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# **Botswana's Constitution of 1966 with Amendments through 2002**

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## CHAPTER I

# The Republic (ss 1-2)

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### 1 Declaration of Republic

Botswana is a sovereign Republic.

### 2 Public Seal

The Public Seal of the Republic shall be such device as may be prescribed by or under an Act of Parliament.

## CHAPTER II

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

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### 3 Fundamental rights and freedoms of the individual

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—

- (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.

### 4 Protection of right to life

#### (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.

## 5 Protection of right to personal liberty

### (1)

No person shall be deprived of his personal liberty save as may be authorized 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 18 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;
- (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; or
- (k) for the purpose of ensuring the safety of aircraft in flight.

### (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 therefor from that other person.

## 6 Protection from slavery and forced labour

(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.

## 7 Protection from inhuman treatment

(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 authorizes the infliction of any description of punishment that was lawful in the country immediately before the coming into operation of this Constitution.

## 8 Protection from deprivation of property

### (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;
  - (ii) in order to secure the development or utilization of that, or other, property for a purpose beneficial to the community; or
  - (iii) in order to secure the development or utilization of the mineral resources of Botswana; 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)

Subsection (1)(b)(i) of this section shall be deemed to be satisfied in relation to any 30 of 1969 Law applicable to the taking of possession of minerals or the acquisition of rights to minerals if that law makes provision for the payment at reasonable intervals of adequate royalties.

### (4)

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 authorizes—

- (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.

**(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—

- (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 to do so 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 21 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.

**(6)**

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.

## 9 Protection for privacy of home and other property

(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 utilization of mineral resources, for the purpose of any census or in order to secure the development or utilization 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 authorizes 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 authorizes, 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.

## 10 Provisions to secure protection of law

(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 recognized 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 authorized 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 recognized 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 subsection (10) 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 18 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) or (2)(e) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under customary law (being proceedings against any person who, under that law, is subject to that law);
- (c) subsection (2)(c) 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 authorizes 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 authorizes a court to convict a person of a criminal offence under any 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.

## 11 Protection of freedom of conscience

(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 Protection of freedom of expression

(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.

(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, employees of local government bodies, or teachers,

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.

## 13 Protection of freedom of assembly and association

(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;
- (b) that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
- (c) that imposes restrictions upon public officers, employees of local government bodies, or teachers; or
- (d) for the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration) and conditions whereby registration may be refused on the grounds that any other trade union already registered, or association of trade unions already registered, as the case may be, is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought,

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.

## 14 Protection of freedom of movement

(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 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.

## 16 Derogation from fundamental rights and freedoms

(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 authorizes 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 authorization 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 14 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 authorized;
- (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; and
- (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 Declarations relating to emergencies

(1)

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

(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; or
- (b) in any other case, at the expiration of a period of 21 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 Enforcement of protective provisions

(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.

(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; or
- (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 purposes 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.

## 19 Interpretation and savings

(1)

In this Chapter, unless the context otherwise requires—

- "court" means any court of law having jurisdiction in Botswana other than a court established by a disciplinary law, 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 (ss 20-29: repealed)

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Repealed.]

## CHAPTER IV

# The Executive (ss 30-56)

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### **PART I The President and the Vice-President (ss 30-41)**

#### *30 Office of President*

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

#### *31 First President*

*(1)*

The first President shall be the person who immediately before 30th September, 1966 holds the office of Prime Minister under the Constitution.

*(2)*

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

### **32 Election of President after dissolution of Parliament**

**(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.

**(2)**

Nominations in the election of a President shall be delivered to the returning officer on such day and at such time as may be prescribed by or under any law for the time being in force in Botswana; the nomination of a candidate in an election of a President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than 1000 persons registered as voters for the purpose of elections to the Assembly.

**(3)**

The following provisions shall then apply—

- (a) a person nominated as a Parliamentary candidate may, at the time of his nomination and subject to the provisions of paragraph (b), declare in such manner as may be prescribed by or under an Act of Parliament which of the candidates in the election of President he supports, but the nomination of a Parliamentary candidate shall be valid notwithstanding that the nomination paper does not contain such a declaration;
- (b) such a declaration shall not be made in relation to any Presidential candidate unless that candidate has signified, in such manner as may be prescribed by or under an Act of Parliament, his consent to the making of a declaration in his favour by that Parliamentary candidate;
- (c) where the Parliamentary election is contested in any constituency a poll shall be taken in that constituency at which the votes shall be given by ballot, and for the purposes of that poll any Parliamentary candidate who declared support in accordance with paragraph (a) for a particular Presidential candidate shall use the same voting colour and symbol, if any, as may have been allocated under any law for the time being in force in Botswana to that Presidential candidate for the purposes of the Presidential election;
- (d) the returning officer shall declare to be elected as President any candidate for whom support has been declared in accordance with paragraph (a) above by not less than such number of persons elected as Members of the National Assembly in the Parliamentary election as corresponds to more than half the total number of seats for Elected Members in the Assembly, and if there is no such person the returning officer shall declare that no candidate has been elected.

**(4)**

Parliament may make provision whereby the time for nominating Presidential candidates may be extended in the event of there being no qualified candidate nominated at the expiration of the time for the delivery of such nominations.

**(5)**

Where, at the expiration of the time for the delivery of nominations in the election of a President, more than one qualified candidate is validly nominated and any of those candidates dies before the commencement of the poll in the Parliamentary election, the poll in the Parliamentary election shall be countermanded, fresh nominations of Parliamentary candidates shall take place in every constituency and a fresh election of a President shall be held in accordance with the foregoing provisions of this section.

**(6)**

Where—

- (a) any candidate in an election of a President dies during the period commencing with the taking of the poll in the Parliamentary election and ending when the result of the election has been ascertained and that candidate would, but for his death, have been entitled to have been declared elected as President under subsection (3) of this section; or
- (b) the returning officer declares in accordance with the provisions of subsection (3)(d) of this section that no candidate has been elected,

the new National Assembly shall meet on such day (not being more than 14 days after the result of the election is ascertained or, as the case may be, the declaration that no candidate has been elected) as the Speaker shall appoint, and shall elect a person to the office of President in such manner as is prescribed by section 35(5) of this Constitution and subject thereto by or under an Act of Parliament. Such an election shall take place before the election of the Specially Elected Members of the National Assembly.

**(7)**

A person elected to the office of President under this section shall assume that office on the day upon which he is declared elected.

**(8)**

Without prejudice to the provisions of section 92 of this Constitution, an Elected Member of the National Assembly may, in the event of there being one or more successful election petitions following a general election, move, at the first sitting of the Assembly after the resultant by-elections have been decided and the Members thereby elected have taken their seats, that the President does not enjoy the support of the majority of the Elected Members of the Assembly; and in the voting on that question the Specially Elected Members of the Assembly shall have no vote. If it appears as a result of the voting on that question that the President does not enjoy the support of a majority of the elected Members of the Assembly, the office of President shall become vacant.

**(9)**

Any Elected Member of the Assembly may give notice to the President that he intends to move in the Assembly a motion under subsection (8) and notwithstanding any other provision of this Constitution the President shall not after receipt of any such notice be empowered to dissolve Parliament before the conclusion of the sitting of the Assembly mentioned in the said subsection (8).

**(10)**

If the office of President becomes vacant in accordance with subsection (8) of this section the seats of the Specially Elected Members of the Assembly shall also become vacant, and the election of a person to the office of President shall take place before the election of the Specially Elected Members.

**(11)**

In this section—

- "Parliamentary candidate" means a candidate in the Parliamentary election;
- "the Parliamentary election" means the general election to elect those Members of the National Assembly who are referred to in section 58(2)(a) of this Constitution following any dissolution of Parliament;
- "Presidential candidate" means a candidate for the office of President;
- "the returning officer" means the returning officer specified in section 38 of this Constitution.

**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.

**34 Tenure of office of President**

(1)

The President shall, subject to the provisions of this section, hold office for an aggregate period not exceeding 10 years beginning from the date of his first assumption of office of President after the commencement of this Act.

(2)

The President shall cease to hold the office of President if at any time during his tenure of office any circumstances arise that would, if he were not a member of the National Assembly, cause him to be disqualified for election thereto.

(3)

The President shall cease to hold office of President at the expiry of the period prescribed under subsection (1) of this section, or when the person elected at the next election of President following a dissolution of Parliament assumes office.

**35 Vacancy in office of President**

(1)

Whenever the President dies, resigns or ceases to hold office, the Vice-President shall assume office as President with effect from the date of the death, resignation or ceasing to be President.

(2)

If the office of President—

- (a) becomes vacant in circumstances in which there is no Vice-President; or
- (b) is vacant whilst the Vice-President is absent from Botswana or is, by reason of physical or mental infirmity unable to perform the functions of his office, the functions of the office of President shall, until such time as a new President assumes office in accordance with this section or section 32 of this Constitution, be performed by such Minister as the Cabinet shall appoint. For the purposes of this subsection, a certificate of the Chief Justice that the Vice-President is by reason of physical or mental infirmity unable to discharge the functions of his office, shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any court.

(3)

Any person performing the functions of the office of President by virtue of subsection (1) or (2) of this section shall not exercise the power of the President to revoke the appointment of Vice-President or to dissolve Parliament.

(4)

If the office of President becomes vacant, the National Assembly shall, unless Parliament is dissolved, and notwithstanding that it may be prorogued, meet on the seventh day after the office of President becomes vacant, or on such earlier day as may be appointed by the Speaker, and shall elect a person to the office in such manner as is prescribed by the next following subsection and, subject thereto, by or under an Act of Parliament.

(5)

In an election of a President under this section—

- (a) the Speaker shall preside at the meeting and conduct the election;
- (b) a person may be a candidate if and shall not be a candidate unless he has been nominated as a candidate with his consent prior to the sitting of the National Assembly at which the election takes place, by not less than 10 Members of the National Assembly entitled to vote in that election;
- (c) at the election every Member of the Assembly except the Speaker and the Attorney-General shall be entitled to vote;
- (d) the votes of the Members of the Assembly who are entitled to vote shall be given by ballot in such manner as not to disclose how any particular Member voted, and any person who receives the votes of more than one half of the total number of persons entitled to vote shall be declared elected as President;
- (e) a person elected as President under this section shall assume the office of President on the day upon which he is declared to be elected;
- (f) not more than three ballots shall be taken unless in the opinion of the Speaker the holding of further ballots is likely to result in the election of a President, in which case not more than two further ballots may be taken;
- (g) only one ballot shall be taken at any sitting of the Assembly, and the Speaker may adjourn the meeting at which a second or subsequent ballot is to be taken for such number of days (in addition to the days on which and to which the meeting is adjourned), not being more than two, as he thinks fit;
- (h) if there is no candidate duly nominated for the first ballot in accordance with paragraph (b) or if after the number of ballots permitted under paragraph (f) have been taken no candidate has been declared elected Parliament shall stand dissolved or, in the case of a Presidential election held in accordance with section 32(6) of this Constitution, the foregoing general election shall be void.

(6)

No business other than the election of a President shall be transacted at a meeting of the National Assembly under subsection (4) of this section or under section 32(6) of this Constitution and such a meeting or any sitting thereof shall not be regarded as a meeting or sitting of the Assembly for the purposes of any other provision of this Constitution.

(7)

At any time when the office of Speaker is vacant or the holder of that office is unable by reason of absence or illness to exercise the functions vested in him by this section and section 32(6) of this Constitution, those functions may be exercised by the Deputy Speaker of the National Assembly or, if there is no Deputy Speaker or the Deputy Speaker is unable by reason of absence or illness to exercise those functions, by such member of the Assembly (not being the President or Vice-President or a Minister or Assistant Minister) as the Assembly may elect for that purpose.



### **36 Discharge of functions of President during absence, illness, etc**

#### **(1)**

Whenever the President is absent from Botswana or considers it desirable to do so by reason of illness or any other cause he may, by directions in writing, authorize—

- (a) the Vice-President; or
- (b) during any period when there is no Vice-President or the Vice-President is absent from Botswana or is, by reason of physical or mental infirmity, unable to perform the functions of his office, some other Minister,

to discharge such of the functions of the office of President as he may specify, and the Vice-President or other Minister may discharge those functions until his authority is revoked by the President.

#### **(2)**

If the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorize another person under this section to perform those functions—

- (a) the Vice-President; or
- (b) during any period when there is no Vice-President or the Vice-President is absent from Botswana or the Vice-President is, by reason of physical or mental infirmity, unable to perform the functions of his office, such Minister as the Cabinet shall appoint, shall perform the functions of the office of President.

#### **(3)**

A person performing the functions of the office of President under this section shall not exercise the power of the President to revoke the appointment of the Vice-President or to dissolve Parliament.

#### **(4)**

A person performing the functions of the office of President by virtue of subsection (2) of this section shall cease to perform those functions if he is notified by the President that the President is about to resume those functions.

#### **(5)**

For the purposes of this section, a certificate of the Chief Justice that—

- (a) the President is incapable by reason of physical or mental infirmity of discharging the functions of his office and the infirmity is of such a nature that the President is unable to authorize another person under this section to perform the functions of his office; or
- (b) the Vice-President is by reason of physical or mental infirmity unable to discharge the functions of his office,

shall, in respect of any period for which it is in force, be conclusive and shall not be questioned in any court:

Provided that any such certificate as is referred to in paragraph (a) of this subsection shall cease to have effect if the President notifies any person under subsection (4) of this section that he is about to resume the functions of the office of President.

### **37 Oath of President**

A person assuming the office of President shall, before entering upon the duties of that office, take and subscribe such oaths as may be prescribed by Parliament.

**38 Returning officer at elections of President****(1)**

The Chief Justice shall be the returning officer for the purposes of elections to the office of President.

**(2)**

Any question which may arise as to whether—

- (a) any provision of this Constitution or any law relating to the election of a President under section 32 or 35 of this Constitution has been complied with; or
- (b) any person has been validly elected as President under those sections, shall be referred to and determined by the returning officer whose decision shall not be questioned in any court.

**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.

#### **40 Salary and allowances of President**

(1)

The President shall receive such salary and allowances as may be prescribed by resolution of the National Assembly, which shall be a charge on the general revenues of the Republic.

(2)

The salary and allowances of the President shall not be altered to his disadvantage during his period of office.

(3)

A person who has held the office of President shall receive such pension or, upon the expiration of his term of office, such gratuity as may be prescribed by resolution of the National Assembly, which shall be a charge on the Consolidated Fund.

#### **41 Protection of President in respect of legal proceedings**

(1)

Whilst any person holds or performs the functions of the office of President no criminal proceedings shall be instituted or continued against him in respect of anything done or omitted to be done by him either in his official capacity or in his private capacity and no civil proceedings shall be instituted or continued in respect of which relief is claimed against him in respect of anything done or omitted to be done in his private capacity.

(2)

Where provision is made by law limiting the time within which proceedings of any description may be brought against any person, the term of any person in the office of President shall not be taken into account in calculating any period of time prescribed by that law which determines whether any such proceedings as are mentioned in subsection (1) of this section may be brought against that person.

## PART II The Cabinet (ss 42-46)

### *42 Ministers and Assistant Ministers*

(1)

There shall be such offices of Minister of the Government (not exceeding six or such other number as Parliament may from time to time provide) as may be established by Parliament or, subject to the provisions of any Act of Parliament, by the President.

(2)

There shall be such offices of Assistant Minister (not exceeding three or such number as Parliament may from time to time provide) as may be established by Parliament or, subject to the provisions of any Act of Parliament, by the President.

(3)

Appointments to the office of Minister or Assistant Minister shall be made by the President from among Members of the National Assembly:

Provided that—

- (i) not more than four persons may be appointed as Minister or Assistant Minister from amongst persons who are not Members of the Assembly but are qualified for election as such; and
- (ii) if occasion arises for making an appointment to the office of a Minister or an Assistant Minister while Parliament is dissolved a person who was a Member of the Assembly before the dissolution may be appointed as a Minister or an Assistant Minister.

### *43 Tenure of office of Ministers and Assistant Ministers*

The office of any Minister or Assistant Minister shall become vacant—

- (a) in the case of a Minister or Assistant Minister appointed from among the Members of the National Assembly, or in the case of a Minister or Assistant Minister appointed from among persons who are not Members of the Assembly who becomes a Member of the Assembly before the expiration of four months from the date of his appointment—
  - (i) if he ceases to be a Member of the National Assembly otherwise than by reason of a dissolution of the National Assembly; or
  - (ii) if, at the first sitting of the Assembly after a general election, he is not a Member of the Assembly;
- (b) in the case of a Minister or Assistant Minister appointed from among persons who are not Members of the Assembly, if before the expiration of four months from the date of his appointment—
  - (i) circumstances arise (other than a dissolution of the Assembly) that, if he were such a Member, would cause him to vacate his seat in the Assembly; or
  - (ii) he does not become a Member of the Assembly;
- (c) if the holder of the office is removed from office by the President;
- (d) upon the assumption by any person of the office of President.

**44 Cabinet**

(1)

There shall be a Cabinet which shall consist of the President, Vice-President and the Ministers.

(2)

There shall preside at meetings of the Cabinet—

- (a) the President;
- (b) in the absence of the President, the Vice-President; or
- (c) in the absence of the President and the Vice-President, such Minister as the President may designate.

(3)

The Cabinet may act notwithstanding any vacancy in its membership.

**45 Oaths to be taken by Ministers and Assistant Ministers**

The Vice-President, a Minister or an Assistant Minister 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.

**46 Secretary to the Cabinet**

(1)

There shall be a Secretary to the Cabinet whose office shall be a public office.

(2)

The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible, in accordance with such instructions as may be given to him by the President, for arranging the business for, and keeping the minutes of, the Cabinet, for conveying decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the President may from time to time direct.

**PART III Executive Functions (ss 47-56)****47 Functions of President**

(1)

The executive power of Botswana shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him.

(2)

In the exercise of any function conferred upon him by this Constitution or any other law the President shall, unless it is otherwise provided, act in his own deliberate judgment and shall not be obliged to follow the advice tendered by any other person or authority.

(3)

Nothing in this section shall prevent Parliament from conferring functions on persons or authorities other than the President.

**48 Command of armed forces**

(1)

The supreme command of the armed forces of the Republic shall vest in the President and he shall hold the office of Commander in Chief.

(2)

The powers conferred on the President by subsection (1) of this section shall include—

- (a) the power to determine the operational use of the armed forces;
- (b) the power to appoint members of the armed forces, to make appointments on promotion to any office in the armed forces and to dismiss any member of the armed forces.

(3)

The President may, by directions in writing and subject to such conditions as he may think fit, delegate to any member of the armed forces any of the powers mentioned in subsection (2) of this section.

(4)

Parliament may regulate the exercise of the powers conferred by or under this section.

**49 Functions of Vice-President**

The Vice-President shall be the principal assistant of the President in the discharge of his executive functions and shall be responsible, under the directions of the President, for such business of the government of Botswana (including the administration of any department of Government) as the President may assign to him.

**50 Functions of Cabinet Ministers and Assistant Ministers**

(1)

The Cabinet shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President and shall, subject to the provisions of this Constitution, be responsible to the National Assembly for all things done by or under the authority of the President, Vice-President or any Minister in the execution of his office.

(2)

The President shall, so far as practicable and subject to the provisions of this Constitution, consult the Cabinet on matters of policy and the exercise of his functions.

(3)

The obligation of the President to consult his Cabinet and for the Cabinet to accept responsibility under this section shall not apply to the exercise by the President of his powers in relation to the appointment or removal of the Vice-President, Ministers and Assistant Ministers, the dissolution of Parliament, the Prerogative of Mercy, the assignment of responsibility to the Vice-President or any Minister and the specification of the functions of an Assistant Minister.

(4)

A Minister shall be responsible, under the direction of the President, for such business of the government of Botswana (including the administration of any department of Government) as the President may assign to him.

(5)

An Assistant Minister shall—

- (a) assist the President or the Vice-President in the discharge of such of the functions of the office of President or Vice-President as the President may specify; or
- (b) assist such Minister in the discharge of the functions assigned to him under subsection (4) of this section as the President may specify.

### **51 Attorney-General**

(1)

There shall be an Attorney-General whose office shall be a public office.

(2)

The Attorney-General shall be the principal legal adviser to the Government of Botswana.

(3)

The Attorney-General shall have power in any case in which he considers it desirable to do so—

- (a) to institute and undertake criminal proceedings against any person before any court (other than a court-martial) in respect of any offence alleged to have been committed by that person;
- (b) to take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4)

The powers of the Attorney-General under subsection (3) may be exercised by him in person or by officers subordinate to him acting in accordance with his general or special instructions.

(5)

The powers conferred on the Attorney-General by paragraphs (b) and (c) of subsection (3) shall be vested in him to the exclusion of any other person or authority:

Provided that where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority and with the leave of the court.

(6)

For the purposes of this section, any appeal from any judgment in any criminal proceedings before any court, or any case stated or question of law reserved for the purpose of any such proceedings, to any other court shall be deemed to be part of those proceedings:

Provided that the power conferred on the Attorney-General by subsection (3)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved at the instance of such a person.

(7)

In the exercise of the functions vested in him by subsection (3) of this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

### **52 Permanent Secretaries**

Where any Minister has been charged with responsibility for any department of Government, he shall exercise general direction and control over that department and, subject to such direction and control, the department shall be under the supervision of a Permanent Secretary whose office shall be a public office.

**53 Prerogative of Mercy**

The President may—

- (a) grant to any person convicted of any offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; and
- (d) remit the whole or part of any punishment imposed on any person for any offence or of any penalty or forfeiture otherwise due to the Government on account of any offence.

**54 Advisory Committee on Prerogative of Mercy****(1)**

There shall be an Advisory Committee on the Prerogative of Mercy which shall consist of—

- (a) the Vice-President or a Minister appointed by the President by instrument in writing under his hand;
- (b) the Attorney-General; and
- (c) a person qualified to practise in Botswana as a medical practitioner, appointed by the President by instrument in writing under his hand.

**(2)**

A member of the Committee appointed under subsection (1)(a) or (c) of this section shall hold his seat thereon for such period as may be specified in the instrument by which he was appointed:

Provided that his seat shall become vacant—

- (i) in the case of a person who, at the date of his appointment, was the Vice-President or a Minister, if he ceases to be the Vice-President or a Minister; or
- (ii) if the President, by instrument in writing under his hand, so directs.

**(3)**

The Committee shall not be summoned except by the authority of the President who shall, as far as is practicable, attend and preside at all meetings of the Committee, and, in the absence of the President, the member of the Committee appointed under subsection (1)(a) of this section shall preside.

**(4)**

The Committee may act notwithstanding any vacancy in its membership and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

**(5)**

Subject to the provisions of this section, the Committee may regulate its own procedure.



***55 Functions of Advisory Committee on Prerogative of Mercy******(1)***

Where any person has been sentenced to death for any offence, the President shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he may require, to be considered at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he shall decide whether to exercise any of his powers under section 53 of this Constitution.

***(2)***

The President may consult with the Committee before deciding whether to exercise any of his powers under the said section 53 in any case not falling within subsection (1) of this section.

***56 Constitution of offices***

Subject to the provisions of this Constitution and of any Act of Parliament, the powers of constituting and abolishing offices for Botswana shall vest in the President.

## CHAPTER V

# Parliament (ss 57-94)

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### PART I Composition (ss 57-70)

#### *57 Parliament*

There shall be a Parliament of Botswana which shall consist of the President and a National Assembly.

#### *58 Composition of National Assembly*

(1)

The President shall be ex-officio a member of the National Assembly, and shall be entitled to speak and to vote in all proceedings of the National Assembly.

(2)

In addition to the President the National Assembly shall consist of—

- (a) 57 Elected Members who shall be elected in accordance with the provisions of this Constitution and subject thereto in accordance with the provisions of any Act of Parliament;
- (b) four Specially Elected Members who shall be elected in accordance with the provisions of the Schedule to this Constitution and subject thereto in accordance with the provisions of any Act of Parliament; and
- (c) the Attorney-General.

(3)

If a person who is not a member of the National Assembly is elected to the office of Speaker of the National Assembly, that person shall, by virtue of holding that office, be a member of the Assembly in addition to the members referred to in subsections (1) and (2) of this section.

#### *59 Speaker*

(1)

There shall be a Speaker of the National Assembly who shall be elected by the Members of the Assembly from among persons who are Members of the Assembly or from among persons who are not Members of the Assembly.

(2)

The President, the Vice-President, a Minister, an Assistant Minister or a public officer shall not be qualified to be elected as Speaker.

(3)

The Speaker shall vacate his office—

- (a) if, having been elected from among the Members of the National Assembly, he ceases to be a Member of the Assembly otherwise than by reason of a dissolution of Parliament or if he is required by virtue of section 68(2) to (3) of this Constitution, to cease to perform his functions as a Member of the Assembly;
- (b) if any circumstances arise that, if he were not Speaker, would disqualify him for election as such;
- (c) when the Assembly first sits after any dissolution of Parliament; or
- (d) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the Members thereof.

(4)

No business shall be transacted in the National Assembly (other than an election to the office of Speaker) at any time when the office of Speaker is vacant.

#### **60 Deputy Speaker**

(1)

There shall be a Deputy Speaker of the National Assembly who shall be elected from among the persons who are Members of the Assembly other than the President, the Vice-President, Ministers or Assistant Ministers.

(2)

The Members of the National Assembly shall elect a person to the office of Deputy Speaker when the Assembly first sits after any dissolution and, if the office becomes vacant otherwise than by reason of the dissolution of the Assembly, at the first sitting of the Assembly after the office becomes vacant.

(3)

The Deputy Speaker shall vacate his office—

- (a) if he ceases to be a Member of the National Assembly, otherwise than by reason of a dissolution of Parliament;
- (b) if any circumstances arise that, if he were not Deputy Speaker, would disqualify him for election as such;
- (c) if he is required, by virtue of section 68(2) to (3) of this Constitution, to cease to perform his functions as a Member of the Assembly;
- (d) if he is elected as Speaker;
- (e) if he is removed from office by a resolution of the Assembly supported by the votes of not less than two-thirds of all the Members of the Assembly; or
- (f) when the Assembly first sits after any dissolution of Parliament.

#### **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.

### **62 Disqualifications for membership of National Assembly**

#### **(1)**

No person shall be qualified to be elected as a Member of the National Assembly who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) has been declared insolvent or adjudged or otherwise declared bankrupt under any law for the time being in force in Botswana and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;
- (c) is certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;
- (d) is a Member of the House of Chiefs;
- (e) subject to such exceptions as may be prescribed by Parliament, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months;
- (f) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;
- (g) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the Assembly or the compilation or revision of any electoral register for the purposes of such elections.

#### **(2)**

Parliament may provide that a person shall not be qualified for election to the National Assembly for such period (not exceeding five years) as may be prescribed if he is convicted of any such offence connected with elections to the Assembly as may be prescribed.

#### **(3)**

For the purposes of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms, and no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

### **63 Constituencies**

Botswana shall be divided into as many constituencies as there are Elected Members of the National Assembly and each of those constituencies shall return one Member to the National Assembly.

### **64 Delimitation Commission**

#### **(1)**

The Judicial Service Commission shall, not later than 1st March, 1969, and thereafter at intervals of not less than five nor more than 10 years, appoint a Delimitation Commission consisting of a Chairman and not more than four other members.

#### **(2)**

Notwithstanding the provisions of subsection (1) of this section, at any time when—

- (a) Parliament has made provision altering the number of seats of Elected Members in the National Assembly; or
- (b) a comprehensive national population census is held in Botswana, the Judicial Service Commission shall, as soon as practicable thereafter, appoint a Delimitation Commission.

(3)

The Chairman of a Delimitation Commission shall be selected from among persons who hold or have held high judicial office.

(4)

No person shall be qualified to be appointed as Chairman or member of a Delimitation Commission who—

- (a) is a Member of the National Assembly;
- (b) is or has been within the preceding five years actively engaged in politics; or
- (c) is a public officer.

(5)

A person shall be deemed to be actively engaged in politics or to have been so engaged during the relevant period if—

- (a) he is, or was at any time during that period, a Member of the National Assembly;
- (b) he is, or was at any time during that period, nominated as a candidate for election to the National Assembly; or
- (c) he is, or was at any time during that period, the holder of an office in any political organization that sponsors or supports, or has at any time sponsored or supported, a candidate for election as a Member of the National Assembly:

Provided that no person shall be disqualified from holding the office of Chairman or member of a Delimitation Commission by reason only of the fact that he has been the Speaker of the National Assembly if he was elected to that office from amongst persons who were not Members of the National Assembly.

(6)

The office of Chairman or other member of the Delimitation Commission shall become vacant if circumstances arise that, were he not Chairman or member of the Delimitation Commission, would disqualify him for appointment as such.

(7)

If, after the appointment of the Delimitation Commission and before the Commission has submitted its report under section 65, the office of Chairman or any other member of the Commission falls vacant or the holder of the office becomes unable for any reason to discharge his functions as a member of the Commission, the Judicial Service Commission may, subject to the provisions of subsections (3) to (5) of this section, appoint another person to be a member of the Commission:

Provided that a member appointed under this section because of the inability of some other member to discharge his functions shall cease to be a member of the Commission when, in the opinion of the Judicial Service Commission, that other member is able to resume his functions as a member of the Commission.

### **65 Report of Commission**

**(1)**

Whenever a Delimitation Commission has been appointed the Commission shall as soon as practicable submit to the President a report which shall state whether any alteration is necessary to the boundaries of the constituencies in order to give effect to subsection (2) of this section or in consequence of any alteration in the number of seats of Elected Members in the National Assembly and where any alteration is necessary shall include a list of the constituencies delimited by the Commission and a description of the boundaries of those constituencies.

**(2)**

The boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable:

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of natural community of interest, means of communication, geographical features, density of population, and the boundaries of Tribal Territories and administrative districts.

**(3)**

In this section "population quota" means the number obtained by dividing the number of inhabitants of Botswana (as ascertained by reference to the latest comprehensive national population census in Botswana) by the number of constituencies into which Botswana is divided under section 63 of this Constitution.

**(4)**

The President shall as soon as practicable after the submission of the report of the Delimitation Commission, by Proclamation published in the Gazette, declare the boundaries of the constituencies as delimited by the Commission.

**(5)**

A Proclamation made under subsection (4) of this section shall come into force at the next dissolution of the National Assembly after it is made.

**(6)**

The Commission may by regulation or otherwise regulate its own procedure and may, subject to its rules of procedure, act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings:

Provided that any decision of the Commission shall require the concurrence of a majority of all its members.

**(7)**

In the exercise of its functions under this section the Delimitation Commission shall not be subject to the direction or control of any other person or authority.

**(8)**

A Delimitation Commission shall stand dissolved upon the date on which its report is delivered to the President.

**65A Appointment of Independent Electoral Commission****(1)**

There shall be an Independent Electoral Commission which shall consist of—

- (a) a Chairman who shall be a judge of the High Court appointed by the Judicial Service Commission;
- (b) a legal practitioner appointed by the Judicial Service Commission; and
- (c) five other persons who are fit, proper and impartial, appointed by the Judicial Service Commission from a list of persons recommended by the All Party Conference.

**(2)**

Where the All Party Conference fail to agree on all or any number of persons referred to in subsection (1)(c) of this section up to dissolution of Parliament, the Judicial Service Commission shall appoint such person or persons as are necessary to fill any vacancy.

**(3)**

For the purposes of this section, "All Party Conference" means a meeting of all registered political parties convened from time to time by the Minister.

**(4)**

The first appointments of the Chairman and the Members of the Commission shall be made not later than 31st January, 1999, and thereafter subsequent appointments shall be made at the last dissolution of every two successive lives of Parliament.

**(5)**

The Chairman and the members of the Commission shall hold office for a period of two successive lives of Parliament.

**(6)**

A person shall not be qualified to be appointed as a member of the Independent Electoral Commission if—

- (a) he has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or
- (b) he has been convicted of any offence involving dishonesty in any country.

**(7)**

A person appointed a member of the Commission shall not enter upon the duties of the office of Commissioner until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by an Act of Parliament.

**(8)**

The Commission shall regulate its own procedure and proceedings.

**(9)**

The Chairman shall preside over all proceedings, and in his absence, the legal practitioner referred to in subsection (1)(b) shall preside over the proceedings.

**(10)**

The quorum shall be four members, one of whom shall be the Chairman or the said legal practitioner.

**(11)**

All issues shall be decided by the decision of the majority of the members present and voting.

(12)

The Commission shall be responsible for—

- (a) the conduct and supervision of elections of the Elected Members of the National Assembly and members of a local authority, and conduct of a referendum;
- (b) giving instructions and directions to the Secretary of the Commission appointed under section 66 in regard to the exercise of his functions under the electoral law prescribed by an Act of Parliament;
- (c) ensuring that elections are conducted efficiently, properly, freely and fairly; and
- (d) performing such other functions as may be prescribed by an Act of Parliament.

(13)

The Commission shall on the completion of any election conducted by it, submit a report on the exercise of its functions under the preceding provisions of this section to the Minister for the time being responsible for matters relating to such elections, and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the National Assembly.

#### **66 Appointment of Secretary to Independent Electoral Commission**

(1)

There shall be a Secretary to the Independent Electoral Commission referred to in section 65A (in this section referred to as “the Secretary”).

(2)

The Secretary shall be appointed by the President.

(3)

The functions of the Secretary shall, subject to the directions and supervision of the Independent Electoral Commission, be to exercise general supervision over the registration of voters for elections of—

- (a) the Elected Members of the National Assembly; and
- (b) the members of any local authority, and over the conduct of such elections.

(4)

A person shall not be qualified to be appointed as Secretary to the Independent Electoral Commission if—

- (a) he is not a citizen of Botswana;
- (b) he has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; or
- (c) he has been convicted of any offence involving dishonesty in any country.

(5)

A person shall not enter upon the duties of the office of Secretary until he has taken and subscribed to the oath of allegiance and such oath for the due execution of his office as may be prescribed by an Act of Parliament.

(6)

For the purposes of the exercise of his functions under subsection (3) of this section, the Secretary may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.



(7)

Subject to the provisions of this section, a person holding office as Secretary shall vacate that office on attaining the age of 65 years or such other age as may be prescribed by an Act of Parliament.

(8)

A holder of the office of Secretary may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(9)

If the President considers that the question of removing the Secretary ought to be investigated then—

- (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two members who hold or have held high judicial office;
- (b) the tribunal shall enquire into and report on the facts thereof to the President and advise the President whether the Secretary ought to be removed from office under this section for inability to perform the functions of his office or for misbehaviour.

(10)

Where a tribunal appointed under subsection (9) advises the President that the Secretary ought to be removed for inability to perform the functions of his office or for misbehaviour, the President shall remove him from office.

(11)

If the question of removing the Secretary from office has been referred to a tribunal under subsection (9) of this section, the President may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall cease to have effect if the tribunal advises the President that the Secretary ought not to be removed from office.

## **67 The franchise**

(1)

A person who—

- (a) is a citizen of Botswana or of any other country to which this section is applied by Parliament;
- (b) has attained the age of 18 years; and
- (c) has either resided in Botswana for a continuous period of at least 12 months immediately preceding the date on which he applies for registration as a voter or was born in Botswana and is domiciled in Botswana on the date on which he applies for registration as a voter,

shall, unless he is disqualified for registration as a voter under any law, be entitled, upon his making application in that behalf at such time and in such manner as may be prescribed by any law, to be registered as a voter for the purposes of elections of Elected Members of the National Assembly, and no other person may be so registered.

(2)

A person who has not continuously resided in Botswana for the period mentioned in paragraph (c) of subsection (1) of this section but has during the whole period retained his residence (or if he has more than one residence, his principal residence) in Botswana and has been absent therefrom for some temporary purpose only shall be deemed for the purposes of the said paragraph (c) to have been resident in Botswana during such absence.

(3)

A person shall be entitled to be registered as a voter—

- (a) in the constituency in which he has his residence, or if he has more than one residence in Botswana in the constituency in which he has his principal residence; or
- (b) in the case of a person who does not have a residence in Botswana but is able to register in person, in the constituency in which he last resided, or in which he was born; or
- (c) in the case of a person who is not resident in Botswana and is unable to register in person, at such place as may be prescribed by Parliament and registration at such place shall be treated as registration in the constituency in which he last resided, or in which he was born in Botswana.

(4)

A person shall be entitled to be registered as a voter in one constituency only.

(5)

Every person who is registered in any constituency as a voter for the purposes of elections of the Elected Members of the National Assembly shall, unless he is disqualified by Parliament from voting in such elections on the grounds of his having been convicted of an offence in connection with the elections or on the grounds of his having been reported guilty of such an offence by the court trying an election petition or on the grounds of his being in lawful custody at the date of the election, be entitled so to vote in that constituency in accordance with the provisions made by or under a law in that behalf; and no other person may so vote.

#### **68 Tenure of office of Members**

(1)

The seat of an Elected Member or a Specially Elected Member of the National Assembly shall become vacant—

- (a) upon the dissolution of Parliament;
- (b) if he is absent from the sittings of the Assembly for such period and in such circumstances as may be prescribed in the rules of procedure of the Assembly;
- (c) subject to the provisions of subsections (2) to (3) of this section, if any circumstances arise that, if he were not a Member of the Assembly, would cause him to be disqualified for election thereto.

(2)

If circumstances such as are referred to in paragraph (c) of the preceding subsection arise in relation to a Member of the Assembly by virtue of the fact that he is declared insolvent, adjudged to be of unsound mind, sentenced to death or imprisonment, or convicted of an election offence and it is open to the Member to appeal against the decision (either with the leave of the court or other authority or without such leave), he shall forthwith cease to perform his functions as a Member of the Assembly but, subject to the next following subsection, he shall not vacate his seat until the expiration of a period of 30 days thereafter:

Provided that the Speaker may, at the request of the Member, from time to time extend that period for further periods of 30 days to enable the Member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate 150 days shall not be given without the approval of the Assembly signified by resolution.

(3)

If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the Member of the Assembly, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Member to appeal, he shall forthwith vacate his seat.

(4)

If at any time before the Member of the Assembly vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant by reason of those circumstances, and he may resume the performance of his functions as a Member of the Assembly.

#### **69 Determination of questions as to membership of National Assembly**

(1)

The High Court shall have jurisdiction to hear and determine any question whether—

- (a) any person has been validly elected as an Elected Member of the National Assembly or the seat of any such Member has become vacant;
- (b) any person has been validly elected as Speaker of the Assembly or, having been so elected, has vacated the office of Speaker.

(2)

Any question whether any person has been validly elected as a Specially Elected Member of the National Assembly or whether the seat of any such Member has become vacant shall be determined by the Speaker.

(3)

Parliament may make provision with respect to—

- (a) the persons who may apply to the High Court for the determination of any question under this section;
- (b) the circumstances and manner in which the conditions upon which any such application may be made; and
- (c) the powers, practice and procedure of the High Court in relation to any such application.

#### **70 Clerk of the Assembly**

(1)

There shall be a Clerk of the National Assembly and an Assistant Clerk of the National Assembly and their offices shall be offices in the public service.

(2)

There shall be such other offices in the department of the Clerk of the Assembly as may be prescribed by resolution of the National Assembly and such offices shall be offices in the public service.

## **PART II General Provisions Relating to Procedure in National Assembly (ss 71-76)**

#### **71 Oaths to be taken by Speaker and Members**

The Speaker, before assuming the duties of his office, and every Member of the National Assembly before taking his seat therein, shall take and subscribe before the Assembly the oath of allegiance.

#### **72 Presiding in Assembly**

There shall preside at any sitting of the National Assembly—

- (a) the Speaker;
- (b) in the absence of the Speaker, the Deputy Speaker; or
- (c) in the absence of the Speaker and the Deputy Speaker, such Member of the Assembly (not being the President or Vice-President or a Minister or Assistant Minister) as the Assembly may elect for that sitting.

### **73 Quorum in Assembly**

If objection is taken by any Member of the National Assembly present that there are present in the Assembly (besides the person presiding) less than one third of the Members of the Assembly and, after such interval as may be prescribed in the rules of procedure of the Assembly, the person presiding ascertains that the number of Members present is less than one third, he shall thereupon adjourn the Assembly.

### **74 Voting in Assembly**

(1)

Save as otherwise provided in this Constitution, any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the Members present and voting.

(2)

The Attorney-General shall have no vote.

(3)

The person presiding in the National Assembly shall have neither an original vote nor a casting vote and if upon any question before the Assembly the votes are equally divided the motion shall be lost.

### **75 Unqualified persons sitting or voting**

Any person who sits or votes in the National Assembly knowing or having reasonable grounds for knowing that he is not entitled to do so shall be liable to a penalty not exceeding P50 or such other sum as may be prescribed by Parliament for each day on which he so sits or votes in the Assembly, which shall be recoverable by action in the High Court at the suit of the Attorney-General.

### **76 Regulation of procedure in Assembly**

(1)

Subject to the provisions of this Constitution, the National Assembly may regulate its own procedure.

(2)

The National Assembly may act notwithstanding any vacancy in its membership (including any vacancy not filled when the Assembly first meets after any dissolution) and the presence or participation of any person not entitled to be present or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

## **PART III The House of Chiefs (ss 77-85)**

### **77 Composition of House of Chiefs**

(1)

There shall be a House of Chiefs for Botswana.

(2)

The House of Chiefs shall consist of—

- (a) eight ex-officio Members;
- (b) four Elected Members; and
- (c) three Specially Elected Members.

**78 Ex-officio Members of the House of Chiefs**

The ex-officio Members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa Tribes, respectively.

**79 Elected and Specially Elected Members of House of Chiefs**

(1)

The Elected Members of the House of Chiefs shall be elected from among their own number by the persons for the time being performing the functions of the office of Sub-Chief in the Chobe, North East, Ghanzi and Kgalagadi districts, respectively.

(2)

The Specially Elected Members of the House of Chiefs shall be elected by the ex-officio and Elected Members of the House of Chiefs in accordance with the provisions of this Constitution from among persons who are not and have not been within the preceding five years actively engaged in politics.

(3)

A person shall be deemed to be or to have been actively engaged in politics for the purposes of subsection (2) of this section in any circumstances in which he would be deemed to be or to have been so engaged for the purposes of section 64(4)(b) of this Constitution.

(4)

Subject to the provisions of subsections (5) and (6) of this section a person shall be qualified to be elected as a Specially Elected Member of the House of Chiefs if, and shall not be qualified to be so elected unless, he—

- (a) is a citizen of Botswana;
- (b) has attained the age of 21 years;
- (c) 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 House; and
- (d) 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.

(5)

No person shall be qualified to be elected as a Specially Elected Member of the House of Chiefs who—

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state;
- (b) has been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full;
- (c) is certified insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana;
- (d) subject to such exceptions as may be prescribed by Parliament, holds any public office, or is acting in any public office by virtue of a contract of service expressed to continue for a period exceeding six months;
- (e) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court;

- (f) holds, or is acting in, any office the functions of which involve any responsibility for, or in connection with, the conduct of any elections to the National Assembly or the compilation or revision of any electoral register for the purposes of such elections; or
- (g) is disqualified for election to the National Assembly by virtue of provision made in pursuance of section 62(2) of this Constitution.

**(6)**

For the purposes of this section two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms, and no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

**80 Oath of allegiance**

Every Member of the House of Chiefs shall, before taking his seat therein, take and subscribe before the House of Chiefs the oath of allegiance.

**81 Secretary to House of Chiefs**

There shall be a Secretary to the House of Chiefs whose office shall be an office in the public service.

**82 Tenure of office of Elected Members and Specially Elected Members**

**(1)**

An Elected Member of the House of Chiefs shall vacate his seat in the House—

- (a) on a dissolution of Parliament; or
- (b) if he ceases to be a person for the time being performing the functions of an office of Sub-Chief in the district from which he has been elected.

**(2)**

A Specially Elected Member of the House of Chiefs shall vacate his seat in the House—

- (a) on the dissolution of Parliament;
- (b) if he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House; or
- (c) subject to the provisions of subsection (3) of this section, if any circumstances arise that, if he were not a Specially Elected Member of the House of Chiefs, would disqualify him for election as such.

**(3)**

If circumstances such as are referred to in paragraph (c) of the preceding subsection arise in relation to a Member of the House by virtue of the fact that he is declared insolvent, adjudged to be of unsound mind, sentenced to death or imprisonment or convicted of an election offence and it is open to the Member to appeal against the decision (either with leave of the court or other authority or without such leave), he shall forthwith cease to perform his functions as a Member of the House but, subject to the next following subsection, he shall not vacate his seat until the expiration of a period of 30 days thereafter:

Provided that the Chairman of the House may, at the request of the Member, from time to time extend that period for further periods of 30 days to enable the Member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate 150 days shall not be given without the approval of the House signified by resolution.

(4)

If, on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the Member of the House, or if by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to a Member to appeal, he shall forthwith vacate his seat.

(5)

If at any time before the Member of the House vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant by reason of those circumstances, and he may resume the performance of his functions as a Member of the House.

### **83 Rules of Procedure of House of Chiefs**

Subject to the provisions of this Constitution, the House of Chiefs may, subject to the approval of the President, make rules regulating its own procedure and in particular, and without prejudice to the generality of the foregoing power, make rules for all or any of the following matter—

- (a) the appointment or election and tenure of office of a Chairman of the House;
- (b) the time and place at which the House shall meet;
- (c) the manner in which the views of the House shall be recorded and, if necessary, expressed to a Minister, the National Assembly, or to any other person or body;
- (d) the regulation and orderly conduct of the proceedings of the House;
- (e) the manner in which the Elected Members and Specially Elected Members of the House shall be elected.

### **84 House of Chiefs may transact business notwithstanding vacancies**

The House of Chiefs shall not be disqualified for the transaction of business by reason of any vacancy among the Members thereof including any vacancy not filled when the House is first constituted or is reconstituted at any time; and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the House or otherwise took part in the proceedings.

### **85 Functions of House of Chiefs**

(1)

The House of Chiefs shall consider the copy of any Bill which has been referred to it under the provisions of section 88(2) of this Constitution and the House shall be entitled to submit resolutions thereon to the National Assembly.

(2)

Any resolution which has been submitted to the National Assembly in accordance with the last foregoing subsection shall forthwith be laid before the Assembly by the Clerk of the Assembly.

(3)

Any Minister who is responsible for a Bill such as is referred to in subsection (1) of this section, or his representative, may attend the proceedings of the House when the copy of the Bill is being considered.

(4)

Any Minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House, and for that purpose the Minister or his representative may attend the proceedings of the House.

(5)

The House of Chiefs shall be entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interests of the tribes and tribal organizations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly.

(6)

A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (3) or (4) of this section shall be entitled to take part in the proceedings of the House relating to the matter in respect of which he attends as if he were a Member of the House:

Provided that he shall not be entitled to vote in the House.

## **PART IV Powers of Parliament (ss 86-89)**

### ***86 Legislative powers***

Subject to the provisions of this Constitution, Parliament shall have power to make laws for the peace, order and good government of Botswana.

### ***87 Mode of exercising legislative powers***

(1)

Subject to the provisions of section 89(4) of this Constitution the power of Parliament to make laws shall be exercised by Bills passed by the National Assembly, after reference in the cases specified in section 88(2) of this Constitution to the House of Chiefs, and assented to by the President.

(2)

When a Bill is presented to the President for assent he shall either assent or withhold his assent.

(3)

Where the President withholds his assent to a Bill, the Bill shall be returned to the National Assembly.

(4)

If where the President withholds his assent to a Bill the Assembly resolves within six months of the Bill being returned to it that the Bill should again be presented for assent, the President shall assent to the Bill within 21 days of its being again presented to him, unless he sooner dissolves Parliament.

(5)

When a Bill that has been duly passed and presented for assent is assented to in accordance with the provisions of this Constitution it shall become law and the President shall thereupon cause it to be published in the Gazette as a law.

(6)

No law made by Parliament shall come into operation until it has been published in the Gazette, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(7)

All laws made by Parliament shall be styled "Acts" and the words of enactment shall be "enacted by the Parliament of Botswana".



## **88 Introduction of Bills**

### **(1)**

Except upon the recommendation of the President, which recommendation may be signified by the Vice-President or a Minister, the National Assembly shall not—

- (a) proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes—
  - (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction;
  - (ii) for the imposition of any charge upon the revenues or other funds of Botswana or the alteration of any such charge otherwise than by reduction;
  - (iii) for the payment, issue or withdrawal from any public fund of Botswana of any moneys not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
  - (iv) for the composition or remission of any debt to the Government of Botswana;
- (b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes.

### **(2)**

The National Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this Constitution or affect—

- (a) the designation, recognition, removal of powers of Chiefs, Sub-Chiefs or Headmen;
- (b) the organization, powers or administration of customary courts;
- (c) customary law, or the ascertainment or recording of customary law; or
- (d) tribal organization or tribal property, unless—
  - (i) a copy of the Bill has been referred to the House of Chiefs after it has been introduced in the National Assembly; and
  - (ii) a period of 30 days has elapsed from the date when the copy of the Bill was referred to the House of Chiefs.

**89 Alteration of Constitution****(1)**

Subject to the provisions of this section Parliament may alter this Constitution.

**(2)**

A Bill for an Act of Parliament under this section shall not be introduced into the National Assembly unless the text of the Bill has been published in the Gazette not less than 30 days before it is so introduced.

**(3)**

In so far as it alters any of the provisions of—

- (a) Chapter II; sections 30 to 44 inclusive, 47 to 51 inclusive, and 56; sections 77 to 79 inclusive and section 85; Chapter VII; or sections 117 to 120 inclusive and section 127 in its application to any of the provisions mentioned in this paragraph;
- (b) sections 57, 63 to 66 inclusive, 86 to 89 inclusive, 90(2) and (3), 91(2), (3), (4) and (5), and 92; Chapter VI; and section 127 in its application to any of the provisions mentioned in this paragraph,

a Bill for an Act of Parliament under this section shall not be passed by the National Assembly unless—

- (i) the final voting on the Bill in the Assembly takes place not less than three months after the previous voting thereon in the Assembly; and
- (ii) at such final voting the Bill is supported by the votes of not less than two-thirds of all the Members of the Assembly.

**(4)**

In so far as it alters any of the provisions mentioned in subsection (3)(b) of this section no Bill shall be presented to the President for his assent unless after its passage by the Assembly it has been submitted to the electors qualified to vote in the election of the Elected Members of the National Assembly, and, on a vote taken in such manner as Parliament may prescribe, the majority of the electors voting have approved the Bill.

**(5)**

In this section—

- (a) references to any provision of this Constitution include references to any provision of a law that alters that provision; and
- (b) references to the alteration of any provision of this Constitution include references to the amendment, modification or re-enactment, with or without modification, of that provision, the suspension or repeal of that provision and the making of a different provision in lieu thereof.

## **PART V Summoning, Prorogation and Dissolution (ss 90-93)**

### ***90 Sessions of Parliament***

**(1)**

Each session of Parliament shall be held at such place within Botswana and shall commence at such time as the President may appoint.

**(2)**

There shall be a session of Parliament at least once in every year so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

**(3)**

Whenever Parliament is dissolved a general election of the Elected Members of the Assembly shall be held within 60 days of the date of the dissolution and a session of Parliament shall be appointed to commence within 30 days of the date of that general election.

### ***91 Prorogation and dissolution of Parliament***

**(1)**

The President may at any time prorogue Parliament.

**(2)**

Subject to the provisions of this Constitution, the President may at any time dissolve Parliament.

**(3)**

Subject to the provisions of subsection (4) of this section, Parliament, unless sooner dissolved, shall continue for five years from the date of the first sitting of the National Assembly after any dissolution and shall then stand dissolved.

**(4)**

At any time when Botswana is at war, Parliament may from time to time extend the period of five years specified in subsection (3) of this section for not more than 12 months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

**(5)**

If, after a dissolution of Parliament and before the holding of the general election of the Elected Members of the National Assembly, the President considers that, owing to the existence of a state of war or of a state of emergency in Botswana or any part thereof, it is necessary to recall Parliament, the President may summon the Parliament that has been dissolved to meet and that Parliament shall be deemed to be the Parliament for the time being, but the general election of the Elected Members of the National Assembly shall proceed and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day before the day on which the election is held.

### ***92 Vote of no confidence in the Government***

If the National Assembly at any time passes a resolution supported by a majority of all the Members of the Assembly who are entitled to vote declaring that it has no confidence in the Government of Botswana, Parliament shall stand dissolved on the fourth day following the day on which such resolution was passed, unless the President earlier resigns his office or dissolves Parliament.

**93 *Sittings of National Assembly*****(1)**

The President may at any time summon a meeting of the National Assembly.

**(2)**

Subject to the provisions of this Constitution, the sittings of the National Assembly in any session of Parliament after the commencement of that session shall be commenced at such times and on such days as the Assembly shall appoint.

**PART VI Interpretation (s 94)****94 *Votes of two-thirds of the Assembly***

Any reference in this Constitution to the votes of two-thirds of the Members of the Assembly shall be construed as a reference to the votes of two-thirds of the Members of the Assembly excluding the person presiding and the Attorney-General.

## CHAPTER VI

# The Judicature (ss 95-107)

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### PART I The High Court (ss 95-98)

#### *95 Jurisdiction and composition*

(1)

There shall be for Botswana a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.

(2)

The judges of the High Court shall be the Chief Justice and such number of other judges of the Court as may be prescribed by Parliament:

Provided that the office of a judge of the High Court shall not be abolished while there is a substantive holder thereof.

(3)

The High Court shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court.

(4)

The High Court shall sit in such places as the Chief Justice may appoint.

(5)

The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court or any court martial and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(6)

The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by subsection (5) of this section.

(7)

The Chief Justice may appoint a Rules of Court Advisory Committee to assist him in reviewing and overhauling the rules made under subsection (6) and to advise on proposals to update and amend such rules.

### **96 Appointment of judges of High Court**

**(1)**

The Chief Justice shall be appointed by the President.

**(2)**

The other judges of the High Court shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.

**(3)**

A person shall not be qualified to be appointed as a judge of the High Court unless—

- (a) he holds, or has held office, as a judge of a court having unlimited jurisdiction in civil and criminal matters in Botswana, in a Commonwealth country or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court; or
- (b) he is qualified to practise as an advocate or attorney in such a court and has been qualified for not less than ten years to practise as an advocate or attorney in such a court;
- (c) he is qualified to practise as an advocate or attorney and he has had the experience in the teaching of law in a recognised university for not less than ten years; or
- (d) he is a Chief Magistrate who has held that office for not less than five years.

**(4)**

In computing, for the purposes of subsection (3) of this section, the period during which any person has been qualified to practise as an advocate or attorney any period during which he has held judicial office after becoming so qualified shall be included.

**(5)**

If the office of Chief Justice is vacant or if the Chief Justice is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the Chief Justice has resumed those functions, as the case may be, those functions shall be performed by such one of the judges of the High Court or such other person qualified for appointment as a judge of the High Court as the President may appoint for that purpose:

Provided that—

- (i) a person may be appointed under this subsection notwithstanding that he has attained the age of 70 years or such other age as may be prescribed for the purposes of section 97 of this Constitution;
- (ii) a person appointed under this subsection, who is not a judge of the High Court, may, notwithstanding the assumption or resumption of the functions of the office of Chief Justice by the holder of that office, continue to act as a judge of the High Court for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

**(6)**

If the office of any judge of the High Court is vacant, or if any such judge is appointed to act as Chief Justice, or is for any reason unable to perform the functions of his office, or if the President, acting after consultation with the Chief Justice, is satisfied that the state of business in the High Court requires that the number of judges of the court should be temporarily increased, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the High Court to act as a judge of that court:

Provided that a person may be so appointed notwithstanding that he has attained the age of 70 years or such other age as may be prescribed for the purposes of section 88 of this Constitution.

(7)

Any person appointed under subsection (6) of this section to act as a judge of the High Court shall, subject to the provisions of section 97(4) and (5) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission:

Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a person whose appointment to act as a judge of the High Court has expired or been revoked to continue to act as such a judge for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

### **97 Tenure of office of judges of High Court**

(1)

Subject to the provisions of this section, a person holding the office of a judge of the High Court shall vacate that office on attaining the age of 70 years or such other age as may be prescribed by Parliament:

Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2)

A judge of the High Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3)

If the President considers that the question of removing a judge of the High Court under this section ought to be investigated then—

- (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4)

Where a tribunal appointed under subsection (3) of this section advises the President that a judge of the High Court ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such judge from office.

(5)

If the question of removing a judge of the High Court from office has been referred to a tribunal under subsection (3) of this section, the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought not to be removed from office.

### **98 Oaths to be taken by judges of High Court**

A judge of the High Court shall not enter upon the duties of his office unless he has taken and subscribed such oath for the due execution of his office as may be prescribed by Parliament.

## **PART II Court of Appeal (ss 99-102)**

### **99 Composition and jurisdiction**

**(1)**

There shall be a Court of Appeal for Botswana which shall have such jurisdiction and powers as may be conferred on it by this Constitution or any other law.

**(2)**

The judges of the Court of Appeal shall be—

- (a) the President of the Court of Appeal;
- (b) such number, if any, of Justices of Appeal as may be prescribed by Parliament; and
- (c) the Chief Justice and the other judges of the High Court:

Provided that Parliament may make provision for the office of President of the Court of Appeal to be held by the Chief Justice ex-officio.

**(3)**

The office of a Justice of Appeal shall not be abolished while there is a substantive holder thereof.

**(4)**

The Court of Appeal shall be a superior court of record and save as otherwise provided by Parliament shall have all the powers of such a court.

### **100 Appointment of judges of Court of Appeal**

**(1)**

The President of the Court of Appeal shall, unless that office is held ex-officio by the Chief Justice, be appointed by the President.

**(2)**

The Justices of Appeal, if any, shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission.

**(3)**

A person shall not be qualified to be appointed as a judge of the Court of Appeal unless—

- (a) he holds, or has held office as, a judge of a court having unlimited jurisdiction in civil and criminal matters in Botswana, in a Commonwealth country or in any country outside the Commonwealth that may be prescribed by Parliament or a court having jurisdiction in appeals from such a court; or
- (b) he is qualified to practise as an advocate or attorney in such a court and has been qualified for not less than ten years to practise as an advocate or attorney in such a court; or
- (c) he is qualified to practise as an advocate or attorney and he has had experience in the teaching of law in a recognised university for not less than ten years.

**(4)**

In computing, for the purposes of subsection (3) of this section, the period during which any person has been qualified to practise as an advocate or attorney any period during which he has held judicial office after becoming so qualified shall be included.



**(5)**

If the office of President of the Court of Appeal is vacant or if the President of the Court of Appeal is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the President of the Court of Appeal has resumed those functions, as the case may be, those functions shall be performed by such one of the other judges of the Court of Appeal or such other person qualified for appointment as a judge of the Court of Appeal as the President may appoint for that purpose:

Provided that—

- (i) a person may be appointed under this subsection notwithstanding that he has attained the age of 70 years or such other age as may be prescribed for the purposes of section 101 of this Constitution;
- (ii) a person appointed under this subsection, who is not a judge of the Court of Appeal, may, notwithstanding the assumption or resumption of the functions of the office of President of the Court of Appeal by the holder of that office, continue to act as a judge of the Court of Appeal for so long thereafter and to such extent as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

**(6)**

If the office of a Justice of Appeal is vacant or if any Justice of Appeal is appointed to act as Chief Justice or President of the Court of Appeal or is for any reason unable to perform the functions of his office, the President, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal:

Provided that a person may be so appointed notwithstanding that he has attained the age of 70 years or such other age as may be prescribed for the purposes of section 101 of this Constitution.

**(7)**

Any person appointed under subsection (6) of this section to act as a Justice of Appeal, shall subject to the provisions of section 101(4) and (5) of this Constitution, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, acting in accordance with the advice of the Judicial Service Commission:

Provided that the President, acting in accordance with the advice of the Judicial Service Commission, may permit a person whose appointment to act as a Justice of Appeal has expired or been revoked to continue to act as such a judge for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

**101 Tenure of office of judges of Court of Appeal****(1)**

Subject to the provisions of this section, a person holding the office of a judge of the Court of Appeal shall vacate that office on attaining the age of 70 years or such other age as may be prescribed by Parliament:

Provided that—

- (i) the President, acting in accordance with the advice of the Judicial Service Commission, may permit a judge who has attained that age to continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age;
- (ii) a person may be appointed as President of the Court of Appeal or as a Justice of Appeal for a fixed period of three years notwithstanding that he has attained the age referred to in this subsection or that he will before the expiry of his appointment have attained that age; and
- (iii) the appointment as President of the Court of Appeal or as Justice of Appeal serving for a fixed period under paragraph (ii) above shall not affect the date at which he is due to retire.

(2)

A judge of the Court of Appeal may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3)

If the President considers that the question of removing a judge of the Court of Appeal under this section ought to be investigated then—

- (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the judge ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4)

Where a tribunal, appointed under subsection (3) of this section, advises the President that a judge of the Court of Appeal ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such judge from office.

(5)

If the question of removing a judge of the Court of Appeal from office has been referred to a tribunal under subsection (3) of this section, the President may suspend the judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the judge ought not to be removed from office.

#### ***102 Oaths to be taken by judges of Court of Appeal***

A judge of the Court of Appeal shall not enter upon the duties of his office unless he has taken and subscribed such oath for the due execution of his office as may be prescribed by Parliament.

### **PART III Judicial Service Commission (ss 103-104)**

#### ***103 Composition and procedure***

(1)

There shall be a Judicial Service Commission for Botswana which shall consist of—

- (a) the Chief Justice who shall be Chairman;
- (b) the President of the Court of Appeal (not being the Chief Justice or the most Senior Justice of the Court of Appeal);
- (c) the Attorney-General;
- (d) the Chairman of the Public Service Commission;
- (e) a member of the Law Society nominated by the Law Society; and
- (f) a person of integrity and experience not being a legal practitioner appointed by the President.

(2)

A member nominated under paragraph (e) or appointed under paragraph (f) of subsection (1) shall hold office for a period of two years, but shall be eligible for re-nomination or re-appointment, as the case may be, for another term of office for two years:

Provided that—

- (i) a member nominated under paragraph (e) may be removed from office by the rest of the members of the Commission acting together only for inability of the member to discharge the functions of his office whether arising from infirmity of mind or body or any other cause or for gross misbehaviour; or
- (ii) a member appointed under paragraph (f) may be removed from office by the President only for inability of the member to discharge the functions of his office whether arising from infirmity of mind or body or any other cause or for gross misbehaviour.

(3)

A member of the Commission shall not enter upon the duties of his office until he has taken and subscribed such oath for the due execution of his office as may be prescribed by Parliament.

(4)

The Judicial Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

(5)

The Commission may regulate its own procedure and, subject to that procedure, may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(6)

The decisions of the Commission shall be by the vote of a majority of the members present, and in the event of an equality of votes, the Chairman shall have a casting vote.

#### **104 Appointment, etc., of judicial officers**

(1)

Power to appoint persons to hold or act in offices to which this section applies, to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the President acting in accordance with the advice of the Judicial Service Commission.

(2)

The offices to which this section applies are—

- (a) the office of Registrar of the Court of Appeal and High Court;
- (b) all offices of magistrate;
- (c) such other offices of President or member of any court or connected with any court as may be prescribed by or under an Act of Parliament.

(3)

In this section references to a court do not include references to a court martial.

## **PART IV Interpretation of the Constitution (ss 105-106)**

### ***105 Reference to High Court of cases involving interpretation of Constitution***

**(1)**

Where any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court and the court is of the opinion that the question involves a substantial question of law, the court may, and shall, if any party to the proceedings so requests, refer the question to the High Court.

**(2)**

Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court in which the question arose shall, subject to any appeal, dispose of the case in accordance with that decision.

### ***106 Appeal to Court of Appeal***

An appeal shall lie as of right to the Court of Appeal from any decision of the High Court which involves the interpretation of this Constitution, other than a decision of the High Court under section 69(1) of this Constitution:

Provided that no appeal shall lie from a determination of the High Court under this section dismissing an application on the ground that it is frivolous or vexatious.

## **PART V Judicial Committee**

**107**

[Repealed]

## CHAPTER VII

# The Public Service (ss 108-116)

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### 108 Power to specify qualifications for certain offices

Subject to the provisions of this Constitution and of any Act of Parliament, power to specify the qualifications and disqualifications for holding such public offices as he may constitute shall vest in the President.

### 109 Public Service Commission

(1)

There shall be a Public Service Commission for Botswana which shall consist of a Chairman and not less than two nor more than four other members.

(2)

The members of the Public Service Commission shall be appointed by the President.

(3)

A person shall not be qualified for appointment as a member of the Public Service Commission if he is a Member of the National Assembly or a public officer, or is or has within the two years immediately preceding his appointment been actively engaged in politics.

(4)

For the purposes of this section a person shall be deemed to be or to have been actively engaged in politics in circumstances in which he would be deemed to be or to have been so engaged for the purposes of section 64(4)(b) of this Constitution.

(5)

Subject to the provisions of this section, the office of a member of the Public Service Commission shall become vacant—

- (a) at the expiration of three years from the date of his appointment;
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such; or
- (c) if he is removed from office in accordance with the provisions of subsection (6) of this section.

(6)

Subject to subsection (7) of this section a member of the Public Service Commission may be removed from office by the President for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

**(7)**

If the President considers that the question of removing a member of the Public Service Commission under subsection (6) of this section ought to be investigated, then—

- (a) the President shall appoint a tribunal which shall consist of a Chairman and not less than two other members selected by the Chief Justice from among persons who hold or have held high judicial office; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to him whether the member ought to be removed under subsection (6) of this section, and the President shall act in accordance with that recommendation.

**(8)**

A member of the Public Service Commission shall not be removed from office except in accordance with the provisions of this section.

**(9)**

If the office of Chairman of the Public Service Commission is vacant or if the person holding that office is for any reason unable to perform the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, those functions shall be performed by such one of the other members of the Commission as may be designated in that behalf by the President.

**(10)**

If at any time there are less than two members of the Public Service Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to perform the functions of his office, the President may appoint a person who is qualified for appointment as a member of the Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (5)(b) of this section, continue to act until the office in which he is acting is filled, or as the case may be, until the holder thereof resumes his functions or until his appointment to act is revoked by the President.

**(11)**

Except as provided in subsection (13) of this section the Public Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

**(12)**

A member of the Commission shall not enter upon the duties of his office until 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.

**(13)**

Provision may be made by or under an Act of Parliament prescribing the procedure of the Commission and, subject thereto, the Commission may regulate its own procedure.

**(14)**

Except as may be otherwise provided in its rules or procedure, the Commission may act notwithstanding any vacancy in its membership or the absence of any member and its proceedings shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

(15)

Any decision of the Commission shall require the concurrence of a majority of all the members thereof.

(16)

A member of the Commission shall not, during the tenure of his office or during the three years immediately following such tenure, be eligible for appointment to any public office other than that of Ambassador, High Commissioner or other principal representative of Botswana in any other country or accredited to any international organization.

## **110 Appointment, etc., of public officers**

(1)

Subject to the provisions of this section and of sections 111, 113 and 114 of this Constitution, power to appoint persons to hold or to act in any office in the public service, to exercise disciplinary control over persons holding or acting in such offices and to remove from such offices shall vest in such person or persons as may be prescribed by Act of Parliament.

(2)

The provisions of this section shall not apply in relation to the following offices, that is to say—

- (a) the office of judge of the Court of Appeal or of the High Court;
- (b) any office to which section 104 or 112 of the Constitution applies.

(3)

Before any person or persons as may have been prescribed under the provisions of subsection (1) exercise power to appoint to or to act in any public office any person who holds or is acting in any office the power to make appointments to which is vested by this Constitution in the President acting in accordance with the advice of the Judicial Service Commission such person shall consult with the Judicial Service Commission.

## **111 Appeals to President**

(1)

Any person other than a member of the Botswana Police Force or the Prison Service who has been removed from office or subjected to any other punishment by the exercise of any powers conferred on any person under the provisions of section 110 of this Constitution may appeal to the Public Service Commission who may dismiss such appeal or allow it wholly or in part.

(2)

Subject to the provisions of subsection (3) every decision of the Public Service Commission under the provisions of this section shall be final.

(3)

Notwithstanding anything contained in subsection (2) if the Public Service Commission dismisses an appeal or allows it in part only the person who appealed may appeal to the President.

(4)

If any person appeals to the President in accordance with the provisions of subsection (3) of this section the President shall either dismiss the appeal or shall order that it be heard by a tribunal appointed by the President, the Chairman of which shall be a person who holds or has held high judicial office or is qualified to be appointed as a judge of the High Court.

(5)

If the President appoints a tribunal to hear an appeal in accordance with subsection (4) of this section the tribunal shall hear the appeal and shall advise the President whether or not the appeal should be allowed either wholly or in part, and the President shall act in accordance with that advice.

## **112 Powers of President in relation to certain public offices**

(1)

The power to appoint a person to hold or act in offices to which this section applies and to remove from office and to exercise disciplinary control over persons holding or acting in such offices shall, subject to the provisions of sections 113 and 114 of this Constitution, vest in the President.

(2)

The offices to which this section applies are—

- (a) Ambassador, High Commissioner or other principal representative of Botswana in any other country or accredited to any international organisation;
- (b) Secretary to the Cabinet;
- (c) Attorney-General;
- (d) Permanent Secretary;
- (e) Commissioner of Police; and
- (f) any other superscale office (other than an office to which this Constitution makes specific provision for appointment or an office to which appointment is made under the provisions of section 104 of this Constitution) which may be prescribed by Act of Parliament.

## **113 Tenure of office of Attorney-General**

(1)

Subject to the provisions of this section, a person holding the office of Attorney-General shall vacate his office when he attains the age of 60 years or such other age as may be prescribed by Parliament.

(2)

A person holding the office of Attorney-General may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3)

If the President considers that the question of removing a person holding the office of Attorney-General from office ought to be investigated then—

- (a) he shall appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office; and
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether the person holding the office of Attorney-General ought to be removed from office under this section for inability as aforesaid or for misbehaviour.

(4)

Where a tribunal appointed under subsection (3) of this section advises the President that a person holding the office of Attorney-General ought to be removed from office for inability as aforesaid or for misbehaviour, the President shall remove such person from office.



(5)

If the question of removing a person holding the office of Attorney-General from office has been referred to a tribunal under this section, the President may suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the person ought not to be removed from office.

## **114 Tenure of office of Auditor-General**

(1)

Subject to the provisions of this section, a person holding the office of Auditor-General shall vacate his office when he attains the age of 60 years or such other age as may be prescribed by Parliament.

(2)

A person holding the office of Auditor-General may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3)

If the National Assembly resolves that the question of removing a person holding the office of Auditor-General from office under this section ought to be investigated then—

- (a) the Assembly shall, by resolution, appoint a tribunal which shall consist of a Chairman and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Assembly;
- (c) the Assembly shall consider the report of the tribunal at the first convenient sitting of the Assembly after it is received and may, upon such consideration, by resolution, remove the Auditor-General from office.

(4)

If the question of removing a person holding the office of Auditor-General from office has been referred to a tribunal under this section, the National Assembly may, by resolution, suspend that person from performing the functions of his office, and any such suspension may at any time be revoked by the Assembly by resolution and shall in any case cease to have effect if, upon consideration of the report of the tribunal in accordance with the provisions of this section, the Assembly does not remove the Auditor-General from office.

## 115 Pensions laws and protection of pensions rights

(1)

The law to be applied with respect to any pensions benefits that were granted to any person before the coming into operation of this Constitution shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2)

The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall—

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before the date on which this Constitution comes into operation, be the law that was in force immediately before that date; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after the date on which this Constitution comes into operation, be the law in force on the date on which that period of service commenced, or any law in force at a later date that is not less favourable to that person.

(3)

Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4)

All pensions benefits shall (except to the extent to which under any law providing for the funding of pensions benefits they are a charge on a fund established by that law and have been duly paid out of that fund to the person or authority to whom payment is due) be a charge on the Consolidated Fund.

(5)

In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or as members of the armed forces or for the widows, children, dependants or personal representatives of such persons in respect of such service.

(6)

References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

(7)

In this section references to service as a public officer include references to service as a public officer of the former Protectorate of Bechuanaland.

## 116 Power of Commissions in relation to pensions, etc

### (1)

Where under any law any person or authority has a discretion—

- (a) to decide whether or not any pensions benefits shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

### (2)

Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

### (3)

The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of a judge of the Court of Appeal or of the High Court or the Auditor-General or Attorney-General has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

### (4)

In this section "the appropriate Commission" means—

- (a) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the Judicial Service Commission or that have been granted in respect of such service, the Judicial Service Commission;
- (b) in any other case, the Public Service Commission.

### (5)

In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers (including service as public officers of the former Protectorate of Bechuanaland) or for the widows, children, dependants or personal representatives of such persons in respect of such service.

## CHAPTER VIII

# Finance (ss 117-124)

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### 117 Consolidated Fund

All revenues or other moneys raised or received for the purposes of the Government of Botswana (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the department of Government that received them for the purposes of defraying the expenses of that department) shall be paid into and form one Consolidated Fund.

### 118 Withdrawals from Consolidated Fund or other public funds

(1)

No moneys shall be withdrawn from the Consolidated Fund except—

- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any Act of Parliament;
- (b) where the issue of those moneys has been authorized by an Appropriation Act, by a supplementary estimate approved by resolution of the National Assembly or by a law enacted in pursuance of section 120 of this Constitution.

(2)

No moneys shall be withdrawn from any public fund of Botswana other than the Consolidated Fund unless the issue of those moneys has been authorized by or under a law.

(3)

No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed by Parliament.

(4)

The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Overseas Governments and Administrations or the investment of any such moneys in securities in which, under the law for the time being in force in Botswana, trustees are authorized to invest, or the making of advances to such extent and in such circumstances as may be prescribed by Parliament, shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

## 119 Authorization of expenditure

(1)

The Minister for the time being responsible for finance shall cause to be prepared and laid before the National Assembly, before or not later than 30 days after the commencement of each financial year, estimates of the revenues and expenditure of Botswana for that year.

(2)

The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the said Bill.

(3)

If in any financial year it is found—

- (a) that the amount appropriated by the Appropriation Act for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Act; or
- (b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation Act or for a purpose for which no amount has been appropriated by the Appropriation Act,

a supplementary estimate showing the sums required or spent shall be laid before the National Assembly and the heads of expenditure shall be included in a supplementary Appropriation Bill, or in a motion or motions approving such expenditure, which shall be introduced or moved in the Assembly.

(4)

Where any supplementary expenditure has been approved in a financial year by a resolution of the National Assembly in accordance with the provisions of subsection (3) of this section, a supplementary Appropriation Bill shall be introduced in the National Assembly, not later than the end of the financial year next following, providing for the appropriation of the sums so approved.

## 120 Authorization of expenditure in advance of appropriation

Parliament may make provision under which, if the Appropriation Act in respect of any financial year has not come into operation by the beginning of that financial year, the President may authorize the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

## 121 Contingencies Fund

(1)

Parliament may make provision for the establishment of a Contingencies Fund and for authorizing the President, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2)

Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the National Assembly as soon as possible for the purpose of replacing the amount so advanced.

## 122 Remuneration of certain officers

(1)

There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed by Parliament.

(2)

The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3)

The salary payable to the holder of any office to which this section applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment.

(4)

Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of subsection (3) of this section, be deemed to be more advantageous to him than any others for which he might have opted.

(5)

This section applies to the offices of judge of the Court of Appeal, judge of the High Court, member of the Public Service Commission, member of the Judicial Service Commission, member of the Delimitation Commission, Auditor-General and Attorney-General.

## 123 Public debt

(1)

There shall be charged on the Consolidated Fund all debt charges for which Botswana is liable.

(2)

For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the revenues or the Consolidated Fund of the former Protectorate of Bechuanaland or Botswana, and the service and redemption of debt thereby created.

## 124 Auditor-General

(1)

There shall be an Auditor-General, whose office shall be a public office.

(2)

The public accounts of Botswana and of all officers, courts and authorities of the Government of Botswana shall be audited and reported on by the Auditor-General and for that purpose the Auditor-General or any person authorized by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so provided by Parliament in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(3)

The Auditor-General shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the National Assembly.

(4)

The Auditor-General shall perform such other duties and exercise such other powers in relation to the accounts of the Government or the accounts of other public authorities or other bodies as may be prescribed by or under any Act of Parliament.

(5)

In the exercise of his functions the Auditor-General shall not be subject to the direction or control of any other person or authority.

## CHAPTER IX

# Miscellaneous (ss 125-127)

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### 125 Resignations

(1)

Any person who is appointed or elected to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed or elected:

Provided that in the case of a person who holds office as President his resignation from that office shall be addressed to the Chief Justice, in the case of a person who holds office as Speaker or Deputy Speaker of the National Assembly his resignation from that office shall be addressed to the Assembly, in the case of an Elected or Specially Elected Member of the Assembly his resignation shall be addressed to the Speaker, and in the case of a Member of the House of Chiefs his resignation from that office shall be addressed to the Chairman of the House.

(2)

The resignation of any person from any office established by this Constitution shall take effect on the date or at the time indicated in the writing signifying the resignation or, if no such date or time is so indicated, at the time the writing is received by the person or authority to whom it is addressed or by any person authorized by that person or authority to receive it.

### 126 Reappointments and concurrent appointments

(1)

Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2)

Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.



## 127 Interpretation

### (1)

In this Constitution unless the context otherwise requires—

- "the Assembly" means the National Assembly;
- "Botswana" means the territory that, on 29th September, 1966, was comprised in the former Protectorate of Bechuanaland;
- "Chief" and "Sub-Chief" have the meanings assigned to those expressions in the Chieftainship Act;
- "financial year" means the period of 12 months ending on 31st March in any year or on such other day as Parliament may prescribe;
- "the Gazette" means the Botswana Government Gazette;
- "high judicial office" means the office of a judge of a court of unlimited jurisdiction in civil and criminal matters in Botswana, a Commonwealth country or in any country outside the Commonwealth that may be prescribed by Parliament or the office of judge of a court having jurisdiction in appeals from such a court;
- "the House" means the House of Chiefs;
- "oath" includes affirmation;
- "the oath of allegiance" means such oath of allegiance as may be prescribed by law;
- "public office" means, subject to the provisions of subsections (2) and (3) of this section, an office of emolument in the public service;
- "public officer" means a person holding or acting in any public office;
- "the public service" means the civil service of the Government;
- "session" means the sittings of the National Assembly beginning when it first sits after the coming into operation of this Constitution or after Parliament is prorogued or dissolved at any time and ending when Parliament is prorogued or is dissolved without having been prorogued;
- "sitting" means a period during which the National Assembly is sitting without adjournment and includes any period during which it is in committee;
- "subordinate court" means any court established for Botswana other than—
  - (a) the Court of Appeal;
  - (b) the High Court;
  - (c) a court martial; or
 the Industrial Court.

### (2)

In this Constitution, unless the context otherwise requires, references to offices in the public service shall be construed as including references to the offices of judges of the Court of Appeal and judges of the High Court and the offices of members of all subordinate courts (being offices the emoluments attaching to which, or any part of the emoluments attaching to which, are paid directly out of moneys provided by Parliament).

### (3)

For the purposes of this Constitution a person shall not be considered to be a public officer by reason only that he is in receipt of any remuneration or allowance as the President, Vice-President, a Minister or Assistant Minister, Speaker, Deputy Speaker or Member of the Assembly, a Member of the House of Chiefs or a member of any Commission established by this Constitution.

(4)

For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Government of Botswana or the former Protectorate of Bechuanaland.

(5)

In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or performing the functions of that office:

Provided that nothing in this subsection shall apply to references to the President or Vice-President in section 35, 36 or 39 of this Constitution.

(6)

In this Constitution, unless it is otherwise provided or required by the context, a reference to the power to make appointments to any office shall be construed as including a reference to the power to make appointments on promotion and transfer and to confirm appointments and to the power to appoint a person to act in or perform the functions of that office at any time when the office is vacant or the holder thereof is unable (whether by reason of absence or infirmity of mind or body or any other cause) to perform the functions of that office.

(7)

References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service:

Provided that nothing in this subsection shall be construed as conferring on any person or authority power to require a judge of the Court of Appeal or the High Court, the Auditor-General or the Attorney-General to retire from the public service.

(8)

Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or in any class of public officer on attaining an age specified therein.

(9)

Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

(10)

No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law.

(11)

Where any power is conferred by this Constitution to make any Act, order, regulation or rule, or to give any direction or instruction, the power shall be construed as including the power, exercisable in like manner to amend or revoke any such Act, order, regulation, rule, direction or instruction.

(12)

Any reference in this Constitution to a law made before 30th September, 1966 shall be construed as a reference to that law as it had effect on 29th September, 1966.

(13)

The Cap. 01:04 Interpretation Act, 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

## **SCHEDULE TO THE CONSTITUTION ELECTION OF SPECIALLY ELECTED MEMBERS OF THE NATIONAL ASSEMBLY (Section 58(2)(b))**

**1**

(1)

In this Schedule—

- "by-election" means an election to fill a vacancy among the Specially Elected Members occurring otherwise than upon a dissolution of Parliament;
- "general election" means an election to fill the vacancies among the Specially Elected Members occurring upon a dissolution of Parliament;
- "the Speaker" means the Speaker of the National Assembly; and
- "prescribed" means prescribed by rules made under paragraph 2 of this Schedule.

(2)

At any time when the office of Speaker is vacant or the holder of that office is unable by reason of absence or illness to exercise the functions vested in him by this Schedule those functions may be exercised by the Deputy Speaker of the National Assembly or, if there is no Deputy Speaker or the Deputy Speaker is unable by reason of absence or illness to exercise those functions, by such Member of the Assembly (not being the President or Vice-President or a Minister or Assistant Minister) as the Assembly may elect for that purpose.

**2**

Subject to the provisions of this Schedule the National Assembly may make rules for the election of its Specially Elected Members.

**3**

Elections of Specially Elected Members shall be conducted by the Speaker and, subject to the provisions of this Schedule and of any rules made under paragraph 2 thereof, shall be conducted in such manner as he may direct.

4

(1)

The President shall nominate four candidates for election in the case of a general election and he shall nominate one candidate for election in the case of a by-election.

(2)

The names of the four candidates or, as the case may be, the name of the one candidate nominated for election by the President under the foregoing subparagraph shall be presented to the National Assembly in such manner as may be prescribed, and any Elected Member of the Assembly (other than the President if he is an Elected Member) shall thereupon be entitled to nominate four candidates for election in the case of a general election and one candidate for election in the case of a by-election.

(3)

A list of the candidates nominated for election by the President and the Elected Members of the National Assembly under the foregoing provisions of this paragraph shall be prepared, and each Elected Member of the Assembly shall be entitled to vote—

- (a) in the case of a general election, for four candidates; and
- (b) in the case of a by-election, for one candidate, on the list so constituted.

(4)

The vote of every Elected Member of the National Assembly shall be given by ballot in such a manner as not to disclose how he has voted.

(5)

An Elected Member of the National Assembly shall not cast more than one vote for any one candidate.

5

(1)

The Speaker shall cause elections of Specially Elected Members to be held—

- (a) in the case of a general election, as soon as practicable after the holding of a general election of the Elected Members of the National Assembly and before the Assembly first meets after that general election; and
- (b) in the case of a by-election, as soon as practicable after a vacancy has occurred among the Specially Elected Members.

(2)

A meeting of the Elected Members of the National Assembly that is held for the purpose of a general election shall be summoned by the Speaker.

(3)

No other business than the holding of a general election may be transacted at any meeting of the Elected Members of the National Assembly summoned under subparagraph (2) of this paragraph and such a meeting shall not be regarded as a meeting of the Assembly for the purposes of any other provision of this Constitution.

**6**

When the votes have been cast, whether at a general election or at a by-election, a list shall be prepared showing the persons for whom votes have been cast in order according to the number of votes received by each of them, the person or persons who received the highest number of votes being placed first and those who received any lower number of votes being placed in descending order.

**7**

In the case of a general election, and subject to the provisions of paragraph 9 of this Schedule, those persons shall be deemed to have been elected as Specially Elected Members who stand in the first and each succeeding place on the list until the number of persons to be elected as Specially Elected Members has been completed.

**8**

In the case of a by-election, and subject to the provisions of paragraph 10 of this Schedule, the person who stands in the first place on the list shall be deemed to have been elected.

**9**

Where, by reason of an equality of votes between them, the number of candidates in any place on the list who would otherwise be deemed to have been elected under paragraph 7 of this Schedule exceeds the number of persons remaining to be elected as Specially Elected Members after the persons in the preceding places have been elected, none of the candidates in that place or in any succeeding place shall be deemed to have been elected and a further election shall be held to fill the vacancies still remaining among the Specially Elected Members; and the provisions of this Schedule shall apply in relation to that further election as if it were a general election where the total number of Specially Elected Members was equal to the number of vacancies still remaining to be filled.

**10**

Where, in a by-election, two or more candidates equally receive the highest number of votes, no candidates shall be deemed to have been elected and a further by-election shall be held, in accordance with the provisions of this Schedule, at which only those candidates who received the highest number of votes in the original by-election may again stand as candidates.