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The Constitution of the Republic of Botswana

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Botho, the basis of being truly human, is an important part of our Botswana cultures and society. Without the respect for and protection of human rights, you cannot live your life with true botho.

The Simplified Constituion of the Republic of Botswana shares the contents of our Constitution in accessible way. Knowledge is power! Understanding your rights and responsibilities which are in our Constitution will contribute to the development of our human rights culture.

We hope that you will find the information useful. Enjoy your Human Rights journey!

Alice Mogwe

Director

DITSHWANELO – The Botswana Centre for Human Rights



Introduction

Botswana became independent in September 1996 after being a British Protectorate since 1885. In 1966, the Constitution was adopted. The Constitution contains provisions which protect and promote human rights – from Section 3 (which deals with the Fundamental rights and freedoms of the individual) to Section 15 (which deals with Protection from discrimination on the grounds of race, etc).

Botswana is a member of the international community. It is a member of the Southern African Development Community (SADC), The African Union (AU), The African Commission on Human and Peoples' Rights and the United Nations. It has committed itself to international human rights standards (and therefore obligations) through signing various human rights instruments (or documents) of these regional, continental and international organisations. These include instruments relating to racial discrimination, women, children, torture, and civil and political rights. Not all of these international human rights obligations have been made into domestic or international legislation.

The Constitution contains only civil and political human rights in Sections 3 – 15. Botswana committed itself to the International Covenant on Civil and Political Rights in 2000. Botswana has not yet committed itself to the International Covenant on Economic, Social and Cultural Rights. The Constitution does not include economic, social, cultural, developmental and group rights.

The purpose of this booklet is to provide you with a simplified version of our Constitution. The Constitution contains Human Rights. Human Rights are important as they protect people. Knowledge about human rights is important because it helps us to develop a society and a world, in which we respect one another.

Information about international human rights standards and obligations is contained in a Guide to Your Human Rights (DITSHWANELO, February 2014).



THE CONSTITUTION OF THE REPUBLIC OF BOTSWANA

The Constitution of Botswana (1966) is the supreme law of Botswana. The Constitution codifies democratic values and establishes a national, sovereign and independent state. Botswana is a Parliamentary Republic. The Constitution is the fundamental law of the Republic of Botswana.

The Constitution clearly sets out:

- the structure of the government of Botswana;
- the rights and duties of the country's citizens;
- the procedure for passing laws; and
- the principle of separation of powers and the balance of legislative, executive and judicial powers.

Botswana has a Parliament which is made up of the National Assembly and the House of Chiefs (*Ntlo ya Dikgosi*). The executive branch is tasked with carrying out government functions. The President is both the Head of State and the head of Government.

PROTECTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Section 3 – Fundamental rights and freedoms

No matter your gender, race, place of birth, political opinions, colour or religion, every person in Botswana has basic individual rights and freedoms.

This means that whether you are:

- male or female;
- a black or white person;
- from any tribe (for example Bamangwato, Balete, Bakgalakadi or Basarwa) or are a foreigner in Botswana;
- a supporter of the Botswana Democratic Party (BDP), Botswana Congress Party (BCP) or the Botswana National Front (BNF);
- a Christian, Muslim or do not practice any religion.

You have the right to these basic rights and freedoms.

The Constitution also protects the following fundamental rights and freedoms of every individual in Botswana. The right to:

- a) life, freedom, personal safety and the protection of the law;



- b) freedom of thought, freedom of speech and the right of individuals and groups to meet and to engage in peaceful protest. The right to form and join groups to pursue common goals without interference by the government; and
- c) protection for the privacy of each person's home and other property and protection from the loss of that property without payment.

These basic rights and freedoms apply to every individual in Botswana, so long as they do not negatively affect the rights and freedoms of others, or the welfare of the general public. This means that an individual's rights or freedoms may be limited in situations where the protection of an individual right conflicts with the rights and interests of others or the welfare of the general public.

Section 4 – Protection of the right to life

Every person in Botswana has the right to life. The Constitution protects an individual's right not to have his or her life taken away intentionally.

This means that murder (the intentional killing of a person by another person) is not permitted by law. In situations where an individual breaks certain laws under The Penal Code 1964, such as murder (Sections 202, 203(1)); treason (Section 34); instigating a foreigner to invade Botswana with armed force (Section 35); committing assault or injures with intent to endanger a life or commit murder during the commission of piracy (Section 63(2)), they may be sentenced to death (capital crimes). When the death of a person convicted of a capital crime is carried out intentionally by the State it is permitted by the Constitution.

The Constitution allows the use of reasonable force for:

- self-defence or the defence of property. This means that if you are being attacked, the law allows you to defend yourself to protect your life and your property. This rule has been included in the Penal Code (section 16);
- members of the police force, in order to effect a lawful arrest or to prevent the escape of a person lawfully arrested. For example, a prisoner who tries to escape during his/her transfer to a new prison or on the way to the court.
- members of the police to suppress a riot, insurrection (a violent uprising against an authority or government) or mutiny (an open rebellion against the proper authorities, especially by soldiers or sailors against their officers); and
- members of the police to prevent the commission of a criminal offence. For example, if a police officer sees one person attacking another, the officer may shoot the attacker in order to prevent harm coming to the victim.





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Section 5 – Protection of right to personal liberty

Every person in Botswana has the right to be free. No one may have his or her personal liberty taken away.

There are, however, certain situations where your right to personal liberty may be limited under the Constitution. These situations are:

- where you have been sentenced to prison by a court;
- where you are being brought before a court;
- for the education or welfare of a child until they are 18 years (this has to be done with the consent of parents or guardians);
- to prevent the spread of an infectious or contagious disease such as tuberculosis (TB); and
- for your protection or treatment or the protection of the community if a person is reasonably suspected to be of unsound mind or addicted to drugs or alcohol.

If you are arrested, you should be informed of the reasons why you have been arrested. This should be done in a language which you understand. If you are suspected of committing, or about to commit, a crime in Botswana, you should also be brought before a court.



Image source: www.legaljuice.com



If you are unlawfully arrested by any person, you have the right to be paid by the person who arrested or detained you. This protects you from situations where you may be unlawfully arrested by the police or improperly locked up in a mental institution.

Section 6 – Protection from slavery and forced labour

Every person in Botswana has the right to freedom from slavery or forced labour.

Slavery has been abolished worldwide and it is a crime to make someone your slave.



Forced labour means all work or services obtained from any person under the threat of penalty, and which have not been offered voluntarily. Examples of forced labour include:

- forced sex work; and
- overworked and unpaid domestic workers.

Section 7 – Protection from inhuman treatment

Every person in Botswana is protected from torture, inhumane or degrading punishment or other treatment. There are some circumstances, however, where such punishment may be authorised by law.

In Botswana, the Penal Code provides for a person to be sentenced to corporal punishment. This involves being whipped. The Education Act 1967 regulates schools, and schools also carry out corporal punishment of students. Section 61 of the Children’s Act 2009 states that no child may be subjected to torture or other cruel, inhuman or degrading treatment or punishment. However, the Act provides that corporal punishment of children is not prohibited, and sets out the circumstance and manner in which corporal punishment can be carried out. Corporal punishment of children has been categorised as inhuman and degrading punishment and there have been calls for its abolition.

In 2013 at the second Universal Periodic Review, the Government of Botswana did not accept recommendations made by the Human Rights Council to remove corporal punishment. This is

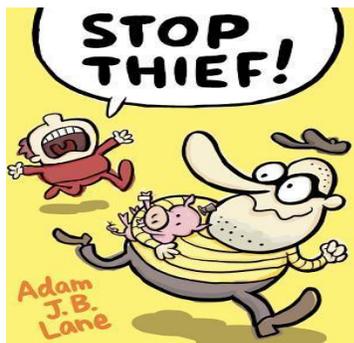


because public discussion has revealed that many people in Botswana wish to retain corporal punishment. The government has said that it will need to pursue public education campaigns before it can consider putting an end to corporal punishment of children in all settings.



Section 8 – Protection from deprivation of property

Every person in Botswana has the right to protection of their property. No one may have their property taken against their wishes or by force.



The Constitution does, however, allow for your property to be taken by the government against your wishes in certain situations. These include where it is necessary for:

- defence;
- public safety, public order, public morality, public health, public interest;
- town and country planning;
- land settlement;
- the benefit of the community; or
- to obtain and use Botswana's mineral resources (this means that if diamonds are discovered on your land the government may take your land for the benefit of all Botswana), with compensation.



The government may also take your land in situations where fair payment is made.

Section 9 – Protection for privacy of home and other property

Every person in Botswana has the right to privacy. No one may have their person or property searched against their wishes and no one may enter your home without your permission.

The Constitution does, however, allow for your person, property or home to be searched in certain circumstances. These include where it is necessary for:

- defence;
- public safety, public order, public morality, public health, public interest;
- town and country planning;
- to obtain and use Botswana's mineral resources for a census;
- the benefit of the community;
- the protection of others;
- government inspection; and
- search by order of a court.



Image source: www.cartoonstock.com

Section 10 – Provisions to secure protections of the law (trial rights)

Every person in Botswana who is charged with a criminal offence has the right to a fair hearing. The Constitution provides that the hearing should be within a reasonable time and by an independent court which has been set up by law.

If you are charged with a criminal offence in Botswana you have the right:

- to be presumed innocent until you are proven guilty. If you plead guilty, this means that you accept that you committed the crime;
- to be informed about the crime with which you have been charged in a language which you understand;



- to be given enough time and opportunity to prepare your defence. This means that you have the right to have access to your lawyer and any documents which may assist you in the preparation of your case;
- to be allowed to defend yourself before court or through a legal representative of your choice. The Constitution allows you to defend yourself if you do not have money to pay a lawyer. The Registrar of the High Court may assign you an attorney if you are charged with murder and your case is being heard in the High Court of Botswana. This free service is known as a *pro deo* legal service;
- find witnesses and question and cross-examine these witnesses in the same way as the prosecution. Cross-examination means questioning a witness on what they have already said to check whether they are consistent in their version of facts; and
- allowed an interpreter, if you do not understand the language used in the trial. This is paid for by the government.

If you are being tried for a criminal offence in Botswana, the trial cannot take place without you, unless you consent to being absent.

The Constitution protects you from being held guilty of a criminal offence which was not an offence at the time it was committed. No penalty may be imposed which is more severe than the penalty which existed when the crime was committed. This means that if you commit theft in 2013 (and the penalty for theft in 2013 is imprisonment and the law is changed to make the penalty for theft in 2014 the death penalty, for example), you cannot then be sentenced to death, if found guilty.

No person may be re-tried in a competent court for a criminal offence in which he or she has been acquitted or convicted. At the end of a trial the judge has to make a decision. One can be found guilty and be convicted or found not guilty and freed (**acquitted**). However, a person can be tried by a higher court in an appeal or during review proceedings relating to the conviction or acquittal. This is an important rule of law as it prevents people from being tried more than once for the same crime after they have been found ‘not guilty’.

No one can be tried for a criminal offence if he or she shows that they have been forgiven (**pardoned**) for that offence. The President of Botswana is empowered by the Constitution to pardon prisoners.

If you are accused of a crime you are protected from being made to give evidence at the trial. You have the right to choose not to testify in court.





Image source: www.kobyoseiwusu.wikispaces.com

No person shall be convicted of a criminal offence unless that offence is described and the penalty is provided in a written law. Any person who goes to court with a case dealing with civil rights should be given the right to a fair hearing within a reasonable time.

Section 11 – Protection of freedom of conscience

Every person in Botswana has the right to freedom of thought. No one may have their freedom to enjoy his or her freedom of thought stopped without their permission.

The Constitution protects the following freedoms:

- freedom of thought and religion. This means that you may choose to follow any religion you wish, free from discrimination. For example, Christianity, Islam, Buddhism, or traditional African beliefs;
- freedom to change religion or belief;
- freedom either alone or in community to follow your religion or belief in worship, teaching, practice and observance. This includes the observance of religious days like Christmas, Easter, Ramadhan and Dewali.

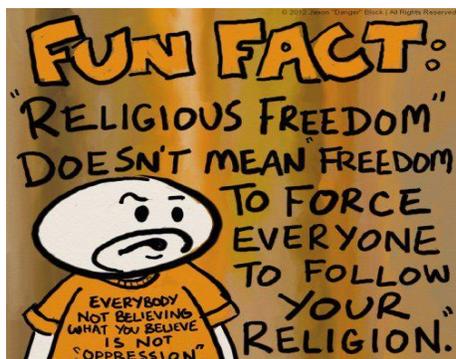


Image source: www.jobsanger.blogspot.com



DITSHWANELO – The Botswana Centre for Human Rights. Private Bag 00416, Gaborone, Botswana. Tel: +267 3906998. Fax: +267 3907778. Cell: +267 71309468. Email: admin.ditshwanelo@info.bw. Website: www.ditshwanelo.org.bw. April 2014.

The Constitution does, however, allow for your freedom of thought to be limited in certain circumstances. These include where it is necessary in the interests of:

- defence;
- public safety;
- public order;
- public morality; public health; and
- to protect the rights and freedoms of other persons.

Section 12 – Protection of freedom of expression

Every person in Botswana has a right to freedom of speech. No one may limit the enjoyment of your freedom of speech without your permission.

The Constitution protects your freedom to:

- hold opinions without interference. This includes freedom of the media to report on stories and publish opinions;
- receive ideas and information without interference. The right to information is an important right as it enables information sharing and gives people the platform to be able to make informed decisions;
- freedom to communicate ideas and information to the public, any person or class of persons without interference; and
- freedom from interference with his or her correspondence. This means that people cannot read any letters addressed to you without your permission or tap your phone to listen to your conversations.



The Constitution does, however, allow for your freedom of speech to be limited in certain circumstances. These include where it is necessary in the interests of:

- defence;
- public safety;
- public order;



- public morality; public health;
- to protect the rights and freedoms of other persons; or
- to protect the private lives of persons in legal proceedings. For example, if the case is sensitive and requires the identity of persons involved to remain confidential.

Section 13 – Protection of freedom of assembly and association

Every person in Botswana has the right to meet and to engage in peaceful protest individually or as a group. Every person in Botswana also has the right to form and join groups to pursue common goals without interference by the government. No one may limit your enjoyment of these rights without your permission.

The Constitution protects your right to form or belong to trade unions or other associations of your interests. This right is particularly important for workers who may form trade unions to protect labour rights.

Labour rights include the right to fair payment and not to work for long hours. If these rights are not respected by your employer, you have a right to demand better working conditions.



Section 14 – Protection of freedom of movement

Everyone in Botswana has the right to freedom of movement. No one may limit your enjoyment of your freedom of movement. The Constitution protects your freedom to:

- move freely throughout Botswana. You may visit any area in Botswana even if you do not originate from that area;
- live in any part of Botswana. A foreigner living in Botswana, however, may be need to have a valid residence permit which allows them to remain in the country;
- enter Botswana. If you are made a prohibited immigrant, however, you may not enter Botswana; and



- remain in Botswana. The Constitution protects you from being removed from Botswana. If you are legally allowed to be in the country you cannot be removed against your wishes.

The Constitution does, however, allow for your freedom of movement to be limited in certain circumstances. These include where it is necessary in the interests of:

- defence;
- public safety;
- public order;
- public morality; public health;
- using land or property in Botswana;
- restricting the freedom of movement of a person who is not a Citizen of Botswana; and
- to protect the rights and freedoms of other persons, such as the Basarwa/San.

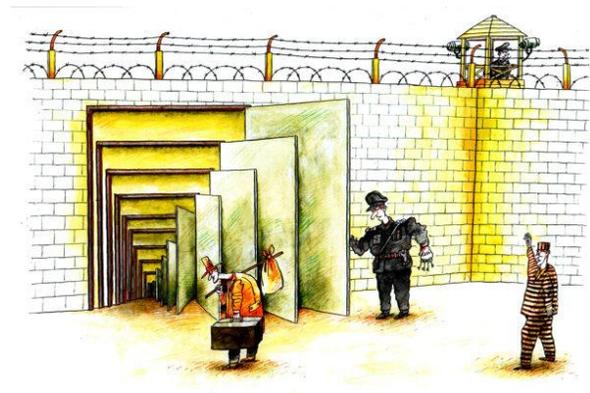


Image source: www.filipspagnoli.wordpress.com

Section 15 – Protection from discrimination on the grounds of race, etc

Every person in Botswana has the right to be free from discrimination. No law may be discriminatory or have a discriminatory effect.

Discrimination is where you are treated differently because of your culture, tribe, place of birth, political opinions, colour, religion or gender. For example, where you do not receive the same rights or privileges as another person, based on any of the above criteria.

Section 16 – Derogation from fundamental rights and freedoms

There are certain situations where the Constitution allows for fundamental rights and freedoms to be deviated from. Your fundamental rights and freedoms may be limited where it is necessary in the case of:



- Botswana being in a period of war; or
- a state of emergency.

Section 17 – Declarations relating to emergencies

The President may at any time, by Proclamation published in the Gazette, declare that a state of public emergency exists. A state of emergency is a governmental declaration which usually suspends a few normal functions of the government, the powers of Parliament and courts. It alerts you to change your normal behaviour, or orders government agencies to put in place emergency preparation plans. It can also be used as a reason to suspend rights and freedoms, even if guaranteed under the Constitution.

Section 18 – Enforcement of protective provisions

If any person claims that any of the provisions of sections 3 to 16 of the Constitution of Botswana have been, are being or are likely to be breached that person may apply to the High Court for a remedy or may seek other legal solutions.

The High Court may make an order to make sure that any of the provisions of sections 3 to 16 are observed.

