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Democracy under siege: the Presidency and executive powers in Botswana

Mpho G. Molomo

Democracy Research Project
University of Botswana

Abstract

This article outlines that the Constitution of Botswana provides for an executive presidency with extensive powers. Unlike other constitutions in the region where power is vested with the people, in Botswana it is vested with the President. While democratic procedures have not been flaunted in Botswana, in a situation where one political party dominates both the executive and the legislative branches of government, there is cause for concern. In this situation, the checks and balances provided for in the constitution are almost redundant. The declaration of the state of emergency and the granting of the Vice-President, Ian Khama, sabbatical leave by the President are examples where the President used his executive powers. This article concludes that given the wide-ranging executive powers that the President enjoys, there is a strong case for presidential elections. In that way, the president would be directly elected by the electorate and therefore directly accountable to them.

Introduction

Botswana is a frontrunner in democratic politics. While white minority rule and one the party regime eclipsed other countries in the Southern African region, Botswana enjoyed a stable multi-party democracy. However, the 1990s ushered in an era of democratic transitions that saw the region embracing democratic norms and practices. It all started with the independence of Namibia in 1990, then followed by multi-party elections in Zambia and Malawi and the historic all race elections in South Africa in 1994. Following the changes in the region, especially the introduction of constitutions that limited the term of president, Botswana's democracy came increasingly under the spotlight and hence the resultant need for introspection.

Despite the eulogy that Botswana has received, it operates an executive presidency that enjoys extensive powers. Kenneth Good (1996:29) describes Botswana as a liberal authoritarian state. In another formulation, he describes Botswana's polity as characterised by "elitism, centralised political power and weak executive accountability" (Good, 1999:50). Political discourse in Botswana has placed attention on its resilience and adherence to multi-party democracy when other countries in the region opted for one-party governments. While such an emphasis is not misplaced, analysis should also focus on how Botswana's democracy operates. The constitution of Botswana provides for an executive presidency with extensive powers. Particular attention, therefore, needs to be placed in the Office of President. Since Mogae took over the reigns of power as President, there has been growing concern, especially from opposition parties, that his administration "negligent, haphazard careless and incompetent" (*The Midweek Sun*, 8 September 1999:1). To borrow a phrase from Kenneth Good (1997:547), the President and his government are "accountable to themselves."

This article seeks to discuss Botswana's position as an open liberal democratic system that is responsive and accountable to its people's needs. The discussion focuses on three areas in Botswana's politics. First, it discusses the powers of the president, and in particular focuses on the powers to declare a state of emergency. Second, it discusses the much-debated sabbatical leave that he granted the Vice-President, Ian Khama Seretse Khama. Third, the article concludes that, given the extensive powers that the office of president enjoys, there is need for presidential elections in Botswana. The article begins by laying out the context within which to understand these political developments.

Contextual Framework

Botswana operates a Westminster parliamentary democracy where 40 Members of Parliament (MPs) are elected on a "winner-take-all" single member constituency system. The Constitution of Botswana provides for a president who is both Head of State and Government with strong executive powers. It provides for the separation of powers between the executive, the legislature and the judiciary. However, the fact that one party, the ruling Botswana Democratic Party (BDP) dominates both the executive and the legislature, the separation of powers only exist in theory. In fact, political power is centralised in the Office of the President. The constitution empowers the President to choose the Vice-President and Cabinet Ministers from among the members of his party in Parliament. In addition, the constitution provides for the appointment of four additional MPs by special nomination. This provision allows the President to bring into parliament people with special skills as well as create a balance in government by bringing in women and youth (for detail see Somolekae, Ntau and Ntsabane in this issue) and minorities that did not make it through the elections. In practice, however, this provision has been used in clear political patronage to reward loyal party activists.

The position of Vice-President has always accounted for a smooth political succession in Botswana. Sir Ketumile Masire served as Vice-President and Minister of Finance and Development Planning in the government Sir Seretse Khama, the first President of the Republic of Botswana. After the death of Seretse in 1980, Masire took over as president. Soon after he assumed the presidency, Masire chose Lenyeletse Seretse for the position of Vice-President. Lenyeletse Seretse held that position until his death and was succeeded by Peter Mmusi. Festus Mogae succeeded Mmusi.

Mogae's take-over as President in April 1998, though smooth, was not free of incidents. At the time of the transition in leadership, the Botswana Democratic Party (BDP) was experiencing the worst factional fight in its history. The party was divided into two factions, the so-called Kwelagobe and Merafhe factions. While these factions were said to manifest the north-south divide (see Mokopakgosi and Molomo in this issue) they were actually fights for political succession. Both factions were fighting for hegemonic control of the party.

Masire orchestrated a process for a smooth political transition. In what, according to President Mogae, "will forever remain as a serious indictment of internal democracy within the BDP", Sir Ketumile Masire brokered a deal to fix the Central Committee elections, in order to avert a split in the party. In an unprecedented move, delegates at the 1997 Congress in Gaborone were asked not to vote for candidates for Central Committee elections but to endorse a compromise list agreed to, behind the scenes, by the warring factions. The Merafhe faction, that was rumoured to back Mogae, allegedly feared that if they contested the Central Committee elections, they would suffer a humiliating defeat. So, they are alleged to have threatened to boycott those elections, ostensibly on the grounds that the Kwelagobe faction had reneged on an earlier deal not to challenge Mogae for the position of chairman of the party (Molomo, 2000: 79). Traditionally, the BDP has reserved the chairmanship of the party to the Vice-President to facilitate smooth succession. The party's constitution had also been amended to allow the Vice-President to take over the presidency of the country, should that position, for one reason or another, fall vacant. The BDP entered the 1999 elections a united party. The 1999 congress that elected the Central Committee, which led the party into the elections, was smooth and did not reflect any negative campaigning or factional fights. However, the danger lurking in the air is that factionalism is returning to the party. There is a lot of discord between the leadership of the party, this time not along the Kwelagobe and Merafe factions but between President Mogae and Vice-President Khama.

Mogae's performance as President is not only measured against that of his predecessor, Sir Ketumile Masire but also his own performance as Vice-President and Minister of Finance. Mogae ascended to the high office with an impeccable record having

served for many years in the higher echelons of government and international bodies. He had had an illustrious career in government as Governor of Bank of Botswana, Permanent Secretary in the Office of the President, and also had a stint at the World Bank. As Minister of Finance and Development Planning he acquitted himself admirably, especially as a prudent custodian of the national treasury. The most cogent example in this regard, is when he stood his ground, despite strong political representation from his cabinet colleagues, and refused to write-off National development loans (Molomo, 1997:208). As a technocrat, his credentials are unquestionable but as a politician, according to the editor of *The Botswana Guardian*, Outsa Mokone, he comes across as a "shrinking president".

President Mogae, who the opposition characterise as a "reluctant president", seems to have lived to that expectation, given his numerous blunders (*The Botswana Gazette* 8 September, 1999: 2). Mogae's administration is crisis ridden. Mogae's first major blunder in office was the motor vehicle loan scheme that was introduced for MPs, Councillors and Chiefs. Through this scheme, politicians and Chiefs benefit from a 50 percent motor vehicle subsidy on their purchases. This scheme was ostensibly geared to assist the legislators with reliable transport to be effective representatives in their constituencies. However, as it turned out, the scheme that initially did not have an upper ceiling, amounted to a blatant process of self-enrichment and acquisition of luxury vehicles. Amidst public outcry, Mogae admitted the error and a ceiling was put in place. Even with this ceiling, the public is not convinced that this is the best way that their tax monies should be spent. The principle that legislators need to be assisted with transport to enhance their efficiency is not in dispute. However, people would have preferred government to provide official transport for the 40 parliamentary offices that have recently been established. Chiefs are already provided with official vehicles. There is an impression that chiefs are only tagged on to make the scheme politically correct.

Providing further justification that politicians need to declare assets and interests when they assume public office, four months after he ascended to the presidency, Mogae was allegedly implicated in a scandal in which public money was used for personal gain. This involved a company in which the President has interests in called Motswedi, which allegedly benefited from a soft loan from a "cash trapped" Owens Corning Pipes Botswana (OCPB). The alleged conflict of interest arose from the fact that the Botswana Development Corporation (BDC), which is a parastatal that spearhead governments industrial development policy and also a share holder in OCPB, had injected money into the company to keep it afloat (*Midweek Sun* 8 December 1999:2). Regarding public accountability by elected officials, the MP for Francistown East, Joy Phumaphi, tabled a motion calling on MPs to declare their assets and interests. Even though parliament passed the motion, it appears that there is no political will to ensure that it is implemented. As president, Mogae needs to be decisive and ensure that politicians are accountable in their public and private affairs.

Powers of the Presidency

According to section 47 (1) of the constitution of Botswana the executive powers of the Republic of Botswana are vested with the President. In the exercise of the powers conferred on him by the constitution, unless otherwise provided, the President acts in his own deliberate judgement and shall not be obliged to follow the advice tendered by anybody. The President controls the key apparatus of the state such as the Army, Police, Broadcasting and Information, Directorate of Public Service management, Directorate of Corruption and Economic Crime, and Printing and Publishing. The President not only appoints cabinet ministers but also chairs its proceedings.

The powers of the President are wide-ranging; they straddle all the arms of government the executive, judiciary and legislature. By virtue of his position, the President heads and controls the executive arms of government, and also has considerable authority over the legislature. The executive presidency in Botswana symbolises the bastion of

political power. The supreme command of the Botswana Defence Force is vested with the President, as Commander-in-Chief. By virtue of the authority vested in him, he has powers to appoint and fire members of the force. More fundamentally, he alone has powers to declare war.

The Executive authority of the President is illustrated, more than anything else, by his powers to appoint and remove from office the Vice-President, Cabinet Ministers and their Assistants, and Ambassadors or High Commissioners. In the exercise of these powers, the President is not obliged to consult anybody or heed anybody's advice. If there is a difference between Khama, Masire and Mogae's administrations, it is in their style of leadership. The ideology and economic direction of the country has remained the same through the reigns of Khama, Masire and Mogae. However, Mogae seems to flaunt the spirit of *Therisanyo* (consultation) that is ingrained in all BDP manifestoes and is also the name of its newsletter. In a nostalgic sense, members of the BDP recall that, notwithstanding the executive powers that the founder presidents enjoyed, their governance was based on a great sense of consultation. Governance was seen as a collective responsibility between the President and his cabinet. To the contrary, President Mogae's leadership has been different. He acts alone. The most cogent examples are his decision to award Vice-President Ian Khama sabbatical leave and the issuance of writ of elections for the 1999 elections.

The Constitution of Botswana specifies the functions of the Vice-President that he is the "principal assistant of the President in the discharge of his executive functions" and shall be responsible for such business as the President may assign him (Botswana Constitution 00:32). The lack of consultation that characterizes Mogae's administration has been a source of frustration for Lieutenant-General Ian Khama who, according to Mogae, was brought into government to "improve productivity in the public service". As Minister of Presidential Affairs and Public Administration, Khama would have liked to have a free hand in the appointment of some senior positions in government. However, President Mogae, according to media reports, seems to be doing most of these appointments alone, much to the irk of his Vice-President (*Midweek Sun*, December 8, 1999:2).

Manifesting his legislative powers, the President, as an ex-officio Member of Parliament can take part in the deliberations of the House, as well as to vote. Perhaps more importantly, he has veto powers. All bills that are passed by the legislature need his assent in order to become law. Recently, when the privatisation motion was having difficulties passing in parliament, following its vigorous debate by opposition MPs, and, in particular, BDP backbenchers, the President came into parliament to cast his vote to help pass the bill. Although, he was not able to vote because he came in late after the voting papers had already been prepared, this incident was nevertheless demonstrable of his voting powers.

Botswana has an established tradition of upholding the rule of law and non-political interference in the operations of the legal system. However, as chief executive of the country, the President enjoys immunities against civil litigation whilst in office, appoints the Chief Justice and Judges of the High Court and also has powers of prerogative of mercy. The President also has powers to constitute commissions of inquiry and to decide whether they should be heard in public or in camera. The Commission of Inquiry investigating the alleged ritual murder of Segametsi Mogomotsi in Mochudi in 1994 is a case in point. Following the public outcry and the civil unrest that resulted in a demonstration by students of Radikolo Community Secondary school, the Scotland Yard police were called in to assist the Botswana Police with the investigations. Upon completion of their task, they handed a report to the Office of the President but despite calls to make it public, it was never publicised.

Over and above his judicial functions and privileges, the President has discretionary powers that allow him to suspend the civil liberties of individuals. Where the President has satisfied himself that a person is an undesirable element in Botswana, Section 7 of the Immigration Act empowers him to declare them prohibited immigrants. In that eventuality,

such a person cannot seek remedy from the courts, and the President is not obliged to disclose the reasons for his actions. The President also has powers to restrict the movement of citizens of Botswana. As attested by Otlhogile (1998:222), in an unprecedented move, Botswana's first President Sir Seretse Khama ordered the withdrawal of passports of Botswana National Front youths that were to attend the International Youth Festival in Cuba in 1978.

The State of Emergency

In another unprecedented move, the President, Festus Mogae, declared a State of Emergency on September 2, 1999. In a region that has just emerged from repression and destabilisation, its declaration triggered a lot of interest. Perhaps, the interest was sparked, more by what people know a state of emergency can do, rather than what it entailed in Botswana.

The context in which the state of emergency was instituted in Botswana was however different from its occurrence in other Southern African countries. In most Southern African countries, where a state of emergency was declared, it was because the country was in total chaos in a country leading to a collapse of the instruments of law and order. Worst still, it was declared when a country was in a state of war and completely ungovernable. In such a situation, a state of emergency was declared to empower the state to suspend the provisions of the constitution – civil and political liberties and democracy – in order to deal with the crisis unfettered by the law. However, in Botswana the state of emergency was not instituted to suppress basic freedoms but to empower democracy.

The state of emergency was declared in Botswana following problems with the voter registration process. The 1999 elections were the first conducted under the auspices of the Independent Electoral Commission (IEC), and were also the first in which the ballot paper that replaced voters' discs was used. Like all elections, preparatory stages such as voter registration and certification of voters' roll had to be made. As the voter registration process continued, it became apparent that a significant proportion of eligible voters in Botswana would not vote on account of problems with national identification cards, popularly known as *Omang*. The law required that only registered voters with a valid *Omang* would be allowed to vote. As a result, a constitutional amendment was made on 16 July 1999 to amend the Electoral Act and allow eligible voters whose cards had expired to vote. Following that dispensation, the IEC had to organise a supplementary registration of voters between 17 and 31 July 1999.

In the meantime, in-keeping with its well established tradition of holding regular elections every five years, President Mogae used the powers vested in him by section 91 of the constitution and dissolved Parliament on August 24, 1999. In compliance with the law that after the dissolution of parliament general elections should be held within 60 days, Mogae issued a writ of election for the 40 parliamentary constituencies, and declared 24 September and 16 October 1999 nomination and poll days, respectively. The Minister of Local Government, Land and Housing issued the same instrument, in terms of section 5 (1) of the Local Council (Conduct of Elections) Regulation for nomination and election of councillors.

Nevertheless, section 27 of the Electoral Law provides that after the President has issued a writ of election, no one has the power to change the voter's roll, except for a transfer of registration. The effect of this was that voters who had registered during the supplementary voter registration exercise and their names were not yet published in the Government Gazette, would not appear in the voters' roll and, as such, would not be allowed to vote. A rigid adherence to the law would have meant that 66 000 registered voters were disenfranchised.

To avoid disenfranchising eligible voters, President Mogae declared a State of Emergency on September 2 1999, and the declaration reads:

Whereas it is provided by section 17(1) of the Constitution that the President may at any time declare that a state of public emergency exists;

And whereas it is necessary to declare a state of emergency for the purpose of taking the necessary measures to prevent the disenfranchisement of a large proportion of the electorate in respect to voting at the next general election so as to avoid any unrest among the electorate;

Now therefore in the exercise of the powers conferred on me by section 17 (1) of the Constitution, I, Festus G. Mogae, President of the Republic of Botswana, do hereby proclaim and declare a State of Emergency (*Mmegi* 3-9 September 1999).

The effect of the State of Emergency was to empower the President to reconstitute Parliament that was dissolved. According to the constitution, Parliament is the only body that can amend the electoral law. As a redress mechanism, that was the only way that the certification of the voter's roll would take place, despite the issuance of the writ of election. Consequently, parliament was reconvened on 6 September 1999 to amend the electoral law.

The declaration of the state of emergency, the first in Botswana's political history was received with mixed feelings. Those who applauded it felt that it was unjustified to disenfranchise eligible registered voters. They argued that to proceed with the elections as if nothing had happened, would have constituted a travesty of democracy. Therefore, the intervention of the President by declaring a state of emergency, they argued, was timely and justified. Those who were opposed to it argued that it was a blunder felt that it not only tarnish Botswana's image as a shining example of democracy but also reflected Mogae's lack of thoroughness on conducting public affairs. In a press conference, Mogae told the nation that he accepted the blame.

President Mogae, who at one stage was a supervisor of elections, admitted that he overlooked the provision that once the writ of election was issued the certification of the voter's roll would have to stop. Seemingly sharing the blame with those who advised him, he recounted the events leading to the emergency. The President said, at a meeting in his office with the Secretary of the IEC, the attorney General and the Permanent Secretary to the President, the President said he was "handed a programme of work showing that the IEC would have completed all the preparatory work by 10 October 1999." Nevertheless, he further noted, it did not occur to all at that meeting that if he went ahead and issued writ of elections the certification of the voter's roll would be halted (*Midweek Sun* 8 September 1999). However, Mogae pointed out, the disenfranchisement of 66 000 voters was "unacceptable" and "constituted an emergency situation."

Opposition parties did not take the state of emergency lightly. The leader of the Botswana Congress Party (BCP), Mike Dingake blamed the events that led to the declaration of the State of Emergency on the incompetence of President Mogae. The leadership of the BCP charged that the BDP government abused its authority because parliament was reconstituted to "absolve the incompetence of the President." In addition, they charged that there was nothing wrong with the Electoral Act to warrant an amendment (*The Midweek Sun* 8 September 1999:1).

The Khama Factor in Politics

Since its inception in 1962, the Botswana Democratic Party (BDP) enjoyed overwhelming electoral support in the Central District - Khama's land. The BDP's electoral strength in the Central District has a historical explanation. As discussed in Holm (1986:22) and also by Barei in this issue, the party's popularity in the area is attributed to the fact that their Paramount Chief, Seretse Khama, was its founder member.

The political alliance between BDP and Bangwato (people of the Central District) came after Seretse Khama was denied the throne of Bangwato following his marriage an English woman, Ruth Williams (Wiseman, 1980:405). When Seretse entered party politics and formed the BDP, the move was widely acclaimed by Bangwato as politically correct because it would allow him not only to rule them but the entire nation of Botswana.

Appeased by the move, Bangwato gave the BDP unflinching loyalty over the years. The perception of Bangwato, when Masire succeeded Khama after his death in 1980 was that he was only holding the fort for Khama's son, Ian Khama Seretse Khama, to enable him to develop a career in the army, grow up and eventually take over as President.

In a seemingly logical set of events, after Festus Mogae was inaugurated Botswana's third President on 1 April 1998, he appointed Lieutenant General Ian Khama Seretse Khama Vice-President and Minister of Presidential Affairs and Public Administration. The appointment of Ian Khama to the position of Vice-President and also to head a powerful ministry of Presidential Affairs and Public Administration was well received by Bangwato. They perceived the move as grooming their heir apparent to eventually take-over the high political office. After Khama ascended to the reign of power, he embraced populist and autocratic tendencies. While the executive powers rested with the President, Khama used his standing in society, as paramount chief of Bangwato, the most populous ethnic group in the country, to assert his influence both in the party and society.

Khama was brought into the ranks of the BDP following the recommendations of the Lawrence Schlemmer Report (1997:3). The report advised that for the BDP to improve its chances of winning the 1999 elections, it needed to bring into its fold a person with "sufficient dynamism", who was untainted by factional fights. This was done in the wake of the 1994 elections, in which the BDP in its seven terms in office met for the first time a serious challenge at the polls. In a parliament of 40 seats, the opposition Botswana National Front (BNF) captured 13 seats, leaving the BDP with 27 seats. Needless to say that the BDP won decisively, the poll reflected significant gains by the opposition. The BNF share the popular vote increased from 27 percent in 1989 to 37 percent in 1994 whilst that of the BDP dropped from 65 percent to 54 percent.

Evidently, his appointment to political office was out of political expediency with a view to gain political mileage from the fact that he is a member of the Khama aristocracy. Khama was brought in to consolidate the BDP vote especially among the Bangwato, which was beginning to wane. Besides, Mogae's choice of Khama as Vice-President, over long serving party stalwarts and veteran politicians; was a clear indication that Khama was not only perceived as a dark horse but also a crown prince. Nevertheless, it would appear that Khama, who was brought into power politics ostensibly to inspire stability in the party and productivity in the public service, now hangs like an albatross around President Mogae's neck. The discussion of the Khama factor in politics will focus on three factors: his sabbatical leave, conduct in public office and position as paramount chief of Bangwato.

First, the discussion focuses on Khama's sabbatical leave. Khama's treatment as a special case, tend to portray Mogae as a weak president. A lot of people, including cabinet ministers, are unhappy with Mogae's decision to grant Khama 12 months sabbatical leave. Justifying his decision to grant Khama sabbatical leave, President Mogae told parliament that when he assumed presidency on April 1, 1998, internal tensions were straining the stability of the Botswana Democratic Party. As a result, he persuaded Khama to leave his position as commander of the BDF, "enter politics and help unify the party". "A man of his caliber, Mogae added, was also wanted to improve productivity in the public service, but Khama had wanted to serve longer in the army and then attend to personal matters...I persuaded him that the nation and the party needed him...I promised him that when the party stability had been restored, I would grant him the break he had planned for. There is now welcome stability at party and national levels" (*Midweek Sun* 8 December 1999:6).

Khama's sabbatical leave in politics is a curious phenomenon. To be sure, sabbatical leave is not a catchall phrase to refer to any type of leave (such as sick, maternity, compassionate or annual leave). It is a specialised type of leave that is commonly associated with academic institutions. Sabbatical leave is earned after academics have served for a specified period of time. For instance, at the University of Botswana those who have served the institution for a continuous stretch of four and five years qualify for six and twelve months, respectively. Normally, such leave is granted to enable the staff

member to retool in their area of specialisation, to gain experience by teaching at another university or to engage in research unencumbered by other responsibilities. Before such leave is granted the applicant spells out his/her work plan and it is awarded on the understanding that it would enhance their academic prowess.

In the Public Service, there is no precedence for that type of leave. Section III, regulation 40(b) of the conditions of service of members of cabinet empowers the president to grant members of his cabinet leave. However, the regulation does not specify the duration of that leave, and it appears the President exploited this loophole to grant Khama sabbatical leave. Nevertheless, for a country such as Botswana that believes in the rule of law, consultation, transparency and accountability, it was expected that Khama's leave should have been handled in an open manner, but this was not the case. Following the BDP parliamentary caucus, it has come to light that Khama actually wanted a five-year sabbatical leave.

The lack of serious debate in parliament regarding Khama's sabbatical leave seems to suggest that public interest was traded "self-interest" and "self-preservation". BDP MPs and cabinet Ministers appeared fearful to speak out against Khama's sabbatical leave. However, if Parliament is to function effectively as a check on the executive, it needs to be more vigorous in debating issues of principle and national concern. Interestingly, however MPs were vocal when they debated the motion calling for the increase of their salaries and benefits, which Khama opposed.

Within the structures of the BDP, it was only the youth wing that spoke against Khama's sabbatical leave. Interestingly, the woman's wing never articulated its position. Over the years, the youth has confronted controversies within the BDP head-on. They were the first to suggest that the former president Sir Ketumile should retire. Much to the irk of the party leadership, the National Youth Executive said in its statement that:

It regrets the constitutional precedent being set by the sabbatical leave granted to his honour the Vice-President. The honourable action is for the Vice President to resign from his office to solve his personal affairs first. [The statement added], if he avails himself at the completion of his personal matters, the President may choose to ask him to serve as Vice President (*Midweek Sun*, 19 January 2000).

In sum, the BDP under Mogae seems to be showing signs of fatigue and decay. The party does not seem to have space for dissenting political views. Lesang Magang is being forced into political wilderness for being openly critical of Khama's sabbatical leave. He has declined standing for re-election for the chairmanship of the youth wing because the party is not happy with the manner in which he handled the issue of Khama's sabbatical leave.

Second, Khama is said to be contemptuous of established norms of governance. There is a lot of outcry concerning Khama's conduct in public office. Khama comes across as a man of action; however, such action needs to be done within the laid out structures and rules. Perhaps, Khama's professional training as a military man explains his style of leadership but it hardly needs emphasis that as a politician he has to order his cards differently. A few examples illustrate the point. One incident was when, without consulting Botswana, Khama announced the abolition of *Tirelo Sechaba* (national service) – albeit an unpopular programme. It may well be that Kedikilwe resigned his position as Minister of Education because he did not want to be associated with the chaos that is likely to result from Khama's unilateral decision. This decision was made in haste without regard to adverse effects it would have, especially on the education system. The University of Botswana and other tertiary institutions, starting the year 2000 will be forced into a double in-take to cater for students who would otherwise have gone for *Tirelo Sechaba*. Another incident was when, in a move ostensibly to open his office to receive grievances directly from the public, he created parallel structures to formally existing ones. In this regard, he fell out with his cabinet colleagues. In opening his office to the public, he found himself

entertaining complaints about other ministers. He allegedly crossed paths with the then Minister of Commerce and Industry, George Kgoroba, when he entertained complaints by the Hotel and Tourism Association against the Minister. In similar vein, he allegedly clashed with the then Minister of Labour and Home Affairs, Bahiti Temane, following complaints by "immigrants who were not happy with the pace at which citizenship applications were processed" (*The Botswana Guardian*, 9 June 2000:11). It remains a curious phenomenon whether President Mogae's decision not to appoint Kgoroba and Temane to cabinet after the 1994 elections was not influenced by the fact that they differed with Khama. Much as it is the prerogative of the President to decide alone whom he appoints to cabinet, their exclusion raised eyebrows because both men hold higher credentials and a track record than some of his appointees. Third, as Minister responsible for radio and broadcasting, Khama stopped the broadcasting of *Dikgang tsa Palamente* (a Radio Botswana programme where members of parliament reported what they discussed in parliament) by MPs. Radio Botswana only broadcasts summaries of deliberations of the House.

Third, by far the most serious indictment on Khama, it appears, is the dual authority that he enjoys. In a practice that appears to contradict the constitution of Botswana, Khama is both paramount chief of Bangwato and a politician (Vice-President and cabinet minister and Member of Parliament in the BDP government). Section 79(2) of the constitution specifies that persons eligible for membership to the House of Chiefs should not have been engaged in politics in the preceding five years. Similarly, Section 62(1) (d) of the same constitution specifies that no person shall be qualified to be elected as a member of the National Assembly who is a member of House of Chiefs. The gray area in the interpretation of these two sections of the constitution is that Khama never serves as chief in the House of Chiefs. What complicates matters is that Khama was installed paramount chief of Bangwato in 1979. Sediegeng Kgamane is serving as the Bangwato regent.

Khama appointment and practice in political office has flaunted a precedent that was set by the late Chief Bathoen II of Bangwaketse. Bathoen resigned his position as Chief in 1969 to join politics on the ticket of the opposition Botswana National Front (BNF). For his part, Khama retired from the army on March 30, 1998 and the next day took up a cabinet position in the BDP government. Khama remains the only politician who is also a paramount chief. The danger lurking in this practice is that it will politicise the institution of chieftainship.

Khama has used his positions as Paramount Chief of Bangwato and Vice-President in an unscrupulous way. During the 1999 election campaign he used public resources for partisan political gain, and that renewed opposition claims that the political playing field was not level. He opened the BDP to criticism that they were not only taking advantage of incumbency in office but also abusing the institution of chieftainship. The Vice-President, Lieutenant General Ian Khama Seretse Khama, used state resources to aid his party's campaign. In what was perceived by the opposition as unfair political advantage, Khama used official transport - a Botswana Defence Force helicopter that he personally piloted - to Nkange, where he launched the BDP manifesto. In further display of lack of political sensitivity, Khama enlisted in his campaign entourage the Bangwato tribal authority, the District Commissioner and Heads of Department (*Mmegi*, 10-16 September 1999:6). At that rally in Nkange, Khama reminded his audience that he was their Chief. In further display of his amateurish political style, when he was reminded that his actions amounted to an abuse of public property, Khama remarked that people were jealous of him because they could not fly a helicopter. Needless to say that the Vice-President is entitled to official transport at all times, a person of his stature is expected to have a fair sense of judgement not to stir public outcry especially during the campaign period. Regarding the abuse of public property and gaining undue political advantage, especially with respect to the Nkange issue, Mike Dingake, President of the Botswana Congress Party (BCP) took the matter up with the office of Ombudsman.

However, despite the criticism of Khama, his approval ratings are likely to increase following his public populist moves. The first major move that won him popular acclaim was his opposition to the motion presented by the MP for Ngwaketse West, Michael Tshipinare. The motion called for an increase in the salaries and benefits of MPs, Councillors and Chiefs. Claiming a high moral ground, Khama opposed the motion saying that the move was an "abuse of power". He taunted his colleagues and said that, speaking for themselves when the people who voted them into power were wallowing in poverty, showed that they were not representing peoples' interests but their own. Khama charged that it would be hypocritical if they were to vote money for themselves after they had refused to increase the sum awarded to old age pensioners on account of unavailability of funds (*Mmegi* 14-20 April 2000:25). He further pointed out that their salaries, which were previously increased by 35 percent, were sufficient. To back his stand point, Khama reiterated the call he made when he launched some BDP candidates during the 1999 election, when he told them not use their positions to "agitate for more money" (*Midweek Sun* 15 October 1999). The students of the University of Botswana staged a demonstration decrying the abuse of authority by MPs, and through a call-in programme at Radio Botswana, Batswana voiced their displeasure with the move by their representatives to try and enrich themselves. On this matter, President Mogae sided with Khama saying that he does not agree with Tshipinare's motion, and will tell parliament that government cannot afford a pay raise for MPs, councillors and chiefs (*Midweek Sun* 7 June 2000:2). Prudent financial management is one of the hallmarks of Botswana's economic success, and only for this reason I applaud Khama's move. But the political mileage that he is deriving from it, is a source of serious concern, if the BDP has to remain united, as the party in power.

Khama's contempt for the other leaders became evident when he addressed a leadership seminar at the Botswana Productivity Center. At that seminar he said the political leadership in Botswana is motivated by "self-interest", "lust for power" and described them as "vultures" who are all out to loot the country's coffers (*Botswana Guardian*, 2 June 2000:10). On this matter, Khama yet again crossed swords with his colleagues at the party caucus. The inability of President Mogae to control Khama, despite his assertions that he is able to control him, is further attested by the fact that he is alleged to have refused to heed Mogae's call to apologise to his colleagues for calling them vultures. Furthermore, the numerous utterances only serve to undermine the integrity and authority of the President. The only way that the President can survive two terms in office is if he wins back the support and confidence of MPs who have been alienated by Khama. Speculation that Mogae may curtail his term as president to make way for Khama who is rumoured to be in a hurry to be President was dashed by Presidents announcement that they are "mischievous and baseless" (*The Midweek Sun*, 19 July 2000:1). In a move seen by many as an attempt to reassure MPs that he is in control, Mogae appointed George Kgoroba, an open critic of Khama, Minister of Education.

Ironically, Khama's assertion of "lust for power" as poor leadership trait that he attributes to other political leaders applies to him as well. First, Khama did not find it politically correct to relinquish the position of Vice-President while on a one-year sabbatical leave. Second, Khama has not only held on to the position of Vice-President but also that of paramount chief of Bangwato despite his political appointment. So, more than anybody else has the propensity to accumulate and centralise political power. Khama's lust for power makes it unlikely that he can voluntarily relinquish power. Khama clearly projects himself as an icon of patriotism and finds himself at odds with his colleagues, in what he calls matters of "principle and integrity" (*The Botswana Guardian* 2 June 2000:11). But if he is to succeed in his venture, he has to realise that he needs to work with people, especially members of his party. Third, Khama uses his position as Vice-President for the narrow benefit for his constituency rather the whole country. He has mobilised doctors and scholarships for the Serowe Development Trust in his constituency, and if this

is not translated into a national agenda, it may compromise the integrity and delivery of the state.

People of Tonota took issue with their MP Pono Moatlhodi for being disrespectful to Khama, who is their chief. On being quizzed that Khama is in parliament as an MP rather than chief, a former councillor and village elder in Tonota, Mr. T. Moepeng said the issue was not about Khama but Botswana culture of respecting other people. He argues that it was not proper for Moatlhodi to talk about Khama's personal life in parliament. Therefore, Moatlhodi is under pressure from the electorate in his constituency to apologise to Khama or face the backlash of losing the election in 2004. However, the irony of the whole matter is that the same people who preach high moral standards regarding Botswana's culture preferred to keep quiet when Khama called MPs "vultures".

Mogae chose to trivialise the matter and said the people castigated Moatlhodi were exercising their democratic right of free speech. Yet, the President knows very well that the matter was much more fundamental than that, it was about the recognition that Botswana is a republic, and that MPs have parliamentary privileges. Chieftaincy, as provided for in the constitution, plays second fiddle to the legislative assembly. The Presidents' silence on a fundamental constitutional matter, such as this one, was a serious indictment on democracy.

Ponatshego Kedikilwe, BDP chairman resigned his position as Minister of Education. Diplomatically, Kedikilwe said he resigned because he could not "measure up to the job as [his] concentration [was] distracted by political and personal considerations" (*Midweek Sun*, 7 June 2000:4). The resignation of a senior figure in the party and government can never be taken lightly; it manifests serious antipathies within the BDP. It marks serious dissention regarding the process of governance. Kedikilwe resigned more out of frustration in the manner in which Mogae is running government. It is inconceivable how Kedikilwe, who is clearly popular within the BDP, can block Khama's ascendancy to the presidency. The BDP constitution was amended in 1995 to suggest that when the party is on power there shall be no presidential elections. Both the BDP and country constitutions provide that if, for one reason or another, the President vacates office the Vice-President automatically becomes President. If the BDP does not amend the constitution to stop do away with the notion of automatic succession, the stage seems to be set that Khama is the next President of the Republic of Botswana.

Based on his lack of respect for established norms and procedures, there are genuine fears that if Khama were to ascend to the presidency after Mogae, which by all indications appears to be certainty, his authoritarian tendencies would become even more manifest. The media once described him as an "authoritarian teetotaler", who if he had the power would ban alcoholic beverages (*Mmegi* 10-16 December 1999:1). However, the presidential spokesman, Andrew Sesinyi has made attempts to dispel notions that are gaining ground that Khama is an autocrat. In this regard, the "Vice-President was not impervious to criticism and neither does he have dictatorial tendencies" (*Midweek Sun*, 29 September 1999).

There is, however, no doubt that Khama is a patriot who acts in the national interest. The most revealing statement was his address on the installation of Chief Tawana II as Paramount Chief of Batawana. In a hard hitting statement he said:

There are forces at work in this country that seek to want to breakdown our achievements since independence. Forces that emanate from a type of leadership, tribal or otherwise that for selfish reasons, or reasons of tribal bias seek to promote themselves or their tribal groupings into prominence over others...The back biting, finger pointing and foul mouthing, that goes on in this country today is an indication of a society that is coming apart. We live in a time when jealousy of one another is going to self-destruct our nation (*Midweek Sun*, 5 July 1995:1).

Though Khama made this statement when he was still commander of the Botswana Defence Force, it clearly had political overtures. He made it at the height of factionalism in

the BDP. His decision three years later to join politics help explain the statement. In addition to his traditional base among Bangwato as paramount chief, Khama derives his support among "citizen business interests and the "white community" (*Botswana Guardian*, 9 June 2000: 7). In the leadership struggle that is likely to emerge within the BDP, the party is strangely poised between stability and factionalism. And Khama is likely to be a defining characteristic of that leadership struggle. However, during the BDP Youth Congress, President Mogae tried to stamp his authority as the party President when he, for the first time, publicly criticised Khama. The President lamented the tension that was brewing within MPs. The President said that the language used by Khama at the BNPC seminar and the acrimonious exchange at the parliamentary caucus was "regrettable and amounted to mutual affront" (*Midweek Sun* 19 July 2000:1).

Presidential Elections

Presidential elections form an important part of the liberal democratic framework. However, Botswana's electoral system does not provide for presidential elections. In the Westminster parliamentary system that Botswana operates, the President is indirectly elected. The presidential candidate of the party that wins the majority of the seats in the national assembly automatically becomes president of the country. However, there is a process through which a presidential candidate is nominated and elected. Only citizens of Botswana who have attained the age of 30 and are qualified to be elected member of the National Assembly qualify to be nominated to the position of President. The nomination of the Presidential candidate, which is presided over by the Chief Justice of the High Court of Botswana, is duly nominated if supported by no less than 1000 persons registered as voters for the purpose of the National Assembly. According to section 32(3)(a)(b)(c) and (d) of the Botswana Constitution, a presidential candidate stands validly nominated provided:

- Any validly nominated parliamentary candidate supports their candidature.
- Any parliamentary candidate who is duly registered supports the candidature of the presidential candidate and uses the 'same voting colour and symbol, if any, as may have been allocated...to that presidential candidate for the purposes of the presidential election'.
- Any presidential candidate whose Parliamentary candidates win more than half of the contested for the National Assembly stands duly elected as President.

This article strongly questions the procedure of electing a president and recommends direct elections for president. It argues that a president who enjoys extensive executive powers must enjoy the popular support of the people. It agitates for the need for a presidential election based on an overall majority of the votes. As entailed in the discussion of alternative electoral systems (see Molomo in this issue), the Two Rounds system of the Plurality-Majority system appears appropriate for presidential elections in Botswana. In such a system, a candidate who secures an overall majority during the first round of elections is declared a winner. However, if no candidate emerges as a clear winner, then the contest enters the second round. The candidate with the least number of votes, if they are three, is eliminated from the race. Then a "run-off" contest is entered into one or two weeks later to produce a candidate with an overall majority.

To compound matters, in what is already an unsatisfactory situation, President Mogae is alleged to have failed to properly file his nomination papers for the 1999 election. A close reading of section 12 of the Presidential Election Act suggests that a presidential candidate should be required to stipulate the colour and symbol that they would be using during the elections. Moreover, according to the Electoral law, the "Third Schedule Form" had to be "signed and dated by a candidate who is declared a candidate."

To the contrary, BDP maintained that there was no need to have "The Third schedule form" filled and signed by Mogae because they were covered by section 148 of the Electoral Act (Chap. 02:07), which reads:

Provided that where a voting colour and symbol have been registered by a political party in accordance with the provisions of section 148 of this act the Independent Electoral Commission shall, subject to the provisions of section 32 (3) (c) of the constitution, allocate such colour and symbol to any candidate whom, he is satisfied on such evidence as he may deem necessary, is the candidate of such party.

Key Dingake, a constitutional lawyer at the University of Botswana, held a different view. According to him, section 32 of the Constitution, the Presidential Election Act and the Electoral Act needed to be read together. Dingake asserted that the Electoral Act is subject to section 32(2)(c) of the constitution. Furthermore, he stated that, MPs in their nomination have to indicate the colour and symbol used by their presidential candidate. However, if the presidential candidate did not identify his/her colour and symbol, he concluded, there was nothing that would link the parliamentary candidate to the presidential candidate.

To further compound matters, section 5(2) of the Presidential Elections (supplementary Provisions) (Chap 02:02) stated that a candidate was validly nominated - in accordance with section 32 of the constitutions - if the nomination papers signed by the candidate, his proposer and seconder. In addition, there was need that there be a statement by the candidate that he is willing and qualified to stand for the election. However, what seemed to be ambiguous was the fact that sequencing of the nomination of the Presidential candidate and the choice of the voting colour and symbol was neither specified by the Constitution, the Electoral Act and the Presidential Elections (supplementary Provisions). Section 12 (1) of the Presidential Elections (supplementary Provisions) states that:

Every candidate whose nomination has been accepted as valid by the returning officer under section 9 and has been so advised shall thereupon hand or cause to be handed to the returning officer a notice in the form set out in the Third Schedule, of the voting colour and symbol he wishes to be allocated to him for purposes of the Presidential election.

Section 12 (2) further qualifies that the choice of the colours and symbol would only be valid if they had already been "registered under the provisions of section 148 of the Electoral Act." The latter argument forms the defense of the BDP that since they had already lodged their colours and symbols with the (IEC), they would only submit their Third Schedule at their convenience.

However, in accordance with section 7 (1) of the Presidential Elections (Supplementary Provisions) Act, on 18 September 1999 the High Court in Lobatse received nominations of candidates for the Office of President. The Chief Justice declared all the four nominations for the Office of President, as the returning officer for presidential nominations, validly nominated. These were: Ephraim L Setshwaelo for Botswana Alliance Movement (BAM), Michael K. Dingake for Botswana Congress Party (BCP), Kenneth Koma for Botswana National Front (BNF) and Festus G. Mogae for the Botswana Democratic Party (BDP).

Conclusion

Much as the state of emergency in Botswana was declared for a benevolent course, its chilling effect is that the extensive powers are placed at the disposal of one person, who is not directly elected by the people. The executive constitutional powers that the president enjoys calls for the creation of presidential elections. Furthermore, the ambiguities in electoral law call on constitutional experts to streamline it and ensure that it is clear.

Moreover, Mogae's move to assert himself as an executive president is further attested by his incisive move of appointing Khama acting President, in total disregard of public opinion, when ever he leaves the country despite the fact that he is on sabbatical leave. Much as the president needs to be decisive, he also must act in the interest of his party to ensure its unity, more so that it is in power. The factional fights within the BDP would be reduced if the Vice-President did not automatically succeed the President, and more fundamentally presidential elections would eliminate these problems. Besides, the President would be directly accountable to the people.

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