

Bringing the Corrupt to Justice – Case Studies

Contribution by

**Mr. T.R. Batty, MBE
Deputy Director, Directorate on Corruption and Economic
Crime (DCEC)
Botswana**

Let me first introduce the country and organisation I represent. Botswana is a northern neighbour of South Africa. Formerly the British Protectorate known as Bechuanaland, it achieved independence in 1966 and at that time was one of the poorest nations in the world. Through a mixture of good fortune and truly democratic and prudent government the country has shown remarkable development over the past 33 years. The good fortune was the discovery of abundant minerals in the country, particularly diamonds. Botswana is no longer dependant on international aid and it pays its way. It has a very small population of 1.6 million people but its other major asset is the abundant and varied wildlife.

Culturally the people of Botswana are totally opposed to crime of any description but of course there are exceptions and the pace of the country's development provided huge opportunities to the unscrupulous few to indulge in corruption and what we call 'economic crime'. The organisation I represent was established in 1994 following a number of high profile corruption scandals. Currently 100 strong we are gradually increasing our staff compliment to 150 which has been assessed as the optimum, given our charter. We implement the three pronged attack of investigation, prevention and public education and we claim to have made a substantial impact in our short history though we know we will have to sustain our endeavours indefinitely.

Now onto the theme of this workshop which is 'Bringing the Corrupt to Justice' and I want to concentrate on one aspect of that subject which is 'international co-operation in criminal investigations' and its growing importance. Botswana relies very much on the international community for many of its resources, both physical and human, though let me repeat - it pays its way. Thus a large volume of international trade and people from many countries come and go. Inevitably corruption and economic crime permeate this international trade and increasingly my organisation needs evidence which can only be obtained from other countries. I will shortly be giving a few examples, both successful and unsuccessful.

The wide disparity between various countries' requirements, the plethora of international treaties and conventions and the varying appreciation of the seriousness of corruption can make the 'international' corruption investigator's job a nightmare. The assistance we ask from one country might be freely given, whilst in another, its requirements might make that assistance impossible or impracticable. Before we even get to that stage however, the absence of a definitive international guide to what treaties exist and what can and cannot be achieved in various countries immediately introduces one highly undesirable factor - delay - delay whilst those requirements are ascertained.

I wonder whether one of the achievements of this workshop in particular and the conference as a whole might be the call for the production of a centralised data base. This could contain, by way of a country by country listing, details of the conventions and treaties to which each belongs, a

description of their legal systems, an explanation of the jurisdiction of the various law enforcement agencies (many of which have no direct access to the services of Interpol) and importantly, what the countries' requirements are for the provision of assistance to other countries in criminal investigations. Such a data base would have enormous value to law enforcement agencies throughout the world. Is this not something that the United Nations Organisation could address?

In some of the examples I shall be giving I will have to make oblique reference to the characters and countries involved. Not only do I not want to cause international offence but some of the cases involved have not been concluded by the courts as yet and accordingly it is not yet opportune to name names.

Example I

One of the many ploys used by corrupt individuals to hide their corruptly attained assets is to have them paid into accounts in other countries, especially those which have a reputation for high levels of banking secrecy. We have a case in Botswana in which a high ranking government official who is a national of another African country is alleged to have been paid a bribe of US\$25,000 in relation to a construction contract in Botswana which he was supervising. The managing director of the company undertaking the contract was resident in a third African country.

At the request of the government official, the managing director arranged for this sum to be sent to a bank account in a European country. That bank account was held in the name of the government official's friend who was resident in his home country

So what evidence do we need? We need evidence from the managing director who paid the bribe, from the friend of the suspect whose account benefited from the payment and from the bank in Europe which processed the payment. Enquiries therefore need to be made in three countries. Let's deal with the European country first. Establishing how enquiries could be made in that country took one month through the good offices of Interpol. The requirements were in fact that a formal letter of request be sent from the Attorney General of Botswana, *note* not the investigation agency to the equivalent authority in the other country. What does that involve? It means the investigating agency preparing a detailed justification to the Attorney General. Then if the Attorney General agrees, as he did in this case, for him to prepare a formal letter of request for the enquiries to be made. This is a very complex and lengthy document. The next requirement was for the letter of request to be sent to the other country via diplomatic channels. This was done. 15 months later we in Botswana received the information we asked for, which again had been routed back to us through diplomatic channels. You will note I said information, not evidence. For our purposes we need original records and witnesses to produce them. So we have to go through the whole process again.

Let us now move on the Managing Director. We could speak to him on the telephone and we did. We needed to interview him. He did not want to come to Botswana for the obvious reason that he would be liable to prosecution for bribery if he did. But he was more than willing for our officers to visit him in his country, but, importantly, he did not want his country's police force involved at all. Botswana is a member of Interpol and strictly speaking we should have first made arrangements for the visit through that organisation, a position not acceptable to the person we

wished to interview. The result is stalemate.

Now the third country, that being the home country of our suspect and the one in which his friend resided. This country has no formal relationship on criminal matters with Botswana. The only avenue of making enquiries was through the very unsatisfactory medium of exchanges of diplomatic notes, a process which in this case took over 6 months and produced no significant results.

In all therefore, the process has been either cumbersome and/or ineffective.

Example 2

This and the next example refer to enquiries in the United Kingdom whose Central Authority for Mutual Assistance in Criminal Matters is the agency for processing requests from other countries. Whilst in my experience the service provided here is effective is still takes an enormous amount of legality, paper and above all, time, to have even the most simple enquiry undertaken. Be that as it may, the UK's system does not easily cope with the situation in which the persons from whom evidence is being sought would incriminate themselves in the process.

We in Botswana are seeking to prosecute a former senior public official for accepting illegal commissions totalling over US\$2 million from a major British conglomerate. The commissions were paid for the official's assistance in arranging the supply of major items of equipment. Employees of the British company were complicit in the payment of these bribes and their conduct amounts to criminal offences both in Britain and Botswana. We in Botswana were more than prepared to give them immunity from prosecution in Botswana in return for them giving the evidence we needed but of course we cannot give them immunity from prosecution in the UK and thus by making a formal request for assistance we would be inviting the UK authorities to investigate the matter. This impasse was solved by arranging a direct relationship between the Botswana Government and the company itself which circumvented the UK's central facilities. This arrangement, concluded by lawyers, has worked satisfactorily. It was necessary because the formal arrangements which were aimed at improving international co-operation did not in fact cater for the particular situation we were faced with.

Example 3

Mr. Adrian SLAVE was employed by the University of Botswana as a purchasing officer and part of his duties were to arrange for the supply of books to the University's library. As a reward for arranging for the supply to be undertaken by a particular company in the United Kingdom, that company paid Mr. Slave unlawful commissions. The commissions were in fact paid to a company which had been set up in Botswana for the specific purpose of receiving the bribes and were sent from UK banks to Mr. Slave's company's bank account in Botswana. We of course needed evidence of the payments from the UK banks, and it suffices to say here, that though the procedure was lengthy and cumbersome, all the required evidence and documents were produced.

Example 4

Many of the problems I have alluded to can be overcome if countries are prepared to remove obstacles. Within the SADC region there are very workable arrangements in place which enable a law enforcement agency in one country to have excellent access to evidence, witnesses and documents in another. Many of my organisation's cases involve witnesses who are in South Africa for example. All we need to do, is through Interpol make contact with the South African Police Service, briefly explain what we want to achieve and make arrangements for our officers to visit the country. Of course, officers from South Africa will be present to assist and to ensure that South African legal requirements are met and the rights of its citizens are observed. Note there is no involvement of the judiciary or the prosecution authorities in these arrangements.

I believe many law enforcement officers share the view that whilst we welcome the generalised move towards closer international co-operation in criminal investigations, there is a worrying tendency to make procedures over-bureaucratic. Many investigators cannot see the necessity of diplomatic involvement nor the need for involving the judiciary or the prosecution authorities, for we believe this serves to weaken the value of these bodies' independence in the judicial system. Governments have of course a duty to protect their citizens, perhaps from unlawful and unjustified encroachment on their rights by foreign investigation agencies, but cannot that duty be devolved more upon the police services as is the cases within the SADC region? There is vocal support for closer co-operation but in the process of achieving it we must guard against placing new obstacles in the way of the free flow of information and evidence.