gifts in kind of goods and services, free holidays, and excessive entertainment. Public Officers are required not only to be on their guard against corruption, abuse of office and influence peddling in all its forms, but actively to participate in the fight against corruption by promptly reporting all improper activities and by helping to bring offenders to justice. Where the line is blurred between what is proper and what is improper, the safe route is always to be chosen.

#### F. CONTINUITY

The Public Service is expected to operate in a regular and reliable manner, so that all the services which it offers to the public, including decision-making services are provided on a continuous basis. Situations of non-continuity where, for example, all key Officers in a field are away at once, so that service is interrupted or delayed, should not be permitted to occur.

Similarly, continuity of knowledge and experience should not be disturbed by block transfers or relocations of Public Officers. No Officer should assume a monopoly of

information or keep his files in his head. It must be ensured that all information is available on file and is accessible to authorised Officers. Continuity also demands that powers be delegated when sole decision-makers are absent. Continuity in the Public Service should be the guarantee of prompt and predictable service to members of the Public during all normal business hours.

#### G. THE DUTY TO BE INFORMED

Every Public Officer has the duty to inform himself and to keep himself informed of all matters pertinent to his service. These include the aims and objectives of the Ministry, prevailing Government policies, the current National Development Plan, and the Training Plan and Schemes of Service applicable to his Ministry. It is the responsibility of accounting Officers to keep all Public Officers subject to their authority apprised of Government policies as they are formulated. Public Officers must also be fully conversant with the Public Service Act, the General Orders, Financial Instructions and Procedures, Supplies Regulations, Transport Regulations and all other rules governing Public Officers. It is only when they are armed with this knowledge that Officers are properly able to serve and inform the Public.

#### H. DUE DILIGENCE

Members of the Public Service are employed and paid by the tax-paying public. They must adhere to the highest standards of diligence and efficiency as a matter of pride and national duty. That is why Public Officers are expected to give of their best whenever required to do so at any hour of the day and during any day of the year.

Due diligence requires that the concerns, complaints and applications of members of the public should be dealt with promptly and thoroughly. It requires that correspondence should be unfailingly and swiftly responded to. Finally, it requires that no Officer should permit his private interests to interfere with his duty of loyalty and continuous performance in the service of the nation.

This Public Service Charter provides the guiding principles of Public Service. In interpreting, and abiding by the General Orders, Public officers must have due regard to them at all times. But they are not immutable laws, nor should they be misused or misinterpreted to justify anything which sound common sense dictates as being unfair, improper, or contrary to the public interest.”

As mentioned above, the government has developed a **Public Service Anti-Corruption Strategy of 2010** by which Public Officers are expected to conduct themselves in certain manner when dealing with the public.

#### **Performance Management System (PMS)**

PMS is a change and quality management process that facilitates a comprehensive management of performance at all levels in an organisation. Public managers must change their mindset and those of their subordinates and design a new paradigm that sets a clear cause for management. PMS was introduced to address:

- Inadequate planning and management of projects resulting in cost overruns.
- Resource wastage due to inefficiency
- Public Servants' insensitiveness to customer needs

PMS Objectives:

- To improve individual and organisational performance in a systematic and sustainable way.
- To improve a planning and change management framework that is linked to budgeting and funding processes.
- To inculcate the culture of performance and accountability
- To enhance the capacity of the Public Service to deliver its services more efficiently and effectively.
- To improve the capacity of the Public Servants to be more productive.
- To focus efforts of the Public Service to facilitate the achievement of NDPs and Vision 2016

There is currently no code of ethics for public servants in Botswana, although some ministries and departments have established internal ethics standards, such as the PPADB. In 2009 the Directorate of Public Service Management (DPSM) drafted a Code of Ethics for the Botswana Public Service, whose purpose was to set the minimum standards of behaviour and conduct that are expected of Public Servants. This was to among others ensure that the public service is free from corruption. The document has not been adopted.

*(b) Observations on the implementation of the article*

**It is recommended that Botswana adopt a code of ethics for its public servants, building on work already undertaken by the DPSM since 2009.** See paras. 2 and 3 of article 8 below.

*(c) Successes and good practices*

Botswana promotes integrity, honesty and responsibility among its public officials primarily under the framework of the Public Service Anti-Corruption Strategy and Public Service Charter.

*Paragraph 2 and 3 of article 8*

- 2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.*
- 3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations,*

*such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with these provisions?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.**

**Public Service Charter**

(quoted above)

**Public Service Anti-Corruption Strategy of 2010**

(quoted above)

**General Orders of 1996 governing the 'Conditions of Service of the Public Service of the Republic of Botswana'**

“3.1 The authority for the appointment, discipline and termination of service of Public Officers is contained in the Constitution of Botswana, the Public Service Act, Cap. 26:01, and in the Regulations made under the Act.

3.2 Any powers that may be conferred on Officers in these respects and **any obligations that may be laid upon Officers in the execution of their official duties** are derived from those enactments, as amplified by the General Orders.

3.3 The provisions of the General Orders relating specifically to appointment, discipline and termination of service do not apply to those Officers for whom separate provision is made in these respects in the Constitution of Botswana.

3.4 The authority for pensions and other retirement benefits is contained in the Pensions Act Cap.27:01, and in the Regulations made under that Act.

3.5 General Orders are to be read in conjunction with Financial Instructions, Supplies Regulations and any other regulations or instructions which may be issued from time to time by Government. These are equally binding on all Public Officers, and also form part of their conditions of service.”

Section 8 subsection 2 states that “a person or entity other than a public officer may not be appointed to or given the responsibility for the collection, custody, or disbursement of public money or receipt, custody, issue or use of public supplies or stores unless such a person or entity’s appointment is made with the prior written authorisation of the Permanent

Secretary.”

The below listed legislative documents touch on the conduct of public officials entrusted with proper and transparent management and utilisation of public goods and office.

Ø Public Finance Management Act

Ø Audit Act

Ø Corruption and Economic Crime Act

Ø Ombudsman Act (No. 5 of 1995) (Cap 02:12)

The provisions in the Constitution that enshrine the independence of offices such as the Auditor-General (section 124), Attorney-General (section 51) and Director of Public Prosecutions (section 51A) further ensure that the performance of their functions is correct, honourable and proper in that independence and freedom from control are constitutionally guaranteed. The relevant sections are quoted under article 6 above.

*(b) Observations on the implementation of the article*

Botswana indicates that it is in compliance with paragraphs 2 and 3 of Article 8.

In the course of the discussions during the country visit, it was noted that the Directorate of Public Service Management drew on the experience of other jurisdictions (e.g., Kenya, Hong Kong Special Administrative Region of China) in refining and finalizing the Public Service Anti-Corruption Strategy.

As noted under paragraph 1 of article 8 above, there is currently no code of ethics in force for public servants in Botswana although some ministries and departments have established internal ethics standards, such as the PPADB. **It is recommended that Botswana adopt a Code of Ethics for the Botswana Public Service, building on the work begun in 2009 by the Directorate of Public Service Management in drafting such a Code of Ethics, whose purpose was to set the minimum standards of behaviour and conduct that are expected of public servants.**

*Paragraph 4 of article 8*

*4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

**Corruption and Economic Crime Act**

“PART III- Functions of Directorate

6. The functions of the Directorate shall be

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

Section 7. Powers of Director

(1) For the performance of the functions of the Directorate, the Director may -

- (a) authorise any officer of the Directorate to conduct an inquiry or investigation into any alleged or suspected offences under this Act;
- (b) require any person in writing to produce, within a specified time, all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents relating to the functions of any public or private body;
- (c) require any person, within a specified time, to provide any information or to answer any questions which the Director considers necessary in connection with any inquiry or investigation which the Director is empowered to conduct under this Act.

(2) Any person who fails -

- (a) to produce any matter required under subsection (1) (b); or
- (b) to provide any information, or to answer any questions, or willfully provides any false information or makes any false statement in answer to a question, under subsection (1) (c), shall be guilty of an offence and shall be liable to the penalty prescribed under section 18(2).”

The Parliament, on 11 August 2016, approved the **Whistleblowing Act No. 9 of 2016**, which seeks to protect anyone who reports acts of corruption.

Section 8 of the Whistleblowing Act provides the list of persons and institutions to which disclosures of impropriety may be made. The list starts with the DCEC and includes the Auditor General, the Ombudsman, the Directorate of Intelligence and Security (DIS), Botswana Police Service, Botswana Unified Revenue Service and the Financial Intelligence Agency.

**8. The following shall appoint authorised persons to receive disclosures of impropriety —**

- (a) the Directorate on Corruption and Economic Crime;
- (b) the Auditor General;
- (c) the Directorate of Intelligence and Security;
- (d) the Botswana Police Service;
- (e) the Ombudsman;
- (f) the Botswana Unified Revenue Service;
- (g) the Financial Intelligence Agency;
- (h) the Competition Authority;
- (i) the Botswana Defence Force; and
- (j) the Botswana Prisons Services.

Section 45A of the amended CECA also provides whistleblower protection.

#### **Section 45A. Intimidation of informers**

Any person who threatens or intimidates another for reporting allegations of corruption under this Act shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10,000 or to imprisonment for a term not exceeding five years, or to both.

Even before adoption of the Whistleblowing Act, any person wishing to report acts of corruption to the DCEC was allowed to do so. There is a toll-free number that members of the public including public officials can use for reporting purposes. The DCEC then deals with such reports accordingly.

There is also the **Office of the Ombudsman**, established under the Ombudsman Act of 1995, which is mandated to assist members of the public as and when they report either maladministration or corrupt practices prevalent in their agencies.

**Corruption Prevention Committees** are a further tool used within government institutions to receive complaints and assist in dealing with issues of corruption. Some Ministries, such as Ministry of Health and Ministry of Local Government and Rural Development, have Anti-Corruption Units mandated with uprooting corruption. These serve as a preventive measure; however, nothing stops anyone from reporting to the DCEC where there are suspicions of corruption.

As noted above, through quarterly ministerial performance reviews conducted by the President of the Republic, ministries are held to account to ensure that corruption is addressed and grievances are resolved in a timely manner.

Mechanisms in place to facilitate reports on corruption.

Ø Whistleblowing Act No. 9 of 2016

Ø DCEC Toll free number

Ø Ombudsman

Ø Suggestion Boxes

Ø Corruption Prevention Committees established in all Ministries

Ø Anti-Corruption Units established in 17 Ministries

Ø Internal mechanisms within Ministries, such as Corporate Services which function to ensure compliance with government rules and regulations

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The following measures have been developed to assist institutions implement anticorruption initiative strategies and in turn these guide public officers in reporting corruption;

- Manual for Corruption Prevention Committees (CPCs)
- Public Service Anti-Corruption Strategy to guide ministries in mainstreaming anti-corruption initiatives (copy received)
- Anti-Corruption Units (ACUs) Guidelines on Transaction Monitoring and Preliminary Inquiries
- Statistics on corruption reports made to the DCEC (see article 13(4) below)
- Training to public officials on corruption. As an example, in 2016, the DCEC increased the number of Corruption Prevention Committees trainings from 07 to 09.

*(b) Observations on the implementation of the article*

In addition to establishing a system for the reporting of complaints alleging corruption in public bodies at the Directorate of Corruption and Economic Crime, Botswana has put into place mechanisms with a view to facilitating the reporting of corruption (e.g. the office of the Ombudsman, the adoption of the Whistleblowing Act, the establishment of a toll-free number). Corruption Prevention Committees and Anti-Corruption Units in some Ministries are a further tool to receive complaints and assist in dealing with issues of corruption in government institutions.

*Paragraph 5 of article 8*

*5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

**CORRUPTION AND ECONOMIC CRIME ACT NO. 6 OF 2013**

**Section 31. Conflict of interest**

consideration. .

8. The Act is amended by substituting for section 31, the following new section —

**“Conflict of interest** 31. (1) A member or employee of a public body is guilty of corruption if —

- (a) he or she, the immediate member of his or her family has a direct or indirect interest, in any company or undertaking with which such body proposes to deal; or
- (b) he or she has a personal interest in any decision which such body is to make,

and he or she, 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 without disclosing the nature of his or her interest.

(2) It is a defence to a charge under this section if the member or employee of a public body having an interest, has first made, in writing, to his or her appointing authority, the fullest disclosure of the exact nature of his or her interest and has been permitted thereafter to take part in the proceedings relating to such dealing or decision.

(3) For the purposes of this section —

(a) “direct interest in a company or undertaking” means a member or employee of a public body or the immediate member of the family of the member or employee of a public body —

- (i) holds a position in,
- (ii) is an employee of,
- (iii) is a shareholder in, or
- (iv) gives services for remuneration or reward to,

a company or undertaking referred to in subsection (1);

(b) “immediate member of the family” means the spouse, son, daughter, sibling or parent of the member or employee of a public body; and

(c) “indirect interest in a company or undertaking” means an employee, agent or nominee of a member or employee of a public body or his or her immediate member of the family has a direct interest in a company or undertaking referred to in subsection (1).”.

The acceptance of gifts by public officers is strictly managed as this may cause present or future conflict. In the DCEC for instance, officers who conduct workshops or other official engagements are required pursuant to a 2013 Government Directive to declare those gifts in writing. A decision is thereafter made on the handling of the gift by management.

The **Public Service Act No. 30 of 2008** requires that any interest to be engaged in business should first be approved by the Permanent Secretary responsible for that particular officer. An application is therefore made prior to such engagement. Where an officer is employed having been already engaged a declaration is to be made nevertheless in line with the General Orders and Directives issued from time to time.

## Public Service Act No. 30 of 2008

### 26. Termination of appointments

(1) An employee's appointment shall terminate on the-

- (a) employee's resignation;
- (b) expiry of the employee's contract;
- (c) employee's retirement;
- (d) abolition of the employee's office;
- (e) employee's dismissal; or
- (f) employee's death.

(2) The appointment of a Permanent Secretary, a Deputy Permanent Secretary, a Head of Department, and any other person in a senior management position shall be terminated by three months' notice in writing to that employee, on the ground that the employee-

- (a) is guilty of misconduct;
- (b) has failed by reason of infirmity of mind or body, to carry out the functions of his or her office satisfactorily or to the performance standards set under the contract relating to his or her appointment;
- (c) has, for any other reason, failed to carry out the functions of his or her office satisfactorily; or
- (d) has, without the consent of the appointing authority, engaged in any other remunerative employment, occupation or business.**

(3) The provisions of sections, 18, 19, 26 and 27 of the Employment Act shall apply with the necessary modifications, to terminations under this Act.

### 37. Particular types of misconduct

It is misconduct for an employee to-

- (a) be absent from duty without leave or reasonable excuse;
- (b) sleep on duty;
- (c) engage in any activity outside his or her official duties which is likely to involve him or her in political controversy or to lead to his or her taking improper advantage of his or her position in the public service;
- (d) engage in any gainful occupation outside the public service without the consent of the prescribed authority;**
- (e) appoint or promote any person to a post in the public service or send any person on a course of training on the basis of consanguinity, affinity, amity, amorous relationship, tribe, favouritism, or on any other consideration other than on merit based on fair and open competition; or
- (f) otherwise conduct himself or herself in a disgraceful, improper or unbecoming manner, or, while on duty, is grossly discourteous to members of the public or any person.

In addition, as mentioned under article 7(4), declarations of conflicts of interest are also required in certain ministries, such as the PPADB (Sections 88 and 90 of the PPAD Act), the Office of the Auditor General and the Botswana Qualifications Authority Act (Section 16, Botswana Qualifications Authority Act, 2013), set forth below.

Disclosure of interest

committee may determine, or as the Board may direct.

16. (1) If a member is present at a meeting of the Board or any committee of the Board at which any matter in which the member or immediate family member of the member is directly or indirectly interested in a private capacity is the subject of consideration, the member shall, as soon as practicable after the commencement of the meeting, disclose such interest and shall not, unless the Board otherwise directs, take part in any consideration or discussion of, or vote on, any question touching on the matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member fails to disclose his or her interest in accordance with subsection (1) and a decision by the Board is made benefitting such member, or an immediate family member of the member, such decision shall be null and void to the extent that it benefits such member or family member.

(4) A member who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P2 000, or to imprisonment for a term not exceeding six months, or to both.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

A **Bill on Asset Declarations** was circulated to all ministries for comment in 2016 and is currently before Parliament, having twice been submitted to the Attorney General's office for comment. The bill, which was developed by the DCEC as the lead agency, would provide a broad scope of application, requiring all public officials at all levels in Botswana (including parastatals) to declare their interests and assets regardless of value, including those of any dependants and any increase in the assets, to the DCEC. The failure to declare would constitute an offence, and fines may also be imposed. No verification mechanism by the DCEC is currently foreseen; declarations would not be published. A copy of the bill was not available during the review.

*(b) Observations on the implementation of the article*

**It is recommended that Botswana take steps to adopt effective disclosure systems for public officials (including members of the judiciary) in respect of conflicts of interest, assets and gifts, which include systems and mechanisms for verification and sanctions for non-compliance, based on international best practices. Botswana has requested technical assistance in this regard (under article 7).**

The observations made above under article 7(4) in respect of disclosures of conflicts of interest are referred to.

*Paragraph 6 of article 8*

*6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Any public officer who violates the Public Service Act and its regulations (including the Guidelines on Declaration of Interest) may be liable to disciplinary measures under the **Public Service Act of 2008**. The Act, at section 37, prohibits particular types of misconduct and any officer may be held liable in disciplinary proceedings with reference to such (section 39).

**37. Particular types of misconduct**

It is misconduct for an employee to-

- (a) be absent from duty without leave or reasonable excuse;
- (b) sleep on duty;
- (c) engage in any activity outside his or her official duties which is likely to involve him or her in political controversy or to lead to his or her taking improper advantage of his or her position in the public service;
- (d) engage in any gainful occupation outside the public service without the consent of the prescribed authority;
- (e) appoint or promote any person to a post in the public service or send any person on a course of training on the basis of consanguinity, affinity, amity, amorous relationship, tribe, favouritism, or on any other consideration other than on merit based on fair and open competition; or
- (f) otherwise conduct himself or herself in a disgraceful, improper or unbecoming manner, or, while on duty, is grossly discourteous to members of the public or any person.

**39. Disciplinary proceedings for misconduct**

- (1) Disciplinary action against an employee who commits an act of misconduct shall be prompt and in accordance with the rules of natural justice.
- (2) The procedure to be followed in respect of a disciplinary action shall be as agreed by collective bargaining.

**40. Punishments for misconduct**

The following are the punishments that may be imposed in disciplinary proceedings under this Act in respect of misconduct-

- (a) a reprimand;
- (b) stoppage of increment, that is non-payment for a specified period of an increment otherwise due;

- (c) deferment of increment, that is a postponement of the date on which the next increment is due.
- (d) with the written consent of the employee, reduction of salary, that is an immediate adjustment of salary to a lower point on the salary scale attached to the post in question;
- (e) a demotion;
- (f) suspension from duty, without pay for a period not exceeding one month; or
- (g) dismissal.”

The **General Orders** also create disciplinary offences and where the Public Service Act lacks there is a requirement to revert to the General Orders.

Several other Acts that create disciplinary offences are the **Police Act, Prisons Act, Botswana Defence Force Act and Codes of Conduct for the Parastatals.**

Upon a report alleging misconduct by a public official being made, a show cause letter is issued to the public officer concerned to show cause (in justification) why his/her conduct is not punishable under any given regulation. After such the Accounting officer makes a decision as to whether there should be a hearing or not. Where a decision is arrived at that there is need for a hearing, the Accounting officer constitutes a Board, depending on the level of the officer to inquire into the conduct of the officer and come up with a resolution. The Board normally constitutes of a Chairperson, Member and a Secretary.

The following provision of the CECA is also referred to.

Disciplinary  
code by  
Minister

5B. (1) The Minister shall prescribe a disciplinary code for the Directorate, which disciplinary code shall provide for —

- (a) disciplinary offences;
- (b) the investigation, hearing and determination of disciplinary offences and the hearing of any appeals; and
- (c) the delegation, by the Director-General, to officers and support staff, of such disciplinary powers as he or she may consider appropriate.

(2) The disciplinary code prescribed under subsection (1) shall provide for the following disciplinary penalties or any combination thereof —

- (a) dismissal from the Directorate;
- (b) reduction in rank or grade;
- (c) suspension from duty for a specified period;
- (d) reprimand;
- (e) admonition; and
- (f) recovery of the cost or part thereof in respect of any loss or damage to the property of the Directorate caused by the default or negligence of any officer subject to disciplinary proceedings where such recovery has not been effected through any other Government procedure.

Conduct of  
officers and  
support staff

5C. An officer of the Directorate shall not become a member of any trade union, or any body or association affiliated to a trade union, or any body or association the object of which or one of the objects of which is to control or influence conditions of employment in any trade or profession:

Provided that an officer may become a member of any such body or association which may be constituted and regulated pursuant to this Act.”

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

The cases previously dealt with as concerns the above are referred to.

*(b) Observations on the implementation of the article*

Botswana has established disciplinary measures against public officials who violate the standards of conduct. However, no statistics on disciplinary cases were available. **The DCEC is encouraged to implement the disciplinary Code for the DCEC adopted in accordance with CECA section 5B.**

## Article 9. Public procurement and management of public finances

### Paragraph 1 of article 9

*1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:*

*(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

*(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*

*(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*

*(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*

*(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The **Public Procurement and Asset Disposal Board (PPADB) Act** outlines procurement procedures which are done in a transparent manner.

In particular, section 26 of the Act provides that public procurements shall take into account the principles of accountability, transparency, integrity and fairness.

### **“PART III. Establishment, Constitution and Membership of the Board (ss 10-17)**

#### **10. Establishment of the Board**

There is hereby established a body to be known as the Public Procurement and Public Asset Disposal Board (hereinafter referred to as "the Board"), which shall be a body corporate with a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, of doing or performing all such acts or things as bodies corporate may, by law, do or perform.

#### **11. Composition of the Board**

The Board shall consist of:

- (a) a full time Executive Chairperson;
- (b) three full time Members; and
- (c) three part time Members.

#### **12. Appointment to the Board**

- (1) The Minister shall appoint the Executive Chairperson and members of the Board.
- (2) The part time members of the Board shall be appointed from among nominees of the associations of contractors and professional bodies and the private sector.

#### **13. Conditions of service**

The Minister shall determine conditions of service and remuneration of Members of the Board.

#### **14. Tenure of Board members**

All Members of the Board, including the Executive Chairperson, shall be-

- (a) appointed for a period not exceeding four years; and
- (b) eligible for re-appointment for only one further term, not exceeding four years....”

The following sections of the PPADB Act are also relevant.

#### **“7. Fair treatment**

Where, for reasons of limitations of capacity, contractors registered in Botswana are unable to satisfy wholly or in part, the specific procurement requirements, they shall be offered an equal opportunity to participate in the bidding process of the beneficiary entity (in conjunction with firms in that country) and where applicable to offer such requirements from third sources.

#### **8. Contribution to other entities**

Contributions by the Government of Botswana in any form to entities such as parastatals, local authorities, private companies, non-governmental bodies, charities and trusts etc., falling outside of the scope of this Act, which entail procurement activities and the subsequent disposal of the products of such procurement activities, shall be-

- (a) kept discrete and identifiable as far as possible; and
- (b) subject to the applicable procurement or disposal provisions of this Act.

#### **9. Discrimination and under-pricing**

- (1) In the event of evidence demonstrating-
  - (a) discrimination of any form against Botswana registered contractors by private firms or

public entities of any other country, either in that country or in a third country, in respect of procurement or disposal activities; or

(b) discrimination or under-pricing or action to this effect by public or private entities of Botswana or public or private entities from another country, which limits competition and places locally registered firms at a disadvantage in the domestic market in respect of procurement or disposal activities, the Board shall in consultation with other interested parties and bearing in mind any treaty obligations of the Government, submit recommendations to the Minister on commensurate measures to compensate for the injustices.

....

## PART V. Functions and Powers of the Board (ss 26-57)

### 26. Functions and powers of the Board

Unless otherwise provided for in this Act or any other enactment, the Board shall ensure that all public procurement and asset disposal entities, in making their decisions, take into account the principles of-

(a) an open, competitive economy and changing external obligations in relation, generally to trade and specifically to procurement, which dynamically impact on a continual basis on domestic procurement policy and practice;

(b) standardisation of procurement items in the interest of cost reduction, ease of maintenance and technological effectiveness;

(c) aggregation of procurement and disposal activities and items that are common to procuring or disposing entities in order to benefit from economies of scale;

(d) competition among contractors by using the most efficient and competitive methods of procurement or disposal to achieve the best value for money;

(e) fair and equitable treatment of all contractors in the interest of efficiency and the maintenance of a level playing field;

(f) accountability and transparency in the management of public procurement and in the disposal of public assets in order to promote ownership of the system and minimise challenges thereto; and

(g) integrity, fairness of and public confidence in, the procurement and disposal process.

### 27. Compliance with the Act

The Board shall ensure that all procuring and disposing entities comply fully with all the provisions of the Act, irrespective of the means of procurement, disposal, or the assets to be procured or to be disposed of.

### 28. Advise stakeholders

The Board shall advise procuring, and disposing entities on all aspects of procurement and disposal management and particularly on the application of the provisions of the Act.

### 29. Standardised bidding package

The Board shall adopt and circulate, and amend where necessary, standardised bidding packages and public assets disposal contracts which shall be used on a mandatory basis by all procuring and disposing entities.

### 30. National standards specification

(1) Where national standards specifications have not yet been issued, the Board shall, in the interim determine, after consultations with relevant stakeholders, which country's or institution's standards specifications shall be substituted on a mandatory basis by all procuring and disposing entities in their respective bidding packages.

(2) Where neither standardised bidding packages nor national standards specifications exist for a specific context, a procuring or disposing entity shall seek the Board's prior written approval to use an alternative.

### 31. Derogation by Board

In exceptional cases, the Board shall permit a procuring or disposing entity to depart from sections 29 and 30, based on a prior written application to the Board detailing the variation being sought with supporting justifications, satisfactory to the Board.

### 32. Approval of specific instructions

(1) The Board shall examine instructions and the conditions of contract contained in each bidding package prior to the issuing of a Tender Notice, and more generally, review and assent to any specific part, or the whole of the bidding package, and obtain changes where these are deemed by the Board to be necessary before they are issued to bidders.

(2) The Board shall ensure that the instructions and conditions of contract in bidding packages are congruent with the Act.

(3) In the event that the general and specific conditions in bidding packages and the client's instructions to bidders are incongruent with the Act, the latter shall take precedence.

### 33. Revision of bid packages

The Board or its Committees shall, at any point between its review of a bid package and the award of a bid, return such bid to the procuring or disposing entity to make amendments to the bid package should it establish that the bid package-

(a) is deficient in any specific respect which, unless it is addressed immediately, is likely to result in multiple variations, delays and spiralling costs; and

(b) patently fails to vest in one contractor (when the bid entails more than one contractor or is part of a larger activity) overall responsibilities for the full and timely scheduled bid outputs; or to put in place alternative arrangements (be they departmental or project management mechanisms) to achieve same, and thereby cause serious implementation slippage on account of overlapping, ill-defined, or missing links in the chain of command for successful implementation on the ground.

### 34. Legal status of bid packages correspondence

From the time a Tender Notice is issued, all-

(a) correspondence between the bidder and the procuring entity or the Board (including the bidding package) up to the point of adjudication by the Board; and

(b) communications between a bid winner and a procuring entity or the Board up to the point of signing of the contract and thereafter, throughout the period of the execution and completion of the contract,

shall be deemed to form part of the contract and thus have legal validity.

### 35. Evaluation procedures

(1) Procuring and disposing entities shall-

(a) in all bid packages, provide for instructions, the criteria to be used in the evaluation process, the value and weights to be attached to each criterion, and the evaluation procedure

- or methodology to be followed in the conduct of the evaluation; and
- (b) establish which procurement methods and procedures shall apply in each case and class of bids, except in emergencies when either sole procurement or competitive negotiations methods and procedures may apply.
  - (2) Only substantially responsive bids shall be considered for comparison, evaluation, adjudication and award.
  - (3) The issuing of a bid or an invitation to tender for a procurement or disposal activity that does not comply with the applicable procedures under the Act shall be deemed to be invalid.

#### 36. Evaluation and adjudication

In the evaluation and adjudication of a bid, no factor outside those explicitly stated in the bidding package shall be taken into account by the evaluators or the adjudicators in arriving at a recommendation or in making an award, unless there are extenuating reasons to use additionally, an industry standard or best practice.

#### 37. Power to adjudicate

- (1) The Board shall adjudicate bid recommendations submitted to the Board by competent bodies and award those bids.
- (2) The Board may return bid recommendations for reconsideration, reject recommendations, appoint an independent evaluation team to re-evaluate bids and on its sole determination, make an award to the most compliant bidder, detailing in such instances in its proceedings the precise grounds for the action it has taken.

#### 38. References

Notwithstanding the provisions of section 35, evaluators and adjudicators shall take into account in ranking, recommending and approving pre-qualification and in adjudicating and awarding bids-

- (a) references cited by pre-qualification applicants and bidders; and
- (b) independent references, in cases in which the evaluating or adjudicating entity regards this to be essential to form a clear view of the physical and financial capacity or performance record of pre-qualification applicants or bidders in terms of their capacity to successfully execute an awarded bid.

#### 39. Industry standards

Where there are extenuating reasons for evaluating or adjudicating entities to use industry standards as a supplementary or alternative evaluation method to that set out in the bidding package, the prior approval of the Board shall be required and the concerned entity shall advise all pre-qualification applicants or bidders of this in advance, indicating to them in writing-

- (a) which industry standard or best practice is to be followed;
- (b) the specific criteria and the values and weights to be attributed to each in the conduct of the evaluation and adjudication; and
- (c) the percentage of the total points, the supplementary or alternative standards shall account for.

#### 40. Precedent to be followed

Where there is a conflict between section 39(a) and any of the provisions of the Act it shall be brought to the attention of the Board, in writing by any interested party immediately, for a decision, on which shall take precedence.

#### 41. Alterations to awarded bids

(1) Any alteration to the conditions of an awarded bid either before or in the course of its implementation by a procuring entity, that in effect-

(a) could have impacted on the evaluation and adjudication ranking of the bid and thus, the choice of contractor;

(b) amends the nature of the awarded bid in terms of contract cost, implementation schedule, components, aggregation or splitting, etc.; and

(c) determines the awarded bid, shall require the prior written approval of the Board.

(2) Subsection (1) shall not apply to normal variations in the execution of a contract once such variations are within the contingency sum of a bid approved by the Board or its Committees.

(3) Guidelines for the variations referred to in subsection (2) shall be prescribed in the Regulations.

#### 42. Changes in bidder's circumstances

Where there are any changes in the circumstances of a bidder, from the point of the submission to the adjudication of a bid, or in the event of an award or at any point thereafter, including execution that could materially affect the bidder's capacity to successfully deliver the required scheduled outputs, this shall be immediately drawn to the attention of the Board or a Committee or the procuring entity by the bidder itself or by any party with an interest in the activity or process in question.

#### 43. Inclusion of all relevant clauses in bidding packages

In the conduct of their business, the Board, its Committees and procuring or disposing entities shall-

(a) include in all bidding packages all relevant, standard clauses in respect of assurances, warranties, bonds, insurances etc.;

(b) ensure that the relevant penalty clauses are contained in all bid packages and shall apply them in respect of non-performance by contractors; and

(c) not waive provisions relating to good practices and exempt a party from any liability relating to negligent conduct, and thereby not expose the Government to unnecessary commercial risks and liabilities.

#### 52. Obtaining of information

(1) In the execution of its functions the Board shall-

(a) obtain such information, documents, records and reports in respect of any aspect of the public procurement or asset disposal process where a breach, wrongdoing, mismanagement or collusion has been alleged, reported or proven against any entity of the Government, or any contractor, or against any entity outside of Government which has been a beneficiary of a Government contribution for procurement or disposal activity; and

(b) summon witnesses, call for the production of books, plans documents, and to examine witnesses and parties concerned on oath.

(2) The Board shall commission investigations and institute tender audits, contract audits and performance audits of-

(a) its Committees, or any procuring and disposing entities with delegated powers of the Board in their exercise of the specific delegated powers in the management of any aspects of the public procurement or asset disposal process in their charge; and

(b) bids at any stage in the procurement or disposal cycle, including awarded bids, and bids under implementation in order to ensure strict compliance with the provisions of this Act, the specific instructions and the specific conditions of contract as contained in the bidding packages in question.

....

#### PART IX Accountability and Transparency: Audit and Ethics (ss 77-94)

##### 77. Independent auditor

(1) The Auditor General shall undertake an annual performance audit of the Board, its Committees, Sub-committees and the procuring and disposing entities and submit his report to the Minister responsible for Finance.

(2) Should the exigencies of the service prevent the Auditor General from undertaking this activity in a timely manner, the Auditor General may appoint an independent auditor to conduct the annual performance audit of the Board, its Committees, Sub-committees and the procuring and disposing entities.

##### 78. Liability of auditor

The independent auditor shall, within a period of five years be liable for any disclosure of fraud, mismanagement or misdemeanour of the Board, its Committees, Sub-committees or the procuring and disposing entities.

##### 79. Audit by the Auditor-General

The Auditor-General, in exercise of his powers under the Finance and Audit Act may initiate audits at any point of the procurement or disposal cycle, such as during the bid preparatory process (tender audit), in the course of the execution of an awarded bid (contract audit), and after the procurement, when bids have been completely delivered by the contractors (performance audit).

##### 80. Audit recommendation and the Board

Once a tender audit, contract audit or performance audit has been undertaken, the findings and the recommendation shall be submitted in writing to the Board for its consideration and for the Board to decide on, and instruct the procuring or disposing entity to implement the requisite corrective actions, where such are deemed necessary.

##### 81. Availability and comments on report

(1) Internal audit reports of the Board, its Committees, Sub-committees or procuring or disposing entities shall be made available to the Auditor and the Auditor's findings shall be referred to, in the Board's Annual Performance Report.

(2) The Board shall discuss the findings in the reports and take the requisite action on them and reflect such action in its Annual Performance Report.

##### 82. Co-operation with the auditors

In the event of a tender audit, contract audit or performance audit of a bid, and in the case of the annual performance audit of the Board, or its Committees, Sub-committees or any procuring or disposing entity, the Board or its Committees, Sub-committees or procuring or disposing entity shall make available, and cause any procuring or disposal entity that may be the subject of an audit, to make certified copies of all documents requested by the auditing body or bodies and likewise put at the disposal of such body or bodies, any member or

official, that they may need to interview.

### 83. Facilitating investigations

In the event of an investigation being conducted into the affairs of the Board, its Committees, Sub-committees or a procuring or disposing entity by the competent authority, including the Directorate on Corruption and Economic Crime, the Botswana Police Service or a duly appointed Commission of Enquiry, the Board shall co-operate fully with the investigating authority and shall cause the Committees and the procuring entity to do the same by making certified copies of all the required documentation available and likewise any person who may be required for interviews by the investigating authority.

### 84. Maintenance of records

The Board, its Committees, Sub-committees and the procuring or disposing entities shall-

- (a) maintain detailed records of all their proceedings; and
- (b) preserve, maintain and safeguard all relevant documents issued and received.”

### Publication of Bid Notices:

### **Public Procurement and Asset Disposal Regulations (24 February, 2006)**

#### 55. Open domestic bidding

- (1) Except as provided for in these Regulations, a procuring or disposing entity shall use the open domestic bidding method.
- (2) A procuring and disposing entity may request the Board for permission to use a procurement procedure other than the open domestic bidding method where the circumstances for the bid are not provided for under the provisions of these Regulations.
- (3) The open domestic bidding method shall be open to all bidders following the advertisement of a bid notice in the Gazette and at least one newspaper of wide circulation in Botswana.

#### 32. Selection of bidders

- (1) The method for selection of bidders to be invited to bid shall be in accordance with the provisions of Part IV and shall be-
  - (a) by publication of a bid notice;
  - (b) by development of a shortlist; or
  - (c) on a sole provider basis.
- (2) A bid notice shall be published in at least one newspaper of wide circulation, in the Gazette and in any electronic or print media as the procuring entity may consider appropriate.
- (3) A tender notice and an invitation to tender shall be in the standard form approved for use by the Board.
- (4) A short list of bidders shall be based on written expressions of interests and shall include bidders who would have met the pre-determined cut-off mark selected on the basis of-
  - (a) a provider's performance record on previous projects;
  - (b) market knowledge of providers, where available; or
  - (c) whether the provider is on the register of contractors maintained by the Board.
- (5) Where a successful provider is to be selected from a shortlist of bidders, the selected provider shall be the best qualified and his or her bid determined as offering value for money to the extent practicable.
- (6) Selection of bidders from a register of providers shall be conducted to allow for equal

opportunity of selection to all registered providers.

Information relating to procurement procedures and contracts (including selection and award criteria and conditions of participation) is contained in the PPADB Act, PPADB Regulations and PPADB Circulars published on the PPADB website <http://www.ppadb.co.bw/>. Detailed information, including the PPADB decisions, as well as information relevant to bidders, such as forms, standardized bidding packages, pricing guides and bidding manuals, is available on the website. The PPADB also published annual reports on its website<sup>6</sup>.

The Integrated Procurement Management System (IPMS) on a periodic basis also publishes public information online to be available to various stakeholders. See IPMS below.

The ESP Portal on the PPADB website contains detailed and searchable information on tenders and contract awards<sup>7</sup>. A screenshot is shown below.

#### Index

Search By Company Name :

Search By Company Director :

Search By Company Shareholder :

Company Name	Project Location	Project Duration (Months)	Award Date	Tender Award Status	Tender Amount	Awarding Entity	Awarded Company	Action
Bodibeng building & Maintenance (PTY) LTD	Selebi Phikwe	9		Approved	2450082.88	Selebi Phikwe Town Council	Bodibeng building & Maintenance (PTY) LTD	<a href="#">Details</a>
Thron Fencing (Pty) Ltd	Selebi Phikwe	11		Approved	8228021.76	Selebi Phikwe Town Council	Thron Fencing (Pty) Ltd	<a href="#">Details</a>
Middle Enterprises (PTY) LTD	Selebi Phikwe	4		Approved	817029.00	Selebi Phikwe Town Council		<a href="#">Details</a>
Earth Inflight (PTY) LTD	Selebi Phikwe	2.5		Approved	14718.00	Selebi Phikwe Town Council	Earth Inflight (PTY) LTD	<a href="#">Details</a>
Black Rubbie Properties (PTY) LTD	Selebi Phikwe	12				Selebi Phikwe Town Council		<a href="#">Details</a>
Extreme Electrix (PTY) LTD	Selebi Phikwe	1.2				Selebi Phikwe Town Council		<a href="#">Details</a>
Kula Investment (PTY) LTD	Selebi Phikwe	3.75				Selebi Phikwe Town Council		<a href="#">Details</a>
Altonville Holdings (PTY) LTD	Ramotswa	3				South East District Council		<a href="#">Details</a>
Ishashane Investments	Ramotswa	3				South East District Council		<a href="#">Details</a>
JNM Building & Investments	Ramotswa	3.5				South East District Council		<a href="#">Details</a>
Regolebele Securities	Ramotswa	3				South East District Council		<a href="#">Details</a>
All Day Investments	Ramotswa	5.5				South East District Council		<a href="#">Details</a>
Ek Building Construction (PTY) LTD	Ramotswa	5				South East District Council		<a href="#">Details</a>
King Shade Services (PTY) LTD	Mogobane	6				South East District Council		<a href="#">Details</a>
TT Renovations (PTY) LTD	Mogobane	6				South East District Council		<a href="#">Details</a>
Green Pastures Electricals (PTY) LTD	Mogobane	22.5				South East District Council		<a href="#">Details</a>

### Procurement review procedure

The PPADB conducts tender audits, contract audits and performance audits (section 52, PPADB Act). Procurements are selected for audit and review on the basis of pre-determined procurement thresholds.

<sup>6</sup> <http://www.ppadb.co.bw/Pages/Publications.aspx>

<sup>7</sup> <http://esportal.ppadb.co.bw/esportal>

Under revised thresholds, Ministerial Tender Committees (MTCs) adjudicate and procure goods and services from P25 million to 300 million, while those for District Administration Tender Committees (DATCs) range from P2 million to P10 million. Above these respective limits, the committees are required to defer to PPADB.

All PPADB awarded tenders are audited. In addition, the Board monitors performance and conducts on-site visits. During the 2014/2015 financial year, the Board visited 18 ongoing projects and made some observations regarding the improvement of the supervision of those projects. Continuous assessments are carried out by principal procurement specialists (for example, civil procurements). Contracts awarded by Ministerial Tender Committees must be visited on a quarterly basis and then randomly, while District Tenders must be visited annual and then randomly.

External audits are also conducted by the Auditor-General. The OAG conducts routine audits and also collaborates with agencies such as DCEC, PPADB, Attorney-General's office and Competition Authority on specific procurement audits.

Further information is included in the PPADB annual report 2016/2017 available online.<sup>8</sup>

### **Administrative complaints review procedure**

Under Part X of the **Public Procurement and Asset Disposal Act**, an Independent Complaints Review Committee, composed of a Chairperson and four members appointed by the Minister, shall be established. The Committee currently comprises of the Chairperson and four (4) members, all from the private sector. The scope of responsibilities of the Complaints Review Committee are the following:

#### **103. Scope of responsibilities**

- (1) The Independent Committees shall deal with-
  - (a) challenges by contractors arising at any point in the procurement and disposal process, that is, from the commencement of the process by the concerned entity to the award decision of the Board or its Committees;
  - (b) complaints by contractors at any point in the registration, reclassification or disciplinary process or decisions; and
  - (c) disputes and resolution of conflicts between-
    - (i) procuring and disposing entities;
    - (ii) such entities and the Board or its Committees; and
    - (iii) contractors in respect of interpretation of the Act;
  - (d) issues within the scope of the Act, upon which it has received a written petition from the public and which it deems to be of sufficient public interest in respect of the procurement and disposal process;
  - (e) conflicts between the Board and employees of the Board; and
  - (f) appeals against disciplinary measures by the Board.
- (2) The Independent Committee may recommend to the Minister any amendments to the Act, which may become necessary in consequence of its consideration of disputes and its detection of weaknesses in, or ways of strengthening the Act, to prevent recurrences of such

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<sup>8</sup> [http://www.ppadb.co.bw/Annual%20Reports/PPADB%20Annual%20Report%202016\\_2017.pdf](http://www.ppadb.co.bw/Annual%20Reports/PPADB%20Annual%20Report%202016_2017.pdf)

challenges or to improve the performance of the regulatory framework.

In respect of grievances, a party may refer a dispute to the Independent Committee or to the High Court, provided the requirements foreseen in the Public Procurement and Asset Disposal Act are complied with.

#### **104. Requirements in respect of grievances**

A party to a dispute who does not get a satisfactory response to his or her grievances may refer a written complaint to the–

- (a) Independent Committee, after following the applicable review procedures of the Board;
- (b) High Court, after following the applicable review procedures of the Independent Committee.

The administrative complaints review procedure is detailed in Regulations 77 to 79 of the **Public Procurement and Asset Disposal Regulations** and the **Public Procurement and Asset Disposal (Independent Complaints Review Committee) Regulations**.

In 2013 the PPADB simplified the procedure to facilitate the lodging of complaints by aggrieved persons and resolution of such complaints. PPADB publishes information about the procedure on its website<sup>9</sup>.

#### **Public Procurement and Asset Disposal Regulations (24 February, 2006)**

##### **PART IX**

##### **Administrative Review (regs 77-79)**

##### **77. Claim for compensation for contravention of legal provisions**

(1) A person who is aggrieved by any decision of the Board or of any of its committees, pursuant to matters arising under section 103 of the Act, may–

- (a) submit a complaint by following the review procedures of the Board, set out in regulation 78; and
  - (b) if that person is dissatisfied with the final decision reached when the review procedures of the Board under paragraph (a) are exhausted, apply to the Independent Committee for a review of the decision.
- (2) The following matters shall not be subject to the review referred to in subregulation (1)–
- (a) the selection of a method of procurement;
  - (b) the choice of an evaluation procedure for such procurement;
  - (c) a decision by the Board or its committee to reject all bids; and
  - (d) a refusal by the procuring entity to respond to an unsolicited offer of an interest to bid.

##### **78. Procedure for claiming compensation**

(1) A person who submits a complaint, under regulation 77 (1) shall do so in writing, to the Secretary of the Board.

(2) The complaint referred to in subregulation (1) shall contain particulars of the precise grounds of the complaint and be accompanied by documentary evidence of loss, in support any monetary claim.

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<sup>9</sup> <http://www.ppadb.co.bw/Pages/Complaints-Procedure.aspx>

- (3) The Board shall cause the procurement proceeding in process to be suspended immediately upon receipt of a complaint in terms of subregulation (1) where-
- (a) the Board has not made an award of a bid; and
  - (b) a letter has not been issued indicating the commencement of the contract.
- (4) No complaint shall be considered by the Board unless such complaint is submitted within 14 days of the date the bidder comes to the knowledge of the complaint.
- (5) The Board shall inform all the bidders participating in the procurement proceedings, to which the complaint relates, of the circumstances leading to the complaint, as soon as possible after the receipt of the complaint.
- (6) Where the Board fails to arrive at a mutually agreed settlement of the complaint with the bidder within 14 days of the submission of the complaint, a dispute shall be declared, and the Secretary of the Board shall refer the dispute to the Independent Committee stating the-
- (a) reasons for the referral of the dispute; and
  - (b) grounds upon which the Board denies liability, where liability is denied.
- (7) Where the Secretary to the Board fails to refer the dispute to the Independent Committee, in terms of subregulation (6), the bidder who is party to the dispute may, within seven days from the date the Secretary was required to have referred the dispute, refer the dispute to the Independent Committee.
- (8) Any bidder whose interests are, or could be affected, by the review proceedings, that may be held in relation to the complaint, shall have a right to participate in the review proceedings.
- (9) Any decision on the complaint arrived at by the Board shall, within five days, be furnished to any of the parties that participated in the review proceedings.

#### 79. Procuring entity to be notified of complaint

- (1) Upon receipt of a complaint under regulation 77, the Board shall, immediately, forward a written notice of the complaint to the procuring entity and such notice shall require the procuring entity to suspend any further action in the procurement proceedings to which the complaint relates until the Board, or where appropriate, the Independent Committee has settled the matter.
- (2) A written complaint submitted under regulation 77, to the Board, shall not be based on frivolous evidence or circumstances and shall contain a declaration of contents, of which, if proven, demonstrate that where the procurement proceedings are not suspended-
- (a) the bidder will suffer irreparable harm;
  - (b) it is probable that the complainant shall succeed; and
  - (c) disproportionate harm shall be caused to the procuring entity or to the other bidders.
- (3) The total period of suspension under subregulation (2) shall not exceed 60 days.
- (4) Any decision taken by the procuring entity and the Board and the grounds and circumstances of such decision shall be made part of the record of procurement proceedings to be kept by the procuring entity and the Board.

Decisions on any complaint made by the Independent Complaints Review Committee established under regulation 3 of the **Public Procurement and Asset Disposal (Independent Complaints Review Committee) Regulations** shall be published by notice in the Gazette, as per regulation 14 thereof.

During the 2016/17 financial year, the ICRC received six (6) complaints. The ICRC dismissed four (4) complaints, one (1) was upheld in favour of the contractor while the other was directed to the Board for reconsideration based on the new information that was

subsequently submitted by the procuring entity. In the ultimate, the Board lifted its initial decision based on new information received and the procuring entity was able to proceed with project implementation. A total of twenty-two (22) retroactive requests were also submitted to the Board during the 2016/17 financial year. Further information is included in the PPADB annual report 2016/2017 available online.<sup>10</sup>

### Suspension and De-Listing of Contractors

Statutory Instrument No. 52 of 2009 entitled “Public Procurement and Asset Disposal (Suspension and De-Listing of Contractors Regulations, 2009” clearly sets out the procedures to be followed in addressing complaints lodged with the Board seeking measures to be taken against contractors alleged to have contravened either the Code of Conduct or the Terms and Conditions of Contract, or are generally underperforming in the execution of contracts entered into with the Government.

Contractors that are found to have committed fraud, corruption or have engaged in general acts of unprofessional conduct will be considered in breach of the Contractors Code of Conduct and the Board shall take punitive action against such parties. See PPADB Circular 3 of 2010 - Procedures for Suspension or Delisting of Contractors<sup>11</sup>.

The Suspension and Delisting Disciplinary Committee of PPADB comprises of 2 members from the private sector, 1 member from the DCEC and 3 members from PPADB.

### E-Procurement: Integrated Procurement Management System (IPMS)

The PPADB, with the objective to improve the public procurement process and in an effort to reduce the procurement cycle time to improve its service delivery to various stakeholders, has envisaged automating the public procurement system through the implementation of an Integrated Procurement Management System (IPMS) <http://ipms.ppadb.co.bw>.

The IPMS to be implemented by PPADB is a unitary platform to initiate and execute all procurement-related activities of all Procurement Entities in Botswana. The system shall be used by PPADB, its Committees (Ministerial Tender Committees and District Administrative Tender Committees), Procurement Entities and Contractors to access or transact on the system based on the access level assigned to them. The system on a periodic basis also publishes public information online to be available to various stakeholders.

The IPMS is being implemented in a phased approach and, currently, the system has been launched to migrate the process of managing the contractor registrations online. The system will assist contractors to submit their applications for registration online, track the status of applications, receive notifications for additional information required by the PPADB for processing of applications for registration, receive notifications of decisions taken by the Board, submit requests for application in additional categories, submit requests for renewal of application, and submit requests for upgrading of application.

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<sup>10</sup> [http://www.ppadb.co.bw/Annual%20Reports/PPADB%20Annual%20Report%202016\\_2017.pdf](http://www.ppadb.co.bw/Annual%20Reports/PPADB%20Annual%20Report%202016_2017.pdf)

<sup>11</sup> <http://www.ppadb.co.bw/Circulars/Circular%20of%202010%20-%20Procedures%20for%20Suspension%20or%20Delisting%20of%20Contractors.pdf>

## Capacity Building

The PPADB training programme aims to create awareness and appreciation of the requirements of the PPAD Act and Regulations and international best practices in public sector procurement. The programme focuses on building the requisite knowledge and skills required in order to apply the requirements of the Act and Regulations in the day-to-day management of public procurement and asset disposal. Procurement professionals will be equipped with the skills required to:

- Explain the structure of the legal and regulatory framework for public procurement and the key features of each constituent part.
- Implement the procurement framework, procedures and controls with the guidance of the PPAD Act and Regulations (such as tender documents and bidding procedure).
- Understand the importance of public procurement as a strategic value-adding activity.
- Evaluate Department's procurements strategy and processes and introduce improvements.
- Understand basic procurement principles. competition, value for money, economy, efficiency, fairness, accountability, transparency and integrity.

PPADB training of procuring entities is done at least once and on an ad hoc basis. In October 2014, the Botswana Qualifications Authority accredited PPADB as a training institution, including accreditation of the training modules. PPADB also holds weekly meeting where contractors may make suggestions and provide input on the procurement procedures.

In the 2016/17 financial year, PPADB conducted forty seven (47) capacity building workshops as follows: twenty two (22) (47%) were for procuring entities, including procurement unit staff, ten (10) (21%) for parastatals, four (4) (8.5%) for landboards, four (4) (8.5%) for MTCs and DATCs, six (6) (13%) for the bidding community and one (1) (2%) for the media. The total number of participants trained during this period is 1684, compared to the previous year's total of 1539.

## Procurement Personnel

The recruitment and selection of PPADB personnel is done through an automated system in IPMS. Further, Members of the PPADB Board are required to disclose potential conflicts of interest and to refrain from participating in any related decision-making process of the Board relation to from any matters that present conflicts of interest (section 88, PPAD Act, quoted above).

Procurement personnel who fail to follow the procurement laws and regulations may be subject to disciplinary action under the Public Service Act (or relevant legislation in the case of parastatals), and to criminal penalties.

As at end of March 2017, staff complement of PPADB 116, which comprised of 4 executive positions, 36 senior and middle management positions and 76 technical and support positions. During the 2016/2017 financial year, staff turnover was 1.4% against a target of 5%.

Regarding training and development, during the 2016/2017 financial year some managers were enrolled for training in the Management Development Programme and Senior Management Development Programme. The Board also provided support for part-time training in undergraduate courses. Different officers were trained in some courses that included: selection skills, procurement and tender management process during the 2016/17 financial year.

PPADB reported that 6 officials were recently suspended, their names were shared with the procuring entities and published in the newspaper.

The rotation of procurement personnel is handled by the procuring entities according to criteria established by them and based on instances of non-compliance.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

1. Standardized bidding packages examples<sup>12</sup>
2. Examples of matters or tenders that ultimately went through review by the courts; case examples (copies provided):
  - Trust Construction and Engineering (PTY) Ltd vs PPADB, Independent Complaints Review Committee and Attorney-General, High Court of Botswana at Lobatse MAHGB000177-16 (October 2016)
  - ZAC Construction (PTY) Ltd vs PPADB and Attorney-General, High Court of Botswana at Gaborone MAHGB000328-15 (February 2016)
3. Examples of how bids are publicized: the Botswana government website<sup>13</sup>
4. Code of Conduct for Contractors<sup>14</sup>
5. “Assessment of the Public Procurement System in Botswana”, conducted by the OECD-DAC Joint Venture on Procurement, June 2007<sup>15</sup>

*(b) Observations on the implementation of the article*

Concerning the publication of tender notices, the Public Procurement and Asset Disposal Regulations (24 February 2006) require that bid notices “shall be published in at least one

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<sup>12</sup> <http://www.ppadb.co.bw/Pages/Documents.aspx>

<sup>13</sup> <http://www.gov.bw/en/News/tender-notice-and-invitation-to-tender/>

<sup>14</sup> <http://www.ppadb.co.bw/Documents/Contractors%20Code%20of%20Conduct.pdf>

<sup>15</sup> <https://www.oecd.org/dac/effectiveness/39244758.pdf>

newspaper of wide circulation, in the Gazette and in any electronic or print media as the procuring entity may consider appropriate” (section 32). In practice, tender notices are published in Botswana’s Daily News, the government gazette (published weekly) and on the government website. Amendments, PPADB circulars and Board decisions are also published in the Daily News (examples were provided to the reviewers).

During the country review visit, it was reiterated that an administrative complaints review procedure had been put into place (as per Regulations 77 to 79 of the Public Procurement and Asset Disposal Regulations and the Public Procurement and Asset Disposal (Independent Complaints Review Committee) Regulations and that a number of remedies were available under that procedure. It was explained that a bidder who was not satisfied with the outcome of a tender could submit a complaint to the procurement entity through a letter to its director. If the subsequent response from the director of the procurement entity is not satisfactory, a formal complaint could be submitted to Public Procurement and Asset Disposal Board (PPADB) and its merits would be examined by a procurement specialist. The tender is suspended for the duration of the process and the findings and recommendations in relation to the case are submitted to the Board, which would then make a decision. It was also explained that complaints filed after the tender is completed are difficult to address due to the high costs incurred at that stage of the process.

Complaints whose outcome was not satisfactory could be filed with the courts, including the High Court. Furthermore, it was noted that an independent complaints review committee had been established under the Ministry of Finance and Economic Development. A case example was provided during the country visit.

### *(c) Successes and good practices*

The reviewers positively note Botswana’s efforts to establish an integrated electronic procurement system, as well as the PPADB website, which contains detailed and current guidance and information on procurement procedures and decisions.

### *Paragraph 2 of article 9*

*2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:*

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*

(e) *Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

**Adoption of the national budget:**

**Constitution of the Republic of Botswana**

“Section 119. Authorization of expenditure

(1) The Minister for the time being responsible for finance shall cause to be prepared and laid before the National Assembly, before or not later than 30 days after the commencement of each financial year, estimates of the revenues and expenditure of Botswana for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the said Bill.

(3) If in any financial year it is found—

(a) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act; or

(b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation Act or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the National Assembly and the heads of expenditure shall be included in a supplementary Appropriation Bill, or in a motion or motions approving such expenditure, which shall be introduced or moved in the Assembly.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the National Assembly in accordance with the provisions of subsection (3) of this section, a supplementary Appropriation Bill shall be introduced in the National Assembly, not later than the end of the financial year next following, providing for the appropriation of the sums so approved.

Section 120. Authorization of expenditure in advance of appropriation

Parliament may make provision under which, if the Appropriation Act in respect of any

financial year has not come into operation by the beginning of that financial year, the President may authorize the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier.”

The process of budgeting in Botswana is policy based. The national budget is typically presented in the form of a budget speech to the national parliament. While the budget outlines how Government plans to collect and spend taxpayer’s money, the budget speech is a Government blueprint that specifies policies, programmes and projects that Government will undertake in a given year in pursuit of national goals and aspirations as specified in the current National Development Programme. In Botswana, the Ministry of Finance and Economic Development (MFED) is responsible for coordinating the preparation of the annual budget and the budget speech.

### **Accountability and management of public finances:**

The system of financial management, control and expenditure is done through the following Acts and regulations:

#### **Public Finance Management Act, 2011 (PFM)**

Part II sets out measures for the control and management of public finances and supplies. Part IV regulates expenditures. PART VI deals with audit and accounts.

#### **“PART II**

**Control and Management of Public Finances and Supplies (ss 4-18)**

#### **4. Powers and duties of Minister**

(1) The Minister shall supervise the finances of Botswana as to ensure that a full account of the finances is made to the National Assembly, and that Botswana's financial control is maintained, and for such purposes shall, subject to the provisions of the Constitution and this

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Act, have the control and management of the Consolidated Fund, the Development Fund and all other public funds, and the supervision, control and direction of all matters relating to the financial affairs of Botswana.

(2) Without derogating from the generality of subsection (1), the Minister shall-

(a) develop and implement a macroeconomic and fiscal policy frame-work for Botswana, as provided in section 5;

(b) cause the establishment of systems throughout Government for planning, monitoring, allocating and budgeting for the use of public moneys and supplies in order to attain efficiency and effectiveness of the economy;

(c) cause the review of all requests for the issue of moneys from the Consolidated Fund and, where the Minister considers it appropriate, approve their inclusion in estimates of expenditure for submission to the National Assembly in accordance with section 5;

(d) provide a framework for the scrutiny and control by the National Assembly over the utilisation of public supplies and public moneys by maintaining clear reporting methods and systems which-

- (i) comprehensively set out the applicable hierarchy and procedures for accountability,
- (ii) ensure the exercise of regularity and propriety in the handling and expenditure of public money and, in particular, demonstrate that goods or services are procured in a fair, equitable, competitive and cost-effective manner in accordance with the law providing for public procurement, and
- (iii) ensure that the Consolidated Fund is effectively managed and shall-
  - A. ensure that all deductions from the Fund are for the purpose of authorised or statutory expenditure in accordance with the provisions of this Act and sections 118 and 119 of the Constitution, and
  - B. require compliance with the established lines of responsibility and best practice regarding principles of fiscal management in the handling of the moneys of the Consolidated Fund, other funds or special funds established under this Act and other public moneys; and
- (e) safeguard public assets by acting under and complying with statutory authority and control when conducting the following financial transactions on behalf of the Government-
  - (i) borrowing of money,
  - (ii) issuing securities,
  - (iii) investing public moneys,
  - (iv) giving guarantees and indemnities, and
  - (v) operating bank accounts.

#### 5. Development of macro-economic and fiscal policy by Minister

- (1) The Minister shall develop and implement a macroeconomic and fiscal policy framework as part of the National Development Plan or any other medium-term planning framework that may be adopted.
- (2) The Minister shall develop macroeconomic objectives in terms of subsection (1) that shall provide for the-
  - (a) broad strategic priorities by which Government shall be guided in the preparation of the budget;
  - (b) overarching policy goals that will guide the budget decisions;
  - (c) policy areas that the Government is to focus on;
  - (d) accord between the budget for the year and the goals of the National Development Plan;
  - (e) advice to Government on the total of public moneys available or that which would be made available and the allocation of such moneys to individual programmes;
  - (f) supervision and monitoring of public moneys; and
  - (g) co-ordination of the international and inter-governmental financial and fiscal relations of Botswana.
- (3) The Minister shall develop macroeconomic fiscal policy objectives in terms of subsection (1) that are to achieve the following principles of fiscal management-
  - (a) reduction of the total debt to prudent levels so as to provide protection against factors that may impact adversely on the level of total debt in the future;
  - (b) maintenance of appropriate levels of debt that do not exceed the limitation on borrowing provided for in section 20 of the Stocks, Bonds and Treasury Bills Act;
  - (c) prudent management of the fiscal risks facing the Government; and
  - (d) pursuit of policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years.
- (4) The Minister shall, annually, present to the National Assembly a report on the-
  - (a) current and projected state of the economy;
  - (b) finances of Botswana; and
  - (c) fiscal policy of the Government.

(5) For the purpose of subsection (4), the Minister shall at the time of presentation of the estimates as required by section 6, ensure that a complete report is made to the National Assembly which-

- (a) sets out recent trends and development indicators of the national economy;
- (b) identifies the period considered by the Minister to be appropriate for the planning of the fiscal policy of the Government;
- (c) provides forecasts of the indicators referred to in subparagraph (i), for the current year and the period determined by the Minister under paragraph (b);
- (d) supplies detailed information on recent fiscal developments and forecasts for the period determined by the Minister under paragraph (b) in respect of-
  - (i) revenues,
  - (ii) recurrent and development expenditures,
  - (iii) borrowing and debt servicing,
  - (iv) contingent liabilities, and
  - (v) any other information in respect of assets and liabilities that may be considered appropriate by the Minister.

(6) For the purposes of subsection (4), the Minister shall at the time of presentation of the estimates as required by section 6, present or submit to the National Assembly-

- (a) a report on the level of compliance by the Government with macroeconomic objectives and the principles of fiscal management as provided in subsection (2) and (3), and
- (b) any additional reports and information as may be necessary during the financial year.

Section 6 of the PFM Act provides for the designation of accounting officers in each organisation.

#### 6. Accounting responsibility

(1) The Minister shall, when laying the annual estimates of revenue and expenditure of the Consolidated Fund in respect of each organisation, designate a public officer to be the accounting officer for such organisation.

(2) Notwithstanding anything contained in subsection (1), the Minister may, if he or she thinks it desirable-

- (a) designate different public officers in respect of different parts of an organisation of revenue or expenditure; and
- (b) at any time designate a public officer to be the accounting officer for any organisation or any part of any organisation and include such designation in the next appropriate supplementary estimates of expenditure or revenue.

(3) Where a public officer has been designated in respect of such organisation as referred to in subsection (2), the provisions of subsection (4) shall apply to such officer in respect of such organisation for which he or she is designated.

**(4) A public officer designated under this section shall be responsible, for the organisation in respect of which he or she is designated, for-**

- (a) the control of expenditure;**
- (b) the collection of revenue and the payment thereof into the Consolidated Fund;**
- (c) the procurement, control, custody, issue and use of all public supplies;**
- (d) control, custody and use of public moneys; and**
- (e) such other matters as may be provided in this Act and the Financial Instructions.**

Section 7 of the PFM Act governs the persons entrusted with the role of collection, custody, or disbursement of public moneys.

#### 7. Duties of public officers

A public officer concerned with or responsible for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies or stores, shall comply with-

- (a) directives issued by the Permanent Secretary; and
- (b) financial procedures issued by the Accountant General, containing procedural detail of the financial instructions.

#### 8. Appointment of revenue collectors, supplies officers, etc.

(1) A person shall not be appointed to a position concerned with or responsible for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies or stores unless such person is fit and proper for the appointment having regard to that person's qualifications, criminal record, integrity, medical fitness and general conduct.

(2) A person or entity other than a public officer may not be appointed to or given responsibility for the collection, custody, or disbursement of public moneys or the receipt, custody, issue or use of public supplies or stores unless such person's or entity's appointment is made with the prior written authorisation of the Permanent Secretary.

(3) The Accountant-General shall from time to time, issue directives as to the definition of "fit and proper".

#### 9. Basis of accounting and classification of accounts

(1) The Minister shall, in consultation with the Accountant-General, determine the basis of accounting and classification of accounts for the Government of Botswana.

(2) For purposes of subsection (1), the Minister may determine such basis of accounting and or classification of accounts with reference to any law and professional standards set by an accounting body recognised in Botswana.

(3) The standards set by the body referred to in subsection (1) shall be in compliance with national and international best practices with respect to public finance accounting.

#### 10. Powers of Permanent Secretary

The Permanent Secretary or any other public officer deputed by him or her in writing shall-

(a) be entitled to inspect all Government offices and offices of entities that are subject to this Act and shall be given access at all times;

(b) be given all available information he or she may require with regard to public moneys collected, held or disbursed or public supplies received, held, issued or used in Government offices and offices of entities or from such offices and to all documents and records in respect of public moneys;

(c) be entitled at any time to inspect such money, supplies, documents and records so far as may in any way be necessary for the purpose of ensuring compliance with the financial instructions, procedures or any directions issued under this Act;

(d) carry out such internal audit examinations and make such reports as the Permanent Secretary may be required to carry out or make under this Act; and

(e) carry out any other function relating to public finance management as is provided in this Act, the Financial Instructions or other instrument made under this Act.

#### 11. Internal audit examinations

(1) The Permanent Secretary shall, in writing, appoint such number of public officers, under

the control and direction of the Director of Internal Audit, as he or she deems necessary to provide internal audit services and carry out such examinations as he or she deems appropriate, which officers shall report to their respective accounting officers.

(2) The accounting officers referred to in subsection (1) shall forward or cause to be forwarded, to the Director of Internal Audit and the Permanent Secretary, copies of reports referred to in the said subsection.

## 12. Government Audit Committee

(1) The Minister shall, by regulations, establish an audit committee to be known as the Government Audit Committee, which shall oversee the conduct of internal audit examinations carried out in terms of section 11 and monitor all internal audit activities of Government to ensure compliance with the generally accepted standards of internal auditing.

(2) The Minister shall appoint members of the Government Audit Committee from the public and private sector holding qualifications and relevant experience in accounting and auditing, financial management or other applicable qualification and experience.

(3) Regulations shall provide powers and functions of the Government Audit Committee, which are to include-

(a) provision of an independent review and oversight of the Government financial and other reporting activities;

(b) reviewing of internal controls, risk management and governance processes;

(c) monitoring and reviewing the effectiveness of Government internal audit function;

(d) requiring the attendance of any public officer, including accounting officers, at its meetings to provide such information or answer such questions as the Government Audit Committee may require;

(e) the Audit Charter which includes composition, powers and functions of the Government Audit Committee;

(f) issuing of annual reports with respect to government internal audit; and

(g) such other powers and functions as the Minister may prescribe.

(4) The Government Audit Committee shall report to the Minister, who shall consider and may deal with any report submitted to him or her as the Minister deems appropriate, including directing that-

(a) with respect to any person considered liable in the report-

(i) proceedings for surcharge or other administrative action be commenced,

(ii) a complaint be submitted to the Directorate on Corruption and Economic Crime,

(iii) such other disciplinary measures as are provided in the Public Service Act and the public officers conditions of service be taken, or

(iv) court proceedings be commenced; or

(b) a report or information, together with any recommendation on action to be taken, be presented to the relevant Minister regarding any audit findings affecting his or her ministry.

## 13. Designation, powers and duties of the Accountant-General

(1) Subject to the Public Service Act, there shall be appointed a public officer to be known as the Accountant-General.

(2) The Accountant-General shall, subject to the direction or the control of the Permanent Secretary, be responsible for the-

(a) compilation and management of the accounts of Government;

(b) custody and safety of public moneys;

(c) disbursements of public moneys;

- (d) issuing of procedures and guidelines for the control, custody, issue and use of public moneys and supplies;
  - (e) establishment and maintenance of an asset register; and
  - (f) such other matters as the Permanent Secretary shall direct.
- (3) The Accountant-General may, with the approval of the Permanent Secretary, give general directions to accounting officers which are consistent with this Act, or any instructions issued under it.
- (4) Without prejudice to the generality of subsection (3), the Accountant-General-
- (a) shall, with the approval of Permanent Secretary, issue financial procedures for purposes of control and management of public moneys and supplies and to ensure compliance with this Act;
  - (b) ensure that the system of internal control and management of public moneys in every Government ministry, department, public fund, agency, or other reporting unit required to produce accounts under this Act or under any other written law, is appropriate to the needs of the organisations concerned and conforms to national and internationally recognised financial standards; and
  - (c) ensure, as far as practicable, that adequate provisions exist for the safe custody of public moneys, supplies, property, securities and other documents.

The office of the Accountant-General is a service department under the Ministry of Finance and Economic Development (MFED) charged with the responsibility of ensuring proper accounting and financial systems, procurement and distribution of goods to ministries and departments in accordance with laws and regulations.

#### PART VI Audit and Accounts (s 42)

##### 42. Annual public accounts

- (1) Any officer other than the Accountant-General who, by virtue of any law, is responsible for the administration of any Special Fund, shall prepare, sign and transmit to the Auditor-General and the Accountant-General an account of such Fund in respect of that financial year containing such information and in such form as the Minister may direct in the regulations, within a period of two months after the close of each financial year.
- (2) The Accountant-General shall prepare, sign and transmit to the Auditor-General, for the purposes of auditing, the accounts and statements as may be prescribed by the Minister in regulations for the purposes of this subsection and which are consistent with the basis of accounting in relation to that financial year, within a period of six months after the close of each financial year.
- (3) As soon as the Auditor-General has completed his or her examination of the accounts and statements transmitted to him or her in accordance with subsection (2), the Auditor-General shall return the same, together with his or her certificate on the accounts and statements, to the Accountant-General who shall, within the period of four weeks after their return to him or her, submit them, together with the Auditor-General's certificate on the accounts and statements, to the Minister.
- (4) The Minister shall, within the period of 30 days after the submission to him or her of the accounts and statements in accordance with subsection (3) lay the same, together with the Auditor-General's certificate on the accounts and statements, before the National Assembly.

Penalties are provided for under the PFM Act as set forth below. Violations of the PFM Act are considered administrative infractions. However, violations in the control and management of public moneys often also give rise to criminal charges under the Proceeds and Instruments of Crime Act. In addition, civil cases may be filed under the PFM Act provisions (section 49).

#### PART VIII Liability (ss 49-51)

##### 49. Liability to keep public money

(1) Where the Permanent Secretary has reason to believe that any person, including a person who is not a public officer-

(a) has received money from Government and has not duly paid it over;

(b) has received money for which the person is accountable to the Government and has not duly accounted for it; or

(c) has in his or her possession public money which has not been applied for the intended purpose; or

(d) has received an overpayment or money in excess of that which the person is entitled, the Permanent Secretary may cause a notice to be served on the person or on the person's executor or executrix within the meaning of the Administration of Estates Act in the case of a deceased person, which shall require the person or the person's executor or executrix within such time as may be specified in the notice to duly pay over, account for, or apply the money and transmit to the Permanent Secretary, a notice with a copy to the Accountant-General that this has been done.

(2) Where a person fails or refuses to comply with a notice served under subsection (1) within the time stipulated, the Permanent Secretary shall cause to be stated an account between the person and the Government showing the amount of money not duly paid over, accounted for or applied, with interest at the prevailing Bank of Botswana rate from the date the amount became due.

(3) In any proceedings for the recovery of the money, a copy of the account stated by a person authorised in that behalf by the Accountant-General shall be prima facie evidence that the amount stated together with interest is due and payable to the Government.

(4) Where it appears-

(a) by the books of account kept by or in the office of a person employed in the collection or management of public moneys;

(b) in any accounting by that person; or

(c) by written acknowledgement,

that the person has, in the course of employment received moneys that belong to the Government and refused or neglected to pay over the moneys to the proper persons at the proper times, an affidavit deposing to these facts made by any person who has knowledge of the matter shall in any proceedings for the recovery of the moneys be received in evidence and be prima facie evidence of the facts stated.

(5) The provision of this section shall apply, with the necessary modifications, to Government supplies or the value of the money or securities.

##### 50. Government property

(1) Books, papers, accounts and documents kept or used by, or received or taken into the possession of any person, who is or has been employed in the collection or management of revenue by virtue of that employment, is property that belongs to the Government.

(2) The moneys and valuable securities received or taken into the possession of an officer or a person in the cause of employment are moneys and valuable securities that belong to

the Government.

#### 51. Deduction from money due by Government

(1) Save where it is provided otherwise in any other written law, where a person is indebted to the Government for a specific sum of money, the Permanent Secretary, in consultation with the Attorney-General, may authorise the retention, by way of deduction or set-off, of the amount of the indebtedness out of any sum of money that may be due or payable by the Government to that person.

(2) Notwithstanding subsection (1), the Permanent Secretary, the Accountant-General or any other accounting officer shall recover an overpayment made out of the Consolidated Fund on account of salary, wages, gratuities and allowances out of a sum of money that may be due or payable by the Government to the person to whom the overpayment was made.

#### 56. Offences and penalties

(1) A person who-

(a) without reasonable excuse, fails to provide by the due date, any information the Permanent Secretary may reasonably require in terms of section 10;

(b) without reasonable excuse fails to provide any information that the Permanent Secretary, the Accountant-General, Auditor-General or a person authorised by him or her may reasonably require in terms of this Act;

(c) without reasonable cause fails to provide, or wilfully obstructs access to any item required pursuant to the provisions of the Act;

(d) opens or causes to be opened any bank account for public or official use without the permission of the Accountant-General or in any other way contravenes section 15 in respect of any bank account; or

(e) being a public officer, without reasonable excuse fails to comply with any financial regulations or instructions or procedures under any law, or fails to execute duties and functions imposed on him or her under this Act or any other law,

is subject to disciplinary proceedings either under the Public Service Act or the Conditions of Service for Public Officers.

(2) In this Part, a reference to a public officer includes a person who has been a public officer.

#### 57. Right to institute civil and administrative actions reserved

The right of Government to institute civil proceedings to recover any money, property or supplies due to Government and the right to institute disciplinary proceedings under the Public Service Act, the conditions of employment for public officers, any applicable law or the conditions of service applicable to the concerned person shall not be affected or in any way be restricted by the institution of criminal proceedings under section 56.

The **Public Audit Act No 15 of 2012** contains detailed provisions on the appointment of the Auditor-General and staff, the duties of the Auditor-General, the audits of public accounts and reports and access to information. The Act contains, in particular, provisions establishing a system of auditing standards and related oversight, as provided below.

### PART IV- *Audits of Public Accounts and Reports*

11. (1) Within a period of two months after the close of each financial year, any officer other than the Accountant-General who, by virtue of any law, is responsible for the administration of any Special Fund, shall prepare, sign and transmit to the Auditor-General and to the Accountant General an account of such Fund in respect of that financial year containing such information and in such form as the Minister responsible for finance may direct.

(2) Within the period of six months after the close of each financial year, the Accountant-General shall prepare, sign and transmit to the Auditor -General, for the purpose of auditing, the accounts and statements specified in the Public Finance Management Act in relation to that financial year, together with such other accounts and statements in relation to that year as the Minister responsible for finance may specify for the purposes of this subsection.

12. (1) Where, by virtue of such a written law as is referred to in the proviso to section 124 (2) of the Constitution, the Auditor-General is required to exercise any functions in relation to the accounts of any body corporate directly established by law he or she -

(a) shall have, in relation to that body and its members, officers, employees and property, in addition to the powers conferred upon him or her by any other law, the same duties and powers as are imposed and conferred upon him or her by the Constitution and this Act in relation to public moneys and public supplies; and

(b) may authorise a professional accountant to examine or audit the books and accounts of that body and such professional accountant shall report thereon to the Auditor-General in such manner as the Auditor-General may direct.

(2) The Auditor-General shall report on his or her audit of the accounts referred to in this section and shall send such report to the appropriate Minister and a copy thereof to the Minister responsible for finance, and the appropriate Minister shall present the report to the National Assembly as if such report were in all aspects one which the Minister is required to present in accordance with section 20.

(3) The appropriate Minister referred to in subsection (2) shall obtain the observations of the body concerned in any matter to which attention has been called by the Auditor-General in his or her report, and such observations shall be presented by the appropriate Minister to the National Assembly with the said report.

(4) Where the appropriate Minister referred to in subsection (2) fails within a reasonable time to present such report to the National Assembly, the Auditor-General shall transmit such report to the Speaker of the National Assembly.

(5) Nothing in this subsection shall require the appropriate Minister referred to in subsection (2) to present any accounts of, or reports on, any authority or body to the National Assembly if the written law establishing such body provides to the contrary.

(6) A body corporate whose accounts have been audited under the provisions of this section shall, in respect of such audit, pay such fees as may be determined by the Auditor-General, with the approval of the appropriate Minister, and such fees shall be paid into the Consolidated Fund.

13. (1) Notwithstanding any other written law, where the Auditor General considers that it is in the public interest to carry out investigations into the finances of any corporation established by a written law or any corporation registered in accordance with the Companies Act, in which Government owns 51 per cent or more of the equity shares, he or she may carry out such investigation.

(2) The Auditor-General may, in carrying out an investigation under this section, request such information as he or she considers necessary from any corporations referred to in that subsection.

(3) A corporation referred to in subsection (1) shall, if so requested by the Auditor-General, give the Auditor-General access to, or provide him or her with such records, information or explanation in respect of itself as the Auditor-General may require for the purposes of an investigation under this section; and the Auditor-General shall be entitled to make copies of or take extracts from any such records.

(4) A corporation which gives any information, explanation or access to any records pursuant to this section shall not give information or an explanation or access to records which it knows to be false or misleading.

(5) The Auditor-General shall, for purposes of carrying out an investigation under this section, have all the powers conferred by section 12 (1) in relation to the corporation in question and to its members, officers, employees and property, and shall have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Enquiry Act, and the provisions of that Act shall, with the necessary modifications, apply in relation to the investigation and to any person summoned to give evidence or giving evidence at the investigation.

(6) The Auditor-General shall, on the conclusion of an investigation under this section, submit a report to the appropriate Minister on that investigation.

(7) Where, after the conclusion of an investigation under this section, the appropriate Minister is of the opinion that there are reasonable grounds for suspecting that any person has committed an offence, he or she shall refer the matter to the appropriate authority.

(8) Any corporation which contravenes the provisions of this section shall be guilty of an offence, and shall be liable to a fine of not less than P50 000 but not exceeding P100 000.

14. (1) Notwithstanding anything to the contrary contained in this Act or any other law, the Auditor-General shall have at his or her own initiative or on the request of any Minister, exercise any of the functions, powers and duties conferred on him or her by the Constitution or by this Act, in relation to the accounts of -

(a) a local authority;

(b) an agency, department or ministry of Government;

(c) an entity which receives more than half of its annual budget directly or indirectly from the Government; and

(d) an entity which such Minister may by order declare to be subject to this Act on the grounds that such entity deals with public funds or supplies.

(2) Where the Auditor-General exercises the powers conferred on him or her by subsection (1), he or she shall have all the powers conferred by subsection 12 (1) in relation to the entity in question and to its members, officers, employees and property, and shall have the same powers, rights and privileges as are normally conferred upon a Commissioner under the Commissions of Enquiry Act, and the provisions of that Act shall, with the necessary modifications, apply in relation to the investigation and to any person summoned to give evidence at the investigation.

15. The Auditor-General may at any time, if it appears to him or her to be desirable, send a report of a special audit on any matter incidental to the Auditor-General's powers and duties under the provisions of this Act to the Speaker of the National Assembly.

16. If at any time it appears to the Auditor-General that any fraud or serious loss or irregularity has occurred in the collection, custody or disbursement of public moneys or in the receipt, custody, issue or use of any public supplies, or in the accounting therefor, he or she shall, unless the fraud, loss or irregularity has already been so reported, immediately bring the matter to the notice of the appropriate Minister.

17. (1) The Auditor-General may appoint a certified auditor of public interest entity registered under the Financial Reporting Act to assist him or her in the performance of his or her functions under this Act.

(2) A person appointed under subsection (1) shall comply with any general or specific directions given by the Auditor-General.

(3) The Auditor-General shall pay such remuneration or allowances as he or she may determine, to the person appointed under subsection (1).

(4) A person appointed under subsection (1) shall submit copies of the audit report to the Auditor-General.

18. (1) The Auditor-General shall adopt standards, manuals, code of ethics and other tools necessary for implementing the auditing standards.

(2) The Auditor-General shall carry out his or her activities in accordance with the standards, manuals or code of ethics adopted under subsection (1) and ensure that staff and other persons undertaking any audit function comply with these standards, manuals or code of ethics.

(3) The Auditor-General shall be responsible for implementing a quality control system to ensure that auditing standards, manuals or code of ethics are complied with in the audit work, including quality assurance mechanisms ensuring that the standards and the control systems are suitable and are applied consistently.

19. (1) The Auditor-General shall, in respect of each audit carried out prepare a report on the audit.

(2) An audit report shall reflect such opinions and statements as may be required by any law applicable to the person audited, but shall reflect at least an opinion or a conclusion on –

(a) whether the annual financial statements of the person audited fairly represent, in all material respects, the financial position at a specific date and results of its operations and cash flow for the period which ended on that date in accordance with the applicable financial reporting framework and legislation;

(b) the compliance of the person audited with any applicable legislation relating to financial matters, financial management and other related matters; and

(c) the reported information relating to the performance of the person audited against predetermined objectives.

(3) The Auditor-General shall forward to the Minister responsible for finance his or her report upon the audit of those accounts and statements and related matters within -

(a) nine months after the end of the financial year to which the accounts and statements relate; or

(b) three months after his or her receipt of accounts and statements under section 11. whichever expires later.

20. (1) The Minister responsible for finance shall, within 30 days of the receipt by him or her of the Auditor-General's reports forwarded to him or her by the Auditor-General, lay the same, without any alteration thereto, before the National Assembly.

(2) If the Minister responsible for finance fails to, as required by subsection (1), lay any report mentioned in this section before the National Assembly, the Auditor-General shall send such report to the Speaker and the Speaker shall present the report to the National Assembly.

21. (1) The Auditor-General shall, where he or she reports on any confidential, special or classified account established by any Act of Parliament -

(a) have due regard to the special nature of the account; and

(b) on the written advice from the appropriate Minister and on the basis of national interest, exclude confidential, secret or classified details of findings from the audit report, provided that the audit report states that these details were excluded.

(2) Subject to subsection (1), the Auditor-General or an authorised auditor shall disclose, under confidential cover to the appropriate Minister, any audit findings on any unauthorised expenditure, irrelevant expenditure or fruitless and wasteful expenditure or any other irregular conduct or activity, or criminal conduct, relating to the financial affairs of such an account.

The **Financial Instructions and Procedures**, issued pursuant to Section 52 of the Public Finance Management Act of 2011, provide detailed guidance on the manner in which public funds are used and controlled.

Article 101 states who the accounting officers for public finance in the different Ministries and Departments are and their roles.

Article 102 highlights the role of the Accountant-General who oversees government expenditure. The article outlines his roles in ensuring that a proper system of accounts is established in every Ministry and Department including self-accounting departments and, inter alia, to exercise adequate supervision of all officers entrusted with control and management of public funds to avoid incidences of theft and/or embezzlement.

Article 301 deals with control of expenditure.

As part of the regulations made pursuant to section 44 the Accountant-General in September 2004 introduced a system to manage payments and government expenditure, **GABS (Government Accounting and Budgeting System)** which works on the Oracle platform. Almost all government ministries and departments use GABS, granting users access according to their specified functions. All payments and records including budgeting is done on the system and records can be accessed at the touch of a button.

Lastly, the **Supplies Regulations and Procedures (2006)** also govern the purchase, storage and issuance of items under stock and records are kept accordingly

The important role of the **Public Accounts Committee**, established under the Parliamentary Standing Orders, cannot be overemphasized. The committee looks into public accounts and holds accounting officers to account. All government entities report their financial performance to the Parliamentary Accounts Committee which sits annually to assess their performance. Any irregularities identified are recommended for rectification and progress is monitored every year. This is done transparently where accounting officers have to present on the affairs of the entity before a panel and members of the media.

## External Audit

The Auditor-General is mandated to audit all government departments and Ministries to ensure compliance with statutory and other requirements.

### Constitution of the Republic of Botswana

“Section 124 Auditor-General

(1) There shall be an Auditor-General, whose office shall be a public office.

(2) The public accounts of Botswana and of all officers, courts and authorities of the Government of Botswana shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorized by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so provided by Parliament in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(3) The Auditor-General shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the National Assembly.

(4) The Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any Act of Parliament.

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

The Ministry of Finance and Economic Development (MFED) has developed a **Public Finance Management (PFM) Reform Programme** for Botswana. The overarching goal of Botswana's PFM Reform Programme is to ensure optimal utilization of public resources for long-term sustainable development. The PFM Reform Programme is aimed at strengthening financial management systems in order to support fiscal discipline, strategic allocation of resources, effective and efficient service delivery and accountability. At the time of review, the PFM Reform Programme was still in force. It covers important developments such as the conversion from cash to accrual based accounting, to be completed by 2018, as well as the introduction of International Public Sector Accounting Standards (IPSAS) and integrated financial reporting.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

1. Public Audit Act of 2012 (copy provided)
2. Reports by the Auditor General (copies provided)
3. Budget Speech preparation guide by Dr. Nyamadzabo (copy provided)
4. 2017 Budget Speech by Honourable O.K. Matambo, Minister of Finance and Economic

Development Delivered to the National Assembly on 6 February 2017<sup>16</sup>

5. Ministry of Finance and Economic Development (MFED) Public Finance Management (PFM) Reform Programme for Botswana<sup>17</sup>

6. Republic of Botswana's Public Financial Management Performance Assessment Report, "Public Expenditure and Financial Accountability (February 2009) (copy provided)

In terms of cases involving violations in the control and management of public finances, the recommendations of the Auditor General are submitted to Parliament for further action, in accordance with the National Accountability Framework.

*(b) Observations on the implementation of the article*

The Ministry of Finance (Department of Internal Audit) has developed a national risk policy that applies to all government institutions, and has provided training on its application. During the country visit, it was clarified that risk based audits were instituted 5 years ago, and that risks were assessed in terms of the size of the budget of the agency (for example, the Ministry of Health would be prioritized over the office of the Ombudsman). Special consideration is also given to those agencies whose activities pose inherent risks, such as, for example, the Treasury.

The Department of Internal Audit conducts audit controls and issues audit reports, and this process also provides for the determination of the scope of the bodies in question as well as for the scope of the external audit by the Auditor General. A risk assessment is carried out as part of that process and, in terms of methodology used, it was noted that the use of existing resources was being optimized to focus audits on areas presenting higher risk factors.

It was clarified that the national risk policy was being developed by the Department of Internal Audit and that the policy was based on general principles such as risk identification, assessment and mitigation. In this regard, reference was made to the lack of clarity regarding the degree to which the risk policy was being implemented. At the same time, it was noted that, in December 2017, a workshop had been held at the office of the Accountant General. At that workshop, risk registers were developed on a pilot basis and a medium to long-term implementation plan was developed, following piloting in six public organizations in 2017. It is planned to expand the use of such registers to the government as a whole.

**It is recommended that Botswana continue efforts towards implementing a clearly defined, centrally developed system of risk analysis and management, devote adequate resources to risk-based audit procedures, and train officials involved in budgeting and expenditure management accordingly. Botswana has requested technical assistance in**

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<sup>16</sup> [http://www.gov.bw/contentassets/95fd057dbf2b4f54801841329125487b/2017-budget-speech\\_final\\_-3february\\_2017.pdf](http://www.gov.bw/contentassets/95fd057dbf2b4f54801841329125487b/2017-budget-speech_final_-3february_2017.pdf)

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[https://www.africanbondmarkets.org/fileadmin/uploads/afdb/Countries/Botswana/Ministry\\_of\\_Finance\\_And\\_Development\\_planning\\_of\\_Botswana/Public\\_Finance\\_Management\\_Reform\\_Prog\\_-\\_Botswana.pdf](https://www.africanbondmarkets.org/fileadmin/uploads/afdb/Countries/Botswana/Ministry_of_Finance_And_Development_planning_of_Botswana/Public_Finance_Management_Reform_Prog_-_Botswana.pdf)

this regard.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes.

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Sections 56 and 57 of the Public Finance Management Act, 2011 provide for offences and penalties, as well as civil or administrative proceedings for cases of loss of public funds.

Offences and penalties

56. (1) A person who —
- (a) without reasonable excuse, fails to provide by the due date, any information the Permanent Secretary may reasonably require in terms of section 10;
  - (b) without reasonable excuse fails to provide any information that the Permanent Secretary, the Accountant-General, Auditor-General or a person authorised by him or her may reasonably require in terms of this Act;
  - (c) without reasonable cause fails to provide, or wilfully obstructs access to any item required pursuant to the provisions of the Act;
  - (d) opens or causes to be opened any bank account for public or official use without the permission of the Accountant-General or in any other way contravenes section 15 in respect of any bank account; or
  - (e) being a public officer, without reasonable excuse fails to comply with any financial regulations or instructions or procedures under any law, or fails to execute duties and functions imposed on him or her under this Act or any other law,

is subject to disciplinary proceedings either under the Public Service Act or the Conditions of Service for Public Officers.

(2) In this Part, a reference to a public officer includes a person who has been a public officer.

Right to institute civil and administrative actions reserved

57. The right of Government to institute civil proceedings to recover any money, property or supplies due to Government and the right to institute disciplinary proceedings under the Public Service Act, the conditions of employment for public officers, any applicable law or the conditions of service applicable to the concerned person shall not be affected or in any way be restricted by the institution of criminal proceedings under section 56.

Furthermore, the Financial Instruction and Procedures, issued pursuant to Section 44 of the Finance and Audit Act, 1993, Chapter 1 paragraph 108 (Inspections) provide that “The Accountant General will cause regular inspections of the accounts and cash of Accounting Units, Treasury Cashiers and Revenue Collectors to be made and will report any regularities to the Permanent Secretary of Ministry responsible for Finance...”

Chapter 15 on Loss and Theft of Public Funds and Accountable Documents stipulates measures to be taken, both civil and administratively to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue.

The system of financial management, control and expenditure is described under paragraph 2 of the article.

The **Government Accounting and Budgeting System (GABS)** ensures that all payments and records including budgeting are done centrally.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

1. Letsholathebe Hospital Audit by the DCEC Corruption Prevention Division, including recommendations of the audit (copy provided)
3. Auditor-General reports indicating supervision of government expenditure (copies provided)

*(b) Observations on the implementation of the article*

Botswana indicates that it is in compliance with paragraph 3 of Article 9.

Botswana’s Financial Instruction and Procedures, Chapter 15 on Loss and Theft of Public Funds and Accountable Documents, stipulate measures to be taken, both civil and administratively to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue.

*(c) Technical assistance needs*

Training in the area of risk-based audits (article 9(2)).

**Article 10. Public reporting**

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary*

to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The thrust of article 10 is anchored on measures that could enhance transparency in so far as obtaining of information by members of the general public, while taking due care to protect privacy and personal data on decisions and legal acts that concern members of the public. It also covers the aspect of simplifying administrative procedures in order to facilitate public access to the competent decision-making authorities; and publishing information, which may include periodic reports on the risks of corruption in public administration.

a) Anti-corruption information is shared through:

- agricultural shows and exhibitions at various places, both rural and urban,
- mall campaigns,
- radio and television programmes,
- presentations to various stakeholders.
- annual reports,
- website/ government portal
- social media like Facebook.

b) Administration procedures are communicated through:

- Government General Orders
- Government Directives

Public information can be obtained from the Botswana government portal [www.gov.bw](http://www.gov.bw).

Office of the President: Structures are in place allowing members of the public to access and obtain information through the Department of Broadcasting Services that publishes information, on a daily basis through the Daily News newspaper at no cost, through national radio stations, the national television and the Government Portal.

Directorate of Public Service Management (DPSM): through its Business Process Reengineering Department, it assists with simplifying administrative procedures in order to facilitate access by the general public.

Annual reports: Most, if not all government departments, institutions and parastatals do provide annual reports which among others; share light to members of the public with regard to their organization, functions, decision-making processes including summary details of corruption cases dealt with within a financial year as evidenced by the DCEC Annual reports.

Government Gazette: Provides useful information on various subjects which relate to the operations, functions and opportunities available for members of the public such as open tenders. It is published every two weeks.

Court judgments: These are accessible to members of the public and provide full details of various cases including corruption related cases. Court register serves the same purpose and provides information to members of the public on upcoming cases and the names of those involved.

Daily news: It is the most widely distributed government newspaper which reaches all the four corners of Botswana. Besides educating, it provides useful information to members of the public on various subjects including those related to corruption and economic crime.

Hansard: This government publication provides information on upcoming bills, notice papers, order papers and archived parliament business, thus empowering members of the general public to follow the business of parliament.

Media: These assist to educate and seek input from members of the public on ways to improve the work of various government departments such as the DCEC. Radio Botswana programmes such as Tokahatso Maduo (Productivity Improvement) and Botswana Television Molemo Wa Kgang have been beneficial in so far as reaching out to members of the public in the fight against corruption.

A draft Access to Information Bill was submitted to the President's office and tabled in parliament in 2010. The draft was then followed by a private members' bill. There has been no consensus on the bill, which was pending at the time of review.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Information is published periodically through:

- Annual Reports
- Quarterly Ministerial Corruption Prevention Committees and Anti-Corruption clubs
- Quarterly Corruption Units Reports
- Ministerial Assessments Reports
- Corruption Risk Assessment Reports
- Anti-Corruption Audit Reports
- Public Accounts Committee (PAC) reports (whose deliberations and reports are made public)
- Hansard
- Daily news publications
- Radio broadcasts

Also, publication is through the courts, once a matter is registered in court the hearing is in public and court documents are made available to those who request it.

Regarding corruption assessments:

- DCEC Annual Reports
- DCEC has a corruption corner on several of the most widely distributed newspapers.
- Annual Reports are done on a yearly basis whilst the publications in newspapers are done every time the newspaper goes to publication.
- Risk Assessments Reports conducted by Ministries' Anti-Corruption Units

*(b) Observations on the implementation of the article*

During the country visit, it was clarified that, in line with Botswana's *Vision 2036; Prosperity for all*, access to information was a priority for the Government as it was expected to enhance both the participation of communities and the rule of law and democracy more generally.

It was explained that access to information had been enhanced, with information being made available by government officials and opportunities to speak to individual officers. Efforts to improve community outreach were described. Furthermore, in reference to the annual reports produced by DCEC, it was explained that such reports were published by 31 March every year, and that they were circulated widely to all members of the public.

The draft Access to Information Bill was pending at the time of review.

Regarding corruption risk assessments, the reviewers noted that the DCEC's 2016-2021 Strategic Report referred to a "lack of tools for measuring corruption and inadequate research on corruption." In this context, it was explained during the country visit that, since its establishment, DCEC had conducted over 100 audits. The Government examined various recommendations emanating from audits specifically geared towards identifying loopholes or systemic weaknesses that may be conducive to corruption. In this regard, it was also noted that DPSM had reviewed existing processes and that the Government had embarked on a

number of reforms in particular in the area of business process engineering.

**It is recommended that Botswana take steps towards the adoption of the Access to Information Bill.**

**It is further recommended that Botswana continue to conduct research and invest in the development of tools and systems for measuring corruption and for analysing the impact of measures taken to address audit recommendations.**

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Promulgation of Access to Information Bill.

Lack of tools for measuring corruption and inadequate research on corruption.

*(d) Technical assistance needs*

Development of indicators to measure the impact of measures that are put into place as a result of recommendations emanating from audits.

Development of a national corruption index.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

## **Article 11. Measures relating to the judiciary and prosecution services**

### ***Paragraph 1 of article 11***

*1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.*

### ***(a) Summary of information relevant to reviewing the implementation of the article***

**Is your country in compliance with this provision?**

(Y) Yes

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Judicial appointments of High Court judges, although made by His Excellency the President, can only be made on the recommendation of the Judicial Service Commission, except the appointment of the Chief Justice and the President of the Court of Appeal by the President of Botswana, which is governed by the relevant sections of the Constitution.

The appointment of Judges of the High Court is provided for under Section 96 (1) of the **Constitution of Botswana**, which reads thus:

“96. Appointment of judges of High Court

- (1) The Chief Justice shall be appointed by the President.
- (2) The other Judges of the High Court shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.
- (3) A person shall not be qualified to be appointed as a Judge of the High Court unless;
  - (a) He or she holds, or has held office, as a Judge of a court having unlimited jurisdiction in civil and criminal matters in Botswana, in a Commonwealth country or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court; or
  - (b) He or she is qualified to practice as an advocate or attorney in such a court and has been qualified for not less than ten years to practice as an advocate or attorney in such a court;
  - (c) He or she is qualified to practice as an advocate or attorney and he or she has had the experience in the teaching of law in a recognized University for not less than ten years; or
  - (d) He or she is a Chief Magistrate who has held that office for not less than five years.”

Section 97 (1) makes provision for tenure of office of Judges of the High Court and it reads:

“97. Tenure of office of judges of High Court

- (1) Subject to the provisions of this Section, the person holding the office of a Judge of the High Court shall vacate that office on attaining the age of 70 years or such other age as may be prescribed by Parliament. Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to proceedings that were commenced before him or her before he or she attained that age.
- (2) A Judge of the High Court may be removed from office only for inability to perform the functions of his or her office (whether arising from infirmity of body or mind from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provision of this Section.
- (3) If the President considers that the question of removing a Judge of the High Court under this Section ought to be investigated then –

- (a) He or she shall appoint a Tribunal which shall consist of a Chairman and not less than two other members, who should or have held high Judicial Office,
- (b) The Tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the Judge ought to be removed from office under this Section for inability as aforesaid or for misbehaviour, the President shall remove such Judge from office.
- (4) Where a Tribunal appointed under subsection (3) of this Section advises the President that a Judge of the High Court ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such Judge from office.
- (5) If the question of removing a Judge of the High Court from office has been referred to a Tribunal under Subsection (3) of this Section the President may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the Tribunal advises the President that the Judge ought not to be removed from office.”

Sections 100 and 101 provide for the appointment and tenure of judges of the Court of Appeal.

100.

Appointment of judges of Court of Appeal

- (1) The President of the Court of Appeal shall, unless that office is held ex-officio by the Chief Justice, be appointed by the President.
- (2) The Justices of Appeal, if any, shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.
- (3) A person shall not be qualified to be appointed as a judge of the Court of Appeal unless—
  - (a) he holds, or has held office as, a judge of a court having unlimited jurisdiction in civil and criminal matters in Botswana, in a Commonwealth country or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court; or
  - (b) he is qualified to practise as an advocate or attorney in such a court and has been qualified for not less than ten years to practise as an advocate or attorney in such a court; or
  - (c) he is qualified to practise as an advocate or attorney and he has had experience in the teaching of law in a recognised university for not less than ten years.
- (4) In computing, for the purposes of subsection (3) of this section, the period during which any person has been qualified to practise as an advocate or attorney any period during which he has held judicial office after becoming so qualified shall be included.
- (5) If the office of President of the Court of Appeal is vacant or if the President of the Court of Appeal is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the President of the Court of Appeal has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the Court of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the President may appoint for that purpose:
 

Provided that—

  - (i) a person may be appointed under this subsection notwithstanding that he has attained the age of 70 years or such other age as may be prescribed for the purposes of section 101 of this Constitution;
  - (ii) a person appointed under this subsection, who is not a judge of the Court of Appeal, may, notwithstanding the assumption or resumption of the functions of the office of

President of the Court of Appeal by the holder of that office, continue to act as a judge of the

Court of Appeal for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(6) If the office of a Justice of Appeal is vacant or if any Justice of Appeal is appointed to act as Chief Justice or President of the Court of Appeal or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal:

(b). Provided that a person may be so appointed notwithstanding that he has attained the age of 70 years or such other age as may be prescribed for the purposes of section 101 of this Constitution.

(7) Any person appointed under subsection (6) of this section to act as a Justice of Appeal, shall subject to the provisions of section 101(4) and (5) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission:

Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a person whose appointment to act as a Justice of Appeal has expired or been revoked to continue to act as such a judge for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

#### 101. Tenure of office of judges of Court of Appeal

(1) Subject to the provisions of this section, a person holding the office of a judge of the Court of Appeal shall vacate that office on attaining the age of 70 years or such other age as may be prescribed by Parliament:

Provided that—

(i) the President, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age;

(ii) a person may be appointed as President of the Court of Appeal or as a Justice of Appeal for a fixed period of three years notwithstanding that he has attained the age referred to in this subsection or that he will before the expiry of his appointment have attained that age; and

(iii) the appointment as President of the Court of Appeal or as Justice of Appeal serving for a fixed period under paragraph (ii) above shall not affect the date at which he is due to retire.

(2) A judge of the Court of Appeal may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause)

or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3) If the President considers that the question of removing a judge of the Court of Appeal under this section ought to be investigated then—

(a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President

and advise the President whether the judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4) Where a tribunal, appointed under subsection (3) of this section, advises the President that a judge of the Court of Appeal ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such judge from office.

(5) If the question of removing a judge of the Court of Appeal from office has been referred to a tribunal under subsection (3) of this section, the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought not to be removed from office.

Section 104 of the Constitution governs the appointment and disciplinary control of magistrates

#### 104. Appointment, etc., of judicial officers

(1) Power to appoint persons to hold or act in offices to which this section applies, to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the President acting in accordance with the advice of the Judicial Service Commission.

(2) The offices to which this section applies are—

(a) the office of Registrar of the Court of Appeal and High Court;

(b) all offices of magistrate;

(c) such other offices of President or member of any court or connected with any court as may be prescribed by or under an Act of Parliament.

(3) In this section references to a court do not include references to a court martial.

Magistrates courts are created by statute, the Magistrates Courts Act (Chapter 04:04), as subordinate courts. They are subordinate to the High Court. Unlike the High Court, Magistrates courts are not created by the Constitution. They are therefore controlled and supervised by the High Court, through reviews and appeals. Powers of these courts are defined in the Act.

#### Magistrates Courts Act (Chapter 04:04)

##### Part: III Judicial Officers (ss 8-11)

#### 8. Grades of magistrates and appointments thereto

(1) There shall be seven grades of magistrates, namely, Regional Magistrate, Chief Magistrate, Principal Magistrate, Senior Magistrate, Magistrate Grade I, Magistrate Grade II and Magistrate Grade III.

(2) The qualifications for appointment in the various grades of magistrate specified in subsection (1) shall be as prescribed from time to time by the President acting in accordance with the advice of the Judicial Service Commission:

Provided that the President may, acting on such advice, and in regard to any particular candidate, waive the qualifications required for appointment to any grade of magistrate to facilitate the localization of the public service.

(3) Notwithstanding the provisions of subsection (2) the President may, acting in accordance with the advice of the Judicial Service Commission, appoint administrative officers of and above the grade of District Officer as Magistrates Grade I or Magistrate Grade II or Magistrate Grade III.

(4) The Registrar and the Deputy Registrar shall have all the powers of a Regional

Magistrate, Chief Magistrate, and the Assistant Registrar of the High Court shall have all the powers of a Senior Magistrate, appointed under this Act.

Section 103 of the Constitution establishes a **Judicial Service Commission** and provides for the composition and the procedure the Commission will adopt. It reads:

“PART III

Judicial Service Commission (ss 103-104)

103. Composition and procedure

(1) There shall be a Judicial Service Commission for Botswana which shall consist of -

- (a) The Chief Justice who shall be Chairman;
- (b) The President of the Court of Appeal (not being the Chief Justice or the most Senior Justice of the Court of Appeal);
- (c) The Attorney - General;
- (d) The Chairman of the Public Service Commission;
- (e) A member of the Law Society nominated by the Law Society; and
- (f) A person of integrity and experience not being a legal practitioner appointed by the President.

(2) A member nominated under paragraph (e) or appointed under paragraph (f) of subsection (1) shall hold office for a period of two years, but shall be eligible for re-nomination or re-appointment, as the case may be, for another term of office for two years:

Provided that –

(i) A member nominated under paragraph (e) may be removed from office by the rest of the members of the Commission acting together only for inability of the member to discharge the functions of his or her office whether arising from infirmity of mind or body or any other cause or for gross misbehaviour; or

(ii) A member appointed under paragraph (f) may be removed from office by the President only for inability of the member to discharge the functions of his or her office whether arising from infirmity of mind or body or any other cause or for gross misbehaviour.

(3) A member of the Commission shall not enter upon the duties of his or her office until he or she has taken and subscribed such oath for the due execution of his or her office as may be prescribed by Parliament.

(4) The Judicial Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

(5) The Commission may regulate its own procedure and, subject to that procedure, may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(6) The decisions of the Commission shall be by the vote of a majority of the members present, and in the event of an equality of votes, the Chairman shall have a casting vote.”

The Administration of Justice has developed a **Judicial Code of Conduct**, which inter alia provides guidelines for and prescribes ethical conduct of Judicial Officers in Botswana, including High Court Judges, Judges of Court of Appeal and all other Courts prescribed by the Law, as well as magistrates. The Code emphasizes judicial independence and states in Clause 1.4 that:

“Judicial Officers have the duty to uphold and defend Judicial independence, not as a privilege of Judicial office but as the constitutionally guaranteed right of everyone to have their dispute heard and decided by impartial Judicial Officers.”

Paragraph 7 of the Code of Conduct deals with enforcement and specifically states that “the Chief Justice shall establish a committee to be known as the **Ethics Committee** which shall investigate any complaint or allegation of misconduct or breach of this Code by a Judicial Officer for conduct not impeachable under Section 97 of the Constitution and take appropriate action against such Judicial Officer, subject to the provisions of the Constitution or any other written law.”

In an effort to further enhance the independence of the judiciary, the Administration of Justice has introduced a **Court Records Management System (CRMS)**. The system ensures that there is no duplication of case numbers and the registration of cases can be done at any point in respect of any given court for any case type. The CRMS automatically assigns a Judge a case upon registration according to the existing case load thus ensuring an equitable and fair distribution of cases. The random automatic assignment of a case to a Judge also has the effect of doing away with forum shopping, which has the effect of undermining judicial integrity.

### **Transparency in the court process**

All cases are heard in open court except where it is specifically stated otherwise, usually for purposes of protecting the victims and witnesses.

Judgments are accessible to members of the public and there is a website where such judgments can be obtained.

The following provisions of the Magistrates Act (Chapter 04:04) are referred to.

#### 6. Proceedings to be open to the public

(1) Except with the agreement of all parties thereto, all proceedings of a court, including the announcement of the decision of the court, shall be held in public.

(2) Nothing in subsection (1) shall prevent the presiding magistrate from excluding from the proceedings persons other than the parties thereto and their legal representatives, to such extent as the magistrate may consider necessary or expedient-

(a) in circumstances where publicity would prejudice the interests of justice;

(b) in interlocutory proceedings; or

(c) in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of 18, or the protection of the private lives of persons concerned in the proceedings.

(3) If any person in or in the precincts of a court conducts himself in such a manner as is capable of disturbing the peace or order of the court, the presiding magistrate may order that such person be removed or detained in custody until the final rising of the court for the day, or, if in the opinion of the magistrate peace or order cannot otherwise be secured, may order that the public gallery be cleared and the doors thereof closed to the public.

#### 7. Public access of records

The records and proceedings of every court shall in all cases be accessible to the public under the supervision of an officer of the court at convenient times and upon payment of such fees as may be prescribed by rules made under section 67 of this Act: Provided that after a period of 30 years has expired from the date of judgment in such proceedings, the President may order the removal of such records and proceedings to a central place of custody.

### **Number of judges specialized in the prosecution of corruption cases**

There is one judge who deals with the prosecution of corruption cases. This judge also hears other cases and has recently been moved to Francistown. Apart from this there is no specialization in the judiciary in Botswana, judges deal with all sorts of cases.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

*The State Versus Tshosa* - this case involved the prosecution of a High Court judge for violation of the Traffic Act.

Currently there are on-going investigations of four judges. The four judges are on suspension pending disciplinary action and possibly prosecution, should the investigations reveal that they have committed an offence.

A risk assessment was conducted in relation to the Court Record Management System and a number of risks were identified. A number of measures have been put in place to address these risks.

The Electronic Court Record Management System has increased efficiency in the management of cases.

#### *(b) Observations on the implementation of the article*

During the country visit, it was clarified that the Judicial Service Commission of Botswana did not provide training for the judiciary and there was no specific integrity or ethics training that judicial officials were expected to undergo.

It was clarified during the country visit that retired judges were precluded from dealing with matters or cases over which they had presided previously.

**It is recommended that the Judicial Service of Botswana consider developing and conducting training courses, including integrity training, for judicial officers.**

**As noted above, it is also recommended that Botswana consider finalizing the development and promulgation of a bill that would establish a system of declaring interests and assets of members of the judiciary.**

*(c) Successes and good practices*

Botswana has introduced a Court Records Management System (CRMS) which provides steps to automatically assign a judge to a case upon registration according to the existing case load, thus ensuring an equitable and fair distribution of cases. The CRMS prohibits “forum shopping” and enhances transparency and confidence of the public and the legal profession.

*Paragraph 2 of article 11*

*2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The appointment of Director of Public Prosecutions is provided for in Section 51A of the **Constitution of Botswana**. In terms of that section the DPP is not subject to the control of any authority but administratively the Director reports to the Attorney-General and consults the AG on cases of national interest.

The Attorney General may be removed only for inability to perform the functions of his office, for misbehaviour or for incompetence, but this follows a tribunal enquiry pursuant to Section 113 of the Constitution of Botswana.

Currently prosecutors are governed by the Public Service Act and General Orders. Disciplinary matters concerning prosecutors are handled by the Public Service Commission.

There is a committee working on a Code of Conduct for prosecutors.

The Public Service Act governs the appointment and removal of prosecutors.

**Constitution of Botswana**

**Section 51A. Director of Public Prosecutions**

(1) There shall be a Director of Public Prosecutions appointed by the President whose office shall be a public office and who shall be subject to the administrative supervision of the Attorney-General.

(2) A person shall not be qualified to be appointed to the Office of Director of Public Prosecutions unless he or she is qualified to be appointed to the Office of a Judge of the High Court.

(3) The Director of Public Prosecutions shall have power in any case in which he or she considers it desirable to do so-

(a) to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed by that person;

(b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and

(c) to discontinue, at any stage before judgment is delivered, any such criminal proceedings instituted or undertaken by himself or herself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under subsection (3) may be exercised by him or her in person or by officers subordinate to him or her acting in accordance with his or her general or special authority.

(5) For the purposes of this section any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court shall be deemed to be part of those proceedings: Provided that the power conferred on the Director of Public Prosecutions by subsection (3)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such person.

(6) In the exercise of the functions vested in him or her by subsection (3) of this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that-

(a) where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority, and with the leave of the court; and

(b) before exercising his or her powers in relation to cases considered by the Attorney-General to be of national importance, the Director of Public Prosecutions shall consult the Attorney-General.

### **Section 113. Tenure of office of Attorney-General**

(1) Subject to the provisions of this section, a person holding the office of Attorney-General shall vacate his office when he attains the age of 60 years or such other age as may be prescribed by Parliament.

(2) A person holding the office of Attorney-General may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) If the President considers that the question of removing a person holding the office of Attorney-General from office ought to be investigated then—

(a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office; and

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the person holding the office of Attorney-General ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4) Where a tribunal appointed under subsection (3) of this section advises the President that

a person holding the office of Attorney-General ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such person from office.

(5) If the question of removing a person holding the office of Attorney-General from office has been referred to a tribunal under this section, the President may suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the person ought not to be removed from office.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

In the case of *The State v Senome*, a prosecutor was prosecuted and convicted for corruption under the Corruption and Economic Crime Act.

*(b) Observations on the implementation of the article*

During the country visit, it was noted that a Code of Conduct for prosecutors had been finalized and was being distributed to all the prosecutors in the country.

Furthermore, in reference to the appointment of specialized prosecutors, it was clarified that the anti-corruption unit in the DPP's Office had officers attached to it, who had been appointed based on their seniority and interest. However, further capacity building and training of specialized anti-corruption and asset recovery prosecutors would be beneficial.

In regards to training, an induction training programme was provided to all prosecutors joining the Directorate for Public Prosecutions. At the same time, training needs assessments are conducted (including on annual bases). Training is offered on an as-needed basis, by each institution but also by external institutions (Justice College in South Africa and others). Training specifically for prosecutors, legal officers and DPP officials was also offered and provided by the UNDP. Ethics and integrity training was also available.

**It is recommended that Botswana continue to invest in the development of specialized expertise and skills of prosecutors and members of the judiciary on anti-corruption and asset recovery matters. Botswana has requested technical assistance in this regard.**

**Furthermore, it is noted that Section 113 of the Constitution provides for the removal of the Attorney-General, but not the DPP. Accordingly, it is recommended that Botswana consider making necessary statutory amendments to ensure the independence of the post of the DPP including to clarify his removal and any disciplinary action.**

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Training of both the judiciary and prosecution.

Specialization of both the judiciary and the prosecution.

Appropriate collection and maintenance of statistical data.

*(d) Technical assistance needs*

Capacity-building: Enhancing the capacity of both the judiciary and the prosecution on the complexities of corruption and financial crimes is a necessity.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No technical assistance is being provided.

**Article 12. Private sector**

*Paragraphs 1 and 2 of article 12*

*1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

*2. Measures to achieve these ends may include, inter alia:*

- (a) Promoting cooperation between law enforcement agencies and relevant private entities;*
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;*
- (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;*
- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;*
- (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the*

*employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;*

*(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with these provisions?**

(P) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.**

1. A Code of Conduct for the Private Sector was developed by Business Botswana (formerly Botswana Confederation of Commerce Industry and Manpower/BOCCIM) and DCEC (August 2006) to encourage the private business sector to be more ethical in their business dealings. The DCEC facilitated the drafting and signing of the Code of Conduct and signatory companies were given some incentives by their mother body for signing the Code. The Code covers various areas extending to ethical conduct, corruption and fraud. A copy was provided to the reviewers.
2. A Code of Conduct for Contractors has also been developed by PPADB.<sup>18</sup> As described under article 9 above, contractors that are found to have committed fraud, corruption or have engaged in general acts of unprofessional conduct will be considered in breach of the Contractors Code of Conduct and the Board shall take punitive action against such parties. See PPADB Circular 3 of 2010 - Procedures for Suspension or Delisting of Contractors<sup>19</sup>.
3. 2016 saw the launch of the Botswana Business Ethics Forum (BBEF) in collaboration with the University of Botswana. To that effect, a seminar brought together representatives from private, public and civil society organizations to promote active dialogue on issues related to governance and business ethics.
4. DCEC and the University of Botswana signed a Memorandum of Understanding with Business Botswana in 2015 to promote good corporate governance and enhance

<sup>18</sup> <http://www.ppadb.co.bw/Documents/Contractors%20Code%20of%20Conduct.pdf>

<sup>19</sup> <http://www.ppadb.co.bw/Circulars/Circular%203%20of%202010%20-%20Procedures%20for%20Suspension%20or%20Delisting%20of%20Contractors.pdf>

knowledge and skills in business ethics. A copy was provided to the reviewers.

5. A draft National Anti-Corruption Policy (December 2015) has been developed through consultations with various stakeholders. It includes mandates for eight pillars of society, including the private sector and civil society.

### **Employment Restrictions for Public Officials**

The DPSM 2013 Guidelines on Declaration of Interest restrict (cooling-off period) the activities of former public officials in terms of their employment by the private sector after their resignation or retirement, with the possibility of disciplinary sanctions in case of violations (section 4.2.5):

#### **6. POST EMPLOYMENT**

- 6.1 All employees shall not participate in any business or related services that would conflict with their former public service duties within one (12 Months) of their resignation or retirement.

### **Legal Practitioners**

The **Legal Practitioners Act** provides for the admission and qualification to practice of attorneys in Botswana who under the law have to meet the threshold, inter alia of "a fit and proper person". The Act provides further for the making of Regulations governing the professional conduct of attorneys and also establishes the Law Society of Botswana. In the event of misconduct by an attorney duly admitted to practice there should be an investigation after a complaint is filed and the possibility of removal from the roll of practicing attorneys. Further, where there is failure by an attorney to submit audited statements of the accounts of the firm, removal may also be occasioned.

“PART II Admission and Enrolment of Legal Practitioners (ss 3-17)

Qualifications and Admission (ss 3-12)

#### **3. Qualifications for practising as legal practitioner**

(1) No person shall be qualified to practise as a legal practitioner unless-

(a) he has been admitted as a legal practitioner;

(b) his name is on the roll; and

(c) subject to subsection (2), he has in force a practising certificate issued by the Registrar under section 30.

(2) The persons specified in the First Schedule shall be exempted from applying for a practising certificate:

Provided that the exemption shall not apply to any person specified in the Schedule who engages in private practice on his own account.

...

#### **12. Oath to taken before enrolment**

No person shall be enrolled as a legal practitioner unless he has taken before the Registrar the oath or affirmation of office as set out in Form A in the Third Schedule. “

The Roll (ss 13-17)

13. Keeping the roll

(1) The Registrar shall continue to keep a list of all legal practitioners in Botswana, called "the roll".

(2) The roll shall be in the form of separate alphabetical lists recording the names of advocates, attorneys, notaries and conveyancers respectively, entitled to practise by reason of having been admitted to practise under this Act with the dates of such admission and the names and addresses.

14. Entry of name and restoration of name

(1) On production-

(a) of an admission of any person as a legal practitioner signed by the court under section 11; or

(b) of an order for the restoration to the roll of the name of a person whose name has been removed from it, and on payment to the Registrar of the fee prescribed in the Fourth Schedule, the Registrar shall enter the name of that person on the roll.

(2) The Registrar shall issue a certificate of admission and enrolment in Form B in the Third Schedule to any person admitted and enrolled as an advocate, attorney, notary, or a conveyancer, as the case may be.

15. Removal or restoration of name of practitioner

(1) The Registrar may, on the application of a legal practitioner, remove his name at his own request from the roll.

(2) The Registrar may, on the application of the Society, remove the name of a legal practitioner from the roll, if he is no longer resident in Botswana or has not resided in Botswana after admission.

(3) The Registrar may, on the application of a former legal practitioner whose name has been removed from the roll at his own request, enter his name on the roll on payment of the fee prescribed in the Fourth Schedule.

...

30. Issue of practising certificate

(1) Subject to section 31 the Registrar shall, within seven days of receipt of an application, issue a practising certificate in the appropriate form specified in Form C in the Third Schedule to a legal practitioner who applies for one to practise in the capacity named in the form, if he is satisfied that-

(a) his name is on the roll;

(b) in the case of an application for the first time, he has obtained a certificate of pupillage or he has been exempted from pupillage;

(c) he is not suspended from practice;

(d)\* he has obtained a fidelity fund certificate under section 37 from the Society for the payment of the prescribed fee to the Fund;

(e) he has furnished a certified copy of the audited accounts of his trust account, certified as having been properly kept, to the Society:

Provided that the provisions of this paragraph shall not apply to a legal practitioner applying for a practising certificate for the first time;

(f) he has paid the annual subscription fees prescribed under section 57;

(g) he has paid, if any, all fines imposed on him under section 53(7) or refunded moneys

required to be refunded by him under section 53(8).

(2) The provisions of subsections (1)(d) and (e) shall not apply to advocates.

...

#### PART VI. Trust Accounts and Notaries, Protocols (ss 45-46)

##### 45. Trust accounts

(1) Every legal practitioner practising on his own or in partnership, other than an advocate or any person specified in the First Schedule, shall open and keep a separate trust account with a bank licensed under the Banking Act, in which he shall deposit all moneys held or received by him in connection with his practice in Botswana on account of any person.

(2) A legal practitioner may invest in a separate savings or other interest-bearing account opened by him with any bank licensed under the Banking Act or a building society registered under the Building Societies Act any money deposited in his trust account which is not immediately required for any particular purpose.

(3) The interest, if any, on money deposited in terms of subsection (1) and the interest on money invested in terms of subsection (2) shall, after the deduction of actual costs incurred in the performance of any duty imposed upon the legal practitioner under this section, be paid over to the Fund by the legal practitioner concerned at the prescribed time and in the manner prescribed.

(4) Notwithstanding the provisions of subsections (2) and (3), regulations may prescribe the mode of investing any money deposited in a trust account which is not immediately required for any particular purpose and the manner of dealing with any interest accruing on such money.

(5) A legal practitioner shall, at the end of every three months' furnish the Society with a certified copy of the bank statement of his trust account.

(6) A legal practitioner operating a trust account in accordance with the provisions of subsection (1) shall keep proper books of account containing particulars and information as to moneys received, held or paid by him for or on account of any person.

(7) The legal practitioner shall cause the trust account to be audited once in every year by an accountant who is a member of the Botswana Institute of Accountants established by the Accountants Act, 1988, and the accountant shall submit to the Council a report containing such information as may be prescribed.

(8) The Council or a person nominated by it may inspect the accounting records of the trust account of any legal practitioner in order to satisfy itself that the provisions of subsections (1) and (6) are being complied with, and if it is found upon such inspection that the records of the trust account have not been properly kept, the Council shall cause the records of the account of the legal practitioner to be written up and recover the costs of the inspection or of such writing up, as the case may be, from that legal practitioner.

(9) No amount standing to the credit of such trust account in the bank shall form part of the assets of the legal practitioner concerned and no such amount and the interest accruing thereon shall be liable to attachment at the instance of any creditor of the legal practitioner: Provided that any excess remaining after payment of the claims of all persons whose moneys have, or should have, been deposited in the trust account shall be deemed to form part of the assets of that legal practitioner.

(10) Upon an application made by the Council to the court and upon good cause shown, the court may prohibit any legal practitioner from operating in any way his trust account or any other account opened or operated by the legal practitioner and, if there is reason to believe that trust moneys have been improperly deposited in any other account, the court may appoint a curator bonis to control and administer such account.

(11) Upon the death or insolvency of, or the assignment of his estate by a legal practitioner or in the event of a legal practitioner being removed from the roll or being suspended from practice or being declared by a court of competent jurisdiction to be incapable of managing his own affairs, or abandoning his practice, the Master may, upon an application made by the Council or by any person having an interest in the trust account of the legal practitioner, appoint a curator bonis to control and administer the trust account.

(12) Any person aggrieved by a decision of the Master under subsection (11) may, within 30 days after the decision became known to him, appeal to the court which may confirm or vary the decision of the Master or give such other decision as in its opinion the Master ought to have given.

(13) Nothing in subsection (11) or (12) shall be construed as preventing any legal practitioner practising in partnership with a legal practitioner referred to in subsection (11) from continuing to operate the trust account of that partnership.

(14) Any bank at which a legal practitioner keeps such trust account shall not, by reason only of the name or style by which the account is distinguished, be deemed to have knowledge that the legal practitioner is not entitled absolutely to all moneys paid or credited to the account:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(15) A bank at which a legal practitioner keeps a trust account shall not, in respect of any liability of the legal practitioner, not being a liability arising out of or in connection with the account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise against moneys standing to the credit of the account.

#### PART VII Disciplinary Committee (ss 47-48)

##### 47. Appointment of Disciplinary Committee

(1) There shall be a Disciplinary Committee of the Council which shall consist of five members appointed by the Council from among its members or from members of the Society.

(2) The Council may remove any member from the Disciplinary Committee, but not while he is hearing a disciplinary case, and fill any vacancy therein.

(3) The Minister may by statutory instrument increase the number of members of the Disciplinary Committee.

##### 48. Secretary of Disciplinary Committee

The Secretary of the Society shall be the Secretary of the Disciplinary Committee.

#### PART VIII Misconduct (ss 49-52)

##### 49. Complaint against legal practitioner

(1) A complaint of professional misconduct, against a legal practitioner which expression includes disgraceful or dishonourable conduct incompatible with the status of a legal practitioner, may be made to the Council by any person.

(2) Upon receipt of a complaint, the Secretary shall refer the complaint to the Disciplinary Committee, and a copy of the complaint shall be given to the Attorney-General by the Secretary.

##### 50. Investigation of complaint by Disciplinary Committee

(1) Where a complaint is referred to the Disciplinary Committee, the Disciplinary

Committee shall investigate such complaint by making such inquiries as it may think fit.

(2) Where the Disciplinary Committee is of the opinion that the complaint discloses a prima facie case of unprofessional conduct on the part of the legal practitioner, it shall furnish the legal practitioner with particulars of the complaint and call on him to furnish it with his explanation regarding the complaint within a specified time.

(3) If the Disciplinary Committee, after considering the complaint, is of the opinion that professional misconduct has been established, it may-

(a) warn or reprimand the practitioner; or

(b) impose a fine not exceeding P10 000 on the legal practitioner.

(4) If the Disciplinary Committee considers that the professional misconduct established under subsection (3) is so serious as to warrant the suspension of the legal practitioner or the removal of his name from the roll, it shall recommend to the Council to apply to the court-

(a) to suspend him from practising for a specified period; or

(b) to have his name removed from the roll.

(5) A copy of the recommendation shall be served on the Attorney-General by the Secretary.

(6) A fine imposed on a legal practitioner under subsection (3)(b) shall be deemed to be an exercise of the civil jurisdiction of a court of competent jurisdiction in an action between the Society as plaintiff and the legal practitioner as defendant and such fine shall be enforceable in the same manner and be subject to the like appeal as are orders or judgments of a court of competent jurisdiction.

(7) Without prejudice to any other remedy, where a fine imposed on a legal practitioner under this section is not paid within 14 days after the making of the order imposing the fine, the Disciplinary Committee may issue a writ of execution directed to the Secretary of the Society to attach such movable or immovable property of the legal practitioner, as may be specified in the writ, and to sell such property by public auction to satisfy the order made against the legal practitioner.

## 52. Definition of misconduct

(1) Without prejudice to the provisions of section 49(1), misconduct on the part of a legal practitioner includes, inter alia, the commission of any of the following acts-

(a) touting;

(b) advertising;

(c) tendering or offering in response to advertisements, circulars or similar invitations either directly or indirectly for the performance of any work or business proper to the calling of a legal practitioner or commonly associated therewith;

(d) allowing his name with all or any of his qualifications of advocate, attorney, notary or conveyancer to appear by way of advertisement or notification or by way of information upon any business letter heads, accounts or other documents whatsoever in conjunction with the name of a person not being an attorney;

(e) entering into or continuing to be a party to any contract or arrangement with an unqualified person the effect whereof is to place him under such control on the part of such unqualified person as may interfere with his independence as an officer of the court; or

(f) committing any act which may be prescribed as misconduct.

(2) Misconduct on the part of an attorney, notary or conveyancer shall include, inter alia, the commission of any of the following acts-

(a) giving or taking allowances in contravention of the provisions of this Act or of any other law;

(b) withholding the payment of trust moneys without lawful cause;

- (c) in any way assisting, allowing or enabling an unqualified person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the preparation or execution of any document or the performance of any professional work which only an attorney, notary or conveyancer, as the case may be, is qualified by law to prepare, sign, execute, attest or perform, or in any way conniving at any arrangement, agreement or understanding whatsoever whereby any such fee or remuneration is or shall be charged, recovered or received, by any such unqualified person;
- (d) opening or maintaining any office or branch which is not under the continuous personal supervision of an attorney;
- (e) keeping the accounts of his business as an attorney, notary or conveyancer in the books of accounts utilized in connection with any other business in which he may be interested jointly with an unqualified person;
- (f) remunerating an employee who is an unqualified person by way of a share in the profits of his business as an attorney, notary or conveyancer;
- (g) referring to or mentioning his professional qualifications of attorney, notary or conveyancer or any one or more of them, on his sale advertisements by a legal practitioner who also carries on the business of an auctioneer;
- (h) assisting any unqualified person to recover charges for services rendered by including the same in any bill of costs or memorandum of charges rendered by him as a legal practitioner, without disclosing the facts in such bill or memorandum;
- (i) entering into or continuing to be a party to any contract of partnership with or of employment by a person not being an attorney in estate and general agency the direct or indirect result whereof is to enable the unqualified person to enjoy or participate in fees reserved to a legal practitioner only or to secure for the legal practitioner the benefit of professional business solicited by the unqualified person;
- (j) committing any act which may be prescribed as misconduct.

#### PART XI. The Law Society of Botswana (ss 55-72)

##### 55. Establishment of Society

- (1) There shall be established a body to be called the Law Society of Botswana (in this Act referred to as "the Society").
- (2) The Society shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name.
- (3) The Society shall not, as a body corporate, be subject to any disability as regards the holding of land to which an individual would not be subject.”

Engineers are registered under the Botswana Engineers Registration Board. The establishment of the Board came after the enactment of the **Engineers Registration Act** which provides for eligibility and criterion for registration; development of Regulations; monitoring of engineers and lastly section 4A(1) (a) provides for high standards of engineering practices and ethics.

Accountants and auditors also have several bodies accounting for their practice and professional conduct flowing from the provisions of the **Accountant's Act No. 12 of 2010**:

- a) Institute of Internal Auditors
- b) Botswana Institute of Chartered Accountants (BICA)
- c) Botswana Accountancy Oversight Authority (BAOA)

d) Association of Chartered Certified Accountants and Chartered Institute of Management Accountants

**Auditing standards:**

Prior to the adoption of the Financial Reporting Act 2010, BICA was responsible for setting auditing standards and had adopted and supported the implementation of the International Standards on Auditing (ISA), which are required by law, on an ongoing basis. Although the responsibility for setting auditing standards now lies with the Botswana Accountancy Oversight Authority (BAOA), BICA continues its ongoing efforts to raise awareness and educate its members about ISA, and encourages compliance with the standards.

**Accounting standards:**

Although BICA has no direct responsibility for the adoption and implementation of public sector accounting standards in Botswana, it promotes the adoption of IPSAS without modifications and assists with their implementation. BICA established a Public Sector Committee, which comprises key stakeholders from the government, to help lead the transition to accrual-basis IPSAS and to develop professional examinations for the public sector. BICA collaborates with the standard setter, the Botswana Accountancy Oversight Authority, to provide training on IPSAS for public sector accountants, and is in the process of developing a public sector accounting curriculum.

**Oversight and discipline of the accounting profession:**

BICA shares responsibility for investigating and disciplining members of the profession and has established investigation and discipline (I&D) mechanisms. BICA established an Appeals Committee in 2014 and has proposed revisions to the Accountants Act 2010 and the Financial Reporting Act 2010 that would help to strengthen the I&D system and improve compliance with revised SMO 6. BICA states that it provides updates on its website and via emails about new and revised requirements on an ongoing basis.

The Botswana Financial Reporting Act 2010 empowers the BAOA to inspect files of auditors of public interest entities periodically to show compliance with auditing standards.

**Ethical standards:**

BICA has direct responsibility for the adoption of ethical standards for members of the accounting profession, and adopted a 2010 version of the IESBA Code of Ethics, supporting member compliance by raising awareness of new ethical requirements and through the training that it provides. BICA provides a copy of the Handbook of the Code of Ethics to each member, and members are required to annually declare they have read and understood the Code and comply with its requirements. The institute also sends all revised requirements of the Code to its members via email. BICA offers pre-qualification ethics trainings to candidates, and includes ethics topics in its continuing professional development events.

The **Quantity Surveyor's Act** establishes the Council for the regulation of Quantity Surveyors and their conduct.

**Please provide examples of the implementation of those measures, including related**

**court or other cases, available statistics etc.**

Disbarment of lawyers: *The Law Society of Botswana v Mutoriti*. The matter involved an attorney whose conduct was deemed to be unbecoming of a legal practitioner. He was then disbarred as an "unfit and proper person" in line with the Legal Practitioner's Act. The Attorney was ultimately prosecuted again by the DCEC for obtaining money from a pro deo client, paid for by government, by false pretences. He was convicted and sentenced accordingly.

A private sector MOU between the DCEC and Business Botswana is in place.

Copies of invitations sent by the DCEC to the financial sector to attend training workshops held by the DCEC on conflicts of interest, ethics and insider trading were provided to the reviewers, together with related presentation materials.

Examples of trainings conducted by DCEC with the Botswana Training Authority for private sector entities were also provided.

In 2016, the DCEC developed a booklet on "Promoting Work Ethics and Integrity in Organizations," for launch in March 2017. The booklet is intended to promote an ethical culture and maintain integrity in organizations, and to provide a practical guide, framework, strategies and measures towards that end.

FIA also conducts training events for financial institutions on the Financial Intelligence Act and their responsibilities and duties.

The Registrar of Companies and Intellectual Property (ROCIP) keeps a register of all registered businesses in Botswana. To register a business, certified copies of identity documents are required for the person presenting the application and for the proposed directors and shareholders, and a practising certificate for the company secretary. The commercial register of businesses is publicly available and includes information on the management and owners of companies.

*(b) Observations on the implementation of the article*

Although the private sector is an important partner in the investigation and prosecution of corruption cases, and the DCEC has conducted a number of workshops in sectors such as construction, IT and procurement, it was explained that there is inadequate participation on the part of private sector entities in anti-corruption programmes.

During the country visit, it was clarified that the Botswana Institute of Chartered Accountants (BICA) regulates the activities of accountants in the country (and is also responsible for small-scale audits), while the Botswana Accountancy Oversight Authority (BAOA) sets auditing and financial standards. The two entities have adopted international accounting standards and they are also subject to review every 3 years.

It was noted during the country visit that a Memorandum of Understanding has been signed with the Accountant General in order to effect the transition from the current cash

accounting standards to the International Public Sector Accounting Standards (IPSAS).

Moreover, a curriculum was being developed to introduce public sector professional qualifications. It was noted that review mechanisms for non-audit accounting were being introduced in 2018 to ensure compliance with quality control standards.

**Botswana is encouraged to take further steps to strengthen the cooperation of the private sector in preventing and countering corruption.**

*Paragraph 3 of article 12*

*3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:*

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

**Financial Intelligence Act**

“PART IV Duty to Identify Customers and Keep Records

Section 9 Obligations of specified party

(1) A specified party shall -

- (a) implement and maintain a customer acceptance policy, internal rules, programmes, policies, procedures or such controls as may be prescribed to protect its system from financial offences; (b) designate compliance officers at the management level who will be in charge of the implementation of internal programmes and procedures, including maintenance of records and reporting of suspicious transactions;
- (c) ensure that a compliance officer designated under paragraph (b) has at all times, timely access to customer identification data, transaction records and other relevant information;
- (d) implement and maintain compliance programmes; and
- (e) develop and maintain audit functions to evaluate any policies, procedures and controls developed in accordance with this section to ensure compliance with measures taken by the specified party to comply with the Act and the effectiveness of those measures.

(2) For the purposes of subsection (1) -

(a) programmes referred to in subsection (1) shall be consistent with instructions, guidelines or recommendations issued under section 27 (1) (b) and may include -

- (i) the establishment of procedures to ensure high standards of integrity of employees and a system to evaluate the personal, employment and financial history of employees;
- (ii) on-going employee training programme with regard to the specified party's obligations under this Act;
- (iii) an independent audit function to check compliance with programmes; and

(b) the internal rules referred to in subsection (1) shall be consistent with prescribed requirements and be made available to all employees of the specified party and shall include -

- (i) the information the record of which is required to be kept under this Part;
- (ii) identification of reportable transactions; and
- (iii) training of employees of the specified party to recognize financial offences.

(3) A specified party that fails to take such measures as are reasonably necessary to ensure that neither it nor a service offered by it, is capable of being used by a person to commit or to facilitate the commission of a financial offence shall be liable to a fine not exceeding P100 000 as may be imposed by a supervisory authority.

#### Section 10 Identification of customers

(1) A specified party shall not establish a business relationship or conclude a transaction with a customer unless the specified party has undertaken due diligence measures and such other steps as may be prescribed -

- (a) to establish and verify the identity of the customer;
- (b) if the customer is acting on behalf of another person, to establish -
  - (i) the identity of that other person,
  - (ii) the customer's authority to establish the business relationship or to conclude a transaction on behalf of that other person;
- (c) if another person is acting on behalf of the customer, to establish and verify -
  - (i) the identity of the customer; and
  - (ii) that other person's authority to act on behalf of the customer.

(2) Where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall not conclude a transaction in the course of that relationship unless it has complied with subsection (1).

(3) Proof of identity of a customer under this section shall be through the production of a National Identity Card for citizens and a passport for non-citizens.

(4) A person who transacts business with a specified party using false identification documents shall be guilty of an offence and liable to a fine not exceeding P100 000 or to

imprisonment for a term not exceeding five years or to both.

(5) A specified party that contravenes a provision of this section shall be liable to such fine not exceeding P250 000 as may be imposed by the supervisory authority.

#### Section 11 Keeping of records

(1) Where a specified party establishes a business relationship or concludes a transaction with a customer, the specified party shall maintain records of -

- (a) the identity of the customer;
- (b) if the customer is acting on behalf of another person -
  - (i) the identity of the person on whose behalf the customer is acting, and
  - (ii) the customer's authority to act on behalf of that other person;
- (c) if another person is acting on behalf of the customer -
  - (i) the identity of that other person, and
  - (ii) that other person's authority to act on behalf of the customer;
- (d) the manner in which the identities of the persons referred to in paragraphs (a), (b) and (c) were established;
- (e) the nature of the business relationship or transaction;
- (f) the amount involved in the transaction and the parties to the transaction;
- (g) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;
- (h) the name of the person who obtained the information referred to under paragraphs (a), (b) and (c) on behalf of the specified party; and
- (i) any document or copy of a document obtained by the specified party in order to verify a person's identity.

(2) Records kept in terms of subsection (1) may be kept in electronic form.

#### Section 12 Period records to be kept

(1) A specified party shall keep records referred to under section 11 for at least five years from the date a transaction is concluded.

(2) Notwithstanding the generality of subsection (1), an investigatory authority may by request in writing, require a specified party to keep and maintain a record referred to under section 11 for such longer period as may be specified in the request.

#### Section 13 Records kept by third party

(1) The duty imposed under section 11 on a specified party may be performed by a third party on behalf of the specified party.

(2) Where a specified party appoints a third party to perform duties imposed under section 11, the specified party shall forthwith provide the Agency with such particulars of the third party as may be prescribed.

(3) Where a third party fails to perform the duties imposed under section 11, the specified party shall be liable for the failure.

#### Section 14 Admissibility of electronic records

An electronic record kept in accordance with section 11 shall be admissible as evidence in court.

#### Section 15 Offences relating to records

(1) A specified party that fails to keep records in accordance with sections 11 and 12 shall be liable to a fine not exceeding P100 000 as may be imposed by the supervisory authority.

(2) A person who destroys or removes any record, register or document kept in accordance with this Part shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years or to both.”

The **Companies Act** in Part XIII contains requirements for accounting records, audits and disclosures by companies. This covers requirements for accounting records to be kept by companies, appointment and qualification of auditors, obligation to prepare financial statements and annual reports, contents and form of financial statements, recordkeeping and the inspection of company records.

While preparing accounts, non-exempt companies and public companies should comply with International Financial Reporting Standards (IFRS) and company law schedules and other laws relating to accounts. Exempt private companies will comply with Generally Accepted Accounting Principles. Audits should be performed according to International Standards on Auditing.

## **COMPANIES ACT**

### **Part XIII. Accounting Records, Audit and Disclosure by Companies (ss 189-221)**

#### **CHAPTER: 42.01**

##### 189. Accounting records to be kept

- (1) The Board of a company shall cause accounting records to be kept that-
  - (a) correctly record and explain the transactions of the company;
  - (b) shall at any time enable the financial position of the company to be determined with reasonable accuracy;
  - (c) shall enable the directors to prepare financial statements that comply with this Act; and
  - (d) shall enable the financial statements of the company to be readily and properly audited.
- (2) Without limiting subsection (1), the accounting records shall contain-
  - (a) entries of money received and spent each day and the matters to which it relates;
  - (b) a record of the assets and liabilities of the company;
  - (c) if the company's business involves dealing in goods-
    - (i) a record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices, and
    - (ii) a record of stock held at the end of the financial year together with records of any stocktakings during the year; and
  - (d) if the company's business involves providing services, a record of services provided and relevant invoices.
- (3) The accounting records shall be kept in the English language.
- (4) If the Board of a company fails to comply with the requirements of this section, every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(2) of this Act.

##### 190. Place accounting records to be kept

- (1) A company shall keep its accounting records at the registered office of the company or subject to subsection (2) at such other place in Botswana as the Board shall determine.
- (2) Notice of any change in the place where the accounting records are kept, shall be submitted to the Registrar within 21 days after such change.
- (3) If a company fails to comply with subsection (1) or (2) -

- (a) the company shall be guilty of an offence and liable to the penalty set out in section 492(2);
- (b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(2).

#### 191. Appointment of auditors

(1) Subject to this section, every public company and every non-exempt private company shall, at each annual meeting, appoint an auditor to -

(a) hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and

(b) audit the financial statements of the company and, if the company is required to complete group financial statements, those group financial statements, for the accounting period next after the meeting.

(2) The Board of a company may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

(3) If in the case of a company which is required to appoint an auditor -

(a) at an annual meeting of a company no auditor is appointed or re-appointed; or

(b) a casual vacancy in the office of auditor is not filled within one month of the vacancy occurring, the Registrar may appoint an auditor.

(4) A company shall, within five working days of the power becoming exercisable, give written notice to the Registrar of the fact that the Registrar is entitled to appoint an auditor under subsection (3) of this section.

(5) If a company fails to comply with subsection (4), the company and every director of the company shall be guilty of an offence and liable to the penalties set out in section 493 (2).

...

#### 194. Qualifications of auditors

(1) A person shall not be qualified to be appointed as an auditor of a company unless that person is a member of the Institute of Accountants of Botswana who is qualified under the rules of that Institute to conduct an audit and holds a valid practising certificate issued by the Institute.

(2) None of the following persons may be appointed or act as auditor of a company -

(a) a director or employee of the company;

(b) a person who is a partner, or in the employment, of a director or employee of the company;

(c) a liquidator or a person who is a receiver in respect of the property of the company;

(d) a body corporate except as permitted by section 193;

(e) a person who is a director or employee of a body corporate which is an officer of the company;

(f) a person who by himself, or his partner, or his employee, regularly performs the duties of secretary or accounting officer or bookkeeper to the company;

(g) a person who is not ordinarily resident in Botswana; or

(h) a person who is indebted in an amount exceeding P5,000 to the company, or to a related company unless the debt is in the ordinary course of business.

...

199. Auditor to avoid conflict of interest

An auditor of a company shall ensure, in carrying out the duties of an auditor under this Part of this Act, that his judgment is not impaired by reason of any relationship with or interest in the company or any of its subsidiaries.

200. Auditor's report

(1) The auditor of a company shall make a report in accordance with the International Standards on Auditing to the shareholders on the financial statements which have been audited.

(2) The auditor's report shall state whether, in the auditor's opinion, the financial statements and any group financial statements, give a true and fair view of the financial position of the company as at the balance sheet date and of the results of its operations and its cash flows for the financial year then ended and comply with International Financial Reporting Standards, and, if they do not, the respects in which they fail to do so.

201. Access to information

(1) The Board of a company shall ensure that an auditor of a company has access at all times to the accounting records and other documents of the company.

(2) An auditor of a company is entitled to require from a director or employee of the company such information and explanations as he thinks necessary for the performance of his duties as auditor.

(3) If the Board of a company fails to comply with subsection (1), every director shall be guilty of an offence and liable to the penalty set out in section 492(3).

(4) A director or employee who fails to comply with subsection (2) shall be guilty of an offence and liable to the penalty set out in section 493(2).

(5) It is a defence to a charge under subsection (4) if the employee proves that -

(a) the employee did not have the information required in his possession or under his control; or

(b) by reason of the position occupied by the employee or the duties assigned to the employee, he was unable to give the explanations required, as the case may be.

...

204. Duties of auditor on becoming aware of irregularity

(1) Where, in the performance of the auditor's duties as auditor of a company, the auditor becomes aware of-

(a) any material irregularity in the conduct of the company's financial affairs; or

(b) any matter which, in his opinion, is otherwise relevant to the exercise of the powers and duties imposed by this Act or by any debenture trust deed, on any trustee for debenture holders, the auditor shall, within seven days after becoming aware of the matter, send a report in writing of such matter to the Board of the company and a copy to the trustee.

(2) The auditor of a borrowing company shall, at the request of the trustee for debenture holders, furnish the trustee with such further information relating to the borrowing company as are within the auditor's knowledge and which, in the auditor's opinion, are relevant to the exercise of the powers or duties conferred or imposed on the trustee by this Act or by the trust deed.

(3) Where a report is given under subsection (1) and the matter on which the auditor has reported has not within 30 days either been remedied or reported by the Board, or in the case of a listed company to the stock exchange, or in the case of any other company to the

shareholders of the company, the auditor shall forthwith provide a written report to the stock exchange or to the Registrar as the case may be.

(4) No right of action against the auditor shall be available to any person by reason only of the auditor having in good faith provided a report pursuant to subsections (1), (2) and (3).

(5) The Registrar, on receipt of the report, may require the directors to forthwith call a meeting of shareholders to be held within seven days or within such further period as the Registrar may direct, to discuss the report.

#### 205. Obligation to prepare financial statements

(1) The Board of every company shall ensure that, within five months after the balance sheet date of the company, in the case of a public company, and within seven months after balance sheet date in the case of any other company, financial statements that comply with sections 206 to 208 are

(a) completed in relation to the company and that balance sheet date; and

(b) dated and signed on behalf of the Board by two directors of the company, or, if the company has only one director, by that director.

(2) The Registrar may, if he considers it appropriate to do so, extend the period of five or seven months specified in subsection (1) to a period not exceeding eight or 10 months respectively.

(3) If the Board fails to comply with subsection (1), every director of the company who is in default shall be guilty of an offence and liable to the penalty set out in section 493(1).

#### 206. Contents and form of financial statements

(1) The financial statements of a company shall give a true and fair view of-

(a) the state of affairs of the company as at the balance sheet date;

(b) the profit and loss or income and expenditure, as the case may be, of the company for the accounting period ending on that balance sheet date; and

(c) the other matters to which the financial statements relate.

(2) Without limiting subsection (1), in the case of public companies and non-exempt private companies the financial statements shall-

(a) be prepared in accordance with and comply with the International Financial Reporting Standards;

(b) comply with any regulations made under this Act which prescribe the form and content of financial statements for public and non-exempt private companies;

(c) comply with any requirement which applies to the company's financial statements under any other Act.

(3) Without limiting subsection (1) the financial statements of an exempt private company shall be prepared on the basis of generally accepted accounting principles which are appropriate for an exempt private company and shall comply with any regulations made under this Act which prescribe the form and content of financial statements for exempt private companies.

(4) If, in complying with the standards or regulations referred to in subsections (2) and (3), the financial statements do not give a true and fair view of the matters to which they relate, the directors shall add such information and explanations as will give a true and fair view of those matters.

#### 207. Obligation to prepare group financial statements

(1) Subject to subsection (2), the Board of a company that has, on the balance sheet date of the company, one or more subsidiaries, shall in addition to complying with section 205,

ensure that, within five months in the case of a public company, and within seven months in the case of any other company, after that balance sheet date, group financial statements that comply with section 208 are -

- (a) completed in relation to that group and that balance sheet date; and
  - (b) dated and signed on behalf of the directors by two directors of the company, or, if the company has only one director, by that director.
- (2) Group financial statements are not required in relation to a company and a balance sheet date if the company is at that balance sheet date the wholly owned subsidiary of any company incorporated in Botswana.
- (3) Group financial statements are not required in relation to a company and a balance sheet date if the company is at the balance sheet date a virtually owned subsidiary of any company incorporated in Botswana and the parent obtains the approval of the owners of the minority interest.
- (4) In the case of a public or non-exempt private company, group accounts need not deal with a subsidiary of the company in circumstances where this would not be required by the International Financial Reporting Standards.
- (5) In the case of companies other than those coming under subsection (4) group accounts need not deal with a subsidiary of the company if the company's directors are of the opinion and the Registrar agrees that-
- (a) it is impracticable, or would be of no real value to members of the company to do so in view of the insignificant amount involved, or would involve expense or delay out of proportion to the value to the members of the company; and
  - (b) the result would be misleading or harmful to the business of the company or any of its subsidiaries.
- (6) The companies required by this section to prepare group financial statements are referred to for this purpose as a "group of companies" or "group".
- (7) If the Board fails to comply with subsection (1), every director of the company who is in default shall be guilty of an offence and liable to the penalty set out in section 493 (2).

#### 208. Contents and form of group financial statement

- (1) The financial statements of a group shall give a true and fair view of-
- (a) the state of affairs of the company and its subsidiaries as at the balance sheet date; and
  - (b) the profit and loss or income and expenditure, as the case may be, of the company and its subsidiaries for the accounting period ending on that balance sheet date.
- (2) Without limiting subsection (1), in the case of public companies and non-exempt private companies the financial statements of a group shall-
- (a) be prepared in accordance with and comply with International Financial Reporting Standards;
  - (b) comply with any regulations made under this Act which prescribe the form and content of group financial statements of public companies and non-exempt private companies; and
  - (c) comply with any requirements which apply to the group financial statements of public companies and non-exempt private companies under any other Act.
- (3) Without limiting subsection (1), the financial statements of the group in the case of an exempt private company shall comply with any regulations made under this Act which prescribe the form and content of group financial statements of exempt private companies.
- (4) Where a subsidiary became a subsidiary of a company during the accounting period to which the group financial statements relate, the consolidated profit and loss statement or the consolidated income and expenditure statement for the group, shall relate to the profit or loss of the subsidiary for each part of that accounting period during which it was a

subsidiary, and not to any other part of that accounting period.

(5) Subject to subsection (4), where the balance sheet date of a subsidiary of a company is not the same as that of the company, the group financial statements shall-

(a) if the balance sheet date of the subsidiary does not precede that of the company by more than three months, incorporate the financial statements of the subsidiary for the accounting period ending on that date, or incorporate interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company; or

(b) in any other case, incorporate interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company.

(6) Subject to subsection (4), group financial statements shall incorporate the financial statements of every subsidiary of the company.

(7) If, in complying with the standards or regulations referred to in subsections (2) and (3) the financial statements do not give a true and fair view of the matters to which they relate the directors shall add such information and explanations as will give a true and fair view of those matters.

#### 209. Registration of financial statement

(1) Every company to which this section applies shall ensure that, statements within 20 working days after the financial statements of the company and any group financial statements are required to be signed, copies of those statements together with a copy of the auditor's report on those statements are delivered to the Registrar for registration.

(2) The copies delivered to the Registrar under this section shall be certified to be correct copies by two directors of the company, or, where the company has only one director, by that director.

(3) This section applies to every-

(a) public company;

(b) other company in which a public company holds more than 25 per cent of its share capital; and

(c) company which is required by any other enactment to deliver its financial statements to the Registrar for registration.

...

#### 211. Meaning of "financial statements and "group financial statements"

(1) In this Act, the term "financial statements", in relation to a company and a balance sheet date, means-

(a) a balance sheet for the company as at the balance sheet date; and

(b) an income statement which shall-

(i) in the case of a company trading for profit, be a profit and loss statement for the company in relation to the accounting period ending at the balance sheet date; and

(ii) in the case of a company not trading for profit, be an income and expenditure statement for the company in relation to the accounting period ending at the balance sheet date; together with any notes or documents giving information relating to the balance sheet or statement including a statement of accounting policies.

(2) In the case of companies which are required to comply with International Financial Reporting Standards the financial statements shall also include-

(a) a statement of changes in equity between its last two balance sheet dates;

(b) a cash flow statement; and

(c) any other statement which may from time to time be required by International Financial Reporting Standards.

(3) In this Act, the term "group financial statements", in relation to a group and a balance sheet date, means-

(a) a consolidated balance sheet for the group as at that balance sheet date; and

(b) a consolidated income statement as described in subsection (2), together with any notes or documents giving information relating to the balance sheet or statement including a statement of accounting policies.

(4) In the case of companies which are required to comply with International Financial Reporting Standards the group financial statements shall also include-

(a) a consolidated statement of changes in equity between the last two balance sheet dates;

(b) a consolidated cash flow statement; and

(c) any other statement which may from time to time be required by International Financial Reporting Standards.

#### 212. Obligation to prepare annual report

(1) The Board of every company shall, in the case of a public company within five months and in the case of any other company within seven months after the balance sheet date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.

(2) If the Board of a company fails to comply with subsection (1), every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(1) of this Act.

(3) This section does not apply to a one person company.

(4) The shareholders of a private company may resolve by unanimous resolution that this section and sections 213 to 220 shall not apply to the company, and from the date of that resolution the Board shall not be required to comply with these sections, provided that if any shareholder during the period of three months after balance sheet date in any year requests the Board in writing that it comply with these sections the Board shall comply with these sections in relation to the annual report next due and in relation to any subsequent year until any further unanimous resolution is passed under this section.

...

#### 215. Contents of annual report

(1) Every annual report for a company shall be in writing and be dated and, subject to subsection (3), shall-

(a) describe, so far as the Board believes is material for the shareholders to have an appreciation of the state of the Company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in-

(i) the nature of the business of the company or any of its subsidiaries, or

(ii) the classes of business in which the company has an interest, whether as a shareholder of another company or otherwise;

(b) include financial statements for the accounting period completed and signed in accordance with section 205 and any group financial statements for the accounting period completed and signed in accordance with section 207;

(c) where an auditor's report is required under Part XIII in relation to the financial statements or group financial statements, as the case may be, included in the report, include that auditor's report;

- (d) describe any change in accounting policies made during the accounting period;
  - (e) state particulars of entries in the interests register made during the accounting period;
  - (f) state, in respect of each director or former director of the company, the total of the remuneration and the value of other benefits received by that director or former director during the accounting period;
  - (g) state the total amount of donations made by the company and any subsidiary during the accounting period;
  - (h) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any persons who ceased to hold office as directors of the company during the accounting period;
  - (i) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and, as a separate item, fees payable by the company for other services provided by that person or firm; and
  - (j) be signed on behalf of the Board by two directors of the company or, if the company has only one director, by that director.
- (2) A company that is required to include group financial statements in its annual report shall include, in relation to its subsidiaries, the information specified in paragraphs (d) to (j) of subsection (1).
- (3) The annual report of a company need not comply with any of paragraphs (a) and (d) to (i) of subsection (1) if all shareholders agree that the report need not do so, and such agreement is noted in the annual report.

#### 216. Failure to disclose

Subject to the constitution of a company, the failure to send an annual report, notice, or other document to a shareholder in accordance with this Act does not affect the validity of proceedings at a meeting of the shareholders of the company if the failure to do so was accidental.

#### 217. Annual return

- (1) Subject to subsection (3) every company shall at least once in every year deliver to the Registrar an annual return.
- (2) Subject to subsection (3) the annual return shall be completed within 28 days from the date of the annual meeting of the company or where section 107 applies, the date by which the company is required to complete the entries in its minute book relating to the matters which are required to be done at an annual general meeting.
- (3) A company which keeps a branch register outside Botswana shall comply with the requirements of subsection (2) within eight weeks after the dates referred to in subsection (2).
- (4) The annual return shall be signed by a director or secretary.
- (5) The annual return of a company limited by shares shall contain the matters specified in the Sixth Schedule provided that if the matters required to be stated are in each case unchanged from the last preceding annual return the company may present a "No Change Return" in which it is certified by a director or secretary of the company that there is no change in any of the matters stated from the previous year.
- (6) The annual return of a company limited by guarantee shall contain the matters which are prescribed by regulations under this Act.
- (6A) The annual return of a close company shall be in the form to be prescribed under this Act.
- (7) A company need not make an annual return in the calendar year of its registration.

(8) Where the number of members of a private company exceeds 25, the company shall send with its annual return a certificate signed by a director or the secretary of the company to the effect that the excess of the number of members of the company over 25 consists wholly of employees or former employees or of a person or persons who are joint holders and who by virtue of section 245(a) are not required to be included in computing the number of 25.

(9) A public company which-

(a) has more than 500 members; and

(b) provides reasonable accommodation and facilities at a place approved by the Registrar for persons to inspect and take a list of its members and particulars of shares transferred, shall not, unless the Registrar otherwise directs, be required to include a list of members with the annual return if a certificate by the secretary is included that the company is of a kind to which this subsection applies.

(10) If the Board of a company fails to comply with subsection (1) or subsection (2), every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(2).

#### 218. Public inspection of company records

(1) A company shall keep the following records available for records inspection in the manner prescribed in section 220 by a person who serves written notice of intention to inspect on the company-

(a) the certificate of incorporation or registration of the company;

(b) the constitution of the company, if it has one;

(c) the share register;

(d) the full names and residential addresses of the directors;

(e) the registered office and address for service of the company;

(f) the register of charges;

(g) copies of the instruments creating or evidencing charges which are required to be registered under section 125; and

(h) in the case of a public company the register of substantial shareholders.

(2) If a company fails to comply with subsection (1)-

(a) the company commits an offence and is liable on conviction to the penalty set out in section 492(1); and

(b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(1).

#### 219. Inspection of company records by shareholders

(1) In addition to the records available for public inspection, a company shall keep the following records available for inspection in the manner prescribed in section 220 by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves written notice of intention to inspect on the company-

(a) minutes of all meetings and resolutions of shareholders;

(b) copies of written communications to all shareholders or to all holders of a class of shares during the preceding 10 years, including annual reports, financial statements, and group financial statements;

(c) certificates given by directors under this Act; and

(d) the interests register of the company, if it has one.

(2) If a company fails to comply with subsection (1)-

(a) the company shall be guilty of an offence and liable to the penalty set out in section 492(2); and

(b) every director of a company shall be guilty of an offence and liable to the penalty set out in section 493(2).

#### 220. Manner of inspection

(1) Documents which may be inspected under section 218 or section 219 shall be available for inspection at the place at which the company's records are required to be kept during normal working hours of each working day during the inspection period.

(2) In this section, the term "inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the eighth working day after the day of service.

#### 221. Copies of documents

(1) A person may require a copy of, or extract from, a document which is available for inspection by that person under section 218 or section 219 to be sent to him-

(a) within five working days after he or she has made a request in writing for the copy or extract; and

(b) if that person has paid a reasonable copying and administration fee prescribed by the company.

(2) If a company fails to provide a copy of, or extract from, a document in accordance with a request under subsection (1)-

(a) the company shall be guilty of an offence and liable to the penalty set out in section 492(1); and

(b) every director of the company shall be guilty of an offence and liable to the penalty set out in section 493(2).

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

No statistics on the implementation of this provision were available.

#### *(b) Observations on the implementation of the article*

Private sector entities must register in the commercial register and keep proper books and accounts, otherwise they are subject to sanctions set out in the Companies Act and FIA. In addition, criminal provisions on forgery and falsification of documents (sections 339-382 Penal Code), fraud and false accounting (sections 321-325 Penal Code) can also apply.

#### *Paragraph 4 of article 12*

*4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The general rule under the Botswana Income Tax Act, section 39 is that an expense, to be tax deductible, must be “wholly, exclusively and necessarily incurred” in the production of income. Section 50 of the Act provides for disallowable deductions as follows:

50. Deductions not allowable

Subject to any express provision in this Part authorizing a specified deduction in ascertaining chargeable income, no deduction shall be allowed in respect of-

- (a) domestic or private expenses;
- (b) any amount not wholly, exclusively and necessarily laid out or expended for the purpose of producing assessable income;
- (c) any capital withdrawn or any expenditure or loss of a capital nature;
- (d) any tax imposed under this Act;
- (e) any income tax or tax of a similar nature charged in a country outside Botswana; or
- (f) any contribution to a benefit, superannuation, pension, provident or similar fund which is not an approved benefit fund or an approved superannuation fund.

The Botswana Income Tax Act and subsidiary legislation do not specify the non-deductibility of expenses involving crimes such as bribes.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

*(b) Observations on the implementation of the article*

Botswana indicates that it is partially in compliance with paragraph 4 of Article 12.

During the country visit, it was clarified that the Income Tax Act envisages the deductibility of some expenses including entertainment expenses, but that there is no specific provision in the Botswana Income Tax Act or subsidiary legislation that specifies the non-deductibility of unlawful expenses such as bribes.

**It is recommended that Botswana amend its legislation to clearly provide for the non-deductibility of unlawful expenses such as bribes from income.**

## Article 13. Participation of society

### *Paragraph 1 of article 13*

*1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:*

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*
- (b) Ensuring that the public has effective access to information*
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:*
  - (i) For respect of the rights or reputations of others;*
  - (ii) For the protection of national security or ordre public or of public health or morals.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The above article aims at promoting active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption. It also aims at raising public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This is done by:

a) Enhancing transparency through:

- Formation of Community Anti-Corruption Clubs - These are a useful platform in so far as engaging members of the public and civil society in the fight against corruption. They are currently three (3) in number, and have been registered with the Registrar of Societies. One example was provided to the reviewers (Thamaga Community Anti-Corruption Club launch).
- Community “kgotla” meetings where the Public Education Division of the DCEC educates the public on the evils of corruption and shares information on ways of reporting. These are sometimes done in coordination with parliamentarians on constituent visits.
- Presentations to Ministries, Departments, Parastatals and private entities. The DCEC’s educational efforts have targeted three populations in particular: government functionaries, youth, and rural communities. The DCEC has conducted trainings for government workers through workshops that focused on Ministries subject to numerous corruption complaints. The DCEC also responded to requests by private sector enterprises and non-governmental organizations for training sessions on issues such as business ethics and conflict of interest within its available resources.

b) Ensuring the public has access to information through:

- Newsletters
- Pamphlets and brochures
- Social media like Facebook
- Comic books
- Radio and television programmes,
- Presentations to various stakeholders.
- Annual reports,
- Websites/ government portal
- Public lectures
- Active participation by individuals and civil society

c) Public information and education activities that contribute to the non-tolerance of corruption include:

- Beginning in 2010, in cooperation with the Ministry of Education, the DCEC integrated corruption issues into school curricula. Infusion has been done in secondary school the junior certificate level in social studies and guidance and counselling subjects. Attempts were made to infuse at the tertiary level (Colleges of Education). Copies of a secondary school syllabus were provided to the reviewers.
- In 2014, DCEC in collaboration with the University of Botswana developed an Anti-Corruption Manual to educate the public on the dangers of corruption. The manual proposes strategies on preventing corruption at an individual, organizational, national and global level. The concept of integrity is used to promote good governance and the rule of law as key values. Workshops to gather views from stakeholders were held since 2012 in Kang, Maun, Francistown, Kanye and twice in Gaborone.
- Since 2008 the DCEC has been engaging in outreach and cooperation with the media, when it created a public relations office in the DCEC.

d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption through:

- Draft Freedom of Information Bill presented to Parliament in 2010
- Whistleblowing Act No. 9 of 2016
- Corruption and Economic Crime Act, as amended

Consultations were held with all representatives of society in developing a policy for Cabinet approval, namely the Draft National Anti-Corruption Policy, which involved all stakeholders in non-governmental organizations, Botswana Council of Non-Governmental Organizations (BOCONGO), Council of Churches and civil society.

The participation of civil society is one of the pillars of Botswana's Vision 2036, entitled "Prosperity for all"<sup>20</sup>. Pillar 4 of the Vision 2036, which has the heading "Governance, Peace and Security" provides as follows:

#### *CIVIL SOCIETY PARTICIPATION*

Civil society organisations, including trade unions and faith based organisations, act as watchdogs and play a pivotal role in identifying gaps and advising government on key socio-economic issues.

**Civil society organisations will be partners and legitimate actors in the national development process.** We will empower and support our civil society organisations to undertake those functions that are complementary to government development efforts. Our civil society will be vibrant, representing the voices of the community, especially the disadvantaged.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Examples of documents:

1. DCEC Annual Reports
2. Tokafatso Maduo (newspaper articles)
3. Facebook screen shots
4. Fairs and Exhibitions report
5. Infusion of anti-corruption content into school syllabus
6. Community Anti-Corruption Club Constitutions
7. Community Anti-Corruption Club Guidelines

<sup>20</sup> <http://www.statsbots.org.bw/sites/default/files/documents/Vision%202036.pdf>

8. Brochures
9. Comic books
10. Posters
11. Newsletters

*(b) Observations on the implementation of the article*

Botswana indicates that it is partially in compliance with paragraph 1 of Article 13.

In the course of the review, DCEC officials cited challenges in engaging civil society in the prevention and fight against corruption, primarily due to limited resources and capacity of civil society organizations, which make them reluctant to engage with the DCEC. Botswana has requested technical assistance in the form of best practices in engaging society in the fight against corruption.

The engagement with civil society also emerged as a priority area in Botswana's first cycle country review when it was recommended that **Botswana “consider strengthening collaboration between the DCEC and civil society on anti-corruption.” This recommendation also stands for this second cycle country review.**

During the country visit, it was clarified that although historically, in Botswana, civil society had not taken an active role on anti-corruption, a partnership between civil society and DCEC has now emerged and its parameters are being defined. In the meantime, meetings and discussions on the scope of activities have taken place. There is also a wish to conclude an agreement between civil society organizations and anti-corruption authorities in view of civil society's role in enhancing public education on anti-corruption. In this regard, it was emphasized that, in the last 3 years, the cooperation between DCEC and civil society had been enhanced in particular in the area of preventive measures. Furthermore, civil society organizations were invited to be a partner in a construction sector transparency initiative (spearheaded by PPBD).

During the country visit, it was discussed that civil society could have a leading role in preventing corruption at community levels and that, from DCEC's perspective, one of the key results areas could be to have civil society actively advocate against corruption and mobilize communities. A need to continue enhancing the partnership between DCEC and civil society was identified. The civil society has expressed a wish for the development of a national action plan to fight corruption as well as to provide technical support in the implementation of anti-corruption programmes.

During the country visit, in response to a question regarding the involvement of the public in government procedures, including the development of laws, it was clarified that, prior to the promulgation of laws in Botswana, the responsible ministries develop memoranda that are circulated to other departments for comments. It was noted that, although the involvement of the public in this regard is minimal, civil society could be involved in some instances.

The observations made under article 10 regarding the Freedom of Information Bill are also referred to.

*Paragraph 2 of article 13*

*2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Information about reporting channels to the DCEC is passed to society through

1. DCEC Annual Reports
2. Tokafatso Maduo (newspaper articles)
3. Facebook screen shots
4. Fairs and Exhibitions
5. Infusion of anti-corruption content into school syllabi
6. Community Anti-Corruption Clubs Constitutions
7. Community Anti-Corruption Clubs Guidelines
8. Brochures
9. Comic books
10. Posters
11. Newsletters
12. "Kgotla" meetings where the Public Education Division of the DCEC educates the public on the evils of corruption and shares information on ways of reporting.

DCEC reports are received either in person or through electronically, anonymously, or by walk-in, all of which are acceptable means. Other mechanisms to facilitate reports on corruption include:

Ø Whistleblowing Act No. 9 of 2016

Ø DCEC Toll free number

Ø Ombudsman

Ø Suggestion Boxes

Ø Corruption Prevention Committees

Ø Anti-Corruption Units

Ø Internal mechanisms within Ministries, such as Corporate Services

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

1. DCEC Annual Reports
2. Tokafatso Maduo (newspaper articles)
3. Facebook screen shots
4. Fairs and Exhibitions
5. Infusion of anti-corruption content into school syllabus
6. Community Anti-Corruption Clubs Constitutions
7. Community Anti-Corruption Clubs Guidelines
8. Brochures
9. Comic books
10. Posters
11. Newsletters

Training for specified parties has been done.

A total of 1430 reports were received by the DCEC in 2016. Out of the 1340 reports, 402 (30%) were classified for investigation, 772 (57.61%) of these were referred to various organisations, whilst 20 (1.49%) needed further development. Furthermore, advice was offered to 86 (6.41%) of these reports and 60 (4.48%) were received as further report to the matters already being investigated by the DCEC.

The Directorate had a total of 1346 cases under investigation as of 31 December 2016. Out of this total, 944 cases were brought forward from the previous year and 402 were classified for investigations.

There have been no changes in the DCEC's reporting/complaint handling mechanism since the new Whistleblowing Act came into effect in December 2016. The DCEC, as one of 8 implementing institutions, has been working to raise awareness of the new law and begin to implement it. Some publicity has also been conducted through TV ads. It is too early to assess the impact of the new law, given that it is not yet fully implemented.

*(b) Observations on the implementation of the article*

**In light of the information provided, it is recommended that Botswana's institutions, including the DCEC, take steps to implement the Whistleblowing Act and that relevant instructions be issued for this purpose.**

**It is also recommended that Botswana continue awareness-raising on corruption and reporting channels to relevant authorities.**

*(c) Challenges, where applicable*

Challenges in engaging civil society in the prevention and fight against corruption, primarily due to limited resources and capacity of civil society organizations.

*(d) Technical assistance needs*

Best practices in engaging society in the fight against corruption.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

**Article 14. Measures to prevent money-laundering**

*Subparagraph 1 (a) of article 14*

*1. Each State Party shall:*

*(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

## *Institutional framework*

The Financial Intelligence Agency (FIA), established under Part II of the **Financial Intelligence Act**, is mandated inter alia to request, receive and analyze reports of suspicious and cash transactions and to report to the relevant investigatory or supervisory authorities where any offence is suspected.

### **Financial Intelligence Act, 2009**

#### **“PART II - Establishment of Financial Intelligence Agency**

##### 3. Establishment of Agency

(1) There is hereby established an Agency, to be called the Financial Intelligence Agency which shall consist of a Director and such other officers of the Agency, as may be necessary for the proper performance of the functions of the Agency.

(2) The Minister may appoint a Director and subject to section 5, no person shall be appointed Director unless he or she possesses such qualifications as the Committee may determine.

(3) The Agency shall be a public office and accordingly, the provisions of the Public Service Act shall with such modifications as may be necessary, apply to the Director and to officers of the Agency.

(4) Subject to the provisions of this Act, the Agency shall not, in the performance of its functions, be subject to the direction or control of any other person or authority.

##### 4. Functions of the Agency

(1) The Agency shall be the central unit responsible for requesting, receiving, analyzing and disseminating to an investigatory authority, supervisory authority or comparable body, disclosures of financial information -

(a) concerning suspicious transactions;

(b) required by or under any enactment in order to counter financial offences; or

(c) concerning the financing of any activities or transactions related to terrorism

(2) For the purposes of subsection (1), the Agency shall -

(a) collect, process, analyze and interpret all information disclosed to it and obtained by it under this Act;

(b) inform, advise and collaborate with an investigatory authority or supervisory authority in accordance with this Act;

(c) forward financial intelligence reports to an investigatory authority;

(d) conduct examinations of a specified party to ensure compliance with this Act by the specified party;

(e) give guidance to a specified party regarding the performance by the specified party of duties under this Act;

(f) provide feedback to a specified party regarding a report made in accordance with this Act; and

(g) exchange information with a comparable body.

(3) In furtherance of the functions of the Agency, the Director may consult with and seek such guidance from law enforcement officers, government agencies and such other persons as the Agency considers desirable.

The **Non-Bank Financial Institutions Regulatory Authority (NBFIRA)** is responsible for supervising the non-bank financial services including insurance, asset managers, pension

and medical aid funds, international financial services centre accredited companies, investment advisors and stockbroking firms. The NBFIRA supervises these sectors for AML/CFT compliance. It is established under the Non-Bank Financial Institutions Regulatory Authority (NBFIRA) Act, 2006.

The regulatory framework of NBFIRA entails regulation of non-bank financial institutions through licensing, supervision and monitoring of compliance with statutes, and regulation of market practices. NBFIRA's regulatory approach embraces a risk scoring methodology, oversight, inspections, investigations and enforcement actions. NBFIRA has powers of enforcement of financial services laws through imposition of administrative penalties or applications to the High Courts for enforcement actions such as statutory management and liquidation. Furthermore, the regulatory authority has powers relating to the oversight of the global businesses providing non-bank financial services under the Botswana Investment and Trade Centre (BITC).

### *Legislative framework*

The anti-money laundering (AML) regime that is established by the Financial Intelligence Act, 2009 and the Financial Intelligence Regulations 2013 emphasizes, among other obligations, the following:

#### (a) Submission of Suspicious and Cash Transaction reports, as well as Electronic Funds Transfer reports, to the FIA

According to sections 17 to 19 and 21 of the FI Act, as read with Regulations 18 and 19:

#### **Financial Intelligence Act, 2009**

##### **“17. Specified party reporting**

- (1) A specified party shall, within such period as may be prescribed, report a suspicious transaction to the Agency.
- (2) Nothing in subsection (1) shall be construed as restricting an attorney from reporting a suspicious transaction of which he or she has acquired knowledge in privileged circumstances if it has been communicated to the attorney with a view to the furtherance of a criminal or fraudulent purpose.
- (3) For purposes of this section, attorney has the same meaning assigned to it under the Legal Practitioners Act.

##### **18. Cash transactions above prescribed limit**

- (1) Notwithstanding the provisions of section 17, a specified party shall, within such period as may be prescribed, report to the Agency, prescribed particulars concerning a transaction concluded with a customer where in terms of the transaction an amount of cash in excess of such amount as may be prescribed—
  - (a) is paid by the specified party to the customer, to a person acting on behalf of the customer or to a person on whose behalf the customer is acting; or
  - (b) is received by the specified party from the customer, from the person acting on behalf of the customer or from a person on whose behalf the customer is acting.
- (2) A specified party that contravenes a provision of this section shall be liable to a fine not exceeding P100 000 as may be imposed by the supervisory authority.

### **19. General Reporting**

(1) A person who carries on, is in charge of, manages, or is employed by a business, shall report a suspicious transaction to the Agency.

(2) A person who accepts any payment in cash in excess of such amount as may be prescribed or an equivalent amount in foreign currency shall report such particulars as may be prescribed to the Agency.

(3) A person who contravenes a provision of this section shall be guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment to a term not exceeding three years or to both.

### **21. Electronic transfer of money into or out of Botswana**

(1) A specified party that through electronic transfer, receives into or sends out of Botswana money in excess of the prescribed amount on behalf or on the instruction of a customer or any person, shall report to the Agency such particulars of the transfer as may be prescribed.

(2) A specified party that contravenes a provision of subsection (1) shall be liable to a fine not exceeding P1 000 000 as may be imposed by the supervisory authority.”

## **Financial Intelligence Regulations, 2013**

### **18. Period of Reporting**

A report made in terms of section 17 or 19 of the Act shall be sent to the Agency as soon as possible but not later than 15 working days, after the suspicion arose concerning the transaction that gave rise to the need to report, unless the Agency, in writing, approves the sending of the report after the expiry of the period.

### **19. Reporting of electronic transfers of money into or out of Botswana**

(1) For the purposes of section 21 of the Act, a specified party that through electronic transfer, receives into or sends out of Botswana, money in excess of P10 000, on behalf or on the instruction of a customer or any person shall report to the Agency such transaction.

...

The Financial Intelligence Act, 2009 (FI Act) designates NBFIRA as the supervisory body responsible for the AML/CTF compliance of non-bank financial institutions. NBFIs are obliged by the FI Act to report suspicious transactions and cash transactions above P10 000 to the FIA.

#### **(b) Identification of Customers**

Section 10 (1) of the FI Act, 2009 (quoted below) states that a specified party shall not establish a business relationship or conclude a transaction with a customer unless the specified party has undertaken due diligence measures.

FI Regulations 6-9 state information that is to be ascertained before establishing any business relationship or transactions with companies, partnerships, trusts and other entities.

Botswana does not have beneficial ownership identification requirements, except for Financial Intelligence Regulation 9 in relation to trusts.

## **Financial Intelligence Act, 2009**

## **“PART IV -Duty to Identify Customers and Keep Records**

### 9. Obligations of specified party

(1) A specified party shall -

(a) implement and maintain a customer acceptance policy, internal rules, programmes, policies, procedures or such controls as may be prescribed to protect its system from financial offences;

(b) designate compliance officers at the management level who will be in charge of the implementation of internal programmes and procedures, including maintenance of records and reporting of suspicious transactions;

(c) ensure that a compliance officer designated under paragraph (b) has at all times, timely access to customer identification data, transaction records and other relevant information;

(d) implement and maintain compliance programmes; and

(e) develop and maintain audit functions to evaluate any policies, procedures and controls developed in accordance with this section to ensure compliance with measures taken by the specified party to comply with the Act and the effectiveness of those measures.

(2) For the purposes of subsection (1) -

(a) programmes referred to in subsection (1) shall be consistent with instructions, guidelines or recommendations issued under section 27 (1) (b) and may include -

(i) the establishment of procedures to ensure high standards of integrity of employees and a system to evaluate the personal, employment and financial history of employees;

(ii) on-going employee training programme with regard to the specified party's obligations under this Act;

(iii) an independent audit function to check compliance with programmes; and

(b) the internal rules referred to in subsection (1) shall be consistent with prescribed requirements and be made available to all employees of the specified party and shall include -

(i) the information the record of which is required to be kept under this Part;

(ii) identification of reportable transactions; and

(iii) training of employees of the specified party to recognize financial offences.

(3) A specified party that fails to take such measures as are reasonably necessary to ensure that neither it nor a service offered by it, is capable of being used by a person to commit or to facilitate the commission of a financial offence shall be liable to a fine not exceeding P100 000 as may be imposed by a supervisory authority.

### 10. Identification of customers

(1) A specified party shall not establish a business relationship or conclude a transaction with a customer unless the specified party has undertaken due diligence measures and such other steps as may be prescribed -

(a) to establish and verify the identity of the customer;

(b) if the customer is acting on behalf of another person, to establish -

(i) the identity of that other person,

(ii) the customer's authority to establish the business relationship or to conclude a transaction on behalf of that other person;

(c) if another person is acting on behalf of the customer, to establish and verify -

(i) the identity of the customer; and

(ii) that other person's authority to act on behalf of the customer.

(2) Where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall not conclude a transaction in the

course of that relationship unless it has complied with subsection (1).

(3) Proof of identity of a customer under this section shall be through the production of a National Identity Card for citizens and a passport for non-citizens.

(4) A person who transacts business with a specified party using false identification documents shall be guilty of an offence and liable to a fine not exceeding P100000 or to imprisonment for a term not exceeding five years or to both.

(5) A specified party that contravenes a provision of this section shall be liable to such fine not exceeding P250 000 as may be imposed by the supervisory authority.”

### **Financial Intelligence Regulations, 2013**

#### **“6. Ascertainment of information concerning companies and close companies**

For the purposes of ensuring compliance with these Regulations and the Act, where a specified party seeks to establish the identity of a company, foreign company or close company wishing to conclude a business relationship or transaction with that specified party, the specified party shall ascertain —

(a) the registered name and registration number of the company;

(b) if it is an external company, the name under which it conducts business in the country in which it is incorporated;

(c) if the external company conducts business in Botswana using a name other than the name specified under paragraph (a) or (b), the name used in Botswana;

(d) if it is an external company, the registered address from which it operates in the country where it is incorporated or if it operates from multiple addresses in that country, the address of its head office;

(e) if the company or close company operates within Botswana, the address from which it operates in Botswana, or if it operates from multiple addresses within Botswana, the address of the office seeking to establish a business relationship or to conclude a transaction with the specified party;

(f) the nature of its business;

(g) the income tax and value added tax registration numbers of the company or close company issued by Botswana Unified Revenue Service, or if incorporated outside Botswana, such numbers issued by a similar revenue office in the country in which it is incorporated if such numbers were issued; and

(h) the particulars referred to in regulation 5 (1) (a), (b) or (c) whichever is applicable concerning —

(i) the manager of the company, or in the case of a close company, each member, or

(ii) each natural person who purports to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the company or close company.

#### **7. Ascertainment of information concerning other entities**

A specified party shall ascertain, in respect of any entity —

(a) the registered name and registration number of the entity, if registered;

(b) the office or place of business, if any, from which the entity operates;

(c) the entity’s principal activities;

(d) the full name, residential address if available, and any one of the following details of the natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the entity, the person’s —

(i) identity card number and date of birth, where the natural person is a citizen of Botswana, or

(ii) passport number and date of birth, where the natural person is not a citizen or resident of Botswana.

#### **8. Ascertainment of information concerning partnerships**

A specified party shall ascertain in respect of a partnership, the partnership's —

- (a) registered name;
- (b) office or place of business, if any, or where applicable, its registered address;
- (c) registration number; and
- (d) full name, residential address if available, and any one of the following details of each partner, including silent partners in a limited partnership and any other natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the partnership —
  - (i) the identity card number and date of birth, where the natural person is a citizen of Botswana, or
  - (ii) the passport number and date of birth, where the natural person is not a citizen or resident of Botswana.

#### **9. Ascertainment of information concerning trusts**

(1) A specified party shall ascertain in respect of a trust —

- (a) its registered name and the registration number, if any;
  - (b) the country where it was set up, if the trust was set up in a country other than Botswana;
  - (c) the management company of the trust, if any;
  - (d) the full name of the trust if not registered;
  - (e) the residential address, contact details and particulars listed in the order of preference under paragraph (f) of each natural person who purports to be authorised to establish a business relationship or to conclude a transaction with the specified party on behalf of the trust; and
  - (f) the full name of the trustee, beneficiary referred to by name in the trust deed or other founding instrument in terms of which a trust is created and the founder of the trust and any of the following details —
    - (i) identity card number and date of birth where the person is a citizen of Botswana, or
    - (ii) passport number and date of birth where the person is not a citizen or resident of Botswana.
- (2) If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the specified party shall follow the procedure in regulation 4 (2) to ascertain the identity of the beneficiaries.”

#### **(c) Keeping of records**

Section 11 and 12 of the FI Act and the FI Regulations establish record keeping requirements for specified parties. Section 15 provides for the penalty that comes with an offence of not keeping records according to sections 11 and 12.

#### **“11. Keeping of records**

- (1) Where a specified party establishes a business relationship or concludes a transaction with a customer, the specified party shall maintain records of-
  - (a) the identity of the customer;
  - (b) if the customer is acting on behalf of another person-
    - (i) the identity of the person on whose behalf the customer is acting, and

- (ii) the customer's authority to act on behalf of that other person;
  - (c) if another person is acting on behalf of the customer-
  - (i) the identity of that other person, and
  - (ii) that other person's authority to act on behalf of the customer;
  - (d) the manner in which the identities of the persons referred to in paragraphs (a), (b) and (c) were established;
  - (e) the nature of the business relationship or transaction;
  - (f) the amount involved in the transaction and the parties to the transaction;
  - (g) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;
  - (h) the name of the person who obtained the information referred to under paragraphs (a), (b) and (c) on behalf of the specified party; and
  - (i) any document or copy of a document obtained by the specified party in order to verify a person's identity.
- (2) Records kept in terms of subsection (1) may be kept in electronic form.

#### 12. Period records to be kept

- (1) A specified party shall keep records referred to under section 11 for at least five years from the date a transaction is concluded.
- (2) Notwithstanding the generality of subsection (1), an investigatory authority may by request in writing, require a specified party to keep and maintain a record referred to under section 11 for such longer period as may be specified in the request.

#### 15. Offences relating to records

- (1) A specified party that fails to keep records in accordance with sections 11 and 12 shall be liable to a fine not exceeding P100 000 as may be imposed by the supervisory authority.
- (2) A person who destroys or removes any record, register or document kept in accordance with this Part shall be guilty of an offence and liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding five years or to both.”

### **Financial Intelligence Regulations, 2013**

#### **PART IV — Keeping of Records**

##### **15. Keeping of records**

- (1) A specified party shall in addition to its responsibility under section 11 of the Act to keep records, keep a copy of each report sent to the Agency in terms of section 17 of the Act as well as copies of records and documents supporting the report in a manner that allows any additional information requested under section 12 of the Act to be forwarded without delay to the person requesting the additional information.
- (2) The Agency shall keep a copy of each report received under section 28 of the Act.
- (3) Every copy, record or document referred to in subregulations (1) and (2) shall be kept
  - (a) for a period of at least five years from the date of filing the report with the Agency; and
  - (b) in the manner that protects the confidentiality of the copy, record or document involved.

##### **16. Record keeping by third parties**

- (1) The specified party shall, where a third party keeps records on behalf of the specified party in terms of section 13 of the Act, ensure it has sufficient access to such records in order to comply with its obligations under the Act without undue delay.
- (2) A specified party shall, in terms of section 13 (2) of the Act provide the Agency with the

identification and contact details of the third party referred to in subregulation (1), including the following particulars —

- (a) the third party's full name, if the third party is a natural person or registered name, if the third party is a company or close corporation;
- (b) the name under which the third party conducts business;
- (c) the full name and contact details of the individual who exercises control over access to records kept under subregulation (1);
- (d) the physical address where the records are kept;
- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact details of the individual who liaises with the third party on behalf of the specified party concerning the retention of the records.

#### **24. Internal rules concerning keeping of records**

A specified party shall have internal rules concerning the keeping of records in terms of section 11 of the Act which shall —

- (a) provide for the necessary processes and working methods to ensure that relevant staff members of the specified party obtain the information pertaining to which records shall be kept on each occasion when a business relationship is established or a transaction is concluded with the specified party;
- (b) provide for the responsibility of the management of the specified party in respect of compliance with the Act and internal rules regarding the keeping of records;
- (c) allocate responsibilities and accountability to ensure that requirements concerning the keeping of records are complied with;
- (d) provide for disciplinary steps against members of staff concerned for non-compliance with the internal rules regarding the keeping of records;
- (e) provide for the necessary processes and working methods to ensure that the accuracy and the integrity of the records is maintained for the entire period for which they must be kept;
- (f) provide for the necessary processes and working methods to ensure that access required or authorised under the Act by the relevant staff members to the records can be obtained without undue hindrance; and
- (g) take into account any guidance notes concerning the keeping of records which may apply to the specified party.”

#### **Section 21, Banking Act**

“Central Bank may call for information

- (1) The Central Bank may, for the purpose of the administration of this Act, call for any information which it may require, from any bank, concerning its operations in Botswana or those of its affiliates in Botswana and subsidiaries abroad, if any.
- (2) The Central Bank may direct that all or any part of the information submitted pursuant to this section shall be audited, either by the bank's own external auditors or by an auditor appointed by the Central Bank, at such bank's own expense.
- (3) Where, under this Act, any information or document is required to be supplied to the Central Bank within a specified period, the Central Bank may, at the request of the bank concerned, extend such period.
- (4) A bank shall notify the Central Bank of any transaction by any of its customers which it suspects to be money laundering.
- (5) Any bank that fails to supply any information called for by the Central Bank under subsection (1), or fails to supply it within the time, or extended time, stipulated by the

Central Bank, or that supplies false or misleading information, or that fails to notify the Central Bank of any suspicious transaction under subsection (4), shall be guilty of an offence and liable to a fine of P10 000.”

#### Section 70, **Bank of Botswana Act**

##### Bank may call for information

(1) For the purposes of the administration of this Act and in the proper performance of its functions under this Act, the Bank may call for such information as it may require from any person.

(2) Any person who fails to supply any information called for by the Bank under subsection (1) or who supplies any false or misleading information shall be guilty of an offence and shall be liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding two years, or to both.”

##### Covered institutions:

#### **Financial Institutions Act, 2009**

##### **FIRST SCHEDULE**

##### **Specified Parties (sec 2)**

1. An Attorney as defined in the Legal Practitioners Act, Cap. 61:01
2. An accountant as defined under the Accountants Act, Cap. 61:05
3. A registered professional as defined under the Real Estate Professionals Act, Cap. 61:07
4. A bank as defined under the Banking Act, Cap. 46:04
5. A bureau de change as defined under the Bank of Botswana Act, Cap. 55:01
6. A building society as defined under the Building Societies Act, Cap. 42:03
7. A casino as defined under the Casino Act, Cap. 19:01
8. A Non Bank Financial Institutions as defined in the Non Bank Financial Institutions Regulatory Authority Act, Act, No. 2 of 2007
9. A person running a lottery under the Lotteries and Betting Act, Cap. 19:02
10. The Botswana Postal Services established under the Botswana Postal Services Act, Cap. 72:01
11. A precious stones dealer as defined under the Precious and Semi Precious Stones (Protection) Act, Cap. 66:03
12. A semi-precious stones dealer as defined under the Precious and Semi Precious Stones (Protection) Act, Cap. 66:03
13. Botswana Savings Bank established under Botswana Savings Bank Act, Cap. 56:03
14. The Botswana Unified Revenue Service established under the Botswana Unified Revenue Services Act, Cap. 53:03
15. Citizen Entrepreneurial Development Agency
16. Botswana Development Corporation
17. National Development Bank established under the National Development Bank Act, Cap. 74:05
18. A car dealership
19. Money remitters

##### Policy-making and coordination:

National coordination on AML in Botswana is spearheaded by the Ministry of Finance and

Economic Development (MFED) through a multi-agency National Coordinating Committee on Financial Intelligence (NCCFI). NCCFI is formed in terms of section 6 of the FI Act to assess effectiveness of policies and measures to combat economic crimes and make recommendations to the Minister of Finance for legislative, administrative and policy reforms. It consists of several institutions, including: Ministry of Finance and Economic Development, DCEC, Botswana Police Service, AG's Chambers, DPP, BoB, Botswana Unified Revenue Service (BURS), NBFIRA, Directorate of Intelligence and Security Services, Ministry of Defence, Justice and Security, Ministry of Foreign Affairs and International Cooperation, and Department of Immigration and Citizenship. The NCCFI is chaired by the Permanent Secretary in MFED and its activities are coordinated by the Director of the FIA. The NCCFI is largely focused on developing the AML/CFT legal and institutional framework, and conducting the National Risk Assessment (NRA), which will be used to develop a National AML/CFT Strategy and Implementation Plans.

### **Financial Institutions Act, 2009**

#### **6. Establishment of National Coordinating Committee on Financial Intelligence**

- (1) There is hereby established a National Coordinating Committee on Financial Intelligence.
- (2) The Committee shall have members consisting of the Director and representatives of —
  - (a) the Ministry of Finance and Development Planning who shall be chairperson;
  - (b) the Directorate on Corruption and Economic Crime;
  - (c) the Botswana Police Service;
  - (d) the Attorney General's Chambers;
  - (e) the Bank of Botswana;
  - (f) the Botswana Unified Revenue Services;
  - (g) the Ministry of Foreign Affairs and International Cooperation;
  - (h) the Department of Immigration;
  - (i) the Non Bank Financial Institution Regulatory Authority;
  - (j) Directorate of Public Prosecutions;
  - (k) Directorate of Intelligence and Security; and
  - (l) Ministry of Defence, Justice and Security.
- (3) The Director shall be secretary to the Committee.

#### **7. Functions of Committee**

The Committee shall —

- (a) assess the effectiveness of policies and measures to combat financial offences;
- (b) make recommendations to the Minister for legislative, administrative and policy reforms in respect to financial offences;
- (c) promote coordination among the Agency, investigatory authorities, supervisory authorities and other institutions with a view to improving the effectiveness of existing policies and measures to combat financial offences;
- (d) formulate policies to protect the international reputation of Botswana with regard to financial offences; and
- (e) generally advise the Minister in relation to such matters relating to financial offences, as the Minister may refer to the Committee.

#### **8. Meetings of Committee**

- (1) The Committee shall meet at least once per quarter for the transaction of business.
- (2) Notwithstanding the provisions of subsection (1), the Committee shall meet when the

Minister so directs.

(3) The Committee —

(a) shall regulate its meetings and proceedings in such manner as it thinks fit;

(b) may request advice or assistance from such persons as it considers necessary to assist it to perform its functions;

(c) may appoint committees from amongst its members to assist it in the performance of its functions; and

(d) may co-opt any person whether for a particular period or in relation to a particular matter to be dealt with by the Committee.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Establishment of the Financial Intelligence Agency which is currently operational.

2017 Assessment of the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG), which came with recommendations.

2017 National Money-Laundering Risk Assessment (NRA) for Botswana.

Establishment of the Non-Bank Financial Institutions Regulatory Authority.

Statistics provided by FIA (through 2016):

<b>Total STRs received by FIA</b>				
<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>TOTAL</b>
22	114	95	15	246

*Disseminations from FIA from February 2014 to June 2016*

<b>Competent Authority to which Disseminations were made</b>	<b>Total</b>
BURS	14
DCEC	6
BPS	6

*(b) Observations on the implementation of the article*

During the country visit it was explained that Botswana completed a National Money Laundering Risk Assessment (NRA) in 2017, supported by the World Bank, which resulted in the adoption of a National AML/CFT Risk Assessment Report and Action Plan. The NRA results were sent to all supervisory authorities for circulation to supervisees and have prompted the development of proposed revisions to the FI Act.

Based on the results of the recent NRA, supervised entities will be required to apply a risk-based approach (RBA) to AML/CFT activities. The RBA is not currently provided for under the FI Act and FI Regulations. Botswana adopted the Financial Intelligence (Amendment) Act in June 2018 to address deficiencies in this regard, and to provide for a risk-based approach to AML/CFT measures.

The results of the NRA will also be used to inform the development of a National AML/CFT Strategy, pending the receipt of technical assistance from ESAAMLG.

It was further explained that policy direction and national coordination on AML/CFT in Botswana is led by the Ministry of Finance and Economic Development through a multi-agency committee known as the National Coordinating Committee on Financial Intelligence (NCCFI). The NCCFI is chaired by the Permanent Secretary in the Ministry of Finance and Economic Development and its activities are coordinated by the Director of the FIA. Currently, the NCCFI is largely focused on developing the AML/CFT legal and institutional framework, and coordinating the NRA. The Ministry of Finance and Economic Development oversees the activities of the NCCFI, as provided under Section 6(2) of the FI Act, and promotes legislative, administrative and policy reforms.

There are ongoing efforts to raise awareness across the financial sector of PICA, the FI Act, 2009 and its regulations, as well as the recent changes to the AML regime introduced by the NRA results, including by Financial Institutions and Designated Non-Financial Businesses and Professions/DNFBPs. FIA officials reported that they conduct training for specified parties based on an annual training plan targeting some sectors, as well as upon request by other entities. Training is also conducted by other supervisory authorities, and a Guidance Note on AML is in development.

It was explained that the Financial Intelligence (Amendment) Act, adopted in June 2018, would also cover gaps identified in the ESAAMLG review, for example to cover Politically Exposed Persons (PEPs) and identification of beneficial owners. As noted under article 52, the FI Act was recently amended to include among others a provision that will align with FATF recommendation 12 on PEPs. Other revisions would cover Customer Due Diligence (CDD) requirements for specified parties for transactions and introduce risk-based supervision. Amendments to the Companies Act would further make beneficial ownership information part of the mandatory information to be provided during company registration.

An action plan to address the findings of the 2017 ESAAMLG mutual evaluation had been submitted in April 2018, and a full report was to be provided to the Group in September 2018.

#### Observations:

The PICA complemented by the Financial Intelligence Act (FI Act), 2009 and its regulations have strengthened the AML/CFT regime of Botswana and have also expanded the list of specified parties (Financial Institutions and Designated Non-Financial Businesses and Professions/DNFBPs) required to implement AML/CFT preventive measures. Awareness of these requirements seems to be low across all Financial Institutions and in particular DNFBPs.

However, as noted above, there are a number of AML/CFT requirements which are not covered. These include beneficial ownership identification (including by persons and entities involved in the formation and registration of legal persons), Politically Exposed Persons (PEPs), record-keeping, correspondent banking and new technologies. Accordingly, the FI Act has major deficiencies arising from limited scope of the obligations and absence of risk-based requirements. Botswana adopted the Financial Intelligence (Amendment) Act in June 2018, to address the above deficiencies.

There have been very few ML cases investigated and prosecuted. Further, while the enactment of the PICA has strengthened the confiscation regime of Botswana, the authorities have not effectively used the provisions to identify and confiscate proceeds of crime relating to ML. Sanctions under the FI Act appear also to be low.

While there are some inspections of FIs (except for money-value transfer providers) by BoB and NBFIRA, the DNFBP sector is yet to be supervised for AML/CFT compliance. Moreover, not all reporting entities are reporting and filing STRs (see table above), with a major concern being the DNFBP sector. It is noted in this context that estate agents and legal practitioners have been identified as being high risk for ML, yet these sectors have a very limited awareness of the ML/TF requirements. Botswana is yet to adequately license or register money-value transfer providers and also monitor the sector for compliance with AML/CT requirements.

While the FI Act designates AML/CFT supervisory bodies for all FIs and DNFBPs (except for dealers in precious metals which are uncovered entities), the supervisors do not apply RBA when conducting their inspections. In addition, there is inadequate capacity across the board to supervise and monitor compliance by the regulated entities.

Regarding banks, it appears that Bank of Botswana applies the Banking (AML) Regulations issued under the Banking Act, which have no specific provision on AML/CFT measures but do require banks licensed by BoB to file suspicious transaction reports (STRs). It was explained that under the proposed legislative revisions, the FI Act and its regulations would supersede the BOB Banking Regulations in this regard, such that financial institutions would be required to file STRs with the FIA.

#### **Recommendations:**

**Botswana should implement the results of its 2017 NRA. All supervisors should use the findings of the NRA to promote understanding of the risks facing their regulated entities and apply risk-based supervisory framework commensurate with the risks identified. Supervised entities should be required to apply the RBA and CDD requirements, commensurate with the risk profile. The AML obligations should be extended to all Financial Institutions and DNFBPs, including money-value transfer providers (MVTPs).**

**The FI Act should be amended to cover the deficiencies on AML/CFT obligations (identified in the ESAAMLG review and highlighted above) and provide for a risk-based approach to implementing these obligations. The legal framework in Botswana should provide for requirements to obtain and retain information on beneficial ownership, in particular relating to legal persons and PEPs. The FI Act should be**

amended to provide more dissuasive and proportionate sanctions. The supervisory bodies should ensure that the sanctions are implemented for non-compliance with the AML/CFT obligations by their regulated entities.

Botswana should continue efforts to raise awareness across the financial sector of PICA, the FI Act and its regulations, as well as the recent changes to the AML regime introduced by the NRA results, including among Financial Institutions and DNFBPs.

The results of the NRA should further be used to inform the development of a National AML/CFT Strategy.

*Subparagraph 1 (b) of article 14*

*1. Each State Party shall: ...*

*(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

**Financial Intelligence Act, 2009**

Preamble to the Financial Intelligence Act

“An Act to provide for the establishment of the Financial Intelligence Agency; to establish a National Coordinating Committee on Financial Intelligence; to provide for the reporting of suspicious transactions and other cash transactions; to provide for mutual assistance with comparable bodies outside Botswana in relation to financial information and for matters connected therewith and incidental thereto.”

PART II Establishment of Financial Intelligence Agency

Sections 3 and 4, Establishment and Functions of the Agency (quoted above).

In terms of the requirements under article 14(1)(b) of the United Nations Convention against Corruption, the Financial Intelligence Agency (FIA) has been established as the national centre for collection, analysis and dissemination of the information regarding potential money laundering. Sections 3 and 4 of the FI Act 2009 (quoted above) are referred to.

The FIA is a department under the Ministry of Finance and Economic Development (MFED) but with distinct powers from those of the Ministry. It is appropriated its own funding annually by the government and the resources are expended independently. It is the only body in Botswana which may seek recognition by the Egmont Group of FIUs or comparable body to exchange financial intelligence information on the basis of reciprocity and mutual agreement (section 31 of FI Act).

Section 4 of the FI Act (Functions of Agency) lays out the powers of the FIA to share information with domestic investigatory authorities, supervisory authorities or comparable bodies, including the obligation to inform, advise and collaborate with investigatory or supervisory authorities, to forward financial intelligence reports to investigatory authorities, and to exchange information with comparable bodies.

FIA cooperates with other like-minded organizations, as authorized under section 4(2)(g) of the FI Act. FIA is being sponsored for membership in the Egmont Group.

Sections 30 and 31 further contain domestic and international cooperation measures.

### **30. Referral of information by supervisory authority**

A supervisory authority shall where in the course of the exercise of its functions, it receives or otherwise becomes aware of any information suggesting the possibility of a commission of a financial offence, advise the Agency.

### **31. Membership of international financial organization**

(1) The Agency shall be the only body in Botswana which may seek recognition by the Egmont Group or comparable body to exchange financial intelligence information on the basis of reciprocity and mutual agreement.

(2) Where the Agency is granted recognition in accordance with subsection (1), the Agency may exchange financial information with other members of the Egmont Group or comparable body in accordance with the conditions for such exchanges established by the Egmont Group.

(3) Without prejudice to subsections (1) and (2), where the Agency becomes aware of any information which may be relevant to the functions of a comparable body, it may disclose the information to the comparable body under conditions of confidentiality.

(4) Subject to subsection (5), where a request for information is received from a comparable body, the Agency shall disclose any relevant information in its possession to the comparable body, on such terms of confidentiality as may be agreed between the Agency and the comparable body.

(5) Where a request referred to in subsection (4) concerns information which has been provided to the Agency by a supervisory authority, an investigatory authority, a statutory body or government agency, the information shall not be disclosed without the consent of the appropriate supervisory authority, investigatory authority, statutory body or government

agency.

(6) The Agency shall maintain a record in such form as may be prescribed, of statistics on the number of information disclosed to a comparable body and the number of requests of financial information from a comparable body.

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Domestic cooperation:

The FIA and the competent authorities in Botswana cooperate and exchange information. One example is the authorities' recent use of inter-agency task forces in dealing with complex cases under investigation.

The work of the multi-agency National Coordinating Committee on Financial Intelligence (NCCFI), chaired by the Permanent Secretary in the Ministry of Finance and Economic Development, is also referred to (see para. 1(a) above).

The statistics on disseminations from FIA to competent national authorities (February 2014 to June 2016) under para. 1(a) are referred to.

The FIA and the law enforcement authorities use secure channels for exchanging information, and protect the confidentiality of information exchanged.

FIA and the Non-Bank Financial Institutions Regulatory Authority (NBFIRA) signed a Memorandum of Understanding on 5 October 2015. The MoU highlights the need for FIA and NBFIRA to engage in joint AML/CFT inspections of entities supervised by NBFIRA and share information regarding non-compliance in the industry as well as the observed trends in the NBFI sector.

International cooperation:

The FIA exchanges information with other FIUs with which it has MoUs or other arrangements. Since October 2014, the FIA made 36 requests to other FIUs out of which 30 were responded to, and received 12 requests from other FIUs and responded to all of them.

*(b) Observations on the implementation of the article*

**FIA is encouraged to finalize its application for Egmont membership.**

It is further observed that the FIA is not the central agency for the receipt of disclosures in respect of the banks, as STR reports from banks must be filed to the Bank of Botswana under section 21(4) of the Banking Act. Further, obtaining of additional information from the banks by the FIA is constrained by section 43(1) of the Banking Act. There are no provisions to show whether the Central Bank refers STR reports to the FIA. As noted above, under the proposed legislative revisions, the FI Act and its regulations would supersede the BOB Banking Regulations in this regard, such that financial institutions would be required

to file STRs with the FIA. **It is recommended that Botswana adopt the proposed legislative amendments to clarify the reporting requirements in this respect.**

Furthermore, the FI Act designates NBFIRA as the supervisory body responsible for the AML/CTF compliance of non-bank financial institutions. It was explained during the country visit that, in addition to FIA, the BoB and NBFIRA, other supervisors include the Real Estate Council and supervisory authorities for lawyers. **It is recommended that Botswana adopt the proposed legislative amendments to clarify the supervisory authorities for DNFBPs in this respect.**

#### *Paragraph 2 of article 14*

*2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

#### **Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 20 of the FI Act 2009 addresses the issue of conveyance of cash. It places the onus of referring such records to the FIA on the Botswana Unified Revenue Services (BURS). Sections 18 and 19 also contain cash reporting obligations.

Section 21 of the FI Act 2009 requires specified parties to file Electronic Funds Transfers Reports (EFTs) with the FIA.

Regulation 19 (1) and (2)(a)–(d) specifies the information that is to be contained in the report.

#### **Financial Intelligence Act**

##### **“18. Cash transactions above prescribed limit**

(1) Notwithstanding the provisions of section 17, a specified party shall, within such period as may be prescribed, report to the Agency, prescribed particulars concerning a transaction concluded with a customer where in terms of the transaction an amount of cash in excess of such amount as may be prescribed—

- (a) is paid by the specified party to the customer, to a person acting on behalf of the customer or to a person on whose behalf the customer is acting; or
  - (b) is received by the specified party from the customer, from the person acting on behalf of the customer or from a person on whose behalf the customer is acting.
- (2) A specified party that contravenes a provision of this section shall be liable to a fine not exceeding P100 000 as may be imposed by the supervisory authority.

### **19. General Reporting**

- (1) A person who carries on, is in charge of, manages, or is employed by a business, shall report a suspicious transaction to the Agency.
- (2) A person who accepts any payment in cash in excess of such amount as may be prescribed or an equivalent amount in foreign currency shall report such particulars as may be prescribed to the Agency.
- (3) A person who contravenes a provision of this section shall be guilty of an offence and liable to a fine not exceeding P50 000 or to imprisonment to a term not exceeding three years or to both.

### **20. Conveyance of cash**

Subject to the Customs and Excise Act, the Botswana Revenue Services Authority shall forward to the Agency records in such form as may be prescribed, of cash in excess of such amount as may be prescribed, conveyed into or out of Botswana.

### **21. Electronic transfer of money into or out of Botswana**

- (1) A specified party that through electronic transfer, receives into or sends out of Botswana money in excess of the prescribed amount on behalf or on the instruction of a customer or any person, shall report to the Agency such particulars of the transfer as may be prescribed.
- (2) A specified party that contravenes a provision of subsection (1) shall be liable to a fine not exceeding P1 000 000 as may be imposed by the supervisory authority.”

## **Financial Intelligence Regulations, 2013**

### **19. Reporting of electronic transfers of money into or out of Botswana**

- (1) For the purposes of section 21 of the Act, a specified party that through electronic transfer, receives into or sends out of Botswana, money in excess of P10 000, on behalf or on the instruction of a customer or any person shall report to the Agency such transaction.
- (2) Where the specified party makes a report concerning an electronic transfer of money in excess of P10 000, received into or sent out of Botswana in terms of section 21 of the Act, the report shall contain, in respect of—
- (a) the natural or legal person making the report or other entity on whose behalf the report is made —
    - (i) the name of the person or entity,
    - (ii) the identity card number where the natural person who makes the report is a citizen of Botswana, or passport number where the natural person is not a citizen or resident of Botswana,
    - (iii) registration number where report is made on behalf of a legal person,
    - (iv) the address of the person or entity,
    - (v) the type of business or economic sector of the specified party and the reporting institution,
    - (vi) where the person making the report is a natural person, the natural person’s contact details, and

- (vii) where the person making the report is a legal person or other entity, the surname, initials and contact details of a contact person;
- (b) the transaction which is reported under section 21 of the Act, full particulars of —
  - (i) the amount of money transferred,
  - (ii) the value date on which the electronic transfer was effected,
  - (iii) the currency transferred and value thereof in Botswana on the date of transfer,
  - (iv) the unique transaction reference number allocated to the transaction,
  - (v) the account number concerned, where the money transferred is debited from an account held at a sending specified party, or where the money received is credited to an account held at receiving specified party, and
  - (vi) the intended purpose of the electronic money transfer as stated by the customer of the specified party making the report;
- (c) the customer of a specified party on whose behalf or instruction money is received into or sent out of Botswana —
  - (i) where the customer is a natural person, the name and surname, or initials and surname, identity card number or passport number and date of birth,
  - (ii) where the customer is a legal person or other entity, the name of such legal person or entity, registration number if any and the name of the natural persons with authority to conduct the transaction on behalf of the legal person or other entity, and
  - (iii) business or residential address and contact details of the customer or the natural person acting on behalf of the customer where the customer is a legal person or other entity;
- (d) the recipient of money sent out of Botswana, or the sender of the money in excess of P10 000 received into Botswana —
  - (i) the full names of the recipient or sender,
  - (ii) the date of birth of the recipient or the sender,
  - (iii) identity card number or passport number of the recipient or sender,
  - (iv) a business or residential address of the recipient or sender, and
  - (v) contact details of the recipient or the sender.
- (3) A report made under section 21 of the Act shall be sent to the Agency as soon as possible, but not later than two working days after the specified party or any of its employees has become aware of the fact that an electronic transfer of money received into or sent out of Botswana has exceeded the amount of P10 000.

### **Customs and Excise Duty Act (Chapter 50:01)**

#### **Preamble**

“An Act to provide for the levying of customs and excise duties and a surcharge; the prohibition and control of the importation, export or manufacture of certain goods; and for matters incidental thereto.

#### **Section 2. Interpretation**

"goods" includes all wares, articles, merchandise, animals, currency, matter or things.

### **PART III. Importation, Exportation and Transit of Goods (ss 7-18)**

#### **Section 7 Appointment of places of entry, authorized roads and routes, etc.**

(1) The Minister may appoint by notice-

- (a) places to be places of entry for Botswana, through which goods may be imported or exported or where goods may be landed for transit, where persons entering or leaving

Botswana may disembark or embark or where goods may be entered for customs and excise purposes;

(b) the roads or routes (including railways) over which persons may enter or leave Botswana or imported goods or goods intended for export or transit carriage may enter or leave Botswana or may be carried from any one point to any other point or the means of carriage of such goods;

(c) places as warehousing places where customs and excise warehouses may be established;

(d) places for such particular and limited purposes and for such periods as may be appointed;

(e) places to be customs and excise airports at which aircraft entering Botswana shall first land, from which aircraft leaving Botswana shall finally depart, through which goods may be imported or exported or where goods may be landed for transit or where persons entering or leaving Botswana may disembark or embark;

(f) places at appointed places of entry or at customs and excise airports for the landing or embarkation of persons and the landing, loading or examination of goods (including baggage);

(g) sheds as transit sheds into which goods, before due entry thereof, may be removed from an aircraft or vehicle;

(h) entrances and exits, general or special, to or from any customs and excise airport...

#### **Section 14. Persons entering or leaving Botswana**

(1) Any person entering or leaving Botswana shall, in such a manner as the Director may determine, unreservedly declare-

(a) at the time of such entering, all goods (including goods of another person) upon his person or in his possession which he brought with him into Botswana which-

(i) were purchased or otherwise acquired abroad or on any vehicle or in any shop selling goods on which duty has not been paid;

(ii) were remodelled, processed or repaired abroad; or

(iii) are prohibited, restricted or controlled under any law; ...

#### **Section 91. Non-declaration of goods**

Any person who contravenes or fails to comply with the provisions of section 14, shall be guilty of an offence and liable to a fine not exceeding P8,000 or treble the value of the goods in question, whichever is the greater, and to imprisonment for two years, and the goods in question and any other goods contained in the same package as well as the package itself shall be liable to forfeiture.”

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

### **DCEC INVESTIGATIONS OF SUSPICIOUS TRANSACTIONS OR SUSPECTED MONEY LAUNDERING FROM 2012 TO 2015**

<b>YEAR</b>	<b>NO. OF CASES</b>
-------------	---------------------

<b>2012</b>	2
<b>2013</b>	7
<b>2014</b>	3
<b>2015</b>	1
<b>TOTAL</b>	13

Botswana provided the followings statistics of detected undeclared cross-border cash transfers; sanctions for non-compliance were not available.

#### **Non-Declaration of Currency from April 2017 to March 2018**

DATE	IMPORT/ EXPORT	BWP	USD	ZAR	NSD	ZW BONDS
1/8/17	Export			16,200		
5/9/17	Export	39,300				
6/9/17	Import		9,341	81,250	4,240	
6/10/17	Import			90,320		
15/11/17	Import			28,100		
18/11/17	Export	87,668.95	3,865	1,260		4,600
10/1/18	Import	111,090				
<b>TOTAL</b>		<b>238,058.95</b>	<b>13,206</b>	<b>217,130</b>	<b>4,240</b>	<b>4,600</b>

#### *(b) Observations on the implementation of the article*

According to the ESAAMLG review, illegal cross-border cash transactions have been identified as high risk for money-laundering in Botswana.

Botswana has adopted a reporting threshold of 10,000 pula for cash transactions to BURS.

The provisions also cover the cross-border movement of bearer negotiable instruments, including travellers' and personal cheques, money orders and bonds. It was explained that the submission of cross-border cash declaration reports from BURS to the FIA to help with the identification of possible money-laundering issues was still being done manually, but that an electronic reporting system was being piloted and would be rolled out in the near future.

**It is recommended that BURS continue efforts towards the implementation of the new cross-border declaration regime, including adequate sanctions for non-compliance and roll-out of the electronic referral system.**

#### *Paragraph 3 of article 14*

*3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:*

*(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*

- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 21 of the **FI Act 2009** requires specified parties to file Electronic Funds Transfer Reports (EFTs) with the FIA.

**Financial Intelligence Act**

PART IV Duty to Identify Customers and Keep Records  
Sections 9, 10, 11 and 12 (quoted above)

Section 21 (quoted above)

**FI Regulation 19(2)(d)** spells out the particulars that must be reported in respect of the sender of an electronic transfer:

“(2) Where the specified party makes a report concerning an electronic transfer of money in excess of P10 000, received into or sent out of Botswana in terms of section 21 of the Act, the report shall contain, in respect of —...

(d) the recipient of money sent out of Botswana, or the sender of the money in excess of P10 000 received into Botswana —

- (i) the full names of the recipient or sender,
- (ii) the date of birth of the recipient or the sender,
- (iii) identity card number or passport number of the recipient or sender,
- (iv) a business or residential address of the recipient or sender, and
- (v) contact details of the recipient or the sender.”

The provisions of the Non-Bank Financial Institutions Regulatory Authority (NBFIRA) Act are also relevant since they relate to money remitters and other non-bank financial institutions

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

1. Reporting requirements under the FI Act.
2. The KYC (Know Your Customer) policy as relates to banks addresses Botswana's stand on the issue.

*(b) Observations on the implementation of the article*

The obligations for specified parties under the FI Act and Regulations, including the duty to identify customers and keep records (Part IV of the FI Act), apply to money remitters, as per the definition of “specified parties” in section 2 of the Act. **However, as mentioned under paragraph 1(a) of Article 14 above, Botswana is yet to adequately license or register money-value transfer providers and also monitor the sector for compliance with AML/CT requirements. It is recommended that Botswana adopt measures in this regard.**

Botswana has not presently implemented subparagraphs (b) and (c) of article 14(3). It was explained during the country visit that the new FI Act amendment would provide for simplified and enhanced CDD requirements, including enhanced scrutiny on funds transfers that do not contain complete information on the originator.

In respect of cross-border wire transfers, the reviewers note that, while section 21 of the FI Act and FI Regulation 19(2) require a report of wire/electronic transfer transactions (including name of originator) above P 10,000 to be made to FIA, it is not a requirement on FIs to ensure that all cross-border wire transfers carry the name of originator. Further, there are no provisions dealing with disclosures of beneficiary information when effecting wire transfers in and out of Botswana and dealing with disclosures of beneficiary account number when effecting wire transfers in and out of Botswana. **The ESAAMLG review identified some further deficiencies in the legal framework relating to cross-border electronic/wire transfers, which Botswana is recommended to address.** It was explained during the country visit that the new FI Act would include the relevant provisions.

*Paragraph 4 of article 14*

*4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

1. The efforts by FIA to cooperate with other FIUs internationally.
2. The drive by FIA to become a member of the Egmont Group.
3. Mutual Evaluation Report of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) on Botswana's anti-money laundering and counter-terrorist financing measures (May 2017) (copy provided)

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Examples attached.

*(b) Observations on the implementation of the article*

It was reported during the country visit that FIA has entered into 8 MOUs with foreign FIUS, as well as one MOU with NBFIRA and one MOU with the Bank of Botswana. An MOU with the DCEC was under negotiation.

Statistics on international cooperation by FIA with other financial intelligence units are provided under article 14(1)(b) above.

*Paragraph 5 of article 14*

*5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The Financial Intelligence Agency (FIA) is mandated to cooperate and exchange information with other law enforcement authorities, supervisory authorities and other financial intelligence units or comparable bodies. This is provided for under Section 29 of the **Financial Intelligence Act of 2009**.

Furthermore, the Financial Intelligence Act designates the Financial Intelligence Agency as the only body that can seek Egmont membership for purposes of exchange of financial intelligence information under Section 31 of the Act. The section also provides for instances where requests for information are received from comparable bodies and mandates the Agency to provide any relevant information in its possession to the comparable body, on such terms of confidentiality as may be agreed upon between the Agency and the comparable body.

### **Financial Intelligence Act**

“Section 29: Referral of information by Agency

- (1) Where the Agency, on the basis of its analysis and assessment of information received by it, has reasonable grounds to suspect that the information would be relevant to the national security of Botswana, the Agency shall disclose the information to the Directorate.
- (2) The Agency shall record in writing, the reasons for its decision to disclose information in accordance with subsection (1).
- (3) Where the Agency becomes aware of information which may be relevant to-
  - (a) the functions of any supervisory authority;
  - (b) investigation or prosecution being conducted by an investigatory authority; or
  - (c) a possible corruption offence, as defined in the Corruption and Economic Crime Act, the Agency shall disclose the information to the supervisory authority or investigatory authority concerned.
- (4) For the purposes of subsections (1) and (3), "information" in relation to a financial transaction or the import and export of currency or monetary instruments includes-
  - (a) the name of the person or the importer or exporter or any other person or entity acting on their behalf;
  - (b) the name and address of the place of business where the transaction occurred or the address of the port of entry into Botswana where the importation or exportation occurred;
  - (c) the date of the transaction, importation or exportation;
  - (d) the amount and type of currency or monetary instruments involved or in the case of a transaction, if no currency or monetary instruments are involved, the value of the transaction or the value of the funds that are the subject of the transaction;
  - (e) in the case of a transaction, the transaction number and the account number if any; and
  - (f) such other identification information as may be prescribed.
- (5) Where any information falling within subsections (1) and (4) was provided to the Agency by a body outside Botswana on terms of confidentiality, the Agency shall not disclose the information without the consent of the body that provided the information.
- (6) The Agency may request a supervisory authority to rebut information indicating that a specified party has as a result of a transaction concluded by or with the specified party, received or is about to receive the proceeds of a financial offence.

(7) Information requested under subsection (6) shall be provided without a court order and within such time limits as may be prescribed.

#### Section 31: Membership of international financial organization

(1) The Agency shall be the only body in Botswana which may seek recognition by the Egmont Group or comparable body to exchange financial intelligence information on the basis of reciprocity and mutual agreement.

(2) Where the Agency is granted recognition in accordance with subsection (1), the Agency may exchange financial information with other members of the Egmont Group or comparable body in accordance with the conditions for such exchanges established by the Egmont Group.

(3) Without prejudice to subsections (1) and (2), where the Agency becomes aware of any information which may be relevant to the functions of a comparable body, it may disclose the information to the comparable body under conditions of confidentiality.

(4) Subject to subsection (5), where a request for information is received from a comparable body, the Agency shall disclose any relevant information in its possession to the comparable body, on such terms of confidentiality as may be agreed between the Agency and the comparable body.

(5) Where a request referred to in subsection (4) concerns information which has been provided to the Agency by a supervisory authority, an investigatory authority, a statutory body or government agency, the information shall not be disclosed without the consent of the appropriate supervisory authority, investigatory authority, statutory body or government agency.

(6) The Agency shall maintain a record in such form as may be prescribed, of statistics on the number of information disclosed to a comparable body and the number of requests of financial information from a comparable body.”

**Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.**

Membership of Botswana in ESAAMLG.

The FIA has signed Memorandums of Understanding with local law enforcement and supervisory authorities and other FIUs as described above.

Examples relating to the regulatory regime by FIA and Botswana’s Non-Bank Financial Institutions Regulatory Authority (NBFIRA) were discussed in the country visit.

#### *(b) Observations on the implementation of the article*

Examples of international cooperation by FIA were discussed during the country visit.

**It is recommended that Botswana continue to strengthen the capacity of the FIA in terms of manpower and operations. Botswana has requested technical assistance in this regard.**

*(c) Technical assistance needs*

**Institution-building:** FIA is a relatively new unit. There is a need to capacitate it in terms of personnel, tools used in analysis etc.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

## V. Asset recovery

### Article 51. General provision

#### *Article 51*

- 1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

#### *(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

Part VI of the **Mutual Assistance in Criminal Matters Act [CAP 08:04] (MACMA)** provides measures of cooperation and assistance in relation to the return of assets.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.**

The **Mutual Assistance in Criminal Matters Act (MACMA)** provides for mutual assistance in criminal matters and some of the provisions provide as follows:

### **Mutual Assistance in Criminal Matters Act, 1990**

Sections 3 and 4 of the **Mutual Assistance in Criminal Matters Act, 1990** provide the application and object of the Act as follows:

#### “Section 3. Application of Act

(1) Where an arrangement has been made with a foreign country for mutual assistance in criminal matters, the Minister may by statutory instrument make regulations that this Act shall apply to that country.

(2) Regulations made under subsection (1) may provide that the application of this Act to a foreign country shall be subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to an arrangement made between Botswana and that country.

#### Section 4. Object of Act

The object of this Act is to facilitate the provision and obtaining by Botswana of international assistance in criminal matters, including-

- (a) the obtaining of evidence, documents or other articles;
- (b) the provision of documents and other records;
- (c) the location and identification of witnesses or suspects;
- (d) the execution of requests for search and seizure;
- (e) the making of arrangements for persons to give evidence or assist investigations;
- (f) the confiscation of property in respect of offences;
- (g) the recovery of pecuniary penalties in respect of offences;
- (h) the restraining of dealings in property, or the freezing of assets, that may be confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences;
- (i) the location of property that may be confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect of offences; and
- (j) the service of documents.

Sections 5 and 6 spell out grounds for refusing mutual legal assistance and conditions for the provision of MLA. Section 8 provides for the procedure to be followed in requesting MLA from Botswana.

#### Section 5. Refusal of assistance

(1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Director of Public Prosecutions-

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) subject to subsection (3), there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of his race, sex, religion, nationality or political opinions;

(d) the request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Botswana, would have constituted an offence under the military law of Botswana but not also under the ordinary criminal law of Botswana;

(e) the granting of the request would prejudice the sovereignty, security or national interest of Botswana;

(f) the request relates to the prosecution of a person for an offence in a case where he has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or

(g) except in the case of a request under section 10, the foreign country is not a country to which this Act applies.

(2) A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Director of Public Prosecutions-

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Botswana, would not have constituted an offence against the laws of Botswana;

(b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside Botswana in similar circumstances would not have constituted an offence against the laws of Botswana;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission where, if it had occurred in Botswana at the same time and had constituted an offence against the laws of Botswana, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

(d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Botswana;

(e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Botswana); or

(f) the provision of the assistance would impose an excessive burden on the resources of the State.

(3) An offence is not an offence of a political character-

(a) if it is an offence in accordance with the provisions of any international convention to which Botswana and the foreign country to which this Act applies are parties and there is an obligation on each party to afford mutual assistance in investigation and prosecution of such offence;

(b) if it is an offence against the life or person of a Head of State or a member of his immediate family, a Head of Government, or a Minister or any related offence;

(c) if it is murder or any related offence.

(4) For the purposes of subsection (3)(b) and (c), "related offence" means aiding and abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit that offence.

Section 6. Assistance may be provided subject to conditions

Assistance under this Act may be provided to a foreign country subject to such conditions as the Director of Public Prosecutions may determine.

Section 8. Request by foreign country

- (1) A request by a foreign country for international assistance in a criminal matter may be made to the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions, in writing, to receive requests by foreign countries under this Act.
- (2) A request made under subsection (1) shall be accompanied by-
- (a) the name of the authority concerned with the criminal matter to which the request relates;
  - (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
  - (c) a description of the purpose of the request and of the nature of the assistance being sought;
  - (d) details of the procedure that the foreign country wishes to be followed by Botswana in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request;
  - (e) a statement setting out the wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes;
  - (f) details of the period within which the foreign country wishes the request be complied with;
  - (g) if the request involves a person travelling from Botswana to the foreign country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person, while the person is in the foreign country pursuant to the request;
  - (h) any other information required to be included with the request under an arrangement between Botswana and the foreign country; and
  - (i) any other information that may assist in giving effect to the request; but failure to comply with this subsection is not a ground for refusing the request.
- (3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made to the Director of Public Prosecutions.”

A draft amendment to the MACMA (Mutual Assistance in Criminal Matters (Amendment) Bill, 2018) has been proposed by the DPP as lead agency and was published on 6 April 2018 (copy provided). The object of the Bill is to comply with the ESAAMLG mutual evaluation of Botswana, which identified gaps in the MACMA. The Bill would inter alia:

- Introduce measures for international cooperation in criminal matters where the subject of the offence has not been convicted of the crime (non-conviction based forfeiture, as permitted under PICA).
- Reduce the threshold for serious offences established under section 2 of MACMA to correspond to the definition in PICA (see article 54(1)(a) below).
- Insert a new provision in MACMA to allow for sharing of confiscated property with foreign countries and for the return of confiscated property to foreign countries, based on recommendations of Botswana’s ESAAMLG review.

In addition, a draft amendment to the PICA (Proceeds and Instruments of Crime (Amendment) Bill, 2018) has been proposed by the DPP as lead agency (copy provided). The object of the Bill is to comply with the ESAAMLG mutual evaluation of Botswana which evaluation identified gaps in the PICA. The Bill would inter alia:

- amend the definition of “serious offence” by reducing the threshold “an offence for which the minimum penalty is a fine of P500 or imprisonment for a period of 6 months, or to both”; and

- increase the period for application for restraining orders to secure property from 28 days to 120 days.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

It was reported that 3 MLA requests relating to asset recovery have been received by Botswana- 2 requests from Zimbabwe and 1 request from South Africa. All 3 requests pertain to the restraint, rather than confiscation of property, and all 3 requests have been discharged. See article 54(2).

Botswana has never refused a request for international cooperation on asset recovery.

*(b) Observations on the implementation of the article*

The underlying basis for international cooperation in asset recovery at the domestic level is the **Proceeds and Instruments of Crime Act, 2014 (PICA)**, which came into force on 1 January 2015. The office of the Receiver was established in September 2017 but is not yet fully operational. Implementing Regulations under the PICA have been issued and copies were provided to the reviewers.

In terms of challenges or obstacles to asset recovery, Botswana authorities reported that the biggest challenge is a lack of capacity. Another challenge is the MACMA and the PICA, which need to be amended.

**As noted under the subsequent articles, it is recommended that Botswana adopt the aforementioned amendments to the PICA and MACMA, subject to the observations made under article 57(3), in order to bring the legislation more closely in line with the requirements of the Convention and to harmonize the legislation.**

It is further observed that the application of the MACMA is limited to States parties where an arrangement has been made for mutual assistance in criminal matters. This situation remains unchanged under the MACMA (Amendment) Bill, 2018. **It is recommended that Botswana consider amending its legislation in this regard.** Please see the observations under paragraph 6 of article 55.

**It is further recommended that Botswana continue to invest in capacity building to develop specialized expertise and skills of prosecutors and members of the judiciary on mutual assistance in criminal matters as well as asset forfeiture and recovery. Botswana has requested technical assistance in this regard.**

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Capacity building.

Legal amendments to MACMA and PICA.

*(d) Technical assistance needs*

**Capacity building:** There is need to build capacity of the international cooperation unit in the DPP with regard to mutual legal assistance as well as asset forfeiture and recovery matters.

**Others:** Sharing of best practices.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

ARINSA and the National Prosecuting Authority of South Africa have assisted in training members of the DPP Asset Forfeiture Unit (established in 2016 in Gaborone, comprising 8 members at the time of review) as well as some investigators from DCEC by way of attachments of personnel.

Through the joint UNODC/World Bank Stolen Asset Recovery Initiative, technical assistance has been provided since 2013 to national authorities, principally the DCEC and the Ministry of Defence Justice and Security (MDJS), to build capacity on anti-corruption and to support the development of implementing regulations under the PICA.

**Article 52. Prevention and detection of transfers of proceeds of crime**

*Paragraph 1 of article 52*

*1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.*

*(a) Summary of information relevant to reviewing the implementation of the article*

## **Is your country in compliance with this provision?**

(P) Yes, in part.

In terms of the requirements of article 52 of the United Nations Conventions against Corruption, under the current legislation specified parties are required to verify the identity of their customers under Section 10 of the **FI Act** and Regulations 5 to 9 of the **Financial Intelligence Regulations**.

### **Financial Intelligence Act (CHAPTER 08:07)**

#### **“Section 10. Identification of customers**

A specified party shall not establish a business relationship or conclude a transaction with a customer unless the specified party has undertaken due diligence measures...”

In addition to the customer identification as per the above section, entities are supposed to ascertain identity information as follows:

### **Financial Intelligence Regulations (CHAPTER: 08:07)**

#### **“Regulation 5. Ascertainment of information concerning natural persons**

For purposes of ensuring compliance with these Regulations and with the Act, where a specified party seeks to establish the identity of a natural person, the specified party shall ascertain the following in relation to the person —

- (a) the person’s full name;
- (b) the person’s nationality;
- (c) where the person is a citizen or resident of Botswana, the identity card number and date of birth of such person;
- (d) where the person is not a citizen or resident of Botswana, the passport number and date of birth of such person;
- (e) the person’s residential address in Botswana where the person is a citizen or resident of Botswana;
- (f) where the person is not a citizen or resident of Botswana, the residential address in his or her country of domicile and physical address in Botswana;
- (g) the person’s contact details;
- (h) the person’s occupation or source of income;
- (i) nature and location of business activities, if any; and
- (j) the source of funds involved in the transaction.

(2) If the person referred to in sub regulation (1) does not have the legal capacity to establish a business relationship or conclude a transaction without the assistance of another person, the specified party shall ascertain the particulars referred to in sub regulation (1) (a) to (f) in relation to the person who provided such assistance.

#### **Regulation 6: Ascertainment of information concerning companies and close companies**

For the purposes of ensuring compliance with these Regulations and the Act, where a specified party seeks to establish the identity of a company, foreign company or close company wishing to conclude a business relationship or transaction with that specified party, the specified party shall ascertain —

- (a) the registered name and registration number of the company;
- (b) if it is an external company, the name under which it conducts business in the country in which it is incorporated;

- (c) if the external company conducts business in Botswana using a name other than the name specified under paragraph (a) or (b), the name used in Botswana;
- (d) if it is an external company, the registered address from which it operates in the country where it is incorporated or if it operates from multiple addresses in that country, the address of its head office;
- (e) if the company or close company operates within Botswana, the address from which it operates in Botswana, or if it operates from multiple addresses within Botswana, the address of the office seeking to establish a business relationship or to conclude a transaction with the specified party;
- (f) the nature of its business;
- (g) the income tax and value added tax registration numbers of the company or close company issued by Botswana Unified Revenue Service, or if incorporated outside Botswana, such numbers issued by a similar revenue office in the country in which it is incorporated if such numbers were issued; and
- (h) the particulars referred to in regulation 5 (1) (a), (b) or (c) whichever is applicable concerning —
- (i) the manager of the company, or in the case of a close company, each member, or
- (ii) each natural person who purports to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the company or close company.

**Regulation 7: Ascertainment of information concerning other entities**

A specified party shall ascertain, in respect of any entity —

- (a) the registered name and registration number of the entity, if registered;
- (b) the office or place of business, if any, from which the entity operates;
- (c) the entity's principal activities;
- (d) the full name, residential address if available, and any one of the following details of the natural person purporting to be authorised to establish a business relationship or conclude a transaction with the specified party on behalf of the entity, the person's —
- (i) identity card number and date of birth, where the natural person is a citizen of Botswana, or
- (ii) passport number and date of birth, where the natural person is not a citizen or resident of Botswana.

**Regulation 8: Ascertainment of information concerning partnerships**

A specified party shall ascertain in respect of a partnership, the partnership's —

- (a) registered name;
- (b) office or place of business, if any, or where applicable, its registered address;
- (c) registration number; and
- (d) full name, residential address if available, and any one of the following details of each partner, including silent partners in a limited partnership and any other natural person purporting to be authorized to establish a business relationship or conclude a transaction with the specified party on behalf of the partnership —
- (i) the identity card number and date of birth, where the natural person is a citizen of Botswana, or
- (ii) the passport number and date of birth, where the natural person is a not a citizen or resident of Botswana.

**Regulation 9: Ascertainment of information concerning trusts.**

- (1) A specified party shall ascertain in respect of a trust —

- (a) its registered name and the registration number, if any;
  - (b) the country where it was set up, if the trust was set up in a country other than Botswana;
  - (c) the management company of the trust, if any;
  - (d) the full name of the trust if not registered;
  - (e) the residential address, contact details and particulars listed in the order of preference under paragraph (f) of each natural person who purports to be authorised to establish a business relationship or to conclude a transaction with the specified party on behalf of the trust; and
  - (f) the full name of the trustee, beneficiary referred to by name in the trust deed or other founding instrument in terms of which a trust is created and the founder of the trust and any of the following details —
    - (i) identity card number and date of birth where the person is a citizen of Botswana, or
    - (ii) passport number and date of birth where the person is not a citizen or resident of Botswana.
- (2) If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the specified party shall follow the procedure in regulation 4 (2) to ascertain the identity of the beneficiaries.”

As noted under article 14, Botswana currently does not have beneficial ownership identification requirements, except for Financial Intelligence Regulation 9 in relation to trusts.

The FI Act and Regulations do not have a provision on conducting enhanced due diligence on Politically Exposed Persons (PEPs). The FI Act is currently under review to include among others a provision that will align with FATF recommendation 12.

*(b) Observations on the implementation of the article*

Botswana has not implemented the provision under review.

**It is recommended that Botswana amend the gaps in its legislation to fully implement the requirements of article 52, including beneficial ownership identification (including by persons and entities involved in the formation and registration of legal persons), Politically Exposed Persons (PEPs), record-keeping, correspondent banking and new technologies.**

The recommendations made above under article 14 are referred to.

*Paragraph 2 of article 52*

*2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:*

*(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and*

*(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.*

*(a) Summary of information relevant to reviewing the implementation of the article*

#### **Is your country in compliance with this provision?**

(N) No.

Botswana completed a National Risk Assessment (NRA) in 2017, which will inform Botswana's authorities and institutions of the risks and vulnerabilities on AML/CFT. This is in compliance with FATF recommendation 1 on assessing AML/CFT risks and applying a risk-based approach. As described under article 14 above, the NCCFI is leading the work to develop the AML/CFT legal and institutional framework and conduct the NRA, which will be used to develop a National AML/CFT Strategy and Implementation Plans.

The NRA results were sent to all supervisory authorities for circulation to supervisees and have prompted the development of proposed revisions to the FI Act.

*(b) Observations on the implementation of the article*

In Botswana the Financial Intelligence Agency gives guidance to a specified party to ensure compliance with this Act by the specified party (Section (4)(2)(e) of the Financial Intelligence Act). However, no such advisories have been issued regarding the types of natural or legal persons to whose accounts financial institutions within Botswana should be expected to apply enhanced security.

**Botswana has not implemented the provision under review. It is recommended that Botswana amend the gaps in its legislation to fully implement the requirements of article 52.**

The recommendations made above under article 14 are referred to.

*Paragraph 3 of article 52*

*3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an*

*appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes, in part.

As described under article 14 above, Sections 11 and 12 of the FI Act and the FI Regulations establish record keeping requirements for specified parties. Section 15 provides for the penalty that comes with an offence of not keeping records according to sections 11 and 12.

**Financial Intelligence Act**

**“Section 11: Keeping of records**

(1) Where a specified party establishes a business relationship or concludes a transaction with a customer, the specified party shall maintain records of-

(a) the identity of the customer;

(b) if the customer is acting on behalf of another person-

(i) the identity of the person on whose behalf the customer is acting, and

(ii) the customer's authority to act on behalf of that other person;

(c) if another person is acting on behalf of the customer-

(i) the identity of that other person, and

(ii) that other person's authority to act on behalf of the customer;

(d) the manner in which the identities of the persons referred to in paragraphs (a), (b) and (c) were established;

(e) the nature of the business relationship or transaction;

(f) the amount involved in the transaction and the parties to the transaction;

(g) all accounts that are involved in a transaction concluded by a specified party in the course of a business relationship or single transaction;

(h) the name of the person who obtained the information referred to under paragraphs (a), (b) and (c) on behalf of the specified party; and

(i) any document or copy of a document obtained by the specified party in order to verify a person's identity.

(2) Records kept in terms of subsection (1) may be kept in electronic form.

**Section 12: Period records to be kept**

(1) A specified party shall keep records referred to under section 11 for at least five years from the date a transaction is concluded.

(2) Notwithstanding the generality of subsection (1), an investigatory authority may by request in writing, require a specified party to keep and maintain a record referred to under section 11 for such longer period as may be specified in the request.”

*(b) Observations on the implementation of the article*

There is a gap in terms of the record-keeping obligation pertaining to beneficial owners.

**It is recommended that Botswana amend the gaps in its legislation to fully implement the requirements of article 52.**

The recommendations made above under article 14 are referred to.

*Paragraph 4 of article 52*

*4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

The FI Act does not have either provisions that address the issue of shell banks in Botswana nor a requirement on financial institutions to refuse establishing correspondent banking relationship with such institutions.

It must be noted that the FI Act of 2009 is undergoing review and this has been included to cater for prohibition of shell banks.

The financial institutions in Botswana are mainly subsidiaries of international banks. Therefore, they have adopted the common practice to use the existing correspondent relationship arrangements of their mother bank in the country of origin to process transactions emanating in Botswana.

*(b) Observations on the implementation of the article*

There is no specific law in Botswana which prohibits the establishment or continued existence of shell banks.

Botswana does not have a legal framework that deals with correspondent banking.

**It is recommended that Botswana amend the gaps in its legislation to fully implement the requirements of article 52.**

The recommendations made above under article 14 are referred to.

*Paragraph 5 of article 52*

*5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

Botswana does not have a provision in relation to financial disclosures for public officials.

The promulgation of an Asset Declaration law is still pending. Declarations are contained in several regulations which need to be consolidated in one Act for all public officials, appointed or elected.

A **Bill on Asset Declarations** was circulated to all ministries for comment in 2016 and is currently before Parliament, having twice been submitted to the Attorney General's office for comment. The bill, which was developed by the DCEC as the lead agency, would provide a broad scope of application, requiring all public officials at all levels in Botswana (including parastatals) to declare their interests and assets regardless of value, including those of any dependants and any increase in the assets, to the DCEC. The failure to declare would constitute an offence, and fines may also be imposed. No verification mechanism by the DCEC is currently foreseen; declarations would not be published.

A copy of the bill was not available during the review.

*(b) Observations on the implementation of the article*

**It is recommended that Botswana take steps to adopt effective financial disclosure systems for public officials that include systems and mechanisms for verification and sanctions for non-compliance, based on international best practices.**

The observations under article 8, para. 5 in respect of conflicts of interest disclosures are also referred to.

*Paragraph 6 of article 52*

*6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

Botswana does not have a clause that seeks to address this provision.

*(b) Observations on the implementation of the article*

**It is recommended that Botswana consider adopting a relevant reporting requirement, in the context of its ongoing efforts to adopt an Asset Declaration law.**

**Article 53. Measures for direct recovery of property**

*Subparagraph (a) of article 53*

*Each State Party shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Botswana only has provisions which allow for the enforcement of foreign orders.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

There is no mechanism for other States parties to initiate civil action in the domestic courts.

**It is recommended that Botswana specify in the law recovery mechanisms for injured parties to establish title or ownership of property, by explicitly granting legal standing to permit them to initiate civil actions in the domestic courts, to fully align the legislation with this part of the Convention.**

*Subparagraph (b) of article 53*

*Each State Party shall, in accordance with its domestic law: ...*

*(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 316 of the **Criminal Procedure and Evidence Act** read together with the definition of “person” in the **Penal Code**:

**“PART XIX Costs, Compensation and Restitution (ss 316-320)**

### **316. Court may order accused to pay compensation**

(1) When any person has been convicted of an offence which has caused personal injury to some other person, or damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon the application of the injured party, forthwith award him compensation for such injury, damage or loss.

(2) For the purposes of determining the amount of compensation or the liability of the accused therefor, the court may refer to the proceedings and evidence at the trial or hear further evidence upon affidavit or verbal or the amount of compensation which may be awarded by the court in accordance with an agreement reached between the person convicted and the person to be compensated.

(3) The court may order a person convicted upon a private prosecution to pay the costs and expenses of such prosecution in addition to the sum (if any) awarded under subsection (1): Provided that if such private prosecution was instituted after a certificate by the Director of Public Prosecutions that he declined to prosecute, the court may order the costs thereof to be paid by the State.

(4) When a magistrate's court has made any award of compensation, costs or expenses under this section, the award shall have the effect of a civil judgment of that court, and when the High Court has made any such award, the Registrar of that Court shall forward a certified copy of the award to the clerk of the magistrate's court of the district wherein the convicted person underwent the preparatory examination held in connection with the offence in question, and thereupon such award shall have the same effect as a civil judgment of that magistrate's court.

(5) Any costs awarded as aforesaid shall be taxed according to the scale, in civil cases, of the court which made the award.

(6) Where any moneys of the accused have been taken from him upon his apprehension, the court may order payment in satisfaction or on account of the award, as the case may be, to be made forthwith from those moneys.

(7) Any person against whom an award has been made under this section shall not be liable at the suit of the person in whose favour an award has been so made, and who has accepted the award, to any other civil proceedings in respect of the injury for which compensation has been awarded.”

The term person is defined as follows in section 2 of the **Penal Code**.

“"person" and "owner" and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used include the State and any local authority;”

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None, as such a scenario has never arisen.

*(b) Observations on the implementation of the article*

It was explained that there been several cases where the government of Botswana has been the victim of fraud and the courts have ordered the payment of compensation or damages to the State of Botswana. The DPP uses the compensation provision in the CP& E (section 316) for cost recovery, especially where the government has lost funds. Examples of cases where compensation or restitution has been claimed by the State of Botswana include, amongst others, the following:

- In State v. Virginia Tshepo Diakabota, Case No. CMMEX-000172/2015, the sum of P45,160.00 was ordered as compensation to the government on 2 June 2015.
- In State v. Kelebogile Masege, Case No. CMMLB -000382/2011, compensation to the State was ordered for P25,200.40.

The provision under review appears to be implemented.

### *Subparagraph (c) of article 53*

*Each State Party shall, in accordance with its domestic law: ...*

*(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.*

### *(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Botswana recognizes third party rights of claimants in confiscation procedures, as demonstrated by the following provisions:

#### **Proceeds and Instruments of Crime Act, 2014**

##### **43. Further Orders**

- (1) The court may, when it makes a restraining order or at any later time, make such orders in relation to the property to which the restraining order relates as it considers just.
- (2) An order under subsection (1) may be made on the application of —
  - (a) the applicant for the restraining order;
  - (b) any person to whose property the restraining order relates or who has an interest in that property;

- (c) a Receiver, if the restraining order directed the Receiver to take control of the property; or
- (d) any other person who obtains the leave of the court to apply.
- (3) Unless the application is made at the same time as an ex parte application for a restraining order, any person referred to in subsection (2) is entitled to appear and to give evidence at the hearing of an application under this section but the absence of that person does not prevent the court from making an order.
- (4) The applicant for an order under subsection (1) shall, unless the application is made at the same time as an ex parte application for a restraining order, give written notice of the application to each person referred to in subsection (2) who have a right to apply for an order under this section.
- (5) Orders that the court may make under subsection (1) include —
  - (a) an order varying the property to which the restraining order relates;
  - (b) an order varying any condition to which the restraining order is subject;
  - (c) subject to section 35 (5), an order providing for the reasonable living expenses, legal expenses and reasonable business expenses of any person referred to in section 35 (4);
  - (d) an order for examination under Chapter VI;
  - (e) an order directing any person whose property the restraining order relates to or any other person to furnish to such person as the court directs, within the period specified in the order, a statement, verified by the oath or affirmation of that person, setting out such particulars of the property to which the restraining order relates as the court thinks proper;
  - (f) an order directing any relevant registration authority not to register any instrument affecting property to which the restraining order relates while it is in force except in accordance with the order;
  - (g) an order directing the Receiver to take control of property at any later time specified in the order under subsection (1);
  - (h) an order regulating the manner in which the Receiver may exercise powers or perform duties under the restraining order;
  - (i) an order determining any question relating to the property; or
  - (j) an order directing a person to whose property the restraining order relates or who has an interest in that property to use or manage specified property to which the restraining order relates, subject to conditions specified in the order.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

In terms of application of the PICA, a successful restraint application, confirmed by the Court of Appeal in December 2016, restrained bank accounts of a respondent with an amount in excess of 23 million Pula suspected to be proceeds of money laundering (see DCEC 2016 annual report, page 21).

*(b) Observations on the implementation of the article*

The article requires States parties to provide legal standing to other States parties to claim, as legitimate owners in confiscation procedures, ownership over assets acquired through the commission of Convention offences.

Apart from third party rights of foreign States, Botswana's law does not specifically recognize the rights of foreign States as legitimate owners of property or primary claimants in confiscation proceedings relating to offences under the Convention.

**Therefore, it is recommended that Botswana specify in the law recovery mechanisms for States parties to establish title or ownership in confiscation proceedings.**

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

The biggest challenge is a lack of capacity. Another challenge is the MACMA and PICA, which need to be amended.

*(d) Technical assistance needs*

**Capacity-building:** Capacity building for law enforcement and prosecution.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

**Article 54. Mechanisms for recovery of property through international cooperation in confiscation**

*Subparagraph 1 (a) of article 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 29 of the **Mutual Assistance in Criminal Matters Act, 1990 (Cap 08:04)** (MACMA) provides for the enforcement of foreign orders and it provides as follows:

**“29. Requests for enforcement of orders**

(1) Where -

(a) a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign confiscation order made in respect of a serious offence, against property that is believed to be located in Botswana; and

(b) the Director of Public Prosecutions is satisfied that –

(i) a person has been convicted of the offence, and

(ii) the conviction and the order are not subject to further appeal in the foreign country, the Director of Public Prosecutions may apply for the registration of the order in the High Court.

(2) Where a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Botswana, the Director of Public Prosecutions may apply for the registration of the order in the High Court.

(3) A foreign confiscation order, or a foreign restraining order, as the case may be, registered in the High Court in accordance with this section has effect, and may be enforced, as if it were an order made by a court under the Proceeds of Serious Crime Act, 1990.

(4) Where an order is registered in a court in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not have effect until they are registered.”

The Proceeds of Serious Crime Act is now the Proceeds and Instruments of Crime Act, 2014 (a copy has been provided to the reviewers).

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

There are no case examples where the courts in Botswana have ordered the enforcement of a foreign confiscation order. All requests received by Botswana relate to the restraint of property (see article 54(2) below).

*(b) Observations on the implementation of the article*

Section 29 of MACMA allows for the enforcement of a foreign confiscation order made in respect of a serious offence, against property that is believed to be located in Botswana. The procedure for the enforcement of foreign confiscation orders is by registration of the order in the High Court (section 29 of MACMA).

Serious offence is defined in section 2 of MACMA by reference to the definition in PICA: “serious offence” means any offence for which the minimum penalty is a fine of P2 000 or imprisonment for a period of 2 years, or to both;

The definition of a serious offence was under review at the time of the country visit. The draft Bill to amend PICA would amend the definition of “serious offence” by reducing the threshold from “an offence to which the minimum penalty is a fine of P2000 or imprisonment for a period of 2 years, or to both” to “an offence for which the minimum penalty is a fine of P500 or imprisonment for a period of 6 months, or to both”.

**It is recommended that Botswana adopt the aforementioned amendments to the PICA and MACMA, which would lower the present threshold for serious offences.**

*Subparagraph 1 (b) of article 54*

*1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:*

...

*(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 47 of the **Proceeds and Instruments of Crime Act, 2014** establishes the offence of money-laundering.

**“47. Money laundering offence**

(1) A person who —

(a) engages in a transaction that involves property which is, or in part directly or indirectly represents the proceeds of any crime; or

(b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Botswana any property which, in whole or in part directly or indirectly represents, the proceeds of any crime, where he or she knows, suspects or has reasonable grounds for knowing or suspecting that the property is derived or realised, in whole or in part, directly or indirectly from any confiscation offence or foreign serious crime related activity, shall be guilty of the offence of money laundering.

(2) It shall be a defence to a charge under this section that the accused —

(a) made a report in accordance with Part V of the Financial Intelligence Act in respect of the transaction that is the subject matter of the charge; or

(b) dealt with the property which is the subject of the charge in order to assist in the enforcement of the law.

(3) A person convicted of an offence under this section shall be liable to a fine not exceeding P20 000 000, or to imprisonment for a term not exceeding 20 years, or to both.”

The PICA allows the courts to make orders (pecuniary penalty orders, civil penalty orders or forfeiture orders) pertaining to the confiscation of proceeds or benefits derived or realized, directly or indirectly, from any unlawful activity. This includes the proceeds of foreign predicate offences, as defined under section 2 of PICA, so long as the property is located in Botswana.

Civil forfeiture and administrative forfeiture are also provided for in Part VI and chapter III of the PICA, respectively.

“proceeds” means property that was derived or realised, or substantially derived or realised, directly or indirectly, by any person from the commission of an offence or a serious crime related activity or foreign serious crime related activity and includes any property with which proceeds have been mixed;

“foreign serious crime related activity” means any act or omission that at the time of its commission, was a foreign offence that, if committed in Botswana, would have been a serious offence, whether or not the person has been charged with the offence, and if charged —

(a) has been tried;

(b) has been tried and acquitted; or

(c) has been convicted;

“confiscation offence” means any offence under the Laws of Botswana;

"serious crime related activity" is defined in Section 2 of the Proceeds and Instruments of Crime Act, 2014 as “any act or omission that at the time of its commission, was a serious offence whether or not the person has been charged with the offence, and if charged-

(a) has been tried;

(b) has been tried and acquitted; or

(c) has been convicted.”

"serious offence" is defined in Section 2 of the of the Proceeds and Instruments of Crime Act, 2014 as "any offence for which the minimum penalty is a fine of P 2000 or imprisonment for a period of 2 years, or to both".

## **Chapter II — Confiscation**

### **Part I — Pecuniary Penalty Orders**

#### **3. Application for pecuniary penalty order**

(1) Where a person (in this Part referred to as the respondent) has been convicted of one or more serious or confiscation offences, the Director of Public Prosecutions may apply to the court before which the conviction was obtained or to the High Court for a pecuniary penalty order against that person.

(2) Except with the leave of the court, an application under subsection (1) shall be made within 12 months of the date of the conviction for the offence in respect of which it is made.

(3) A court shall not grant leave under subsection (2) unless it is satisfied that —

(a) the benefit to which the application relates was only derived, realised or identified after the end of the 12 month period referred to in subsection (2);

(b) the necessary evidence only became available after the end of the 12 month period referred to in subsection (2); or

(c) it is otherwise in the interests of justice to do so.

(4) The Director of Public Prosecutions shall give written notice of an application made under subsection (1) to the respondent unless the court waives this requirement upon being satisfied that it is reasonable to do so.

(5) An application made under subsection (1) may be amended at any time prior to its final determination where reasonable notice of the amendment is given by the applicant.

(6) Subject to subsection (7), after an application made under this section has been finally determined, no further application may be made under this Part against the respondent in respect of the same confiscation offence without the leave of the court which determined the application or the leave of the High Court.

(7) The leave of the High Court referred to under subsection (6) shall not be given unless the court is satisfied that —

(a) the benefit to which the new application relates was only derived, realised or identified after the determination of the first application;

(b) the necessary evidence only became available after the determination of the first application; or

(c) it is otherwise in the interests of justice to do so.

### **Part II — Civil Penalty Orders**

#### **11. Application for a civil penalty order**

(1) The Director of Public Prosecutions or a prescribed person may apply to a magistrate's court or to the High Court for a civil penalty order requiring a person (in this Part referred to as "the respondent") to pay to the Government an amount assessed by the court as the value of the benefits derived by the respondent from a serious crime related activity that took place not more than twenty years before the making of the application. ...

### **Part IV — Forfeiture Orders**

#### **18. Application for forfeiture order**

(1) Where a person has been convicted of one or more confiscation offences, the Director of Public Prosecutions may apply to the court before which the conviction was obtained or

to the High Court for a forfeiture order against proceeds or instruments relating to that offence or offences.

(2) Except with the leave of the court, an application under subsection (1) shall be made within 12 months of the date of the conviction for the offence in respect of which it is made.

(3) A court may not grant leave under subsection (2) unless it is satisfied that —

(a) the proceeds or instruments to which the application relates were only identified after the end of the 12 month period referred to in subsection (2);

(b) the necessary evidence only became available after the end of the 12 month period referred to on subsection (2); or

(c) it is otherwise in the interests of justice to do so.

(4) The applicant shall give written notice of an application made under subsection (1) to any person the applicant has reason to believe has an interest in property the subject of the application unless they have absconded or the court waives this requirement upon being satisfied that it is fair to do so.

(5) An application made under subsection (1) may be amended at any time prior to its final determination where reasonable notice of the amendment is given by the applicant.

(6) Subject to subsection (7), after an application made under this section has been finally determined, no further application may be made under this Part against the defendant in respect of the same confiscation offence without the leave of the court which determined the application or the High Court.

(7) The leave of the High Court referred to under subsection (6) shall not be given unless the court is satisfied that —

(a) the proceeds or instruments to which the new application relates were only identified after the determination of the first application;

(b) the necessary evidence only became available after the determination of the first application; or

(c) it is otherwise in the interests of justice to do so.”

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

There are no case examples where the courts in Botswana have ordered the confiscation of foreign property by issuance of a domestic confiscation order. All requests received relate to the restraint of property (see article 54(2) below).

*(b) Observations on the implementation of the article*

**The recommendation made under article 54(1)(a) in respect of serious offences also applies to the provision under review.**

**It is recommended that Botswana adopt the aforementioned amendments to the PICA and MACMA, which would lower the present threshold for serious offences.**

*Subparagraph 1 (c) of article 54*

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The **Proceeds and Instruments of Crime Act (PICA), 2014** provides for civil penalty orders in section 11, which is non-conviction based.

**“Part II — Civil Penalty Orders**

**11. Application for a civil penalty order**

(1) The Director of Public Prosecutions or a prescribed person may apply to a magistrate’s court or to the High Court for a civil penalty order requiring a person (in this Part referred to as “the respondent”) to pay to the Government an amount assessed by the court as the value of the benefits derived by the respondent from a serious crime related activity that took place not more than twenty years before the making of the application. ...”

Section 25 of the **Proceeds and Instruments of Crime Act, 2014** provides for civil forfeiture orders and therefore the recognition of a foreign order concerning non-conviction based forfeiture is permitted. The section provides that:

**25. Civil forfeiture order**

An order for civil forfeiture shall be an order in rem, granted by a magistrate’s court or the High Court to forfeit to the Government, property that is proceed or an instrument of a serious crime related activity or foreign serious crime related activity.

26. Application for a civil forfeiture order

(1) The Director of Public Prosecutions or a prescribed person may apply to a magistrate’s court or to the High Court for a civil forfeiture order over property that is a proceed or an instrument of a serious crime related activity or foreign serious crime related activity. ...

27. Grant of civil forfeiture order

(5) For the purposes of making a determination under subsection (1), proof that a person was convicted, found guilty; or found not criminally responsible in relation to a similar

offence arising from the same facts as the alleged serious crime related activity or foreign serious crime related activity is proof that the person committed the serious crime related activity or foreign serious crime related activity.

The court can still make an order in respect of the property of an absconder. An absconder is defined in Section 2 of PICA, as shown below:

## **2. Interpretation**

(1) In this Act, unless the context otherwise requires —  
“absconder” means a person who has absconded in accordance with subsection (4);

### *(b) Observations on the implementation of the article*

As of the time of review (January 2018), there were 2 domestic cases pending under Section 27 of the PICA that would involve the restraint of assets in the absence of a conviction.

**It is recommended that Botswana amend the Mutual Assistance in Criminal Matters Act to cover non-conviction based orders and return of assets.**

### *Subparagraph 2 (a) of article 54*

*2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:*

*(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;*

### *(a) Summary of information relevant to reviewing the implementation of the article*

#### **Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The following provisions of the **Mutual Assistance in Criminal Matters Act, 1990 (MACMA)** are relevant.

Section 29 of the **Mutual Assistance in Criminal Matters Act, 1990 (MACMA)**, which is already discussed under subparagraph 1(a) of article 54 above, covers this provision. It provides for the enforcement of foreign restraining orders (subsection 2).

Section 3 of the **Judgments (International Enforcement) Act Cap 11:04** provides for the enforcement of judgments of superior courts of other countries where there is substantial reciprocity.

### **“3. Application of Part II**

Where the President is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country, substantial reciprocity of treatment will be assured as respects the enforcement in that country of judgments given in the High Court of Botswana, the President may, by statutory instrument, order- that this Part shall extend to that country; and

that such courts of that country as are specified in the order shall be the superior courts of that country for the purposes of this Part.

Any judgment of a superior court of a country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if-

it is final and conclusive between the parties thereto;

there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

it is given after the coming into operation of the order directing that this Part shall extend to that country.

For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.”

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

It was reported that 3 MLA requests relating to asset recovery have been received by Botswana- 2 requests from Zimbabwe and 1 request from South Africa. All 3 requests pertain to the restraint of property, and all 3 requests have been discharged; none were formally refused.

#### Example:

In terms of domestic application of the PICA, a successful restraint application, confirmed by the Court of Appeal in December 2016, restrained bank accounts of a respondent with an amount in excess of 23 million Pula suspected to be proceeds of money laundering (see DCEC 2016 annual report, page 21).

*(b) Observations on the implementation of the article*

Under section 29(2) of the Mutual Assistance in Criminal Matters Act, there is provision for the enforcement of a restraining order issued by a competent authority of a requesting State in respect of a serious offence, following the required steps in the said section.

Section 35 of PICA defines a “restraining order” as follows:

(1) For the purposes of this Act, a restraining order is an order that property or any interest in property shall not be disposed of or otherwise dealt with except in the manner or circumstances, if any, specified in the order.

In terms of the freezing of accounts and transactions, authorities in the DPP’s office explained that there are 2 options:

- 1) FIA can freeze accounts for up to 10 days, under section 24 of the Financial Intelligence Act (set forth below). This period may be extended by court order until the final court disposition (e.g., confiscation).
- 2) A restraint order is issued by the court ordering that the accounts remain frozen until their final disposition.

Financial Intelligence Act

24. Interruption of transaction by Agency

The Agency shall, where it has reasonable grounds to suspect that a transaction may involve the commission of a financial offence, direct in writing, the specified party or person who made the report, not to proceed with the transaction for such period not exceeding ten working days as shall be stated in the notice, in order to allow the Agency —

- (a) to make the necessary inquiries concerning the transaction; or
- (b) if the Agency deems it appropriate, to inform and advise an investigatory authority.

**The recommendation made under article 54(1)(a) also applies to the provision under review.**

**It is recommended that Botswana adopt the aforementioned amendments to the PICA and MACMA, which would lower the present threshold for serious offences.**

*Subparagraph 2 (b) of article 54*

*2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:*

*...*

*(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

**Section 31 of the MACMA** allows for requests by a foreign country to the Director of Public Prosecutions to obtain the issue of a restraining order. Under the Proceeds and Instruments of Crime Act, the Director of Public Prosecutions may apply to a magistrate's court or the High court for a restraining order requested by the foreign country.

**“31. Requests for restraining orders**

Where-

- (a) a criminal proceeding has commenced in a foreign country in respect of a serious offence;
- (b) there are reasonable grounds to believe that property that may be made or is about to be made the subject of a foreign restraining order is located in Botswana; and
- (c) the foreign country requests the Director of Public Prosecutions to obtain the issue of a restraining order under the Proceeds of Serious Crime Act against the property, the Director of Public Prosecutions may apply to a magistrate's court or the High Court for the restraining order requested by the foreign country.”

Sections 30 and 32 of MACMA are also relevant. Section 30 of the Mutual Assistance in Criminal Matters Act provides for requests for search and seizure warrants in respect of tainted property. In terms of this section, the Director of Public Prosecution may authorise a police officer to apply to a magistrate for the issuance of a search warrant requested by a foreign country.

**“30. Requests for search and seizure warrants in respect of tainted property**

Where —

- (a) a criminal proceeding or criminal investigation has commenced in respect of a foreign country in respect of a serious offence;
- (b) there are reasonable grounds to believe that tainted property in relation to the offence is located in Botswana; and
- (c) the foreign country requests the Attorney-General to obtain the issue of a search warrant under the Proceeds of Serious Crime Act in relation to the tainted property; the Attorney-General may authorise a police officer to apply to a magistrate for the search warrant requested by the foreign country.

**32. Requests for information gathering orders**

Where ----

- (a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a serious offence;

- (b) a document in relation to the offence is reasonably believed to be located in Botswana; and
- (c) the foreign country requests the Attorney-General to obtain the issue of—
  - (i) a production order under the Proceeds of Serious Crime Act, 1990 in respect of the document, or
  - (ii) a search warrant under the Proceeds of Serious Crime Act, 1990 in respect of the document,
 the Attorney-General may authorise a police officer to apply to a magistrate or a judge of the High Court for the order requested by the foreign country.
- (2) Where —
  - (a) a criminal proceeding or criminal investigation has commenced in a foreign country in respect of a serious offence that is —
    - (i) a money laundering offence in respect of proceeds of a serious offence; or
    - (ii) an ancillary offence in relation to an offence of a kind referred to in subparagraph (i);
  - (b) information about transaction conducted through an account with a financial institution in Botswana is reasonably believed to be relevant to the proceeding or investigation; and
  - (c) the foreign country requests the Attorney-General to obtain the issue of an order under the Proceeds of Serious Crime Act, 1990 directing the financial institution to give information to the police about transactions conducted through the account, the Attorney-General may authorise a police officer to apply to a magistrate or a judge of the High Court for the order requested by the foreign country.”

Section 12 of the MACMA

**12. Requests by foreign countries for search and seizure**

“12. (1) Where -

- (a) a proceeding or investigation relating to a criminal matter involving a serious offence has commenced in a foreign country;
  - (b) there are reasonable grounds to believe that a thing relevant to the investigation or proceeding is located in Botswana; and
  - (c) the foreign country requests the Director of Public Prosecutions to arrange for the issue of a search warrant under this section in relation to that thing, the Director of Public Prosecutions may authorise a police officer, in writing, to apply to a magistrate in the district in which that thing is believed to be located for the search warrant requested by the foreign country.
- (2) Where a police officer authorised under subsection (1) has reason to believe that the thing to which the request relates is, or will, at a specified time, be -
- (a) on a person;
  - (b) in the clothing that is being worn by a person; or
  - (c) otherwise in a person's immediate control, the police officer may -
    - (i) lay before a magistrate an information on oath setting Out the grounds for that belief, and
    - (ii) apply for the issue of a warrant under this section to search the person for that thing.
- (3) Where an application is made under subsection (2), the magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable -
- (a) to search the person for the thing; and
  - (b) to seize anything found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.

- (4) Where a police officer authorised under subsection (1) has reason to believe that the thing to which the request relates is, or will, at a specified time, be, upon any land, or upon or in any premises, the police officer may –
- (a) lay before a magistrate an information on oath setting out the grounds for that belief; and
  - (b) apply for the issue of a warrant under this section to search the land or premises for that thing.
- (5) Where an application is made under subsection (4), the magistrate may, subject to subsection (6), issue a warrant authorising a police officer (whether or not named in the warrant), with such assistance, and by such force, as is necessary and reasonable –
- (a) to enter upon the land, or upon or into the premises; (b) to search the land or premises for the thing; and
  - (c) to seize anything found in the course of the search that the police officer believes, on reasonable grounds, to be relevant to the proceeding or investigation.
- (6) A magistrate shall not issue a warrant under this section unless–
- (a) the informant or some other person has given to him either orally or by affidavit, such further information, if any, as he requires concerning the grounds on which the issue of the warrant is sought; and
  - (b) he is satisfied that there are reasonable grounds for issuing the warrant.
- (7) There shall be stated in a warrant issued under this section –
- (a) the purpose for which the warrant is issued, including a reference to the nature of the criminal matter in relation to which the search is authorised;
  - (b) whether the search is authorised at any time of the day or night or during specified hours of the day or night;
  - (c) a description of the kind of things authorised to be seized; and
  - (d) a day, not being later than one month after the issue of the warrant, on which the warrant ceases to have effect.
- (8) If, in the course of searching, under a warrant issued under this section, for a thing of a kind specified in the warrant, the police officer finds another thing that he believes on reasonable grounds –
- (a) to be relevant to the proceeding or investigation in the foreign country or to afford evidence as to the commission of a criminal offence; and
  - (b) is likely to be concealed, lost or destroyed if it is not seized, the warrant shall be deemed to authorise him to seize the other thing.
- (9) Where a police officer finds, as a result of a search in accordance with a warrant issued under this section, a thing which he seizes wholly or partly because he believes the thing on reasonable grounds to be relevant to the proceeding or investigation in the foreign country, he shall deliver the thing into the custody and control of the Commissioner of Police.
- (10) Where a thing is delivered into the custody and control of the Commissioner of Police under subsection (9), the Commissioner shall arrange for the thing to be kept for a period not exceeding one month from the day on which the thing was seized pending a direction in writing from the Director of Public Prosecutions as to the manner in which the thing is to be dealt with (which may include a direction that the thing be sent to an authority of a foreign country).
- (11) A police officer who executes a search warrant issued under subsection (3) or (5) shall, as soon as practicable after the execution of the warrant, give to the person, or give to the owner or occupier of the land or premises or leave in a prominent position on the land or at the premises, as the case requires, a notice setting out–
- (a) the name and rank of the police officer,

(b) the name of the magistrate who issued the warrant and the day on which it was issued; and (c) a description of any things seized and removed in accordance with the warrant.

(12) A police officer acting in accordance with a warrant issued under subsection (3) may remove, or require a person to remove, any of the clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person under the warrant.

(13) A person shall not be searched under a warrant issued under subsection (3) except by a person of the same sex.

(14) Where a police officer is authorised, under a warrant issued under subsection (3), to search a person, the police officer may also search-

(a) the clothing that is being worn by the person; and

(b) any property in, or apparently in, the person's immediate control.”

Other relevant provisions of Botswana’s law include Section 51 (Production Order) of the **Proceeds and Instruments of Crime Act, 2014** which provides as follows:

**“51. Production order**

(1) Where a person is the subject of an investigation for a confiscation offence or is reasonably suspected of having committed a foreign serious crime related activity, and there are reasonable grounds for suspecting that information relevant to the offence or activity, or that may assist in any way in tracking or identifying the proceeds of the offence, or in assessing the value of any property of the person convicted of the offence, or suspected of having committed the offence, are in possession of or under the control of any person, the Director of Public Prosecutions may apply to a magistrate's court for a production order in respect of any document containing the information relevant to the offence or activity.

(2) An application for a production order shall be supported by an affidavit sworn by a prescribed investigator setting out the grounds for the application, and the basis for any suspicions as to the commission of the offence, or as to the location of any such information as is referred to in subsection (1).

(3) A magistrate before whom an application is made under this section, may, if he or she is satisfied that there are reasonable grounds for making the order, issue a production order, subject to such conditions as he or she may think fit to impose, ordering any person to produce to a police officer any documents of the kind referred to in subsection (1) that are in such person’s possession or under his or her control, or to make such documents available to a prescribed investigator for inspection, at such time or place as may be specified in the order.

(4) Where a document is produced or made available to a prescribed investigator under this section he or she may take extracts from it or make copies of it, and if it was ordered to be produced to the prescribed investigator, he or she may retain it if, and for so long as, its retention is reasonably necessary for the purposes of this Act.

(5) A person shall not be excused from producing or making available a document when ordered to do so under this section on the ground that producing it or making it available might tend to incriminate him or her or make the person liable to a penalty, or that it would or might be in breach of an obligation (whether imposed by an enactment or otherwise) of the person not to disclose the existence or contents of the document:

Provided that any information, document or thing obtained as a direct or indirect consequence of the production or making available of the document shall not be admissible

in evidence against the person producing it or making it available in any criminal proceedings except in respect of an offence under section 53.

(6) For the purposes of the proviso to subsection (5) proceedings on an application for a confiscation order or a restraining order are not criminal proceedings.

(7) Where a prescribed investigator retains a document pursuant to an order under this section, he or she shall, on request of the person to whom the order is addressed, give to that person a copy of the document, certified under his or her hand to be a true copy of the document.

(8) Where a production order requires a person to produce a document to a prescribed investigator, the person may apply to a magistrate's court or the High Court for a variation of the order, and if the court is satisfied that the document is essential to the business activities of the person, and the interests of justice will not thereby be jeopardised, it may vary the terms of the production order so that it requires the person to make the document available to a prescribed investigator for inspection.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None as no such requests have been received.

*(b) Observations on the implementation of the article*

Section 31 allows for the issuance of a restraining order on the basis of a foreign request in respect of a serious offence.

**The recommendation made under article 54(1)(a) also applies to the provision under review.**

**It is recommended that Botswana adopt the aforementioned amendments to the PICA and MACMA, which would lower the present threshold for serious offences.**

*Subparagraph 2 (c) of article 54*

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

*(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The preservation of property is addressed in Sections 46 and 68 of PICA and Section 58 of the Criminal Procedure and Evidence Act.

**46. Establishment of office of Receiver**

- (1) There is hereby established an Office of Receiver which shall consist of a Receiver and such other officers as may be appointed.
- (2) The office of Receiver shall be a public office, and accordingly, the provisions of the Public Service Act shall apply to the office of Receiver.
- (3) The Minister may appoint a Receiver on such terms and conditions as he or she thinks fit.
- (4) The Receiver shall be responsible for preserving the value of the property in his or her possession in respect of an order made under this Act or under any written law.
- (5) Where the Receiver is directed to take control of property under sections 35 (3) or 43 (1), the Receiver may do anything that is reasonably necessary for the purpose of preserving the value of the property including —
  - (a) becoming a party to any civil proceedings affecting the property;
  - (b) maintenance of the property to preserve its value;
  - (c) ensuring that the property is insured;
  - (d) realising or otherwise dealing with securities or investments, if the property consists, wholly or partly, of securities or investments;
  - (e) if the property consists of shares in a company, the Receiver may exercise the rights attaching to the shares as if he or she were the registered holder of the shares to the exclusion of the registered holder;
  - (f) employing, or terminating the employment of persons in the business and doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis, if the property consists, wholly or partly, of a business; and
  - (g) if the property is volatile or wasting in nature or there is likely to be a significant depreciation in its value between the appointment of the Receiver and the date at which any proceedings under Chapters II and IV, in the opinion of the Receiver, likely to be concluded, sell the property by any means reasonably calculated to derive the best price and shall prudently invest the proceeds in an interest bearing account.
- (6) Subsection (5) (c) and (d) shall not limit the generality of the other.
- (7) Any person having possession of any property in respect of which a receiving order is made under this Act, shall give control or possession thereof to the Receiver.
- (8) The Receiver shall, where practicable, give notice to an owner of any property he or she receives under this Act before he or she disposes of the property in any manner.

**Chapter VII — Confiscated Assets Trust Fund**

**68. Establishment of Fund**

- (1) The Minister shall establish a Fund to be known as the

Confiscated Assets Trust Fund to which all moneys collected under this Act shall be paid into.

(2) In addition to any moneys which may be collected under this Act, any profits derived or investments and sales made by the Receiver in relation to property confiscated under this Act shall be paid into the Fund.

Section 31 of MACMA (quoted above) further provides for the issuance of restraining orders on the basis of a foreign request.

**Criminal Procedure and Evidence Act,  
Section 58. Disposal of property seized**

(1) When on the arrest of any person on a charge of an offence relating to property, the property in respect of which the offence is alleged to have been committed is found in his possession, or when anything is seized or taken under the provisions of this Act, the person making the arrest or (as the case may be) the person seizing or taking the thing shall deliver, or cause to be delivered, the property or thing to a judicial officer within such time as in all the circumstances of the case is reasonable.

(2) Whenever anything is so seized or taken, marks of identification when practicable shall, by the person seizing it, be placed thereon at the time of the seizure or taking or as soon thereafter as can conveniently be done.

(3) The judicial officer shall cause the property or thing so seized, or taken to be detained in such custody as he may direct, taking reasonable care for its preservation until the conclusion of a summary trial or of any investigation that may be held in respect of it; and if any person is committed for trial for any offence committed with respect to the property or thing so seized or taken, or for any offence committed under such circumstances that the property or thing so seized or taken is likely to afford evidence at the trial, the judicial officer shall cause it to be further detained in like manner for the purpose of its being produced in evidence at such trial.

(4) At the conclusion of the summary trial or (as the case may be) if the Director of Public Prosecutions declines to prosecute, the judicial officer shall direct that the thing be returned to the person from whose possession it was taken, unless he is authorized or required by law to dispose of it otherwise.

The **Proceeds and Instruments of Crime Act, 2014 (PICA)** came into force on 1 January 2015, and implementing regulations have been issued. However, some provisions of the Act have not yet been implemented. The office of the Receiver was established in September 2017 but is not yet fully operational. At the time of review, it was expected that the Receiver would be given a budget for its operations in March 2018.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

There are no examples.

*(b) Observations on the implementation of the article*

Section 46 of PICA calls for the establishment of the office of the Receiver. The PICA provides for two key functions to be performed by the Receiver: first, the management of restrained property in terms of section 46(4), which requires the Receiver to preserve the value of the property in his or her possession, and second the management of confiscated property in terms of section 68(2), which requires the Receiver to perform functions in relation to confiscated property, such as making profits, sales and investments and pay the proceeds into the Confiscated Assets Trust Fund.

At the time of review, the Receiver had not yet begun its operations and so there were no examples of its operations and no information on the effectiveness of the procedure to manage and preserve property pending confiscation. It was explained that all properties seized by law enforcement agencies in Botswana would be managed by the Receiver and preserved for confiscation, without the need for a court order or direction to this effect. In each case the Receiver will check the existence of the property, assess its quality and determine what steps are needed for its preservation.

It was explained that under the previous system in place before the office of the Receiver was established, properties were managed by each law enforcement agency such as the police, unless a court ordered otherwise. In some cases, restrained funds were held by the Accountant-General.

Steps to enhance the preservation of assets pending confiscation were underway through the PICA Amendment Act, which would amend Section 35 of PICA to prevent property from personal dissipation. The amendment would allow any law enforcement officer or the Receiver to seize or otherwise secure property that is liable to confiscation, where there is reasonable suspicion that the property is likely to be disposed of or removed and the disposal or removal would be prejudicial to a restraint or forfeiture order

**Accordingly, it is recommended that Botswana continue to strengthen mechanisms for the preservation of property pending confiscation, including through the implementation and amendment of PICA, and consider adopting comprehensive asset management guidelines in this respect.**

**Botswana has requested technical assistance to build the capacity of the international cooperation unit in the DPP with regard to mutual legal assistance, asset forfeiture and recovery matters.**

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Amendment of the existing Mutual Assistance in Criminal Matters Act to cover non-conviction based orders and return of assets, among others.

*(d) Technical assistance needs*

**Capacity-building:** There is need to build capacity of the international cooperation unit in the DPP with regard to mutual legal assistance.

**Others:** Sharing of best practices.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

Through the joint UNODC/World Bank Stolen Asset Recovery Initiative, technical assistance has been provided since 2013 to national authorities, principally the DCEC and the Ministry of Defence Justice and Security (MDJS), to build capacity on anti-corruption and to support the development of implementing regulations under the PICA.

**Article 55. International cooperation for purposes of confiscation**

*Paragraph 1 of article 55*

*1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:*

*(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or*

*(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 29 of the **Mutual Assistance in Criminal Matters Act** provides for requests for the enforcement of foreign orders:

**“29. Requests for enforcement of orders**

(1) Where -

(a) a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a foreign confiscation order made in respect of a serious offence, against property that is believed to be located in Botswana; and

(b) the Director of Public Prosecutions is satisfied that –

(i) a person has been convicted of the offence, and

(ii) the conviction and the order are not subject to further appeal in the foreign country, the Director of Public Prosecutions may apply for the registration of the order in the High Court.

(2) Where a foreign country requests the Director of Public Prosecutions to make arrangements for the enforcement of a foreign restraining order, made in respect of a serious offence, against property that is believed to be located in Botswana, the Director of Public Prosecutions may apply for the registration of the order in the High Court.

(3) A foreign confiscation order, or a foreign restraining order, as the case may be, registered in the High Court in accordance with this section has effect, and may be enforced, as if it were an order made by a court under the Proceeds of Serious Crime Act, 1990.

(4) Where an order is registered in a court in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not have effect until they are registered.”

Provisions for the issuance of domestic confiscation orders on the basis of foreign requests are described under subparagraph 1 (b) of article 54.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None. Botswana has not received any requests for asset confiscation. All requests received by Botswana relate to the restraint of property (see article 54(2)).

*(b) Observations on the implementation of the article*

No requests for asset confiscation under MACMA have been received by Botswana to date.

It was confirmed by the authorities that, if such a request were received from another State party, Botswana authorities could proceed either: in accordance with subparagraph 1(b) of article 55 to submit the foreign confiscation order to the domestic authorities for enforcement, or in accordance with subparagraph 1(a) of article 55 to submit the request to the courts for the purpose of obtaining an order of confiscation.

**The recommendation made under article 54(1)(a) in respect of serious offences also applies to the provision under review.**

*Paragraph 2 of article 55*

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The relevant provisions for this paragraph are Section 12 as well as Sections 29-32 of the MACMA. The provisions are quoted under article 54(2) above.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

**The recommendation made under article 54(1)(a) in respect of serious offences also applies to the provision under review.**

*Paragraph 3 of article 55*

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the

*requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;*

*(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;*

*(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 8 of the **Mutual Assistance in Criminal Matters Act, 1990** provides for the requirements to be met by a foreign country. The section provides inter alia the following:

“8. (1) A request by a foreign country for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General, in writing, to receive requests by foreign countries under this Act

(2) A request made under subsection (1) shall be accompanied by –

(a) the name of the authority concerned with the criminal matter to which the request relates;

(b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(c) a description of the purpose of the request and of the nature of the assistance being sought;

(d) details of the procedure that the foreign country wishes to be followed by Botswana in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign country pursuant to the request’

(e) a statement setting out the wishes of the foreign country concerning the confidentiality of the request and the reasons for those wishes;

(f) details of the period within which the foreign country wishes the request be complied with;

(g) if the request involves a person travelling from Botswana to the foreign country, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person, while the person is in the foreign country pursuant to the request;

- (h) any other information required to be included with the request under an arrangement between Botswana and the foreign country; and
- (i) any other information that may assist in giving effect to the request; but failure to comply with this subsection is not ground for refusing the request
- (3) Where a request by a foreign country is made to a person authorised under subsection (1), the request shall be taken, for the purposes of this Act, to have been made for the Attorney- General”

For the court to issue an order for confiscation, the papers filed before court in support of such application must have sufficient information regarding the description of the property to be confiscated including the location, value as well as the statement of facts relied upon by the requesting State party.

For purposes of article 55 paragraph (3)(b), Section 29 of the Mutual Assistance in Criminal Matters (quoted above) is relevant.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

The provision under review appears to be implemented.

*Paragraph 4 of article 55*

*4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The **Mutual Assistance in Criminal Matters Act** sections 8 and 29 (cited above), and the provisions of the **Proceeds and Instruments of Crime Act** (principally Chapter II —

Confiscation; Chapter IV — Restraint of Property Subject to Confiscation; and Chapter VI — Investigation Powers) provide the relevant domestic law.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

At the time of review Botswana had not signed any treaties on mutual legal assistance or asset recovery, although bilateral agreements on mutual legal assistance have been proposed with several countries (see article 59 below).

*Paragraph 5 of article 55*

*5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.**

The reviewers were provided with copies of the relevant laws during the course of the review.

*(b) Observations on the implementation of the article*

The provision under review is implemented.

*Paragraph 6 of article 55*

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 3 of the **Mutual Assistance in Criminal Matters Act** provides as follows:  
“3. (1) Where an arrangement has been made with foreign country for mutual assistance in criminal matters, the Minister may by statutory instruments make regulations that this Act apply to that country.  
(2) Regulations made under subsection (1) provide that the application of this Act shall be subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to an arrangement made between Botswana and that country.”

The Convention can only be used as a basis if it has been domesticated. The process of domestication of international treaties, including this Convention, is ongoing.

Botswana has not signed any treaties on asset recovery.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

The provision of MLA by Botswana is limited to States parties where an arrangement has been made for mutual assistance in criminal matters. It was confirmed during the country visit that assistance may be provided in the absence of a treaty, so long as the DPP has authorized application of the Act to a foreign country by issuance of a relevant regulation in accordance with section 3. This would be done on a case-by-case basis. No countries have been designated under the MACMA to date.

In respect of multilateral treaties and arrangements (e.g., the Commonwealth Harare Scheme, SADC and this Convention), Botswana authorities confirmed that the country may

provide assistance on the basis of those treaties, provided their provisions have been fully domesticated in the national legislation. It was explained that the process of domestication of this Convention is still ongoing. Accordingly, the reviewers note that MLA is limited to the extent that not all offences established under the Convention have been criminalized.

**It is recommended that Botswana consider amending the MACMA to allow for the provision of assistance in the absence of a treaty or regulation, and to continue efforts towards the full implementation of the Convention.**

*Paragraph 7 of article 55*

*7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 5 of the **Mutual Assistance in Criminal Matters Act** provides circumstances under a request may be refused. The section provides as follows:

“5.(1) A request by a foreign country for assistance under this Act shall be refused if, in the opinion of the Director of Public Prosecutions-

(a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(b) subject to subsection (3), there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;

(c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of his race, sex, religion, nationality or political opinions;

(d) the request relates to the prosecution or punishment of a person in respect of an act or omission that if it had occurred in Botswana, would have constituted an offence under the military law of Botswana but not also under the ordinary criminal law of Botswana;

(e) the granting of the request would prejudice the sovereignty, security or national interest of Botswana;

(f) the request relates to the prosecution of a person for an offence in a case where he has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or

(g) except in the case of a request under section 10, the foreign country is not a country to which this Act applies.

(2) A request by a foreign country for assistance under this Act may be refused if, in the opinion of the Director of Public Prosecutions-

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Botswana, would not have constituted an offence against the laws of Botswana;

(b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside Botswana in similar circumstances would not have constituted an offence against the laws of Botswana;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission where, if it had occurred in Botswana at the same time and had constituted an offence against the laws of Botswana, the person responsible could no longer be prosecuted by reason of lapse of time or any other reason;

(d) the provision of the assistance could prejudice an investigation or proceeding in relation to a criminal matter in Botswana;

(e) the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in or outside Botswana); or

(f) the provision of the assistance would impose an excessive burden on the resources of the State.

(3) An offence is not an offence of a political character-

(a) if it is an offence in accordance with the provisions of any international convention to which Botswana and the foreign country to which this Act applies are parties and there is an obligation on each party to afford mutual assistance in investigation and prosecution of such offence;

(b) if it is an offence against the life or person of a Head of State or a member of his immediate family, a Head of Government, or a Minister or any related offence;

(c) if it is murder or any related offence.

(4) For the purposes of subsection (3)(b) and (c), "related offence" means aiding and abetting, counselling or procuring the commission of, being an accessory before or after the fact to, or attempting or conspiring to commit that offence."

The circumstances for refusal of a request do not include insufficiency of evidence nor the value of the property.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

The circumstances for refusal of a request under Section 5 of MACMA do not include

insufficiency of evidence nor the value of the property.

*Paragraph 8 of article 55*

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The relevant legislation does not place an obligation on Botswana to consult the requesting country.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

Although it was explained that the authorities in Botswana would consult as a matter of practice, it is recommended that Botswana specify the matter in its law or procedure on MLA.

*Paragraph 9 of article 55*

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Section 43 of the **Proceeds and Instruments of Crime Act, 2014** recognizes third party rights of claimants in confiscation procedures. The provision is quoted under article 53(c) above.

Section 44 of PICA further provides for exclusion of property from restraint and it reads as follows:

“44. (1) Where the court in reliance of the existence of a conviction, charge or investigation makes a restraining order against property a person who has been convicted or has been charged with a confiscation offence or is the subject of an investigation for a confiscation offence or who has, or is about to have an application made against them for a civil forfeiture order or civil penalty order (in this section referred to as the "relevant person") or any person who has an interest in the property may apply to the court to exclude their interest from the order.

(2) The court shall grant the application where the applicant is not the relevant person, and the restraining order was made against the property under section 37 for the purpose of securing a pecuniary penalty order if it is satisfied that -

(a) a pecuniary penalty order cannot be made against the relevant person; or

(b) the relevant person does not have an interest in the property which is the subject of the application.

(3) The court shall grant the application where the applicant is not a relevant person and the restraining order was made against the property under section 37 for the purpose securing a forfeiture order if it is satisfied that -

(a) the property is not proceeds or an instrument in relation to the offence;

(b) the applicant was not in any way involved in the commission of the offence;

(c) where the applicant acquired the interest at the time of or after the commission or alleged commission of the confiscation offence and the interest was acquired without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was proceeds or an instrument: and

(d) the relevant person does not have an interest in the property which is the subject of the application.

(4) The court shall grant the application where the applicant is not a relevant person and the restraining order was made against the property under section 37 for the purpose of securing an automatic forfeiture order if it is satisfied that the relevant person does not have an interest in property the subject of the application.

(5) The court shall grant the application where the applicant is not the relevant person and the restraining order was made against the property under section 39 for the purpose of securing a civil penalty order if it is satisfied that -

(a) a civil penalty order cannot be made against the relevant person; or

(b) the relevant person does not have an interest in the property which is the subject of the application.

(6) The court shall grant the application where the applicant is not a relevant person and the restraining order was made against the property under section 39 for the purpose of securing a civil forfeiture order if it is satisfied that-

(a) the property is not proceeds or an instrument in relation to the serious crime related activity or foreign serious crime related activity;

(b) the applicant was not, in any way, involved in the commission of the serious crime related activity or foreign serious crime related activity;

(c) where the applicant acquired the interest at the time of, or after the commission or alleged omission of, the serious crime related activity or foreign serious crime related activity, the interest was acquired without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was a proceed of an instrument; and

(d) the relevant person does not have an interest in the property which is the subject of the application.

(7) The court shall grant the application where the applicant is the relevant person and the restraining order was made against the property under section 37 or 39 for the purpose of securing a pecuniary penalty order or a civil penalty order if it is satisfied that a pecuniary penalty order or a civil penalty order cannot be made against the relevant person.

(8) The court shall grant the application where the applicant is the relevant person and the restraining order was made against the property under section 37 or 39 for the purpose of securing a forfeiture order or a civil forfeiture order if it is satisfied that the property is not a proceed or an instrument.

(9) Subject to section 45 (1), the court shall grant the application where the applicant is the relevant person and the restraining order was made against the property and section 38 for the purpose of securing automatic forfeiture if it is satisfied that -

(a) the property was not use in, or in connection with, any unlawful activity;

(b) the property was not derived, directly or indirectly, by any person from any unlawful activity; and

(c) the applicant's interest in the property was lawfully acquired.

(10) Where, prior to the occurrence of automatic forfeiture under section 22, an application is made for orders under subsections (4) or (9) or for a declaration under section 45 (1), the filing of the application shall suspend the expiration of the 60 day time period referred to in subsection 22 (1) in respect of any property specified in the application.

(11) In the event that any application for orders under subsections (6) or (9) or a declaration under section 45 (1) is dismissed, withdrawn or struck out the 60 day time period referred to in subsection 22 (1) shall be deemed, by operation of this subsection, to have expired thereby permitting automatic forfeiture under section 22 to occur.”

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

The provision appears to be implemented.

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Capacity building of the international cooperation unit in the DPP in so far as mutual assistance and asset forfeiture and recovery are concerned.

*(d) Technical assistance needs*

As noted above, capacity building is needed for the international cooperation unit in the DPP insofar as mutual assistance in criminal matters as well as asset forfeiture and recovery are concerned.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

**Article 56. Special cooperation**

*Article 56*

*Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure**

**full compliance with this provision of the Convention.**

It is possible under SARPCCO, INTERPOL and ARINSA to transmit such information without prior request.

The Financial Intelligence Act, Section 31(3) is also considered relevant in this regard.

Section 31, Financial Intelligence Act

31. (1) The Agency shall be the only body in Botswana which may seek recognition by the Egmont Group or comparable body to exchange financial intelligence information on the basis of reciprocity and mutual agreement.

(2) Where the Agency is granted recognition in accordance with subsection (1), the Agency may exchange financial information with other members of the Egmont Group or comparable body in accordance with the conditions for such exchanges established by the Egmont Group.

(3) Without prejudice to subsections (1) and (2), where the Agency becomes aware of any information which may be relevant to the functions of a comparable body, it may disclose the information to the comparable body under conditions of confidentiality.

(4) Subject to subsection (5), where a request for information is received from a comparable body, the Agency shall disclose any relevant information in its possession to the comparable body, on such terms of confidentiality as may be agreed between the Agency and the comparable body.

(5) Where a request referred to in subsection (4) concerns information which has been provided to the Agency by a supervisory authority, an investigatory authority, a statutory body or government agency, the information shall not be disclosed without the consent of the appropriate supervisory authority, investigatory authority, statutory body or government agency.

(6) The Agency shall maintain a record in such form as may be prescribed, of statistics on the number of information disclosed to a comparable body and the number of requests of financial information from a comparable body.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

Recently there was sharing or exchange of information with the Republic of South Africa in relation of the matter of *DPP v Khato Civils (PTY) LTD*, which involved a company of South African origin but with a subsidiary in Botswana. This information was shared through the auspices of the ARINSA network.

*(b) Observations on the implementation of the article*

At the time of review FIA had made five (5) spontaneous disclosures to various law enforcement agencies. No further detail was available.

Some examples of cooperation and/or dissemination of information through informal basis were discussed during the country visit.

Proposed amendments to CECA would allow the DCEC to share information in the absence of a request. Amendments were passed during the July 2018 Parliament sitting but did not form part of the review.

**Based on the information provided, it is recommended that relevant law enforcement agencies in Botswana continue to strengthen measures for the spontaneous exchange of information with foreign counterparts.**

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

There is need to strengthen the relations with other states in order for the informal forms of cooperation to be fully effective and efficient.

*(d) Technical assistance*

Facilitation of international law enforcement cooperation with other countries.

**Article 57. Return and disposal of assets**

*Paragraphs 1 and 2 of article 57*

*1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.*

*2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Sections 318 and 319 of the **Criminal Procedure and Evidence Act** [Chapter 08:02, Laws of Botswana] complement the Mutual Assistance in Criminal Matters Act and the Proceeds and Instruments of Crime Act, 2014 in addressing this article.

**318. Restitution of stolen property**

(1) If any person is convicted of theft or receiving stolen property knowing it to have been stolen, or otherwise unlawfully obtaining any property, such property may be restored to the owner or his representative on application by him to the court.

(2) In every such case the court before which such person is tried for any such offence shall have power to award from time to time writs of restitution in respect of the said property or to order the restitution thereof in a summary manner.

(3) If it appears, before any award is made, that any valuable security has been bona fide paid or discharged by any person liable to the payment thereof or, being a negotiable instrument has been bona fide taken or received by transfer or delivery by any person for a just and valuable consideration without notice or without any reasonable cause to suspect that the same had by any offence been stolen or otherwise unlawfully obtained, or if it appears that the property stolen or received as aforesaid or otherwise unlawfully obtained has been transferred to an innocent purchaser for value who has acquired a lawful title thereto, the court shall not award or order the restitution of such security or property.

**319. Return of exhibits**

(1) The court may, after the conclusion of any trial and subject to any special provision contained in any law, make a special order as to the return to the person entitled thereto of the property in respect of which the offence was committed or of any property seized or taken under this Act or produced at the trial. If no such order is made the property shall, on application, be returned to the person from whose possession it was obtained (unless it was proved during the trial that he was not entitled to such property) after deduction of the expenses incurred since the conclusion of the trial in connection with the custody of the property; but if within a period of three months after the conclusion of the trial no application is made under this section for the return of the property, or if the person applying is not entitled thereto or does not pay the expenses aforesaid, the property shall vest in the State.

(2) The court convicting any person of any offence which was committed by means of any weapon, instrument or other article produced to the court may, if it thinks fit, declare such weapon, instrument or other article to be forfeited to the State.

(3) The court convicting any person of any offence specified in Part I of the First Schedule who was arrested while in possession or custody of any vehicle or receptacle used in the conveyance of or containing any article or substance in connection with which the said

offence was committed may, if it thinks fit, declare that vehicle or receptacle, or the convicted person's right thereto, to be forfeited to the State:

Provided that such declaration shall not affect any rights which any person other than the convicted person may have to the vehicle or receptacle in question if it is proved that he did not know that it was being used or would be used for the conveyance of, or as receptacle for, the said article or substance, or that he could not prevent such use.

(4) During the trial resulting in any such declaration of forfeiture and at any time after the making of such declaration, the court which is holding or which held the trial may inquire into and determine any person's rights to the vehicle or receptacle in question; and if such determination is adverse to any person, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the forfeiture was declared, or against a sentence imposed as a result of such conviction.

(5) If any such declaration is set aside or varied after the sale, on behalf of the State, of the vehicle or receptacle or rights declared to be forfeited, the person whose rights were upheld by the setting aside or variation of the declaration may, at his option, enforce those rights against any person in possession or custody of the vehicle or receptacle in question, or claim from the Government an amount equal to the value of those rights but not exceeding the proceeds of the sale of those rights.”

Section 29 of **Mutual Assistance in Criminal Matters Act** (quoted above) provides for the enforcement of foreign confiscation orders.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

It is noted that Section 318 of the Criminal Procedure and Evidence Act is limited to offences of theft or receiving stolen property.

There are no provisions in the Mutual Assistance in Criminal Matters Act that address the return of forfeited or confiscated property or any fines, pecuniary penalties or compensation that is recovered by reason of the enforcement of an order.

In terms of the PICA, confiscated property is forfeited to the Government. No provision appears to be made for payment to victims. Sections 4(1) and 11(1) of PICA provide for the court to order the respondent to pay the penalty to the Government. Sections 19(1) and 22(1) provide that proceeds and instrumentalities of crime shall be forfeited to the Government.

In terms of section 68(1) of PICA, the Confiscated Assets Trust Fund is to be established for the sole purpose of receiving payment of “all moneys collected under this Act”. Given that the PICA provides for property ordered confiscated to vest in the Government, it is for the Government to determine how these funds ought to be administered. The PICA is

completely silent on what the money in the Fund ought to be used for. There are usually two options in this regard. Either the proceeds in the Fund are paid over to the Consolidated Revenue Fund, like other fines or penalties, or the legislation specifies that the money in the Fund or forfeited property may be made available for specified purposes, such to support the asset recovery programme, to train asset recovery personnel, to fund asset management, to fund victims or victim organisations, etc.

In terms of Article 117 of the Constitution “[a]ll revenues or other moneys raised or received for the purposes of the Government of Botswana (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.”

While the PICA establishes a Fund for purposes of receiving the property forfeited under the PICA, it does not specify the purpose for which the Funds are to be used. This may mean that, absent a legislative amendment to PICA to specify the purposes for which the Fund is to be used, the funds must be paid into the Consolidated Fund.

In terms of a decision at the policy level of Government regarding the use or disposition of confiscated funds, it was explained that a statutory instrument (the Confiscated Assets Fund Order) would specify the use and disposition of property and was pending signature by the Minister of Finance.

Furthermore, as noted above, the proposed MACMA Amendment Bill 2018 would allow for sharing of confiscated property with foreign countries and for the return of confiscated property to foreign countries, by inserting a new provision as follows:

*Insertion of section 30A in the Act*

*12. The Act is amended by inserting, immediately after section 30 the following new section*

*–*  
*“Sharing confiscated 30A.(1) The Director of Public property with a Prosecutions may enter into agreement foreign country with competent authority of a foreign country for the reciprocal sharing with that country of property or a part of it realised –*

*(a) in the foreign country, as a result of action taken under this Act; or*

*(b) in Botswana, as a result action taken under this Act*

*(2) Where the Minister responsible for finance considers it appropriate, the Minister may order that the whole or any part of any property confiscated under this Act, or the value thereof be remitted to the foreign country.”*

#### Recommendations:

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention, nor is reference made to returning property to requesting States.

**It is recommended that Botswana take measures to enable the return of confiscated property, when acting on the request made by another State Party, in accordance with this Convention. The adoption of the proposed MACMA Amendment would be a step**

**in this direction, subject to the observations under article 57(3) below.**

**Botswana could also consider developing an asset recovery guide with practical guidance on these issues.**

**Botswana has requested technical assistance in the form of capacity building and sharing of good practices in respect of article 57.**

*Subparagraph 3 (a) of article 57*

*3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:*

*(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

Botswana's law does not make a distinction between public funds/property and non-public funds/property but instead the guiding factor is whether the funds are tainted in that they were obtained as a result of a criminal activity. Therefore, the provisions of Botswana's law which would apply to any other offence would equally apply to embezzlement of public funds and the laundering of such funds.

Sections 4, 8, 29, 30 and 31 of the **Mutual Assistance in Criminal Matters Act** complemented by the general provisions of the Criminal Procedure and Evidence Act, particularly sections 316, 318 and 319 (quoted above) are relevant and would apply.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None as they have been no request received for such.

*(b) Observations on the implementation of the article*

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention in cases of embezzlement of public funds or of laundering of embezzled public funds.

**It is recommended that Botswana take legislative and other measures to provide for the return of property as specified in article 57(3) of the Convention.**

*Subparagraph 3 (b) of article 57*

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

*(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The provisions cited above are referred to.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

*(b) Observations on the implementation of the article*

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention in cases involving the proceeds of offences under this Convention.

**It is recommended that Botswana take legislative and other measures to provide for the return of property as specified in article 57(3) of the Convention.**

*Subparagraph 3 (c) of article 57*

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

*(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(P) Yes, in part.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

In Botswana there is no policy on compensation of victims of crime by the State. Instead what obtains is compensation of the victim of crime by an accused person. Section 316 of the Criminal Procedure and Evidence Act (quoted above) provides for an application for compensation by a complainant after conviction of an offence which has caused personal injury to some other person, or damage to or loss of property belonging to some other person.

*(b) Observations on the implementation of the article*

In terms of the PICA, confiscated property is forfeited to the Government. No provision appears to be made for payment to victims.

The referenced measures do not establish an obligation to return and dispose of assets in accordance with the Convention.

**It is recommended that Botswana take legislative and other measures to provide for the return of property as specified in article 57(3) of the Convention.**

*Paragraph 4 of article 57*

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The issue of the expenses incurred in investigations, prosecution or judicial proceedings is not specifically addressed in the **Mutual Assistance in Criminal Matters Act**.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

There is no law, policy or practice on the issue of costs related to asset recovery.

**In the absence of any law or practice on the issue, it is recommended that Botswana clarify the matter of costs in the context of ongoing revision of the legislation.**

*Paragraph 5 of article 57*

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(N) No.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

None.

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

None.

*(b) Observations on the implementation of the article*

It was confirmed during the country visit that Botswana has not entered into any asset sharing agreements or arrangements.

The matter would be further addressed in the proposed amendments to MACMA.

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

Capacity building.

Best practices.

*(d) Technical assistance needs*

Capacity-building.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

No.

## **Article 58. Financial intelligence unit**

### *Article 58*

*States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider*

*establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

The **Financial Intelligence Act** that established the Financial Intelligence Agency was passed in May 2009 and commenced in part in March 2010. It subsequently fully commenced in July 2013 when the **Financial Intelligence Regulations** were gazetted. The implementation of the Act commenced in 2012 with the setting up of the structure.

The Financial Intelligence Agency is the central unit responsible for requesting, receiving, analyzing and disseminating to investigatory authorities, supervisory authorities or comparable bodies, disclosures of financial information, the agency became operational in February 2014. The Financial Intelligence Agency disseminates intelligence reports to investigatory authorities and other Financial Intelligence Units or Comparable bodies. The investigatory authorities include the Botswana Police Service, the Directorate on Corruption and Economic Crime, Directorate on Intelligence and Security Services, Immigration and Botswana Unified Revenue Service.

**Financial Intelligence Act**

Sections 3 and 4 (quoted under subparagraph 1 (a) of article 14 above)

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

*(b) Observations on the implementation of the article*

The observations under articles 14 and 52 are referred to.

**Article 59. Bilateral and multilateral agreements and arrangements**

*Article 59*

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

*(a) Summary of information relevant to reviewing the implementation of the article*

**Is your country in compliance with this provision?**

(Y) Yes.

**Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.**

No bilateral treaties on mutual legal assistance are currently in place. However, Botswana has proposed bilateral agreements on mutual legal assistance with the following countries: South Africa, Rwanda, Zambia, Zimbabwe, Kenya, Malawi, Mozambique, Ethiopia, Ghana, Namibia, Angola, China and Nigeria.

Botswana has signed and ratified the following:

Commonwealth Scheme on Mutual Legal Assistance in Criminal Matters (Harare Scheme).  
Rome Statute -ICC  
UN Convention against Transnational Organized Crime  
UN Corruption Convention  
UN Convention against Illicit Traffic in Narcotic  
Drugs and Psychotropic Substances  
SADC Protocol on Mutual Legal Assistance in Criminal Matters  
SADC Protocol on Extradition  
United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons

**Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.**

There have been mutual legal assistance requests from Botswana to the United Kingdom, United States of America, China, South Africa, Zimbabwe, Zambia, Spain, Cyprus and Barbados.

*(b) Observations on the implementation of the article*

Botswana has not signed any MLA treaties. The response refers to proposed treaties.

**Botswana could consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation on asset**

recovery. It has requested technical assistance in this regard.

*(c) Challenges, where applicable*

**Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.**

- Capacity building
- Best practices
- Model agreements/arrangements

*(d) Technical assistance needs*

- Capacity-building.
- Facilitation of international cooperation with other countries.

**Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.**

The only technical assistance provided was from South Africa which assisted with drafting of extradition documents.