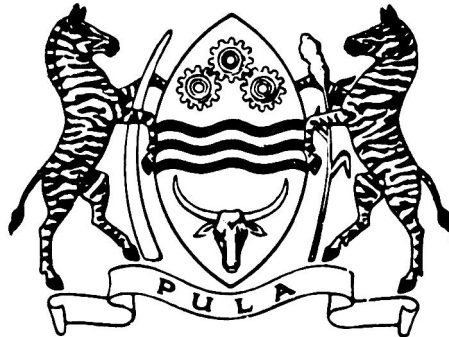


REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

Vol. XIX, No. 11

GABORONE

27th February, 1981

CONTENTS

Page

The following Supplement is published with this issue of the Gazette —	
Supplement B — Criminal Procedure and Evidence (Amendment) Bill, 1981 —	
Bill No. 8 of 1981	B.41—42
Census (Amendment) Bill, 1981 — Bill No. 9 of 1981	B.43—44
Habit-Forming Drugs (Amendment) Bill, 1981 — Bill No. 10 of 1981	B.45

The Botswana Government Gazette is printed by the Botswana Government Printer.
Private Bag 0081; GABORONE, Republic of Botswana.
Subscription rate is P20-00 post free for 12 months.
The price for this issue of the Gazette (including Supplement) is 15 thebe.

Bill No. 8 of 1981

CRIMINAL PROCEDURE AND EVIDENCE (AMENDMENT) BILL, 1981

(Published on 27th February, 1981)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. Paragraph (ii) of the proviso to section 227 (1) of the Criminal Procedure and Evidence Act (Cap. 08:02) provides, in effect, that a confession made to a policeman of the commission of any offence shall not be admissible in evidence against the maker of the confession unless the confession was confirmed and recorded in writing in the presence of a magistrate or of any justice who is not a member of the police force.

3. Where a person in police custody indicates a wish to make a statement to a police officer which may, in the event, amount to a confession, it has been the practice in Botswana for that person to be taken by the police before a magistrate who gives him the opportunity to make a statement and records in writing any statement he may elect to make.

4. It has heretofore been accepted as law in Botswana that such a statement recorded by a magistrate, whether it constitutes a confession or not, is admissible in evidence against the person who made it so long as it is proved that he made it freely and voluntarily, in his sound and sober senses and without having been unduly influenced to do so.

5. A recent decision of the High Court of Botswana has, however, cast considerable doubt on the legality of this procedure and consequently on the admissibility of statements resulting from use of the procedure.

6. The crux of the High Court's decision is that such a statement is one made directly to the magistrate concerned and that a magistrate in Botswana is not empowered by Parliament in his capacity as a judicial officer to employ such a procedure involving, as it does, the questioning and cautioning of the person concerned. The irregularity of the procedure is such that the High Court has expressed the opinion that statements resulting from use of the procedure ought not to be admitted in evidence.

7. The object of the Bill is to amend the Criminal Procedure and Evidence Act in order to put the legality of the procedure questioned by the High Court on a firm statutory basis and thus ensure the admissibility of statements resulting from a proper use of the procedure.

D.K. KWELAGOBÉ,
*Minister of the Public Service
and Information.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Insertion of new section 229A in Cap. 08:02

A BILL

entitled

An Act to amend the Criminal Procedure and Evidence Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Criminal Procedure and Evidence (Amendment) Act, 1981.

Insertion
of new
section 229A
in
Cap. 08:02

2. The Criminal Procedure and Evidence Act is amended by inserting therein, immediately after section 229 thereof, the following new section –

“Admissibility of confessions and other statements made before magistrate or justice

229A. (1) A policeman may take or cause to be taken any person lawfully detained in his custody before a magistrate or any justice who is not a member of the police force and the magistrate or justice shall give that person the opportunity to make a statement to him in respect of any offence that person is alleged to have committed and, if that person elects to make a statement, the magistrate or justice shall record the same in writing in the language in which it is made or in some other language into which it is duly translated while being made.

(2) Before any person makes a statement in terms of this section, the magistrate or justice shall caution him to the effect that he is not obliged to say anything unless he wishes to do so but that should he elect to say anything it will be recorded in writing and may be used in evidence either for or against him.

(3) Every statement recorded in accordance with this section shall, whether it amounts or does not amount to a confession of the commission of any offence, be admissible in evidence either for or against the maker thereof at any subsequent trial or preparatory examination in respect of any offence, to the extent that the contents thereof are sufficiently relevant for the purpose of the trial or preparatory examination.

(4) Notwithstanding subsection (3), a statement recorded in accordance with this section shall not be admissible in evidence against the maker thereof unless it is proved to have been freely and voluntarily made by him in his sound and sober senses and without having been unduly influenced thereto.”.

Bill No. 9 of 1981

CENSUS (AMENDMENT) BILL, 1981

(Published on 27th February, 1981)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. By virtue of section 3 of the Census Act (Cap. 17:02), regulations made under that section in connexion with a census may prescribe, as a maximum punishment for a contravention of the regulations, a fine of P20 or in default of payment imprisonment for one month.

3. It is considered that this maximum punishment which may be prescribed for a breach of such regulations is too lenient.

4. The first object of the Bill, therefore, is to amend the Census Act in order that regulations made under section 3 of the that Act may prescribe, as a maximum punishment for a breach thereof, a fine of P100 and imprisonment for 3 months.

5. The opportunity is also taken, as regards section 3 of the Census Act, to alter the erroneous reference to rules to a reference to regulations.

6. Section 10 of the Census Act prescribes a maximum punishment of a fine of P200 and imprisonment for one month for an offence committed under that section by a census officer. Again, it is considered that this maximum punishment is too lenient.

7. The second object of the Bill, therefore, is to amend the Census Act in order to increase the maximum punishment for an offence committed by a census officer under section 10 to a fine of P400 and imprisonment for one year.

P.S. MMUSI,

Minister of Finance and Development Planning.

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 3 of Cap. 17:02
3. Amendment of section 10 of principal Act

A BILL

entitled

An Act to amend the Census Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

Short title
Amendment
of section 3
of
Cap. 17:02

1. This Act may be cited as the Census (Amendment) Act, 1981.

2. Section 3 of the Census Act (hereinafter referred to as "the principal Act") is amended —

- (a) by substituting for the word "rules", which appears therein, the word "regulations"; and
- (b) by substituting for the words "shall be guilty of an offence and liable to a fine of P20, or, in default of payment, to imprisonment for one month", which appear therein, the words "shall be guilty of an offence and liable to a fine of P100 and to imprisonment for 3 months."

Amendment
of section
10 of
principal
Act

3. Section 10 of the principal Act is amended by substituting for the words "shall be guilty of an offence and shall be liable to a fine of P200 and to imprisonment for one month", which appear therein, the words "shall be guilty of an offence and liable to a fine of P400 and to imprisonment for one year."

L2/4/789 I

Bill No. 10 of 1981

HABIT-FORMING DRUGS (AMENDMENT) BILL, 1981

(Published on 27th February, 1981)

MEMORANDUM

A draft of the above Bill, which it is proposed to present to the National Assembly, is set out below.

2. There has been lately an increase in the number of offences committed in respect of habit-forming drugs. The Police are however handicapped in their efforts to stamp out this social evil because of the restrictions placed on the Police powers of search. Under the existing law, any police officer below the rank of a sergeant has no power of searching any person suspected of committing an offence under the Habit-Forming Drugs Act (Cap. 63:04) without a search warrant.

3. The object of the Bill is, therefore, to amend section 8 of the Habit-Forming Drugs Act in order to confer power of search on all members of the Police Force.

D.K. KWELAGOBÉ,
*Minister of the Public Service
and Information.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 8 of Cap. 63:04

A BILL
entitled

An Act to amend the Habit-Forming Drugs Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Habit-Forming Drugs Short title
(Amendment) Act, 1981.

2. Section 8 of the Habit-Forming Drugs Act is hereby amended Amendment
by substituting for subsection (1) thereof the following new of section
subsection — 8 of
Cap. 63:04

“(1) In this section “authorized officer” means any member of the Botswana Police Force.”.

L2/4/788 I