

The Uneasy Relationship Between Parliament and the Executive in Botswana

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Abstract

This paper starts from a premise that parliament plays multiple roles in any democracy. These include legislation and the exercise of horizontal accountability over the executive. Thus, an effective parliament is one that undisturbedly makes laws, provides oversight and demands accountability from the executive. Unfortunately, there is often a wide gap between expectation and outcomes; many parliaments in Africa are dominated by the executive. The same is true in Botswana, where parliament is weak and subject to the whims and caprices of the executive. Given this scenario, there are calls, including by Members of Parliaments, for a review of the Constitution. Hence, moving forward, a constitutional review is imperative to, amongst others, create a highly independent legislature along the US model and curtail the powers of the presidency. Therefore, doing so will confer the following benefits: affirm the supremacy of parliament; enhance oversight and accountability; and burnish Botswana's democratic credentials.

Introduction

Political philosophy, under the rubric of the social contract theory, states that individuals possess natural rights that they surrendered in favour of the absolute authority of government. Particularly, this idea is found in the writings of Thomas Hobbes (1651), John Locke (1689) and Jean-Jacques Rousseau (1762). Thus, the social contract is an instrument that provides a basis for legitimate government. Hence, this is a quid pro quo arrangement in that the individuals surrendered their natural rights to a sovereign in return for protection from both internal and external enemies and a host of services from the state (e.g., public education, health and physical infrastructure like roads). However, surrendering natural rights to a sovereign is fraught with problems, particularly, given the fact that government has a monopoly of force. Hence, there was a need to devise a means to keep governmental power in check. Principally, this was done through the doctrine of separation of powers, credited especially to the French enlightenment philosopher, Charles de Secondat Montesquieu, in *De l'esprit des lois* (1748). However, it is notable that John Locke (1689) talked about the idea when he argued that legislative power should be divided between the crown and parliament. Montesquieu, thus, identified three branches of government between which power should be allocated and separated: (i) legislature; (ii) executive; and (iii) judiciary. The legislature makes law, the judiciary interprets and implement laws, while the executive implements government programmes and policies. The principal argument underlying the separation of powers is that 'when a single person or group has a large amount of power, they can become dangerous to citizens' and that this 'is a method of removing the amount of power in any group's hands, making it more difficult to abuse' (Landauer & Rowlands 2001: paragraph 2:1) Similarly, Montesquieu (1748:221) cautioned against the concentration of powers in a single body, arguing that 'when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner'.

Also, he argued that 'again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined

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to the executive power, the judge might behave with all the violence of an oppressor' (*ibid*). While the doctrine of separation of powers is theoretically appealing, in practice, it is impossible to have a complete separation of powers (except in cases where parliament is elected separately from the President). In most instances, there is a partial separation of powers; Botswana is an example where the Cabinet is drawn from parliament. Stepped in the doctrine of separation of powers, countries have adopted different systems of government. At a broad level, there are two systems: (i) presidentialism; and (ii) parliamentary (Linz 1990, 1994; Lijphart 1992; Puig 2002). The former is exemplified by the United States where there is a near complete separation of powers and the latter (the Westminster system) finds utmost expression in the United Kingdom and some countries of the Commonwealth. In contrast, there is fusion of, or less separation of powers in parliamentary systems. For instance, the Cabinet is drawn from the Legislature (Shugart & Mainwaring 1997; Strom 2003). In between, there are hybrid systems that combine features of presidential and parliamentary systems, such as France. Having laid the background, this paper proceeds as follows. It takes a glance at parliament; it discusses the structure of government and parliamentary sovereignty in Botswana; it discusses case studies illuminating the dominance of the executive over parliament and proposes the way forward.

Parliament at a Glance

Parliament is the most supreme national representative institution of the people in a democracy. It is chosen by the people to represent them. It, thus, has a direct mandate from the people, what Linz (1990; 1994) refers to as 'democratic legitimacy'. As such, it is the link between the people and their government (see IPU 2006). Legislatures are the 'people's branch of government, the institution where citizen interests and preferences are expressed and transformed into policy, and the point at which, at least potentially, people most closely engage their national government' (USAID 2000:1). Hence, citizens are most likely to identify with their area MP as opposed to either a judge or Cabinet Minister. Importantly, what is a parliament? Although there are many definitions, this paper adopts the one below:

A parliament is a representative body of individuals to whom the people have entrusted the responsibility of laying down the legal framework within which society will be governed. A parliament is also tasked with ensuring that these legal conditions are implemented in a responsible manner by the executive branch (UNICEF 2009:2).

Although there are no universally accepted criteria of what constitutes a well-functioning democratic parliament, IPU (2006:7) holds that the following constitute the defining characteristics of a democratic parliament:

Representative: that is, socially and politically representative of the diversity of the people, and ensuring equal opportunities and protections for all its members;
Transparent: that is, being open to the nation through different media, and transparent in the conduct of its business;
Accessible: this means involving the public, including the associations and movements of civil society, in the work of parliament;
Accountable: this involves members of parliament being accountable to the electorate for their performance in office and integrity of conduct; and
Effective: this means the effective organisation of business in accordance with these democratic values, and the performance of parliament's legislative and oversight functions in a manner that serves the needs of the whole population.

Out of the above five characteristics, this paper will focus on one; effectiveness. This choice is advised by the fact that effective (or strong) parliaments highly correlate with strong democracies. In this regard, the following are enabling factors of effective parliaments: (i) adequate parliamentary facilities and self-organisation; (ii) improved legislative processes [e.g. scrutinising bills, ensuring the quality of bills, etc]; (iii) effective oversight of the executive; and (iv) robust procedures for budgetary oversight and financial control (see *ibid*). All things being equal, effective parliaments are desirable for the simple reason that such organisations will grow and nurture democracy and enhance governance, particularly, in developing countries. What is the overall performance of African parliaments? Are they effective? There is a consensus that they are weak (e.g. see Eberlei and Henn 2003; UNECA 2005; 2006; Africa All Party Parliamentary Group 2008). To illustrate, UNECA (2005:127) states that ‘in terms of enacting laws, debating national issues, checking the activities of the government... these duties and obligations are rarely performed with efficiency and effectiveness in many African parliaments’. Hence, parliamentary strengthening, particularly done by donors (e.g., EU and DFID Department for International Development) is important in order to support African parliaments. However, there are pre-conditions; e.g. (i) MPs must have technical skills and support to execute their functions; and (ii) the legislature-vs.-executive relationship must not be such that the latter dominates the former (UK DID 2004; EU 2010). Finally, this exercise must be more long-term and demand-driven and it should address the causes of poor performance, be context-aware, involve recipients and include systematic evaluation (Hudson & Wren 2007).

Structure of Government in Botswana

It is important to note that Botswana operates a hybrid, rather than a pure parliamentary system Nsereko (2004). For instance, as with the Prime Minister under the parliamentary system, the President of Botswana is elected by parliament rather than the people. Furthermore, like under a presidential system, the President of Botswana is head of both state and government. This fusion is a complete departure from a pure parliamentary system where the head of state and government are separate. However, the Constitution of Botswana provides for three arms of government, each charged with various functions in accordance with the concept of separation of powers. First, is the executive, which comprises primarily of the president, assisted by the vice president and the cabinet. As per section 47 (1 and 2) of the Constitution of Botswana, executive powers repose in the president;

- (1) The executive power of Botswana shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.
- (2) In the exercise of any function conferred upon him by this Constitution or any other law the President shall, unless it is otherwise provided, act in his own deliberate judgment and shall not be obliged to follow the advice tendered by any other person or authority (RoB 1997:sec. 47).

It is deducible from the above and other sections that the Constitution of Botswana vests extensive executive powers on the president (see also Good 1996; Otlhogile 1998; Sebudubudu & Osei-Hwedie 2006; Soest 2009; Bodilenyane 2012). Notably, his/her powers are far-reaching and straddle all the arms of government: the executive, judiciary and legislature (Molomo 2000). Thus, he/she has the power to appoint the following: Secretary to the Cabinet; Ministers and Assistant Ministers; Attorney General; Permanent Secretaries; Commissioner of Police; Commander of Armed Forces; Chief Justice and Judge President; and super scale officers (Good 1996; Otlhogile 1998). Connectedly, all these officers, save judges, are subject to disciplinary control by the president, hence, he/she can fire them for actionable offences. The cabinet plays an advisory role towards the president in line with section 50 (1) of the Constitution, which stipulates that ‘the Cabinet shall be responsible for advising the

President with respect to the policy of government and with respect to such matters as they may be referred to it by him/her' (RoB 1997). The president's obligation to consult cabinet is, simply put, partial. As section 50 (2) of the Constitution states, 'the President shall, so far as practicable and subject to the provisions of this Constitution, consult the cabinet on matters of policy and the exercise of his functions' (*ibid*). Thus, as Key Dingake (2000:82) argues, 'if the president disregards the views of cabinet and National Assembly and rules single handedly, a constitutional challenge against his or her actions cannot succeed'. Notably, the president's voluntary obligation to consult cabinet is not applicable to his/her exercise of some powers, for example, the appointment of vice president, ministers and assistant ministers, the dissolution of parliament and the exercise of prerogative of mercy (RoB 1997: section 50 (3)).

Secondly, there is parliament, which consists of the President and the National Assembly. Section 57 of the Constitution of Botswana stipulates that 'there shall be a Parliament of Botswana, which shall consist of the President and a National Assembly'. The powers of parliament are provided for in sections 86-89 and, specifically, section 86 states that 'subject to the provisions of this Constitution, Parliament shall have power to make laws for the peace, order and good government of Botswana'. Alongside parliament, there is Ntlo ya Dikgosi, (formerly called House of Chiefs before the passing of the Bogosi Bill in 2008; see RoB 2008). The Ntlo ya Dikgosi is a 35-member body which is composed of tribal chiefs and plays an advisory role towards parliament, particularly, on issues of customary law, tribal organisation and the administration of customary courts. In this regard, the body does not have legislative or veto powers. Besides making laws, parliament is charged with the responsibility of oversight (see section 50 of the Constitution). Among others, oversight is exercised through parliamentary question time, select committees and commissions of inquiry. Finally, there is the judiciary, which is charged with interpretation of the law. The judiciary comprises of the High Court as well as the Industrial Court and Court of Appeal, and other lower courts, particularly magistrates courts.

Legislative and Executive relations in Botswana

Firstly, contrary to the concept of separation of powers and its checks and balances and the supremacy of parliament [also called parliamentary supremacy or legislative supremacy in parliamentary systems such as Botswana (see Dicey 1885 on this concept)], the parliament of Botswana is subordinate to, and dominated by the executive (Molomo 2002; Bodilenyane 2012; Botlhale 2012a). This issue is elaborately discussed in a recent book, *Democratic Deficit in the Parliament of Botswana*, by Ray Molomo, former speaker of the Botswana National Assembly. Molomo (2012) lucidly catalogues instances that sufficiently bespeak the fact that the executive lords it over parliament and, expressively, he asserts that the former treats the latter as its 'rubber-stamp' and 'doormat' (Molomo 2012:242 & 445). Tellingly, parliament is a department within the Office of the President. Confirmedly, Fombad (2005:322) succinctly puts it when saying that 'to all intents and purposes, the executive controls parliament'. Consequently, parliament is unable to significantly discharge some of its roles or functions. Several factors, some of which are addressed below, account for this state of affairs. First, the parliament lacks operational independence from the Office of the President (OP). Among others, the parliament of Botswana neither has an independent budget nor does it hire its own staff. Instead, it depends on the OP and Directorate of Public Service Management (DPSM) for the budget and personnel respectively. Arising from this, it can be argued that parliament is subject to the whims and caprices of the executive arm of the government.

Ideally, parliament should formulate its own budget and also be responsible for hiring its staff. Hence given this situation that has obtained since independence in 1966 and in an attempt to wrestle parliament from the executive, in March 1988, Gaefalale Sebeso, then MP for Tswapong South, tabled a motion in parliament calling for the strengthening of the body. His motion read:

that this honourable House strongly urges Government to take up steps forthwith to ensure that parliament as a supreme body in Botswana becomes an independent institution detached from the Office of the President where it has all the time been relegated to the lower status of a minor department (Botswana Parliament 2003:2).

Although parliament adopted the motion, nothing was done to action it until February 2002, when then speaker, Ray Molomo, appointed a taskforce to draft terms of reference for a consultancy to assist in carrying out a study on the independence of parliament (see Somolekae 2006). Subsequently, a study team was formed and some of its six terms of reference were:

- To define the role of parliament in relation to its main task as a legislature by means of an Act;
- To establish the role of the National Assembly in relation to the mandate of the Executive to rule and/or govern in as far as the National Assembly has power to exercise its functions as a public watchdog...;
- To define the role of the National Assembly in relation to Powers, Privileges, Conditions of Service and Code of Conduct of MPs; and
- To establish the role of parliament relating to the conduct of its day to day running of its management and administration by an Act establishing the Parliamentary Service and Parliamentary Service Commission (Botswana Parliament 2003:3).

The committee made 11 recommendations; some being: (i) that there was a need to better define the functions of parliament for ‘the...parliament lacks a clear statement of its roles and functions’ (ibid:5); (ii) that parliament must be empowered to approve national policies; (iii) that standing orders be amended to enable parliament to perform its watchdog role; (iv) that parliament must ratify treaties, conventions and protocols; and (v) that parliament must be involved in the appointment and removal from office of certain high officers; e.g. the Auditor General, the Ombudsman and the Director of the Directorate on Corruption and Economic Crime. These are yet to be actioned, thus, leaving parliament in an unfavourable situation.

Secondly, the president of Botswana is not constitutionally accountable to parliament. As stated previously, according to the Constitution (sec. 47.2), the president is empowered to ‘act in his own deliberate judgment and shall not be obliged to follow the advice tendered by any other person or authority’. For instance, when Lesotho experienced post-election turmoil in 1998, then President, Festus Mogae, dispatched Botswana Defence Force (BDF) troops to act in unity with the South African National Defence Force (SANDF) in stabilising the kingdom. President Mogae did not consult parliament, while the cabinet was informed when the troops were already on their way to Lesotho. Accordingly, some members of parliament (MPs) complained that the legislature had not been consulted before national troops were deployed in a foreign land. In response, Mogae’s deputy, Ian Khama, then also Minister of Presidential Affairs and Public Administration, told MPs that there was no law that required the president to consult parliament. Furthermore, Khama reminded MPs that the BDF Act also empowered the president to act alone (Ramadubu 2 October 1998:1). Although presidents are commanders in chief in many democracies, they can only exercise the operational use of the military in consultation with other state institutions, especially the legislature. For instance, in the United States of America, the War Powers Act requires the president to consult Congress before committing US forces to conflicts (GoUSA 1973). Furthermore, since they do not account to parliament, presidents in Botswana attend parliamentary sessions voluntarily. For instance, when questioned about his habitual absence from parliament, President Ian Khama stated that parliamentary sessions clashed with his gym schedule and that he attended the latter since he cherished physical fitness (Kanani 1 July 2010:1).

Thirdly, in some instances, the executive even bypasses parliament, despite the latter supposedly holding the power of the purse. The Directorate on Intelligence and Security's (DIS) imbroglio is instructive. A few months before the retirement of then president, Festus Mogae, on 31 March 2008, the government set up a spy agency, the DIS. Apparently, the DIS was established right before the beginning of the 2008/2009 financial year (the financial year started on 1 April 2008), therefore, its funding could not be accommodated within the upcoming budget. Hence, there were two options available to the Ministry of Defence, Justice and Security: (i) delay the operation of the DIS until the commencement of the 2009/10 financial year; or (ii) seek supplementary funding from parliament as the custodian of the public purse. Unfortunately, none of these happened. The Ministry of Defence, Justice and Security chose to illegally appropriate money from the National Disaster Relief Fund (Lute 28 July 2010:1; *Sunday Standard Reporter* 21 July 2010:1; PAC 2011). The DIS did not stop there; it illegally appropriated funds from the National Disaster Relief Fund again during the 2009/10 financial year. Thus, if one were to pardon the first wrongful and illegal appropriation, one would have difficulty pardoning the second one.

The matter was discussed in parliament when a motion that requested for the adoption of the 2007/2008 and 2008/2009 parliamentary accounts committee reports tabled by then Parliamentary Accounts Committee chairperson, Moiserale Goya, was debated on 15 August 2011 (BOPA 15 August 2011a:2). Then Minister of Justice, Defence and Security, Phandu Skelemani, under whose watch the illegal appropriation happened, told parliament that he did not object to calls by MPs for an investigation into the use of the National Disaster Relief Fund money to establish the DIS (*ibid*). For his part, the Finance Minister, Kenneth Matambo, conceded that the correct procedure was not followed when the DIS appropriated the money but, however, stated that 'there was no evidence that the funds had been misused' (*ibid*:2). Perhaps one may want to point out that the statement that 'there was no evidence that the funds had been misused' misses the point; i.e., parliament's power of the purse was undermined. Furthermore, that the Minister for Presidential Affairs and Public Administration, Mokgweetsi Masisi, apologised for the DIS imbroglio on 15 March 2011 (Bame 16 March 2011:1) was not enough. Ideally, the guilty parties should have been punished for undermining one of parliament's potent powers; power of the purse.

Fourthly, the aborted privatisation of Air Botswana (AB) is another illustration of how the Executive undermines parliament. Subsequent to the passing of the Privatisation Policy (RoB 2000) and Privatisation Master Plan (PEEPA 2004), Air Botswana was earmarked as the guinea pig of privatisation. Thus, in mid December 2006, the Cabinet week gave the Ministry of Works and Transport the go-ahead to begin negotiations with the South Africa-based regional airline SA Airlink on the privatisation of Air Botswana (*Mmegi* 19 December 2006:1). In this connection, the objectives of AB's privatisation were, amongst other things, to ensure continuity of air transport and the development of viable, safe and efficient air services (*ibid*). In the subsequent, there was concern in some quarters that the exercise was being conducted in a manner that was contrary to the Air Botswana Transaction Act. Thus, then Member of Parliament for Francistown South, Khumongwana Maoto, moved a motion in parliament arguing that the privatisation be suspended (Piet 10 April 2009:1). He argued that the current privatisation negotiations did not conform to the Air Botswana Transaction Act. Maoto's motion enjoyed support across the political divide (Botlhale 2012). In addition, Parliament demanded to be included in the privatisation exercise as the custodian of public assets. Cabinet absolutely refused and, to fortify its stance, it sought advice from the Attorney General, Atalia Molokomme. Molokomme supported the Cabinet, asserting:

As a general principle, unlike Acts, parliamentary resolutions are not binding on the executive, but are binding on parliament itself. However, Parliament also has the power to table motions aimed at influencing the policy directions of the executive. In this context, the current Air Botswana negotiations should be seen as a process, which falls squarely within the preserve of the executive function, and cannot be suspended simply by a Parliamentary motion to that effect. However, the outcome should not be contrary to the law, in particular the Air Botswana (Transition) Act (Cap. 74:09) and the Civil Aviation Regulation (Reform) Act (Cap. 71:03) (*The Voice* 1 May 2007:1)

The MPs were not convinced and, therefore, continued to voice opposition to the cabinet's position that parliamentary motions were not binding on the executive. To illustrate, then Deputy Speaker, Gladys Kokorwe, asserted the supremacy of parliament when she saying, 'the Executive has to get used to the idea that these are modern times and the era of Parliament acting as a rubber stamping institution for the Executive is over...' (Motlogelwa 13 April 2007:1). Nonetheless, the executive was unbending on its resolve to privatise the national airline and it was only the threat of litigation by the Botswana Congress Party, assisted by private attorney Dick Bayford (Mooketsi 30 April 2007:1), which forced the government to capitulate.

Fifthly, although parliament has created various state institutions, most of these, especially the oversight ones, are not accountable to it. Instead, these institutions are accountable to the Office of the President, specifically, the president. The Directorate on Corruption and Economic Crime (DCEC) and the Ombudsman are the cases in point. To provide context, the DCEC was established in September 1994 under the Corruption and Economic Crime Act (GoB 2011a). The Directorate is an operationally autonomous law enforcement agency and its statutory mandate is to combat corruption (*ibid*). The Office of the Ombudsman was established in 1995 through an Act of Parliament (GoB 2011b). Its duty is to investigate the administrative actions or decisions taken by public institutions or the officials of such institutions (*ibid*). The president appoints the DCEC Director and the Ombudsman. In the case of the latter, the Ombudsman Act (RoB 1995) provides that the president must appoint the Ombudsman in consultation with the Leader of the Opposition in Parliament. Apparently, the consultation is not defined, hence, to all intents and purposes, this means telling by the president on his choice of the Ombudsman to the Leader of the opposition. Thus, then Leader of the opposition, Otsweletse Moupo, once alleged that President Ian Khama did not consult him when he appointed the late Ofentse Lepodise as the Ombudsman in August 2006. As it is, parliament is not involved in the appointment of both the DCEC Director and Ombudsman. Ruinously, these officers are not accountable to parliament; they do not lay their reports before this body. Instead, they report to the responsible minister, for instance, the DCEC reports to the Office of the President.

The same thing is true of the Directorate on Intelligence and Security (DIS); parliament plays no role in the appointment of the DIS Director, neither does it oversee the DIS. Instead, it is overseen by a tribunal and reports directly to the Office of the President (Motlogelwa 13 April 2012:1). However, in accordance with best practices in the Commonwealth and elsewhere, these bodies must report directly to parliament, an elected body representing the citizens.

Sixthly, the ruling BDP, which has dominated parliament since independence, emphasises tight party discipline on its MPs. Attempts by some MPs to toe away from the party line always attract the wrath of the party leadership and threats of being recalled. For instance, in March 2007, three 'recalcitrant' MPs; Botsalo Ntuane, Boyce Sebetlela and Duke Lefhoko, were summoned before the central committee to account for a number of charges. Apparently, the MPs' fault was impugning the executive on issues such as the privatisation of Air Botswana and the proposed Trade and Liquor Act. The continued criticism, particularly by backbench MPs, irked then party president, Festus Mogae, such that he rebuked them when addressing the party's 42nd National Council on 3 April 2007.

He said, ‘a member of parliament cannot denigrate, ridicule, disparage, malign, vilify, revile and cast dispersions on the BDP government and still expect the electorate to return the party to power’ (BOPA 2 April 2007:4). Boldly, Mogae went further and compared the antics of vocal backbenchers to ‘diphokwana’ (un-castrated young billy goats) who made useless noises (see *Sunday Standard* 26 August 2007:2; Modise 1 April 2008:10; Lotshwao 2011).

The same phenomenon has continued under the Ian Khama leadership. To illustrate, in November 2008, then Tonota South MP, Pono Moatlhodi, was accused of undermining a caucus decision by speaking over the time limit and also speaking ill of the BDP when commenting on the 2008 State of the Nation Address (Nkala 13 November 2008:2). He was immediately recalled as BDP candidate for the Tonota South constituency and had to apologise to his bo-tate (party elders) before he could be restored to the candidacy. Lastly, on 29 July 2011 during the BDP National Congress, the BDP MPs, who were previously against amendments to the Trades Dispute Act were instructed to support Minister Peter Siele’s amendments to the Act (Botlhale 2012c). Expectedly, they obliged and passed the instrument. Furthermore, the weakness of the Botswana parliament is compounded by the size of cabinet. Out of 61 MPs, 26 (42%) are Ministers, hence, whenever parliament votes, they consistently tilt the vote in favour of the executive.

The Need for Reforms

Democracy can only be strong and alive if all three pillars of the state are separated and fully independent; i.e. the executive; legislative (parliament) and judiciary (FES 2011). Botswana does not have a water-tight separation of powers (Fombad 2005; 2012; Dingake 2009). Due to the Westminster style of government, the executive and legislature are fused; Ministers are drawn from parliament. Consequently, in this kind of institutional setting, parliament is the weakest of the arms of government (FES 2011). Hence, energy and money must be expended to strengthen parliament. Interestingly, even the MPs are alive to the fact that parliament is weak and that, to all intents and purposes, is subservient to the executive (for confirmatory note, see Ramokhua 2012). In this regard, the following headlines are worthy of mention: MPs want more independence (Makgapha 3 July 2011:1); Parliament discusses separation of powers (BOPA 19 August 2011b:4); MPs agree on Parliament independence (BOPA 22 August 2011c:4); and Review Constitution to decipher separation of powers - Nasha (Morewagae 29 June 2011:2).

In recognition of the above problems, particularly the weakness of parliament vis-à-vis, the executive and failure to act on the recommendations of the 2003 study on the independence of parliament, then Speaker of the National Assembly, Margret Nasha, commissioned a task force on the independence of parliament in September 2010 (Botswana Parliament 2011; Makgapha 3 July 2011:1). The purpose of the task force was to ‘review the Report of the study on the independence of parliament of Botswana [2003]’ (Botswana Parliament 2011:2). The task force unearthed a lot of constraints and impediments to the independence of parliament. These included, amongst others: dominance of government business over members’ business; non-action on committee reports save the Public Accounts Committee; weak institutional capacity of parliament as amply instanced by poor resourcing; MPs’ disempowerment in critical areas such as budgeting; and the servile character of the Botswana parliament (*ibid*).

Other than reviewing the 11 recommendations coming from the Report of the study on the independence of parliament of Botswana 2003, the task force came up with 10 recommendations. The key ones are next summarized: (i) legislative reform (this calls for the amendment of section 20 of the Constitution of Botswana so that the Clerk of the National Assembly and other offices fall under the Parliamentary Service); (ii) Business Forecast (more time to be allocated to parliament’s own business); (iii) Parliament Charter; and (iv) strengthening public accountability to enhance parliament’s role. The task force submitted its report to the Speaker of the National Assembly in February 2011 and was debated in parliament in August 2011. However, before the report was debated in parliament,

parliament held a workshop on the separation of powers on 26 June. Speaking about the doctrine of separation of powers at the workshop, Nasha said; ‘my understanding of this is that each of the three branches of government has its own distinct sphere of operation that is defined in the constitution. It is crucial that the three should respect each other, and more importantly, collaborate with each other, to ensure the smooth running of the wheels of government’ (Nasha 27 June 2011:1).

It is apparent from the above that the groundwork has been laid regarding the needed reforms, particularly the separation of powers to, amongst others, strengthen parliament. Currently, parliament is working on an action plan to action the recommendations of the task force. Hence, parliament should move with speed to action the recommendations. As Molomo (2012) argues, Botswana is favourably circumstanced because she can learn helpful lessons from parliaments in Namibia, South Africa, Zambia and Uganda. Thus, to strengthen parliament, she must bench-mark from best practices in the sub-region. In the ultimate, parliament must be independent from the Office of the President. In addition, there must be established a Parliamentary Service Commission to enable parliament to hire its own staff (see SADC-PF 2012). Finally, and vitally, a constitutional review is imperative to, amongst others, create a highly independent legislature along the US model to beget enhanced oversight and accountability and circumscribe the powers of the executive (including making provision for the direct election of the president). Hence, it is encouraging to note that there is a groundswell of support for constitutional review; see MPs want more independence (Makgapha 3 July 2011:1); Parliament discusses separation of powers (BOPA 19 August 2011b:4); and MPs agree on Parliament independence (BOPA 22 August 2011c:4). Relatedly, the president and his cabinet must account to parliament. As previously mentioned, the president of Botswana does not account to any state institution. Hence, Botswana can pick valuable lessons from South Africa. Section 92 (2) of its Constitution reads; ‘members of the Cabinet are accountable collectively and individually to parliament for the exercise of their powers and performance of their functions’ (RoSA 1996).

Conclusion

Parliament plays multiple roles in any democracy; e.g., making laws, providing oversight and demanding accountability from the executive. Thus, an effective parliament is one that undisturbedly makes laws, provides oversight and demands accountability from the executive. Unfortunately, there is often a wide gap between expectation and outcomes; many parliaments in Africa are dominated by the executive. The same is true in Botswana; parliament is weak and it is dominated by a powerful executive. Hence, a constitutional review is imperative to, amongst others, dilute the powers of the executive and strengthen parliament. However, it must be noted that a constitutional review, as adequately instanced by the examples of Zimbabwe and Zambia (AfroBarometer 2011; Lusaka Times 2011), is fraught with problems, particularly, it could be hijacked by partisan politics. Therefore, circumspection is key in executing these legal exercises. Currently, there is resistance to moves to review the Constitution within the BDP. For instance, President Ian Khama cautioned against it in November 2011 saying, ‘we should, therefore, exercise caution in heeding calls to alter the founding document that has been the guarantor of our enviable record of political stability...’ (Khama 2011:5). While it is very true that caution is imperative when tinkering with the Constitution, it is inarguable that a review is overdue.

Acknowledgement

An earlier version of this paper was presented by Dr Emmanuel Botlhale at a Frente de Libertação de Moçambique and Friedrich-Ebert-Stiftung (Mozambique)-organised conference on “The Relationship between ruling parties and parliaments in Southern Africa”, Maputo (Mozambique), 30-31 May 2012.

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