

## **DEEPENING PARTICIPATION IN BOTSWANA: A CASE FOR REFERENDUMS**

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### **ABSTRACT**

Botswana's democracy endured despite flaws such as low voter turnout, weak civil society and a powerful presidency, weak executive accountability and limited participation in public policy. This paper makes a case for increased use of referenda in deciding legislation and public policy making to stimulate participation in political process as elections. It argues that popular participation through mandatory referendums could promote participation and strengthen Botswana's democracy. Basing on the presumed educative effects of a referendum on citizens this paper argues that subjecting policy decisions to a referendum more frequently will overtime result in politically competent citizens that partake in political process such as elections. Participation through referendum increases civic engagement as it enhances their civic abilities. More importantly, engaged citizens develop confidence in their ability to influence government decisions and it also boosts citizen level of trust in government. This will propel them to polls on the Election Day as well increase their interest in public affairs. Furthermore, subjecting policy matters to a referendum provides necessary checks and balances on government and ensures that party politics do not undermine public interest. In view of this, direct participation can save Botswana's democracy in the face of declining quality of representation and an overly strong executive.

### **INTRODUCTION**

Botswana's democratic credentials are widely documented in the literature. The country has embraced and developed a constitutional framework which promotes adherence to civil liberties

and the respect for the rule of law and has been able to conduct free and fair elections regularly (Mpabanga, 2000; Molomo, 1998; Botlhomilwe and Sebudubudu, 2011). Botswana has held eleven general elections since independence; albeit with a declining voter turnout save for the past two general elections. Low voter participation has also been observed in by elections and referendums.

The lower voter turnout is blamed on a number of factors among them lack of civic education (Mpabanga, 2000; Molutsi, 1998), political culture that discourages other groups from participating in the political process such as the youth (Ntsabane, 2000; Mogalakwe, 2006), the electoral system (First Past the Post), lack of a vibrant media, civil society and weak opposition parties (Mpabanga, 2000). Ntsabane (2000) attributes low voter turnout to lack of experience with elections as an institutionalized process of selecting political office bearers. While these scholars have identified the causes of low voter turnout in Botswana, they do not go further to recommend any institutional reform to address voter apathy or to foster participation.

Scholars of participation in a democracy claim a relationship between voter turnout and direct democracy innovations (Smith and Tolbert, 2004; Gabriel and Verba quoted in Qvortrup 2002,). It is argued that direct democracy instruments like referendums and initiatives have positive externalities such as generating interest in political affairs and therefore promote political participation (Smith and Tolbert, 2004). This is supported by the arguments of Jacques Rousseau, John Stuart Mill and de Tocqueville that ‘democracy was best being taught by practicing it’ quoted in Qvortrup (2002). Similarly, Tolbert and Smith vouch for the educative effect of direct democracy. Their notion of ‘educated by an initiative’ informed transformative effect of initiatives on voter turnout also speaks of the efficacy of direct democracy instruments in promoting political education. It is argued that campaign and mobilization of electorates that normally precedes referendum have the potential to enhance political education and capacity to participate in other processes such as elections (Qvortrup, 2002; Laisney, 2012; Hug, 2008; Setala, 1999).

Informed by these arguments, countries across the world have in the recent years employed referendums to stimulate interest in politics with a view to address low voter turnout currently

bedeviling modern democracies (Hug, 2008; Setala; 2006; Laisney, 2012). Basing on this premise, this paper makes a case for increased use of referendums in deciding public policy matters in Botswana. It argues that popular vote has the potential to develop politically competent citizens with interest in political matters. It argues that political education as a by product of participation nurture responsible citizens who see voting as a civic duty and are also confident about the value of their vote. Not only will politically engaging citizens result in increased voter turnout but it will also promote civic participation and thus strengthen democracy in Botswana.

Increased use of direct democracy therefore has the potential to motivate participation in elections and abate voter apathy currently characteristic of Botswana's democracy. The article argues that in view of flaws in Botswana's democracy (weak civil society, weak parliament and an unaccountable executive), over and above addressing voter apathy, referendums could enhance the ability of citizens to hold the government accountable and ensure that government decisions are consistent with the will of the people. The paper recommends constitutional amendment to provide for mandatory referendums on constitutional amendments, and significant political matters and issues that even though important for the growth of Botswana's democracy they would not be embraced by the government. Mandatory referendums on constitutional amendments and other salient issues will ensure that referendums are not manipulated to serve the interest of government. In this way, referendum will only be used to supplement representative democracy and not as its replacement.

This five part paper begins by briefly discussing participation in Botswana politics focusing on factors that have contributed to low political participation in Botswana. The second section dwells into the theoretical framework underpinning the arguments submitted in this paper and proceeds to look at empirical evidence drawing mainly from studies on the impact of initiatives and referendums on voter turnout in United States. The fourth section makes a case for increased use of referendums in deciding public policy and finally the paper discusses matters that can be subjected to a popular vote.

## **POLITICAL PARTICIPATION IN BOTSWANA**

Research on political participation in Botswana is fairly new and still emerging. For the past decade, particular attention has been dedicated to explanatory variables for declining voter turnout, increasing voter apathy especially among the youth and the overall decline in political participation. Mpabanga (2000) observes the declining levels of participation in her piece; *'Declining Voter Participation in Botswana: Trends and Patterns.'* The decline, according to her analysis is more to do with the lack of appropriate and sufficient voter education than socio-economic factors.

Voters need to be educated on their country's constitution, their right to vote and the importance of exercising that vote, and the power that a vote can have in shaping their lives<sup>1</sup> (Mpabanga, 2000). The Independent Electoral Commission (IEC) Botswana report (2002) attributes political apathy in Botswana to politics of inclusion and low levels of repression compared with other parts of Southern Africa. Elsewhere the report notes a lack of youth activism in political struggles which could generate some form of youth participatory politics.

Other accounts have pointed to the dominant party system and the electoral system as reasons for disengagement. For instance, Mfundisi (2005, p.166) states that "voters disengage from the political process because of the apparent domination by one party for more than 40 years of democratic rule". The scholar links unbalanced competition with disenchantment of voters who know that electoral outcome is certain. Some scholars have narrowly focused on youth and participation in Botswana. For instance, Ntsabane (2005) links voter apathy among the youth to African political culture that does not consider the youth capable and mature to be involved in public affairs. Youth participation is often met with negative reactions and mistrust, for they are simply viewed as minors.

In their account, Ntsabane and Ntau (2000) observe that the reasons for the lower participation rates among the youth are to be found in traditional Tswana society's political culture that does not consider public affairs a domain for women and the youth. The authors blame the agencies of

socialization such as the family, school system, political parties and the media for reproducing such a culture. According to them, this culture dates back to the pre-colonial period when public affairs were the preserve for chiefs and elderly males.

We observe that the trend in the literature on participation has also leaned towards prescribing solutions to address the low level of participation in Botswana. Maundeni (2006) suggests that faith based organizations such as churches should play a part in civic and voter education. The Voter Apathy Report of 2002 reveals that the faith sector in Botswana tends to be aloof and/or encourage their members to refrain from electoral activities and other political activities. According to Ntsabane (2005) institutional reform in terms of electoral and political reforms to gain citizens' trust on the electoral process and political institutions can encourage people to participate in political process. For this reason, Ntsabane concludes that "popular trust in political institutions such as the legislative, executive branches of government and the electoral process in the country may lead to more citizens taking an interest in elections" (2005, p.175).

Based on the literature surveyed on participation in Botswana, we observe a gap in terms of the role that referendums could have in increasing the level of participation. Whereas referendums have previously been utilized to decide on important policy issues, not much scholarly work has been devoted to examining and understanding their effects on popular participation. In 2007, Molomo analyzed the political implications of the 4<sup>th</sup> October 1997 referendum for Botswana but did not show how referendums could have an effect on citizens and political participation.

In view of the above, we seek to add to the discussion by making a case for the use of referendums as a way of involving the masses in policy making and enhancing political participation in Botswana. We do not prove that referendums in Botswana have led to increased voter turnout in the past elections, rather we argue that if employed more frequently referendum could result in a politically conscious citizen it could also led to heightened public interest in public affairs and democratic process such as voting.

## **REFERENDUM AND POLITICAL PARTICIPATION**

The democratic theory places participation at the centre of any democratic system. A look at the historical development of democracy reveals an emphasis on popular participation and

deliberation (Setala and Schilller, 2009). For example, a defining feature of Athenian democracy was deliberation among equal citizens before laws could be made. Participation was both a duty and a right of all those who counted as citizens (Hug, 2008; Setala and Schilller, 2012). Modern democracy has taken the form of representative democracy. Popular participation is mainly through casting a vote in elections or competing for public office, government consultation of the citizens and direct democracy in the form of referendums and initiatives. Collectively known as 'democracy innovation' referendums and initiatives are 'institutions that have been especially designed to increase and deepen citizen participation in the political decision making process' Graham Smith (2009, p.1) cited in Setala and Schiller (2012, p.1).

According to Schiller and Setala (2012) initiatives are direct democracy institutions that allow citizens to initiate issues and collectively bring them to political agenda by collecting a specified number of signatures endorsing the action. Therefore, they originate from citizens. Matters brought to political agenda through an initiative can be subjected to a referendum or be addressed by the parliament. On this note, Setala (1999, p.6) borrowing from Liphjart (1984, p.200) states that 'The referendum by itself entails a very modest step toward direct democracy but, combined with the initiative, it becomes a giant step'. Referendums, on the other hand are "all institutions in which the citizens vote upon a policy issue, regardless of the motivations and functional differences between various forms..." (Setala, 2012, p.4). In referendums, the legislature subjects a proposed law or amendments to existing laws to a popular vote (Smith and Tolbert, 2004). The classification of referendums is usually based on the institutional framework of these instruments. Setala (2012) claims that the major factors considered in the classification of referendums are; initiation process and the actors involved. That is the initiator and the source of legislative proposal. They can either be mandatory or optional. The former are constitutionally sanctioned to decide specific matters the latter category is held on request from political actors like the legislature or a prime minister (Setala, 1999). The mandatory referendums ensure that public views are taken into consideration when drafting certain legislation.

While the institutional frameworks of referendums differ, they all have a transformative effect on the public. They are both believed to have profound impact in enhancing democracy by

developing a politically conscious citizen. In addition they are believed to provide citizens with an opportunity to influence public policy in an era of alienated government.

### **THE EDUCATIVE EFFECTS OF A REFERENDUM**

Basing on the self sustaining character of a participatory political system, early thinkers as, Jacques Rousseau, John Stuart Mill and G.D.H Cole have argued for expanded opportunities of participation to enhance political knowledge which would give rise to more participation. According to Parry et al (1992) participation is determined by opportunities availed. It is therefore upon government to create institutionalized avenues to allow the citizenry a chance to have a say in governance. Contrary to this, most modern democracies have limited opportunities for participation, a result of which has been disengaged masses. Botswana is no exception.

Of recent, there has increased use of referendums other direct democracy instruments to in European countries and other regions to allow popular participation. Laisney (2012) notes that in the spirit of democratic renewal , the recent years , government have increased use of referendum to generate participation and restore public trust and in political institutions. Correspondingly, the utility of direct democracy instruments like referendums in strengthening democracy has attracted a lot of attention in academic cycles. Scholars claim that direct democracy innovations promote participation, increase legitimacy of decisions and most importantly they have a transformative effect on the voters (Tolbert, 2004; Qvortrup, 2002). Setala and Schiller (2012) observe that studies have indicated a positive correlation between citizens's perception of politics and interest in public affairs. Setala and Schiller claims that Bowler and Donovan (2002, p3) "have found a positive correlation between citizens's sense of political efficacy and the frequency of the initiative institutions in the US states." This argument was formerly developed by Pateman (1970) who claimed that increasing opportunities for public participation could nurture politically competent, interested and active citizens with strong believe in their ability to influence public policy. Referendum processes involves intense deliberation between the two opposing camps; citizens benefit from the debates which broadens their understanding of political matters. The by-product of which is interests on political matters which would translate in participation in other democratic processes. Frenchman Alexis de Tocqueville

enthusiastically wrote: “the direct participation of the people in legislation” would make them acquainted with the laws and instructed them in the art of government.” (In Smith and Tolbert, 2004, p.11)

In addition, they promote democratic values of compromise, consensus and reasonableness. Crucially; Barber cited in (Setala, 1999, p.60) observes “...participation should have a transformative effect on individual opinions: it is expected to create reasonableness of political opinions.”

He continues:

*The purpose of civic participation and deliberation is not merely to filter citizens' preferences and prevent unreasonable outcomes; they must be seen as a value in themselves, because they are necessary for the creation of the responsible citizenship which is the precondition of participatory democracy*

To scholars of participation the idea of democracy as government by the people implies active involvement of the in people decision making, formulating legislation and participating in other aspects of democratic government. Rousseau argued that participation has a developmental function on citizens. Through participation we can develop a ‘good citizen’ who is able to compromise his narrowly conceived interest in pursuit of the common good. Most importantly he develops civic virtues and is likely to fulfill responsibilities as a member of the community. The civic values would enhance the propensity to participate more in public affairs. Pateman (1970,p.25) enthusiastically states:

*Once the participatory system is established, and this is a point of major importance, it becomes self sustaining because the very qualities that are required of individual citizens if the system is to work successfully are those that the process of participation itself develops and fosters; the more the individual participates the better able he is to do so.*

According to Rousseau the social contract rests on continual participation of masses on political processes and this is to be fostered and nurtured by involving the citizen in decision making.



This enhances legitimacy of the laws made and boasts public confidence in government institutions and processes (Patemen, 1970).

Rousseau believed that participation has a controlling function on the government institutions and through which he guards his freedom (Pateman, 1970). To Rousseau, man is only free when he is governed with laws that he had been party to their development. He forcibly argues: "...freedom is increased through participation in decision making because it gives him a very real degree of control over the course of his life and the structure of his environment." (cited in Pateman, 1970, p.26). In the words of proponents of direct democracy: "Direct legislation could 'make the voter realize that he is a sovereign in fact as well as in name..." (In Smith and Tolbert, 2004, p. 13).

The deliberative process that precedes referendum is important in holding the legislators accountable and ensuring that issues are adequately debated and any information relating to the matter are availed to the public. To John Stuart Mill, evil motives of public official makes a compelling case for mass participation: He writes "one of the greatest of democracy lies in 'the sinister interest of the holders of power: it is the danger of class legislation...and one of the most important questions demanding consideration...is how to provide efficacious securities against evil" (Cited in Qvortrup, 2002:28).

Barber (1984) cited in Setala (1999), argued for 'strong democracy,' a democracy with more opportunities for people to have a say in governance, and facilitated by the use of direct democracy instruments. This forms the gist of this paper. We argue for the use of referendum to broaden avenues for participation as well as nurture a participatory culture by improving the capacity of citizens to take part in the democratic processes and hold the government accountable.

This perceived benefit of direct democracy instrument makes a strong case for increased use of a referendum in democracies with alienated masses to promote their participation and build strong democracies (In Barber's sense, 1984). Given shrinking voter turnout in Botswana attributed to lack of political education and lack of confidence on institutions and political parties (Mfundisi,

2005), using referendums to decide certain policy matters could enhance political knowledge and thus generate interest to actively participate in the democratic processes such as elections. Qvortrup (2002, p.26 ) affirms :

*It has been asserted that ‘democracy is best taught by practicing it’ It follows from this assertion that a more frequent use of referendums would lead to a higher turnout as more voters become interested in political issues.*

Most importantly, the cumulative transformative effect of engaging citizens through direct democracy will address many of the flaws observed in Botswana’s democracy. According to Qvortrup proponents of the idea of democracy believed that it could salvage democracy in era of declining quality of representation.

Therefore:

*The use of referendums may be justified by both lines of argument: different types of referendums may be considered to be corrective with respect to the representation of popular interests and a check on parliamentary majorities; and they may also be considered to enhance public participation and deliberation. (Setala, 1999, p.6)*

Civic education gained through frequent participation in direct legislation also improves the quality of democracy. It enhances ability of citizens to hold government accountable and join civic organization which form an integral part of a functioning democracy (Smith and Tolbert, 2004). Qvortrup (2002, p.62) quoting John Stuart Mill says: “...a viable democracy required civic education for the individual which ideally could be gained through active political participation.” On this basis, countries are increasingly using referendums to engage their citizens and various studies on direct democracy and political participation confirm that they indeed stimulate participation.

## **DIRECT DEMOCRACY AND VOTER TURNOUT: EMPIRICAL EVIDENCE**

Different researches have arrived at varying conclusions on the impact of direct democracy innovations on voter turnout. According to Tolbert, Mc Neal and Smith (2003) study by Smith

(2001) on direct democracy and political knowledge in different states in the US confirms the voter mobilization thesis. According to these scholars frequently using direct democracy to decide public policy experience higher voter turnout, but this is with regard to midterm elections and not presidential elections, sentiments shared by Schlozman and Yohai (2008). According to Marti (2014) Tolbert and Smith have arrived at the conclusion that voter turnout increases when there are initiatives running at the same time with presidential and midterm elections. Studying 50 US states between 1970 and 1996, Tolbert, Grummel and Smith (2001) found that states that frequently subject issues to the ballot have higher voter turnout in presidential elections and midterm elections compared to those that do not. According to Tolbert et al (2003) studies conclude that direct democracy activate electorate and therefore can lead to increased voter turnout. Similarly, the 1972-1996 study by Smith (2001) found that initiatives and referenda on salient issues that have been covered by the media increase turnout by 3% more than in state that do not have the institutional arrangement of referenda (Tolbert et al, 2003). Accounting for this, Tolbert et al (2003) claims that the effect of initiatives is significant and pronounced in midterm elections since they are low information and therefore the educative effects of ballot propositions is not mitigated by intense media coverage or interest group contests. Tolbert and Smith (2005) hold the same view, and indicate that it is so because where the midterm elections are not run at the same time with presidential elections therefore the focus tends to be on state level issues and candidates (Tolbert and Smith, 2005).

For example, using voter eligible population (VEP) in their study which looked into the effect of ballot proposition in the period 1980-2002 on voter turnout, Tolbert and Smith (2005) found that voter turnout for presidential elections increases by 0.7% with each initiative while midterm elections record an increase of 1.7% in voter turnout for each initiative in the ballot. Therefore contrary to findings of other scholars ballot proposition have a voter mobilization effect even in both presidential and midterm elections. However, the impact is low in presidential elections when compare to midterm elections. Tolbert and Smith (2005) note that these findings therefore indicate that frequent use of initiatives can drive the people to the polls confirming the proposition of participatory theorists however Tolbert and Smith (2005) do not explain or classify the kind of voters that are mobilized by initiatives. Donovan and Smith (2004) attempts

to understand the composition of voters motivated by the initiatives in these American states; Colorado, Oregon and Arizona. According to them, initiatives have a mobilizing effect on partisan voters, those with ideological positions and better educated. According to their findings, without the ballot prepositions these voters would not vote. Donovan and Smith (2004) found that 28.4% of Arizona respondents claimed to have been influenced by the ballot to participate in the previous elections, in Colorado 24.9% respondents attributed their participation to presence of ballot prepositions and just under a third of the Oregon voters pointed to ballot initiatives as their source of motivation. These findings validate the preposition of progressive thinkers that direct democracy innovations could stimulate interest in public affairs and participation in democratic processes such as elections.

Motivation to vote therefore derives from specific ballot issues. In this way, it can be inferred that not all initiatives would drive the masses to the polls. The mobilization depends on the content issue. Correspondingly, in their study aimed at investigating the kind of voters that are likely to be motivated by ballots to vote in the midterm and presidential elections, Donovan, Tolbert and Smith (2009) found that partisans and highly educated and with interest in politics are mostly mobilized to vote in presidential elections. The peripheral, independents and lowly educated are mostly mobilized by ballot measures and participate in midterm elections than in presidential elections. Thus ballot measures mobilize peripheral voters who would otherwise not vote. This is primarily because the extensive media coverage of the ballot may generate interest in public affairs (Donovan, etal 2009). This confirms findings of previous research of Campbell's 1966 work that people who do not identify with any political party are less likely to vote unless mobilized by a third party. This is particularly important given declining interest in political education. Furthermore, Donovan etal (2009) observe that the ballot propositions may alter the electoral context by elevating issues on the ballot to prominence in midterm elections. The issues placed on ballots may turn out to be the major deciding issues when assessing candidates. Candidates' position on specific ballot prepositions would have an influence of voter perception of them. For example, placing issues relating to same sex marriages greatly influence the electorates' choices in 2004 presidential elections (Donovan etal 2009).

Contrary to above findings, other scholars claim that frequent use of referendums lead to a decline in voter turnout. For example, Freitag and Stadelmann-Steffen (2010) concludes that intensive use of direct democracy instruments in Switzerland tends to reduce voter turnout over time. In view of this, like Dicey warned that, direct democracy innovations should not be daily bread but should be used only in complex matters. Contrary to Freitag and Stadelmann's findings, Smith, Tolbert and Bowen (2008) claim that researches found that people residing in areas where a referendum is allowed have high level of participation. According to, Smith et al (2008) this is further buttressed by evidence from USA which indicates that electorates in state whose institutional framework provides for direct democracy initiatives are more knowledgeable about public affairs and the same holds for Canada. Generally evidence from the studies explored suggests a positive correlation with participation and use of direct democracy initiatives. A bulk of studies confirm the progressive reformers views that direct democracy has transformative effects on electorates and can propel them to the polls on election day.

It is this procedural by-product that forms the premise of the paper. Our argument is that engaging the public in legislation could have an educative effect on the public. In addition to this it enhances level of civic engagement and increase confidence in government. So then, direct democracy does not only benefit the electorate but also benefits the government. Gilen, Glaser and Mendelberg (2001,p.3) writes:

*Some of the most influential supporters of direct democracy came by their support out of a conviction that propositions will restore voter's faith in their government , and specifically in their elected representatives : "in these measures ...we are not dispensing with representative government, but making sure that we are going to have it," concluded Woodrow Wilson.*

The utility of a referendum also derives from its impact on public perception of government. Engaging populace through a referendum generates a sense of involvement this is particularly important where people have a perception that the government operates in isolation and has relegated them to the. Dick Gephardt advocating for use of referendum in America noted ' there is a growing feeling among American people that their votes no longer count that politicians fail

to respond to legitimate concerns, and that they have little or no impact on policy decisions. People are frustrated. Voters stay at home on Election Day and yearn for a clear choice on issues' (Qvortrup, 2002, p. 20). The same can be said about other democracies, Botswana included, the people have been sidelined and decisions dominated by the political officials thus justifying the need for increased use of referendums.

### **A CASE FOR REFERENDUMS IN BOTSWANA**

Botswana's policy making process have been criticized for being highly centralized in the executive. Sebudubudu and Osei-Hwedie (2006) note that the bureaucracy through its advisory role plays a central role in the policy making and the same is true of the process of drafting legislation. The process excludes citizens and civil society. For this reason Botswana's democracy has been dubbed 'elitist', (Good, 1999) 'minimalist' to denote the limited role of citizens in Botswana's democracy as well as lack of accountability. Participation in Botswana usually takes form of consultations by the cabinet through Kgotla meetings. This however, is inadequate because even though accessible, the debate reflects power relations in the society. Debates are normally dominated by the chief and his advisors or very wealthy men in the society at the exclusion of commoners (Mogalakwe, 2006). In addition, deriving from the Tswana culture of respect and authority, this consultative process usually turns out to be an endorsement of government decisions. The public does not critically engage government officers on government policy decision because of lack of information. In addition, youth participation in Kgotla meetings is very low. Therefore consultation through the Kgotla does not always yield intended objective of engaging Botswana in policy making. Exacerbating the situation is that civil society organizations have not been very active in promoting voter education or mobilizing people to participate in public policy (Mfundisi, 2005). Infact, the government constantly sideline civil society in deciding policies on which the input of civil society could have profound impact in the outcomes of such policies. Civil society is counteracting force to state power, ensuring that the government acts within the parameters set by constitution (Sebudubudu and Osei-Hwedie, 2006). Therefore this requires institutionalized structures for popular participation

that will compel the government to engage citizen in governance. Direct democracy innovations such as referendums could give citizens a say in the affairs of their country.

In this way, use of referendums to engage the masses in critical decisions enhance their capacity to participate in the democratic process and therefore contribute to development of engaged citizens. A politically conscious citizen will take interest to participate in such activities as voting and other civic responsibilities. Therefore direct democracy could help abate voter apathy by fostering political education which would drive the masses to the polls. Botswana lack this political consciousness. Vast literature attests to this (Mfundisi, 2005, Mpabanga, 2000). To demonstrate this, describing the atmosphere during the first Botswana election in 1965 Good and Taylor (2008, p.754) write “the people entered the process belatedly and in a purely formalistic way. Voting took place in March 1965 among ‘an entirely apolitical electorate’. Only slightly over half of those eligible bothered to participate in an election that was almost certainly preparing the ground for the country’s independence. The excitement and enthusiasm that usually surrounds the first elections in county was clearly absent in Botswana, perhaps because Botswana did not attach any political significance to their maiden election or simply lacked political knowledge. Infact Good and Taylor (2008) acknowledge that ‘Politically, Botswana had had no experience of electing leaders and the country was dominated by hereditary chiefs who controlled patronage and acted as intermediaries with the British...” pg751. They go on further to suggest that the post colonial government retained status quo by forming an elitist democracy where public participation is limited to voting. It is this electoral democracy that had bred voter apathy and disinterested citizens.

Attesting to this, Barber cited in Qvortrup (2002) argued that the reason why voters are incompetent to legislate is because they have been sidelined in deciding public affairs, providing them with an opportunity to make laws through referendum enhance their understanding of the political process. He asserts ‘initiatives and referendum processes are ideal instruments of civic education’ pg 36. Making a case for the use of initiative, Harvard political scientist, William Munro wrote in 1912:

*Emphasis is laid, for example, upon the educative value of direct legislation. By means of the initiative, a spirit of legislative enterprise is promoted among the voters; men are encouraged to formulate political ideas of their own and to press these upon public attention with the assurance that they shall have a fair hearing (Cited in Smith and Tolbert, 2004,p.xvii).*

It is argued that direct democracy enhances knowledge about governance. The public become better informed about government process as well as their rights and responsibilities in a democracy. Attesting to this, Alexis de Tocqueville argued ‘the direct participation of the people in legislation ‘would make them acquitted with the laws and instruct them in the art of government.’ (Cited Tolbert and Smith, 2004, p.11). This propels the citizens to polls. Aware of government processes and procedures they would be in a better place to make informed choices. This, however, depends on robustness of the campaign leading to a referendum. A muted referendum campaign would not contribute to development of civic virtue thus might not motivate people to participate in other processes of democracy such as joining political parties, civic organization and voting in general elections (Setala and Schiller, 2009; Smith and Tolbert,2004). In Botswana referendums do not usually attract a lot of attention from politicians and other political actors. For example, Molomo (1998) points out that in the 1997 referendum the politicians did not do much to educate the public on referendum, nor the pros and cons of the policy proposals put before them. The focus was much on encouraging the electorate to vote. This could have been because there was a consensus among political parties on the need to reform electoral laws. While there were qualms about allowing eighteen year olds to vote, this did not generate intense debate among politicians nor ordinary Batswana. This is in part explained by the fact that there was consensus on the issues among politicians. A hotly contested issue would attract a lot of debate, with each side trying to pursue the voter to vote in its favour. Intense debate generates interest in understanding the issues relating to it. It also forces politicians to reveal more information about the issues at hand. Expounding on this, Setala and Schiller (2009) note that referendums enhance democracy as they force legislators to defend their positions, thus allow the citizens to know the positions of politicians on different issues.



Therefore subjecting matters to popular vote could promote accountability as legislators explain their stand point during campaign (Setala and Schiller, 2009; Setala, 1999; Tolbert et al, 2003).

Involving citizens in governance helps them to develop some confidence about the value of their contribution and thus begin to take more active role in the democratic process. Referring matters to the electorate could inspire confidence and trust on government. Inferring from William Munro's arguments, it could further be argued that the ability to influence government decisions would enhance confidence to participate more. Attesting to this, Tolbert and Smith (2004) argue that ballot measures could result in positive view about government responsiveness (external efficacy) and increase on citizen's ability to exert influence on the government (internal efficacy). Basically they "make the voter realize that he is a sovereign in fact as well as in name". This will motivate the voters to acquire more knowledge about other issues in public affairs that may not necessarily be in the ballot measure. Tolbert and Smith (2004, p.12) proffer

*'Possession and exercise of the power of direct legislation...'has strong educational influence upon the people', providing, "a limitless field for the individual member of society and for society as a whole to develop through submission of new laws to the people". Once equipped with the power to legislate" citizens "will soon acquire knowledge of public questions and demonstrate a degree of intelligence that will put opponents of direct legislation to shame'*

In view of the above, direct democracy instruments could enhance political knowledge and interest in public affairs. Most importantly, it engenders a sense of political involvement and thus enhances public trust on government. Mfundisi (2005) has also pointed to lack of trust in representatives as factor contributing to reduced interest in elections. The electorates tend to hold the view that once in office the politicians serve their own interests. While public policy does not always reflect the interest of the electorates. These views underscore the need for citizens to take an active role in Botswana's democracy. Promoting participatory democracy could mitigate these flaws and strengthen Botswana's democracy. Most importantly, popular participation through referendum could also ensure that public policy is a reflection of the interest of Botswana and not of the ruling party.

Civic education and interest in political matters could motivate citizens to join civic organization; such as political parties and civil society organizations. Civic organizations play a fundamental role in a democracy. They have the potential to mobilize the masses for participation and are a countervailing force to state power. Botswana suffers a weak civil society and this has limited their ability to influence government (Sebudubudu and Osei-Hwedie, 2006) their weakness emanates primarily from a lack of civic culture among Batswana and Tswana culture of respect and subordination. What Taylor (2003) says is the ‘absence of tradition of questioning’. Generally, Batswana have not been very keen in joining civic organizations resulting in a weak civil society which does not exert any considerable pressure on the government. Taylor (2003) observes that due to lack of a strong civil society and opposition, BDP policies go through without any opposition. This means that more often than not the policies and legislation mirror the interest of the BDP-BDP executive to be precise! To demonstrate the magnitude of the problem, Taylor (2003) claims that the opposition in parliament is so muted that criticism of government policies had to come from BDP backbench. He quotes BDP MP noting that ‘there is no opposition in parliament’. In most cases, party loyalty takes precedence over objective and open debates.

The emphasis on discipline and respect to party position has silenced many of the opposing view point in the BDP. Self criticism in the BDP ended with the rise of President Ian Khama to the high office (Botlhomilwe, Sebudubudu and Maripe, 2011). The dominance of BDP members in parliament and its tight grip on its legislators has ensured that laws passed are consistent with the interest of the party and its leadership. One wonders if the party policies are a product of debate and consensus at party level. If the leadership behavior in parliament is anything to go by then we can safely argue the debate is not only muted at parliament but also at the party structures. The policies that go on to be national policies are not robustly debated and scrutinized before their presented before the parliament. It would seem what the party leadership decides what will ultimately pass as the parliament simply rubberstamp decisions made by the executive. This practice undermines democracy.

A constitutional framework that provides for popular participation in the form of direct vote on some of the government policies and proposed legislation as would be defined in the constitution could compel the ruling party to subject its policy proposal to in-depth analysis and debate by party structures as well as the parliament to ensure that when finally thrown to Batswana they get a thumbs up. Currently the constitution entrenches executive dominance and centralization of decision making. Attesting to his Lotshwao (2011) highlights that section 47 (1 and 2) “empowers the president to bypass the party and impose policies.” Pg 107. He forcefully argues

*For a governing party, intraparty democracy is particularly important inasmuch as it makes government (and not just party leadership) responsive to popular demands. Participation by party membership and lower structures in decision making also imposes checks and balances against bad leadership decisions. For internal democracy to exist, a culture of tolerance of debate and dissenting opinion by the party leadership is necessary precondition. Pg. 106*

What obtains in the BDP is a complete opposite of this. The BDP leadership’s intolerance to dissenting views is widely catalogued right from Masire’s era to Khama’s government. For example, during the parliamentary debates on Privatization of Air Botswana members that objected on grounds that there has not been sufficient consultation with the stakeholders were heavily criticized by the then President Mogae. He lamented the BDP backbenchers: ‘a member of parliament cannot denigrate, ridicule, disparage, malign. Vilify, revile and cast dispersions in the BDP government and still expect the electorate to return the party to power’ cited in (Lotshwao, 2011, p.107). It is surprising, scary and disappointing to hear the president lambast the parliament for delivering on their constitutionally recognized mandate. In fact it raises questions about the leadership’s commitment to strengthening democracy in Botswana. This kind of attacks from leadership has undermined robust debate and independent opinion thus reducing legislators to mere cheerleaders of policies presented by the executive. As a result of pressure from party leadership BDP members of parliament have in a number of instances used their numbers to abort a number of motions that could have contributed to the development of the country and deepened democracy. This has happened on instruction from party leaders.

These policies have not contributed in any way to the development of Botswana. Involving the masses through referendums therefore would save the democratic process from seizure by party interest. As argued by Dicey in Qvortrup (2002, p.54) ‘The attraction of the referendum was that it would make’ democracy itself a check on party tyranny’

This intolerance to criticism and unilateral decision making grew with the ascendancy of Khama to presidency. Botlhomilwe et al (2011) argues that Khama’s intolerance to different viewpoint, criticism and freedom of speech could only serve to undermine democracy and slide the country into an authoritarianism. This state of affairs makes a strong case for the electorate to take an active role in their democracy. This demands an informed electorate able to hold the government accountable. It requires an electorate that can raise questions through available channels as groups or as individuals. Over and above this, it requires electorates who exercise their democratic right to vote and use it to hold the government accountable. The complacency and docility has shown that Botswana lacks this kind of citizens. It is on the basis of this that we call for use of referendum to nurture a participatory culture as well as an educative tool to save Botswana’s democracy.

Under duress from the executive the parliament had passed a number of laws which are out of step with democratic principles and also inconsistent with the interests of Botswana. Botlhomilwe et al (2011, p.335) argue “The fear and distrust of Ian Khama seems to have infiltrated the minds of the country’s legislators.” This behavior further entrenches elitism and illiberalism. It undermines representative democracy and the electorates as their interest are made secondary to BDP’s. This alone could discourage the public from expressing their democratic right to vote since their representative fail to voice out their aspirations and needs. Direct democracy initiatives could allow the electorate to reject or endorse government proposed laws if not aligned with the interest of the electorate, thus deepen participatory democracy and enhance checks on the government. Good (1999) cautions against lack of mass participation

*Authoritarianism is inbuilt among a society with low political participation, a small and constrained civil society, and a passive parliament of largely self interested MPs.*

*Botswana's democracy works in the interest of the ruling elite, legitimizing and supporting their position in the absence of electoral competition could never do. (Pg 62)*

Mandatory referendums could therefore save the country from dwindling into authoritarianism. It is clear that BDP interests are often conflated with interests of the nation. According to Botlhale and Molefhe (2013) BDP legislators would reject any proposed that do not appeal to their interest. The Right to Information Bill, the Bill on Declaration of Assets and Liabilities, proposal to amend the constitution to allow for direct election of the president among others are some of the proposals that BDP legislators rejected. The request by opposition MP to table the freedom of information bill was aborted on purely partisan reasons. The relevance of the law in the 21<sup>st</sup> century democracies cannot be over emphasized. Not only will the adoption of the law enhance democracy, information is a basic human right and any state that purports to be a democracy must be seen to be making efforts to avail information to citizens to enhance their ability to hold the government accountable and participate fully in the democratic process. Meaningful participation in public affairs requires the public to have information about government processes, policies and programmes Young democracies in the region as South Africa and Angola (Botlhale and Molefhe, 2013) have embraced this law while Africa's oasis of democracy lags behind.

The bill on declaration of assets and liabilities was also killed on purely partisan reasons. Adopting a law on declaration of assets and liabilities has been a topical issue following revelation of possible corruption in government in the 1990s. If passed this law would enhance accountability among politicians and senior public servants in addition to protecting them against public speculation on their involvement in corruption. Given the increasing allegations of corruption in government involving high placed people such as cabinet ministers and senior government officials, such a law would contribute towards building a clean government and also win public trust on institutions and as well as strengthen Botswana's anti corruption strategy. Studies have also shown that Batswana support the law on declaration of assets and liabilities. According to Modise (2012), over 50% of Batswana interviewed in the Afrobarometer round 5 show support for the declaration of assets by cabinet members to an independent body, 64%

have held the view that the same should be extended to sitting MPS, head of public enterprises and senior government officials (Modise,2012) . The evidence point to the need to have the law in place, this will not only save the government officials accusations of engaging in corruption but will enhance Botswana's democracy. Sadly as is the norm, public interest was subordinated to the interest of BDP executive. The reasons advanced in rejecting the proposal show little regard for public interest. A motion on constitutional amendment was also aborted on flimsy grounds. Botlhomilwe etal (2011:344) quotes a local newspaper:

*There is a growing intolerance for open and honest debate from the ruling Botswana Democratic Party as evidenced by the zeal to try to stifle parliamentary democracy...*

It continued....

*...When the BDP demigods use the party caucus to hijack national debates in the national assembly, it is the public that is short-changed and in the end it is democracy that suffers.*

In a similar manner laws that are not in sync with the democratic principle which probably would have been rejected by Batswana had been passed in parliament without rigorous debate to merely protect interests of BDP leadership. The Intelligence and Security Services Act was rushed through parliament without proper consultation with stakeholders resulting in opposition MPs boycotting the debates in protest (Tsholofelo, 2013). According to Tsholofelo (2013) the adoption of the bill without input of opposition MPs denied it the much needed debate and has reduced its legitimacy. The controversies and outcry following the adoption of the law underscores and its implications on foundations of the constitution and democracy are a justification enough for people to have directly voted on its adoption. Most importantly, throwing the matter to the public to decide on whether they want a spy law or not would have increased its legitimacy among Batswana and perhaps would not be surrounded by such much negative publicity.

In the same way, the public health law was adopted despite the draconian clauses on HIV/AIDS that undermine human rights. Opponents of this law argue that the law legitimizes breach of

confidentiality as a cornerstone of medical practice as it gives the medical practitioners the power to disclose one's status to a third party (Letswamotse, 2013). He noted that with the new law, many people will lose confidence in the public health care system. Surprisingly the BDP dominated parliament approved the bill, opposition MPs found themselves at the mercy of BDP backbenchers again! The parliament had failed once again to play its role as the custodian of human rights and has allowed the government to infringe upon the rights of citizens.

This apparent failure of the body entrusted with the protection of human rights is a compelling reason to have measures in place to allow the people to decide what is best for them. A referendum will serve this purpose. Arguing in support of a referendum, A.V Dicey, one of the contributors to the development of argument in support of referendum, argued that a referendum would become a 'people's veto', a corrective measure against the excess of legislature and not necessarily a replacement for representative democracy (Qvortrup, 2002). Therefore a referendum becomes the only instrument that the people can use to restrain legislative power. He argues that it is

*the only check on the predominance of party which is at the same time democratic and conservative. The attraction of the referendum was that it would make 'democracy itself a check on party tyranny', without undermining the system of representative government which 'appears to be an essential characteristics of civilized or progressive state (Qvortrup, 2002, p.54)*

Given the above discussed political context, throwing policy matters to the electorates act as a check on the legislature to ensure that laws are consistent with the interest of Botswana. According to Qvortrup (2002), referendums act as a check on government. They protect the nation against party politics and sectarian interests that undermine constructive debates in parliament (Qvortrup, 2002). Therefore employ referendum to decide some public policy matters could give the people restrain their government. it could promote accountability in the legislature and government in general thus close the observed gaps in Botswana's institutions of accountability. Participating in policy making also a sense of involvement in decision making and thus can encourage people to participate as they begin to appreciate the value of their

involvement/vote. Most importantly, direct democracy develops citizens, it inculcates civic virtues and transforms them into active citizens that understand government process and are willing to play their role in a democracy.

### **SUBJECTS ON WHICH A REFERENDUM MAY BE HELD**

In Botswana, the constitution and the referendum act are silent on the matters that must be decided by a referendum. Section 3 of the referendum act of 1987 pronounces: “Where under any law, any matter is required to be submitted to a vote of the electors qualified to vote in the election of the elected Members of the National Assembly for approval by the majority of them, it shall be submitted in accordance with the provisions of this act.” There seems to be no clear criteria on issues that must be decided by popular vote. The referendum act only outlines the procedure and does not go further to delineates issues that may be the object of electors. The practice, at least with the past three referenda has been that matters relating to constitutional amendment are decided by a referendum subject to approval by the national assembly. In this way, the legislature plays an important role in determining whether an issue will be decided by a referendum or not. In fact, much power lies with the national assembly as they decide on whether the issues should be in the agenda, if the National assembly does not deem it necessary to hold a referendum they might vote against the proposal. They depend on the will of the parliament. In this way, referendum in Botswana is adhoc or optional referendum since they are initiated by the parliament.

It would be difficult to clearly define matters for which a referendum can be called. While neither the constitution nor the referendums act specify that constitutional amendment should be thrown to the public to decide, the government has in the past subjected proposals on amendment of constitutional clauses and other legislation such as the electoral law to popular vote. This should be extended to other significant issues, ideally issues that have a bearing on human rights. That is, legislation that might severely curtail rights which citizens have been enjoying. For example laws that would undermine their rights to privacy, freedom of expression and right to personal liberty. It is important that any law that seeks to limit the enjoyment of those rights involves the public right from its conception, formulation and implementation. This will not only



ensure that the law enjoys greater legitimacy but will also model it such that it is compatible with the interest of the people. Their implications on the founding principles of the republic and fundamental human rights alone are enough justification for involving the masses in their formulation.

In a similar manner, any proposed legislation that departs from established principles, social norms and values of the society should be a product of consensus among Batswana for purposes of ownership and understanding. The same is true for laws that although necessary to safeguard the security, peace and stability of the nation, are in conflict with long standing principles democracy. By seeking guidance from the populace the government allows them to decide on how much of each their liberties can be limited to guarantee their security or to advance common good. Striking a balance between two seemingly conflicting values can be a daunting task without the involvement of the masses.

Referendum is also meant to curtail the state from infringing constitutionally guaranteed rights at whim. It is important to note that the interests of the people change with time such that the government cannot at anytime claim monopoly of information on what people consider important and worthy of addition into the menu of rights. To keep apace with changing environment and opinions is only appropriate to engage the people. For example, despite calls by human rights groups to legalize same sex marriages the government has constantly held that homosexuality is immoral and therefore should not be legalized. The view is premised on the assumption that these non traditional practices would not sit well with Batswana yet there is no evidence pointing to that. The government has defined the social values and norms as well as what is right and morally acceptable. This conception of the morally right and wrong was influenced by societal values of a particular era. The views of Batswana on these matters might have changed over time as a result of influences of Western values .In view of this, such matters on which representatives cannot claim to know the position of Batswana should be decided by a direct vote.

## **CONCLUSION**

This paper has explored the use of referendum to decide public policy as a way through which people can be engaged in government. It has argued that based on the positive educative externalities of referendums subjecting policy matters to referendums more frequently could enhance political knowledge and interest in public affairs. Most crucially, a referendum develops citizens into politically conscious citizens that take interest in public affairs. Therefore, overtime referendum could develop political conscious citizens who participate in democratic process. On the basis of this; this paper has recommended mandatory referendums on some policy matters as an address to low levels of participation characteristic of Botswana's democracy. In addition to increasing voter turnout, referendum encourages civic engagement. Furthermore, in the face of quality of representation as a result of BDP dominance in the legislature and party politics engaging the masses in law making through referendums can be an effective instrument for controlling the government.

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