Embezzlement of the National Petroleum Fund in Botswana

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Abstract: The government of Botswana had created the National Petroleum Fund (NPF) in order to cushion Botswana from oil inflationary increases and by October 2016 it was reported be around at 600 million Pula while by November 6, 2017, almost a year later, it was reported to be running dry. The blunder that government made was that they left the funds in the Ministry of Mineral Resources, Green Technology and Energy Security (MMGE) regardless of the fact that the Permanent Secretary in the Ministry of Finance and Development Planning (MFDP)had requested that the funds be transferred to his ministry and be managed from there. Botswana has over the years been given accolades of being the least corrupt country on Africa. The case of the "disappearance of the NPF" funds indicates that the standard of ethics has degenerated in the country. This paper uses secondary data to disentangle the myth that Botswana may still be the shining example of good governance in Africa using the case study of NPF funds embezzlement by some of those entrusted to safeguard the fund.

Keywords: Corruption, Embezzlement, Public funds, Botswana

1. Introduction

Corruption has no boundaries as it is found both in developed and developing countries (Lawal, 2007). Corruption has been receiving more attention from scholars, technocrats and the public at large due to its negative outcomes which are well documented cases of corruption in the developed countries. Furthermore, Lawal (2007), asserts that in Africa there are clear signs and symptoms of corruption as there have been no significant or improvement pertaining the issue of development in many African States. This is evidenced in the inability of most governments to reduce poverty, provide basic amenities and good education (Nwankwo, 2014). The reduction of poverty, increased levels of education and low corruption rates in a country is a fundamental step in the realization of development (Shah, 2009).

Corruption in the United Kingdom (UK) is defined by the Fraud Act (United Kingdom, 2006), as crime which can be committed in three ways, firstly by abuse of position, false representation and lastly failure to disclose information. According to the Federal Bureau of Investigations (FBI), fraud is perceived as cheating, stealing and lying (Silverstone, Sheetz, Pednault & Rudewicz, 2012). Fraud is an act of unlawfully and intentionally making false presentation to the actual or the prejudicing of other individuals (Western Cape Provincial Treasury, 2012). Therefore, fraud encompasses criminal

offences such as the use of public or taxpayers' money for private gains. The next section discusses theories of corruption under which embezzlement is subsumed.

2. Methods and Materials

The article relies mainly on secondary data particularly newspapers and financial reports. In that regard, secondary data is normally defined in opposition to primary data (Koziol & Arthur, 2011). Therefore, secondary data refers to data that is already available, having been collected for some other purposes (Boslaugh, 2007). Yet, this data may be beneficial to one's research purpose. There are several advantages of using secondary data particularly the aforementioned sources as there are also disadvantages. The obvious advantage of secondary sources is that they are cheaper and conveniently easier to access. According to Boslaugh (2007), secondary data can be commended for it is economical in nature. In other words, it does not require one to devote an extensive amount of resources for this purpose. However, it can be considered costly if the secondary sources being utilised need to be purchased, for example; newspapers need to be bought. Regardless of this factor the cost is significantly lower than starting from scratch. Secondary data provides a way to access the work of the best scholars all over the world and in the case of this research, the best journalists and economic experts in the country. Boslaugh (2007), confirms this thought as he acknowledges that with secondary data there is breadth of information available. Furthermore, secondary data is informed by expertise and professionalism (Herron, 1989).

Secondary data is inherent in nature; this means that one works with data that has been availed to them (Boslaugh, 2007). Thus, it is mainly dependant on a third party. Data collected by the third party can be considered significantly less reliable and less accurate as the process; planning and the execution can be questionable. This is held up by Johnston (2017), who clarifies that secondary data analysis often lacks literature that defines the specific process used for data collection. Secondary data collected can distort the results of the research. The utilisation of secondary data requires special care to amend or modify for use. Therefore, it is important to determine the purpose of the original project that produced the data because it can influence a number of factors (Johnston, 2017).

3. Theories

3.1 Theory of Differential Association

The Theory of Differential Association was founded by Edwin Sutherland during the 1930s. According to Wells (2005), Sutherland was one of the first researchers of white-collar crime. His research mainly focused on fraud committed by individuals holding high level positions, he stated that usually the public or shareholders will bear the negative consequences of this crime. Sutherland (1949) asserts that the Theory of Differential Association elucidates that crime is learned just like any other phenomenon. Sutherlands further contends that any crime that is committed, a communication process would have taken place; hence the help of other individuals is a necessity for the crime to be successful. Furthermore, Sutherland (1949) opines that crime is committed where there is a conducive environment to violate the laws, rules and regulations compared to where the environment is constrictive or prohibitive. More so it has been discovered that any organization which consists of untrustworthy employees will pass that behaviour to trustworthy employees and inevitably the trustworthy employees will help or aid the untrustworthy employees (Sutherland, 1949; Wells, 2005). However, like any other theory, the Differential Association Theory has its own critics. Akers (1996) is of the view that the Differential Association Theory is inconclusive

because not all individuals associated with criminals will end up being criminals themselves.

3.2 The Fraud Diamond Theory

Wolfe and Hermanson (2004) founded the Diamond Theory which states that for fraud to occur, other than having the opportunity, rationale and motivation, the perpetrator should possess the capabilities of committing the crime. The capability encompasses the ability to actually carry out the crime without being noticed and have the technological knowledge of how to carry out the crime (Wolfe & Hermanson, 2004).

3.3 The Fraud Scale

The Fraud Scale was developed by Albrecht, Howe and Romney in 1983. Albrecht, Howe and Romney (1983) assert that the major causes of fraud are the level of the individual personal integrity, the availability of a chance to cover up the fraud and lastly the environmental pressure. The problems faced by the individuals are likely to pressure them to commit the fraud regardless of the nature and type of the environment. More so the individuals are likely to commit fraud because of the opportunities they create themselves or the individuals will utilise opportunities because of the missing or loose internal organizational controls. Lastly personal integrity entails the ethical behaviour which an individual adopts. Albrecht et al. (1983) advances that when one's individual integrity is low, availability of chances of committing fraud and environmental pressures are high. There are higher chances of fraud being committed compared to when there is no situational pressure, no chances of committing fraud and lastly when one's individual integrity is high (Albrecht et al., 1983).

4. Embezzlement at the International Level

As propounded by Feng (1997) embezzlement and bribery has become a common crime in the modern day world. Feng further postulated that embezzlement and bribery compromises the integrity of both the state personnel and institutions. Liu (1983) asserts that since the economic reform of 1978, corruption has even become a common phenomenon to the extent that it is even found at every level of China's political system. In actual fact China has reintroduced stiffer penalties to those who have

been found to be corrupt which are expected to act as a deterrent (Guifeng, 2009). According to the Transparency International (2018), Nigeria is ranked number 32 on the list of 52 countries which were assessed. The second most transparent and least corrupt country in the continent is Botswana ranked at 34 out of 180 countries. However, this does not mean that there are no corrupt activities which have been carried out of late; this is evidenced by the high profile case of National Petroleum Fund where elites embezzled government money. New Zealand tops the world Transparency Index, the second country is Denmark and lastly Switzerland, Norway and Finland are co-joined on third place by following good governance. Important lessons can be derived from these aforementioned countries because they have managed to curb corruption. Martini and Chêne (2011) assert that there is little research carried out on the countries believed to have succeeded in combating corruption. However, Martini and Chêne (2011), postulates that the aforementioned countries do have similar enabling conditions and common high levels of media freedom and prioritisation of human rights such as freedom of information. Access of information will allow the citizens to hold public officials accountable for their actions thereby ensuring that there is transparency in how public institutions are governed thereby reducing the prevalence of corruption.

4.1 Zimbabwe

According to Moyo (2014), corruption is an act or behaviour which tends to deviate from the prescribed role or duty of public officials because of the possibility of personal private gains. Zimbabwe is not immune to rampant cases of corruption. This has led scholars such as Robinson (2004), to assert that one of the major developmental challenges being faced by Zimbabwe is corruption. According to Tizor (2009), the definition of corruption as espoused by (Moyo, 2014) describes public office bearers in Zimbabwe as they regard public offices as a conducive environment to amass untraceable wealth. Makumbe (1994 & 2011), observed that the challenge of corruption in Zimbabwe is highly linked with the nature and type of leadership (unethical). He further opines that the unethical type of leadership found in Zimbabwe has fuelled the blossoming of corruption. Zimbabwean public officials are deemed to be acting in an unethical manner because of their contributions in the squandering of national resources which are meant to benefit the

nation at large. High profile cases of embezzlement are that of War Victims Compensation Fund (WVCF) scandal of 1994 and Willowgate in 1998 (Nyarota, 2006; Shana, 2006).

4.2 China

It is believed that the levels of corruption in China have damaged its cordial relations with its Western counterparts. This has led to the undermining of the government of China's political and economic procedures and systems (Zhu & Zhang, 2016). According to Zhu and Zhang (2016), in the Chinese context corruption encompasses malpractices at the workplace, attainment or amassing of wealth illegally, misuse of government properties and public funds, graft, bribery and lastly embezzlement. Corruption in China holds back economic development, precipitates poverty and instability, which leads to an imbalanced distribution of income across communities (Wu & Zhu, 2011). Furthermore, Ko and Weng (2012) asserts that corruption in China has evolved from non-transactional corruption which is dominated by misappropriation and embezzlement of funds to transactional type of corruption which encompasses bribery. Additionally, Wedeman (2004) opines that corruption drastically rose from the 1980s to the 1990s, whereby high profile cases of corruption/embezzlement were significantly on the rise. High level public officials were implicated in these corruption cases involving large amount of money (Wedeman, 2004). In China high profile cases of corruption, have been repeatedly associated with top public officials (Tang, 2018). The case of a politburo member of the CCP party allegedly to be involved in corrupt activities brought much attention on the top public officials (The Guardian, 2012). Moreover, there were other allegations on the former politburo standing committee member of the CCP and he was deemed to be the top leader of the CCP since 1949 to be involved in corrupt activities (New York Times, 2014).

5. Different Methods/Types of Embezzling Public Funds

Embezzlement refers to the misuse of public funds. Embezzlement is an intentional misspending of money (Fan, Lin & Treisman, 2009). This refers to the appropriation of money and other assets meant for a specific purpose for either personal use or for what it is not meant for the specific organisation (Bartz, Strock & Harris, 2000). Such an act is

an unauthorized disbursement of money or other assets for personal gain. Misappropriation of funds or embezzlement is the highest type of fraud in organisations. People deliberately convert public funds to personal use without a blink of fear or conscience disturbance (Ibanichuka & Onuoha, 2012). The types of embezzlement include; paying fictitious purchase and contract payment for no returning inwards, outright taking away of corporate government resource or assets for personal use (larceny). Examples of such include cheque books not being accounted for in the general ledgers, revenue reconciling their own journal entries, illegal collection of cash from coffers just to mention but a few (Bartz, Strock & Harris, 2000).

A common method of embezzlement is a case in which funds entrusted to one person or entity into is used for personal gain. Embezzlement may also be regarded hand in hand with outright taking away corporate government resources for personal use (Ibanichuka & Onuoha, 2012). This is noted to have been common in the public sector. In Zimbabwe, auditors exposed embezzlement. The Auditor General (AG) of Zimbabwe exposed massive misappropriation of funds at the Minerals Marketing Corporation of Zimbabwe (MMCZ) where huge sums of money exceeding the legally permissible threshold were spent on shady donations. According to the (Government of Zimbabwe, 2017), the MMCZ spent a total of US\$2 989 913 on social corporate responsibility against the approved US\$250 000. This is supported by a legislative instrument called the Minerals and Marketing Corporation Act Section 21 provides that the corporation shall provide financial assistance to any institution or person whose activities or part of whose activities or part of whose activities are such as to be, in the opinion of the board, of benefit to the corporation or to the mining industry or any part of that industry (Government of Zimbabwe, 2017). This comes as the government has always expressed concern over accounting for low revenues from the sale of minerals. Concern has also been raised at how the revenue is being used amid reports that the bulk of the funds are diverted to personal use. It is unclear what the extra US\$2 750 000 was used for. This is a clear indication of public funds being embezzled in the public sector as noted by auditors.

A familiar method noted in the issue of misappropriation of funds is the issue of paying for fictitious purchase and contract payment for no return inwards. This is often seen in corrupt public sectors; auditors on various occasions found it. In some cases, the public enterprises department flouted regulations governing the use of funds running into millions of dollars. One such organisation is the Minerals Marketing Corporation of Zimbabwe, which paid over US\$25 228 in fees to a non-existent board as reported by the Auditor General (Government of Zimbabwe 2017). The Auditor General of Zimbabwe commented on the aforementioned issues as she clarified that such activities as she said there is a risk-board may be paid for services not rendered. In the absence of the declaration of interests, objectivity may be compromised when decisions are made on issues that management and Board members have an interest in are made (Government of Zimbabwe, 2017).

Another method reported by the auditors in the public sector is larceny which goes hand in hand with another method that is the illegal taking of corporate or government resources or assets or property for personal use (Hemmens, 2015). This is a character driven by greed and personal interests and desire to gain economic benefit through the position they occupy. Cases such as that mentioned have been foreign in Botswana; this can be noted as Botswana is number 1 in sub-Saharan according to Corruption Perceptions Index and it ranks at 34/175 world over as of 2018. This may be considered impressive especially in Africa. However, Botswana in recent years particularly in 2017 has not been totally immune to the rots of embezzlement. This refers to the scandal reported in the Mmegi Newsletter on the 8th of December 2017 reporting a business men Director of Kgori Capital and others of having stolen at least P320 million from the National Petroleum Fund and laundered it through the businesses which the counterparts had set up.

6. Botswana's Experience of Embezzlement – the NPF Case Study

6.1 Those Implicated in the Fraud

Botswana's good image of being the least corrupt country in Africa was debunked by the case of the National Petroleum Fund and other scandals that have rocked the country in the last ten years between 2008 and 2018. The NPF case was brought to the country's attention by the local newspapers on allegations of money laundering by several individuals including high ranking officials, a Minister,

High Court Judge, President, Vice President, companies and directors, and a business mogul (Mokwena, 2018). The authors are cautious of the fact that the case is before the courts and therefore the names have been deliberately left out.

6.2 Amount Purported to be Embezzled Including Properties and Other Items

It is alleged that P250 million Pula was embezzled by those who were supposed to safeguard it for the nation. The purpose of the fund, according to Mr Merapelo Tautona (Principal Energy Officer), is to cushion the retail prices as government doesn't give out money to cushion prices (BOPA, 2016). Instead of achieving this goal, the money is reportedly to have been embezzled and fraudulently used for personal gain by one of those implicated to buy several properties in and outside the country, numerous expensive cars including Mesarati Ghibli (over P1, 000, 000.00), Rolls Royce Phantom worth about P3 million, Mercedes Benzes and others (16 in total), Rolex GMT Master 1 watch worth P80 000 (ZAR134 385.00), demolished and build a house for P5 330 439.00 "from the 1st November 2017 to 17th May 2018" (Mathala, 2019). Government has taken steps to repossess most if not all the properties alluded to above. Most of the properties alluded to have been impounded by government. The other co-accused also brought lavish properties in and outside Botswana. The accused have been charged with 65 counts of money laundering except for one former employee of the Ministry of Mineral Resources, Green Technology and Energy Security (MMGE) who has been charged with abuse of office, money laundering, theft, and giving false information to a public officer (Mathala, 2019). As the case continues, the embezzled amount keeps going up.

7. Measures of Curbing Embezzlement in Botswana

7.1 Auditing

Auditing is a mechanism that can be used to ensure accountability of public funds in Botswana on both levels of government that is macro and micro to curb embezzlement. The office of the Auditor-General (AG) generally adheres to the standards that have been set by the International Organisation of Supreme Audit Institutions (INTOSAI). INTOSAI advocates for the legal requirements with respect to the appointment and termination of the Auditor-General, the

financing of the budget, the hiring of staff, the auditor's jurisdiction and the timing and extent of dissemination of audit reports. In reality it is almost impossible to audit all government entities every year. However, 80% of central government expenditure goes under audit yearly. The audit looks into revenue received, expenditure on top of the assets and liabilities. According to limi (2006) a variety of audits are performed, including systems audits, financial and compliance, procurement and some performance audits as well as payroll and recently Information Technology audits have been introduced in Botswana

7.2 Separation of Powers

Botswana is the country first in Africa and 38th position out 179 worldwide for the 2007 Corruption Perception Index (CPI) in terms of curbing corruption and maintaining little or no corruption (Transparency International Corruption Perception, 2009). Furthermore, Botswana has adopted the principle of separation of power between legislative, executive and judicial branches of government. This measure has ensured accountability by promoting a high level of predictability and transparency, with limited incidence of corruption as no sector can be bought as there is separation of power. Such measures have encouraged micro and macro officials to handle public funds honestly and transparently, thus curbing embezzlement. While the above statement may be true, the case study of the National Petroleum Fund is one of those that indicate that there is corruption in Botswana. In actual fact, there are more cases of corruption that have been investigated, perpetrators tried and found guilty.

7.3 Anti-Corruption Initiatives

Several anti-corruption initiatives have been put in place to ensure there little or no embezzlement throughout the country's financial systems. In this regard, a lot attention is then drawn to formidable laws that include the Corruption and Economic Crime Act (CECA) which established the Directorate on Corruption and Economic Crime (DCEC); the first task of the DCEC is to carry out investigations on any allegations of economic crime and corruption, moreover the agency has got the prerogative to further investigate transactions which are frivolous and lastly the DCEC is mandated to share investigative findings with the Directorate of Public Prosecutions (DPP). The other overlapping functions

of DCEC is the prevention of public sector corruption through regular audits and carrying out public educational activities on the negative impact of corruption (Sebudubudu, 2014). Also to ensure that the public servants of Botswana adhere to good ethical standards or practices. The government enacted the Corruption and Economic Crime Act of 1994 (CECA), meanwhile the Office of Ombudsman was commissioned in 1995. However, according to the Revenue Watch (2013), there are no transparent laws in Botswana; this has led to unclear operational practices of political institutions which are already on the obscurity of public scrutiny. Additionally, Stiftung (2014) contends that Botswana has no framework/ law that obligates the public servants to declare their assets. Stiftung (2014) asserts that, this has led the public to contend that there is no genuine will on the part of politicians to curb the misuse of power and corruption. Similar sentiments were espoused by Motshegwa, Bodilenyane and Mooketsane (2016). Botswana in its Financial Intelligence Act: CAP 08:07 Sub-Section 35 [1(A& B)] requires Directors to declare their assets and it doesn't clarify if all public servants and politicians should do the same.

The Public Procurement and Asset Disposal Act (Republic of Botswana, 2002) adopts a decentralised approach with public entities made responsible for managing procurement with the role of oversight, regulation, monitoring and evaluation, inspection of the procurement record and capacity development being the responsibility of the Public Procurement and Asset Disposal Board in order to minimise embezzlement. Procurement responsibilities are under the jurisdiction of the Accounting Officer as stipulated in current procurement legal and regulatory framework the responsibility for procurement is given to the Accounting Officer. The procurement act principles are still active to this day.

The Botswana Constitution is also a tool for controlling public funds which provides the foundation for public financial management as proposed in Chapter VIII while details are regulated by the Finance and Audit Act (Republic of Botswana Constitution). The constitutions allocate lucid roles and responsibilities to all levels of government (central and sub-national) this can be considered as micro and macro levels of government, which are held up by the requirements of the Finance and Audit Act. The important jurisdictions concerning public finance management comprises of the management of the Consolidated Fund where government revenues

ought to be deposited and "direct charges to the Consolidated Fund including for the remuneration of the Auditor General; the direct charge to the Consolidated Fund for public debt service; the role, jurisdiction and independence of the Auditor General (Republic of Botswana Constitution, 2006:45). A clear definition, who does what, when and how, allows for elaborate and easy steps to be taken if there are ever any inconsistencies.

8. Conclusion

Embezzlement of funds by public officials is detrimental to developmental initiatives. Funds which are supposed to be channelled towards the betterment of lives of the citizens are gobbled by few individuals. If this is not addressed properly, the challenge of embezzlement will continue widening the gap between the poor and rich which will subsequently crash the spirit of equity which is advocated by good governance practices. Highly ranked countries on the International Transparency Index such as Denmark and New Zealand have made positive strides in combating the cancerous crime of embezzlement. The aforementioned countries have prioritised the issue of human rights which include freedom of information. Freedom of information is whereby government activities are made transparent to the public which will inherently increase accountability since public officials will be accountable for their actions. More so countries such as China have enacted tough and stiff punishments for perpetrators of embezzlement such as payment of huge sums of money and death penalty. The stiff punishments will act as deterrents to those who would commit corruption in the form of embezzlement. If Botswana is committed to really stamping out corruption, they should benchmark with the aforementioned countries.

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