

CHAPTER 41:01
CHIEFTAINSHIP

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An Act to re-enact with amendments the provisions relating to Chiefs, Deputy Chiefs, Sub-Chiefs and Headmen and matters incidental thereto or connected therewith.

[Date of Commencement: 9th October, 1987]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Chieftainship Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"Chief" means a Chief of one of the tribes and includes any regent thereof;

"Chief's representative" means a person appointed as a Chief's representative in terms of section 20;

"community area" means the area inhabited by a tribal community;

"customary law" means, in relation to any tribe or tribal community, the general law or custom of such tribe or community except in so far as such law or custom is repugnant to morality, humanity or natural justice, or injurious to the welfare of members thereof or repugnant to the Constitution or any other enactment;

"deputy chief" means a person appointed as deputy chief in terms of section 9;

"headman" means a person recognized as a headman in terms of section 20;

"judicial commission" means one or more Commissioners appointed by a Commission issued under the Commissions of Inquiry Act, the Commissioner or, if there is more than one Commissioner, the Chairman of the Commissioners being a person who holds or has held a high judicial office;

"kgotla" means the customary meeting of a tribe or tribal community or any portion thereof for the discussion in accordance with customary law of matters of tribal or communal concern;

"senior member of the tribe" means the person who, according to customary law, is responsible for the tribe in the absence of the Chief;

"sub-chief", in relation to any tribal community, means the person recognized as the sub-chief of that tribal community in terms of section 19;

"tribal authority" has the meaning assigned to it under section 5(2);

"tribal community" means any community which is living outside a tribal territory but is organized in a tribal manner;

"tribal territory" means, respectively, the Bamangwato, Batawana, Bakgatla, Bakwena, Bangwaketse, Bamalete and Batlokwa Tribal Territories, as defined in the Tribal Territories Act, the area known as the Barolong Farms as described in the Botswana Boundaries Act, and any area which may be added to any such areas by any enactment;

"tribe" means the Bamangwato Tribe, the Batawana Tribe, the Bakgatla Tribe, the Bakwena Tribe, the Bangwaketse Tribe, the Bamalete Tribe, the Barolong Tribe or the Batlokwa Tribe.

PART II

Recognition and Removal of Chiefs (ss 3-14)

3. Chieftainship

There shall be an office of Chief (in this Act referred to as "the chieftainship") for each of the tribes.

4. Who is a Chief

(1) A Chief is an individual who—

- (a) has been designated as a Chief in accordance with customary law by his tribe assembled in the kgotla; and
- (b) has been recognized as a Chief by the Minister.

(2) Where there is a vacancy in the chieftainship of a tribe, either by reason of death, deposition or abdication, it shall be the duty of the tribe assembled in the kgotla under the chairmanship of the senior member of the tribe to designate the rightful successor to the chieftainship according to customary law.

(3) The Minister may, at any time, make an order withdrawing recognition from a Chief if—

- (a) the Chief has been deposed and his appeal against his deposition has been dismissed or the period allowed for appealing has elapsed without an appeal having been brought; or
- (b) the Minister considers it to be in the public interest to withdraw recognition.

5. Appointment of regent

(1) Where a person designated a Chief under section 4 is below the age of 21, or, being of or above that age, is undergoing a full-time course of education approved for the purposes of this section by the Minister, such person shall not for the time being be recognized as Chief, and it shall be the duty of the tribe so assembled to designate another person (in this Act

referred to as "regent") of the tribe according to customary law.

(2) If the Minister considers that a person designated as Chief is, for any reason, unable to assume the chieftainship, he may recognize the person so designated as Chief but may appoint a person (in this Act referred to as a "tribal authority") who shall hold office as the tribal authority until the Minister considers that the Chief is able to assume the chieftainship.

(3) Subject to the provisions of section 7, the Minister shall, by notice published in the *Gazette*, appoint the person designated in terms of subsection (1) to be regent.

(4) A regent shall, pending the recognition of a Chief for the tribe in respect of which he is appointed, exercise and perform to the exclusion of all other persons, the functions of the Chief.

6. Termination of regency

(1) An appointment as regent shall terminate and the rightful successor to the chieftainship shall be recognized as Chief on a day to be specified by the Minister by notice published in the *Gazette*.

(2) Subject to the provisions of section 7, the day so specified shall be the day determined for such purpose by the regent in the kgotla.

7. Judicial commission to be appointed in case of doubt

If any question arises as to whether—

- (a) a person designated under section 4(2) is, under customary law, the rightful successor to the chieftainship, or is a fit and proper person to be so recognized;
- (b) a person designated under section 5 is, under customary law, the rightful person to be appointed as regent pending the recognition of the Chief, or is a fit and proper person to be appointed as regent;
- (c) a day determined under section 6(2) is the day on which it is desirable that a regency should terminate and a Chief be recognized; or
- (d) a regency should be terminated and a Chief recognized although no day has been determined under section 6(2),

the Minister may appoint a judicial commission to inquire into the matter.

(2) On receipt of the report of a judicial commission appointed in terms of this section the Minister shall determine the question which has arisen, and make such decision for the purposes of section 4(2), 5 or 6 as he may deem appropriate.

8. Tribal authority

(1) Where for any reason there is a vacancy in the chieftainship of any tribe, the Minister may, by notice published in the *Gazette*, appoint any person to be the tribal authority for that tribe.

(2) A tribal authority shall, pending the recognition or appointment under this Act of a Chief or regent for the tribe in respect of which he is appointed, exercise and perform, to the exclusion of all other persons, the functions of the Chief.

9. Deputy chief

(1) Subject to the provisions of subsection (2), a Chief may appoint any person as deputy chief.

(2) An appointment made under subsection (1) shall be subject to the approval of the Minister, and when so approved, the Minister shall cause a notice of the appointment to be published in the *Gazette*.

(3) If any disagreement arises between the Chief and the Minister as to the choice of deputy chief, the matter shall be decided by the Minister and the Minister, by notice published in the *Gazette*, shall appoint such Person to be deputy chief as he deems fit.

(4) A deputy chief shall perform such functions as the Chief may from time to time delegate to him in addition to the functions mentioned in section 10.

(5) Any delegation made in pursuance of subsection (4) shall be made known in the customary manner to the persons likely to be affected thereby.

10. Temporary absence or incapacity of Chief

(1) If a Chief is temporarily unable to exercise the functions of his office, whether by reason of illness, absence or other cause, the powers and duties relating to his office shall be exercised and performed by the deputy chief, or if there is no deputy chief, by the senior member of the tribe.

(2) A deputy chief or senior member of the tribe, as the case may be, shall not continue to perform the functions of the Chief in terms of this section if the Chief has notified him that he is about to assume or resume the exercise of his functions.

11. Incapacity of Chief

(1) If by reason of old age or mental or physical infirmity or other incapacity a Chief has become incapable of performing adequately the functions of his office, it shall be the duty of the Chief or in the absence of the Chief, the senior member of the tribe to report the circumstances to the Minister.

(2) On receipt of the report, the Minister may call upon the Chief or the senior member of the tribe to assemble the tribe in kgotla to consider the circumstances of the case and, if necessary, to designate a person who shall perform the functions of the Chief.

(3) Subject to the provisions of subsections (4) and (5), the Minister shall, by notice published in the *Gazette*, appoint any person so designated to perform the said functions during the incapacity referred to in this section.

(4) If any question arises as to whether it was necessary for any person to be so designated,

or whether any person so designated is fit to exercise those functions, or if there is any dispute as to whom the kgotla has designated, the matter shall be decided by the Minister.

(5) Upon deciding any question under subsection (4), or if the Chief or senior member of the tribe has failed to summon a kgotla or if a kgotla has failed to designate a person to exercise and perform the duties of the Chief, the Minister shall make such appointment as he may deem fit.

(6) Any person appointed under subsection (3) or subsection (5) shall, during the incapacity of the Chief, be deemed for the purposes of this Act to be the Chief.

12. Removal of Chief

(1) If—

- (a) the Minister has reasonable cause to believe that the Chief of any tribe; or
- (b) any tribe or section of a tribe lodges with the Minister a complaint that the Chief of that tribe,

is incapable of exercising his powers, has abused his powers or is for any reason not a fit and proper person to be a Chief, he shall suspend the Chief and inform him of the facts in writing of the reason for his suspension.

(2) Where a Chief has been suspended and informed of the grounds of his suspension in accordance with the provisions of subsection (1), the Minister shall make such inquiry or cause such inquiry to be made as he deems fit and consider any representations made to him by the Chief.

(3) If after the holding of an inquiry under subsection (2), the Minister's belief is confirmed or is of the opinion that the allegations made against the Chief have been proved, he may, if he considers it to be expedient and in the interest of peace, good order and good government depose such Chief or suspend him from the chieftainship for a period not exceeding five years.

13. Appeal against decision of Minister

(1) Any person who is dissatisfied with the decision of the Minister deposing him as Chief may appeal to the President against the decision within two months after the giving of the decision.

(2) An appeal under this section shall not operate as a stay of execution of any order made by the Minister and such order shall be of full force and effect until such time as it is otherwise disposed of on the appeal.

14. Appointment of person to act in place of suspended Chief

The Minister may appoint any person to act as a Chief in place of a Chief who has been suspended and whose appeal against his suspension has been dismissed or the period allowed for appealing has elapsed without an appeal having been brought.

PART III
Functions of Chiefs (ss 15-18)

15. Functions of Chiefs

It shall be the function of every Chief—

- (a) to exercise his powers under this Act to promote the welfare of the members of his tribe;
- (b) to carry out any instructions given to him by the Minister;
- (c) to ensure that the tribe is informed of any development projects in the area which affect the tribe;
- (d) to convene kgotla meetings to obtain advice as to the exercise of his functions under this Act; and
- (e) to perform such other functions as may be conferred on him by or under this Act.

16. Admission of membership into the tribe

A Chief shall have power, after consultation with the tribe or any section thereof in accordance with customary law—

- (a) to determine questions of tribal membership and admit persons to membership of the tribe; and
- (b) to arrange tribal ceremonies.

17. Prevention of crime

(1) It shall be the duty of every Chief to the best of his ability to prevent the commission of any offence within his tribal territory.

(2) A Chief receiving information that any person, who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, is within his tribal territory, shall cause such person to be arrested forthwith and taken before a court having jurisdiction over him.

(3) A Chief receiving information that property of any description which has been stolen, whether within or without his tribal territory is within such area, shall cause such property to be seized and detained pending the order of a court having jurisdiction in the matter and shall forthwith report such seizure and detention to such court.

(4) Any person acting on and in accordance with instructions lawfully given by a Chief pursuant to the provisions of this section shall be deemed to be empowered to do all that may be reasonably necessary to give effect to such instructions.

18. Directions by Minister

(1) The Minister may issue directions in writing to any Chief, not inconsistent with the provisions of this Act, for the better carrying out of the provisions of this Act.

(2) Any Chief who fails to comply with any direction given to him by the Minister shall be liable to be suspended or deposed in accordance with the provisions of section 12.

PART IV ***Sub-Chiefs and Headmen (ss 19-20)***

19. Recognition, etc., of sub-chief

(1) The Minister may, by notice published in the *Gazette*, after causing to be held such consultation as he may deem fit with the kgotla of any tribal community, recognize, or withdraw the recognition, of any person as sub-chief of that tribal community.

(2) A sub-chief shall have, in relation to the tribal community of which he is sub-chief, such of the powers and duties of a Chief as the Minister may specify by notice published in the *Gazette*.

20. Headmen and Chief's representatives

(1) A Chief may, after consultation with the kgotla in the customary manner, recognize any person as headman in respect of any area of his tribal territory and may in like manner terminate the recognition.

(2) A Chief may, after consultation with the people of the area, with the approval of the Minister, appoint any person as his representative in respect of any area of his tribal territory and may in like manner terminate the appointment.

(3) The Minister may, if he is satisfied that—

- (a) the recognition of a headman has been made without due consideration of the wishes and the interests of the kgotla, cancel the recognition of such headman, and may recognize as headman such person as he deems fit;
- (b) the appointment of the person proposed by the Chief as his representative would not be in the interests of the people of the area, make such appointment as he deems fit; or
- (c) the Chief is wilfully failing or refusing to fulfil his responsibilities under this section, recognize as headman or appoint as Chief's representative, as the case may be, such person as he deems fit,

and any recognition or appointment made by the Minister under this subsection shall not be capable of termination by the Chief,

(4) A headman or Chief's representative shall have, in relation to the area of the tribal territory in respect of which he has been recognized or appointed, such of the powers and duties of the Chief as the Chief may from time to time delegate to him.

(5) Every delegation made in pursuance of subsection (4) shall be made known in the customary manner to the persons likely to be affected thereby.

(6) In this section "Chief" includes "sub-chief" and "tribal territory" includes "community area".

PART V **Supplementary (ss 21-26)**

21. Salaries of Chiefs

(1) Chiefs, tribal authorities, deputy chiefs, sub-chiefs and headmen (hereinafter in this Part referred to as a "Chief") shall be paid from moneys appropriated by law for that purpose, salaries at such rates as may be fixed by the Minister by order published in the *Gazette*.

(2) Different rates may be fixed in respect of different Chiefs.

22. Undermining power of chief

(1) Subject to the provisions of subsection (2), a person shall be guilty of an offence if he commits any act with intent to undermine the lawful power and authority of a Chief.

(2) Nothing in this section shall prevent any person from bringing a claim or making a complaint against any Chief in accordance with the provisions of this Act.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding two years, or to both.

23. Prohibition of persons purporting to act as chiefs etc.

(1) If he considers it expedient in the public interest, the Minister may by order—

- (a) prohibit any person who is not a Chief (whether or not he was formerly recognized as a Chief) from purporting to exercise the functions of a Chief;
- (b) require a person subject to such a prohibition to reside outside a specified area;
- (c) require that no person shall treat as a Chief a person who is subject to such prohibition,

and any person who contravenes such order shall be guilty of an offence.

(2) Before making any order under subsection 1(b), the Minister shall afford to the person to be affected by the order an opportunity to make any representations he may wish in regard to the order or the terms of the order.

24. Penalty for contravening the provisions of section 23

(1) Any person who contravenes the provisions of section 23 shall be guilty of an offence and liable to a fine not exceeding P200 or to a term of imprisonment not exceeding one year, or

to both.

(2) No prosecution for an offence under this section shall be instituted except on the written authority of the Attorney-General.

25. Jurisdiction of courts in relation to cause or matter affecting chieftainship

(1) Notwithstanding any provision of any enactment to the contrary, no court shall have jurisdiction to hear and determine any cause or matter affecting chieftainship.

(2) For the purposes of this section "cause or matter affecting chieftainship" means any cause, matter, question or dispute relating to any of the following—

- (a) the designation of any person as a Chief or the claim of any person to be designated as a Chief; or
- (b) recognition, appointment or suspension of a person to be a Chief.

26. Regulations

The Minister may make regulations for the better carrying out of the provisions of this Act and without derogating from the generality of the foregoing, such regulations may prescribe—

- (a) the general conditions of service of;
- (b) the procedure for taking disciplinary actions; and
- (c) the punishment which may be awarded for breaches of discipline by,

persons appointed under this Act.