

BECHUANALAND PROTECTORATE.

No. 32 of 1943.

(Promulgated 3rd September, 1943.)

PROCLAMATION

By HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Native
Administration Proclamation, 1943.

Whereas it is expedient to make provision for the designation, recognition and removal of Chiefs, Sub-Chiefs and Headmen and for the constitution and appointment of Native Authorities and the definition of their powers and functions in the Bechuanaland Protectorate:

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

1. In this Proclamation, unless the context ^{Definitions.} otherwise requires—

“ Administrative Officer ” means the Administrative Officer in charge of the District concerned and includes any Administrative Officer acting under his direction;

“ Chief ” means the Chief or Regent over any tribal area who has been recognised in that capacity by the High Commissioner and confirmed therein by the Secretary of State;

“ District ” means any Magisterial District established as such by the High Commissioner by Notice in the *Gazette*;

“ Judicial Enquiry ” means an enquiry conducted according to the rules of evidence and at which any party interested shall have the right to appear and to be legally represented;

“ Kgotla ” means the customary meeting of a tribe or native community or portion thereof for the discussion of matters of tribal or communal concern in accordance with Native custom;

“ Native ” means any aboriginal native belonging to any tribe of Africa, and includes persons of mixed race living as members of any native community, tribe, village or location in the Territory;

“ Native Authority ” means a Native Authority appointed under this Proclamation in respect of the specified area for which such Native Authority is appointed, and includes a Subordinate Native Authority;

“ Native law and custom ”, “ Native law or custom ” and “ Native custom ” mean in relation to a particular tribe or in relation to any native community outside any tribal area the general law or 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 ” or “ Headman ” means any native recognised as such in accordance with section *eleven*;

“ Tribe ” in respect of persons living within a tribal area means all natives living within that area, subject, however, to any order made under section *thirty-six*;

“ Tribal area ” means the area known as the Barolong Farms as described in Schedule B of Proclamation No. 1 of 1896, the Bamangwato, Batawana, Bakgatla, Bakwena and Bangwaketsi Native Reserves as defined in Proclamations No. 9 of 1899, No. 55 of 1908 and No. 31 of 1933, the Bamalete Native Reserve as defined in Proclamation No. 28 of 1909 and the Batlokwa Native Reserve as defined in Proclamation No. 44 of 1933 or any area which may hereafter be added thereto by law.

CHAPTER I.

DESIGNATION, RECOGNITION AND REMOVAL OF CHIEFS, SUB-CHIEFS AND HEADMEN.

Recognition of existing Chiefs.

2. Every Chief who at the commencement of this Proclamation is lawfully holding the office of Chief shall be deemed to have been recognised by the High Commissioner and confirmed by the Secretary of State.

Procedure in case of vacancy in the Chieftainship.

3. (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, or if the person who under native custom is the rightful successor to the Chieftainship is a minor to designate a Regent according to native custom, and to cause the name of the Chief or Regent 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 such designation:

Provided that where any doubt arises whether the person so designated is, under native custom, the rightful successor to the Chieftainship or Regency, or is, by reason of an allegation that he is unworthy or incapable of exercising the same justly or for any other sufficient reasons, a fit and proper person to discharge the functions of Chief or Regent, the High Commissioner may direct that a Judicial Enquiry be held to enquire into the matter and to report thereon to the High Commissioner, who shall then decide the matter.

(2) In the event of a vacancy in the Chieftainship of a tribe and pending the designation of a Chief or Regent, the person who under native custom is charged with the duty of summoning the tribe to assemble in Kgotla in order to designate the successor to the Chieftainship or to designate a Regent in terms of this section shall act as Chief of the tribe.

4. (1) Every Chief may exercise the functions of his office as soon as he shall have been designated by the tribe as Chief unless the High Commissioner otherwise directs.

Chief to exercise functions when designated.

(2) If the High Commissioner declines to recognise or the Secretary of State declines to confirm the recognition of the person designated as Chief or Regent in terms of sub-section (1) of section *three* such person shall thereupon cease to exercise the powers and functions of the Chieftainship and the provisions of sub-clause (2) of section *three* shall again become operative.

5. The minority of a Chief shall terminate and the appointment of a Regent shall cease to have effect on such date as may be fixed by the tribe in Kgotla unless the High Commissioner shall otherwise direct. In the event of the tribe in Kgotla omitting or failing to fix the date when called upon to do so by the Resident Commissioner, the High Commissioner may direct that a Judicial Enquiry be held to enquire into the matter and to report thereon to the High Commissioner, who may thereafter fix such date.

Termination of Regency and minority.

6. If a Chief is to be absent from his tribal area or for any other reason is incapable temporarily of carrying out the functions of the Chieftainship it shall be lawful for the Chief to designate, or, if the Chief is incapable of so designating, for the person who according to native custom is entitled to take charge of the tribe as if the Chief had been absent to

Temporary absence or incapacity of Chief.

designate, the person or persons who, subject to the agreement of the tribe in Kgotla and the approval of the Resident Commissioner, shall exercise such functions of the Chieftainship as he shall delegate to such person or persons for the period of the Chief's absence or incapacity.

Procedure
if Chief
incapa-
citated.

7. (1) If by reason of old age or mental or physical infirmity or other incapacity a Chief has become incapable of performing adequately the duties of his office, it shall be the duty of the Chief, or the person who according to native custom is entitled to take charge of the tribe as if the Chief had been absent, or the Administrative Officer, to report the circumstances to the Resident Commissioner. The Resident Commissioner may thereupon call upon the Chief or the appropriate person under native custom to assemble the tribe in Kgotla to consider the circumstances of the case and, if necessary, to designate the person or persons who, subject to the approval of the High Commissioner, shall exercise the functions of the Chieftainship or shall assist the Chief in the exercise of his functions.

(2) In the event of failure by the tribe to assemble in Kgotla or in the event of the tribe having assembled in Kgotla failing for reasons considered by the Resident Commissioner to be inadequate to designate a person or persons mentioned in sub-section (1) of this section, the High Commissioner may after a Judicial Enquiry appoint such person or persons.

(3) In the event of the High Commissioner refusing to approve the person or persons designated in terms of sub-section (1) of this section the High Commissioner shall refer the matter back to the tribe for reconsideration and then may, after having caused due enquiry to be held in Kgotla, appoint such person or persons.

Suspension
and
deposition
of Chiefs.

8. The High Commissioner may suspend for a stated period and for such further stated periods as he may deem fit or may depose any Chief who shall appear to him, whether on representations made by the tribe or a section thereof or otherwise, to have abused his power, or be unworthy, or incapable of exercising the same justly, or for other sufficient reasons, and thereupon such Chief shall be disqualified from exercising the functions of the Chieftainship unless and until he be expressly restored by the High Commissioner:

Provided that no suspension shall take place unless the charges against such Chief are communicated to him and he has made or has

had sufficient opportunity of making his answer or defence thereto, and that no extension of any stated period of suspension shall be ordered unless such Chief shall have been afforded an opportunity to show cause to the High Commissioner against such extension:

Provided further that no deposition shall take place until the charges against such Chief have been investigated at a Judicial Enquiry, and the High Commissioner shall have considered the record and findings of the Enquiry:

Provided, however, that where the High Commissioner is satisfied that there is reasonable ground for apprehending that grave disturbance of the peace may ensue unless a Chief is forthwith removed from his tribal area he may authorise 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 pending a Judicial Enquiry which shall in any case be commenced within six months, failing which such Chief shall be allowed to return to his tribal area.

9. (1) Upon the suspension of any Chief the procedure laid down in section *seven* for the designation of the person or persons who shall exercise the functions of the Chieftainship shall be adopted.

How
vacancy
filled in
event of
suspension
or
deposition.

(2) Upon the deposition of any Chief, a vacancy in the Chieftainship shall be deemed to have occurred and the procedure laid down in section *three* shall be adopted.

10. (1) (a) When a Chief has been suspended or deposed in accordance with section *eight*, the High Commissioner, if he is satisfied that it is necessary for the re-establishment or maintenance of peace, order and good government in the tribal area in which such Chief has exercised his functions, may issue an order directing such Chief to confine himself within such portion of the tribal area as may be specified in the order or 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.

Restriction
of
movements
or removal
of Chiefs
who have
been
deposed or
suspended.

(b) Where the High Commissioner is satisfied that there is reasonable ground for apprehending that grave disturbance of the peace may ensue unless any such Chief as aforesaid is forthwith removed from the tribal area he may authorise 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.

(c) 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) (a) 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 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 shall be interpreted or applied so as to prohibit or prevent any Chief who has been suspended or deposed in accordance with section *eight* from leaving the Territory.

Recogni-
tion,
deposition,
etc., of
Sub-Chiefs
and
Headmen.

11. In tribal areas it shall be lawful for the Chief and in areas other than tribal areas it shall be lawful for the Administrative Officer to accord recognition to any person designated as Sub-Chief or Headman in accordance with native custom, or after due enquiry in Kgotla to refuse recognition to or to suspend or depose any such Sub-Chief or Headman, and if considered necessary in the interests of the tribe or community concerned to remove such Sub-Chief or Headman to such part of the tribal area as the Chief may specify or to such part of the district outside a tribal area as the Administrative Officer may specify, as the case may be:

Provided that before the refusal of recognition, suspension, deposition or removal of any Sub-Chief or Headman becomes effective, such Sub-Chief or Headman shall be afforded an opportunity to make representations through the Administrative Officer for the consideration of the Resident Commissioner who may direct any Administrative Officer to enquire into the matter in Kgotla and report thereon. Thereafter the Resident Commissioner may confirm, reverse or vary the decision of the Chief or Administrative Officer.

CHAPTER II.

CONSTITUTION, APPOINTMENT AND POWERS OF NATIVE AUTHORITIES.

12. The High Commissioner shall constitute the office of Native Authority for each of the tribal areas and may constitute the office of Native Authority for any other specified area or group of areas within the Territory. Constitution of office of Native Authority.

13. (1) The High Commissioner shall appoint to the office of Native Authority so constituted in respect of a tribal area the Chief of that area and to the office of Native Authority so constituted in respect of any other area such Sub-Chief, Headman or other suitable person or group of persons as he may think fit. Appointment to office of Native Authority.

(2) In addition to the provisions of subsection (1) the High Commissioner may appoint in respect of a tribal area after consultation with the Chief and tribe in Kgotla the Chief and a Council to be the Native Authority for that area for a stated time:

Provided that the Chief and Tribe shall be given an opportunity to submit the names of the persons to be appointed to any such Council.

(3) For the purposes of this section "Chief" shall include the person or persons designated or appointed to exercise the functions of the Chieftainship or to assist the Chief in accordance with sections *seven* and *nine*.

14. (1) The Resident Commissioner in respect of any specified area or group of areas or group of persons outside a tribal area may constitute the office of Subordinate Native Authority and shall direct to which Native Authority the office so constituted shall be subordinate. Constitution of office of Subordinate Native Authority.

(2) The Native Authority of a tribal area in respect of any specified area or group of areas or group of persons within such tribal area or tribe may constitute the office of Sub-

ordinate Native Authority subject to the approval of the Resident Commissioner, and any office so constituted shall be subordinate to the Native Authority constituting the same.

Appointment to office of Subordinate Native Authority.

15. The Resident Commissioner in respect of any office of Subordinate Native Authority constituted by him and a Native Authority with the approval of the Resident Commissioner in respect of any office of Subordinate Native Authority constituted by the Native Authority may appoint to any such office such Sub-Chief, Headman or other suitable person or group of persons as may be thought fit.

Revocation, etc., of constitution or appointment.

16. (1) The High Commissioner, the Resident Commissioner or the Native Authority, as the case may be, may revoke, suspend or vary any constitution or appointment made under sections *twelve, thirteen, fourteen and fifteen*, and may at any time order that any person or persons appointed to be a member or members of a Native Authority shall cease to be a member or members thereof, and thereupon such person or persons shall cease to be a member or members of such Native Authority.

(2) The High Commissioner after due enquiry may direct the Resident Commissioner or the Native Authority, as the case may be, to revoke, suspend or vary any constitution or appointment made under sections *fourteen and fifteen*.

Power of High Commissioner to appoint Administrative Officer to office of Native Authority.

17. (1) In any area other than a tribal area where the office of Native Authority constituted under this Proclamation is for the time being vacant or in any case of emergency the High Commissioner may appoint any Administrative Officer to such office.

(2) When the High Commissioner has made an appointment under this section the provisions of this Proclamation with the exception of sections *twenty-seven and thirty* shall, *mutatis mutandis*, apply.

(3) No act done by an Administrative Officer appointed under this section in the exercise of any power conferred upon him in virtue hereof and with reference to the area for which he is appointed shall be deemed to be invalid by reason only of the fact that the act was not done within such area.

Publication of constitution and appointments to office of Native Authority.

18. All orders and directions issued regarding the constitution of and appointment to the office of Native Authority in accordance with sections *twelve, thirteen, fourteen, fifteen, sixteen and seventeen* shall be published in the *Gazette*.

19. (1) It shall be the duty of every Native Authority to perform the obligations by this Proclamation imposed, and generally to assist the Government to maintain law, order and good government among the natives residing or being in the area over which its authority extends, and for the fulfilment of this duty it shall have and exercise over such natives the powers under this Proclamation conferred, in addition to such powers as may be vested in it by virtue of any law or native custom for the time being in force.

Duties and powers of Native Authorities.

(2) The High Commissioner may direct that a Native Authority shall exercise only such of the powers conferred upon Native Authorities by this Proclamation as he may specify, and when any such directions shall have been given this Proclamation shall be deemed to confer upon such Native Authority only such powers as the High Commissioner shall have specified.

(3) A Subordinate Native Authority shall exercise only such of the powers and duties of a Native Authority as the Resident Commissioner or the Native Authority constituting the office of that Subordinate Native Authority may specify, or shall exercise all the powers and duties of a Native Authority save only those, if any, expressly excluded by the Resident Commissioner or said Native Authority, as the case may be.

20. (1) Where a Chief and Council is appointed to the office of Native Authority the duties of the Native Authority shall be exercised by the Chief after consultation with the Council and in accordance with the advice given by the Council.

Manner in which Native Authority shall carry out its duties.

(2) When more than one person is appointed to be a Native Authority the decision of the majority shall be the decision of the Native Authority, and the person presiding over meetings of the Native Authority shall have a casting as well as an original vote.

(3) Where a Native Authority consists of more than one person, such Native Authority shall make rules, which shall be subject to the approval of the Resident Commissioner, for the due and proper conduct of its business and duties.

(4) Every Native Authority shall carry out its duties in the customary manner unless otherwise provided in this Proclamation and shall exercise its authority in consultation with the Kgotle in accordance with native law and custom.

Duty of natives to assist Native Authority.

21. It shall be the duty of every native, when thereto required by a Native Authority, to assist in carrying out the duties imposed upon such Authority by this Proclamation or by any other law or native custom for the time being in force; and every native so required by a Native Authority shall be deemed to be empowered to do all that may be reasonably necessary to give effect to any lawful order given by such Authority.

Prevention of crime.

22. (1) It shall be the duty of a Native Authority to interpose for the purpose of preventing, and to the best of its ability to prevent, the commission of any offence by any native within the local limits of its authority.

(2) A Native Authority knowing of a design to commit an offence by a native within the local limits of its authority may arrest or direct the arrest of the native so designing, if it appears to such authority that the commission of the offence cannot be otherwise prevented. Any native so arrested shall, unless he be released within twenty-four hours of his arrest, be taken forthwith before an Administrative Officer or a Native Court having jurisdiction over him.

(3) Every Native Authority receiving information that any native who has committed an offence for which he may be arrested without a warrant, or for whose arrest a warrant has been issued, is within the local limits of its authority, shall cause such native to be arrested and taken forthwith before an Administrative Officer or a Native Court having jurisdiction over him.

(4) Every Native Authority receiving information that property of any description which has been stolen, whether within or without the local limits of its authority, is within such limits, shall cause such property to be seized and shall forthwith report such seizure to an Administrative Officer or to a Native Court having jurisdiction in the matter and shall detain such property pending an order of the Administrative Officer or the Native Court, as the case may be.

Duty of natives to attend before Government officers and others when so directed by Native Authority.

23. (1) It shall be the duty of every native, when so directed by a Native Authority, to attend before such Native Authority or before an Administrative Officer or any other Government Officer, or before a Native Court having jurisdiction over such native.

(2) Any such native who, when so directed to attend before any such Authority, person or Court, shall, without reasonable excuse, neglect or refuse to attend as and when directed

may be arrested by or under the order of the Native Authority and taken before such Authority, person or Court:

Provided that if such native be in employment, due notice that he is required to attend before any such Authority, person or Court as aforesaid, shall be given in writing to the employer, and if such employer should without just or reasonable cause prevent or refuse to allow such native to obey such order he shall be guilty of an offence and liable on conviction before a Court having jurisdiction over him to a fine not exceeding ten pounds or to imprisonment with or without hard labour for a period not exceeding two months, or to both such fine and such imprisonment.

24. Subject to the provisions of any law for the time being in force and to the general or special directions of the High Commissioner, a Native Authority may, subject to the general or special directions of the Native Authority, if any, to which it is subordinate, issue orders to be obeyed by natives within the local limits of its authority—

Power of
Native
Authority
to issue
orders.

(a) *Intoxicating liquors*: prohibiting, restricting or regulating the manufacture, distillation, brewing, sale, transport, distribution, supply, possession and consumption of intoxicating liquors;

(b) *Gambling*: prohibiting, restricting or regulating gambling;

(c) *Arms*: providing for assisting in the regulation and control of the carrying and possession of arms;

(d) *Disorderly conduct*: prohibiting any act or conduct which in the opinion of the Native Authority might cause a riot or a disturbance or a breach of the peace;

(e) *Crime*: requiring natives to report the presence within the local limits of its authority of any native who has committed an offence for which he may be arrested without a warrant or for whose arrest a warrant has been issued, or of any property stolen or believed to have been stolen whether within or without such local limits;

(f) *Prostitution*: providing for the suppression of prostitution and procuration;

(g) *Noxious plants and drugs*: prohibiting or restricting the sale, supply, use, possession or cultivation of poisonous or noxious plants and the manufacture of noxious drugs or poisons;

(h) *Migration*: prohibiting, restricting or regulating the migration of natives from, to

or within the local limits of its authority;

(i) *Vital statistics*: requiring the birth, marriage or death of any native within the local limits of its authority to be reported to it or to such other person as it may direct.

(j) *Census and Tax*: providing for the assisting in the compilation of information required for census and tax purposes and assistance in the collection of taxes;

(k) *Communications*: providing for the making, maintenance and protection of roads;

(l) *Markets*: for the purpose of establishing and regulating native markets;

(m) *Health and Nutrition*: with a view to securing the health, nutrition and well-being of the community—

(i) preventing the spread of infectious or contagious disease, whether of human beings, animals or plants, and for the care of the sick;

(ii) requiring measures to be taken to secure proper housing and sanitation;

(iii) for the purpose of exterminating or preventing the spread of tsetse fly, locusts, mosquitoes or any other pest;

(iv) establishing, maintaining and regulating the use of tribal or communal grain reserves;

(n) *Natural resources*: with a view to the preservation, better use and improvement of natural resources—

(i) preventing the pollution of the water in or injury to any dam, stream, water-course, water-hole, well, bore-hole or other water supply and preventing the obstruction of any stream or water-course;

(ii) regulating the provision, maintenance and use of tribal or communal water supplies;

(iii) prohibiting, restricting or regulating the cutting or destruction of trees;

(iv) providing for the destruction of noxious weeds;

(v) preventing overstocking and regulating grazing;

(vi) prohibiting, restricting or regulating the burning of grass or bush, and the use of fire or lights in any manner likely to ignite any grass or bush, and extinguishing grass or bush fires;

(vii) preventing soil erosion and for the protection of anti-soil erosion works;

(viii) prohibiting, restricting or regulating wasteful methods of agriculture;

(o) *Livestock Industry*: with a view to the better control and improvement of livestock—

(i) prohibiting, restricting or regulating the movement, sale, disposal or acquisition in, through or within the local limits of its authority of livestock of any description;

(ii) improving livestock and their products;

(iii) providing for the notification of the finding of stray livestock and their safe custody and disposal;

(p) *Game and Vermin*: providing for the protection and preservation of game and the destruction of vermin;

(q) *Enforcement of orders issued by an Administrative Officer*: for the purpose of enforcing any lawful instructions issued by an Administrative Officer;

(r) *Native law and custom*: prohibiting, restricting, regulating or requiring to be done any matter or thing which the Native Authority, by virtue of any native law and custom for the time being in force, has power to prohibit, restrict, regulate or require to be done;

(s) *Other purposes*: for any other purpose, whether similar to those hereinbefore enumerated or not, which may, by Notice in the *Gazette*, be specially sanctioned by the High Commissioner, either generally or for any particular area.

25. (1) Whenever in the local limits of the authority of any Native Authority there is or is likely to be such shortage of food that a famine exists or is likely to ensue, the Native Authority may, subject to the provisions of any law for the time being in force and subject to the general or special directions of the High Commissioner and of the Native Authority, if any, to which it is subordinate, issue orders within the local limits of its authority—

Power of
Native
Authorities
in event of
famine.

(a) requiring any able-bodied male native, who is otherwise unable to provide food for himself or his dependants, to work on any public works, relief works or in such other employment and for such period as may be approved by the Resident Commissioner;

(b) requiring any native, who refuses to avail himself of the facilities provided by the Native Authority to obtain food and who is otherwise unable to provide food for

himself or his dependants, to move to such place within its area as the Native Authority may direct in order that such native may be more conveniently fed or to such place without its area as the Resident Commissioner may approve;

(c) requiring any native or group of natives to cultivate land within the local limits of its authority to such reasonable extent as the Native Authority may direct;

(d) prohibiting, restricting or regulating the removal of foodstuffs belonging to natives from the area of its authority and the movement of foodstuffs within such area; and

(e) prohibiting or limiting the brewing of beer.

(2) If a Native Authority shall accompany any natives required under this section to work or to move to a place where they can be more conveniently fed, such Native Authority shall continue to exercise its authority over such natives.

(3) There shall be given and paid to all natives working under the provisions of paragraph (a) of sub-section (1) such rations and wages as the Native Authority, with the approval of the Resident Commissioner, may prescribe, and such wages may be paid wholly or in part in food at rates fixed by the Native Authority with the approval of the Resident Commissioner.

Promulga-
tion of
orders.

26. (1) Every order given under section *twenty-four* or section *twenty-five* shall be made known to the native or natives by whom is to be obeyed in such manner as is customary in the area of jurisdiction of the Native Authority by whom the order is given and thereupon shall be binding on the person or persons by whom it is to be obeyed.

(2) Every order given by a Native Authority under section *twenty-four* or section *twenty-five* shall be reported at the earliest possible moment to the Native Authority, if any, to whom it is subordinate and to the Administrative Officer.

Powers of
Resident
Commis-
sioner and
Admini-
strative
Officers in
relation to
orders
which
may be
issued by
Native
Authorities.

27. (1) Whenever in the opinion of the Resident Commissioner or an Administrative Officer it is expedient for the good order and government of the area of jurisdiction of a Native Authority, or for the prevention of famine in that area, that any order shall be issued which such authority is empowered to issue by section *twenty-four* or section *twenty-five*, the Resident Commissioner or the Admini-

nistrative Officer may direct the Native Authority to issue and enforce any such order, and if the Native Authority shall neglect or refuse to issue or enforce the order which it is so directed to issue, the Resident Commissioner or the Administrative Officer may himself issue and enforce such order, and thereupon such order, when made known in the manner prescribed by section *twenty-six*, shall have the same force and effect as if it had been issued by the Native Authority.

(2) Whenever the Resident Commissioner or an Administrative Officer is of opinion that any order issued by a Native Authority should not have been issued or should not be enforced, the Resident Commissioner or the Administrative Officer may direct the Native Authority to revoke such order or to refrain from enforcing such order or may himself revoke such order and may, with the consent of the High Commissioner, require the repayment of any fine imposed by a Subordinate Court or a Native Court or the release from custody of any person sentenced to imprisonment by any such court for contravention of such order, whether before or after his direction to revoke or to refrain from enforcing such order, or his revocation of such order, was issued.

(3) The Administrative Officer shall forthwith report to the Resident Commissioner any directions issued under this section.

(4) No directions shall be issued under sub-sections (1) and (2) of this section until the Native Authority concerned shall have been afforded an opportunity of making representations before an Administrative Officer in Kgotla and, if the matter in dispute is a direction under sub-section (2), the order in question shall not be enforced pending a decision.

28. (1) When an order is issued under section *twenty-four*, section *twenty-five* or section *twenty-seven* a penalty for the breach thereof may be specified, and different penalties in the case of successive breaches may be specified and such penalty or penalties shall be made known in the manner prescribed in section *twenty-six* :

Penalties
for offences
by natives.

Provided that the penalty shall not exceed a fine of twenty-five pounds or imprisonment with or without hard labour for six months or both such fine and imprisonment.

(2) A native who contravenes or fails to obey any order or direction which by this Proclamation he is bound to obey shall be guilty of an

offence and shall be liable on conviction to the penalty specified in terms of sub-section (1) of this section, or if no penalty is specified to a fine not exceeding twenty-five pounds or to imprisonment with or without hard labour for six months or to both such fine and imprisonment.

(3) A native shall be guilty of an offence and shall be liable on conviction to the penalty prescribed in sub-section (2) if he obstructs or interferes with the lawful exercise by a Native Authority of any powers conferred by this Proclamation.

(4) A native shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a period not exceeding one year, or to both such fine and imprisonment, if, not being a Native Authority, or a Chief, Sub-Chief or Headman, he shall hold himself out to be a Chief, Sub-Chief or Headman or assume the powers of a Native Authority:

Provided that except in so far as the High Commissioner may by order otherwise direct no proceedings shall be taken for an offence against this sub-section without the consent of the High Commissioner.

(5) A native accused of an offence against this section may be arrested without warrant by a Native Authority or by any person acting under the directions of such Authority and may be tried before any court having jurisdiction.

(6) No court shall be deemed to be authorised by this section to impose heavier penalties than such court is authorised to impose in the exercise of its ordinary criminal jurisdiction.

Penalty for
conspiring
against
Chief or
Native
Authority.

29. (1) Any person who conspires against or subverts or attempts to subvert the authority of any Chief or Native Authority shall be guilty of an offence and liable on conviction to such punishment as may lawfully be inflicted for the crime of sedition:

Provided that no proceedings shall be taken for an offence against this sub-section without the consent of the High Commissioner:

Provided further that for the purpose of this sub-section the term "Native Authority" shall not include a Subordinate Native Authority.

(2) Any person who conspires against or in any manner attempts to undermine the authority of a Sub-Chief, Headman or Subor-

dinate Native Authority shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment with or without hard labour for a period not exceeding two years, or to both such fine and imprisonment. All proceedings under this sub-section shall be instituted in a Native Court of appeal established under section *thirty-one* of the Bechuanaland Protectorate Native Courts Proclamation, 1943, or where there is no Native Court of Appeal in a Subordinate Court of competent jurisdiction.

(3) Except with the permission of the High Commissioner no Native Court shall have jurisdiction to try an offence against this section.

30. (1) A Native Authority shall be guilty of an offence and liable to a fine not exceeding fifty pounds upon conviction before a court having power to impose such maximum fine for any of the following acts or neglects:—

Penalty
to which
Native
Authorities
are liable.

(a) if it shall wilfully neglect to exercise any of the powers by this Proclamation conferred upon it for or in respect of the prevention of offences or the bringing of offenders to justice, or the seizure of property stolen or believed to have been stolen;

(b) if it shall wilfully refuse or neglect to exercise any of the powers given to it by section *nineteen* of this Proclamation;

(c) if when directed by the Resident Commissioner or an Administrative Officer to issue orders for any of the purposes specified in sections *twenty-four* and *twenty-five* it shall wilfully neglect to issue any of the orders directed;

(d) if it shall wilfully neglect to enforce any order issued by it under the directions of the Resident Commissioner or an Administrative Officer or issued by the Resident Commissioner or an Administrative Officer under the powers conferred by sub-section (1) of section *twenty-seven*;

(e) if it shall wilfully neglect to revoke an order when directed by the Resident Commissioner or an Administrative Officer under the powers conferred by sub-section (2) of section *twenty-seven*, or if it shall enforce or attempt to enforce any order after it has been directed as aforesaid to refrain from so doing;

(f) if it shall wilfully neglect to enforce any lawful order issued by a Native Authority to whom it is subordinate;

(g) if it shall be guilty of any abuse of authority conferred on it by this Proclamation or by any other law or by native custom;

(h) if it wilfully neglect to carry out any regulation made under this Proclamation.

(2) When a group of natives is collectively appointed to be a Native Authority, proceedings may be taken against all or any members of such Authority, either together or separately in respect of any act or default punishable under this section, and upon proof of the commission of an offence by such Authority every member thereof shall individually be liable to the penalties prescribed unless the court is satisfied that he was in no way responsible for or a party to the commission of the offence.

(3) No proceedings shall be taken for an offence against this section against a Native Authority who is Chief or Chief and Council without the consent of the High Commissioner or in other cases without the consent of the Resident Commissioner.

Power of
Native
Authorities
to make
rules.

31. (1) (a) Subject to the provisions of any law for the time being in force and after consultation with the Kgotla a Native Authority, with the concurrence of the Native Authority, if any, to which it is subordinate, and subject to the approval of the High Commissioner, may make rules, to be obeyed by natives, providing for the peace, good order and welfare of such natives, including rules with regard to public services provided by the Native Authority in any capacity and also any matter in respect of which an order under section *twenty-four* could have been issued.

(b) When any rule has been made by a Native Authority in terms of paragraph (a) of this sub-section the High Commissioner may make a similar rule to be obeyed by all the persons other than natives residing within the area of jurisdiction of such Native Authority.

(c) Rules made under this sub-section may specify the fees to be paid in respect of any matter or act for which provision is made thereby and may impose penalties for the breach thereof not exceeding a fine of fifty pounds or imprisonment with or without hard labour for one year, or both such fine and imprisonment.

(2) (a) Every rule made under paragraph (a) of sub-section (1) of this section shall be made known in such manner as is customary

within the area of the jurisdiction of the Native Authority making the rule and thereupon shall be binding upon all natives residing or being within the area of jurisdiction of the Native Authority making the rule.

(b) Every rule made under paragraph (b) of sub-section (1) of this section shall be published in the *Gazette*.

(3) A native accused of an offence against rules made under this section may, unless the rules otherwise provide, be arrested without warrant by a Native Authority or by any person acting under directions of a Native Authority and may be brought before any court having jurisdiction.

(4) Without prejudice to any other mode of proof, a certificate purporting to be signed by the Resident Commissioner or an Administrative Officer shall be sufficient evidence of the terms of any rule made under paragraph (a) of sub-section (1) of this section, that the approval of the High Commissioner has been given, and that the rule has been made known as required by this section.

(5) The High Commissioner may at any time revoke any rule made by a Native Authority under paragraph (a) of sub-section (1) of this section, and such revocation shall be made known in the manner in this section specified for the promulgation of such rule and shall thereupon have effect:

Provided that before revoking any such rule the High Commissioner shall afford the Native Authority concerned an opportunity to make representations.

32. (1) Subject to the provisions of any law for the time being in force a Native Authority, with the concurrence of the Native Authority, if any, to which it is subordinate, and subject to the approval of the High Commissioner, may impose a levy of money or in kind to be paid by natives domiciled within the local limits of its authority or subject to its jurisdiction for such purposes and at such rates as the High Commissioner may approve.

Powers of
Native
Authorities
to impose
levies.

(2) The High 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 Native Authority an opportunity of representing to him the reasons why the proposed

levy is considered by the Native Authority necessary or desirable in the interests of the tribe or native community concerned.

Powers of
Chiefs and
Native
Authorities
to exact
unpaid
labour.

33. (1) Notwithstanding anything to the contrary in this Proclamation contained, a Chief, Sub-Chief, Headman, or Native Authority may, in accordance with native law or custom, call upon the natives in his or its area to perform any of the following services without payment or remuneration in cash or in kind for a period not exceeding sixty days in any one period of twelve months including the times spent in going to and from the place of work:—

(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 circumstances 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 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 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 recognised 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 and discharge the duties of his office.

(2) Any native liable to be called upon to perform any service in accordance with paragraphs (b) and (c) of sub-section (1) of this section may be allowed to pay to the revenues of the Native Treasury a commutation fee, instead of performing such service, at such rate and in such manner as may be specified by the Native Authority with the approval of the Resident Commissioner.

(3) Save as in sub-section (1) provided a Chief, Sub-Chief, Headman or Native Authority 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.

34. No court shall be precluded from trying an offence under this Proclamation by reason of the fact that such offence, if committed, was a breach of an order, direction or rule issued by the court as a Native Authority, or under the powers given by section *twenty-seven*, or by any member of the court as a Native Authority or member of a Native Authority.

Preservation of jurisdiction of court concerned in the issue of orders and rules.

35. The High Commissioner may delegate to the Resident Commissioner all or any of the powers vested in him under this Proclamation as he may deem expedient and subject to such conditions as he may impose, and may order that the exercise of such delegated powers shall not require publication in the *Gazette* but shall be notified in such manner as is customary for the native community in the area concerned.

Delegation of powers of High Commissioner.

36. The High Commissioner may make regulations for the carrying into effect of the objects and purposes of this Proclamation.

Power of High Commissioner to make regulations.

37. Any native who contravenes or fails to comply with any provision of this Proclamation or of any regulation or rule made thereunder in respect of which no special penalty is provided shall be liable to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for a period not exceeding one year or to both such fine and imprisonment.

General Penalty.

38. The Bechuanaland Protectorate Native Administration Proclamation, 1934, is hereby repealed :

Repeal of Proclamation No. 74 of 1934.

Provided that such repeal shall not affect the validity of any orders, directions, notices and appointments in respect of Chiefs, Sub-Chiefs or Headmen made under the Proclamation hereby repealed, and such orders, directions, notices and appointments shall have effect as if made under this Proclamation.

39. This Proclamation may be cited as the ^{Short title} Bechuanaland Protectorate Native Adminis- ^{and} tration Proclamation, 1943, and shall have ^{commence-} force and take effect as from the first day of ^{ment.} January, 1944.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this
Twenty-eighth day of August, One thousand Nine
hundred and Forty-three.

HARLECH,
High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,
Administrative Secretary.