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- 1. Botswana is a sovereign Republic. Declaration
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- 2. The Public Seal of the Republic shall be such device as may be prescribed by or under an Act of Parliament. Public Seal.

CHAPTER II**PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

- 3. Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely— Fundamental
rights and
freedoms
of the
individual.

- (a) life, liberty, security of the person and the protection of the law ;
- (b) freedom of conscience, of expression and of assembly and association ; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being

limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Protection
of right to
life.

4.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable:—

- (a) for the defence of any person from violence or for the defence of property ;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained ;
- (c) for the purpose of suppressing a riot, insurrection or mutiny ; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection
of right to
liberty.

5.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in execution of the sentence or order of a court, whether established for Botswana or some other country, in respect of a criminal offence of which he has been convicted ;
- (b) in execution of the order of a court of record punishing him for contempt of that or another court ;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law ;
- (d) for the purpose of bringing him before a court in execution of the order of a court ;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana ;
- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years ;
- (g) for the purpose of preventing the spread of an infectious or contagious disease ;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community ;
- (i) for the purpose of preventing the unlawful entry of that person into Botswana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Botswana or for the purpose of restricting that person while he is being conveyed through Botswana in the course of his extradition or removal as a convicted prisoner from one country to another ; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within

Botswana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Botswana in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana,

and who is not released, shall be brought as soon as is reasonably practicable before a court; and if any person arrested or detained as mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that other person.

6.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression “forced labour” does not include—

(a) any labour required in consequence of the sentence or order of a court;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection
from slavery
and forced
labour.

Protection
from
inhuman
treatment.

7.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) 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 authorises the infliction of any description of punishment that was lawful in the former Protectorate of Bechuanaland immediately before the coming into operation of this Constitution.

Protection
from
deprivation
of property.

8.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(a) the taking of possession or acquisition is necessary or expedient—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement ; or

(ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community ; and

(b) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation ; and

(ii) securing to any person having an interest in or right over the property a right of access to the High Court, either direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Botswana.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorises—

(a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party ; or

(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—

(i) in satisfaction of any tax, rate or due ;

- (ii) by way of penalty for breach of the law whether under civil process or after conviction of a criminal offence under the law in force in Botswana ;
- (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract ;
- (iv) in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations ;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or injurious to the health of human beings, animals or plants ;
- (vi) in consequence of any law with respect to the limitation of actions ; or
- (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ; or

- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of—

- (i) enemy property ;
- (ii) property of a deceased person, a person of unsound mind, a person who has not attained the age of twenty-one years, a prodigal, or a person who is absent from Botswana, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein ;
- (iii) property of a person declared to be insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property ; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

Protection
for
privacy of
home and
other
property.

9.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) 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—

- (a) that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or in order to secure the development or utilisation of any property for a purpose beneficial to the community ;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons ;
- (c) that authorises an officer or agent of the Government of Botswana, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be ; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions
to secure
protection
of law.

10.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognised by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty ;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged ;
- (c) shall be given adequate time and facilities for the preparation of his defence ;
- (d) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice ;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution ; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(9) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established or recognised by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in the last foregoing subsection shall prevent the court or other adjudicating authority from excluding from the proceedings

persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

- (a) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings ; or
- (b) may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

- (a) subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts ;
- (b) subsection (2)(d) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under African customary law (being proceedings against any person who, under that law, is subject to that law) ;
- (c) subsection (2)(e) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds ;
- (d) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law ;
- (e) subsection (8) of this section to the extent that the law in question authorises a court to convict a person of a criminal offence under any African customary law to which, by virtue of that law, such person is subject.

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(d) and (e) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

(14) In this section “criminal offence” means a criminal offence under the law in force in Botswana.

Protection
of freedom of
conscience.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place

of education which it wholly maintains ; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) 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 which is reasonably required—

(a) in the interests of defence, public safety, public order, public morality or public health ; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

Protection
of freedom of
expression.

(2) 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—

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ; or

(b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television ;
or

(c) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection
of freedom of
assembly and
association.

13.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) 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—

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health ; or

(b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons ; or

(c) that imposes restrictions upon public officers,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection
of freedom of
movement.

14.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Botswana, the right to reside in any part of Botswana, the right to enter Botswana and immunity from expulsion from Botswana.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) 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—

(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, or public health or the imposition of restrictions on the acquisition or use by any person of land or other property in Botswana and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society ;

(b) for the imposition of restrictions on the freedom of movement of any person who is not a citizen of Botswana ;

(c) for the imposition of restrictions on the entry into or residence within defined areas of Botswana of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or well being of Bushmen ;

(d) for the imposition of restrictions upon the movement or residence within Botswana of public officers ; or

(e) for the removal of a person from Botswana to be tried outside Botswana for a criminal offence or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law in force in Botswana of which he has been convicted.

(4) If any person whose freedom of movement has been restricted by order under such a provision as is referred to in subsection (3)(a) of this section (other than a restriction which is applicable to persons generally or to general classes of persons) so requests at any time during the

period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Botswana, appointed by the Chief Justice.

(5) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

15.—(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.

Protection
from
discrimina-
tion on the
grounds
of race, etc.

(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 or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons ; 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 authorised 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 authorised 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.

Derogation
from
fundamental
rights and
freedoms.

16.—(1) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 5 or 15 of this Constitution to the extent that the law authorises the taking, during any period when Botswana is at war or any period when a declaration under section 17 of this Constitution is in force, of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period.

(2) Where a person is detained by virtue of such an authorisation as is referred to in subsection (1) of this section the following provisions shall apply—

(a) he shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained ;

(b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised ;

(c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, qualified to be enrolled as an advocate in Botswana, appointed by the Chief Justice ;

(d) he shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal representative and he and any such legal representative shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations, concerning the necessity or expediency of continuing his detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

17.—(1) The President may at any time, by Proclamation published in the Gazette, declare that a state of public emergency exists.

Declarations
relating to
emergencies.

(2) A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect—

(a) in the case of a declaration made when Parliament is sitting or has been summoned to meet within seven days, at the expiration of a period of seven days beginning with the date of publication of the declaration ;

(b) in any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration ;

unless before the expiration of that period, it is approved by a resolution passed by the National Assembly, supported by the votes of a majority of all the voting members of the Assembly.

(3) Subject to the provisions of subsection (4) of this section, a declaration approved by a resolution of the National Assembly under subsection (2) of this section shall continue in force until the expiration of a period of six months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution :

Provided that the National Assembly may, by resolution, supported by the votes of a majority of all the voting members of the Assembly, extend its approval of the declaration for periods of not more than six months at a time.

(4) The National Assembly may by resolution at any time revoke a declaration approved by the Assembly under this section.

18.—(1) Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of sections 3 to 16 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

Enforcement
of protective
provisions.

(2) The High Court shall have original jurisdiction—

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section ;

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 16 (inclusive) of this Constitution.

(3) If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 3 to 16 (inclusive) of this Constitution, the person presiding in that court may,

and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his opinion, the raising of the question is merely frivolous or vexatious.

(4) Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(5) Rules of court making provision with respect to the practice and procedure of the High Court for the purpose of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

Interpreta-
tion and
savings.

19.—(1) In this Chapter, unless the context otherwise requires—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly ;

“court” means any court of law having jurisdiction in Botswana other than a court established by a disciplinary law, and includes the Judicial Committee and in sections 4 and 6 of this Constitution a court established by a disciplinary law ;

“disciplinary law” means a law regulating the discipline of any disciplined force ;

“disciplined force” means—

- (a) a naval, military or air force ;
- (b) a police force ; or
- (c) a prison service ;

“legal representative” means a person entitled to practise in Botswana as an advocate or attorney.

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(3) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Botswana, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

CHAPTER III

CITIZENSHIP

Persons who
become
citizens on
30th Septem-
ber 1966.

20.—(1) Every person who, having been born in the former Protectorate of Bechuanaland, is on 29th September 1966 a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Botswana on 30th September 1966.

(2) Every person who, having been born outside the former Protectorate of Bechuanaland, is on 29th September 1966 a citizen of the United Kingdom and Colonies or a British protected person, and is not a citizen of any other country, shall, if his father becomes, or would but for his death have become, a citizen of Botswana in accordance with the provisions of subsection (1) of this section, become a citizen of Botswana on 30th September 1966.

21. Every person born in Botswana on or after 30th September 1966 shall become a citizen of Botswana at the date of his birth:

Provided that a person shall not become a citizen of Botswana by virtue of this section if at the time of his birth—

(a) neither of his parents is a citizen of Botswana and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Botswana ; or

(b) his father is a citizen of a country with which Botswana is at war and the birth occurs in a place then under occupation by that country.

22. A person born outside Botswana on or after 30th September 1966 shall become a citizen of Botswana at the date of his birth if at that date his father is a citizen of Botswana:

Provided that a person shall not become a citizen of Botswana by virtue of this section if at the time of his birth he becomes a citizen of any other country.

23.—(1) Any person born outside the former Protectorate of Bechuanaland before 30th September 1966, who does not become a citizen of Botswana in accordance with section 20(2) of this Constitution, but whose father becomes or would but for his death have become, a citizen of Botswana in accordance with section 20(1) of this Constitution shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana:

Provided that any person who is under the age of twenty-one years (other than a woman who is or has been married) shall not be competent to make an application for registration under this subsection, but an application may be made on behalf of that person by his parent or guardian.

(2) Any person who, on 30th September 1966, is a citizen of the United Kingdom and Colonies, having become such a citizen by virtue of his having been naturalised or registered under the British Nationality Act 1948(a) in the former Protectorate of Bechuanaland or whilst in the service of the Bechuanaland Government, shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana:

Provided that any person who is under the age of twenty-one years (other than a woman who is or has been married) shall not be competent to make an application for registration under this subsection, but an application may be made on behalf of that person by his parent or guardian.

Persons born in Botswana on or after 30th September 1966.

Persons born outside Botswana on or after 30th September 1966 who became citizens at birth.

Persons entitled to be registered as citizens of Botswana by virtue of connection with Bechuanaland.

(3) Any woman who, on 30th September 1966, is or has been married to a person—

(a) who becomes a citizen of Botswana by virtue of subsection (1) or subsection (2) of section 20 of this Constitution ; or

(b) who, having died before that date would, but for his death, have become a citizen of Botswana by virtue of that section,

shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(4) Any woman who—

(a) on 30th September 1966, is married to a person who becomes entitled to be registered as a citizen of Botswana under subsection (1) or subsection (2) of this section but whose marriage is terminated after that date by death or dissolution and before that person exercises his right to be so registered ; or

(b) on 30th September 1966, has been married to a person who becomes or would but for his death have become entitled to be registered as a citizen of Botswana under subsection (1) or subsection (2) of this section, but whose marriage has been terminated by death or dissolution before that date,

shall be entitled, upon making application before the specified date in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(5) In this section "the specified date" means 1st October 1968, or such later date as may be prescribed by or under an Act of Parliament.

Registration of persons born outside Botswana on or after 30th September 1966.

24. Any person who is born outside Botswana on or after 30th September 1966 and whose father is at the date of such birth a citizen of Botswana shall, if he does not become a citizen of Botswana under section 22 of this Constitution, be entitled, upon application being made on his behalf by his parent or guardian within two years of his birth or with the permission of the Minister at a later date, to be registered as a citizen of Botswana.

Registration of Commonwealth citizens and citizens of certain African countries.

25.—(1) Any person who—

(a) has attained the age of twenty-one years or is a woman who is or has been married ;

(b) is a citizen of any country to which this section applies ; and

(c) has been ordinarily resident in Botswana (including the former Protectorate of Bechuanaland) for the period of five years immediately preceding that person's application for registration or for such shorter period as the President may in exceptional circumstances in any particular case direct,

shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

(2) This section applies to—

(a) any country to which section 28 of this Constitution applies ; and

(b) any other country which is a country in Africa and is for the time being declared by the Minister, by notice published in the Gazette, to be a country which grants to citizens of Botswana a right to obtain citizenship of that country corresponding to that conferred by this section.

26.—(1) Any woman who, after 29th September 1966, marries a person who is or becomes a citizen of Botswana shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

Woman married to Botswana citizen.

(2) Any woman who is, on 30th September 1966, married to a man who after that date becomes a citizen of Botswana shall be entitled, upon making application before such date and in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Botswana.

27.—(1) Parliament may make provision for the acquisition of citizenship of Botswana by persons who are not eligible or who are no longer eligible to become citizens of Botswana under the provisions of this Chapter.

Powers of Parliament.

(2) Parliament may make provision for depriving of his citizenship of Botswana any person who is a citizen otherwise than by virtue of section 20, 21 or 22 of this Constitution.

(3) Parliament may make provision for the renunciation by any person of his citizenship of Botswana.

(4) Parliament may make provision to regulate the procedure relating to the acquisition and loss of citizenship of Botswana.

28.—(1) Every person who under this Constitution or any Act of Parliament is a citizen of Botswana or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

Commonwealth citizens.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948(a) or who continues to be a British subject under section 2 of that Act, or who is a British subject by virtue of section 1 of the British Nationality Act 1965(b) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) Save as may otherwise be provided by Parliament, the countries to which this section applies are the United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, Malaysia, Nigeria, Cyprus, Sierra Leone, Tanzania, Jamaica, Trinidad and Tobago, Uganda, Kenya, Malawi, Malta, The Gambia, Zambia, Southern Rhodesia, Singapore, Guyana, and any other country that may be prescribed by Parliament.

29.—(1) Any person who, upon the attainment of the age of twenty-one years, is a citizen of Botswana and also a citizen of some country other than Botswana shall, subject to the provisions of this section, cease to be a citizen of Botswana upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and made such declaration of his intentions concerning residence as may be prescribed by Parliament.

Dual citizenship.

(2) Any person who—

(a) has attained the age of twenty-one years before 30th September 1966, and

(a) 1948 c. 56.

(b) 1965 c. 34.

- (b) becomes a citizen of Botswana on that day by virtue of the provisions of section 20(1) of this Constitution ; and
 - (c) is immediately after that day also a citizen of some country other than Botswana,
- shall, subject to the provisions of this section, cease to be a citizen of Botswana upon the specified date unless he has renounced his citizenship of that other country, taken the oath of allegiance and made such declaration of his intentions concerning residence as may be prescribed by Parliament.

(3) Subject to the provisions of this section a citizen of Botswana shall cease to be a citizen if—

- (a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Botswana by voluntary act (other than marriage) ; or
- (b) having attained the age of twenty-one years he otherwise acquires the citizenship of some country other than Botswana and has not, by the specified date, renounced his citizenship of that other country, taken the oath of allegiance and made such declaration of his intention concerning residence as may be prescribed by Parliament.

(4) A person who, having attained the age of twenty-one years or being a woman who is or has been married—

- (a) becomes a citizen of Botswana otherwise than under section 20, 21 or 22 of this Constitution ; and
- (b) is immediately after the day upon which he becomes a citizen of Botswana also a citizen of some other country,

shall, subject to the provisions of this section, cease to be a citizen of Botswana upon the specified date unless he has renounced the citizenship of that other country, taken the oath of allegiance, and made such declaration of his intentions concerning residence as may be prescribed by Parliament.

(5) For the purposes of this section, where, under the law of a country other than Botswana, a person cannot renounce his citizenship of that other country, he need not make such renunciation but he may instead be required to make such declaration concerning that citizenship as may be prescribed by Parliament.

(6) In this section “ the specified date ” means—

- (a) in relation to a person to whom subsection (1) of this section refers, the date on which he attains the age of twenty-two years ;
- (b) in relation to a person to whom subsection (2) of this section refers, 1st October 1968 ;
- (c) in relation to a person to whom subsection (3)(b) of this section refers, the expiration of one year after the date on which he acquired the citizenship of the country other than Botswana ; and
- (d) in relation to a person to whom subsection (4) of this section refers, at the expiration of three months after the date upon which he became a citizen of Botswana,

or, in the case of a person of unsound mind, such later date as may be prescribed by or under an Act of Parliament.

(7) Provision may be made by or under an Act of Parliament for extending beyond the specified date the period in which any person may make a renunciation of citizenship, take an oath or make a declaration for the purposes of this section, and if such provision is made that person shall not cease to be a citizen of Botswana upon the specified date but shall cease to be such a citizen upon the expiration of the extended period if he has not then made the renunciation, taken the oath or made the declaration, as the case may be.

30.—(1) In this Chapter—

“the Minister” means the Minister who is for the time being responsible for matters relating to citizenship in Botswana.

“British protected person” means a person who is a British protected person for the purposes of the British Nationality Act 1948.

Interpretation.

(2) For the purpose of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 30th September 1966 and the birth occurred after 29th September 1966 the national status that the father would have had if he had died on 30th September 1966 shall be deemed to be his national status at the time of his death.

(4) An application for registration as a citizen under section 23, 24 or 25 of this Constitution or under any Act of Parliament shall not be made by or on behalf of any person who, under any law in force in Botswana, is adjudged or otherwise declared to be of unsound mind.

CHAPTER IV

THE EXECUTIVE

PART 1

The President and Vice-President

31. There shall be a President of the Republic of Botswana who shall be the Head of State.

Office of President.

32.—(1) The first President shall be the person who immediately before 30th September 1966 holds the office of Prime Minister under the Constitution.

First President.

(2) The first President shall be deemed to have assumed office at the coming into operation of this Constitution.

33.—(1) Whenever Parliament is dissolved an election shall be held to the office of President in such manner as is prescribed by this section and, subject thereto, by or under an Act of Parliament.

Election of President after dissolution of Parliament.