

CORRUPTION AND ECONOMIC CRIME ACT, 1994

No. 13



of 1994

ARRANGEMENT OF SECTIONS

PART I — *Preliminary*

SECTION

1. Short title
2. Interpretation

PART II — *Establishment of Directorate*

3. Establishment of Directorate
4. Appointment of Director
5. Acting Director

PART III — *Functions of Directorate*

6. Functions of Directorate
7. Powers of Director
8. Power of Director to obtain information
9. Special identity card
10. Power of arrest
11. Power of search and seizure
12. Procedure after arrest
13. *Search with warrants*
14. Search without a warrant in certain cases
15. Exercise of powers of search and seizure
16. Surrender of travel document
17. Return of travel document
18. Resisting or obstructing officers
19. False reports to officers
20. Falsely pretending to be officer
21. Immunity of officers of Directorate
22. Annual report

PART IV — *Offences*

23. Definition of valuable consideration
24. Corruption by or of public officer
25. Corruption in respect of official transaction

26. Acceptance of bribe by public officer after doing act
27. Promise of bribe to public officer after doing act
28. Corrupt transactions by or with agents
29. Bribery for giving assistance in regard to contracts
30. Bribery for procuring withdrawal of tender
31. Conflict of interest
32. Bribery in relation to auctions
33. Cheating of public revenue
34. Possession of unexplained property
35. Certain matters not to constitute defence
36. Penalty
37. Application for confiscation order
38. Application for restraining order

PART V — Prosecution of offences

39. Prosecution of offences

PART VI — Evidence

40. Evidence of pecuniary resources or property
41. Evidence of an accomplice
42. Presumption of corruption

PART VII — Miscellaneous

43. Frivolous, false or groundless complaints
44. Prohibition of disclosure of information
45. Protection of informers
46. Liability for offences committed abroad
47. Regulations

An Act to provide for the establishment of a Directorate on Corruption and Economic Crime; to make comprehensive provision for the prevention of corruption; and confer power on the Directorate to investigate suspected cases of corruption and economic crime and matters connected or incidental thereto.

Date of Assent: 13.8.94.

Date of Commencement: 19.8.94.

ENACTED by the Parliament of Botswana.

PART I — Preliminary

- | | |
|----------------|---|
| Short title | 1. This Act may be cited as the Corruption and Economic Crime Act, 1994. |
| Interpretation | 2. In this Act, unless the context otherwise requires — |
| Cap. 26:01 | “agent” includes any person employed by or acting for another; |
| | “Deputy Director” means a person appointed under the Public Service Act as Deputy Director; |
| | “Director” means the person appointed under section 4; |

“Directorate” means the Directorate established under section 3;
 “principal” includes an employer;
 “public body” means any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment; and includes any company in which 51 per cent or more of the equity shares are owned by the Government of Botswana;
 “public officer” includes any person holding an office by election or appointment under any enactment or under powers conferred by any enactment, or in a company in which 51 per cent or more of the equity shares are owned by the Government of Botswana;
 “valuable consideration” has the meaning assigned to it under section 23.

PART II — *Establishment of Directorate*

3. (1) There is hereby established a Directorate to be known as the Directorate on Corruption and Economic Crime (in this Act referred to as “the Directorate”) which shall consist of a Director, Deputy Director and such other officers of the Directorate as may be appointed.

Establishment of Directorate

(2) The Directorate 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 Directorate and the officers thereof.

Cap. 26:01

4. (1) The President may appoint a Director on such terms and conditions as he thinks fit.

Appointment of Director

(2) The Director shall be responsible for the direction and administration of the Directorate.

5. (1) If the office of the Director is vacant or the Director is absent from duty for any reason, the Deputy Director shall, except where the President otherwise directs, act as Director.

Acting Director

(2) If both the Director and the Deputy Director are absent from duty, the President may appoint another person to act as Director until the return to duty of either the Director or the Deputy Director.

PART III — *Functions of Directorate*

6. The functions of the Directorate shall be —

Functions of Directorate

- (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.

Powers of
Director

7. (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).

Power of
Director to
obtain
information

8. (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).

9. The Director may issue to an officer of the Directorate a special identity card which shall be prima facie evidence of appointment as an officer of the Directorate.

Special identity card

10. (1) An officer authorised in that behalf by the Director may, without warrant, arrest a person if he reasonably suspects that that person has committed or is about to commit an offence under this Act.

Power of arrest

(2) Where, during an investigation by an officer of the Directorate of a suspected offence under this Act, another offence is disclosed, the officer may, without warrant, arrest a person if he reasonably suspects that that person is guilty of that other offence, and he reasonably suspects that such other offence was connected with, or that either directly or indirectly its commission was facilitated by the suspected offence under this Act.

- (3) An officer referred to in this section may —
- (a) use such force as is reasonable in the circumstance in effecting an arrest under this section; and
 - (b) for the purpose of effecting an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be arrested.

(4) No premises or place shall be entered under subsection (3) unless the officer has first stated that he is an officer and the purpose for which he seeks entry and produced his identity card to any person requesting its production.

(5) On compliance with the provisions of subsection (4), the officer may enter the premises or place by force, if necessary.

Power of
search and
seizure

11. (1) Where an officer has arrested a person under section 10, he may —

- (a) search that person and the premises or place in which he was arrested;
- (b) seize and detain anything which such officer has reason to believe to be or to contain evidence of any of the offences referred to in Part IV.

(2) A person shall not be searched under subsection (1) except by a person of the same sex.

Procedure
after arrest
Cap.08:02
Search with
warrants

12. A person arrested under section 10 shall be taken as soon as practicable to a police station to be dealt with in accordance with the provisions of the Criminal Procedure and Evidence Act.

13. (1) If it appears to the Directorate that there is reasonable cause to believe that there is in any premises, place, vessel, boat, aircraft or other vehicle anything which is or contains evidence of the commission of any offence under Part IV, the Director or any officer of the Directorate may make an application on oath to a magistrate for a warrant to search such premises, place, vessel, boat, aircraft or other vehicle.

(2) If a magistrate to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises, place, vessel, boat, aircraft or other vehicle referred to in subsection (1) anything which is or contains evidence of the commission of any of the offences referred to in Part IV, he may by warrant direct the Director, or any officer authorised by him under section 7 (1) (a), to enter and search such premises, place, vessel, boat, aircraft or other vehicle and seize and detain anything which the Director, or the officer authorised by the Director, has reason to believe to be or to contain evidence of any of the offences referred to in Part IV.

Search without
warrant in
certain cases

14. Whenever the Director, or an officer authorised by him under section 7(1) (a), has reasonable cause to believe that there is in any premises, place, vessel, boat, aircraft or other vehicle any article or document which is evidence of the commission of an offence, or in respect of which an offence has been, is being, or about to be committed, under Part IV, is being conveyed, or is concealed or contained in any package in the premises, place, vessel, boat, aircraft or other vehicle, for

the purpose of being conveyed, then and in any such case, if the Director or the officer authorised by him under section 7 (1) considers that the special exigencies of the case so require, he may without a warrant enter the premises, place, vessel, boat, aircraft or other vehicle, and search, seize and detain such article, document or package.

15. (1) In the exercise of the powers of search, seizure and detention under section 13 (2) or 14, the Director or any other officer of the Directorate may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he deems necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

Exercise of powers of search and seizure

(2) Notwithstanding the provisions of sections 7, 13 and 14, the Director, or any other officer of the Directorate shall not have access to any books, records, returns, reports or other documents, or data stored electronically, or to enter upon any premises, place, vessel, boat, aircraft or other vehicle if in the opinion of the President in writing such access or entry is likely to prejudice national security.

16. (1) A magistrate may, on the application ex parte of the Director, by written notice require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under Part IV to surrender to the Director any travel document in his possession.

Surrender of travel document

(2) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a magistrate.

(3) Where a person is taken before a magistrate under subsection (2), the magistrate shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the magistrate that he does not possess a travel document, by warrant commit him to prison there to be safely kept until he complies with the notice.

17. (1) A person who has surrendered a travel document under section 16 may at any time make a written application to the Director for its return, and every such application shall contain a statement of the grounds on which it is made.

Return of travel document

(2) The Director may —

(a) grant the application either without conditions or subject to such conditions as to the further surrender of the travel document and the appearance of the applicant at any time and place in Botswana as may be specified by the Director in a written notice served personally on the applicant; or

(b) refuse the application.

(3) A person aggrieved by the refusal of the Director to return his travel document to him may appeal to a magistrate.

Resisting or obstructing officers

18. (1) Any person who resists or obstructs an officer in the execution of his duty shall be guilty of an offence.

(2) Any person guilty of an offence under this section or section 7 (2) or 8 (2) shall be liable on conviction to imprisonment for a term not exceeding five years, or to a fine not exceeding P10 000, or to both.

False reports to officers

19. Any person who knowingly —

(a) makes or causes to be made to an officer a false report of the commission of any offence; or

(b) misleads an officer by giving false information or by making false statements or accusations,

shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding three years.

Falsely pretending to be officer

20. Any person who falsely pretends —

(a) that he is an officer of the Directorate or has any of the powers of an officer under this Act or under any authorisation or warrant issued under this Act; or

(b) that he is able to procure an officer of the Directorate or to do or refrain from doing anything in connection with the duty of such officer,

shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding three years.

Immunity of officers of Directorate

21. No action shall be brought against the Director or any other officer of the Directorate (or any other person authorised by the Director to perform any act under this Act), in respect of any act or thing done or omitted to be done in good faith in the exercise of his duties under this Act.

Annual report

22. (1) The Director shall, on or before 31 March in each year, or by such later date as the President may allow, submit to the President a report on the activities of the Directorate in the previous year.

PART IV — *Offences*

Definition of valuable consideration

23. For the purposes of this Part, “valuable consideration” means —

(a) any gift, benefit, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(b) any office, employment or contract;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any other service, or favour including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;

(e) the exercise or forbearance from the exercise of any right or any power or duty; and

(f) any offer, undertaking or promise whether conditional or unconditional, of any valuable consideration within the meaning of the provisions of any of the preceding paragraphs.

24. (1) A public officer is guilty of corruption in respect of the duties of his office if he directly or indirectly agrees or offers to permit his conduct as a public officer to be influenced by the gift, promise, or prospect of any valuable consideration to be received by him, or by any other person, from any person.

**Corruption by
or of public
officer**

(2) A person is guilty of corrupting a public officer if he endeavours directly or indirectly to influence the conduct of the public officer in respect of the duties of his office by the gift, promise, or prospect of any valuable consideration to be received by the public officer, or by any other person, from any person.

25. (1) A public officer is guilty of corruption if he accepts, or agrees or offers to accept, for himself, or for any other person any valuable consideration as an inducement or reward for doing or forbearing to do anything in respect of any matter in which he is concerned in his capacity as a public officer.

**Corruption in
respect of
official
transaction**

(2) A person is guilty of corrupting a public officer if he gives or agrees or offers to give any valuable consideration to a public officer, whether for the benefit of that public officer or of another person as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the public officer is concerned in his capacity as a public officer.

26. If, after a person has done any act as a public officer, he accepts, or agrees or offers to accept for himself or for any other person, any valuable consideration on account of such act, he shall be presumed, until the contrary is shown, to have been guilty of corruption in respect of that act before the doing thereof.

**Acceptance of
bribe by public
officer after
doing act**

27. If, after a public officer has done any act as such officer, any other person agrees or offers to give to or procure for him or for any other person any valuable consideration on account of such act, the person so agreeing or offering shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of such act, corrupted the public officer in respect of such act.

**Promise of
bribe to public
officer after
doing act**

28. (1) An agent is guilty of corruption if he corruptly accepts, or agrees or offers to accept from any person, for himself or for any other person any valuable consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

**Corrupt
transactions
by or with
agents**

(2) A person is guilty of corruption if he corruptly gives or agrees to give or offers to give to any agent any valuable consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

(3) If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, such a person is guilty of corruption.

Bribery for giving assistance in regard to contracts

29. (1) A public officer is guilty of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any valuable consideration as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in, promoting, administering, executing or procuring (including any amendment, suspension or cancellation) of any contract (including a subcontract) with a public body.

(2) A person is guilty of corruption if he directly or indirectly gives, or agrees or offers to give any valuable consideration to any public officer as an inducement or reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in, promoting, administering, executing or procuring any contract (including a subcontract) referred to in subsection (1).

Bribery for procuring withdrawal of tender

30. (1) A person is guilty of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any valuable consideration as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance.

(2) A person is guilty of corruption if he directly or indirectly gives or agrees or offers to give any other person any valuable consideration as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender for such a contract as is referred to in subsection (1).

Conflict of interest

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

(2) It is a defence to a charge under this section if the person having an interest has first made in writing to the public body the fullest disclosure of the exact nature of his 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 "family" includes a paramour.

32. (1) A person is guilty of corruption if he directly or indirectly accepts or agrees to accept for himself or any other person any valuable consideration as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

Bribery in
relation to
auctions

(2) A person is guilty of corruption if he directly or indirectly gives or agrees or offers to give any other person any valuable consideration as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

33. A person is guilty of cheating the public revenue if as a result of his fraudulent conduct money is diverted from the revenue and thereby depriving the revenue of money to which it is entitled.

Cheating of
public revenue

34. (1) The Director or any officer of the Directorate authorised in writing by the Director may investigate any person where there are reasonable grounds to suspect that that person —

Possession of
unexplained
property

- (a)** maintains a standard of living above that which is commensurate with his present or past known sources of income or assets; or
- (b)** is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets.

(2) A person is guilty of corruption if he fails to give a satisfactory explanation to the Director or the officer conducting the investigation under subsection (1) as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession.

(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such resources or property as a gift, or loan without adequate consideration, from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

35. (1) If, in any proceedings for an offence under this Part, it is proved that the accused accepted any valuable consideration, believing or suspecting or having reasonable grounds to believe or suspect that the valuable consideration was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in this Part, it shall be no defence that —

Certain matters
not to constitute
defence

- (a) he did not actually have the power, right or opportunity to do so or forbear;
- (b) he accepted the valuable consideration without intending to do so or forbear;
- (c) he did not in fact do so or forbear.

(2) If, in any proceedings for an offence under this Part, it is proved that the accused offered any valuable consideration to any other person as an inducement or reward for or otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in this Part, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity to do so or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Penalty

36. 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.

Application for
confiscation
order
Act No. 19 of
1990

37. Where a person has been convicted of corruption or cheating the public revenue under this Part, the Attorney-General may apply for a confiscation order under section 3 of the Proceeds of Serious Crime Act, 1990, and accordingly, the provisions of that Act shall have effect in respect of the application.

Application for
restraining
order Act
No. 19 of
1990

38. Where a person, who is the subject of an investigation under this Act has been or is about to be charged with an offence under Part IV, the Attorney-General may apply for a restraining order under section 8 of the Proceeds of Serious Crime Act, 1990, and accordingly, the provisions of that Act shall have effect in respect of the application.

PART V — *Prosecution of offences*

Prosecution of
offences

39. (1) If, after an investigation of any person under this Act, it appears to the Director that an offence under Part IV has been committed by that person, the Director shall refer the matter to the Attorney-General for his decision.

(2) No prosecution for an offence under Part IV shall be instituted except by or with the written consent of the Attorney-General.

PART VI — *Evidence*

Evidence of
pecuniary
resources or
property

40. (1) In any proceedings against a person for an offence under Part IV, the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his present or past known sources of income or assets, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court —

- (a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or agreed or offered to accept any valuable consideration; and
- (b) as showing that the consideration was accepted or agreed or offered to be accepted as a valuable consideration as an inducement or reward.

(2) For the purposes of subsection (1) an accused person shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

41. Notwithstanding any rule of law or practice to the contrary, no witness shall, in any proceedings for an offence under Part IV, be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any valuable consideration to the person accused or, as the case may be, by reason only of any payment or delivery of any valuable consideration by or on behalf of the person accused to him.

Evidence of an accomplice

42. Where in any proceedings for an offence under Part IV, it is proved that the accused offered or accepted a valuable consideration, the valuable consideration shall be presumed to have been offered and accepted as such inducement or reward, as is alleged in the particulars of offence unless the contrary is proved.

Presumption of corruption

PART VII — *Miscellaneous*

43. (1) At the conclusion of any proceedings for an offence under Part IV, the court may, if it is of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify in writing and transmit the certificate and the record of the proceedings to the Attorney-General.

Frivolous, false or groundless complaints

(2) Any person who in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit, any offence under Part IV, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years, or to a fine not exceeding P5 000, or to both.

Prohibition of disclosure of information

44. Any person who, without lawful authority or reasonable excuse, discloses to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Act the fact that he is subject to such an investigation or any details of such investigation, or publishes or discloses to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation, shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding P2 000, or to both.

Protection of informers

45. (1) In any trial in respect of an offence under Part IV, a witness shall not be obliged to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) Where any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceedings under this Act contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court, before which the proceedings are held, shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(3) If in any proceedings before a court for an offence under this Act the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings a court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Director, the court may permit inquiry and require full disclosure concerning the informer or such person.

Liability for offences committed abroad

46. The provisions of this Act shall have effect, in relation to citizens of Botswana, outside as well as within Botswana; and where an offence under Part IV is committed by a citizen of Botswana in any place outside Botswana, he may be dealt with in respect of such offence as if it had been committed within Botswana.

Regulations

47. The President may, by statutory instrument, make regulations generally for the purpose of giving effect to the provisions of this Act.

PASSED by the National Assembly this 25th day of July, 1994.

T.G.G.G. SEELETSO,
Clerk of the National Assembly.