

## CHAPTER I: The Republic (ss 1-2)

---

### 1. Declaration of Republic

Botswana is a sovereign Republic.

### 2. Public Seal

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

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

---

### 3. Fundamental rights and freedoms of the individual

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

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

the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

### 4. Protection of right to life

1. No person shall be deprived of his or her 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 or she has been convicted.
2. A person shall not be regarded as having been deprived of his or her life in contravention of subsection (1) of this section if he or she 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 or she dies as the result of a lawful act of war.

## 5. Protection of right to personal liberty

1. No person shall be deprived of his or her personal liberty save as may be authorized by law in any of the following cases, that is to say—
  - a. in execution of the sentence or order of a court, whether established for Botswana or some other country, in respect of a criminal offence of which he or she has been convicted;
  - b. in execution of the order of a court of record punishing him or her 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 or her by law;
  - d. for the purpose of bringing him or her before a court in execution of the order of a court;
  - e. upon reasonable suspicion of his or her 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 or her parent or guardian, for his or her education or welfare during any period ending not later than the date when he or she attains the age of 18 years;
  - g. for the purpose of preventing the spread of an infectious or contagious disease;
  - h. in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his or her 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 or she is being conveyed through Botswana in the course of his or her extradition or removal as a convicted prisoner from one country to another;

• Power to deport citizens  
• Extradition procedure  
• Restrictions on entry or exit

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 or her 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 or she is permitted to make to any part of Botswana in which, in consequence of any such order, his or her presence would otherwise be unlawful; or

k. for the purpose of ensuring the safety of aircraft in flight.

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

3. Any person who is arrested or detained—

a. for the purpose of bringing him or her before a court in execution of the order of a court; or

b. upon reasonable suspicion of his or her 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 or her, he or she shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he or she appears at a later date for trial or for proceedings preliminary to trial.

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

## 6. Protection from slavery and forced labour

1. No person shall be held in slavery or servitude.

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

3. For the purposes of this section, the expression "forced labour" does not include—

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

b. labour required of any person while he or she 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 or she is detained;

c. any labour required of a member of a disciplined force in pursuance of his or her 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;

• Emergency provisions

- 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.

• Prohibition of cruel treatment  
• Prohibition of torture

## 7. Protection from inhuman treatment

1. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.
2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the country immediately before the coming into operation of this Constitution.

## 8. Protection from deprivation of property

• Protection from expropriation

1. No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—
  - a. the taking of possession or acquisition is necessary or expedient—
    - i. in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement;
    - ii. in order to secure the development or utilization of that, or other, property for a purpose beneficial to the community; or
    - iii. in order to secure the development or utilization of the mineral resources of Botswana; and
  - b. provision is made by a law applicable to that taking of possession or acquisition—
    - i. for the prompt payment of adequate compensation; and
    - ii. securing to any person having an interest in or right over the property a right of access to the High Court, either direct or on appeal from any other authority, for the determination of his or her 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 or she is entitled, and for the purpose of obtaining prompt payment of that compensation.

• Ownership of natural resources

2. No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he or she 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 or her choice outside Botswana.
3. Subsection (1)(b)(i) of this section shall be deemed to be satisfied in relation to any 30 of 1969 Law applicable to the taking of possession of minerals or the acquisition of rights to minerals if that law makes provision for the payment at reasonable intervals of adequate royalties.
4. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) of this section to the extent that the law in question authorizes—
  - a. the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he or she is a party; or
  - b. the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.
5. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—
  - a. to the extent that the law in question makes provision for the taking of possession or acquisition of any property—
    - i. in satisfaction of any tax, rate or due;
    - ii. by way of penalty for breach of the law whether under civil process or after conviction of a criminal offence under the law in force in Botswana;
    - iii. as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
    - iv. in the execution of judgments or orders of a court in proceedings for the determination of civil rights or obligations;
    - v. in circumstances where it is reasonably necessary to do so because the property is in a dangerous state or injurious to the health of human beings, animals or plants;
    - vi. in consequence of any law with respect to the limitation of actions; or
    - vii. for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed, to carry out),

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

- b. to the extent that the law in question makes provision for the taking of possession or acquisition of—
  - i. enemy property;
  - ii. property of a deceased person, a person of unsound mind, a person who has not attained the age of 21 years, a prodigal, or a person who is absent from Botswana, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - iii. property of a person declared to be insolvent or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - iv. property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court, or by order of a court, for the purpose of giving effect to the trust.
6. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by Parliament.

## 9. Protection for privacy of home and other property

1. Except with his or her own consent, no person shall be subjected to the search of his or her person or his or her property or the entry by others on his or her premises.
2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—
  - a. that is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilization of mineral resources, for the purpose of any census or in order to secure the development or utilization of any property for a purpose beneficial to the community;
  - b. that is reasonably required for the purpose of protecting the rights or freedoms of other persons;

• Regulation of evidence collection  
• Right to privacy

• Census

- c. that authorizes an officer or agent of the Government of Botswana, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or duty or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority or body corporate, as the case may be; or
- d. that authorizes, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or entry upon any premises by such order,  
and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

## 10. Provisions to secure protection of law

- 1. If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognized by law.
- 2. Every person who is charged with a criminal offence—
  - a. shall be presumed to be innocent until he or she is proved or has pleaded guilty;
  - b. shall be informed as soon as reasonably practicable, in a language that he or she understands and in detail, of the nature of the offence charged;
  - c. shall be given adequate time and facilities for the preparation of his or her defence;
  - d. shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice;
  - e. shall be afforded facilities to examine in person or by his or her 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 or her 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 or she cannot understand the language used at the trial of the charge,  
and except with his or her own consent the trial shall not take place in his or her absence unless he or she so conducts himself or herself as to render the continuance of the proceedings in his or her presence impracticable and the court has ordered him or her to be removed and the trial to proceed in his or her absence.

- Right to fair trial
- Judicial independence
- Right to speedy trial

- Presumption of innocence in trials

- Trial in native language of accused

- Right to counsel

- Right to examine evidence/ witnesses

- Trial in native language of accused

3. When a person is tried for any criminal offence, the accused person or any person authorized by him or her in that behalf shall, if he or she 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.

• Protection from ex post facto laws

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.

• Prohibition of double jeopardy

5. No person who shows that he or she 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 or she 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 or she shows that he or she has been pardoned for that offence.

• Protection from self-incrimination

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

• Principle of no punishment without law

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

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

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

• Right to public trial

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

11. Nothing in subsection (10) shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

a. may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings; or

b. may be empowered by law to do so in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings.

• Privileges for juveniles in criminal process



12. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—
- a. subsection (2)(a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
  - b. subsection (2)(d) or (2)(e) of this section to the extent that the law in question prohibits legal representation before a subordinate court in proceedings for an offence under customary law (being proceedings against any person who, under that law, is subject to that law);
  - c. subsection (2)(c) of this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
  - d. subsection (5) of this section to the extent that the law in question authorizes a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him or her shall in sentencing him or her to any punishment take into account any punishment awarded him or her under that disciplinary law;
  - e. subsection (8) of this section to the extent that the law in question authorizes a court to convict a person of a criminal offence under any customary law to which, by virtue of that law, such person is subject.
13. In the case of any person who is held in lawful detention, the provisions of subsection (1), subsection (2)(d) and (e) and subsection (3) of this section shall not apply in relation to his or her trial for a criminal offence under the law regulating the discipline of persons held in such detention.
14. In this section "criminal offence" means a criminal offence under the law in force in Botswana.

## 11. Protection of freedom of conscience

1. Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his or her religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his or her 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 or her own consent (or, if he or she is a minor, the consent of his or her 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 or her own.

- Freedom of religion
- Freedom of opinion/thought/conscience

4. No person shall be compelled to take any oath which is contrary to his or her religion or belief or to take any oath in a manner which is contrary to his or her religion or belief.
5. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—
  - a. in the interests of defence, public safety, public order, public morality or public health; or
  - b. for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion,
 and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

## 12. Protection of freedom of expression

1. Except with his or her own consent, no person shall be hindered in the enjoyment of his or her 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 or her correspondence.
2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—
  - a. that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
  - b. that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, regulating educational institutions in the interests of persons receiving instruction therein, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television; or
  - c. that imposes restrictions upon public officers, employees of local government bodies, or teachers,
 and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

- Freedom of expression
- Freedom of press
- Right to privacy

- Right to protect one's reputation
- Radio
- Telecommunications
- Television

### 13. Protection of freedom of assembly and association

- 1. Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of assembly and association, that is to say, his or her 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 or her interests.
- 2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—
  - a. that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
  - b. that is reasonably required for the purpose of protecting the rights or freedoms of other persons;
  - c. that imposes restrictions upon public officers, employees of local government bodies, or teachers; or
  - d. for the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration) and conditions whereby registration may be refused on the grounds that any other trade union already registered, or association of trade unions already registered, as the case may be, is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought,

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

### 14. Protection of freedom of movement

- 1. No person shall be deprived of his or her 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 or her 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. [Repealed.]
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 or she last made such request, as the case may be, his or her case shall be reviewed by an independent and impartial tribunal presided over by a person, qualified to be enrolled as an advocate in Botswana, appointed by the Chief Justice.
  5. On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted, the tribunal may make recommendations, concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

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

1. Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.
2. Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.
3. In this section, the expression "discriminatory" means affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour, creed or sex 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;

- General guarantee of equality
- Equality regardless of gender
- Equality regardless of skin color
- Equality regardless of creed or belief
- Equality regardless of tribe or clan
- Equality regardless of political party
- Equality regardless of origin
- Equality regardless of race

- Restrictions on rights of groups

- d. for the application in the case of members of a particular race, community or tribe of customary law with respect to any matter whether to the exclusion of any law in respect to that matter which is applicable in the case of other persons or not; or
  - e. whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.
5. Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.
  6. Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.
  7. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorized by section 9(2), 11(5), 12(2) 13(2), or 14(3), as the case may be.
  8. Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.
  9. Nothing contained in or done under the authority of any law shall be held to be inconsistent with the provisions of this section—
    - a. if that law was in force immediately before the coming into operation of this Constitution and has continued in force at all times since the coming into operation of this Constitution; or
    - b. to the extent that the law repeals and re-enacts any provision which has been contained in any written law at all times since immediately before the coming into operation of this Constitution.

## 16. Derogation from fundamental rights and freedoms

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

• Emergency provisions

2. Where a person is detained by virtue of such an authorization as is referred to in subsection (1) of this section the following provisions shall apply—
  - a. he or she shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his or her detention, be furnished with a statement in writing in a language that he or she understands specifying in detail the grounds upon which he or she is detained;
  - b. not more than 14 days after the commencement of his or her detention, a notification shall be published in the Gazette stating that he or she has been detained and giving particulars of the provision of law under which his or her detention is authorized;
  - c. not more than one month after the commencement of his or her detention and thereafter during his or her detention at intervals of not more than six months, his or her case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, qualified to be enrolled as an advocate in Botswana, appointed by the Chief Justice; and
  - d. he or she shall be afforded reasonable facilities to consult and instruct, at his or her own expense, a legal representative and he or she 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 or her 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 or her detention, to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

## 17. Declarations relating to emergencies

1. The President may at any time, by Proclamation published in the Gazette, declare that a state of public emergency exists.
2. A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect—
  - a. in the case of a declaration made when Parliament is sitting or has been summoned to meet within seven days, at the expiration of a period of seven days beginning with the date of publication of the declaration; or
  - b. in any other case, at the expiration of a period of 21 days beginning with the date of publication of the declaration,  
unless before the expiration of that period, it is approved by a resolution passed by the National Assembly, supported by the votes of a majority of all the voting members of the Assembly.

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

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

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

## 18. Enforcement of protective provisions

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

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

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

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

3. If in any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of sections 3 to 16 (inclusive) of this Constitution, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his or her opinion, the raising of the question is merely frivolous or vexatious.
4. Parliament may confer upon the High Court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.
5. Rules of court making provision with respect to the practice and procedure of the High Court for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

## 19. Interpretation and savings

1. In this Chapter, unless the context otherwise requires—
  - "court" means any court of law having jurisdiction in Botswana other than a court established by a disciplinary law, and in sections 4 and 6 of this Constitution a court established by a disciplinary law;
  - "disciplinary law" means a law regulating the discipline of any disciplined force;

- "disciplined force" means—
    - a. a naval, military or air force;
    - b. a police force; or
    - c. a prison service;
  - "legal representative" means a person entitled to practise in Botswana as an advocate or attorney;
  - "member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.
2. In relation to any person who is a member of a disciplined force raised under an Act of Parliament, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.
  3. In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Botswana, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

## CHAPTER III: Citizenship (ss 20-29: repealed)

---

[Repealed.]

## CHAPTER IV: The Executive (ss 30-56)

---

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

#### 30. Office of President

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

#### 31. First President

1. The first President shall be the person who immediately before 30th September, 1966 holds the office of Prime Minister under the Constitution.
2. The first President shall be deemed to have assumed office at the coming into operation of this Constitution.