

CHAPTER 41:01
BOGOSI
ARRANGEMENT OF SECTIONS

SECTION

PART I
Preliminary

1. Short title
2. Interpretation

PART II
Recognition of tribes

3. Recognition of tribes

PART III
Recognition and Removal of Dikgosi

4. Who is a *Kgosi*
5. Recognition of *Kgosi*
6. Tribe to designate successor
7. Appointment of *Motshwarelela Bogosi*
8. Termination of appointment of *Motshwarelela Bogosi*
9. Judicial Commission to be appointed in case of doubt
10. *Mothusa Kgosi*
11. Temporary absence or incapacity of *Kgosi*
12. Incapacity of *Kgosi* or *Mothusa Kgosi*
13. Removal of *Kgosi*
14. Appeal against decision of Minister
15. Withdrawal of recognition from *Kgosi*
16. Appointment of person to act in place of suspended *Kgosi*

PART IV
Functions of Dikgosi

17. Functions of *Dikgosi*
18. Admission of membership into tribe
19. Prevention of crime
20. Directions by Minister

PART V
Dikgosi and Dikgosana

21. Recognition of *Kgosi* by tribal community
22. *Kgosana* and *Moemela Kgosi*

PART VI
General and Supplementary Provisions

23. Tenure of office of *Dikgosi*
24. Training of *Dikgosi*
25. Undermining powers of *Dikgosi*
26. Prohibition of persons purporting to act as *Dikgosi*, etc.
27. Jurisdiction of courts in *Bogosi* matters
28. Regulations
29. Repeal of Cap. 41:01
30. Savings

Act 9, 2008.

An Act to re-enact with amendments the provisions relating to *Bogosi* and matters incidental thereto or connected therewith.

[Date of Commencement: 30th April, 2008]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the *Bogosi* Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"Bogosi" means the institution of traditional leadership or the position of *Kgosi*;

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

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

"Kgosana" means a person recognised as such in terms of section 22 (1);

"Kgosi" means a person so designated by the tribe and recognised as such by the Minister under section 4;

"kgotla" means the customary meeting place of a tribe or tribal community for the discussion, in terms of customary law, of matters of tribal or communal concern;

"Moemela Kgosi" means *Kgosi's* representative appointed under section 22 (2);

"Mothusa Kgosi" means a person appointed as such in terms of section 10;

"Motshwarelela Bogosi" has the meaning assigned to it under section 7;

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

"tribal area" means the area inhabited by a tribe, whether within or outside of a tribal territory;

"tribal community" means any community or ethnic group, whether or not living within a tribal territory, which is organised in a tribal manner;

"tribal territory" means any territory defined as such in the Tribal Territories Act, and includes the territory defined in Schedule B to the Botswana Boundaries Act;

"tribe" means any tribal community in existence and recognised as a tribe immediately before the commencement of this Act and includes such other tribal communities as may be so recognised under section 3.

(2) A reference in any enactment to "Chief", "Sub-Chief" or any other variant in the nomenclature of "Chief" or "Sub-Chief" shall be construed as a reference to "*Kgosi*" or any appropriate variation in the nomenclature of "*Kgosi*".

PART II
Recognition of tribes (s 3)

3. Recognition of tribes

(1) The Minister, after consulting a tribal community in its *Kgotla*, may recognise that tribal community as a tribe.

(2) In deciding whether a tribal community shall be recognised as a tribe, the Minister shall take into account the history, origins, and organisational structure of the community, and any other relevant matters.

PART III
Recognition and Removal of Dikgosi (ss 4-16)

4. Who is a Kgosi

A *Kgosi* is an individual who-

- (a) possesses such minimum educational qualifications as may be prescribed from time to time;
- (b) has been designated as *Kgosi* under section 6; and
- (c) is recognised as a *Kgosi* by the Minister in accordance with the provisions of sections 6 and 21.

5. Recognition of Kgosi

(1) Subject to the provisions of this Part and of section 22, no person shall hold or assume the *Bogosi* of any tribe or exercise or perform any of the powers or duties pertaining thereto unless he or she has been recognised as *Kgosi* of such tribe under the provisions of this Act.

(2) Subject to the provisions of section 9, no person shall be recognised as *Kgosi* of any tribe unless he or she has been designated as the rightful successor thereto in accordance with section 6.

6. Tribe to designate successor

(1) Where there is a vacancy in the *Bogosi* of a tribe, either by reason of death, deposition, abdication or retirement, it shall be the duty of the tribe assembled in the *kgotla* under the chairmanship of the senior member of the tribe to designate the rightful successor to the *Bogosi* according to customary law or according to the established norm and practice of that tribe.

(2) Subject to the provisions of sections 7 and 9, the Minister shall, by notice published in the *Gazette*, recognise the person so designated as *Kgosi* of such tribe.

7. Appointment of Motshwarelela Bogosi

(1) Where a person designated as *Kgosi* under section 6 is for any reason unable to assume *Bogosi*, or where a person recognised as a *Kgosi* is unable to take up the functions of that office, it shall be the duty of the tribe or the person so recognised as *Kgosi*, as the case may be, to designate another member (in this Act referred to as "*Motshwarelela Bogosi*") of the tribe according to customary law, or the established norm and practice of such tribe.

(2) Subject to the provisions of section 9, the Minister shall, by notice published in the *Gazette*, appoint the person designated in terms of subsection (1) to be *Motshwarelela Bogosi*.

(3) A person appointed as *Motshwarelela Bogosi* of a tribe shall exercise and perform to the exclusion of all other persons, the functions of the *Kgosi*.

8. Termination of appointment of Motshwarelela Bogosi

(1) An appointment as *Motshwarelela Bogosi* shall terminate and the rightful successor to the *Bogosi* shall be recognised as *Kgosi* on a day to be specified by the Minister by notice published in the *Gazette*.

(2) Subject to the provisions of section 9, the day so specified shall be the day determined for such purpose by the Minister in the *kgotla* in consultation with the tribe.

9. Judicial Commission to be appointed in case of doubt

(1) If any question arises as to whether-

- (a) a person designated under section 6 (1) is, under customary law, the rightful successor to the *Bogosi*, or is a fit and proper person to be so recognised;
- (b) a person designated under section 7 is, under customary law, the rightful person to be appointed as *Motshwarelela Bogosi* pending the recognition of the *Kgosi*, or is a fit and proper person to be appointed as *Motshwarelela Bogosi*; or
- (c) the appointment of a *Motshwarelela Bogosi* should be terminated and a *Kgosi* recognised although no day has been determined under section 8 (2),

the President on the advice of the Minister may appoint a Judicial Commission to inquire into the matter.

(2) On receipt of the report of a Judicial Commission appointed in terms of this section,

the Minister shall determine the question which has arisen, and make such decision for the purposes of section 6 (1), 7 or 8 as he or she may deem appropriate.

10. *Mothusa Kgosi*

(1) A *Kgosi* may, with the approval of the Minister, and after consultation with his or her tribe at a *kgotla* meeting, appoint any person as *Mothusa Kgosi* and such appointment shall be published in the *Gazette*.

(2) No person shall be appointed as *Mothusa Kgosi* unless the *Kgosi* and the Minister are satisfied that that person possesses attributes which qualify him or her to be so appointed.

(3) If the *Kgosi* and the Minister disagree as to the choice of *Mothusa Kgosi*, the matter shall be decided by the Minister who shall after consultation with the tribe at a *kgotla* meeting appoint such person to be *Mothusa Kgosi* as he or she considers appropriate.

(4) A *Mothusa Kgosi* shall perform such functions as the *Kgosi* may from time to time delegate to him or her in addition to the functions mentioned in section 11.

11. *Temporary absence or incapacity of Kgosi*

(1) If a *Kgosi* (including *Motshwarelela Bogosi* who is acting for a *Kgosi*) is temporarily unable to exercise the functions of his or her office, whether by reason of illness, absence or other cause, the powers and duties relating to his or her office shall be exercised and performed by the *Mothusa Kgosi*, or if there is no *Mothusa Kgosi*, by the senior member of the tribe.

(2) A *Mothusa Kgosi* or senior member of the tribe, as the case may be, shall cease to perform the functions of the *Kgosi* in terms of this section when the *Kgosi* assumes or resumes the exercise of his or her functions.

12. *Incapacity of Kgosi or Mothusu Kgosi*

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

(2) On receipt of the report, the Minister may call upon-

- (a) the *Mothusa Kgosi*, if it is the *Kgosi* who becomes incapable of performing the functions of his or her office;
- (b) the *Kgosi*, if it is the *Mothusa Kgosi* who becomes incapable of performing the functions of his or her office; or
- (c) the senior member of the tribe if both the *Kgosi* and the *Mothusa Kgosi* become incapable of performing the functions of their office,

to assemble the tribe in *kgotla* to consider the circumstances of the case and, if necessary, to designate a person who shall perform the functions of the *Kgosi* or the *Mothusa Kgosi*, as the case may be.

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

(4) If any question arises as to whether it was necessary for any person to be so designated, or whether any person so designated is fit to exercise those functions, or if there is any dispute as to whom the tribe has designated, the matter shall be decided by the Minister after consulting the tribe at a *kgotla*.

(5) Upon deciding any question under subsection (4), or if the *Kgosi*, *Mothusa Kgosi* or senior member of the tribe, as the case may be, has failed to summon a *kgotla* meeting to designate a person to exercise and perform the duties of the *Kgosi* or *Mothusa Kgosi*, the Minister shall, after consulting with the tribe, make such appointment as he or she considers appropriate.

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

13. *Removal of Kgosi*

(1) If-

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

is incapable of exercising his or her powers, has abused his or her powers, is being insubordinate or is refusing or has refused to carry out lawful orders, or is for any reason not a fit and proper person to be a *Kgosi*, the Minister shall make such enquiry or cause such enquiry to be made as he or she may consider appropriate and shall afford the *Kgosi* an opportunity to be heard.

(2) If after the holding of an enquiry under subsection (1), the allegations made against the *Kgosi* are proved, the Minister may-

- (a) caution or reprimand the *Kgosi*;
- (b) order the stoppage of increment of the salary of the *Kgosi*;
- (c) suspend the *Kgosi*;
- (d) if he or she considers it to be expedient and in the interest of peace, good order and good governance, depose such *Kgosi* or extend the suspension for a period not exceeding two years.

(3) Where the allegations made against a *Kgosi* have not been substantiated at the enquiry, the *Kgosi* shall be reinstated.

14. Appeal against decision of Minister

(1) Any person who is dissatisfied with the decision of the Minister deposing or suspending him or her as *Kgosi* may appeal in writing to the President against the decision within two months of the giving of the decision.

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

15. Withdrawal of recognition from *Kgosi*

The Minister may, by notice published in the *Gazette*, at any time, withdraw recognition from a *Kgosi* if-

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

16. Appointment of person to act in place of suspended *Kgosi*

Notwithstanding the provisions of clause 11, the Minister may, after consultation with the tribe at a *kgotla* meeting, appoint a senior member of the tribe to act as a *Kgosi* in place of the *Kgosi* who has been suspended and whose appeal against his or her suspension has been dismissed or the period allowed for appealing has elapsed without an appeal having been brought.

PART IV

Functions of Dikgosi (ss 17-20)

17. Functions of *Dikgosi*

It shall be the function of every *Kgosi*-

- (a) to exercise his or her powers under this Act to promote the welfare of the members of his or her tribe;
- (b) to carry out any lawful instructions given to him or her by the Minister;
- (c) to convene *kgotla* meetings to obtain advice as to the exercise of his or her functions under this Act;
- (d) to arrange tribal ceremonies;
- (e) to preside over cases in terms of the warrant of his or her court issued under the Customary Courts Act; and

- (f) to perform such other functions as may be conferred on him or her by or under this Act or any other enactment.

18. Admission of membership into tribe

A *Kgosi* shall have power, after consultation with the tribe or any section thereof in accordance with customary law, to facilitate the integration of persons wishing to settle within the tribe.

19. Prevention of crime

(1) Every *Kgosi* shall, to the best of his or her ability, prevent the commission of offences within his or her tribal area.

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

(3) A *Kgosi* receiving information that property of any description which has been stolen, whether within or outside his or her tribal area, is within such area, shall cause such property to be seized and detained pending the order of a court having jurisdiction in the matter and shall forthwith report such seizure and detention to such court.

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

20. Directions by Minister

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

(2) Any *Kgosi* who without good cause fails to comply with any directions given to him or her by the Minister shall be liable to be reprimanded, suspended, stoppage of increment of salary or deposed in accordance with the provisions of section 13.

PART V

Dikgosi and Dikgosana (ss 21-22)

21. Recognition of *Kgosi* by tribal community

(1) The Minister may, where a person has been designated as a *Kgosi* by a tribal community, recognise such person as *Kgosi* of that tribal community, and may, where he or she considers it appropriate, in like manner withdraw such recognition in accordance with section 15.

(2) A *Kgosi* shall have, in relation to the tribal community of which he or she is *Kgosi*, such of the powers and duties of a *Kgosi* as may be specified by the Minister by notice published in the *Gazette*.

22. *Kgosana* and *Moemela Kgosi*

(1) A *Kgosi* may, after consultation with the people of the area at a *kgotla* in the customary manner and with the approval of the Minister, recognise any person designated by his or her tribe as *Kgosana* in respect of the area of his or her tribal territory or tribal area and may in like manner withdraw the recognition.

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

(3) The Minister may, if he or she is satisfied that-

- (a) the recognition of a *Kgosana* has been made without due consideration of the wishes and interests of the people of the tribal territory or tribal area, cancel the recognition of such *Kgosana*, and may recognise as *Kgosana* such person as he or she considers appropriate after consultation with the people of the tribal territory or tribal area, as the case may be;
- (b) the appointment of the person proposed by the *Kgosi* as his or her *Moemela Kgosi*

- would not be in the interests of the people of the area, make such appointment as he or she considers appropriate after consultation with the tribe; or
- (c) the *Kgosi* is wilfully failing or refusing to fulfil his or her responsibilities under this section, recognise as *Kgosana* or appoint a *Moemela Kgosi*, as the case may be, such person as he or she considers appropriate after consultation with the people of the area,

and any recognition or appointment made by the Minister under this subsection shall not be withdrawn or terminated by the *Kgosi*.

(4) A *Kgosana* or *Moemela Kgosi* shall have, in relation to the area of the tribal territory or tribal area in respect of which he or she has been recognised or appointed, such of the powers and duties of the *Kgosi* as the *Kgosi* may from time to time delegate to him or her.

(5) Every delegation made in pursuance of subsection (4) shall be made known following consultations at a *kgotla* meeting to the persons likely to be affected thereby.

PART VI

General and Supplementary Provisions (ss 23-30)

23. Tenure of office of *Dikgosi*

(1) A *Kgosi* shall hold office on permanent and pensionable terms, and may retire on attaining the age of 50 years or such other age as may be prescribed.

(2) A *Kgosi* who holds office on permanent and pensionable terms shall vacate his or her office on reaching the age of 80 years or such other age as may be prescribed:

Provided that the Minister may permit a *Kgosi* who has attained the age of 80 years to continue in office for such period as he or she may consider appropriate.

(3) For the purposes of the Cap. 27:01 Pensions Act, *Bogosi* is a public service.

24. Training of *Dikgosi*

A person who holds office as *Kgosi* shall not proceed on a full time course of study or training without the written approval of the Minister, which approval shall not be unduly refused or withheld.

25. Undermining powers of *Dikgosi*

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

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

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P2,000 or to imprisonment for a term not exceeding five years, or to both.

26. Prohibition of persons purporting to act as *Dikgosi*, etc.

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

- (a) prohibit any person who is not a *Kgosi* (whether or not he or she was formerly recognised as a *Kgosi*) from purporting to exercise the functions of a *Kgosi*; or
- (b) require that no person shall treat as a *Kgosi* a person who is subject to such prohibition,

and any person who contravenes such order shall be guilty of an offence and liable to a fine not exceeding P2,000 or to a term of imprisonment not exceeding two years, or to both.

(2) No prosecution for an offence under this section shall be instituted except on the written authority of the Director of Public Prosecutions.

27. Jurisdiction of courts in *Bogosi* matters

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

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

- (a) the designation of any person as a *Kgosi* or the claim of any person to be designated

as a *Kgosi*; or

- (b) the recognition of, appointment to be, or suspension of a person from being a *Kgosi*.

28. Regulations

The Minister may make regulations for any matter which is required to be prescribed or for the better carrying out of the provisions of this Act and without derogating from the generality of the foregoing, such regulations may prescribe-

- (a) the general conditions of service of;
- (b) the procedure for taking disciplinary actions against; and
- (c) the punishment which may be awarded for breaches of discipline by, persons appointed under this Act.

29. Repeal of Cap. 41:01

The Cap. 41:01 Chieftainship Act is hereby repealed.

30. Savings

(1) Notwithstanding the repeal effected under section 29, any person who immediately before the commencement of this Act was a *Kgosi* shall continue to hold such office as if he or she had been so designated, appointed and recognised under this Act.

(2) For the avoidance of doubt, nothing in this Act shall be construed as derogating from or affecting the validity of the Tribal Territories Act.