

# The Legacy of Professor Kenneth Good and the Impact of the 2021–2024 Constitutional Review Debacle on Botswana's 2024 Elections

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## Abstract

Namibia and South Africa adopted new democratic constitutions in 1990 and 1996 respectively, thereby overshadowing Botswana, which had been regarded as Africa's leading example of democracy. During the 2019 election campaign, the ruling Botswana Democratic Party (BDP) pledged to conduct a comprehensive constitutional review in response to long-standing public grievances about the country's growing socio-economic and political issues. However, after winning the elections, the party seemed unwilling to fulfil this promise. In December 2021, President Mokgweetsi Masisi yielded to popular pressure for a constitutional review. His controversial approach involved him appointing a Presidential Commission on the Review of the Constitution, defining its terms of reference, and selecting the commissioners. This approach served the narrow self-interest of the ruling elite and the BDP, but the commission's findings were rejected by civil society and opposition parties. Civil society, including church groups, even threatened litigation if the government did not withdraw its Constitution (Amendment) Bill No. 4 of 2024. This paper uses qualitative research to argue that Masisi's approach gives credence to Professor Kenneth Good's view of Botswana as an authoritarian liberal and minimalist democracy, where the ruling elites are accountable only to themselves. Consequently, this approach has perpetuated a 'strong man' syndrome and weak institutions, leading to the continued marginalisation of some sectors of society. The BDP's significant loss of power in the 2024 elections, after 58 years, can be understood in this context.

**Keywords:** constitution, constitutional review, president, civil society, economic development, authoritarianism

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## **Introduction**

According to former Chief Justice of South Africa, Justice Ismail Mohammed, ‘The constitution of a nation is not simply a statute which mechanically defines the structures of government and the relations between the government and the governed, it is a ‘mirror of the national soul’, the identification of the ideals and aspirations of a nation, the articulation of the values binding its people and disciplining its government’ (Hatchard 2001: 210). While Botswana’s constitution grants extensive powers to the president, the first three presidents exercised caution in their use of these powers. However, the fourth president, General Seretse Khama Ian Khama (2008–2018), displayed more dictatorial tendencies, leading to calls for a constitutional review. His presidency saw an increase in elite corruption, mismanagement, and human rights violations (Magang 2025). Consequently, constitutional reform was viewed as a means to achieve better governance, by establishing a meaningful separation of powers, reducing poverty and economic inequality, and promoting greater participation in the democratic process for marginalised groups. Khama’s successor, Mokgweetsi Masisi, pledged to initiate a constitutional review but appeared reluctant to do so due to potential threats to the ruling elite’s interests. The strained relationship and ensuing power struggle between Masisi and Khama further delayed the process (Makgala and Malila 2022). Eventually, pressure from civil society compelled Masisi to establish a commission of inquiry for the constitutional review, although he manipulated the process to serve his own interests. This reflects the notion that elite interests in Botswana often take precedence over public interests (Makgala and Seleke 2020).

Botswana is often regarded as a model of African liberal democracy. The core principle of liberal democracy is political freedom and the separation of the powers of the Executive, Judiciary, and Legislature. Since gaining independence in 1966, Botswana has consistently held elections every five years. While many African countries experienced one-party rule or military dictatorships during the post-colonial period, Botswana has maintained a semblance of a multiparty system, a relatively free press, and a functioning civil society. As a result, Botswana is often described as an exception that defies generalizations, an exemplar of good political and economic governance, a functioning liberal democratic system, a hopeful model for Africa, and one of the least corrupt countries on the continent (Samatar 1999; Acemoglu *et al.* 2003; Mogalakwe 2008).

The popular understanding of liberal democracy is a governance system characterised by the separation of the powers of the three branches

of government – the Executive, the Judiciary, and the Legislature – that operate independently yet harmoniously within a constitutional framework that safeguards this separation (Molomo 2012). Ideally, these branches provide checks and balances, ensuring that power is decentralised or distributed.

The constitution of Botswana was first drafted in 1963 in Lobatse as part of the country's preparations for independence from Britain. It involved three representatives from each political party at the time, including factions of the Botswana Peoples Party, Botswana Democratic Party (BDP), *dikgosi* (chiefs), and local European and Indian communities (Masire 2006). The constitution was finalised in 1966 at Marlborough House in London for the elections that led to Independence on 30 September 1966 (Otlhogile 2018). It did not include provisions for the direct election of a president as the head of state. Instead, the leader of the party with the majority of parliamentary seats automatically became the president of Botswana through a first-past-the-post (FPTP) electoral system. The rationale was that governing would be challenging if the president and the majority of parliament members came from different parties (Masire 2006). Although unelected, the president holds significant executive powers and influence. They can issue writs of election and declare the dates of general elections. The president also has the authority to declare any foreigner *persona non grata* without providing reasons.

The portrayal of Botswana as a liberal democracy sharply contrasts with reality, especially regarding Botswana's supposedly liberal constitutional framework. The following examples from the constitution (Republic of Botswana c.1966) illustrate this point:

1. *Section 39* stipulates that the president shall appoint the vice president from among elected members of the National Assembly who are citizens of Botswana by birth or descent and endorsed by the National Assembly.
2. *Section 41 (1)* stipulates that no legal proceedings, either civil or criminal, can be brought against the sitting president in his private or official capacity.
3. *Section 47 (1)* stipulates that the Executive powers of the Republic of Botswana are vested in the president.
4. *Section 47(2)* stipulates that, in the exercise of any function conferred upon him, the president shall act according to his own deliberate judgement and shall not be obliged to follow the advice tendered by any person or authority.

5. *Section 90(1)* stipulates that each session of Parliament shall be held at such place within Botswana and at a time determined by the president.
6. *Section 91 (1)* states that the president may prorogue Parliament at any time.
7. *Section 91 (2)* states that the president may dissolve Parliament at any time.
8. *Section 96 (1)* states that the president appoints the Chief Justice of Botswana, while other Judges of the High Court are appointed by the president based on the advice of the Judicial Service Commission.
9. *Section 100* states that the president appoints the president of the Court of Appeal, while other justices of Appeal are appointed by the president based on the advice of the Judicial Service Commission.
10. *Section 103* describes the composition of the Judicial Service Commission (JSC), with all members appointed by the president except for one member nominated by the Law Society of Botswana (LSB).

The president appoints members of the cabinet, high commissioners, ambassadors, military commanders, police and prison service leaders, heads of the Directorate on Corruption and Economic Crimes (DCEC), Directorate of Intelligence and Security (DIS), Financial Intelligence Agency, Independent Electoral Commission (IEC), and others. The lack of independence for these oversight agencies is heightened by the dependence of their leaders on the president for their positions, as they have no security of tenure.

It is important to note the principle of separation of powers in Botswana. A key tenet of liberal democracy is the division of authority among the Executive, the Judiciary, and the Legislature. In 2017 and 2023, Justice Ian Kirby, then president of the Botswana Court of Appeal, recognised that there is no real separation of powers between the Executive and the Legislature, which he described as effectively one (Ramadubu 2023). Kirby stated that the only separation of powers in Botswana exists between the Executive and Legislature on one hand, and the Judiciary on the other. In other words, the Judiciary is the only truly independent branch of government. We will first examine the Legislature and then turn to the Judiciary. The Speaker of Botswana's Eighth Parliament (1999–2004), Ray Molomo, referred to Parliament as a mere puppet of the Executive, completely under its control (Molomo 2012). Efforts to gain independence

and empower the Legislature have been firmly rejected by the Executive (Molomo 2012; Nasha 2014).

Justice Kirby, recognised as Botswana's leading jurist, claims that the Judiciary is more independent of the Executive than the Legislature is; this claim warrants scrutiny. As stated in Section 96(1) of Botswana's constitution, the Chief Justice is appointed by the president, and Section 100 specifies that the president of the Court of Appeal is also appointed by the president. However, other judges of the High Court and justices of the Court of Appeal are appointed by the president based on the advice of the JSC. This raises the question of why both the Chief Justice and the president of the Court of Appeal cannot be appointed similarly, under the advice of the JSC. The situation becomes more complex when considering the composition of the JSC itself. According to Section 103 of the constitution, all JSC members, except one representative from the LSB, are appointed by the president. Many view the president's power to appoint the Chief Justice, the president of the Court of Appeal, and JSC members as evidence of the Executive's control over the Judiciary. Contrary to Justice Kirby's assertion, it can be argued that, similar to the Legislature, the Judiciary in Botswana is also influenced by the Executive and lacks genuine independence.

In a public statement released in October 2023, the LSB expressed concerns about the lack of transparency in the JSC's processes. The LSB contends that the secrecy surrounding the JSC's deliberations undermines confidence in its decision-making and suggests that judicial appointments may not always be merit-based (Council of the LSB 2023). This serious accusation by the LSB reinforces claims about the state's influence over the judiciary. Critics argue that serving at the pleasure of the president undermines judicial independence due to the lack of tenure security for judges.

This paper is based on desktop research that includes secondary literature, official government documents, civil society reports, pronouncements, independent think tank publications, and media coverage.

### **Previous Calls for Constitutional Reform and Developments Elsewhere in Africa**

Opposition politicians and segments of civil society had occasionally called for constitutional review and reform, but the government typically ignored these demands. In 2000, President Festus Mogae established a commission of inquiry in response to long-standing calls from ethnic minorities to amend Sections 77, 78, and 79 of the constitution, which

recognised only eight Tswana-speaking groups (Republic of Botswana 2000). President Mogae's commission toured the country for consultations, but powerful Tswana speakers vehemently resisted, and demanded that the status quo be maintained. The ensuing media debate became so inflammatory that some feared that a tragedy similar to the 1994 Rwandan Genocide could occur in Botswana (Makgala *et al.* 2020). In response to a neo-conservative Tswana campaign, the government proposed diluted amendments to the contested sections of the constitution.

In 2004, the BDP strategy and manifesto committee called for a national referendum to repeal sections 42 and 58 of the Republican constitution (Communication with Dr. Joseph Tsonope 15 April 2024). The aim was to professionalise government operations based on merit and corporate governance compliance, instead of the political affiliation that had led to inefficiency in the public service. However, this referendum never materialised.

In 2011, Kgosi Kgafela II of the Bakgatla ba Kgafela tribe led a passionate campaign amid legal proceedings. He argued that the Botswana constitution, from which the government derived its authority, lacked necessary legal legitimacy (*Sunday Standard* 2011). In his court papers, he stated, 'The constitution of Botswana purports to be something that it is not. The whole system is a fraud upon me and the people of Botswana. I am being prosecuted on the basis of a fraudulent law' (*Sunday Standard* 2011). However, his campaign was unsuccessful, and he fled to South Africa in 2012, not due to this case, but after a warrant for his arrest was issued concerning a criminal case involving the alleged flogging of tribesmen.

The independence constitutions of Namibia and South Africa are regarded as gold standards. For example, Kenneth Good describes Namibia's constitution as an advanced liberal democratic document that vests 'all power' in the people (Good 2004: 143). Similarly, the South African constitution is often praised as one of the most liberal and progressive in the world today (Meshoe 2017). In Zimbabwe, President Robert Mugabe manipulated the 1999–2000 constitutional review process to serve the ruling elite's interests (Dzinesa 2012: 11–12). Notably, President Masisi adopted a similar approach to Mugabe in manipulating the constitutional review process for his own ends (Phetlhe 2022a; Monganja 2023). President Masisi's Constitutional Review Commission had the authority to reject public suggestions and instead recommended its own views, thus rendering the exercise a complete mockery.

### **Kenneth Good and the Critique of Botswana's Democracy**

Professor Kenneth Good was an Australian political science scholar who became a professor in the Department of Political and Administrative Studies at the University of Botswana (UB) in 1990. His article, 'Authoritarian Liberalism: The Defining Character of Botswana', critically assesses Botswana's constitution (Good 1996). He published a revised version of the article as a chapter in his 2004 book, arguing that

The liberal political economy of Botswana contains within itself an executive presidency with extensive powers of control and influence. These powers operate at various key levels of society and government, but ordinarily do so on a differentiated, episodic basis, and are frequently latent or held in reserve. The full panoply, however, constitutes a structured autocracy which extends much beyond the values and institutions of Tswana and liberal elitism, reinforcing the latter but gravely undermining, if not negating, the principles of popular participation and openness. Nevertheless, it was usually the multi-party system and regularised free and fair elections which were superficially most prominent: 'the shining light of democracy' thus beamed forth from Botswana over apartheid- and single-party dominated region. ... Regional political developments also have their revelatory effects. The establishment in Namibia and South Africa through the 1990s of constitutionally limited presidencies and open government brought the unrestrained executive powers in the erstwhile leading democracy into greater clarity. In the process, a more accurate interpretation of democratic institutions in Botswana and its neighbours became possible (Good 2004: 4).

Botswana experienced significant economic development, and transformed from one of the world's poorest countries at Independence in 1966 to an upper-middle-income economy by the mid-1990s. Paradoxically, this progress was accompanied by high levels of poverty and significant economic inequality. Kenneth Good addressed these issues in his 1993 article 'At the End of the Ladder: Radical Inequalities in Botswana'. Although Botswana was viewed as one of Africa's least corrupt countries, the early 1990s saw the emergence of widespread corruption and mismanagement among cabinet ministers, senior government officials, and the ruling elite. Good (1994) described the extent and impact of this elite corruption in Botswana. He argued that Botswana was not a liberal democracy but a liberal authoritarian state with centralised

power and weak executive accountability. According to Good (1997, 2004), the government was unethical and unaccountable, with the president and his administration being accountable only to themselves, similar to governments in neighbouring countries.

The ruling BDP, in power since Independence in 1966, leveraged its access to state resources to solidify its position and marginalize opposition parties. Aiming to maintain an uneven playing field despite significant challenges to its power the BDP generally opposed electoral reforms proposed by the opposition. The main opposition party, the Botswana National Front (BNF), has called for electoral reforms since 1984, after constitutional and electoral developments leading up to South Africa's first democratic elections in 1994. Initially resistant, the BDP reluctantly accepted these proposals after winning the 1994 elections. Illustrating the president's extensive powers, Good notes that

[President] Masire, in April 1995, announced major electoral reform proposals – to reduce the voting age to 18 and establish an independent election commission before the 1999 elections – he did so without prior consultation with Cabinet or party; he acted, as he later explained, in his capacity as President of the country and of the BDP (Good 2004: 8).

However, contrary to Good's conclusions, Professor Otlhogile observes that 'Masire's electoral reforms were not unilateral. They were agreed upon in the All-Party Conference, and Masire announced the agreement reached by the parties and the government in his role as the President' (Communication with Professor Otlhogile 21 August 2023).

Debilitating factional strife in the BDP led a South African political consultant to recommend retiring Masire and recruiting a leader untainted by party factionalism (Molomo 2000). In response, Masire introduced a constitutional amendment in 1997 that established automatic succession to the presidency by the vice president if the president is unable to fulfil their duties. Additionally, a limit of two terms of five years each for the presidency was implemented. Masire retired in April 1998 after serving for 18 years, and his vice president, Festus Mogae, automatically took over. Mogae then appointed Lt Gen Seretse Khama Ian Khama, the commander of the Botswana Defence Force (BDF), as his vice president. Ian Khama, the son of the country's founding President Sir Seretse Khama, was a highly popular *kgosi* (chief) of Gammangwato or Central District, then a stronghold of the BDP with the largest number of electoral constituencies in the country.

In 1997 and 2002, the government forcibly removed the Basarwa (Bushmen/San) from their ancestral Central Kalahari Game Reserve (CKGR) to new settlements outside the reserve. This controversial relocation garnered international attention and condemnation. Survival International, a London-based non-governmental organization, led a campaign against the Botswana government, and argued that the relocation was motivated by diamond exploration in the CKGR. They also targeted the country's tourism industry and launched a campaign against Botswana's vital diamond sector (Taylor and Mokhawa 2003). Good followed the Basarwa relocation and produced publications linking it to diamond exploration (Good 2003, 2008).

In his article on 'Authoritarian Liberalism', Good assessed Botswana's Immigration Act, which was later used to deport him. He wrote that

A variety of legal instruments exist which the state can utilize to restrict information and control opinion. The Immigration Act, for one, confers 'wide and sweeping' powers upon the President, exercisable by himself alone, which are subject to judicial challenge. Section 7 of that Act allows the President to declare a visitor or foreign resident of Botswana a prohibited immigrant. That person has no right to be heard by a court before or after the decision, nor has he or she the right to demand information as to the grounds of the decision. The affected person's spouse, children under 18 and other dependents must all also leave, even if they are Botswana citizens, and have no involvement in the affair (Good 2004: 9).

Good provided several examples of deportations from the 1980s to the 1990s. In February 2005, he became a victim of the same Immigration Act. He presented a seminar paper, co-authored with Ian Taylor, at the UB, criticizing the country's presidential automatic succession (Good and Taylor 2005). A few days prior to the presentation, Good was declared a prohibited immigrant by President Mogae and was given 48 hours to leave the country. However, he challenged the government in court, and, after a lengthy case, received the judgment that presidential power could not be challenged or reversed according to the country's constitution. Therefore, he had to leave, which damaged Botswana's democratic credentials, as its academic freedom and free speech were questioned (Pegg 2005; Taylor 2006). Ian Kirby, the country's Attorney General at the time,

argued that freedom of speech should be consistent with the country's norms and morals. Freedom of speech does not allow anyone to make irresponsible, damaging and false statements, the freedom to advance shocking and disturbing ideas, freedom to advance hostile and pernicious ideas and the freedom to say dangerous and irresponsible things. He said Botswana is a peaceful and conservative country that has a constitutional right to limit freedoms' (*Mmegi* 2005).

Later, President Mogae claimed that Good was a security risk to Botswana because he had communicated with Survival International, which campaigned against the country's diamond and tourism industries. Good and Taylor published a journal article dismissing Botswana as 'a minimalist democracy' (Good and Taylor 2008).

### **Declining Governance Indicators, Botswana Commentators, and the Authoritarian Liberalism Thesis**

Kenneth Good's thesis of Botswana as an authoritarian liberal state was challenged by his Moptswana colleague in the Department of Political and Administrative Studies, Mpho Molomo. According to Molomo, 'That Botswana's democratic system is far from perfect is without doubt, but to assert that it is an authoritarian liberal state is an exaggeration' (Molomo 1998: 152). Molomo's article appeared in 1998, shortly after Mogae and Khama ascended to the presidency and vice-presidency, respectively. However, soon after Khama became vice president, he began exhibiting tendencies perceived as a disregard for established government procedures and the rule of law. One of these actions was Mogae granting Khama an unprecedented and controversial one-year 'sabbatical leave' and permission to personally pilot a BDF chopper, contrary to the BDF Act. Molomo addressed these concerns and Khama's excesses in a 2000 paper titled 'Democracy Under Siege: The Presidency and Executive Powers in Botswana'. He referenced Good's characterization of Botswana as a liberal authoritarian state, in which the president and his government are accountable only to themselves (Molomo 2000). Molomo concluded that, given the broad executive powers the president enjoys, there is a strong case for presidential elections. This way, the president would be directly elected by the electorate and therefore directly accountable to them, he argued. In Molomo's view, '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' (Molomo 2000: 101).

Ian Khama succeeded Mogae as president in April 2008. His regime has faced criticism for being authoritarian, repressive, and corrupt (Mogalakwe and Nyamnjoh 2017). The tradition of consultation, known as *therisanyo* in Setswana, is highly valued in Botswana, even by British colonial authorities (Makgala and Mogalakwe 2021). However, Khama appeared to dislike consultation. His government imposed a significant levy on alcoholic beverages, thus reportedly paralyzing the alcohol and entertainment industry. He was also intolerant of dissent within the BDP, which led members of a marginalised faction to leave and form a new party, called the Botswana Movement for Democracy, in 2010. Khama established the controversial DIS, which conducted extrajudicial killings of suspected criminals and targeted politicians, journalists, and trade unionists critical of the president and his government (Magang 2025). Additionally, Khama refused to engage in consultation, as exemplified by his refusal to meet with the leadership of the Botswana Federation of Public Service Unions (BOFEPUSU). Khama's refusal resulted in a two-month strike by BOFEPUSU in 2011, with the federation demanding a 16 per cent inflationary cushion (Makgala and Malila 2014). Many striking employees who were essential services providers were subsequently dismissed.

Widespread corruption and mismanagement led to many multibillion-pula projects failing or falling behind schedule, with politically connected perpetrators facing no consequences (Botswana Manual Workers Union 2016; Magang 2025). Instead, the Office of the Ombudsman and the DCEC, which were corruption-fighting entities known for their nominal independence and relative effectiveness, were transferred to the Office of the President. Additionally, there was heavy spending on the military and intelligence services at the expense of productive sectors of the economy, along with the militarisation of the public service, as discussed in Kenneth Good's paper (Good 2012). Army officials were deployed to lead government departments. Despite parliamentary immunity, a BDP member of Parliament who criticised the Alcohol Levy and compared Botswana to a religious fundamentalist state was forced to apologise to President Khama (Molomo 2012) in an effort to enforce 'discipline' among BDP parliamentarians. Another MP who criticised the militarisation of the public service, stating it demoralised public servants, was barred from contesting for his Tonota constituency under the BDP ticket in the 2009 elections. It was only after former presidents Masire and Mogae intervened that Khama relented. In 2016, the government closed the loss-making Bamangwato Consolidated Limited copper and nickel mine in Selebi Phikwe, without prior consultation with the mine's employees. As a result, approximately 5,000 mine employees were retrenched, which exacerbated the already alarming unemployment

crisis in Botswana. Judicial independence was also compromised, with some high court judges being victimised. Disregard for the rule of law became so pronounced that even former President Festus Mogae expressed concern about it in Tanzania in 2014 (*Mmegi* 2014). The country's declining governance indicators were evident in widespread poverty, economic inequality (one of the worst globally), and rising unemployment (World Bank 2015; Mogalakwe and Nyamnjoh 2017).

BOFEPUSU responded by uniting opposition parties to form the Umbrella for Democratic Change (UDC). The UDC saw combined opposition parties receive 53 per cent of the popular vote, while the BDP managed just 47 per cent, but returned to power through the FPTP electoral system. The BDP won 37 parliamentary seats, the UDC won 17 seats, and the Botswana Congress Party (BCP), which acted independently, secured three seats. Botsalo Ntuane, a progressive BDP activist, contested for the party's influential secretary-general post in the 2015 elective congress. In his manifesto, he advocated for electoral reforms such as proportional representation or a hybrid model, as well as funding for political parties to level the political playing field (Makgala 2019). Although he won convincingly outside the traditional BDP factions, he was marginalised by Vice President Masisi, and his ideas never materialised as they were anathema in the BDP.

Khama's leadership style attracted commentary from some Botswana scholars who supported Kenneth Good's authoritarian-liberal-state thesis. For instance, in 2011, Mokganedi Botlhomilwe, David Sebudubudu, and Bugalo Maripe of UB wrote that 'despite having won international acclaim as an African "success miracle," freedom and tolerance in the country exist within the limits set by the state' (Botlhomilwe *et al.* 2011: 331). They argue that there is limited freedom, and a growing intolerance by the political leadership of dissenting views. The Botswana state, therefore, fits the model of authoritarian liberalism explained by Good. Letshwiti Tutwane, then a media scholar at UB, traced what he described as the 'Myth of Press Freedom in Botswana: From Sir Seretse Khama to Ian Khama'. His article argues that

for all the plaudits that it has received Botswana is not a true example of democracy. It only continues to shine because of its historical context and the elaborate machinations of the ruling party. It supports Good's 1996 thesis of Authoritarian Liberalism as an apt description of this style of leadership (Tutwane 2011: 43).

A similar conclusion is reached by Monageng Mogalakwe, a Botswana political sociologist, in his article on what he characterises as the myth of Botswana's exceptionality (Mogalakwe 2008).

### **Deteriorating Governance Indicators and President Masisi's Promise for Constitutional Review**

Khama appointed Mokgweetsi Masisi as vice president after the 2014 elections. Masisi became president through automatic succession on 1 April 2018 when Khama's term ended. Believing that Khama's leadership style nearly cost the BDP power in 2014, Masisi sought to reverse many of Khama's unpopular policies. It is widely believed that Khama appointed Masisi with the expectation that he would then appoint Khama's younger brother, Tshekedi Khama, as vice president to maintain the Khama dynasty's influence in Botswana. However, with advice from former presidents Masire and Mogae, Masisi broke this 'gentlemen's agreement' and appointed Slumber Tsogwane instead (Morton 2019). The reversal of Khama's policies and Masisi's perceived 'betrayal' led to a fallout between the two leaders. Khama launched a campaign to oust Masisi and the BDP in the 2019 elections. Khama quit the BDP to help form the opposition party Botswana Patriotic Front (BPF), which gained significant support in Serowe. The UDC attempted to align with Khama but suffered, as voters sympathised with Masisi and returned the BDP to power in 2019. With Khama's backing, the UDC unsuccessfully petitioned the high court with the claim that the elections were rigged in favour of the BDP.

In its election manifesto, the BDP included a constitutional review among its pledges, alongside combatting entrenched corruption and promoting an inclusive economy (BDP 2019). In his inaugural address on 1 November 2019, Masisi stated,

As part of the Government's efforts to deepen the spirit of *therisanyo*, my Government is committed to a comprehensive review of Botswana's Constitution, which will take stock of the changed social, political, and economic landscape over the last fifty-three years. The engagements and consultations necessary to start the ball rolling will be initiated soon after the full formation of my government. I remain resolute in my commitment to creating a more inclusive Botswana (Masisi 2019).

However, Masisi was accused of being as intolerant of criticism as Khama had been, and Masisi used state resources to pursue Khama, including in court cases. One case charged Khama with defrauding the

government of approximately P100 billion, but the high court dismissed it due to fabricated evidence. Moreover, there was a lack of political will to combat endemic elite corruption, and anti-corruption institutions remained under the Office of the President, with their heads lacking job security. For example, the Auditor General reported how politically connected ‘Covidpreneurs’ defrauded the government during Covid-19 procurement (Republic of Botswana 2022a), yet the perpetrators were not prosecuted. A 2022 Afrobarometer survey indicated that more Botswana believed the Office of the President was becoming the epicentre of corruption, and adherence to the rule of law declined.

Masisi introduced the ‘Reset Agenda’ in 2021 and ‘Mindset Change’ in 2023, as he believed that these concepts were necessary for economic development through a knowledge-based economy. However, he often failed to lead by example; he frequently arrived late for official events (Selatlhwa 2022). Additionally, critic Adam Phetlhe noted a significant erosion of the rule of law, accountability, transparency, and good governance under Masisi; Phetlhe argued that Masisi’s campaign for mindset change was based on ‘Do as I say and not as I do’ (Phetlhe 2023).

Most importantly, Masisi was reluctant to initiate a constitutional review, supposedly due to the matter’s sensitivity and the need for thorough investigation. The devastation caused by Covid-19 also became a convenient excuse. However, civil society, represented by the Botswana Council of Non-Governmental Organisations (BOCONGO), persistently advocated for a constitutional review. For instance, on 14 September 2021, BOCONGO and the South African Institute of International Affairs (SAIIA) hosted an online workshop on constitutional review; the workshop aimed to provide participants with background information on the campaign (BOCONGO and SAIIA 2021). The workshop sought to ‘shed light on what was envisaged for the revised constitution, and to exchange lessons from Kenya, Zambia, and South Africa because these countries have been through the process of constitutional review’. Presentations were made by representatives from Zambia, Kenya, and South Africa. In March 2021, civil society compiled a position paper titled ‘The Big Governance Issues in Botswana’ and submitted it to the African Peer Review Mechanism; the paper addressed issues such as the separation of powers, citizen participation, economic inclusion, transparency, and accountability. Regarding ‘Separation of Powers’, the document noted that

Political and personal interests have made separation between Botswana’s three arms of government difficult. Although the Judiciary boasts a high level of independence, Botswana’s Parliament is limited in what it can achieve without the Executive.

It is also weakened by the First Past the Post electoral system, which marginalises smaller political parties and has led to the underrepresentation of women and youth in Parliament. Civil society believes that a Mixed Member Proportional Representation electoral system would strike a balance between a Parliament that is both representative and accountable. It is also recommended that Parliament be removed from its position under the Office of the President (*The Big Governance Issues in Botswana 2021: 3*).

Under the theme of ‘Citizen Participation and Economic Inclusion’, it was noted that

Although considered a full democracy, Botswana needs to address the lack of citizen participation in both its political and economic spheres. Barriers to political participation include the First Past the Post electoral system, political party funding structures, and a fragmented opposition, all of which have helped to entrench the ruling party’s hegemony. Botswana also suffers exclusion from the country’s economy, despite its significant growth over the years. Many citizens still live below the poverty line, with little prospect for accumulating wealth. It is recommended that government introduce legislation that can empower citizens politically and economically (*The Big Governance Issues in Botswana 2021: 4*).

Regarding ‘Transparency and Accountability’, it was stated that ‘Historically, Botswana has demonstrated high levels of transparency and accountability. Its declining performance according to several governance indicators over the last few years, however, warrants concern. Issues include corruption; the independence of oversight bodies; access to information and media; and conflicts of interest’ (*ibid*). The document recommended that ‘oversight bodies, such as the Independent Electoral Commission, be afforded more autonomy and that government actions be carried out with greater transparency’ (*ibid*).

Private media editorials urged Masisi to take action, by suggesting that he would immortalise himself into the annals of Botswana history by initiating a constitutional review process. Masisi campaigned across the country, to inform people about his desired outcomes for the proposed constitutional review. He strongly opposed the idea of directly electing the president, and asserted that the current arrangement had been serving the country well and should be preserved. His vice president and the Minister for State President also supported maintaining the status quo. However, some trade union leaders argued that Masisi’s campaigning for his

preferred outcome undermined the yet-to-be-launched process (Makgala and Malila 2022).

### **‘Dream Deferred’? Response to Masisi’s Constitutional Review Process**

In December 2021, Masisi established an 18-member ‘Presidential Commission of Inquiry into the Review of the Constitution of Botswana’. He wrote the terms of reference, which included submitting the report to the president. This decision sparked controversy among civil society and opposition parties, who argued that Parliament, not the president, should have appointed the commission. They claimed Masisi intended to make only cosmetic changes aligned with the BDP’s interests instead of implementing substantive reforms for the greater good. The commission’s composition faced heavy criticism and allegations that Masisi’s fellow southerners dominated the commission’s leadership, which suggested that tribalism and regional bias were at play. Critics also contended that appointing the commission was rushed and failed to represent various segments of society and experts. For instance, the commission lacked a political scientist, political economist, constitutional lawyer, political historian, and political sociologist, and international experts knowledgeable about constitutional developments in countries such as Kenya, Zambia, Zimbabwe, and South Africa. Consequently, the opposition boycotted the process and did not make submissions to the commission as it travelled the country ‘consulting’ the people. One critic stated, ‘By rendering the Constitutional Review process exclusively his own and choosing to be tone-deaf to dissenting stakeholders’ voices, Masisi is displaying dictatorial tendencies to such an emotive national issue the implications of which are ghastly to comprehend’ (Phetlhe 2022b: 7).

While gathering public opinions, the Commission received several interesting suggestions, including:

- The president should be elected directly and have reduced presidential powers.
- The president should be held accountable to Parliament and the electorate by removing presidential immunity to criminal prosecution and impeachment.
- An independent panel instead of the president should appoint the Speaker of Parliament, the Attorney General, and judges.
- The Directorate of Public Service Management should appoint career diplomats to serve as ambassadors and high

commissioners, instead of the president choosing failed politicians for these posts.

- Oversight institutions should report to Parliament, which should be completely independent of the Executive.
- Botswana should consider adopting a proportional representation (PR) electoral system or a hybrid system combining PR and FPTP, to ensure adequate representation of marginalised groups in Parliament.
- The constitution should specify the election date or delegate this responsibility to the IEC, instead of leaving it to the president's discretion.
- Following the Southern African Development Community's Protocol on elections, ballot counting should occur at polling stations instead of at a central location.
- The state should provide funding for political parties, to prevent foreign influence (Republic of Botswana 2022b).

It is worth noting that, under the current constitution, impeachment is not excluded but is categorised as a motion of no confidence (Communication with Professor Otlhogile 21 August 2023). Contrary to such suggestions, some members of the public supported the status quo of the indirect election of the president and the maintenance of presidential powers. Unsurprisingly, the BDP's contribution echoed Masisi's position, which he continued to promote throughout the review process. He faced criticism for attempting to influence the process with his own agenda. Kgosi Kgafela II, in exile in South Africa, submitted a lengthy statement to Masisi, in which he dismissed the commission as frivolous and demanded the secession of his Bakgatla tribal territory from the rest of Botswana (*The Patriot* 2022).

When the commission's report was made public in September 2022, many were outraged by its recommendations, which contradicted popular demands. Notably, although the commission acknowledged that most people advocated for the direct election of the president, the commission rejected this in support of Masisi's reasoning, and claimed that direct election had failed elsewhere (Republic of Botswana 2022b), without providing further details. Independent newspaper columnist Adam Phetlhe (2022a) argued that the ambiguity lies in the commission's failure to explain why it rejected direct presidential election while retaining the current system whereby the leader of the party with most parliamentarians automatically becomes the president of the country. He found it absurd that a commission led by a former Chief Justice would dismiss the people's

wishes without clear reasons. He also cited that Kenyans have successfully directly elected their presidents, including Uhuru Kenyatta twice and William Ruto in August 2022, without reported governance issues or delays.

The proposal to enshrine the general election date in the constitution was rejected in favour of the status quo of the president setting the date. Opposition parties have long criticised the president for waiting until the ruling party is ready to set the date. The report also dismissed the suggestion to count ballots at polling stations to prevent claims of cheating, and provided no reasons for this decision, despite its controversial nature that led to unprecedented high numbers of petitions by the UDC after the 2019 elections. However, the review commission did endorse the recommendation to fund political parties based on their parliamentary seat count (Republic of Botswana 2022b). The BDP had previously argued that it would be the main beneficiary since it has the majority of seats in Parliament. The report also supported the public's stance against public servants doing business with the government, to combat corruption, but rejected the idea of an independent office to investigate and prosecute the president, the vice president, and ministers, on the grounds that current legislation is sufficient. The commission noted the overreaching approach of the much-feared DISS and recommended that the agency focus solely on its intelligence-gathering mandate.

Some recommendations clearly targeted Ian Khama, who, claiming his life was in danger, fled to South Africa in November 2021. For instance, the report suggested that a retired president who had served a total of 10 years should not return to active politics. The commission endorsed the establishment of a ministry of parliamentary affairs to strengthen the separation of powers and ensure the independence of Parliament from the Ministry of State Presidency.

The report's release sparked the outrage of the public, private media, social media, civil society, and pundits, and raised doubts about the commissioners' integrity. Some considered the commission the worst in Botswana's presidential history, and deemed it a waste of public funds and time. The commission was accused of exceeding its terms by proposing new supposedly neutral names for tribal territories; UB linguist Professor Thapelo Otlogetswe argued that such a change could erase the country's history and the role of *dikgosi* in Botswana's formation (Koboyatau 2022). The commission's rejection of direct presidential elections alarmed many, who viewed it as indefensible and as prioritising Masisi's interests over national concerns. In response, Adam Phetlhe penned a scathing piece titled 'Open Letter to Justice Dibotelo and His Commissioners':

It [the report of the commission] must be discarded to the nearest landfill with a fresh process to review the Constitution commenced under a different Commission. Someone likened the report to a political manifesto. It just shows how dismissive to the report people are. The following paragraph shows how your report fell far too short to meet the cut. A paper titled ‘Constitution In Transition: Academic Inputs For A New Zimbabwe’ authored by Nobert Kersting (Professor at Stellenbosch University, Department of Political and Comparative Science) ... lists the following under a sub-heading ‘Some general aspects about Consultation process in Constitution making: (1) Inclusiveness of Civil Society should be included to give the process broad support and legitimacy; (2) Expert Committees – it is important to have a committee of experts to analyse inputs from the public and convert them into Constitutional principles. A committee of experts will synthesise the existing drafts; (3) Depoliticisation – It is important that Constitutional principles be divorced from narrow political interests’ ... It is evident there was no inclusiveness of civil society in your process. This point has been widely made by the civil society itself. ... It is doubtful if the Commission had expert committees whose function was to ‘analyse inputs from the public and convert them into Constitutional principles’. The fact that anything under the sun was collected and lumped into your report as Constitutional issues is the case in point. It goes without saying your Constitutional review process was not ‘de-politicised from narrow political interests’. Even the blind with [due] respect could see this was a stage-managed political gambit masquerading as a true, broad-based national project (Phetlhe 2022c: 7).

Spencer Mogapi of the private *Sunday Standard* newspaper criticised the commission and its report, stating,

The president’s Reset Agenda makes reference to new thinking. Yet the commissioners he appointed to the Constitution Review have recommended taking Botswana to the dark ages. ... It was supposed to be the signature undertaking for Masisi presidency, a flagship of his legacy. Now it might turn out to be a symbol of his failure (Mogapi 2022: 9).

For UDC leader Advocate Duma Boko, ‘This commission was a farce from the get-up. It had no structural ambition. It was a futile charade

from the very moment it was conceived and constituted' (Motsokono 2002).

The LSB criticised the report, stating that the commission had not adequately educated the public on what a constitution is, thus leading to confusion and ignorance. The LSB also expressed concern that key stakeholders, such as Parliament, civil society, and constitutional experts, were sidelined, which rendered the process flawed. In late October 2023, the LSB released its position paper condemning the constitutional review process. Since the process was initiated by a presidential commission of inquiry that lacked impartiality, the LSB had chosen not to participate (Council of the LSB 2023).

The constitutional review process supported Kenneth Good's thesis of Authoritarian Liberalism, with the president and his government being accountable only to themselves. Civil society groups, believing the process was flawed, sought funding from the European Union for a more inclusive and informed constitutional review process, themed 'Botswana Constitution Review Process: Towards a People Driven Constitution' (*Midweek Sun* 2023: 6). Interestingly, in August 2023, reports emerged that, while the cabinet and BDP backbench pushed for the adoption of the constitutional review report by Parliament before the end of its winter session on 11 August 2023, Masisi showed no interest in adopting the review. 'Information gathered by this publication is that Masisi has blatantly informed cabinet and the BDP backbench that adoption of the constitutional review recommendations is not urgent' (Tiro 2023: 1). This was despite Masisi's promise to the residents of Sese village on 6 July 2023 that a white paper would be tabled before the parliamentary session (Tiro 2023: 1). It is unclear whether Masisi's change in position was influenced by the ongoing EU-sponsored civil society consultative process or the report's widely discredited nature. Respected Botswana jurist and legal scholar Justice Key Dingake criticised Masisi's constitutional review process, calling it a 'dream deferred' for Botswana (Setshwaelo 2023: 20). The constitutional review process perpetuated the country's strongman-and-weak-institutions syndrome.

The Constitution (Amendment) Bill No. 4 of 2024, introduced in mid-March 2024, supported the recommendations of the constitutional review commission. To address controversial judicial appointments and limit presidential powers while ensuring transparency, Section 28(a) of the Bill stated that the 'President shall, prior to appointment, submit three nominees for the position of Chief Justice or President of the Court of Appeal to the Judicial Committee' (Republic of Botswana 2024). Section 28(b) further explained that 'The Judicial Committee shall assess and interview the three nominees under paragraph (a) and thereafter

recommend two nominees to the President, one of which shall be appointed Chief Justice or President of the Court of Appeal, as the case may be'. Phetlhe quickly dismissed these provisions as superficial and a laughable pretence, and questioned why the process did not include public advertisement of the positions and allow interested individuals to apply (Phetlhe 2024). He believed nothing had changed from the previous system. Retired UB linguist Dr. Joseph Tsonope advocated for a national referendum to approve the commission's report instead of relying on Parliament. He argued that cabinet appointments based on political affiliation rather than merit are regressive and would hinder Botswana's progress towards the upper-income economy envisioned in Vision 2036 (Communication with Dr. Joseph Tsonope 15 April 2024).

Church groups, including Evangelical Fellowship Botswana (EFB) and Apostolic Faith Mission of Botswana, expressed serious concern about the Bill's provisions, particularly the recognition of homosexuality. They called for thorough public input and threatened to advise their members against voting for candidates who were supporting the Bill in the 2024 elections. However, an official from Botswana Network on Ethics, Law, and HIV/AIDS accused the church of using the constitutional review process to promote a homophobic agenda (Bosaletswe 2024). Civil society generally demanded a reduction in presidential powers, including those pertaining to judicial and oversight appointments and the unilateral declaration of election dates, which they argued could be abused for political gain. BOCONGO, with over 40 constituent members, also denounced the Bill and called for an immediate restart of the constitutional review process; they proposed wide-ranging measures for a more inclusive and people-centred approach (Selathlwa 2024). They threatened litigation if their concerns were ignored (Mbazo 2024). During a public lecture organised by EFB, Professor Otlhogile highlighted a clause aimed at preventing former presidents, particularly Ian Khama, from participating in active politics. Another clause of the Bill amends section 68 of the constitution (Republic of Botswana 2024) and appeared to target Unity Dow, a specially elected MP who left the BDP in 2023 to join the BCP after defying what she felt was a counterproductive instruction from Masisi (Piet 2024). Passing the Bill ended in a farce when, in September 2024, the Bill failed to secure the mandatory two-thirds vote in Parliament. Masisi and his foreign affairs minister were out of the country at the time. Before the vote, all opposition parliamentarians walked out in protest, leaving the voting to their BDP counterparts. Of the 40 BDP members in the National Assembly, 37 voted for the Bill, one voted against it, and two abstained.

The BDP's long-standing resistance to constitutional reform to address entrenched socio-economic and political issues contributed to its

devastating defeat in the 2024 elections. The results were crushing for the party, which won only four out of 61 contested parliamentary seats and lost power for the first time in 58 years. The UDC gained power by winning 36 seats and 39 per cent of the popular vote, while the BCP and BPF secured 15 and five seats, respectively. The BDP fell victim to its persistent refusal to adopt electoral reform proposals, such as proportional representation or a hybrid model, while clinging to the FPTP system that had favoured the party but disadvantaged the opposition. Despite winning only four parliamentary seats, the BDP received 31 per cent of the popular vote, which was more than the combined total of the BCP (15 seats) and BPF (five seats). The mismanagement of the constitutional review process was seen as critical to the BDP's loss (Maundeni *et al.* 2025).

Duma Boko, the lawyer for Professor Good's deportation case, became president of the BNF and later the UDC, and led the party to its historic 2024 election victory. He reversed politically motivated visa demands and deportations imposed by the BDP government against international activists and critics, but Professor Good had died of natural causes in 2020. It is likely that Good would have welcomed the UDC victory, and President Boko would have lifted the ban on him and invited him to the inauguration, as Boko did for other banned people.

### **Conclusion**

The paper illustrates the campaigns for greater separation of powers in Botswana, that took place amid the country's declining governance indicators, as well as constitutional reform and development found elsewhere in Africa. Kenneth Good's concept of authoritarian liberalism and his analysis of Botswana's liberal democracy have been validated in the 2022 constitutional review, which is the first constitutional review since Botswana's Independence in 1966. In response to public pressure, President Masisi reluctantly fulfilled his 2019 election promise for a constitutional review. Unfortunately, he controlled the commission's terms of reference and the appointment of its commissioners, without any established criteria. Furthermore, the commission's findings and recommendations contradict the sentiments expressed during public consultations.

As a result, the constitutional review process became a debacle, with civil society questioning the validity of the findings and recommendations, and social media activists ridiculing them. This situation, as Good might argue, exposes the true nature of Botswana's liberal democracy. The review process was merely a facade orchestrated by the ruling elite, and lacked a genuine commitment to accountability.

The review served as a means for the ruling class, particularly the president, to maintain their authoritarian, top-down rule, which has persisted for nearly 60 years. The maintenance of the status quo is facilitated by the country's constitution and has been cleverly disguised by periodic elections, despite an uneven electoral playing field. Nonetheless, the 2024 elections proved to be a devastating shock to the BDP.

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