

Separation of powers in botswana



**ASSIGN
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SEPARATION OF POWERS IN BOTSWANA Government The constitution implicitly recognises the separation of powers by dealing with each of the three organs of government in separate and distinct provisions. The executive is dealt with in chapter IV, sections 30-56, the legislature in chapter V, sections 57-94 and the judiciary in chapter VI, sections 95-106.

Executive The whole of chapter IV of the constitution deals with the executive. Part I deals with the President and Vice President, part II with the Cabinet and part III with the executive functions. In spite of this, section 47 explicitly vests executive functions on the President.

The President is not elected directly by universal suffrage but rather indirectly under section 32 after parliamentary elections from the newly elected members of Parliament. He can only hold office for an aggregate period of 10 years and if the office falls vacant, the Vice President takes over. The President appoints the Vice President and such number of Ministers and Assistant Ministers as are determined by Parliament. They must all be members of Parliament at the time of their appointment. If not, then before the expiration of four months after their appointment they must become members of Parliament or vacate the position.

This therefore means that there is no strict separation of powers in Botswana. Executive power vests in the President and section 49 states that the Vice President acts as his "principal assistant" and works under his directions. He is responsible for such business of government (including the administration of any department of Government), that the President may assign to him. The usual pattern has been to assign a specific department to the Vice President. On the other hand, cabinet Ministers and Assistant

Ministers are responsible for advising the President with respect to policy and such other matters that he may refer to them.

Nevertheless, section 50 makes it clear that the cabinet shall be responsible to Parliament for all things done by or under the authority of the President and Vice President in the execution of their duties. This generally means that the cabinet as a whole, including the President are collectively responsible to Parliament. Ministers are also individually responsible to Parliament and the public at large for the running of their ministries. Legislature Parliament, according to section 57, consists of the President and the National Assembly.

The latter is composed of the President, as ex officio member, 57 elected members, and 4 specially elected members. Although Botswana has earned considerable praise for maintaining a full-fledged liberal multi-party democratic system since independence, one party, the Botswana Democratic Party (BDP) has won all elections since independence and remains a dominant party in a system marked by a weak and fragmented opposition parties. The Botswana parliament exercises three main functions viz, the making of laws, controlling public finance and scrutinising and controlling Government.

Section 86 vests on Parliament the " power to make laws for the peace, order and good government of Botswana. " Legislation only becomes law under section 87 after it has been assented to by the President. Another important function of Parliament, which is provided for under sections 117 to 124, is to control the use of public finances. As a result of this control, Government must obtain legislative authority before it can engage in certain financial activities such as levying taxes, imposing rates, and charging fees.

The final function of scrutinising and controlling Government is carried out in at least three different ways.

The first of these is through question time, motions and ministerial statements. The Standing Orders of the National Assembly allow any private member of Parliament to address a question to a Minister relating to a public matter for which he is responsible. An alternative to question time is the motion, which enables a member to move a motion on any topic by giving three days' notice of his intention to do so. Besides Parliament, there is also the Ntlo ya Dikgosi, which until the constitutional amendments of 2005, was known as the House of Chiefs.

According to section 77, it is to be composed of "not less than 33 nor more than 35 members," some of whom are persons performing the functions of kgosi in certain specified districts, some appointed by the President and others selected under section 78(4)(c). The Ntlo ya Dikgosi although having some role to play in the law making process is not a second chamber of Parliament in any sense. Its limited role in the law making process is specified in section 85, which enables it to: i) consider the copy of any Bill, which may affect the designation, recognition, removal of powers of Dikgosi or Dikgosana; affect the organisation, powers or administration of customary laws; affect customary law, or the ascertainment or recording of customary law; or affect the tribal organisation or tribal property. ii) be consulted by any Minister on any matter on which he desires to obtain their opinion; or iii) discuss any matter within the executive or legislative authority, which it considers it to be desirable to take cognizance in the interests of the tribes,

and tribal organisations it represents and make representations to the President or send messages to Parliament on this.

The Ntlo ya Dikgosi therefore only plays a consultative and advisory role. The Judiciary In Botswana, the constitution in section 127 implicitly distinguishes between superior courts and inferior or subordinate courts. Section 127 of the constitution in defining "subordinate court," states that this "means any court established for Botswana other than the Court of Appeal, the High Court, a court martial, or the Industrial Court. Generally, the jurisdiction of superior courts is neither limited by the value of the subject matter nor geographically and they tend to deal with the more important and difficult cases.

By contrast, the jurisdiction of inferior courts is limited both geographically and according to the value of the subject matter of the dispute. Another distinctive feature of inferior courts is that they are amenable to the supervisory jurisdiction of the High court. The most important inferior courts in Botswana are the Magistrates' court and the customary courts. Another important distinction is that between courts of general, ordinary or normal jurisdiction and courts of special jurisdiction. Courts of general jurisdiction are those, which deal with practically any kind of case, whether civil, or criminal, that may be brought before them.

On the other hand, courts of special jurisdiction may deal only with stated and limited kinds of issues. The courts of general jurisdiction are organised in a hierarchy and consists of (i) the Court of Appeal, (ii) the High Court, (iii) the Magistrates' Courts and (iv) the Customary Courts. This structure reflects the dual system of laws operating in the country in that the first three courts are

concerned primarily with administering the common law and statutes enacted by the legislature while the last courts deal essentially with customary law. The courts of special jurisdiction consist of the land tribunal, the juvenile court, the court martial and the industrial court. Those who adjudicate upon disputes in the superior courts, consists of the Judge President of the Court of Appeal, the Chief Justice of the High Court and such other judges of the High Court and the Court of Appeal as Parliament may prescribe. Their role in the administration of justice is set out in Part VI of the Constitution. These constitutional provisions and other laws regulate matters such as their appointment and dismissal, their tenure, their status and their independence from the other two branches of government