

1966 No. 1171

AFRICA

The Botswana Independence Order 1966

Made - - - - 20th September 1966
Laid before Parliament 20th September 1966
Coming into Operation Immediately before
 30th September 1966

At the Court at Balmoral, the 20th day of September 1966

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf conferred by the Foreign Jurisdiction Act 1890(a) and section 5 of the Botswana Independence Act 1966(b), is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation,
commence-
ment and
construction.

1.—(1) This Order may be cited as the Botswana Independence Order 1966.

(2) This Order shall come into operation immediately before 30th September 1966:

Provided that Her Majesty's Commissioner for the Bechuanaland Protectorate (in this Order referred to as "the Commissioner") acting in accordance with the advice of the Prime Minister, may at any time after 20th September 1966 exercise any of the powers conferred upon the President by section 4(3)(a) of this Order or section 91(1) of the Constitution of Botswana established by this Order to such extent as may, in his opinion, be necessary or expedient to enable that Constitution to function as from 30th September 1966.

(3) Save where the context otherwise requires, expressions used in sections 1 to 18 (inclusive) of this Order have the same meaning as in the Constitution set out in Schedule 2 to this Order and the provisions of section 129 of that Constitution shall apply for the purposes of interpreting those sections as they apply for the purposes of interpreting that Constitution.

Revocations.

2. The Orders specified in Schedule 1 to this Order (hereinafter referred to as "the existing Orders") are revoked to the extent specified therein.

3. Subject to the provisions of this Order the Constitution set out in Schedule 2 to this Order (hereinafter referred to as "the Constitution") shall come into effect in Botswana at the commencement of this Order.

4.—(1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the existing Orders or the establishment of a Republic in Botswana, continue in force after the commencement of this Order as if they had been made in pursuance of this Order. Existing laws.

(2) The existing laws and any Act of Parliament of the United Kingdom or Order of Her Majesty in Council (other than the Botswana Independence Act 1966 or this Order) having effect as part of the law of Botswana or any part thereof immediately before the commencement of this Order shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(3) The President may by order made at any time before 30th September 1967 make such amendments to—

(a) the existing laws ; or

(b) any Act of Parliament of the United Kingdom or Order of Her Majesty in Council (other than the Botswana Independence Act 1966 or this Order) having effect as part of the law of Botswana or any part thereof immediately before the commencement of this Order,

as may appear to him to be necessary or expedient for bringing those laws or that Act of Parliament or Order into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the commencement of this Order by or under the existing Orders, that prescription or provision shall, as from the commencement of this Order, have effect as if it had been made under the Constitution by Parliament or, as the case may be, by the other authority or person.

(5) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(6) In this section, the expression "the existing laws" means all Proclamations, Ordinances, laws, rules, regulations, orders and other instruments made by the High Commissioner for South Africa, the High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland or any other person or authority in Bechuanaland and having effect as part of the law of the Bechuanaland Protectorate or any part thereof immediately before the commencement of this Order (including any such instrument made before the commencement of this Order and coming into operation on or after the commencement of this Order) and includes any law applied to the Bechuanaland Protectorate by any such instrument.

5.—(1) Every person who immediately before the appointed day holds or is acting in a public office shall be deemed to have been appointed as from the commencement of this Order to hold or to act Existing officers.

in that office or the corresponding office established by the Constitution in accordance with the provisions of the Constitution:

Provided that any person who, under the existing Orders or under any existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) For the purposes of subsection (1) of this section the expression "public office" shall include the office of Chief Justice and of Chairman or member of the Public Service Commission, and any person who holds or is acting in any such office as from the commencement of this Order shall be deemed to have taken and subscribed any necessary oath under the Constitution.

(3) The provisions of this section shall be without prejudice to the provisions of sections 7 and 8 of this Order.

(4) In this section "existing law" means such a law as is referred to in section 4(6) of this Order.

Judges of the Basutoland, Bechuanaland Protectorate, and Swaziland Court of Appeal to be judges of the new Court of Appeal.

6.—(1) Any person who, immediately before the commencement of this Order, holds or is acting in the office of President of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal shall be deemed to have been appointed as from the commencement of this Order to hold or act in the office of President of the Court of Appeal established by the Constitution.

(2) Any person who immediately before the coming into effect of this Order holds or is acting in the office of an appointed judge (other than the President) of the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal shall be deemed to have been appointed as from the commencement of this Order to hold or act in the office of Justice of Appeal of the Court of Appeal established by the Constitution and such number of offices of Justice of Appeal as may be necessary for that purpose shall be deemed to have been established in accordance with the provisions of section 100(2)(b) of the Constitution.

(3) Any person who holds or is acting in the office of President or a Justice of Appeal of the Court of Appeal of Botswana as from the commencement of this Order shall be deemed to have taken and subscribed any oath which may subsequently be prescribed by Parliament under section 103 of the Constitution.

(4) Any person who holds or is acting in the office of President or a Justice of Appeal of the Court of Appeal as from the commencement of this Order and who at the commencement of this Order has attained the age of sixty-two years shall be deemed to have been appointed to hold or to act in the office of President or Justice of Appeal of the Court of Appeal until 30th September 1969 or until such earlier date, if any, as may have been prescribed as the limit of his term of office when he was appointed to the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal.

First Vice-President and Ministers.

7.—(1) Any person who immediately before the commencement of this Order holds the office of Deputy Prime Minister established under the existing Orders shall be deemed to have been appointed as from the commencement of this Order to hold the office of Vice-President in accordance with the provisions of the Constitution.

(2) Where any office of Minister (other than the office of Prime Minister or Deputy Prime Minister) or of Parliamentary Secretary is established under the existing Orders immediately before the commencement of this Order the equivalent office of Minister or, as the case may be, Assistant Minister shall be deemed to have been established, from the commencement of this Order, under the Constitution, and any person holding that office immediately before the commencement of this Order shall be deemed to have been appointed as from the commencement of this Order, to hold the equivalent office in accordance with the provisions of the Constitution.

8.—(1) Any person who immediately before the commencement of ^{Parliament.} this Order is an Elected or Specially Elected Member of the Legislative Assembly constituted by the existing Orders (in this section referred to as "the existing Assembly") shall, if he is qualified to be elected as a member of the National Assembly, be deemed as from the commencement of this Order to have been elected as an Elected or Specially Elected Member, as the case may be, of the National Assembly in pursuance of the provisions of the Constitution and shall hold his seat in the National Assembly in accordance with the provisions of the Constitution:

Provided that any such person who does not become a citizen of Botswana on the commencement of this Order shall be deemed to be such a citizen for the purpose of section 62 of the Constitution until he becomes such a citizen or until 30th September 1967, whichever is the earlier.

(2) Any person who immediately before the commencement of this Order is the Speaker or Deputy Speaker of the existing Assembly shall as from the commencement of this Order be deemed to have been elected as such in pursuance of the provisions of the Constitution and shall hold office in accordance with the provisions of the Constitution.

(3) Any person who on 29th September 1966 is a registered voter for the purpose of elections of Elected Members of the existing Assembly and who does not become a citizen of Botswana on the commencement of this Order shall be deemed to be such a citizen for the purposes of paragraph (a) of section 68(1) of the Constitution until he becomes such a citizen or until 30th September 1967, whichever is the earlier.

(4) The rules of procedure of the existing Assembly, as in force immediately before the commencement of this Order, shall, until it is otherwise provided by the National Assembly under section 77(1) of the Constitution, be the rules of procedure of the National Assembly, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(5) Any person who immediately before the commencement of this Order is an Elected Member of the House of Chiefs constituted by the existing Orders (in this section referred to as "the existing House of Chiefs") shall as from the commencement of this Order be deemed to have been elected as an Elected Member of the House of Chiefs in pursuance of the provisions of the Constitution and shall hold his seat in the House in accordance with the provisions of the Constitution.

(6) The rules of procedure of the existing House of Chiefs, as in force immediately before the commencement of this Order, shall, until it is otherwise provided under section 84 of the Constitution, be the rules of procedure of the House of Chiefs established by the Constitution, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the provisions of the Constitution; and any person who immediately before the commencement of this Order holds office as Chairman of the existing House of Chiefs under the said rules shall accordingly hold office as from the commencement of this Order as Chairman of the House of Chiefs established by the Constitution.

(7) The Chairman of the House of Chiefs shall cause a general election of Specially Elected Members of the House of Chiefs to be held as soon as practicable after the commencement of this Order.

(8) Notwithstanding anything contained in section 92(3) of the Constitution (but subject to the provisions of subsections (4) and (5) of that section) Parliament shall, unless sooner dissolved, stand dissolved on 23rd March 1970.

Citizenship. 9.—(1) Any person who, at the commencement of this Order, is entitled to be registered as a citizen of Botswana under subsection (2) or (3) of section 23 or section 25 of the Constitution shall, until he becomes a citizen of Botswana or until 30th September 1968 (whichever is the earlier) and subject to the provisions of subsection (3) of this section, have the status of a citizen of Botswana.

(2) Any person who has the status of a citizen of Botswana by virtue of the provisions of this section shall be regarded as such a citizen for the purposes of the provisions of the Constitution (other than Chapter III) and the provisions of any other law for the time being in force in Botswana (other than sections 11 and 12 of this Order or a law made or having effect as if made in pursuance of section 27 of the Constitution).

(3) Where provision is made by any law for the time being in force for depriving any person of citizenship of Botswana those provisions shall apply to the status conferred by this section and any person may be deprived of that status under those provisions accordingly.

Emergency Powers Orders in Council 1939 to 1964.

10. The Emergency Powers Orders in Council 1939(a) to 1964(b) shall cease to have effect as part of the law of Botswana on 30th September 1966.

Appeals in respect of certain decisions affecting pensions and like benefits.

11.—(1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say, a decision within any of the following classes:—

(a) a decision of the appropriate Commission to give such concurrence as is required by section 118 of the Constitution in relation

(a) See S.I. 1952 I, at p. 621.

(b) S.I. 1956/731, 1963/88, 1633, 1964/267, 1199 (1956 I, p. 512; 1963 I, p. 105; III, p. 3084; 1964 I, p. 467; II, p. 2781).

to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such an officer's service as a public officer ;

- (b) a decision by any authority to remove such an officer from office if the consequence of the removal is that any benefits cannot be granted in respect of the officer's service as a public officer ;
- (c) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

(2) Where any decision such as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made to an authority within the time stated in such a notice as is mentioned in subsection (2) of this section for a case to be referred to an Appeals Board, the authority shall notify the President in writing of that application and the President shall appoint an Appeals Board for that purpose consisting of—

- (a) one member selected by the President ;
- (b) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant ; and
- (c) one member selected by the two other members jointly (or, in default of agreement between those members, by the Chief Justice) who shall be the Chairman of the Board.

(4) Such an Appeals Board shall inquire into the facts of the case that is referred to it, and for that purpose the Board—

- (a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request ;
- (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case ; and
- (c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(5) When such an Appeals Board has completed its considerations of the case, then—

- (a) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (a) of subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice ;
- (b) if the decision that is the subject of the reference to the Board is a decision such as is mentioned in paragraph (b) or (c) of subsection (1) of this section, the Board shall not have power to advise

the authority responsible for making the decision to affirm, reverse or modify the decision but the Board may advise the authority responsible for granting the benefits in question—

- (i) where the officer has been removed from office, to grant all or part of the benefits for which the officer concerned would have been eligible under any law if he had retired voluntarily at the date of the dismissal; or
- (ii) where some other disciplinary action has been taken in relation to the officer, that on the grant of any benefits under any law in respect of the officer's service such benefits shall be increased by such amount, or shall be calculated in such manner, as the Board may specify in order to offset all or any part of the reduction in the amount of such benefits that, in the opinion of the Board, would or might otherwise be a consequence of the action,

and that authority shall act in accordance with that advice and the provisions of that law shall have effect accordingly.

(6) In this section—

“the appropriate Commission” and “pensions benefits” have the meanings assigned to them in section 118 of the Constitution; “legal representative” means a person entitled to practise in Botswana as an advocate or attorney.

(7) This section applies to any officer who is the holder of a pensionable public office and—

- (a) is designated under the Overseas Service (Bechuanaland) Agreement 1962;
- (b) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or
- (c) is not a citizen of Botswana.

Compulsory retirement to facilitate appointment of local candidates.

12.—(1) If the President is satisfied that there are more local candidates qualified for appointment to any offices to which section 114 of the Constitution applies than there are vacancies in those offices which could appropriately be filled by such local candidates, he may select officers to whom this section applies and whose retirement would cause vacancies in those offices that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and, by notice in writing, call upon the officers so selected to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) If the President so requests, the Judicial Service Commission or Public Service Commission shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in any branch of the service for which the Commission is responsible than there are vacancies in that branch that could appropriately be filled by such local candidates; and the Commission, if satisfied that such is the case, shall, if so requested by the President, select officers in that branch to whom this section applies and whose retirement would in the opinion of the Commission cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the President of the number of officers so

selected; and if the President specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), the Commission shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(3) Any notice given under subsection (1) or (2) of this section requiring any officer to retire from the public service shall—

(a) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date upon which he shall so retire which shall be not earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire; and

(b) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that, with the consent of the officer, the notice may specify an earlier date or, as the case may be, a shorter period.

(4) An officer to whom this section applies shall not be compulsorily retired from the public service for the purpose of facilitating the appointment of local candidates except in accordance with the provisions of this section.

(5) This section applies to any officer who holds a pensionable public office, and—

(a) is designated under the Overseas Service (Bechuanaland) Agreement 1962;

(b) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or

(c) is not a citizen of Botswana.

13.—(1) Any proceedings pending immediately before the commencement of this Order on appeal from the High Court of the Bechuanaland Protectorate to the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal may be continued after the commencement of this Order before the Court of appeal established by the Constitution. Legal proceedings.

(2) Any decision given before the commencement of this Order by the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal in an appeal from the High Court of the Bechuanaland Protectorate shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the Court of Appeal established by the Constitution.

(3) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the existing Orders other than the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal may be continued after the commencement of this Order before the corresponding court established by or under the Constitution.

(4) Any decision given before the commencement of this Order by any such court as aforesaid shall, for the purpose of its enforcement or for

the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by or under the Constitution.

Appeals
to Judicial
Committee.

14.—(1) Until Parliament otherwise provides under section 108 of the Constitution, an appeal shall lie from decisions of the Court of Appeal to the Judicial Committee in the cases mentioned in paragraphs (a) and (b) of section 4 of the Basutoland, Bechuanaland Protectorate and Swaziland (Appeals to Privy Council) Order in Council 1954^(a) as if references therein to the Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal were references to the Court of Appeal established by the Constitution and references to Her Majesty in Council were references to the Judicial Committee.

(2) Until Parliament otherwise provides under section 108 of the Constitution, and without prejudice to the provisions of subsection (1) of this section, an appeal shall, with the special leave of the Judicial Committee, lie to the Judicial Committee from the decision of the Court of Appeal in any civil or criminal matter.

(3) The provisions of subsections (2) and (3) of section 108 of the Constitution shall apply in relation to appeals under this section as they apply in relation to appeals under that section.

Prerogatives
and
privileges
of Crown.

15. Where under any law in force in the Bechuanaland Protectorate immediately before the commencement of this Order any prerogatives or privileges are vested in Her Majesty, those prerogatives or privileges shall, from the commencement of this Order, vest in the President.

Property
and assets.

16.—(1) Subject to the provisions of this section, any property and assets which immediately before the commencement of this Order are vested in Her Majesty or in the Commissioner, for the purposes of the Government of the Bechuanaland Protectorate, shall, from the commencement of this Order, vest in the President on behalf of the Government of Botswana.

(2) Any property which, immediately before the commencement of this Order, is liable to escheat or be forfeited to Her Majesty for the purposes of the Government of the Bechuanaland Protectorate, shall, from the commencement of this Order, be liable to escheat or be forfeited to the President on behalf of the Government of Botswana.

(3) Where, immediately before the commencement of this Order, any person holds any property or assets in trust for Her Majesty or for the Commissioner for the purposes of the Government of the Bechuanaland Protectorate, that person shall, from the commencement of this Order, hold such property or assets on the like trust for the President.

Rights,
liabilities and
obligations.

17.—(1) All rights, liabilities and obligations of—

(a) Her Majesty in respect of the Government of the Bechuanaland Protectorate; and

(b) the Commissioner or the holder of any other office under the Crown in respect of the Government of the Bechuanaland Protectorate on behalf of that Government,

(a) S.I. 1954/1370 (1954 I, p. 1013).

shall, from the commencement of this Order, be rights, liabilities and obligations of the President on behalf of the Government of Botswana and, subject to the provisions of any law, shall be enforceable by or against the President accordingly.

(2) In this section, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise (other than any rights referred to in the preceding section and any rights, liabilities or obligations of Her Majesty in respect of the Government of the Bechuanaland Protectorate arising under any treaty, convention or agreement with another country or with any international organisation).

18.—(1) Parliament may alter any of the provisions of this Order (in so far as these provisions form part of the law of Botswana) in the same manner as it may alter any of the provisions of the Constitution: Alteration
of this
Order.

Provided that—

(a) section 5 (except in so far as it relates to the office of Chief Justice) section 7, section 8(5) and (7) and sections 11 and 12 may be altered by Parliament only in the same manner as the provisions specified in paragraph (a) of section 90(3) of the Constitution; and

(b) section 3, section 5 in so far as it relates to the office of Chief Justice, section 6, section 8(8), sections 13 and 14 and this section may be altered by Parliament only in the same manner as the provisions specified in paragraph (b) of section 90(3) of the Constitution.

(2) Section 90(5) of the Constitution shall apply for the purposes of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in the said section 90 to any provision of the Constitution and to the alteration of any such provision.

W. G. Agnew.

SCHEDULE 1

Section 2.

EXISTING ORDERS REVOKED BY THIS ORDER

The Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal Order in Council 1954—S.I. 1954/1369 (1954 I, p. 167) in so far as it relates to Bechuanaland.

The Basutoland, Bechuanaland Protectorate, and Swaziland Court of Appeal (Amendment) Order 1964—S.I. 1964/1187 (1964 II, p. 2759), in so far as it relates to Bechuanaland.

The Basutoland, Bechuanaland Protectorate and Swaziland Court of Appeal (Amendment) Order 1965—S.I. 1965/133 (1965 I, p. 274), in so far as it relates to Bechuanaland.

The Basutoland, Bechuanaland Protectorate, and Swaziland Court of Appeal (Amendment No. 2) Order 1965—S.I. 1965/978 (1965 I, p. 2414), in so far as it relates to Bechuanaland.

The Bechuanaland (Electoral Provisions) Order 1964—S.I. 1964/915 (1964 II, p. 1953), the whole Order.

The Bechuanaland (Electoral Provisions) (No. 2) Order 1964—S.I. 1964/1843 (1964 III, p. 4009) ; the whole Order.

The Bechuanaland Protectorate (Constitution) Order 1965—S.I. 1965/134 (1965 I, p. 276) ; the whole Order.

The Bechuanaland Protectorate (Constitution) (Amendment) Order 1965—S.I. 1965/1718 (1965 III, p. 4838) ; the whole Order.

The Bechuanaland Protectorate (Constitution) (Amendment) Order 1966—S.I. 1966/687 (1966 II, p. 1545) ; the whole Order.

SCHEDULE 2

Section 3.

THE CONSTITUTION OF BOTSWANA**ARRANGEMENT OF SECTIONS****CHAPTER I****THE REPUBLIC****Section**

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5. Protection of right to personal liberty.
6. Protection from slavery and forced labour.
7. Protection from inhuman treatment.
8. Protection from deprivation of property.
9. Protection for privacy of home and other property.
10. Provisions to secure protection of law.
11. Protection of freedom of conscience.
12. Protection of freedom of expression.
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3. Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest to each and all of the following, namely— Fundamental
rights and
freedoms
of the
individual.

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

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

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

Protection
of right to
life.

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

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

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

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

Protection
of right to
liberty.

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

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

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

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

(3) Any person who is arrested or detained—

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

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

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

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

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

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

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

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

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

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

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

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

Protection
from slavery
and forced
labour.

Protection
from
inhuman
treatment.

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

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the former Protectorate of Bechuanaland immediately before the coming into operation of this Constitution.

Protection
from
deprivation
of property.

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

- (a) the taking of possession or acquisition is necessary or expedient—
 - (i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement ; or
 - (ii) in order to secure the development or utilisation of that, or other, property for a purpose beneficial to the community ; and
- (b) provision is made by a law applicable to that taking of possession or acquisition—
 - (i) for the prompt payment of adequate compensation ; and
 - (ii) securing to any person having an interest in or right over the property a right of access to the High Court, either direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

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

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

- (a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party ; or
- (b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

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

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—
 - (i) in satisfaction of any tax, rate or due ;

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

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

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

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

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

Protection
for
privacy of
home and
other
property.

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

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

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

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

Provisions
to secure
protection
of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Protection
of freedom of
conscience.

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

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

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

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

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

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

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

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

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

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

Protection
of freedom of
expression.

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

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

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

(c) that imposes restrictions upon public officers,

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

Protection
of freedom of
assembly and
association.

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

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

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

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

(c) that imposes restrictions upon public officers,

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

Protection
of freedom of
movement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) for the appropriation of public revenues or other public funds ;
- (b) with respect to persons who are not citizens of Botswana ;
- (c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law ;
- (d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons ; or
- (e) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

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

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

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

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

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

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

Derogation
from
fundamental
rights and
freedoms.

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

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

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

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

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

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

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

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

Declarations
relating to
emergencies.

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

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

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

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

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

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

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

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

Enforcement
of protective
provisions.

(2) The High Court shall have original jurisdiction—

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

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

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

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

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

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

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

Interpre-
tation and
savings.

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

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

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

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

“disciplined force” means—

(a) a naval, military or air force ;

(b) a police force ; or

(c) a prison service ;

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

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

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

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

CHAPTER III

CITIZENSHIP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) who becomes a citizen of Botswana by virtue of subsection (1) or subsection (2) of section 20 of this Constitution ; or
- (b) who, having died before that date would, but for his death, have become a citizen of Botswana by virtue of that section,

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

(4) Any woman who—

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

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

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

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

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

Registration of Commonwealth citizens and citizens of certain African countries.

25.—(1) Any person who—

- (a) has attained the age of twenty-one years or is a woman who is or has been married ;
- (b) is a citizen of any country to which this section applies ; and
- (c) has been ordinarily resident in Botswana (including the former Protectorate of Bechuanaland) for the period of five years immediately preceding that person's application for registration or for such shorter period as the President may in exceptional circumstances in any particular case direct,

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

(2) This section applies to—

- (a) any country to which section 28 of this Constitution applies ; and
- (b) any other country which is a country in Africa and is for the time being declared by the Minister, by notice published in the Gazette, to be a country which grants to citizens of Botswana a right to obtain citizenship of that country corresponding to that conferred by this section.

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

Woman married to Botswana citizen.

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

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

Powers of Parliament.

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

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

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

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

Commonwealth citizens.

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

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

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

Dual citizenship.

(2) Any person who—

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

(a) 1948 c. 56.

(b) 1965 c. 34.

(b) becomes a citizen of Botswana on that day by virtue of the provisions of section 20(1) of this Constitution ; and

(c) is immediately after that day also a citizen of some country other than Botswana,

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

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

(a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Botswana by voluntary act (other than marriage) ; or

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

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

(a) becomes a citizen of Botswana otherwise than under section 20, 21 or 22 of this Constitution ; and

(b) is immediately after the day upon which he becomes a citizen of Botswana also a citizen of some other country,

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

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

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

(a) in relation to a person to whom subsection (1) of this section refers, the date on which he attains the age of twenty-two years ;

(b) in relation to a person to whom subsection (2) of this section refers, 1st October 1968 ;

(c) in relation to a person to whom subsection (3)(b) of this section refers, the expiration of one year after the date on which he acquired the citizenship of the country other than Botswana ; and

(d) in relation to a person to whom subsection (4) of this section refers, at the expiration of three months after the date upon which he became a citizen of Botswana,

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

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

30.—(1) In this Chapter—

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

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

Interpreta-
tion.

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

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

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

CHAPTER IV

THE EXECUTIVE

PART 1

The President and Vice-President

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

Office of
President.

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

First
President.

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

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

Election of
President
after
dissolution of
Parliament.

(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 one thousand persons registered as voters for the purpose of elections to the Assembly.

(3) Where, at the expiration of the time for the delivery of nominations, only one qualified candidate is validly nominated in an election of a President the returning officer shall declare him to be elected and where, at the expiration of that time, more than one qualified candidate is validly nominated the following provisions shall apply—

- (a) every person nominated as a Parliamentary candidate shall, at the time of his nomination, 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 and if he does not so declare his nomination as a Parliamentary candidate shall be void ;
- (b) a candidate in an election of President may enter upon the nomination paper of any Parliamentary candidate, if so requested by the candidate, his endorsement of that person's candidature but the nomination of a Parliamentary candidate shall be valid notwithstanding that the nomination paper is not so endorsed ;
- (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 whose nomination paper has been endorsed by the Presidential candidate for whom he has declared his support 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 subparagraph (a) above by not less than such number of persons elected as members of the National Assembly in the Parliamentary election as corresponds to 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 (4)(d) of this section that no candidate has been elected, the new National Assembly shall meet on such day (not being more than fourteen 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 36(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 93 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 bye 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 the last foregoing subsection 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 last foregoing subsection.

(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 59(1)(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 39 of this Constitution.

Qualification
for election
as President.

34. A person shall be qualified for election as President if, and shall not be so qualified unless, he—

- (a) is a citizen of Botswana ;
- (b) has attained the age of thirty years ; and
- (c) is qualified to be elected as a member of the Assembly.

Tenure of
office of
President.

35.—(1) If the President is not a member of the Assembly when he is declared elected as President, he may continue to hold office as President for a period of six months commencing at the date on which he was so declared elected, but if immediately before the expiration of that period he continues to hold the office of President and is not a member of the Assembly he shall upon the expiration of that period cease to hold the office of President.

(2) If the President is a member of the Assembly he shall cease to hold the office of President if he ceases to be a member of the Assembly otherwise than by virtue of a dissolution of Parliament.

(3) The President shall cease to hold office when the person elected at the next election of President following a dissolution of Parliament assumes office.

Vacancy in
office of
President.

36.—(1) If the office of President is vacant, the Vice-President shall, subject to the provisions of this section, perform the functions of the office of President until such time as a new President assumes office in accordance with this section or section 33 of this Constitution.

(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 33 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 ten 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 subparagraph (b) above, or if after the number of ballots permitted under subparagraph (f) above 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 33(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 33(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 33(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.

37.—(1) Whenever the President is absent from Botswana or considers it desirable so to do by reason of illness or any other cause he may by directions in writing, authorise the Vice-President to discharge such of the functions of the office of President as he may specify and the Vice-President may discharge those functions until his authority is revoked by the President.

Discharge of
functions of
President
during
absence,
illness, etc.

(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 authorise 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 subsection 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 authorise 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.

Oath of President.

38. 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.

Returning officer at elections of President.

39.—(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 33 or 36 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.

Vice-President.

40.—(1) There shall be a Vice-President of the Republic of Botswana who shall be appointed by the President from among the members of the National Assembly.

(2) The Vice President shall continue in office until a person elected at the next election of President under section 33 or 36 of this Constitution assumes office:

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

- (a) if the appointment of the holder of the office is revoked by the President ; or
- (b) 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—

- (a) if his appointment is revoked by the President ;
- (b) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament ;
- (c) upon the assumption by any person of the office of President ; or
- (d) 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 36 or 37 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—

- (a) if his appointment is revoked by the Vice-President ;
- (b) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament ; or
- (c) 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.

41.—(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. Salary and allowances of President.

(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.

Protection of
President in
respect of
legal
proceedings.

42.—(1) Whilst any person holds or performs the function 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 2

The Cabinet

Ministers
and
Assistant
Ministers.

43.—(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—

- (a) 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
- (b) 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.

Tenure of
office of
Ministers
and
Assistant
Ministers.

44. 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.
- 45.—(1) There shall be a Cabinet which shall consist of the President, Vice-President and the Ministers. Cabinet.
- (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.

46. 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.

Oaths to be taken by Ministers and Assistant Ministers.
Secretary to Cabinet.

47.—(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 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 3

Executive Functions

48.—(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.

Functions of President.

(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.

Command of armed forces. **49.**—(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.

Functions of Vice-President. **50.** 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.

Functions of Cabinet Ministers and Assistant Ministers. **51.**—(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.

52.—(1) There shall be an Attorney-General whose office shall be a public office. Attorney-General.

(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 so to do—

- (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) of this section 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) of this section 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 (including the Judicial Committee) 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.

53. 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. Permanent Secretaries.

54. 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 ;

Prerogative of Mercy.

- (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.

Advisory
Committee
on
Prerogative
of Mercy.

55.—(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—

- (a) 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
- (b) 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, so 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.

Functions of
Advisory
Committee
on
Prerogative
of Mercy.

56.—(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 54 of this Constitution.

(2) The President may consult with the Committee before deciding whether to exercise any of his powers under the said section 54 in any case not falling within subsection (1) of this section.

Constitution
of
offices.

57. 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

PART 1

Composition

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

59.—(1) The National Assembly shall consist of— Composition
of National
Assembly.

(a) thirty-one 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 ; and

(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.

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

60.—(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. Speaker.

(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 69(2) 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.

61.—(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. Deputy
Speaker.

(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 69(2) 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.

Qualifica-
tions for
election to
National
Assembly.

62. Subject to the provisions of section 63 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 twenty-one 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.

Disqualifica-
tions for
membership
of National
Assembly.

63.—(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 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 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 ; or

(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 purpose 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.

64. 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.

Constituencies.

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

Delimitation Commission.

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

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

(i) is a member of the National Assembly ; or

(ii) is or has been within the preceding five years actively engaged in politics ; or

(iii) is a public officer.

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

(i) he is, or was at any time during that period, a member of the National Assembly, Legislative Assembly or Legislative Council ; or

(ii) he is, or was at any time during that period, nominated as a candidate for election to the National Assembly, Legislative Assembly, or Legislative Council ; or

(iii) he is, or was at any time during that period, the holder of an office in any political organisation that sponsors or supports, or has at any time sponsored or supported, a candidate for election as a member of the National Assembly, Legislative Assembly or Legislative Council :

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—

- (a) he has been the Speaker of the Legislative Council ; or
- (b) he has been the Speaker of the Legislative Assembly or of the National Assembly if he was elected to that office from amongst persons who were not members of the Legislative Assembly or National Assembly as the case may be.

(4) 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.

(5) If, after the appointment of the Delimitation Commission and before the Commission has submitted its report under the next following section, 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 subsection (3) 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.

Report of
Commission.

66.—(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 64 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.

67.—(1) There shall be a Supervisor of Elections whose duty it shall be to exercise general supervision over the registration of voters at elections of the Elected Members of the National Assembly and over the conduct of such elections. Supervisor
of Elections.

(2) The office of Supervisor of Elections shall be held by a public officer, being the public officer for the time being designated by name by the Public Service Commission for that purpose.

(3) A person shall not enter upon the duties of the office of Supervisor of Elections 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.

(4) For the purposes of the exercise of his functions under subsection (1) of this section, the Supervisor of Elections 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.

(5) The Supervisor of Elections shall, on the completion of any election of an Elected Member or Elected Members of the National Assembly, submit a report on the exercise of his functions under the foregoing 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 Assembly.

(6) In the exercise of his functions under the foregoing provisions of this section the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

The Franchise.

68.—(1) A person who

- (a) is a citizen of Botswana or of any other country to which this section is applied by Parliament ; and
- (b) has attained the age of twenty-one 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) A person shall be entitled to be registered as a voter—

- (i) 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
- (ii) in the case of a person who does not have a residence in Botswana, in the constituency in which he was born.

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

(4) 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 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.

Tenure of office of members.

69.—(1) The seat of an Elected Member or a Specially Elected Member of the National Assembly shall become vacant—

- (a) upon a 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 subsection (2) 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) (a) If circumstances such as are referred to in subparagraph (c) of the preceding paragraph 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 subparagraph, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

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

(b) 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.

(c) 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.

70.—(1) The High Court shall have jurisdiction to hear and determine any question whether—

Deter-
mination of
questions
as to
membership
of Assembly.

(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.

71.—(1) There shall be a Clerk of the National Assembly and a Clerk Assistant of the National Assembly and their offices shall be offices in the public service. Clerk of the
Assembly.

(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 2

*General Provisions Relating to Procedure in
National Assembly*

- Oaths to be taken by Speaker and members. **72.** 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.
- Presiding in Assembly. **73.** 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.
- Quorum in Assembly. **74.** 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 nine 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 still less than nine, he shall thereupon adjourn the Assembly.
- Voting in Assembly. **75.**—(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.
- Unqualified persons sitting or voting. **76.** 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 fifty rand 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.
- Regulation of procedure in Assembly. **77.**—(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 3

The House of Chiefs

- Composition of House of Chiefs. **78.**—(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.

79. 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.

Ex-officio
Members of
House of
Chiefs.

80.—(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, Francistown, Ghanzi and Kgalagadi districts, respectively.

Elected and
Specially
Elected
Members of
House of
Chiefs.

(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 circumstance in which he would be deemed to be or to have been so engaged for the purposes of section 65(3)(b)(ii) 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 twenty-one 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 63(2) of this Constitution.

(6) For the purpose 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.

Oath of allegiance.

81. 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.

Secretary to House of Chiefs.

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

Tenure of office of Elected Members and Specially Elected Members.

83.—(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 arises that, if he were not a Specially Elected Member of the House of Chiefs, would disqualify him for election as such.

(3) (a) If circumstances such as are referred to in subparagraph (c) of the preceding paragraph 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 subparagraph, he shall not vacate his seat until the expiration of a period of thirty 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 thirty days to enable the member to pursue an appeal against the decision, so, however, that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval of the House signified by resolution.

(b) 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.

(c) 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.

84. 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 matters:—

Rules of Procedure of House of Chiefs.

(a) the appointment or election and tenure of office of a Chairman of the House ;

(b) the times and places 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.

85. 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 so to do sat or voted in the House or otherwise took part in the proceedings.

House of Chiefs may transact business notwithstanding vacancies.

86.—(1) (a) The House of Chiefs shall consider the copy of any bill which has been referred to it under the provisions of section 89(2) of this Constitution and the House shall be entitled to submit resolutions thereon to the National Assembly.

Functions of House of Chiefs.

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

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

(2) 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.

(3) 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.

(4) A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (1)(c) or (2) 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 4

Powers of Parliament

Legislative powers. 87. Subject to the provisions of this Constitution, Parliament shall have power to make laws for the peace, order and good government of Botswana.

Mode of exercising legislative powers. 88.—(1) Subject to the provisions of section 90(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 89(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 twenty-one 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".

89.—(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— Introduction of bills.

(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 or powers of Chiefs, Sub-Chiefs or Headmen ;

(b) the organisation, powers or administration of African Courts ;

(c) African customary law, or the ascertainment or recording of African customary law ; or

(d) tribal organisation 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 thirty days has elapsed from the date when the copy of the bill was referred to the House of Chiefs.

90.—(1) Subject to the provisions of this section Parliament may alter this Constitution. Alteration of 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 thirty days before it is so introduced.

(3) In so far as it alters any of the provisions of—

(a) Chapter II ; sections 31 to 45 inclusive, 48 to 52 inclusive, and 57 ; sections 78 to 80 inclusive and section 86 ; Chapter VII ; or sections 119 to 122 inclusive and section 129 in its application to any of the provisions mentioned in this subparagraph ;

(b) sections 58, 64 to 68 inclusive, 87 to 90 inclusive, 91(2) and (3), 92(2), (3), (4) and (5), and 93 ; Chapter VI ; and section 129 in its application to any of the provisions mentioned in this subparagraph ;

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 section 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 5

Summoning, Prorogation and Dissolution

Sessions of Parliament.

91.—(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 sixty days of the date of the dissolution and a session of Parliament shall be appointed to commence within thirty days of the date of that general election.

Prorogation and dissolution of Parliament.

92.—(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 twelve 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.

93. 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.

Vote of no confidence in the Government.

94.—(1) The President may at any time summon a meeting of the National Assembly.

Sittings of 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 6

Interpretation

95. 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.

Votes of two-thirds of the Assembly.

CHAPTER VI

THE JUDICATURE

PART 1

The High Court

96.—(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.

Jurisdiction and Composition.

(2) The judges of the High Court shall be the Chief Justice and such number of other judges (hereinafter referred to as puisne judges) as may be prescribed by Parliament:

Provided that the office of a puisne judge 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.

Appoint-
ment of
judges of
High
Court.

97.—(1) The Chief Justice shall be appointed by the President.

(2) The puisne judges 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—

(i) he holds, or has held office as, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth 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

(ii) he is qualified to practise as an advocate in such a court and has been qualified for not less than five years to practise as an advocate or attorney in such a court.

(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 puisne judges or such other person qualified for appointment as a judge of the High Court as the President may appoint for that purpose :

Provided that—

(a) a person may be appointed under this subsection notwithstanding that he has attained the age of sixty-two years or such other age as may be prescribed for the purposes of section 98 of this Constitution ;

(b) a person appointed under this subsection, who is not a puisne judge, 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 puisne judge 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 puisne judge of that court :

Provided that a person may be so appointed notwithstanding that he has attained the age of sixty-two years or such other age as may be prescribed for the purposes of section 98 of this Constitution.

(7) Any person appointed under subsection (6) of this section to act as a puisne judge, shall subject to the provisions of section 98(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 puisne judge 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.

98.—(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 sixty-two years or such other age as may be prescribed by Parliament :

Tenure of
office of
judges of
High Court.

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.

Oaths to be taken by judges of High Court.

99. 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 2

Court of Appeal

Composition and Jurisdiction.

100.—(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 puisne 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.

Appointment of judges of Court of Appeal.

101.—(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—

(i) he holds, or has held office as, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth 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

(ii) he is qualified to practise as an advocate in such a court and has been qualified for not less than five years to practise as an advocate or attorney in such a court.

(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—

(a) a person may be appointed under this subsection notwithstanding that he has attained the age of sixty-two years or such other age as may be prescribed for the purposes of section 102 of this Constitution;

(b) 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 sixty-two years or such other age as may be prescribed for the purposes of section 102 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 102(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.

102.—(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 sixty-two years or such other age as may be prescribed by Parliament.

Tenure of office of judges of Court of Appeal.

Provided that—

- (a) 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 ;
- (b) 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
- (c) The appointment as President of the Court of Appeal of a Justice of Appeal serving for a fixed period under paragraph (b) 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.

Oaths to be taken by judges of Court of Appeal.

103. 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 3*Judicial Service Commission*

Composition and procedure.

104.—(1) There shall be a Judicial Service Commission for Botswana which shall consist of—

- (a) the Chief Justice, who shall be Chairman ;

- (b) the Chairman of the Public Service Commission or such other member of that Commission as may for the time being be designated in that behalf by the Chairman of that Commission ;
- (c) one other member who shall be appointed by the Chief Justice and the Chairman of the Public Service Commission acting together.

(2) The member appointed under subsection (1)(c) of this section may be removed from office by the Chief Justice and the Chairman of the Public Service Commission acting together, but he may be removed only for inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour. Such a member shall in any case vacate his office at the expiration of a period of three years from the date of his appointment.

(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 :

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

105.—(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. Appointment, etc., of judicial officers.

(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 4

Interpretation of the Constitution

106.—(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. Reference to High Court in cases involving interpretation of Constitution.

(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.

Appeals to
Court of
Appeal.

107. 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 70(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 5

Judicial Committee

Judicial
Committee
may be an
appeal court.

108.—(1) An appeal shall lie from the Court of Appeal to the Judicial Committee in such classes of cases and subject to such conditions as to leave or otherwise as may be prescribed by or under an Act of Parliament.

(2) Any decision given by the Judicial Committee in any appeal under this section shall be enforced in like manner as if it were a decision of the Court of Appeal.

(3) Subject to the provisions of subsection (4) of this section, the Judicial Committee shall, in relation to any appeal to it under this section in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal.

(4) An Act of Parliament made under subsection (1) of this section may confer on the Judicial Committee powers additional to those conferred by this section and may make such other provision as may be necessary or expedient for regulating the exercise by the Committee of any jurisdiction conferred upon it under this section.

CHAPTER VII

THE PUBLIC SERVICE

Power to
specify
qualifications
for certain
offices.

109. 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.

Public
Service Com-
mission.

110.—(1) There shall be a Public Service Commission for Botswana which shall consist of a Chairman and not less than two or 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 65(3)(b)(ii) 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.
- (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 paragraph (b) of subsection (5) 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) 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) 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:

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

(14) 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 organisation.

Appoint-
ment, etc.
of public
officers.

111.—(1) Subject to the provisions of this section and of sections 115 and 116 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 such persons from office shall vest in the Public Service Commission.

(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 105 or section 114 of this Constitution applies;

(c) any office in the Botswana police force below the rank of Assistant Superintendent to the extent that the Commissioner of Police or some other officer of the force is empowered by law to exercise the powers referred to in subsection (1) of this section.

(d) any office in the Botswana prison service below the rank of Assistant Superintendent of Prisons to the extent that the Director of Prisons or some other officer of the service is empowered by law to exercise the powers referred to in subsection (1) of this section.

(3) The Public Service Commission may, by directions in writing and subject to such conditions as it sees fit, delegate any of its powers under subsection (1) of this section to any one or more members of the Commission or, with the consent of the President, to any public officer.

(4) Before any of the powers conferred by this section in relation to the Clerk or Clerk-Assistant of the National Assembly are exercised by the Public Service Commission, the Commission shall consult with the Speaker of the Assembly, and before any such power in relation to the Secretary to the House of Chiefs is so exercised the Commission shall consult with the Chairman of the House.

(5) Before exercising its power of appointment in relation to the office of Attorney-General the Public Service Commission shall consult with the President.

(6) Before the Public Service Commission or any other person exercises powers under this section 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, the Public Service Commission or that person shall consult with the Judicial Service Commission.

112.—(1) Any person who has been removed from office or subjected to any other punishment prescribed by Parliament in exercise of the powers conferred on the Public Service Commission by the preceding section or delegated by the Commission thereunder may appeal to the President:

Appeals to President.

Provided that where the punishment has been imposed in exercise of powers delegated by the Commission the President may require the case to be reviewed by the Commission before an appeal is made to the President.

(2) If any person appeals to the President in accordance with the provisions of subsection (1) 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.

(3) If the President appoints a tribunal to hear an appeal in accordance with subsection (2) 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 partly, and the President shall act in accordance with that advice.

113.—(1) Parliament may provide that such powers as it may specify in relation to the appointment, removal from office and disciplinary control of members of the police force below the rank of Assistant Superintendent shall, subject to such conditions as Parliament may impose, vest in the Commissioner of Police or some other officer in the police force.

Appointment etc. of subordinate police and prison officers.

(2) Parliament may provide that such powers as it may specify in relation to the appointment, removal from office and disciplinary control of members of the Prison Service below the rank of Assistant Superintendent of Prisons shall subject to such conditions as Parliament may impose vest in the Director of Prisons or some other officer in the Prisons Service.

(3) Members of the police force or of the prison service who have been removed from office or subjected to any other punishment under the law of Botswana made in accordance with subsection (1) or subsection (2) of this section shall have a right to appeal to the Public Service Commission which may dismiss the appeal or allow it wholly or partly.

(4) If a member of the police force or a member of the prison service appeals to the Public Service Commission in accordance with the provisions of subsection (3) of this section and the Public Service Commission dismisses that appeal or allows it in part only, the person who made the appeal may further appeal to the President and the provisions of subsections (2) and (3) of section 112 shall apply in relation to such an appeal as they apply in relation to an appeal to the President under subsection (1) of that section.

114.—(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 vest in the President.

Powers of President in relation to certain public offices.

(2) Before exercising any such power as is referred to in subsection (1) of this section the President shall consult the Public Service Commission:

Provided that the President shall not be obliged to consult the Public Service Commission before appointing to any office referred to in subsections 3(a) and 3(c) of this section a person already holding such an office.

(3) 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) Permanent Secretary; and
- (d) Commissioner of Police.

Tenure of office of Attorney-General.

115.—(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 sixty years.

(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;
- (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.

Tenure of office of Director of Audit.

116.—(1) Subject to the provisions of this section, a person holding the office of Director of Audit shall vacate his office when he attains the age of sixty years.

(2) A person holding the office of Director of Audit 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 Director of Audit 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 Director of Audit from office.

(4) If the question of removing a person holding the office of Director of Audit 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 Director of Audit from office.

117.—(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. Pensions laws and protection of pensions rights.

(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.

Power of
Com-
missions in
relation to
pensions,
etc.

118.—(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 Director of Audit 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

119. 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.

Consolidated
Fund.

120.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

With-
drawals from
Consolidated
Fund or
other public
funds.

(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 authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the National Assembly or by a law enacted in pursuance of section 122 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 authorised 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 Oversea 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 authorised 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.

121.—(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 thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Botswana for that year.

Authorisa-
tion of
expenditure.

(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.

Authorisation of expenditure in advance of appropriation.

122. 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 authorise 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.

Contingencies Fund.

123.—(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.

Remuneration of certain officers.

124.—(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, Director of Audit, and Attorney-General.

125.—(1) There shall be charged on the Consolidated Fund all debt Public debt. charges for which Bechuanaland 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.

126.—(1) There shall be a Director of Audit, whose office shall be a public office. Director of Audit.

(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 Director of Audit and for that purpose the Director of Audit 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 Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the National Assembly.

(4) The Director of Audit 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 Director of Audit shall not be subject to the direction or control of any other person or authority.

CHAPTER IX

MISCELLANEOUS

127.—(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: Resignations.

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 when the writing signifying the resignation is received by the person or authority to whom it is addressed or by any person authorised by that person or authority to receive it.

Reappointments and concurrent appointments.

128.—(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.

Interpretation.

129.—(1) In this Constitution unless the context otherwise requires—

“Act of Parliament” means a law enacted by Parliament;

“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 Law, 1965(a);

“the Commonwealth” means Botswana and any country to which section 28 of this Constitution applies and any dependency of any such country;

“financial year” means the period of twelve 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 some part of the Commonwealth 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;

“the Judicial Committee” means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833(b) as from time to time amended by any Act of Parliament of the United Kingdom;

“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 subsection (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 Judicial Committee ;
- (b) the Court of Appeal ;
- (c) the High Court ; or
- (d) a court-martial.

(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 monies 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 sections 36, 37 or 40 of this Constitution.

(6) In this Constitution unless it is otherwise provided or required by the context, a reference to power to make appointments to any office shall be construed as including a reference to power to make appointments on promotion and transfer and to confirm appointments and to 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 Director of Audit 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 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 Proclamation, order, regulation or rule, or to give any direction or instructions, the power shall be construed as including the power, exercisable in like manner to amend or revoke any such Proclamation, order, regulation, rule, direction or instructions.

(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 Interpretation Act 1889(a) 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.

Section
59(1).

SCHEDULE TO THE CONSTITUTION

ELECTION OF SPECIALLY ELECTED MEMBERS OF NATIONAL ASSEMBLY

1.—(1) In this schedule—

“bye-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 bye-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 sub-paragraph 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 bye-election.

(3) A list of the candidates nominated for election by the President and the Elected Members of the Legislative 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 bye-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 shall have 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 bye-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 sub-paragraph (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 bye-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 bye-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 bye-election, two or more candidates equally receive the highest number of votes, no candidate shall be deemed to have been elected and a further bye-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 bye-election may again stand as candidates.

EXPLANATORY NOTE

(This Note is not part of the Order.)

By virtue of the provisions of the Botswana Independence Act 1966 the present Protectorate of Bechuanaland will attain fully responsible status within the Commonwealth on 30th September 1966 under the name of Botswana. This Order makes provision for a Constitution for Botswana from that date.