

Constitution of Botswana 1966

CHAPTER II

Protection of Fundamental Rights and Freedoms of the Individual (ss 3-19)

15. Protection from discrimination on the grounds of race, etc.

(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(a) for the appropriation of public revenues or other public funds;

(b) with respect to persons who are not citizens of Botswana;

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(d) for the application in the case of members of a particular race, community or tribe of customary law with respect to any matter whether to the exclusion of any law in respect to that matter which is applicable in the case of other persons or not; or

(e) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined

force or for the service of a local government authority or a body corporate established directly by any law.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorized by section 9(2), 11(5), 12(2) 13(2), or 14(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section—

(a) if that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or

(b) to the extent that the law repeals and re-enacts any provision which has been contained in any written law at all times since immediately before the coming into operation of this Constitution

CHAPTER III

Citizenship (ss 20-29: repealed by Constitution (Amendment) Act 32 of 1982)

CHAPTER IV

The Executive (ss 30-56)

33. Qualification for election as President

(1) A person shall be qualified for election as President if, and shall not be qualified unless, he—

(a) is a citizen of Botswana by birth or descent;

(b) has attained the age of 30 years; and

(c) is qualified to be elected as a Member of the National Assembly.

(2) Notwithstanding any other law to the contrary, for the purposes of this section and section 39—

(a) the term "citizen by birth" shall be understood to include only those persons who became citizens of Botswana prior to the amendment of the law relating to citizenship by the Cap. 01:01 Citizenship Act;

(b) any person who, although his father was a citizen of Botswana at the time of that person's birth, had, by virtue of his having been born outside Botswana, to be registered as a citizen of Botswana, under the law relating to citizenship in force at that time, shall be regarded as a citizen by descent.

39. Vice President

(1) There shall be a Vice-President who shall be appointed by the President from among the Elected Members of the National Assembly who are citizens of Botswana by birth or descent, which appointment shall be endorsed by the said Elected Members.

(2) The Vice-President shall continue in office until a person elected at the next election of President under section 32 or 35 of this Constitution assumes office:

Provided that the office of Vice-President shall become vacant—

(i) if the appointment of the holder of the office is revoked by the President; or

(ii) if the holder of the office ceases to be a Member of the National Assembly for any other reason than a dissolution of Parliament.

(3) The Vice-President shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

(4) If the Vice-President is absent from Botswana or is incapable by reason of illness or any other cause of discharging the functions of his office, the President may appoint a person, from among the Members of the Assembly, to perform the functions of the office of Vice-President and any person so appointed may discharge those functions accordingly:

Provided that a person appointed under this subsection shall cease to perform the functions of the office of Vice-President—

(i) if his appointment is revoked by the President;

(ii) if he ceases to be a Member of the Assembly otherwise than by reason of a dissolution of Parliament;

(iii) upon the assumption by any person of the office of President; or

(iv) upon the President giving him notice that the Vice-President is about to resume his functions.

(5) Where the Vice-President is performing the functions of the office of President in accordance with section 35 or 36 of this Constitution he may appoint a person, from among the Members of the Assembly, to perform the functions of the office of Vice-President and any person so appointed may discharge those functions accordingly:

Provided that a person appointed under this subsection shall cease to perform the functions of the office of Vice-President—

(i) if his appointment is revoked by the Vice-President;

(ii) if he ceases to be a Member of the Assembly otherwise than by reason of a dissolution of Parliament; or

(iii) if the Vice-President ceases to perform the functions of the office of President.

(6) In this section references to Members of the Assembly shall, in the event of Parliament being dissolved, be construed as references to those persons who immediately before the dissolution were Members of the Assembly.

61. Qualifications for election to National Assembly

Subject to the provisions of section 62 of this Constitution, a person shall be qualified to be elected as a Member of the National Assembly if, and shall not be qualified to be so elected unless—

(a) he is a citizen of Botswana;

(b) he has attained the age of 18 years;

(c) he is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered; and

(d) he is able to speak, and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.