

BECHUANALAND PROTECTORATE

No. 74 of 1934.

(Promulgated 4th January, 1935.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER

Entitled the Bechuanaland Protectorate Native Administration Proclamation.

Whereas under and by virtue of Article *two* of the Order-in-Council dated the ninth day of May 1891, the High Commissioner is empowered on His Majesty's behalf to exercise all powers and jurisdiction which Her late Majesty Queen Victoria at any time before or after the date of that Order had or might have within the territory of the Bechuanaland Protectorate, and to that end to take or cause to be taken all such measures and to do or cause to be done all such matters and things within the territory as are lawful and as in the interest of His Majesty's service he may think expedient.

And whereas under and by virtue of Article *four* of the aforesaid Order-in-Council the High Commissioner may from time to time provide by Proclamation for the administration of justice, the raising of revenue, and generally for the peace order and good government of all persons within the territory, and in the said Article it is directed that the High Commissioner in issuing such Proclamations shall respect any native laws or customs by which the civil relations of any Native Chiefs, tribes or populations under His Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction.

And whereas it is desirable to make better provision for the appointment, powers and functions of Native Chiefs, Sub-Chiefs and Headmen in the Bechuanaland Protectorate, hereinafter referred to as "the territory".

Now therefore under and by virtue of the powers in me vested I do hereby declare, proclaim and make known as follows:—

DEFINITIONS.

I. In this Proclamation and in any rules or regulations made thereunder, unless inconsistent with the context—

- "Chief" shall mean the Chief over any tribal area who has been recognized in that capacity by the High Commissioner and confirmed therein by the Secretary of State and shall include an Acting Chief;
- "district" shall mean any Magisterial District established as such by the High Commissioner by notice in the *Gazette*;
- "Headman" shall mean any person appointed as such by the chief or sub-chief of the tribe or area affected;
- "intoxicating liquor" or "liquor" shall mean any spirit, wine, ale, beer, porter, cider, perry, hopbeer, kgadi, or any liquor containing more than two per cent. by volume of alcohol, and any liquor which the High Commissioner may from time to time declare by notice in the *Gazette* to be included in this definition, but shall not include native or kaffir beer;

"Kgadi" shall mean any fermented liquor made from water to which the powder commonly known as "Seretse" has been added and golden syrup, or treacle, or molasses, or sugar, or honey, or moretwa berries or mogwana berries;

"Kgotla" shall mean the customary meeting of a tribe or portion thereof in some duly recognized place for the discussion of matters of tribal concern in accordance with native custom;

"Magistrate" shall mean any Magistrate or Assistant Magistrate and shall include any officer duly appointed to act in either of these capacities;

"native" shall mean any aboriginal native belonging to any tribe of Africa, and shall include persons of mixed race living as members of any native community, tribe, kraal or location in the territory;

"Native law and custom" shall mean in relation to a particular tribe or in relation to any native community outside any tribal area the general law and custom of such tribe or community except so far as the same may be incompatible with the due exercise of His Majesty's power and jurisdiction or repugnant to morality, humanity or natural justice or injurious to the welfare of the natives;

"Sub-Chief" shall mean any native who has been appointed as such by the Resident Commissioner under the provisions of section *eleven*;

"Tribal area" shall mean any reserve defined in Proclamations No. 9 of 1899, No. 55 of 1908, No. 28 of 1909, No. 2 of 1911, No. 31 of 1933, No. 44 of 1933, or any other area which has been or may hereafter be defined by law as such reserve.

2. (1) Upon the occurrence of a vacancy in the Chieftainship of a tribe it shall be the duty of the tribe assembled in Kgotla to designate the former Chief's successor according to native custom and to cause his name to be submitted to the Resident Commissioner with a view to seeking the High Commissioner's recognition and the Secretary of State's confirmation of his appointment. Provided that, where any doubt arises whether the person so designated is under native custom the rightful successor to the Chieftainship or is a fit and proper person to discharge the functions of a Chief the Resident Commissioner shall hold a public inquiry for the investigation of the matter in doubt and shall report thereon to the High Commissioner.

(2) In the event of a vacancy in the Chieftainship of a tribe and pending the recognition of any Chief in terms of section *four* or the approval of any acting Chief in terms of section *six* the person who under native law and custom is charged with the duty of summoning the tribe to assemble in Kgotla in order to designate the successor to the Chieftainship in terms of this section, or to designate an acting Chief in terms of section *six*, shall act as Chief of the tribe.

3. Every Chief who at the date of the taking effect of this Proclamation is lawfully holding the office of Chief shall be deemed to have been recognized by the High Commissioner and confirmed by the Secretary of State.

4. Every Chief may exercise the functions of his office so soon as he shall have been recognized by the High Commissioner.

5. (1) The Chief and tribe having assembled in Kgotla, the Chief shall proceed to designate the persons who under native custom are entitled to advise him as his Councillors, and may with the approval of the tribe in Kgotla designate other persons also to be Councillors. The Chief shall notify the names of all his Councillors to the Resident Magistrate. Such designation shall be made immediately after the coming into force of this Proclamation and in the case of a Chief who is

recognized after such coming into force within one week of his assumption of the Chieftainship: Provided always that a Chief may from time to time designate as a Councillor any person who may thereafter become entitled under native custom to advise him as one of his Councillors, or designate with the approval of the tribe in Kgotla any other person to be one of his Councillors; whereupon any such additional designation shall be notified forthwith to the Resident Magistrate. It shall be the duty of the Chief in the exercise of his functions to consult with these Councillors who, with the Chief, shall be styled the Tribal Council.

(2) The Chief with the approval of the Resident Commissioner may at any time terminate any Councillor's tenure of office and shall do so if the Resident Commissioner after consultation with the Chief shall so direct.

6. (1) If the person designated by the tribe as Chief under section *two* is a minor the functions of the Chief shall be discharged during such minority by an acting Chief to be designated by the tribe in Kgotla subject to the approval of the High Commissioner, and, in the event of failure by the tribe to designate such Acting Chief within such time as the Resident Commissioner may fix, the High Commissioner may appoint an Acting Chief or Council.

(2) For the purpose of sub-section (1) the minority of a Chief shall terminate and the appointment of an Acting Chief or Council shall cease to have effect on such date as may be fixed by the tribe in Kgotla subject to the approval of the High Commissioner. In the event of the tribe in Kgotla failing to fix such date when called upon to do so by the Resident Commissioner, the date shall be fixed by the High Commissioner.

7. If the High Commissioner is satisfied that by reason of old age or mental or physical infirmity or other incapacity a Chief has become incapable of performing adequately or for any reason has neglected or failed to perform adequately the duties of his office he may instruct the Resident Commissioner to call upon the Chief to assemble his tribe in Kgotla to designate subject to the approval of the High Commissioner an Acting Chief or Council. In the event of failure by the Chief so to assemble his tribe in Kgotla or by the tribe to designate such Acting Chief or Council within such time as the Resident Commissioner may fix, the High Commissioner may appoint an Acting Chief or Council to act with or on behalf of the Chief in administering the affairs of the tribe, provided that if in any such matter the Chief shall fail to seek the advice of such Acting Chief or Council or having sought such advice shall fail to act in conformity with it, such Acting Chief or Council may act in such matter in the place of the Chief and any such act of the Acting Chief or Council shall be for all purposes as valid as if it had been performed by the Chief.

8. If the High Commissioner declines to recognize the appointment of any Chief or withdraw his recognition of such appointment or if the Secretary of State declines to confirm or cancels his confirmation of such appointment such Chief shall thereupon be suspended from the exercise of the powers and functions of the Chieftainship, provided that such recognition or confirmation shall not be withheld withdrawn or cancelled until the Chief has been afforded an opportunity to show cause to the High Commissioner or to the Resident Commissioner if deputed thereto by the High Commissioner against such withholding withdrawal or cancellation. During the period of suspension of any Chief from the exercise of the powers and functions of the Chieftainship, the powers and functions of the Chieftainship shall be exercised by an Acting Chief to be designated by the tribe in Kgotla subject to the approval of the High Commissioner, and in the event of failure by the tribe to designate such Acting Chief within such time as the Resident Commissioner may fix the High Commissioner may appoint an Acting Chief or Council.

9. In the event of a tribe desiring to depose a Chief such desire shall be forthwith reported to the Resident Commissioner, and an opportunity shall be afforded to the Chief of making to the High Commissioner such representations as he may wish to make. The High Commissioner if it appears to him that the desire reported represents the wishes of a reasonably large portion of the tribe, may refer such representations to the Special Court acting as a Commission of Enquiry with all the powers and authority of a Commission appointed under the provisions of Proclamation No. 30 of 1933 for investigation and report and upon receipt of the report of the Special Court may authorize or decline to authorize such deposition: Pending the decision of the High Commissioner the Chief shall as from a date to be fixed by the Resident Commissioner be suspended from exercising the powers and functions of his office. If the High Commissioner shall authorize the deposition the office of Chief shall forthwith become vacant and the necessary proceedings as provided by this Proclamation shall be taken for designating another person as Chief. If the High Commissioner shall decline to authorize the deposition the Chief shall be restored to the exercise of the powers and functions of his office. The High Commissioner shall not authorize such deposition without prior reference to the Special Court of any representations which may have been made by the Chief concerned but may decline to authorize such deposition without prior reference to the Special Court.

10. (1) When a Chief has been suspended from the exercise of the powers and functions of his office in accordance with section *eight* or has been deposed in accordance with section *nine* the High Commissioner may, if he is satisfied that it is necessary for the re-establishment or maintenance of peace order and good government in the tribal area over which such Chief has exercised authority, by an order under his hand instruct the Resident Commissioner to issue an order directing such Chief to leave such tribal area within such time as may be specified in the order or to leave the tribal area within the said time and not to enter or be found therein or within any other portion of the territory specified in the order. Provided that where the High Commissioner is satisfied that there is reasonable ground for apprehending that grave disturbance of the peace may ensue unless the Chief is forthwith removed from the tribal area he may by an order in writing under his hand authorize the Resident Commissioner to cause the Chief to be arrested forthwith and removed in custody outside the tribal area or to any place named in the order. Before an order is made under this section the High Commissioner shall afford to the Chief an opportunity of making any representations against such order unless in the opinion of the High Commissioner the circumstances are such that any delay in making the order would endanger the maintenance of peace, order and good government, and in such case any Chief who has complied with the order may make representations to the High Commissioner showing cause why such order should be modified or withdrawn.

(2) Any Chief upon whom an order has been served under sub-section (1) who shall refuse or neglect to comply therewith, or who, having left such area, shall return thereto or shall be found in any portion of the territory specified in the order without the consent of the High Commissioner, shall be guilty of an offence, and shall on conviction be liable to imprisonment, with or without hard labour, for a period not exceeding six months, and the High Commissioner may, by an order in writing under his hand, order him to be removed either forthwith or on the expiration of any term of imprisonment to which he may have been sentenced as aforesaid, to such part of the territory as the High Commissioner may by such order direct, and such order shall be sufficient warrant for his removal in custody to that part of the territory.

(3) Nothing in this section or in any order issued thereunder contained shall be interpreted or applied so as to prohibit or prevent any Chief who has been suspended from the exercise of the powers and functions of his office in accordance with section *eight* or who has been deposed in accordance with section *nine* from leaving the territory.

11. The Resident Commissioner after consultation with the natives concerned may appoint a Sub-Chief over any community of natives occupying an area which is not a tribal area, and may, after like consultation, revoke such appointment.

12. In any area other than a tribal area the Sub-Chief shall exercise over the natives placed under his charge such authority and ~~some~~ of the functions of a Chief as the Magistrate with the approval of the Resident Commissioner may confer on him.

13. Subject to the provisions of this Proclamation every Chief, Sub-Chief and Headman shall exercise his authority in consultation with his Council or Kgotla in accordance with native law and custom.

14. Any person who shall conspire against or subvert or attempt to subvert the authority of any Chief or Sub-Chief shall be guilty of an offence and on conviction shall be liable to such punishment as may lawfully be inflicted for the crime of sedition: Provided that no one shall be deemed to have conspired against or subverted or attempted to subvert the authority of any Chief or Sub-Chief if he is able to prove to the satisfaction of the Court that he intends or intended in good faith only—

- (a) to show that any Chief or Sub-Chief has been misled or mistaken in his measures; or
- (b) to point out errors or defects in the administration of the tribe or community or in the administration of justice with a view to the reformation of such alleged errors or defects or to urge the members of the tribe or community to attempt to procure by lawful means the alteration of any matter connected with such administration.

15. (1) Every Chief or Sub-Chief shall be responsible to the Government for the maintenance of law and order and the prevention of crime among the natives residing in the area over which his authority extends, and for the fulfilment of his duty such Chief or sub-Chief shall, in addition to the powers conferred upon him by this Proclamation and subject to the provisions thereof, exercise such powers as may be vested in him by virtue of native law and custom as defined by this Proclamation and it shall be the duty of any Chief or Sub-Chief immediately to bring to the notice of the Magistrate of his district any conditions of unrest or dissatisfaction or any other matter of serious import or concern to the Government.

(2) Whenever a Chief or Sub-Chief has occasion to absent himself from the area in which he exercises authority he shall inform the Magistrate of the district and shall designate to such Magistrate the person who will take charge of the area during his absence and on his behalf. A Headman intending to be absent from the sphere of his duties shall report such absence to his Chief.

16. Every Headman shall, in respect of the area under his charge, be responsible to his Chief or Sub-Chief for the preservation of peace and good order and the prevention of crime among the natives living therein and shall carry out any lawful order given to him by such Chief or Sub-Chief.

17. (1) It shall be the duty of every Chief or Sub-Chief to comply with all laws and to carry out such lawful orders and instructions as may from time to time be given to him by the Resident Commissioner personally or through the Magistrate of the district. It shall also be his duty to render within the area under his authority such assistance as may be required of him by responsible officers of the Government in connection with the following matters, and a Chief or Sub-Chief if required to do so shall issue orders to be obeyed by the natives within the area under his authority in respect of the same:—

- (a) Restricting or prohibiting the manufacture of any intoxicating liquor and the sale or supply of such liquor to natives;
- (b) prohibiting or restricting the sale, supply or cultivation of poisonous or noxious plants and the manufacture of noxious drugs or poisons;
- (c) prohibiting any act or conduct which in the opinion of the Magistrate or Chief might cause a riot or a disturbance or breach of the peace;
- (d) preventing the pollution of the water in or injury to any dam, stream, watercourse, water-holes, well, borehole or other water supplies and preventing the obstruction of any stream or watercourse;
- (e) regulating the cutting of timber and prohibiting the wasteful destruction of trees;
- (f) requiring natives to report the deaths of persons suspected to have been caused by violence or by other than natural causes;
- (g) requiring natives to report cases of infectious or contagious diseases whether of human beings or animals and generally for the prevention of the spread of such diseases;
- (h) for the collection of such statistics, including vital statistics, as may be called for by the Government;
- (i) requiring natives to report the presence within the tribal area of any stolen property;
- (j) for the protection of roads;
- (k) for the protection and preservation of game;
- (l) requiring the natives of the tribal area to co-operate in any measures taken for the purpose of exterminating or preventing the spread of the Tsetse fly, locusts, mosquitoes, or pests of a like nature;
- (m) for the prevention and extinction of grass and bush fires;
- (n) reporting the presence of any fugitive offender in the area;
- (o) reporting the illicit introduction into the area of arms, ammunition and intoxicating liquor;
- (p) reporting the presence in the area of strange stock without lawful permit;
- (q) reporting the commission or suspected commission of crime and offences;
- (r) for any other purpose prescribed by the Resident Commissioner with the approval of the High Commissioner.

(2) Every order given by the Chief or Sub-Chief under this section and every public order, direction or notice that may be notified to the Chief by the Magistrate shall be made known by the Chief or Sub-Chief to the native or natives concerned in accordance with native law and custom and shall thereupon be binding on the native or natives to whom it shall apply.

(3) Any native who shall disobey any order given under this section shall be guilty of an offence and on conviction by the court or native tribunal having jurisdiction shall be liable to a fine not exceeding five pounds or in default of payment to imprisonment for a period not exceeding one month.

18. (1) Whenever a Magistrate shall consider that any order issued by a Chief, Sub-Chief or Headman in his district should not have been issued or should not be enforced, he may, after discussion with such Chief, Sub-Chief or Headman direct such Chief, Sub-Chief or Headman to suspend the carrying out of such order and shall forthwith report the matter to the Resident Commissioner who may uphold revoke or modify such order.

(2) As from the date of the suspension of any such order no proceedings shall be taken or continued for the enforcement thereof and no penalty incurred thereunder shall be enforced unless and until the order has been confirmed by the Resident Commissioner.

(3) Where the Resident Commissioner has revoked any such order any conviction for a contravention of the order before the date of such revocation shall be set aside and any fine imposed under any such conviction, which has been paid by the person convicted, shall be refunded to him.

19. No levy of money or in kind shall be imposed upon or exacted from any native save under authority of a law of the territory except with the written approval of the Resident Commissioner and subject to such conditions as he may prescribe. The Resident Commissioner shall not give such approval unless the tribe or native community concerned duly assembled in Kgotla for the purpose shall have previously consented to the levy, and if satisfied that such consent has been given he shall not withhold his approval without having afforded the Chief an opportunity of representing to him the reasons why the proposed levy is considered by the Chief and the tribe necessary or desirable in the interests of the tribe. Every decision by the Resident Commissioner under this section shall forthwith be reported by him to the High Commissioner.

20. No contract entered into or obligation undertaken by a Chief, Sub-Chief or Headman in the territory (whether with or without the consent of his advisers according to native law and custom) shall be binding upon the tribe or upon any community of natives under such Chief, Sub-Chief or Headman unless the approval of the High Commissioner shall have been given thereto in writing or unless the subject matter thereof is of a value in all under two hundred and fifty pounds.

21. No tribe or community of natives or portion of a tribe or community of natives shall be held responsible for the personal obligations of any Chief, Sub-Chief or Headman.

22. (1) A Chief or Sub-Chief may, in accordance with native law and custom, call upon the natives in his area to perform any of the following services without payment or remuneration in cash or in kind:—

- (a) Services necessary in times of national emergency in order to avert a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases whether human or animal, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population.
- (b) Minor communal services of a kind which, being performed by the members of a tribe or community in the direct interest of the said tribe or community, can therefore be considered a part of the normal civic obligations incumbent upon the members of the tribe or community, provided that the tribe or community in Kgotla shall have the right to be consulted in regard to the need for such services.
- (c) Personal services to a Chief or Sub-Chief which are recognized by native law and custom (such as the ploughing of the Chief's tribal lands) and are undertaken in order to enable such Chief or Sub-Chief to maintain his position as head of the tribe and discharge the duties of his office.

(2) Save as in sub-section (1) provided, a Chief, Sub-Chief or Headman shall not exact any work or service from any native in his area under the menace of any penalty for its non-performance, and shall not employ any native on personal or tribal work or service who has not offered himself voluntarily for such work or service.

23. Any person contravening or failing to comply with or being guilty of an offence against any of the provisions of this Proclamation or of any regulations made thereunder for which no penalty is specially provided shall be liable on conviction by a Court of Resident Magistrate to a fine not exceeding fifty pounds or in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

24. The High Commissioner may make, alter and repeal regulations to facilitate the carrying into effect of this Proclamation and in particular but without prejudice to the generality of the foregoing for prescribing and defining the conditions under which services may be required to be rendered under section *twenty-two*. Such regulations may prescribe penalties for any contravention thereof.

25. This Proclamation may be cited as the Bechuanaland Protectorate Native Administration Proclamation, 1934, and shall have force and take effect from the date of its publication in the *Gazette*.

GOD SAVE THE KING.

Given under my Hand and Seal at Capetown this Twenty-eighth day of December One thousand Nine hundred and Thirty-four.

H. J. STANLEY,
High Commissioner.

By Command of His Excellency
the High Commissioner.

E. COHEN,
for Administrative Secretary.