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## Academic Freedom and the Constriction of Democratic Space in Botswana: Reflections from an Academic-cum-Politician

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### Abstract

Academic freedom in Botswana is not institutionalized by law. It is only assumed in practice. In recent years however, the government of Botswana has shown a willingness and eagerness to use and exploit existing laws to stifle criticism and free speech. The enactment of such legislation as the Media Practitioners and the Intelligence and Security Act in their current form and the refusal to pass an open democracy law are clear indicators of a government that is hostile to a free flow of information. The timidity of both staff and students and their failure to engage both management and government over the erosion of their freedom serves as a fertile ground for more repression on students and staff in institutions of higher learning in the future. It is the argument of this article that as the legal environment, administrative processes, and attitudes of the rulers point to a constriction of the democratic space in Botswana, academic freedom will be curtailed. There is thus an urgent need for students and academics to advocate the institutionalization of academic freedom and the opening up of democratic space. It is only when accountable, transparent and responsive governance structures are in place that academic freedom can flourish.

### Résumé

Au Botswana, la liberté académique n'est pas institutionnalisée par la loi ; elle est seulement supposée être pratiquée. Toutefois, ces dernières années, le gouvernement a manifesté sa volonté d'exploiter des lois existantes pour étouffer toute critique ou liberté d'expression. La promulgation de lois telles que Media Practitioners et Security and Intelligence act et le refus d'adopter une loi sur la démocratie sont des indicateurs clairs d'un gouvernement hostile à une libre circulation des informations. La timidité des professeurs et des étudiants et leur échec à s'engager contre l'érosion de leur liberté sert de terrain fertile fait accroître la répression. Cet article montre que tant que

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l'environnement juridique, la démarche administrative et les attitudes des gouvernants restreignent l'espace démocratique, la liberté académique en sera limitée. Il y a donc nécessité de plaider en faveur d'une institutionnalisation de la liberté académique et de l'ouverture de l'espace démocratique. Ce n'est que lorsque les structures de gouvernance seront responsables, transparentes et réactives que la liberté académique pourrait s'exercer.

### Introduction

Throughout history, much progress has occurred through growth in understanding of ourselves, our institutions, and the environment in which we live. But experience teaches us that major discoveries and advances in knowledge are often highly unsettling and distasteful to the existing order. Only rarely do individuals have the intelligence and imagination to conceive such ideas and the courage to express them openly. If we wish to stimulate progress, we cannot afford to inhibit such persons by imposing orthodoxies, censorship, and other artificial barriers to creative thought (Derek Bok 1982).

Academic freedom, defined differently by various authors, is a contested terrain. While academic intellectuals give it a broader meaning to include human rights, in particular freedom of thought and expression, governments normally prefer a limited definition that encompasses the right to teach and research with minimal interference from both government and university administration. In Botswana, debate on academic freedom has been muted since independence. Intellectuals, academics and students at universities have generally charted some course that has had elements of academic freedom. The real debate on the concept gained some currency when the then President of Botswana declared a political science professor in the University of Botswana, Professor Kenneth Good, a prohibited immigrant. These developments caused some concern albeit only briefly in the university community. It emerged at a time that academics are very prone and vulnerable to persecution by the state. It also emerged, to many for the first time, that freedom of expression in Botswana is subject to conditions and formalities that are enshrined in the constitution.

A cursory assessment of the current legal and political climate with the introduction of such laws as the Media Practitioners Act of 2008, Intelligence and Security Services Act of 2008, the University of Botswana Act of 2008, reveals that all efforts are being marshalled by the state to limit basic freedoms, particularly freedom of expression. The Botswana government is willing to use both the new laws and the old ones to constrict democratic space and limit academic freedom. The appointments to university

structures, selection of leadership and policies introduced are those that are geared towards control and imposition of restrictions to the free flow of information. The inclination by both government and university administration is to create a climate where freedom of expression is restricted rather than expanded. This article attempts to show how academic freedom in Botswana is curtailed through legal and administrative processes. Self-censorship, subservience, submission, conformism and acquiescence are cultivated through a systematic process of intimidating surveillance, patronage inspired appointments and restrictive policies.

### **Academic Freedom, the Kampala Declaration and the Future**

Mkandawire (2005) makes reference to the search for autonomous intellectual spaces by African intellectuals since independence. The repressive regimes that have been a part of Africa's political landscape made it difficult to locate such spaces. The quest by some African intellectuals to contribute to the development agenda of their fledgling nations caused them to uncritically adopt national development frameworks (Diouf and Mamdani 1994). The Kampala Declaration (1990) was a response by African intellectuals to break away from both the repressive regimes and the bondage of sentimental nationalistic politics that did not offer any respite to the suffering of the masses of the African peoples. It manifested a realization that academics and academic institutions in Africa have a special role to play, not only in terms of teaching, training and research but also in terms of social responsibilities to their communities. The autonomy of intellectuals, their institutions and students is also highlighted by the Declaration. The Declaration recognizes fully the imperative of academics for participation in the choice of their representatives. The Kampala Declaration also sets very clear obligations for the governments to respect the rights and freedoms of academics and to ensure that persecution and harassment are not meted out against academics, academic institutions and students.

The Declaration spells out clear social and political responsibilities for the intellectuals in Africa. They have a 'responsibility to struggle for and participate in the struggle of the popular forces for their rights and emancipation' (Article 22). The Declaration further states that the 'intellectual community is obliged to encourage and contribute to affirmative action to redress historical and contemporary inequalities based on gender, nationality or any other social disadvantage' (article 25). To achieve the milestones contained in the Declaration, African scholars and intellectuals need to change their mind-set and view academic freedom as a democratic right to be fought

for rather than a birthright bestowed by schooling. They should see academic freedom as what Daniel et al., (1993) call a human right anchored in both civil and political rights, and economic, social and cultural rights. Academics in Africa seem not to have internalized this reality.

Generalization regarding the situation of Africa and the role of intellectuals is difficult, as it may conceal the true picture in individual countries. However, certain conditions are common in most African countries. Conditions of social and economic deprivation, poverty, unemployment, inequities, corruption, diseases, violation of human rights, intolerance, conflicts and violence are common. Successive United Nations Human Development Reports which measure the performance of countries in the combined areas of educational attainment, life expectancy and GDP per capita reveal that most African countries fall in the low human development category (UNDP 2010). African intellectuals research and publish on the problems of the continent but it is not clear how such interventions influence policy and the development agenda. There is also very little evidence of African scholars and intellectuals aligning or acting in solidarity with victims of injustice, oppression and disadvantage. Most intellectuals seem to acquiesce in their own oppression and that of the downtrodden. With only a few exceptions, African academic fell to the lure of lucrative consultancy packages and co-opted into government and non-governmental structures. Others simply migrated to wealthier nations.

The future for academic freedom, and for academics, looks bleak. The global recession and the fight against terrorism have provided a convenient platform for the state to further corrode human rights and in particular academic freedom. The recession will be used to justify cutbacks in the education sector, resulting in dwindling admissions and the retrenchment of academic staff members. Research funds will also be cut. The fight against terrorism will be used to justify draconian pieces of legislation that will violate basic human rights. The academia should be ready to deal with these challenges.

### **Botswana: Exploring the Freedom of Expression Terrain**

Botswana's coveted status as a model of democracy in Africa has been seriously exposed in recent times. The constitution of the country, in tone and content, is undemocratic. In addition to awarding the president excessive powers, it offers a rich and convenient repository for autocratic rule (Good 1996). The constitution can easily be exploited to advance totalitarian agendas. The President, for instance, is under no obligation to take advice

from anyone in the exercise of his power (section 47 (2)). He is also immune to prosecution while in office for any offence (section 41). Many of the sections of the constitution are couched in language that guarantees rights on the one hand and takes away the same rights on the other by providing a plethora of exceptions under which the same rights may not be enjoyed. Sections 12 and 13 of the constitution, for instance, guarantee the freedom of expression and association respectively but the exercise of these powers is subject to a litany of conditions and formalities. Section 12 (2) allows for the contravention of freedom of expression in the interest of defence, public safety, public order, public morality and public health. The section further allows interference with this freedom where it is necessary to protect the reputations, rights and freedoms of other persons, preventing the disclosure of confidential information, maintaining the authority and independence of the courts, regulating educational institutions and technical administration as well as for the purposes of imposing restrictions upon public officers, employees of local government bodies or teachers.

Freedom of expression is thus seriously watered down in the context of Botswana. The situation is further exacerbated by an absence of subordinate legislation to facilitate the exercise of rights and freedoms contained in the constitution. There is no Freedom of Information law to give practical expression to the freedom of expression. Legislation that exists is that restricts or severely limits the exercise of rights and freedom of expression contained in the constitution. Good (1996) and Dingake, K. (2000) identify laws such as the law of sedition, defamation and contempt as inimical to the free flow of information. The laws such as the National Security Act (1986), Printed Publications Act (1968) and Cinematograph Act (1971) have also been cited as inhibiting free flow of information.. In recent times, the Media Practitioners Act (2008) and the Intelligence and Security Service Act (2008) have been enacted. These two pieces of legislation further entrench secrecy and stifle free thought and expression. In particular, the extra-judicial killings and the police brutality that have been reported since the establishment of the Directorate of Intelligence and Security services made many people fearful of expressing their views. There are also growing fears that the Directorate of intelligence Services tracks people's telephone and other electronic communication. The recent requirement by the Botswana Telecommunications Authority to register all mobile phones has only served to heighten the fear.

Freedom of expression in Botswana is constrained and restricted. The impact of this is that self-censorship has become the norm rather than the

exception. There is general caution as to what people say or write lest they offend the many laws that restrict freedom of expression. Academics and intellectuals as a part of the socio-economic milieu are invariably constrained in discharging their mandate freely and openly, as they are aware that the general expectation of those who hold power is that of conformism as opposed to critical engagement.

### **Academic Freedom and the Deportation of Professor Good (and Others)**

Section 7 of the old Immigration Act and Section 41(3) of the amended act confer on the President of Botswana the powers to declare any visitor or foreigner in Botswana a prohibited immigrant. This power has been invoked on numerous occasions by the four presidents that have ruled Botswana in the last 45 years. In 2005, President Mogae used the same clause to expel Kenneth Good, a political science professor in the University of Botswana. The professor mounted an unsuccessful bid to overturn the deportation order, but save for some brief reprieve delivered by Justice Moatlhodi Marumo, Good's stay in Botswana was terminated.

The President did not, and is not, required by law to tender an explanation for his actions in this regard. For all that is known, Professor Good was one of the sharpest critics of Botswana's democracy. Professor Good is critical and he accepts criticism. He is widely read and highly knowledgeable. Professor Good's lectures which I attended as a candidate for the Master of Public Administration programme were highly challenging and entertaining as well. His incisive appreciation of democratic and ethical governance is refreshing. He is uncompromising in his pursuit of the truth. His works on 'Authoritarian Liberalism: A Defining Feature of Botswana's Democracy', 'Autocratic Elites and Enfeebled Masses in Africa', and 'At the Ends of the Ladder: Radical Inequalities in Botswana', and others are seminal intellectual collections that shatter the 'shining example' mediocrity that hitherto adorned literature on Botswana. These articles and many others that showed the weaknesses of Botswana's democracy must have irked the authorities in Gaborone. They did not pronounce their irritation at what Good wrote, but instead, the authorities claimed that the 72-year old Good was a 'security threat to Botswana although the government never deigned to produce evidence to that effect' (Taylor 2005:106). There are other vague reference to Good working with Survival International, an NGO that waged a campaign against Botswana's diamond industry. All explanations rendered, whether implied or direct, clearly showed that Good's freedom of expres-

sion was being encroached upon. But Good lost his appeals because, according to Botswana law, the president's action cannot be questioned (Taylor 2005).

The law of deportation of foreign nationals still stands and it now rests on a powerful precedent as it won the day at the highest court of the land – the Court of Appeal. The powers enshrined in the piece of legislation are held in reserve to be enforced on any visitor or foreigner, who in the estimation, however flawed or arbitrary, of the President or his informers is a nuisance to Botswana. In actual fact, in recent times, President Ian Khama has deported a handful of people in his short period in office, including Caesar Zvayi, a Zimbabwe academic who was working for the University of Botswana Media Studies Department. Other victims of the deportation law under President Khama include pastors, crime suspects and at least three others who were accused of insulting the president (Keorapetse, *Botswana Gazette* 2009).

This law is a potent and effective weapon in deterring non-citizens critics from pronouncing their opinions openly and freely. Non-citizen academics and intellectuals are thus very vulnerable to expulsion from Botswana if they hold views that are critical, either to Botswana or the President himself. Under the circumstances, many academics will submit to the expectations of those in authority so that they can keep their employment. Academic freedom thus becomes a casualty. Those who seek to challenge the action of this state are often disarmed by the state reference to the emotive and sensitive issue of national security, as happened with Professor Good. The stringent immigration and work permit protocols for expatriate lecturers in the University of Botswana further curtail their freedom of expression, as many such lecturers fear suffering the fate of the likes of Professor Good.

### **Functions of the University and Academic Freedom**

The system and structure of University of Botswana governance is established under the University Act of 2008. In addition to customary functions of providing higher education and training, teaching and doing research, the University Act prescribes the function of the University of Botswana as 'supporting and contributing to the realization of the economic and social development of the nation'. The Act does not specify how such contribution should be made and this gives ample space for academics to venture into various activities that concern socio-economic development. Politics of a partisan nature is not explicitly mentioned as a possible dimension through

which academics can contribute to social development. Through the years however, the University of Botswana has allowed its employees to participate in electoral politics not only through professional engagement in the election management and administration but also as candidates and activists of political parties. As this author has witnessed, the process of granting such permission has always been characterised by relative unease on the side of the university administration. The cause of such cannot be immediately determined but it would be reasonable to conclude that it arises mainly due to the fact that a majority of those who have been applying for such permission are from the opposition ranks. It could also be that the negative commentary by ruling party officials on political activities is unsettling to the university administration. The absence of a clear reference to political participation and democratic development in the functions of the university as laid out in the University of Botswana Act creates a level of ambiguity that could be exploited by those who are keen on limiting academic freedom and expression.

#### **University Governance and the Potential Threat to Academic Freedom**

The University Act section (6) through to section 26 defines the university governance structures. It spells out their manner of appointment and the power they hold. The manner of appointment of the structures and principal officers of the university, one must point out, is phrased more in favour of the state and it is designed to give the government leverage to have greater influence in the management and administration of the university. The Chancellor whose functions are mainly ceremonial is appointed by the President of the Republic of Botswana (sec 7.1). The Vice Chancellor is appointed by the Minister in consultation with the University Council and Senate (section 8.1) The Minister who appoints the Vice Chancellor is the appointee of the President. The Chairman of the ultimate governing body of the university which is the University Council is appointed by the Minister (section 10.1). During the parliamentary debate on the Act, members of the opposition, namely Hon Akanyang Magama and Hon Dumelang Saleshando, argued painstakingly against the appointments emphasizing instead the need for consultation with relevant bodies. Witness what Hon. Magama said:

Now, with respect to the appointment of the Chancellor of the University by the President my concern is that there is no clearly defined procedure and process for making such an appointment and this may lead to conflict in the event that the President appoints someone who is not acceptable to the University community. I think it is has to be a consultative process. There-

fore, I have suggested an amendment to that statute which I circulated and I will motivate at the Committee stage.

Hon Saleshando had this to say too in relation to the appointments:

The appointment of the Chancellors as stated by the Bill, I have a difficulty with a Chancellor who is appointed without necessarily consulting any person or even coming up with the basic standards that the person should meet besides saying that they must be an eminent person.

He further observed somewhat rhetorically that:

Mr Speaker, let me conclude by stating that I am totally opposed to those amendments that seek to do away with consultative processes that informed the appointment of the University officers and allow instead for unilateral decision making. I want to plead with Members of Parliament that we should allow for some compromise that will compel for consultation. It does not matter how good willed the person holding office at that particular time may be, it is very important that critical decision making must always be informed by consultation, otherwise you will have people being appointed unilaterally by Minister to hold positions and the following day they are busy making donations for primary elections for that Minister who appointed them.

The general thrust of opposition Members of Parliament was for consultation and lesser powers for the Minister in university affairs. The ruling party MPs were however adamant that the president should act alone in the appointment of the chancellor and the minister should have greater powers in appointments of both the Vice Chancellor and Chairman of Council.

The composition of the University Council is one contentious issue. The University Council has 32 members, 12 of whom are appointed by the Minister, five directly and seven on the recommendation of Council (section 9.1a). Seven more people are civil society members appointed by the Chancellor on the recommendation of Council. Academic staff is entitled to one position and students another position out of the 32-strong member Council.

The over-representation of government appointees in the university governance structure and the under-representation of academics and students is the first line of threat against academic freedom. Government appointees will mainly represent the interest of those who appointed them. Even if they wish to be independent, the limitation is that they may not fully appreciate the full dimensions of the concept of academic freedom as it relates to the institution, academic staff and students.

### **Composition of Senate and Selection of Deans and Heads of Departments**

The Senate of the University of Botswana has overall responsibility over academic policies and plans, academic development strategy, and research and community service functions of the university. Its members include the Vice Chancellor, Deputy Vice Chancellors, representatives from faculties, Dean of Faculties, students, Director of library Services, Director of Research and Development, Deputy Director of Affiliated Institutions, Director of Academic Services and Director of Continuing Education. The composition of Senate becomes particularly important as it is the body that determines the quality and content of programmes. To the extent that it has representatives of both staff and students, the University of Botswana caters for a critical segment of the university population. It is however worrying that the representation of staff unions is limited. The Heads of Department absence in Senate may also compromise the quality of programmes, as it is the heads who have better insight into academic needs of their respective departments.

An equally important issue is that which concerns the selection of Deans and Heads of Departments. Whilst in the past, Heads of Departments and Deans were selected through popular support of members of both the departments and faculties; under the current system, Deans are appointed by application, nomination or invitation, and Heads of Departments are appointed by the Vice Chancellor after receiving a non-binding recommendation from the Dean and members of the particular department. The selection of Deans and Heads of Departments through popular vote was appropriate in that it ensured that those who were selected served the best interest of the constituency that elected them. Under the current system, Deans and Heads of Department pay no allegiance to the constituencies they lead and it is highly possible that they can serve only the interest of senior management. In this case, the basic freedoms of academics can be curtailed.

### **Policy on Partisan Political Activities on the University Campus**

For many years since its inception, the University of Botswana has allowed partisan political activity on its campuses. However in 2007, the university initiated a discussion on the need to regulate political activity. The policy was ultimately approved by the University Council in March 2009. The preamble to the policy makes the most clear and explicit commitment ever by the University regarding freedom of expression. It states that ‘as an institution of higher education, the University of Botswana (herein called “the

University”) is committed to free and open discussion and the exchange of ideas and opinions on topical issues that affect the wider community, including the expression of political views within its campuses’. The preamble further emphasized the healthiness of political debate. In so far as the policy acknowledges and endorses the freedom of staff and students to engage in partisan political activity, it is welcomed and appreciated.

The policy however has a restrictive tone around it, particularly in respect to students. Section 2.3 states that students shall not be entitled to invite or allow representatives of political parties to become involved in student politics. Specifically, ‘political party representatives shall not be allowed to interfere with or become involved in student politics’. Section 2.5 further directs that ‘members of political parties shall not participate in student political activities in any manner whatsoever’. The policy does not allow the use of political party property on campus.

Without any shadow of doubt, the policy imposes a limitation on students’ freedom of association. It curtails students’ interaction with their political parties on campus which renders sterile the claim that the university is committed to open and free discussion. It is also not clear how the interaction of students and the political parties on campus can compromise the non-partisan nature of the university, which is the major motivation for coming up with this policy. Studying the document closely, one sees a university that is extremely suspicious of political parties. The university would seem to believe that student activism is a product of political party involvement and if such relationship is severed, students would ‘behave properly’.

A noteworthy issue is that whilst there is a policy to regulate political activities on campuses of the university, there is no policy on academic freedom. In the case of the University of Botswana, the issue of academic freedom is hardly ever on the agenda. A plethora of policies have been formulated on a variety of issues but none has been targeted at advancing the academic freedom of both the institution and individuals working for the university. In actual fact, the mission, vision and value statement of the University of Botswana does not explicitly mention academic freedom. It is only implied.

### Conclusion

Academic Freedom in Botswana has never been a subject of active debate and engagement. Its existence is thus at the behest and benevolence of the state and its appointees at the university campus. The boundaries and parameters of the concept and the freedom continue to shift in favour of the

state. The state has tightened the national legal framework to curtail the free flow of information and that will make the curtailment of academic freedom easier and swifter. As decision making powers firmly resides in the appointees of the state, very soon the university will bear a huge resemblance to the civil service, both in its operations and expected code of conduct. The reversal of this trend will be difficult. It will require students and intellectuals to collectively engage the state and the university administration on the issue of academic freedom. They must impose it on the national and campus agenda. Academics and students should also be at the front of expanding democratic space and democratizing institutions of higher learning.

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