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REPABOLEKI YA BOPHUTHATSWANA



REPUBLIC OF BOPHUTHATSWANA

REPUBLIEK VAN BOPHUTHATSWANA

TONA YA MERERO YA PUSO, YA PHIMELO LE YA DIPHOFO TSA SELEGAE
THE MINISTER OF STATE AFFAIRS, OF DEFENCE AND OF CIVIL AVIATION
DIE MINISTER VAN STAATSAANGELEENTHEDE, VAN VERDEDIGING EN VAN BURGERLIKELUGVAART

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DATE: 19 May 1993 FAX NO: 011-3972211

SUBJECT: Botswana Govt's submission to
Technical Comm. on Constitutional
Matters

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BOPHUTHATSWANA GOVERNMENT'S SUBMISSION

FUNDAMENTAL PRINCIPLES RECOMMENDED TO BE CONTAINED IN A CONSTITUTION

The following is a model for a Constitution which embodies certain fundamental principles. It does not purport to be a conclusive model in this regard, but does contain those principles which ought to form the cornerstone of any proper constitutional model.

Addition to the proposed constitution:-

The recommended constitution does not deal with the following issues, although it is accepted that it may or ought to be embodied in a constitution namely:-

- (a) the principles viz a viz democracy, independence and economy upon which the territory is based;
- (b) the National Flag;
- (c) the National Anthem ;
- (d) official languages;
- (e) territory; and
- (f) supreme law of the territory

Apart from the above the embodiment of the following principles is recommended:-

Enforcement of rights.

- 1.(1) The following fundamental rights are binding on the legislature, the executive and the judiciary, and are directly enforceable by law.
- (2) Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this Declaration.
- (3) Subject to the provisions of subsection (4), the Supreme Court shall have the power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this Declaration.

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Equality before the law.

2. All people shall be equal before the law, and no one may because of his sex, his descent, his race, his language, his origin or his religious beliefs be favoured or prejudiced.

Right of life.

3. (1) Everyone's right of life shall be protected by law and no one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- (2) Deprivation of life shall not be regarded as inflicted in contravention of this section when it results from the use of force which is no more than absolutely necessary-
- (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Punishment.

4. No one shall be subjected to torture or to inhuman and degrading treatment or punishment.

Right of liberty and freedom.

5. (1) No one shall be held in slavery or servitude.
- (2) No one shall be required to perform forced or compulsory labour - provided that this shall not include-
- (a) any work required to be done in the ordinary course of detention imposed under the provisions of subsection (3) or during conditional release from such detention;
 - (b) any service of a military character in terms of a law requiring citizens to undergo military training;

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- (4) If, in relation to any proceedings brought before the Supreme Court for the enforcement, against the State or any of its Ministers or officials, of any right or duty referred to in section 5(3)(g) or (5), section 8(1) or section 9(1) of this Chapter, there is lodged with the Court a certificate under the hand of the State President to the effect that, after having received information from the National Security Council, he is satisfied that any affidavits or other documents or evidence to be tendered by the State or any of its Ministers or officials in answer to such proceedings, will or is likely to divulge information which will prejudice any general criminal or public investigation which is then pending into-
- (a) any alleged conspiracy, any armed or military rebellion or insurrection, or other acts of treason or sedition, aimed at effecting a change of the Government of the territory in a manner contrary to that provided for in this Constitution or any other relevant law, or at effecting the secession from the territory of any part of its territory; or
- (b) any conduct or activity alleged to constitute an offence in terms of section 15(c) or (d) or section 22(1)(a) or (b) of the Internal Security Act, 1979 (Act 32 of 1979),

the Court shall, on application on behalf of the State or, as the case may be, any such Minister or official cited as the defendant or respondent in such proceedings, postpone such proceedings for such period as shall be specified in such application, but not exceeding two months, for the purpose of concluding such general investigation: Provided that on application brought on behalf of such defendant or respondent on the day first following the expiration of such period of two months, and the lodgement with the Court of such a certificate to the effect that the conclusion of such general investigation could not be effected within that period despite all reasonable endeavours having been applied to that end, the Court shall grant one more postponement of such proceedings for such further period as shall be specified in the latter application, but not exceeding one month.

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- (c) any service exacted in case of an emergency or calamity threatening the existence or well being of the territory;
- (d) any work or service which forms part of normal civic obligations imposed by law.
- (3) Everyone has the right to liberty and security of person and no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so, provided that such a person shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within reasonable time or to release pending trial, and that release may be conditioned by guarantees to appear for trial;
- (c) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (d) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
- (e) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the territory or of any person against whom action is being taken with a view to deportation or extradition;
- (g) lawful detention in the interests of national security or public safety.

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(4) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(5) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided promptly by a court and his release ordered if the detention is not lawful.

(6) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law; judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(7) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law, and shall have the following minimum rights;

- (a) to be informed promptly, in a language which he understands and in detail of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or, unless a law otherwise provides, through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free of charge when the interests of justice so require.

(7A) Notwithstanding the provisions of subsections(5),(6) and (7), a person held in custody by virtue of his arrest or detention pursuant to and for the purposes of or in connection with any general criminal or public investigation into any of the matters referred to in paragraphs (a) and (b) of section 1(4), shall, time as such general investigation has been concluded-

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- (a) where he has been charged with an offence regarding any such matter, **not be tried for such offence,** unless the attorney-general, in concurrence with the Minister of Law and Order, otherwise directs; and
- (b) irrespective of whether or not he has been so charged, but subject to the provisions of section 25(7) of the Internal Security Act, 1979, not be entitled to visitation by any other person, and no one shall have a right of access to the person so in custody, except with the written authority of the said Minister and subject to such terms and conditions as that Minister may determine and specify in such authority.

(8) No one shall be guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under the law in force at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time the criminal offence was committed.

Respect for private and family life.

6. (1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of such a right except in so far as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the territory, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.
- (3) The system of education shall be controlled by the State, but private educational institutions may, on application, in the discretion of the Government and subject to such conditions as the Government may deem fit, be allowed where such institutions in their educational aims and standards are not inferior to state institutions.

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(2) No restrictions shall be placed on the exercise of such rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedom of others and the provisions of this section shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the territory.

Protection of property.

10. (1) The right to own and possess private and communal property is protected.

(2) Expropriation shall be authorised only in terms of an Act of Parliament, if it is for the public benefit and if reasonable compensation is paid.

Restriction of fundamental rights.

11. (1) The rights and freedom referred to in section 12 to 10 may be restricted only by a law of Parliament and such a law shall have a general application.

(2) Except for the circumstances provided for in this Declaration, a fundamental right and freedom shall not be totally abolished or in its essence be encroached upon.

THE STATE PRESIDENT

Office of State President.

12. The Head of the State of the territory is the State President, who shall represent and serve the territory and its people.

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Powers of State President.

13. (1) The State President is the executive Head of Government and commander-in-chief of the defence force of the territory.
- (2) The State President, in his capacity as commander-in-chief of the defence forces of the territory, may, subject to such conditions as may be prescribed by or under any law-
- (a) mobilize and call out the defence forces or any part thereof for operational purposes or otherwise for the maintenance of law and order, the preservation of the peace, the protection of life, health or property or the provision or continuance of essential services; and
- (b) confer commissioned ranks in the defence forces on any person serving or qualified to serve therein and give to such person a commission under his hand.
- (3) The State President shall in addition to the other provisions of this Constitution, further have power-
- (a) to confer honour;
- (b) to appoint and to accredit, to receive and to recognise ambassadors, pleni-potentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
- (c) to pardon or reprieve offenders, either conditionally or unconditionally and to remit any fines, penalties or forfeitures;
- (d) to enter into and ratify international conventions, treaties and agreements;
- (e) to proclaim and terminate martial law;
- (f) to declare war and make peace; and
- (g) to make such appointments as he may determine under powers vested in him by any other law and to exercise such other powers as may be vested in him and perform such other functions as may be assigned to him, by any other law.

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Election of State President.

14. (1) The State President shall be directly elected, as hereinafter provided, by general suffrage of persons who are registered as voters as contemplated by this Constitution.

EXECUTIVE GOVERNMENT**Executive government.**

15. The executive government of the territory is vested in the State President, who shall consult the Ministers in Executive Council.

Executive Council.

16. The Executive Council shall consist of the State President and the Ministers of State appointed under section 18(1).

Confirmation of executive acts of State President.

17. (1) The State President shall exercise his powers, authorities and functions vested in him under section 15 in writing under his signature which shall be confirmed by the impress of the Seal of the territory.
- (2) All decisions of the Executive Council shall be recorded in writing and such decision shall be taken in accordance with such rules of procedure as determined by the Executive Council.

State departments and Ministers.

18. (1) The State President shall establish such Departments of State as he deems necessary for the Government, and shall appoint persons as Ministers of State to administer such Departments: Provided that the State President may, in lieu of appointing a person as Minister of State in respect of any Department, in relation to such Department act as the responsible Minister and administer such Department himself, in which event he shall for all purposes in law be deemed to be the Minister of such Department.
- (2) Persons appointed under sub-section(1) shall be Ministers of State and shall hold office during the pleasure of the State President.

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Deputy Ministers.

19. (1)(a) The State President may from time to time appoint persons, who are members of the National Assembly, to hold office during his pleasure as Deputy Ministers of any specified departments or as Deputy Minister of such other description as the State President may determine, and to exercise or perform on behalf of a Minister any of the powers, functions and duties entrusted to such Minister under any law or otherwise which may, subject to the direction of the State President, be assigned to him from time to time by the said Minister.
- (b) Any person appointed under paragraph (a) shall not be a member of the Executive Council.
- (2) The remuneration and retirement benefits of a Deputy Minister shall be determined by an Act of Parliament.

Power to appoint and dismiss persons.

20. Except as may otherwise be provided in this constitution or any other law, the appointment and dismissal of persons in the service of the territory vests in the State President.

THE LEGISLATURE**Legislative power.**

21. (1) The legislative power of the territory shall vest in Parliament consisting of the State President and the National Assembly.
2. Parliament shall, have full power to make laws for the peace, order and good government of the territory.
3. Parliament shall exercise its power to make laws by Bill passed by the National Assembly and assented to by the State President and every law assented to shall be styled as Act.

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Constitution of National Assembly.

22. (1) The National Assembly shall consist of-

- (a) twenty-four members designated by the regional authorities in the territory, in accordance with the provisions of subsection (2), on or before such date, being within fourteen days of the reconstitution of such regional authorities in terms of section 16(4)(a) of the Traditional Authorities Act, 1978 (Act 23 of 1978), as the State President may by proclamation determine;
- (b) seventy-two members elected in the manner provided in subsection (3);
- (d) the person holding the office of State President who shall, upon having taken the oath be an ex officio member of the National Assembly, with all the rights and privileges conferred on members by the provisions of this Constitution, subject to any specified provisions to the contrary contained therein.

Persons entitled to register as voters and to vote.

23. (1) Every persons who-

- (a) is a citizen of the territory;
- (b) is of the age of twenty-one years or over or, if he is a taxpayer, of the age of eighteen years or over; and
- (c) is not subject to any disqualification mentioned in section 24, shall be entitled to be registered as a voter in an electoral division and, if he is so registered to vote at an election.

(2) Every person registered as a voter shall, at an election of members of the National assembly have as many votes as there are members to be elected for the electoral division in which he is registered, but shall not record more than one vote in favour of any one candidate.

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Disqualification of voters.

24. (1) No person shall be entitled to be registered as a voter or to the continuance of his registration as a voter or to vote in any election-
- (a) if he has been convicted of any of the offences referred to in Schedule 1 of the Aliens and Travellers Control Act, 1979 (Act 22 of 1979) or amendment thereof: Provided that his disqualification shall lapse ten years after such conviction or, if any sentence of imprisonment had been imposed on any person so convicted, ten years after the expiration of such period of imprisonment;
 - (b) if he has been convicted of any offence and sentenced to a period of imprisonment of more than twelve months without the option of a fine or ordered to be detained in a rehabilitation centre under any law and such period has not finally ceased to be operative at least three years before the date of completion of his application to be registered or the date upon which it is decided whether or not his name is to be removed from the voters' list, as the case may be; or
 - (c) if he has been convicted of any corrupt or illegal practice under any electoral law and has been declared incapable of being registered as a voter or of voting at an election during any period and the said period has not expired; or
 - (d) if he is subject to an order of court declaring him to be of unsound mind or mentally disordered or defective or is lawfully detained as mentally disordered or defective.
- (2) For the purpose of paragraphs (a) and (b) of sub-section (1)-
- (a) a person who has been granted a free pardon shall be deemed not to have been convicted of the offence in respect of which he has been pardoned; and
 - (b) a period of imprisonment means the full term of a sentence of imprisonment notwithstanding any suspension or remission of the whole or any portion of such sentence.

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Disqualifications from being a member of National Assembly.

25. No person shall be capable of being elected or nominated or of sitting or remaining as a member of the National Assembly-
- (a) unless he is over the age of twenty-five years;
 - (b) if he is, in terms of section 24, entitled to be registered as a voter in any electoral division in the territory and is in fact so registered;
 - (c) if he has been convicted-
 - (i) of any offence contemplated by section 41 (1)(a) which in terms of that section would have disqualified him from registration as a voter;
 - (ii) of the offence of defeating or obstructing the course of justice, or any offence under any law, relating to the illicit dealing in or conveyance of any dependence producing drugs, or any other offence, whether under common law and statute, of which corruption, dishonesty of falsities constitutes an element;
 - (iii) on account of any conspiracy, incitement or attempt on his part to commit any of the offence contemplated by subparagraph (i) or (ii); or
 - (iv) of any offence for which he has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months;
 - (e) if he is an unrehabilitated insolvent,
unless he has received a grant of amnesty or a free pardon, or unless the imprisonment imposed for any such offence has expired, at least ten years before the date of his election of nomination.

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Sessions of National Assembly.

26. (1) Every session of the National Assembly shall be held at the seat of the Government.
- (2) There shall be a session of the National Assembly at least once every year, which shall commence on a date determined by the State President: Provided that the period between the last sitting day of the National Assembly in one session and its first sitting day in the next session shall not exceed fifteen months.
- (3) A special session of the National Assembly may at any time be called by the State President and at such session only such business as the State President may approve shall be considered.
- (4) The Secretary of the National Assembly shall in writing, not less than forty-two days before an ordinary and not less than seven days before a special session of the National Assembly, inform the members of the date and time fixed for, and the business to be considered at, such session.

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- (a) the proceedings of the National Assembly shall be open to the public; and
- (b) there shall be freedom of speech and debate in and before the National Assembly and any committee thereof for every member of the National Assembly and such freedom shall not be liable to be impeached or questioned in any court or place outside the National Assembly.
- (6) No civil or criminal proceedings shall be instituted against any member of the National Assembly, nor shall such member be liable to arrest or imprisonment or for damages, by reason of any matter or thing which he may bring by petition, bill, resolution, motion or otherwise or may have said in or before the National Assembly or any committee thereof.
- (7) No person shall be liable in damages or otherwise for any act done within the legal powers of the National Assembly and under its warrant or other authority.
- (8) No member or servant of the National Assembly shall, while in attendance on the National Assembly, be obliged to appear as a party or as witness in any civil proceedings in any court that holds its sitting elsewhere than at the seat of the National Assembly, and a certificate by the Speaker stating that such member or servant is in attendance on the National Assembly shall be sufficient proof of such attendance.

Bill appropriating public funds or imposing taxation.

28. Any Bill which appropriates revenue or moneys for the ordinary actual services of the Government shall deal only with such appropriation and shall be known as an Appropriation Bill.

Signature and enrolment of Acts.

29. A Bill adopted by the National Assembly shall, become a law upon

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having been assented to, and a fair copy thereof, in the Setswana, English or Afrikaans language, having been signed by the State President:
Provided that, where the Bill adopted by the National Assembly was made available to and considered by the National Assembly in only one or two of the said languages, the State President shall only sign a copy of such Bill of which the text is in the language or in one of the two languages, (as the case may be) in which such Bill was so made available and considered.

Proclamation and commencement of law.

30.(1) The Secretary of the National Assembly shall cause every law to be published in the Gazette.

(1A) Any law assented to by the State President in terms of section 29(1) may, for the purposes of publication in terms of subsection (1) of this section and section 13(1) of the Interpretation Act, 1957 (Act No.33 of 1957), where -

- (a) such law was, as a Bill considered and adopted by the National Assembly in only two of the official languages of the territory, be published in such two languages; or
- (b) such law was, as a Bill, considered and adopted by the National Assembly in only one of the official languages of territory be published in that language:

Provided that such law shall be published in the remaining official language or languages (as the case may be), within six months as from the date upon which it was published in accordance with the provisions of paragraph (a) or (b), as the case may be.

(1B) The provisions of subsection (1A) shall mutatis mutandis apply in respect of the publication of any proclamation, regulation, by-law or notice issued, made or given by the State President, any Minister of State or any other authorised person in terms of any law in force in territory.

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(2) A law shall come into operation on the date of its publication in the Gazette unless the law itself provides that it shall come into operation on another date or on a date to be fixed by notice thereunder.

Matters of privilege.

31.(1) Anything said by any member of the National Assembly in or before the National Assembly or any committee thereof, whether as such a member or as witness, shall be deemed to be a matter of privilege.

(2) If, in any civil or criminal proceedings which have been instituted for or on account or in respect of any matter of privilege, there is produced to the court by the defendant or the Secretary of the National Assembly stating that the matter in question is one which concerns the privilege of the National Assembly, the court shall forthwith stay the proceedings which shall thereupon be deemed to have been finally determined.

CHIEFS, HEADMEN AND REGIONAL BOUNDARIES

Chiefs to retain personal status.

32.(1) The chiefs in the territory shall retain their status.

(2) Chiefs and headmen shall exercise their authority in terms of an Act of Parliament.

Designation of chiefs.

33.(1) The designation of chiefs, acting chiefs, headmen, acting headmen and independent headmen shall, subject to the provisions of subsection (2) vest in the State President.

(2) The creation of any new chieftainship, or sub-chieftainship shall not be confirmed by the State President except after consideration of 23

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recommendation of the Executive Council.

Regional boundaries.

34. Parliament shall not alter the boundaries of any regional authority area for any purpose, other than the inclusion therein, of land added to territory except after consultation with every regional authority affected thereby.

THE JUDICATURE

Establishment and Constitution of Supreme Court.

35.(1) There is hereby established the Supreme Court of the territory in which shall be vested the judicial power of the territory and which shall comprise -

- (a) the Appellate Division, consisting of the Chief Justice and such number of judges of appeal as may be required by law; and
- (b) the General Division, consisting of the Judge-President and such number of other judges as the Minister of Justice may from time to time determine,

and who shall be duly appointed by the State President: Provided that the preceding provisions of this subsection shall not be construed so as to preclude the person appointed as Chief Justice from also being appointed as Judge-President.

(2) The Supreme Court shall be a court of record and shall have for its use a distinctive seal, which shall be in the custody of the Registrar

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of the Court.

(3) The seat of the Supreme Court shall be at the capital of the territory and the Minister of Justice may, after consultation with the Chief Justice, by notice in the Gazette appoint any other place in the

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territory as an additional seat of the Supreme Court.

Jurisdiction of Supreme Court.

36. Subject to the provisions of this Constitution and of any other law (including the common law) the Supreme Court shall -

- (a) have jurisdiction over all persons residing or being in the territory; and
- (b) have power -
 - (i) to hear and determine all civil and criminal matters, proceedings or causes arising within the territory;
 - (ii) to hear and determine appeals from all lower courts; and
 - (iii) to review the proceedings of all lower courts.

Rules of Court.

37.(1) Subject to any contrary provision existing in any other law, the Chief Justice may make rules regulating the conduct of proceedings in the Supreme Court and prescribing matters which may be necessary to prescribe in order to ensure the proper dispatch and conduct of the business of that Court, and may amend, substitute or withdraw any rule so made.

(2) All rules made under subsection (1), and every amendment, substitution or withdrawal thereof, shall be made known by notice in the Gazette.

Circuit courts.

38. The Chief Justice may by notice in the Gazette -

- (a) divide the territory into circuit districts and from time to time in like manner alter the boundaries of any circuit district; and

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- (b) determine the times when and the places where the Supreme Court shall sit in any such circuit district for the hearing of cases.

Administration of justice.

- 39.(1) The administrative aspects of the functioning of the courts throughout the territory shall be under the control of the Minister of Justice.
- (2) There shall be appointed, by the Minister of Justice, subject to the provisions of the laws governing the public service and to the provisions of section 90(1), an attorney-general who -
- (a) shall have authority to prosecute in the name of the State any person charged with an offence before any court;
 - (b) may perform any function which is necessary for or incidental to the exercise of such authority; and
 - (c) shall have such other powers and competence as may be conferred upon him by or under any other law.
- (3) The attorney-general shall, in the exercise of his powers, authorities and functions be under the direction and control of the Minister of Justice who may after consultation with the Chief Justice set aside or vary any decision of the attorney-general and himself either generally or with reference to a particular matter, exercise or perform any power, authority or function of the attorney-general.
- (4) The Minister of Justice may, subject to the laws governing the public service, appoint one or more deputy-attorney-general who, under the direction and control of the attorney-general may do anything that the attorney-general may lawfully do.
- (5) Whenever for any reason the attorney-general is absent or unable to carry out the functions of his office or whenever the office of the attorney-general becomes vacant, the Minister of Justice may appoint any

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deputy attorney-general, or, if none is available, any other qualified officer of the public service to act temporarily in the place of the attorney-general.

Recognition and application of customary law.

40.(1) In all proceedings involving questions of tribal customs followed by persons in the territory shall be in the discretion of the court to decide such questions in accordance with the tribal law applying to such customs except in so far as the court may find that such law has been repealed or modified or is contrary to public policy or opposed to the principles of natural justice: Provided that no such findings shall be made by any court in respect of the custom providing for the payment of bogodi.

(2) The court shall not, in the absence of any agreement between the parties regarding the system of law to be applied in any such proceedings, apply any system of customary law other than that -

- (a) which is observed at the place in territory where the defendant or respondent resides, carries on business or is employed, or
- (b) if more than one system of customary law is in operation at that place, which is observed by the tribe to which the defendant or respondent belongs.

(3) For the purposes of subsection (1) a court including the Supreme Court in applications, trials and appeals may summon to its assistance in an advisory capacity such assessors as the court may deem necessary and the opinions of any such assessors shall be recorded and shall form part of the record of the proceedings.

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deputy attorney-general, or, if none is available, any other qualified officer of the public service to act temporarily in the place of the attorney-general.

Recognition and application of customary law.

40.(1) In all proceedings involving questions of tribal customs followed by persons in the territory shall be in the discretion of the court to decide such questions in accordance with the tribal law applying to such customs except in so far as the court may find that such law has been repealed or modified or is contrary to public policy or opposed to the principles of natural justice: Provided that no such findings shall be made by any court in respect of the custom providing for the payment of boodi.

(2) The court shall not, in the absence of any agreement between the parties regarding the system of law to be applied in any such proceedings, apply any system of customary law other than that -

- (a) which is observed at the place in territory where the defendant or respondent resides, carries on business or is employed, or
- (b) if more than one system of customary law is in operation at that place, which is observed by the tribe to which the defendant or respondent belongs.

(3) For the purposes of subsection (1) a court including the Supreme Court in applications, trials and appeals may summon to its assistance in an advisory capacity such assessors as the court may deem necessary and the opinions of any such assessors shall be recorded and shall form part of the record of the proceedings.

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FINANCE

Revenues vest in State President.

41. All revenues and other moneys received from any source whatsoever for the purpose of the administration of territory shall vest in the State President.

Territory Revenue Fund.

42.(1) Into the Territory Revenue Fund there shall be paid all the revenues raised or received by the State President other than any moneys that are payable by or under any law into a fund established for a specific purpose.

(2) Subject to the provisions of section 70, no moneys shall be withdrawn from the Revenue Fund except under appropriation made by a law of Parliament.

State President may issue special warrant.

43.(1) The State President may by special warrant under his hand authorise the issue of money from the Revenue Fund -

(a) to defray unforeseen expenditure of a special character which is not provided for in an appropriation law and which cannot without serious injury to the public interest be postponed until adequate provision can be made therefor by Parliament;

or

(b) to meet an excess under any head of expenditure in any appropriation law.

(2) The total sum which the State President may authorise under sub-section (1) shall not any time exceed five percent of the annual appropriation at its next ensuing session.

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Requirements for issue out of Revenue Fund.

44. No issue shall be made out of the Revenue Fund except in pursuance of a requisition from an accounting officer with a warrant signed by the State President and no such warrant shall have effect unless it is countersigned by the Auditor-General or a person acting under his general or special authority.

Annual estimates.

45. The annual estimates of revenue and expenditure for the territory shall be prepared by the Executive Council, and shall thereafter be submitted by the Minister of Finance to the National Assembly for appropriation.

Appointment of Auditor-General.

46. The State President shall, subject to the provisions of law appoint an Auditor-General whose conditions of service shall be prescribed by the National Assembly to whom he shall be responsible for the proper exercise and performance of his duties.

GENERAL**Public Service Commission.**

47. There shall be a Public Service Commission which shall consist of a Chairman and not more than four other members appointed by the State President in a full-time or part-time capacity.

Liability of the State in respect of acts of its servants.

48.(1) Subject to the provisions of subsection (2) any claim against the

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State, which would if that claim had arisen against a person be the ground of an action in any competent court, shall be recognisable by such court, whether such claim arises out of any contract lawfully entered into on behalf of the State or out of any wrong committed by any servant and within the scope of his employment as such servant.

(2) No proceedings of any nature shall be brought under subsection (1) if a period of twelve months has elapsed from the date on which the plaintiff became aware of the cause of action and unless notice in writing of the intention to bring such proceedings and of the cause thereof has been given to every defendant at least one month before the commencement of the proceedings.

(3) In any proceedings instituted by virtue of the provisions of subsection (1) the Minister of the department concerned may be cited as nominal defendant or respondent.

(4) No execution, attachment, or like process shall be issued against the nominal defendant or respondent in any proceedings under this section or against the property of the State but the amount required to satisfy any judgment or order against such nominal defendant or respondent shall be paid from public funds.

(5) Nothing in this section contained shall affect any provision of any other law which -

- (a) limits the liability of the State or any department or other institution thereof in respect of any act or omission of its servants;
- (b) prescribes a different period within which a claim shall be made in respect of any such liability; or
- (c) imposes conditions on the institution of any proceedings.

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REPEAL AND AMENDMENT OF CONSTITUTION

Repeal and amendment of constitution.

49.(1) Parliament may repeal or amend any provision of sections 1 to 49 (inclusive) of this Constitution with a two-thirds majority of its members present in the National Assembly: Provided that in the case of repeal or amendment to sections 1 to 11, a seventy per cent majority vote shall be obtained.

TRANSITIONAL AND SAVING PROVISIONS

Citizenship.

- 50.(1) Citizens of the territory shall be -
- (a) All Batswana as defined by an Act of Parliament;
 - (b) any other person legally domiciled in the territory at independence for a period of five years or more who applies and is accepted as a citizen; and
 - (c) any other person who apply and is accepted as a citizen.
- (2) Any citizen shall have the right to renounce his citizenship of the territory.

State departments and Ministers.

51. Any department of State in existence immediately prior to the commencement of this Constitution, shall be deemed to have been established under section 18(1) and any Minister appointed under that section to administer such department and holding office immediately prior to such commencement, shall be deemed to have been appointed under that section to administer that department, provided that such Minister shall make and subscribe the prescribed oath.

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Duties, powers, authorities and functions of chiefs and headmen to remain.

52. Notwithstanding anything in this Constitution contained all duties, powers, authorities and functions lawfully exercised by chiefs and headmen immediately prior to the commencement of this Constitution shall remain in force until varied or withdrawn by the competent authority.

Powers, authorities and functions of tribal, community and regional authorities to remain.

53. Notwithstanding anything in this Constitution contained all powers, authorities and functions lawfully exercised by tribal, community and regional authorities in the territory immediately prior to the commencement of this Constitution shall remain in force until varied or withdrawn by Parliament.

Vesting and use of certain land.

54. All Government land which at the commencement of this Constitution or at any time thereafter is reserved for occupation by the tribes or communities residing thereon shall -

- (a) vest in the State President subject to any existing charge or obligation on or over such land or otherwise lawfully affecting the same;
- (b) continue to be used and administered for the settlement, support, benefit and material and moral welfare of such tribes or communities; and
- (c) not be alienated or in any way diverted from the purpose for which land is reserved except under the authority of an Act of Parliament generally or specially adopted in this regard: Provided that notwithstanding the provisions of such an Act any such alienation or diversion shall only be effected in

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consultation with the tribe or community concerned.

Continuation of local authorities.

55. Notwithstanding anything in this Constitution contained every local authority in existence in any district of the territory at the commencement of this Constitution, including every regional, tribal and community authority, shall continue in existence and in operation until disestablishment or altered in accordance with law.

High Court of territory appointment of judges, rules of court and appointment of attorney-general.

56. The High Court established under section 34 of the Bantu Homelands Constitution Act, 1971 (Act 21 of 1971), shall, as constituted immediately prior to the commencement of this Constitution, be deemed to be the Supreme Court and to have been established and constituted as such by section 35(1).

Advocates and attorneys.

57.(1) No person shall practise the profession of an advocate, an attorney, a notary or a conveyancer before or of the Supreme Court of the territory unless he has been duly admitted or enrolled as such in accordance with the laws of force in the territory governing the admission and practice of advocates, attorneys, notaries or conveyancers, as the case may be.

(2) All advocates and attorneys entitled immediately prior to the commencement of this Constitution to practice in the High Court referred to in section 56(1) shall be entitled, subject to the provisions of the aforesaid laws, to practice in the Supreme Court.

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Provisions relating to existing courts.

58. Subject to the provisions of this Constitution -
- (a) every court in existence in a district of the territory immediately prior to the commencement of this Constitution, other than the court constituted under section 10 of the ~~Bantu~~ Administration Act, 1927 (Act 38 of 1927), shall remain in existence and in operation in accordance with its existing constitution and jurisdiction until altered or disestablished by or under any Act of Parliament;
 - (b) the laws which immediately prior to the commencement of this Constitution applied to the High Court referred to in section 56(1) shall apply ~~mutatis mutandis~~ to the Supreme Court: Provided that any reference in any laws to the "Minister of Bantu Administration and Development" shall be construed as a reference to the Minister of Law and Order and the Secretary of Law and Order respectively;
 - (c) all proceedings pending immediately prior to the commencement of this Constitution -
 - (i) in any court considered under section 10 of the said Bantu Administration Act, 1927 and in the aforesaid High Court shall stand removed to the magistrate's court of the district and the Supreme Court, respectively, which shall have jurisdiction to hear and determine the same; and
 - (ii) in any court constituted or established under section 33 of the said Bantu Administration Act, 1927 or section 10 of the Bantu Administration Act, 1927, Amendment Act, 1929 (Act 9 of 1929) shall be continued and concluded in every respect as if this Constitution had not been passed;

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- (d) all judgments and orders of the said High Court or any other court (other than the Supreme Court) referred to in paragraph (a) or (c) shall have the same force and effect as if they had been given or made by the Supreme Court or, as the case may be, the court of corresponding jurisdiction in territory.

Application of laws and vesting of rights, etc.

59.(1) Subject to the provisions of this Constitution, all laws which immediately prior to the commencement of this Constitution, were in operation in any district of the territory shall continue in operation and continue to apply except in so far as such laws are substituted by any applicable law of territory or are amended or repealed by Parliament by or in terms of this Constitution: Provided further that, until otherwise provided by Parliament, the laws regulating the affairs of any Department of Posts and Telecommunications or any similar department established under section 18(1) shall be deemed to have been amended to provide for the administration of that department as a department of State and not in accordance with the principles prescribed in the Post Office Re-adjustment Act, 1968 (Act 67 of 1968).

(1A) Upon the addition of any land or territory to the territory -

- (a) all laws, together with all proclamations, regulations, by-laws and notices issued, made or given thereunder, in operation in the territory immediately prior to the date of such addition, shall, as from such date apply and be of force in the land or territory so added except such of the said laws (if any) as may, in relation to any such land or territory in question, be specifically excluded, and which shall not so apply and be of force; and

- (b) all laws in operation in such land or territory immediately

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prior to the date of such addition, shall, as from such date, lapse and cease to be of force in the land or territory so added except such of the lastmentioned laws (if any) or such parts thereof as may, in relation to any such land or territory in question, be specified in this Constitution and which shall, together with all proclamations, regulations, by-laws and notices issued, made or given thereunder and of force in such land or territory immediately prior to the date of such addition, continue in operation and continue to apply in such land or territory until such time as it is substituted, amended or repealed by or in terms of an Act of Parliament.

(1B) The exclusion or continuation, in terms of paragraph (a) or (b) of subsection (1A), of laws for any particular land or territory being added to territory -

(a) shall be effected by way of an Act of Parliament specifically adopted for that purpose in relation to the land or territory in question: Provided that -

(i) if Parliament is then not in session and it is not practicable to convene parliament timeously for the purpose of adopting such an Act before the date of the addition of any land or territory to the territory, the State President acting in consultation with the Executive Council, may by way of proclamation in the Gazette, effect the said exclusion or continuation in relation to the land or territory in question, and any such proclamation shall be laid on the table of the National Assembly for ratification within fourteen days after the commencement of its next ensuing session.

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(2) All rights, powers, authorities, duties, obligations and functions which were vested in or devolved upon a Minister or other authority or person in the Republic of South Africa (including any authority or person in any provincial administration) by or under any law of the Republic of South Africa which continues to apply in the in terms of subsection (1) and (1A) shall vest in or devolve upon the corresponding Minister, authority or person exercising similar powers or performing similar duties or functions in territory and in the absence of such corresponding Minister, authority or person, upon the Minister, authority or person designated by the State President, and any regulation, rule, order, notice, approval, registration or authority made, given or granted and any other authority or person in the Republic of South Africa prior to the commencement of this Constitution shall in relation to the administration of the territory, be deemed to have been made, given, granted or taken by such corresponding Minister, authority or person in the territory.

(3) Any reference in any law which continues to apply in the territory in terms of subsection (1) or (1A)(b) to -

- (a) the Cape Colony, the Cape Province, the Zuid-Afrikaansche Republiek, the Orange Free State, the Transvaal, the Union of South Africa or the Republic, shall be construed as a reference to the territory;
- (b) the Crown, the King, the Queen, the Governor-General, Governors or Lieutenant-Governors shall be construed as a reference to the territory or the State President, as the circumstances may require;
- (c) the King-in-Council, the Queen-in-Council or the Governor-General-in-Council, shall be construed as a reference to the State President;
- (d) The Cabinet or the Cabinet of Territory, shall be construed

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- as a reference to the Executive Council of the territory;
- (e) the Administrator of the Cape Province or the Transvaal or the Orange Free State shall be construed as a reference to the State President or to the responsible Minister as the circumstances may require;
- (f) the Supreme Court of South Africa or any judge thereof shall be construed as a reference to the Supreme Court of the territory or any judge thereof;
- (g) The official Gazette or the Gazette, the Government Gazette of the Republic of South Africa or the Provincial Gazette shall be construed as a reference to the Government Gazette of the territory.

(4) If any provisions of subsection (1), (1A), (2) or (3) give rise to administrative difficulty, the State President may by proclamation in the Gazette make such provision as he may deem necessary to remove such difficulty.

(5) Any agreement concluded between the Government of the territory and the Government of the Republic of South Africa prior to independence of the territory, shall acquire legal force and effect in the territory from the date of independence of the territory, upon a notice to this effect being proclaimed in the Gazette by the State President.

Public Servants.

60.(1) All persons who immediately prior to the commencement of this Constitution are in the service of the Government of the shall become public servants of the .

(2) Any person who become a public servant of the territory under subsection (1) or who, on or after the date of commencement of this Constitution is transferred from the service of any other government to the service of the territory shall be entitled to retire from the service

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at the time at which he would have been entitled to retire if he had not become a servant of the territory.

Certain agreements binding on the territory.

61. All rights and obligations under conventions, treaties or other similar agreements which were binding on the Government of the territory immediately prior to the commencement of this Constitution shall be rights and obligations of the territory.

Institution or continuation of legal proceedings.

62.(1) All criminal proceedings shall be instituted in the name of the territory and any criminal proceedings which have not been concluded before the commencement of this Constitution, or which although concluded may thereafter be reopened, shall be continued in all respects as if this Constitution had not been passed, save that such proceedings shall be continued in the name of the territory.

(2) Any civil proceedings by or against any Minister as representing the Government of this self-governing territory which have not been brought to finality before the commencement of this Constitution, or which although concluded may thereafter be reopened, may be continued against that Minister but as representing the Government.

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