

Section 47 of the Constitution of Botswana: An Ingredient for Personal Rule

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Abstract: Section 47 (1) and (2) of the constitution of Botswana provides thus; 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. 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 judgement and shall not be obliged to follow the advice tendered by any other person or authority. This paper examines this provision and argues that such provision accords the president extensive executive powers and promotes personal rule. In other words, the constitution of Botswana accords the president absolute powers and that is undemocratic. The paper further argues that this provision undermines the functioning of the Judiciary and the Legislature thereby compromising the doctrine of separation of powers. In addition, the paper posits that this provision has led to the dominance of the Executive arm of government over Parliament and the Judiciary. In such circumstances the accountability of the President to the citizenry is compromised. In view of these, this paper argues that section 47 of the Constitution of Botswana is out-dated, undemocratic and is overdue for amendment.

Keywords: Constitution of Botswana, Judiciary, Legislature, Section 47, Personal Rule

1. Introduction

This paper examines Section 47 of the Constitution of Botswana. The special focus is on how this provision influences or has influenced personal rule in Botswana. Section 47 (1) and (2) explicitly vests executive power in the President. It provides as follows: "(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 judgement and shall not be obliged to follow the advice tendered by any other person or authority." The legislative function and the judicial function of the State are vested in a group of people, that is, in the National Assembly and the President as well as in the Judiciary consisting of judges and magistrates respectively. Unlike the judicial and the legislative function, the executive function is vested in a single individual, the President. The paper argues that this provision accords the president extensive and absolute executive powers and promotes personal rule. Personal rule is a type of political system that is centered on a leader or a

select few elites who control and monopolize state power (Jackson & Rosberg, 1982). The paper posits that this provision has led to the dominance of the Executive arm of government over Parliament and the Judiciary and that this provision undermines the functioning of the Judiciary and the Legislature and compromises the doctrine of separation of powers.

To achieve the aim, the paper is divided into six sections inclusive of this introduction and the conclusion. The second and third sections present the theoretical framework of the paper as well as Botswana and powers of its presidency, respectively. In the fourth section, Section 47 of the Constitution and Personal Rule in Botswana has been discussed. Section five critically discusses the Personal Rule as applied in Botswana. The paper concludes that the roots of personal rule in Botswana is the constitutional provision which vests extensive and absolute executive powers in the hands of one person, which is the president. This provision is therefore out-dated and undemocratic and needs to be repealed or amended with a view of spreading the executive powers to a number of persons or bodies just like it is the case with the judicial and the legislative powers of government in Botswana.

2. Theoretical Framework

Jackson and Rosberg (1984:421) defined personal rule as "a distinctive type of political system in which the rivalries and struggles of powerful and wilful men, rather than impersonal institutions, ideologies, public policies, or class interest, are fundamental in shaping political life." They further defined personal rule as a type of political system that is centred on a leader or a select few elites who control and monopolize state power (Jackson & Rosberg, 1982). Ogbazghi (2011:2) posits that "the political dynamics of personal rule, by nature, promotes personalized state-society relationships rather than institution-based practices of governance. This is simply because, he argued, "personal rule is based on loyalty to the president as opposed to institutions, which are constantly monitored and controlled to ensure that they will not achieve any balance of power that could threaten the system." Jackson and Rosberg (1984:421) argued that the political system of personal rule is "shaped less by institutions or impersonal social forces than by personal authorities and power." As such, institutions, by definition, are not governed exclusively by the formal rules as they are often flouted whenever and wherever they come into conflict with the interests of the ruler (ibid: 438). Seabo (2018) noted that "the exercise of power by personal rulers is often not done within the remit of the law and that in such political systems, established and effective political institutions and mechanisms of accountability are largely absent and those that exist are rendered ineffective". Similarly, Arriola (2009) posits that formal institutions tend to be generally too weak to perform their functions in personal regimes. Jackson and Rosberg (1984) contended that personal rule is a distinctive political system where leaders try to stay afloat in an unrestrained way.

As a result, in such political systems, government and administration are likely to be highly personal and permeated with patronage and corruption. Personal rulers tend to be self-centred and seek to control state apparatus. In so doing, the primary motive of personal rulers is not much about the interest of the nation other than achieving their own self-centred objectives (Seabo, 2018). At the very essence of the problem of personal rule thus lies the monopolization of political power (Davidson, 1993; Reno, 1997; Ayittey, 1999; Ogbazghi, 2011). Ayittey (1999) and Linz (2000) combined personal rule with the system of what he calls "political sultanism" as

the natural embodiment of the monopolization of power at the heart of Africa's political crisis. The phenomenon of sultanism or state hegemony operates within a "defective economic system of statism," that is the monopoly of enormous power in the hands of a single individual, which is achieved by such devices as price controls, legislative acts, regulations, state ownership of the means of production, and the operation of state enterprises (Ayittey, 1999; Linz, 2000; Ogbazghi, 2011). Unlike in functioning democracies with pluralistic politics, political power tends to be dominated and monopolised by few political elites in personal regimes. In this way, a leader rules by decree and consults with his most trusted loyalists (Seabo, 2018).

Ogbazghi (2011) noted that the political history of many African independence and contemporary leaders has shown that they equated the practice of unrestrained power with state sovereignty. Against this backdrop, Roessler (2011:310) asserts that in personalist, authoritarian regimes the incumbent's use of his discretionary power to make appointments and eliminate real or perceived rival's increases anxiety within the government. Seabo (2018:247) argued that "personal regimes take various forms and include princely rule, autocracy, prophetic rule and tyrannical rule". To this end, all state funds, opportunities, and other resources, including government bureaucracy are used as strategic centres of enrichment and reward for such loyal clients. Bosch (2015:1) described personalist regime as "the most stereotypical form of dictatorship. He wrote that the term raises associations of absolute power in the hands of one man, surrounded by a loyal group of sycophants telling the dictator what he wants to hear and all the excesses, narcissism and paranoia that go with it." Ezrowand Frantz (2011) and Bosch (2015) argued that in accordance with the personalist regimes, the military, state resources and ruling party are dominated by one person, wherein the ruler aims to use power for personal desires that can be enjoyed by him and distributed among his protégés.

3. Botswana and Powers of Its Presidency

Botswana is a unitary state that embraces a hybrid system of government. A hybrid between the parliamentary system as practiced in Britain and the presidential system as practised in the United States (Nsereko, 2010). A unitary state is a state

in which the three major branches of government have authority in all matters over the whole territory and all persons in the territory of the state. Whereas, in a federal state powers are distributed by the Constitution between the Government of the whole or the central or federal and the governments of the regions or provinces into which the country is subdivided (Nsereko, 2010). A presidential feature in the Botswana system of government is the merger of the two executive functions of the Head of State and Head of Government into the office of the President and the way the head of the Executive exercises his or her powers. The President of Botswana is the sole repository of the executive power; he does not share that power with anybody (RoB 1997:sec. 47; Molomo, 2000; Nsereko, 2010; Dingake, 2011; Botlhale & Lotshwao, 2015). However, in a parliamentary system, the functions of the Head of State and the Head of Government are separate. It is also worth noting that Botswana adopted a constitutional democracy as opposed to a parliamentary democracy. Therefore, the centre piece of Botswana's democracy is not a sovereign parliament but a supreme law, in the form of a constitution. The Constitution of Botswana provides for the separation of powers between the Executive, the Legislature and the Judiciary. Unlike in many countries, the President of Botswana is elected by parliament and not by the people. That is, the President, in whom the executive power of the State is vested, is not directly elected by the people. Nevertheless, Botswana has always been viewed as a shining example of democracy in Africa (Molomo, 2000).

Powers of the Presidency in Botswana are provided for by Section 47 (1) and (2) of the Constitution of Botswana which reads:

"(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 judgement and shall not be obliged to follow the advice tendered by any other person or authority".

That is, the political power is centralised in the Office of the President. The Constitution of Botswana provides for an executive presidency with extensive

powers, sweeping constitutional powers, he decides alone, he does not share that power with anybody (RoB, 1997; Molomo, 2000; Good, 2007; Botlhale & Lotshwao, 2015). However, (Colton, n.d.) argued that "no man is wise enough, nor good enough to be trusted with unlimited power."

The President of Botswana is the Head of State and Head of Government. He is the Commander in Chief of the armed forces. He appoints the Vice-President, Cabinet Ministers, Assistant Ministers, Special Elected Members of Parliament, Permanent Secretaries, Assistant Permanent secretaries, Commissioner of Police, Chief Justice of the High Court, Judge President, Judges, the Attorney General, the Auditor General, the Ombudsman, Ambassadors or High Commissioners and He can appoint and constitute a commission of inquiry into any matter, determine whether it sits in public or in private, and whether their report is made public or not (RoB, 1997).

The President also exercises the prerogative of mercy (RoB, 1997; Molomo, 2000; Good, 2007; Dingake, 2009; Nsereko, 2010; Bodilenyane, 2012; Botlhale & Lotshwao, 2015). The Office of the President further has direct control over the Public Service, the Directorate on Corruption and Economic Crime (DCEC), Information and Broadcasting and all oversight institutions in Botswana. The President is an ex-officio Member of Parliament and can take part in the deliberations of the House, including voting. He has veto powers and all bills that are passed by the legislature need his assent in order to become law. In the exercise of these powers, the President is not obliged to consult anybody or heed anybody's advice (RoB, 1997). The powers of the President are also exacerbated by the fact that the President of the Country is also the president of the ruling party. In Botswana, the ruling party has always been the Botswana Democratic Party (BDP) since independence in 1966. Surprisingly, Section 92 of the Constitution empowers the President to dissolve a democratically elected parliament, even though the President himself is not democratically or popularly elected (Mogalakwe & Nyamnjoh, 2017).

4. Section 47 of the Constitution and Personal Rule in Botswana

Botswana has always received accolades as a shining example of democracy in Africa. This was mainly attributed to the founding President of Botswana Sir Seretse Khama who espoused democratic principles

in his leadership. Similarly, his successor, Sir Ketumile Masire championed democratic principles which put Botswana as democratic politics frontrunner as attributed to democratic transitions by embracing democratic norms and practices. Nevertheless, Botswana operates an executive presidency that enjoys extensive executive powers (Molomo, 2000). This has led to Botswana being susceptible to personal rule. Personal rule in Botswana is amongst other things attributed to the provision of Section 47 of the Constitution of Botswana which gives the President absolute powers. Richard (2014) and Seabo (2018) posits that personal rule in Botswana was experienced under the leadership of General Ian Khama in which strict militaristic discipline carried out in the form of directives displaced consultation as one of the cornerstones of Botswana's democracy. As alluded to by Richard (2014:128) "when army generals take control of the country, participatory democracy gets assaulted; inclusive governance is dealt a hard blow, civil liberties get eroded and ultimately autocratic rule displaces and overthrows democratic rule". This was the defining features of General Ian Khama's Presidency. For example, Khama's unilateral pronouncement of public salary adjustment at a kgotla (village ward) meeting while negotiations with unions at the Public Bargaining Council were on-going (Seabo, 2018). A number of unilateral decisions which affect the whole nation were taken by President Ian Khama, the source of power to do so being the Constitution of Botswana. For instance, whereas consultation in policymaking lies at the center of a democracy, Khama unilaterally pronounced policy positions. In his briefing, Good (2010:315) described personal rule under General Ian Khama as follows:

"Since the succession of Lieutenant-General Ian Khama to the presidency in April 2008, an escalation in the militarization and personalisation of power in Botswana has taken place. Repressive agencies have been operationalized, military personnel have entered government in increased number, an informal coterie of advisers has come into being around Khama, and a spate of accusations of extra-judicial killings by state agents have been made. Governance and democracy are thus seriously undermined in what is conventionally represented as an African success."

Good (2010) described this as events which threatens the rule of law, peace, and human rights in the country. For instance, in 2008 as noted by Seabo

(2018), a 30% alcohol levy was imposed on the country without prior consultation with all involved stakeholders. In so doing, Khama alienated captains of industry and civil society which is an anathema to due consultation in the policy making process. As if that was not enough, Khama unilaterally pronounced public servants' salary adjustment of 3% in 2010 at a kgotla meeting while a consultative process at the bargaining council was underway (add sources). These are some of the decisions that are exacerbated by Section 47 read in conjunction with Section 41 of the Constitution. Section 41 of the Constitution gives the sitting president absolute immunity from criminal and civil proceedings. It states that no criminal or civil proceedings shall be instituted or continued against the president in respect of anything done, or omitted to be done, in his private or official capacity. This provision makes it difficult to challenge any decision a president makes, whether in his or her private capacity or state capacity. Thus, Section 47, read with Section 41 of the Constitution, creates loopholes that make the office of the president susceptible to abuse, corruption and misuse of power; and the issue of personal interests overriding public interest comes into play. Such powers lead to the monopolizing of the state by a few individuals or state capture. However, some may view extensive presidential powers as appropriate by arguing that whatever the president does, he or she is answerable to the country, thus the constitution accords limitless powers that the president fully execute his duties without "shaming the country." The president needs these powers to fully execute his or her duties as the head of state and as the head of the executive branch of government. The president is given so much power so that he cannot blame his failure to execute the presidential duties on lack of adequate powers needed to execute these duties.

5. Synopsis of Personal Rule in Botswana

This section outlines some of the highlights of personal rule in Botswana more especially under the leadership of President Ian Khama. Personal rule in Botswana has been somewhat felt during the leadership of President Festus Mogae and gained momentum during the leadership of Ian Khama who controlled and monopolized state power. Under Ian Khama's leadership, the State has been transformed into an instrument of consumption for the few. State resources were used to serve the

interest of those in power and their cronies. The following 5 subsections briefly discuss the measures of Botswana's personal rule.

5.1 The Directorate of Intelligence and Security (DIS)

The establishment of the DIS by the Government of Botswana under the leadership of General Ian Khama was mired with a lot of controversy from the public and opposition political parties (add sources). The DIS is established under the Office of the President to investigate, gather, coordinate, evaluate, correlate, interpret, disseminate and store information, whether inside or outside Botswana, for the purposes of, detecting and identifying any threat or potential threat to national security and advising the President and the Government of any threat or potential threat to national security (Good, 2016). Thus, the DIS exists to enhance national security and to protect national interest by gathering intelligence at national, externally and international levels. At least in paper, the DIS formation was a good initiative for the country, however, the DIS's real practice instilled a lot of fear to the nation. One of the critical objectives of the initiative was to offer security services to the president's administration through intelligence gathering of his opponents as well as taking action against them (Gabathuse & Kgoboge, 2019). Accordingly, Richard (2014) asserted that the DIS was popularly known for allegedly spying on prominent opposition members and for extra judicial killings. Good (2010:316) is of the view that "the existence and role of DIS is closely identified with President Khama". Furthermore, the DIS is the institution which typified General Khama's dominance by gaining public prominence when a wanted criminal suspect John Kalafatis was shot dead in Gaborone in 2009 (Good, 2016). "The killing of Kalafatis in public execution style was one of several other reported killings at the hands of the DIS without following due process in courts of law" (Seabo, 2018:252). Moreover, "there had been 12 shootings in which 8 people died between April 2008 and March 2009, and according to the Law Society of Botswana 'immense fear' existed in the nation" (Good, 2016:6). The DIS was seen as protecting the personal interest of President Ian Khama other than assuming a duty of ensuring national security.

Surprisingly, in an interview with Mmegi Newspaper (31 May 2019) "former president Ian Khama has

advocated for the disbanding of the Directorate of Intelligence and Security (DIS) and its sister spy organisation, Military Intelligence (MI). Khama argued that the current President Mokgweetsi Masisi-led regime is using these departments to serve his own interests. Khama parroted similar accusations that were apparently levelled against his government when he was in office (Kgoboge, 2019:4-5).

5.2 Public Service Appointments

The President of Botswana is empowered by the Constitution to appoint key and senior public servants. He appoints the Vice-President, Cabinet Ministers, Assistant Ministers, Special Elected Members of Parliament, Permanent Secretaries, Assistant Permanent secretaries, Commissioner of Police, Chief Justice of the High Court, Judge President, Judges, the Attorney General, the Auditor General, the Ombudsman, Ambassadors, High Commissioners and the Commander of the Botswana Defence Force (BDF) (RoB, 1997). In many occasions, the presidential appointments have overlooked meritocracy over loyalty to the sitting President. Accordingly, after becoming the president in 2008, Khama appointed trusted loyalists most of whom were drawn from the army to occupy strategic positions within key bureaucratic institutions (Seabo 2018). Richard (2014:120) argued that "Khama's ascendance to the presidency opened the 'floodgates' to an unprecedented military influx into civilian offices and partisan politics". Good outlined the militarization of the public service as follows:

"General Merafhe became Vice-President, the former Captain Kitso Mokaila became Minister for Environment, Wildlife and Tourism, and, as noted, Brigadier Ramadeluke took over at Justice, Defence, and Security...The appointment of military men reportedly cascaded downwards, with retired Lieutenant-Colonel Moakohi Modisenyane as general manager of the Central Transport Organization and Colonel Silas Motlalekgosi as head of the Prison Service." (Good, 2010:322-323).

The above citation shows how key senior public servants appointments were personalised and/or militarized. These appointments were largely due to personal loyalty to the President a defining attribute of personal rule in Botswana. "The independence of the judiciary came under attack as Khama unilaterally made judicial appointments disregarding the Judicial Services Commission. The Judicial Services

Commission that is charged with among other functions recommending judicial appointments has not had it easy with Khama" (Seabo, 2018:254). Good (2016) asset serious limitations in the independence are experienced accompanied by strength of the judiciary and secrecy which prevailed in the president's appointment of judges on the recommendation of the Judicial Service Commission.

5.3 Corruption and Mismanagement of Public Office

High profile, elite and institutionalised corruption and mismanagement of public office are also defining attributes of personalist regimes. "The stories of corruption coming out of Botswana, do not point to lower levels of corruption as much as the inability of the Botswana Directorate on Corruption and Economic Crime (DCEC) to deal with elite corruption, especially if it involves members of the executive arm of the state. Elite corruption has flourished under the regime of General Ian Khama" (Mogalakwe & Nyamnjoh, 2017:5). "Various newspapers in Botswana have reported on corrupt deals which have privileged the presidents' family and friends. These have been Seleka Springs, Khama's brothers' company, which has long dominated the BDF's defence procurements. The Khama brothers, including President Khama himself, and their friends, have been sole middlemen of especially lucrative BDF procurement deals, from fighter aircraft through to trainer and transport aircraft, and on to armoured vehicles and tanks" (Mogalakwe & Nyamnjoh, 2017:6). Motlogelwa and Civilini (2015) posits that "the BDF arms procurements have made President Khama and his brothers so wealthy that they have been referred to as Botswana's "military millionaires". On another note, Seabo (2018) avers that what is unique about Khama's presidency is that the president used state institutions and or resources to finance his private life. Seabo (ibid) gives an example of the construction of an airstrip in the private property of Ian Khama and subsequent constructions apparently carried out by the military using military resources. During his tenure as Vice-President, "Lieutenant General Ian Khama Seretse Khama used state resources to aid his party's campaign. In what was perceived by the opposition as unfair political advantage, Khama used official transport a Botswana Defence Force helicopter that he personally piloted to Nkange, where he launched the BDP manifesto" (Molomo, 2000:103).

One of the companies that dominates Botswana's tourism industry is Okavango Wilderness Safaris, which owns several lodges in the tourist hub. President Ian Khama and several of his family members are reported to have direct or indirect financial interests in the company and/or its subsidiaries (Mogalakwe & Nyamnjoh, 2017). Not only is Khama reported to have tight control over Botswana's tourism industry, he has appointed his younger brother as the Minister responsible for tourism, and is reportedly patron to all national environmental-based NGOs (Rihoy & Maguranyanga, 2010:59). Makgala and Botlhomilwe (cited in Mogalakwe & Nyamnjoh, 2017) pointed out that political corruption and the strong 'link between Botswana Democratic Party (BDP) elite and army generals' serves to illustrate the relationships between 'politicians, businesspeople, and high ranking military leaders' which together can be seen to form Botswana's self-perpetuating 'power elite' (Mills, 1956). Here, 'political, economic and military powers combine through interwoven alliances' (Mills, 1956) to form a power elite whose interests drive policy and societal values in the direction it wants, regardless of democratic principles (Dye and Zeigler, 1997, 155)". "Khama prevailed over BDP MPs to pass a bill to amend the pensions and retirement benefits which was viewed by the opposition as attempts to sustain the president's lifestyle. The list of Khama's retirement benefits is probably a far cry from what his predecessors are entitled to (Seabo, 2018). "In addition to other benefits, new clauses permitted the president to work in government while he continued to earn 80% of his monthly salary and even to choose his preference of location for retirement home." (Weekend post, 2019).

Moreover, the president, a pilot by training, could fly government aircraft, use boats or any other preferred mode of transport (Chida, 2017). Permanent Secretary to the President (PSP) Carter Morupisi has admitted during a press conference that government has gone overboard with regard to the law just to please former President Lt Gen Ian Khama (Gasennelwe, 2019).

Morupisi made this startling revelation at a media briefing in Gaborone which was aimed at discussing the pension and benefits of former presidents especially with regard to Khama. The public service chief said former presidents; the late Sir Ketumile Masire and Festus Mogae never wanted special treatment extended to them from government with regard

to pensions and benefits, but Khama continues to expect preferential treatment. The PSP said they admit being wrong with regard to the fact that, they did this when Khama was still president. In other words, he added that, Khama took decisions concerning the office he was heading to, of former President, while he was still president. "He took away the prerogative of the then incoming president, to take such decisions as the law provides for that. A sitting president now, is the one entitled to take such decisions with regard to the benefits of the retired president (office of the former president.)" (Gasennelwe, 2019:2)

Bayford (2009 cited in Good 2010:317) expressed what he called the 'public perceptions' of President Khama: "He is nepotistic, corrupt and misuses government resources for personal and family gain'. As Vice-President 'he was contemptuous of Parliament', and he 'abused government property' despite repeated calls from the Ombudsman not to do so. Bayford alleges that under his presidency security agents have killed unarmed citizens the DIS has spied on people 'because he is paranoid about being displaced as leader of the ruling party'. Further, the President 'surrounds himself with friends, relatives and sycophants as advisers."

5.4 Advertising Ban on Private Media

The private media in Botswana has suffered the burden of Ian Khama's authoritarian rule. It has been identified as one of the critics of BDP (Khama) led government. There has been an advertising ban on private media by public institutions under the presidency of Ian Khama. Mogapi (2015) pointed out that "over the years, the Botswana Democratic Party and their government led and participated in what by all accounts amounted to a reign of terror against those who opposed both the party and government. Economic suffocation has often been the preferred weapon of choice, the private media, in all its multi-faceted variations was being denied government advertising in a most obnoxious scale".

Media Institute for Southern Africa (2009) stated that during Ian Khama's reign, a cloud of fear had descended on civilian life in Botswana, impacting on freedom of expression and the constitutional provisions guaranteeing freedom of expression are not respected by government. With the Department of Broadcasting placed under the Office of the President, only government programmes and

activities of the ruling party (BDP) were aired in the Botswana Television (Btv) and Radio Botswana. Opposition political parties' activities were often side-lined to the extent that their leaders complained against state media abuse and unfair coverage. Mokwena (2017:4) reported that "a study conducted by the Ombudsman found that the ruling BDP enjoyed disproportionate coverage by Botswana Television. The report shows that BDP enjoys 82 percent of coverage as compared to 18 percent shared by the rest of the opposition parties and out of 89 activities, only 16 from opposition were found to be newsworthy by BTV compared to 73 from the BDP". This has led to Freedom House (2017) arguing that while Botswana has a robust media sector, authorities in 2016 sought to suppress reporting on the opposition and on issues related to corruption.

5.5 Ineffective Oversight Institutions

As, Arriola (2009) posits, formal institutions tend to be generally too weak to perform their functions in personal regimes, established and effective political institutions and mechanisms of accountability are largely absent and those that exist are rendered ineffective. This has been the defining feature of Botswana's oversight institutions, particularly the Parliament, the Office of the Ombudsman, the Directorate on Corruption and Economic Crime (DCEC) and the Office of the Auditor General. Parliament in Botswana has been rendered ineffective owing to the over dominance of the Executive branch of government. Given its dominance, the Executive controls the Legislature (Fombad, 2005). The ineffectiveness of the office of the Ombudsman, Auditor General and the DCEC in Botswana has been attributed to the fact that all these institutions are under the Office of the President, they report to the office of the President. The Office of the President is the final decision maker on whatever matters brought before it by these institutions. Examples of such matters are cases of corruption, economic crime and mismanagement of public office for personal advantage. Thus, the ineffectiveness of these institutions are largely due to their operational independence. The Ombudsman, the Auditor General and the DCEC Director are presidential appointees, they owe their allegiance to the president, therefore, there are in a very compromising position to investigate the president and his allies on issues of corruption and mismanagement of public office.

Similarly, Members of Parliament (MPs) argued and exposed how "toothless" the Ombudsman is as it is unable to use its powers to hold top government officials accountable. They said it is only using its powers to investigate and prosecute members of society's low classes. MPs said that is why when the former Ombudsman Lethebe Maine pronounced that the then Vice President Ian Khama had no right to fly Botswana Defence Force (BDF) aircrafts he continued flying them. Maine's recommendation to reprimand Khama was thrown out of the window as former President Festus Mogae gave Khama permission to fly BDF aircrafts (Sunday Standard, 2016). In accordance with best practices in the Commonwealth and elsewhere, these bodies must report directly to parliament, an elected body representing the citizens (Botlhale & Lotswao, 2015).

Contrary to the concept of separation of powers and its checks and balances and the supremacy of parliament, the parliament of Botswana is subordinate to, and dominated by the executive (Molomo 2002; Bodilenyane 2012; Botlhale 2012; Botlhale & Lotswao, 2013). "The extent of executive influence over the legislative branch is particularly evident in the law-making process. Although the parliament's principal function to make laws, as in most parliamentary democracies, the whole of this process - especially the most decisive pre-legislative stages - is controlled and driven completely by the executive" (Fombad, 2005:321). Botlhale and Lotswao (2013:42) argued about the ineffectiveness of parliament by stating that "parliament is a department within the Office of the President (OP), consequently, parliament is unable to significantly discharge some of its roles or functions. 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". The ineffectiveness of parliament is further aggravated by Section 47 of the Constitution of Botswana which implies that the president is not constitutionally accountable to Parliament.

Parliament in Botswana is indeed incapacitated, seriously weak and therefore ineffective; another defining feature of personalist regimes. Likewise,

under the leadership of Ian Khama the DCEC has always been viewed as a "toothless bulldog" which could not investigate cases of corruption and economic corruption amongst the ruling elites and the president's allies. Parliament and other oversight institutions named above need to be strengthened.

6. Conclusion

This paper has looked at Section 47 of the Constitution of Botswana and how it has influenced or is influencing personal rule in Botswana. Special reference was made to the ruling of former president Ian Khama from 2008 to 2018 whose administration exhibited personal rule regime characteristics ranging from institutionalised corruption, mismanagement of public office, the use of state apparatus for private gain, ineffective oversight institutions, advertising ban on private media and senior public service appointments based on loyalty to the president. The paper concludes that the roots of personal rule in Botswana is the constitutional provision which vests extensive and absolute executive powers in the hands of one person, the president. This provision is therefore out-dated and undemocratic and needs to be repealed or amended with a view of spreading the executive powers to a number of persons or bodies just like it is the case with the judicial and the legislative powers of government in Botswana. The paper further argued that this provision undermines the functioning of the Judiciary and the Legislature thereby compromising the doctrine of separation of powers. In addition, the paper posits that this provision has led to the dominance of the Executive arm of government over Parliament and the Judiciary. In such circumstances the accountability of the president to the citizenry is compromised. Therefore, section 47 of the constitution of Botswana is overdue for amendment.

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