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**ACT NO.8 OF 1997**

**THE NATIONAL ASSEMBLY ELECTION (AMENDMENT) ACT, 1997**

An Act to amend the National Assembly Election Order, 1992 so as to provide, in accordance with the Constitution, for particular powers and functions of the Independent Electoral Commission, to make further provisions regarding the qualifications and disqualifications of electors and Members of the National Assembly, to enhance the democratisation of the electoral process through orderly election campaigns, the observation and monitoring of elections, the registration of political parties for purposes of elections as well as an Electoral Code of Conduct for political parties and candidates and to provide for other related matters.

Enacted by the Parliament of Lesotho

**Short title and commencement**

1. (1) This Act may be cited as the National Assembly Election (Amendment) Act, 1997 and shall come into operation on such date as the Minister responsible for Law and Constitutional Affairs may, by notice in the Gazette, appoint.
- (2)<sup>b</sup> A notice under subsection (1) may appoint different dates for the coming into force of different provisions of this Act.

**General amendments**

2. The National Assembly Election Order<sup>1</sup>, 1992 (hereinafter referred to as "the Order") is amended —
  - (a) by replacing, wherever it appears, the word "must" and all other words denoting the imperative, with the word "shall"; and by replacing with "may" all words denoting the permissive or which are empowering;
  - (b) by replacing all references to "the Court of Disputed Returns" with references to the "High Court";
  - (c) by replacing all references to "political organisation" with reference to "a political party"; and
  - (d) by deleting the words "endorsed candidate" and "unendorsed candidate" and substituting the words "party candidate" and "independent candidate", respectively.

**[NOTE:** Re. Section 2(1): The definitions which contain references to specific section numbers of the Order will have to be re-examined and, where appropriate, altered in order to reflect the correct cross references to sections in the final version of the draft Bill approved for publication in the Gazette. This may necessitate the modification of subsection (1) and should be borne in mind.]

**Amendment of section 1 and construction of other laws**

3. Section 1 of the Order is amended in subsection (1) by replacing the word "Election" with the word "Elections"; and any provision of this Order or of any other law in which there is reference to the National Assembly Election Order, 1992 shall be construed as if the word "Election", wherever it appears in that provision or other law, had been replaced with the word

“Elections”.

**Amendment of section 2**

4. Section 2 of the Order is amended is subsection (1) —
- (a) by deleting the definition “appropriate Executive Authority”;
  - (b) by inserting the following definition after the definition “area electoral officer”-  
 “Authorised representative”, in relation to a political party means a person authorised in writing by the secretary of the political party concerned for the purpose of the provisions in which the expression occurs”;
  - (c) by replacing the definition “Chief Electoral Officer” with the following new definition -  
 “Director of Elections” means the Director of Elections appointed under section 9D and includes any person who is acting in that office;”;
  - (d) by replacing the definition “Commission” with the following new definition-  
 “Commission” means the Independent Electoral Commission established by section 66 of the Constitution;”;
  - (e) in the definition “election officer” by replacing the word “election” with the word “electoral” and by inserting that definition (as amended) immediately after the definition “electoral list;”;
  - (f) by replacing the definition “high judicial office” with the following new definition —  
 “ high judicial office” has the same meaning as in section 154 (1) of the Constitution;”;
  - (g) by deleting the definition “the King”; and
  - (h) by replacing the definition “political organisation” with the following new definition —  
 “political party” means a political party registered under this Act;”.

**Amendment of Chapter 2**

5. Chapter 2 of the Order is replaced with the following —
- “CHAPTER 2: FURTHER PROVISIONS RELATING TO ELECTORAL COMMISSION**
- Oath of members of Commission**
3. Every member of the Commission shall, before assuming the duties of his office, take and subscribe the oath specified in Schedule 3 to this Order.
- Other powers, duties and functions of Commission**
4. For the purpose of carrying out its functions under the Constitution and this Order, the Commission shall have the following powers —
- (a) to establish and maintain liaison and co-operation with political parties and other interested civic groups;

- (b) to undertake and promote research into electoral matters;
- (c) to continuously review legislation and other matters relating to elections and referenda and to make appropriate recommendations thereon;
- (d) to promote, through the media and other appropriate and effective means, the civic education of the citizens concerning elections;
- (e) to develop and promote the development of electoral expertise and technology in all spheres of government;
- (f) to divide Lesotho into electoral areas and to publish the areas, by notice, in the Gazette;
- (g) to register as electors the citizens of Lesotho who qualify to be registered as such;
- (h) to prepare and maintain a general register of electors;
- (i) to appoint electoral officers, consultants and other persons and to specify their functions;
- (j) to prepare and maintain an electoral list for each constituency;
- (k) to establish and maintain a register of official symbols for use by political parties and candidates at elections;
- (l) to establish committees to assist or advise it in the performance of its functions; and
- (m) to discharge such other functions as are conferred upon the Commission by this Order or any other law made thereunder or as are necessary for the proper carrying out of the purposes of this Order.

**Particular means of safeguarding independence of Commission**

5. For the purpose of safeguarding the independence of the Electoral Commission and its members —
  - (a) every member and every officer of the Commission shall perform his functions impartially and independently, in good faith and without fear, favour or prejudice;
  - (b) no member of the Electoral Commission —
    - (i) shall, during his term of office, be eligible for nomination or appointment to any other public office;
    - (ii) may, whether directly or indirectly in any manner, give support to, oppose or any party or candidate participating in an election or any of the issues in contention between political parties or candidates;
    - (iii) may, by his membership, association, statement, conduct or in any other manner

place in jeopardy his perceived independence, or prejudice the credibility, or integrity of the Commission.

**Party Delegates**

6. (1) Every political party shall have the right to nominate not more than two delegates (hereinafter referred to as "party delegates") to the Commission each of whom shall be a registered elector.
- (2) Party delegates shall represent the political party nominating them with the Commission and shall have the right in general to be informed of all sittings of the Commission relating to electoral matters and decisions taken thereat.
- (3) Party delegates shall have full and free right of access to the offices of the Commission, to all records kept therein and to check, verify and obtain any information regarding the work of the Commission; provided that the Commission shall have the right to nominate an official of the Commission to accompany such delegates at all times.
- (4) A party delegate shall continue in office until removed by the political party nominating him.
- (5) Party delegates shall have the right to seek and obtain from the members of the Commission as well as from any other official connected with management, supervision or security of the elections or of any aspect thereof, information showing whether or not such persons are taking adequate measures to comply with the provisions of the law in any forthcoming elections, and the members or such other persons shall be bound to furnish such information immediately.
- (6) Notwithstanding any provision in this Order granting party delegates the right to seek and obtain information, such right shall not include the right to be made aware of security features relating to the ballot papers, voting documents and the official mark used by the Commission on ballot papers.
- (7) The information referred to in this section may be given orally or in written form; and where the information is of a confidential nature, a party delegate to whom it is given shall have the same

obligation as to its confidentiality as the person from whom the information is obtained.

#### **Power of Commission to resolve complaints**

7. (1) Any complaint submitted in writing alleging any irregularity in any aspect of the electoral process at any stage shall, if not satisfactorily resolved at a lower level of authority, be examined and decided by the Commission; and where the irregularity is confirmed, the Commission shall take necessary action to correct the irregularity and any effects it may have caused.
- (2) Any appeal shall lie to the High Court against a decision of the Commission confirming or rejecting the existence of an irregularity.
- (3) The appeal shall be made by way of an application, supported by affidavits of evidence, which shall clearly specify the declaration that the High Court is being requested to make.
- (4) On hearing an application under subsection (2), the High Court may make such order as it thinks fit and its decision shall be final.
- (5) The High Court shall proceed to hear and determine an appeal under this section as expeditiously as possible and may for that purpose, suspend any other matter pending before it.
- (6) The Chief Justice shall, make rules of Court for regulating the procedure in respect of any appeals under this section and may, for that purpose, adopt any procedure prescribed by any law, subject to such modifications as he may specify.

#### **Right of Commission to institute actions**

8. For the purpose of performing its functions, the Commission may bring an action before any court in Lesotho and may seek from the court any remedy which may be available under the law.

#### **Exemption from liability**

- 9A. A member of the Commission or an officer or employee of the Commission or any other person performing any function of the Commission under the direction of the Commission, shall not be personally liable to any civil proceedings for any act done in good faith in the performance of those functions.

#### **Special powers of Commission**

- 9B. Where, during the course of an election, it appears to the Commission that, by reason of any mistake, miscalculation

or emergency, any of the provisions of this Order or any law relating to the election, other than the Constitution, does not accord with the exigencies of the situation, the Commission may, by particular or general instructions, extend the time for doing any act, increase the number of electoral officers or polling stations or otherwise adapt any of those provisions as may be required to achieve the purposes of this Order or that law to such extent as the Commission considers necessary to meet the exigencies of the situation.

**Duty to submit reports**

- 9C. (1) The Commission shall submit to Parliament through the Minister responsible for Law and Constitutional Affairs —
- (a) within six months after the end of each financial year, an annual report of its functions, activities and affairs and an audited statement of its revenue and expenditure for that year; and
  - (b) within six months after the declaration of the results of a general election or a referendum, a report on the election or referendum,  
and the Minister shall lay the annual report and the audited statement or, as the case may be, the report on the election or referendum before the National Assembly and the Senate.
- (2) The National Assembly and the Senate shall deliberate upon such reports and every elector shall be entitled to make oral or written representations to the committee regarding the election or referendum.

**Director of Elections and other staff of Commission**

- 9D. (1) The Commission shall have a Director of Elections who shall be a public officer appointed by the Commission acting in consultation with the Public Service Commission upon such terms and conditions as may be determined by the Commission in consultation with the Public Service Commission and specified in his instrument of appointment.
- (2) The Director of Elections shall be appointed from amongst persons of high moral character and proven integrity, possessing the relevant qualifications and proven ability in the field of public administration.
  - (3) The Director of Elections shall be the chief executive of the Commission and shall perform such functions as are conferred upon him by this Order and such other functions as may be assigned to

- him by the Commission.
- (4) The Director of Elections may be removed by the Commission only for —
    - (a) inability to exercise the functions of his office whether arising from infirmity of body or mind or any other cause; or
    - (b) misbehaviour.
  - (5) The Commission shall also have such other officers and employees, made available to it by the Minister responsible for the Public Service as required under section 66A (2) of the Constitution, as may be necessary for the discharge of its functions.

**Appointment of area electoral officers**

- 9E. (1) The Commission shall appoint a public officer to be the area electoral officer for each electoral area.
- (2) The functions of an area electoral officer are —
    - (a) in relation to the electoral area concerned —
      - (i) to perform such of the functions of the Director of Elections as that officer specifies; and
      - (ii) to perform the functions of presiding officer for absent electors; and
    - (b) to perform such other functions as are imposed or conferred on area electoral officers under this Order.

**Appointment of other electoral staff**

- 9F. (1) The Commission shall appoint and employ such registration officers and enumerators as are, in its opinion, required for the purpose of registering persons as electors.
- (2) Whenever an election is to be held for a constituency, the Commission —
    - (a) shall appoint and employ a returning officer and deputy returning officer for the constituency; and
    - (b) shall, after consultation with the returning officer, appoint and employ a presiding officer for each polling station to be established within the constituency; and
    - (c) may, after similar consultation, appoint and employ a deputy presiding officer for each such polling station and such official witnesses and polling officers as may, in its opinion, be required to conduct polling at the polling station; and
    - (d) shall, after similar consultation, appoint and employ such counting officers as may, in its opinion, be required to count the votes cast at the election.
  - (3) A person may hold two or more offices under this section

at the same time.

- (4) If for any reason an officer appointed in respect of a polling station is unable to perform his or her functions at the station, any other person appointed in respect of the polling station —
- (a) may; and
  - (b) if directed to do so by the returning officer or presiding officer concerned, shall, perform those functions.

**Functions of heads of Lesotho diplomatic missions**

- 9G. (1) Subject to any general or special directions that may be given by the Commission, the head of a Lesotho diplomatic mission in another country -
- (a) has the functions of the Director of Elections for the purposes of registering as electors -
    - (i) public officers employed in the service of the Government of Lesotho in that other country; and
    - (ii) the dependants or employees of public officers referred to in subparagraph (i), who are qualified to be registered as electors; and
  - (b) has the functions of a presiding officer for absent electors for the purpose of enabling electors who are public officers employed in the service of the Government of Lesotho in that other country, and electors who are the dependants and employees of those officers, to vote at an election as absent electors.
- (2) The Deputy of the head of a Lesotho diplomatic mission has the functions referred to in subsection (1) (a) and (b) for the purpose of enabling the head of that mission to be registered as an elector and to vote at an election as an absent elector”.

**Amendment of section 10**

6. Section 10 of the Order is replaced with the following new section —

**“Qualifications for registration as an elector**

10. A person shall be qualified to be registered as an elector if he is so qualified in accordance with section 57 of the Constitution.”

**Amendment of section 11**

7. Section 11 of the Order is replaced with the following section —

**“Qualifications for an elector to be registered for a particular constituency**

- 11.(1) A person who is a citizen of Lesotho and who has attained the age of eighteen years shall, unless he is disqualified under section 57 of the Constitution to be registered as such, apply to be registered as an elector for the constituency where he —

- (a) originates from; or

- (b) ordinarily resides; or  
(c) is in employment,  
and, subject to this Order, a registered elector has the right to vote in the polling district where he is registered and at the polling station or polling place allocated to him.
- (2) Subject to subsection (1), if a person, other than an absent elector, registered as an elector for a particular constituency —
- (a) changes his place of residence or place of employment from that constituency to another and wishes to vote for in the latter constituency; or
- (b) for any good cause, as may be determined by the Director of Elections, wishes to vote in a polling district other than the one in which he is registered within the same constituency,  
he shall apply in the prescribed form, to the Director of Elections for the transfer of his registration to the other constituency or, as the case may be, to the other polling district; but a transfer of one's registration from one constituency to another may only be effected prior to the commencement of any suspension of registration of electors provided for in section 19 and shall not entitle the elector to vote for a candidate other than a candidate for the latter constituency.
- (3) An application under subsection (2) shall only be granted if the Director of Elections is satisfied that the applicant is qualified for registration."

#### **Amendment of section 12**

8. Section 12 of the Order is replaced with the following section —
- “Other disqualifications from entitlement to be registered as an elector or to vote**
12. (1) In addition to the disqualifications specified in subsection (3) of section 57 of the Constitution, a person shall not be qualified to be registered or to continue to be registered as an elector or to vote in an election to the National Assembly for a period of five years following the date on which he is convicted of an offence under Part 2 (except sections 114 and 118), Part 3 or Part 4 of Chapter 9 or the date on which he is reported guilty of such an offence by the court trying an election petition.
- (2) Where a court convicts a person or reports him guilty of an offence referred to in subsection (1), it shall inform the Director of Elections in writing who, if the person concerned is registered as an elector, shall —
- (a) delete his name from every register of electors in which he is registered; and
- (b) inform all other electoral officials whose duties include the registration of electors, of the deletion of that

person's name from the register as well as the period of his disqualification and order them to delete his name from all electoral lists.”.

#### **Amendment of section 16**

9. (1) Section 16 of the Order is amended —
- (a) by replacing subsection (2) with the following subsection —
 

“(2) The Director of Elections shall, if satisfied that an applicant for registration is qualified for registration and is not disqualified under the provisions of the Constitution and this Order —

    - (a) issue the applicant an elector's registration card in the prescribed form, being a card bearing a distinct identifying number —
      - (i) to which a photograph of the applicant, taken by the registration officer, is attached; and
      - (ii) on which is placed by the applicant the signature or prescribed mark of the applicant; and
    - (b) register that person in the general register by entering the particulars of that person as prescribed in section 13 (2) on which shall be marked by the applicant the signature or prescribed mark of the applicant but, if the Director of Elections is not so satisfied (whether because of the failure to produce adequate evidence of identity or for any other reason), he shall refuse the application and notify the applicant in writing of the refusal which shall include a statement of reasons.”; and
  - (b) by adding immediately after subsection (5) the following new subsection —
 

“(6) If the elector's registration card is lost, destroyed, defaced, torn or otherwise damaged, the elector shall notify the registration officer or other officer duly authorized in that behalf in writing giving proof thereof, and upon the officer being satisfied with such proof he shall issue to the elector a duplicate copy of the card with the words “DUPLICATE” clearly marked or printed thereon.”.

#### **Addition of sections 16A and 16B**

10. The Order is amended by adding immediately after section 16 the following new sections —

##### **“Monitoring of registration of electors by political parties**

16A. Every political party contesting an election shall have the right to monitor the registration of electors and shall do so through its designated representatives assigned to a specified registration centre and whose name shall be notified in writing to the Director of Elections; and in the absence of such notification by any political party it shall be presumed that that party does not desire to monitor the registration of electors at the registration centre.

### **Rights and duties of representatives of political parties**

16B. (1) Representatives of political parties shall have the following rights —

- (a) to be treated with due respect and consideration by all persons administering registration of electors and by the representatives of other political parties;
  - (b) to request and obtain information on activities relating to the registration of electors.
- (2) It is the responsibility of the representatives of political parties in exercising their rights under subsection (1) —
- (a) to monitor the registration activities conscientiously and objectively;
  - (b) to co-operate in order to ensure that the registration activities proceed normally by avoiding unjustified interference in and obstacles to the work of registration officers;
  - (c) to refrain from divulging any information about an elector or prospective elector as a consequence of acting as a representative and which is not relevant to the registration process.”.

#### **Amendment of section 19**

11. Section 19 of the Order is amended —

- (a) in subsection (4) by deleting the words “appropriate Executive Authority” and substituting the words “the King”; and
- (b) in subsection (5) by deleting the words “The Chief Electoral Officer” and substituting the words “The Commission”.

#### **Amendment of section 22**

12. Section 22 of the Order is amended —

- (a) in subsection (4) by deleting from paragraph (a) all the words after the words “one electoral list”; and
- (b) by adding the following subsection after subsection (5) -  
“(6) Without prejudice to section 33, a person entitled to be registered as an elector or an authorized representative of a political party may, in accordance with such procedure as may be prescribed by the Commission, make representations to the Director of Elections regarding any matter relating to an electoral list for a constituency before it is printed in accordance with section 24.”.

#### **Amendment of section 29**

13. Section 29 of the Order is amended in subsection (1) —

- (a) by deleting from paragraph (b) the words “an offence under this Order” and substituting the words “an offence referred to in section 47(1)(b)”;
- and
- (b) by deleting paragraph (c) and substituting the following paragraph

“(c) adjudges or declares a person to be of unsound mind”.

### **Amendment of Part 4 of Chapter 3**

14. Part 4 of Chapter 3 of the Order is amended by replacing the heading of that Part with the following —

#### **“SUPPLEMENTARY PROVISIONS ON DELIMITATION AND REGISTRATION”**

### **Amendment of section 31**

15. Section 31 of the Order is amended —

(a) by inserting the following section after section 30

#### **“Constituency delimitation to be publicised and right to make representations, etc.**

31. (1) Without prejudice to subsection (2), before a constituency delimitation order is published in the Gazette, a person entitled to be registered as an elector or an authorized representative of a political party may, in accordance with such procedure as may be prescribed by the Commission, make representations to the Director of Elections regarding any matter relating to the proposed delimitation of that constituency.
- (2) A person entitled to be registered as an elector or a representative of a political party may object to the proposed delimitation in connection with any matter relating thereto; and the provisions of sections 33 and 34 shall apply, **mutatis mutandis**, to the objection.
- (3) As soon as practicable after a constituency delimitation order under section 67 of the Constitution is published, the Director of Elections shall —
- (a) make available for public inspection, without charge, at the Director of Elections office a single map or a series of maps that show the names and boundaries of all constituencies in Lesotho;
  - (b) make available, without charge, at that office and such other places in Lesotho as he or she considers appropriate, a description of the boundaries of those constituencies and of the Commission’s reason for delimiting those boundaries in that manner;
  - (c) display in each constituency, in a conspicuous place to which members of the public have access, a map showing the boundaries of the constituency; and

- (d) publish a notice in one or more newspapers circulating generally in Lesotho or in such other manner as he may deem fit informing members of the public of the availability for inspection and the display of the matters mentioned in paragraphs(a), (b) and (c).”; and
- (b) by renumbering section 31 as subsection (4) of section 31 and, in that subsection, by replacing the word “notice” wherever it appears, with the word “order”.

#### **Amendment of section 33**

16. Section 33 of the Order is amended in subsection (1) by inserting in the introductory part after the words “registered as an elector” the words “or representative of a political party”.

#### **Amendment of section 34**

17. Section 34 of the Order is amended —
- (a) by replacing subsection (1) with the following new subsection —
    - “(1) If a person —
      - (a) who has made an objection under section 33; or
      - (b) in respect of whom the objection has been made, is dissatisfied with the determination of the Director of Elections, he shall submit the determination to the magistrate designated for that purpose by the Chief Justice, by notice published in the Gazette, in respect of the constituency in which such person has applied for registration.”;
    - (b) in subsection (2), by replacing the word “Judge” with the word “magistrate”; and
    - (c) in subsection (4) by replacing the word “Judge” with the word “magistrate”.

#### **Amendment of Chapter 4**

18. Chapter 4 of the Order is replaced with the following new Chapter —  
**“CHAPTER 4 — REGISTRATION OF POLITICAL PARTIES**

##### **Political parties to register**

35. (1) No political party may endorse a candidate for election unless if it has first been registered in accordance with the provisions of this Order.
- (2) For the purposes of subsection (1) a political party may apply to the Commission for registration and the Commission shall register such party if it fulfils the conditions prescribed in section 36.
- (3) An application for registration of a political party shall be made by the president, chairman or secretary of the party in the prescribed manner and shall be accompanied by a copy of its constitution setting out, *inter alia*, the name of the political party, its abbreviated name (if any) and its

distinguishing mark or symbol and shall also be accompanied by —

- (a) the application fee as may be prescribed;
- (b) a declaration in the prescribed form, signed by not less than (500) members of the political party in question whose names appear on the general register of electors in support of the application for registration; and the declaration shall contain —
  - (i) the full names and the physical and postal addresses of the persons who have signed the declaration; and
  - (ii) the names or numbers of the constituencies in respect of which such signatories are registered;
- (c) particulars of all assets and liabilities and all bank accounts of the political party;
- (d) a statement indicating a single bank account into which all income of the political party including contributions from any source shall be paid and from which all election expenses shall be paid.

(4) Upon the registration of a political party and on payment of the prescribed registration fee, the Director of Elections shall issue that political party with a registration certificate in the prescribed form and publish the particulars of such registration in the Gazette.

**Qualifications and conditions for registration**

36. (1) No political party shall be qualified to be registered —
- (a) unless its membership is voluntary and open to all citizens of Lesotho without discrimination on the grounds of race, colour, sex, language, religion, national or social origin, property, birth or other status;
  - (b) if by its constitution or policy -
    - (i) its sole intention is to advocate or promote the interests of any religious belief or group, or of only a specific area or part of the Kingdom of Lesotho;
    - (ii) its intention is to advocate or promote the interests of any ethnic or racial group;
    - (iii) it accepts or advocates the use of force or violence as a means of attaining its political objectives; or
    - (iv) it does not allow periodic and democratic election of its leadership.
- (2) The Commission may not register a political party if its proposed name, abbreviated name, distinguishing mark or symbol mentioned in the application —
- (a) resembles the name, abbreviated name, distinguishing

- mark or symbol, as the case may be, of any other registered party to such extent that any of them is likely to mislead, confuse or deceive; or
- (b) contains anything which portrays the propagation of or incitement to violence or hatred or which may cause serious offence to any section of the population on the ground of race, colour, sex, age, language or culture, religion, conscience or belief, disability or national social or ethnic origin, property, birth or other status; or
  - (c) contains a representation of the national flag, or the national armorial ensign, of Lesotho or so closely resembles that flag or ensign as to be likely to be mistaken for it; or
  - (d) contains a representation of any coat of arms or emblem used by or associated with the Royal Family of Lesotho or so closely resembles that coat of arms or emblem as to be likely to be mistaken for it; or
  - (e) contains a representation of any logo, mark or symbol of a prominent public body or so closely resembles that logo, mark or symbol as to be likely to be mistaken for it; or
  - (f) is, in his opinion, obscene or is likely to cause offence to members of the public or is such that if registered the electoral system would be likely to be brought into disrepute.

#### **Cancellation of registration of political party**

37. The Commission may direct the Director of Elections to cancel the registration of a political party if —

- (a) the Commission, after due notice in writing to that political party and an inquiry into the matter, is satisfied that the party no longer functions or has ceased to exist;
- (b) the Commission is notified by that party in the prescribed manner that the party has dissolved or is intending to dissolve on a specified date; or
- (c) the party is in breach of any of the conditions referred to in subsections (1)(a) and (b), (2)(b) and (f) of section 36 or any of the provisions of this Order or any law made thereunder.

#### **Appeals**

38. (1) A political party which is aggrieved by a decision of the Commission not to register it or to cancel its registration may, within 30 days after the party has been notified of the decision, appeal to the High Court against the decision.

(2) In considering such an appeal against the refusal to register a party in terms of subsection (2) (a) of section 36, the High Court —

- (a) shall take into account the fact that the party which is associated with the name, abbreviated name, distinguishing mark or symbol, as the case may be for the longest period, should **prima facie** be entitled thereto;
- (b) may, for the purposes of paragraph (a) -
  - (i) afford the parties concerned an opportunity to offer such proof, including oral evidence or sworn or affirmed statements by any person which, in the opinion of the High Court, may be of assistance in the expeditious determination of the matter; and
  - (ii) administer an oath or affirmation to any person appearing to testify orally before it.

#### **Inspection of documents**

39. A copy of every document in the possession of the Commission for the purposes of the registration of a political party, shall be kept at the office of the Commission and, at the discretion of the Commission, be available for inspection by the public and any person wishing to inspect such document during office hours without payment.

#### **Saving the right of political parties to register for other purposes under the Societies Act<sup>1</sup>**

40. Notwithstanding anything to the contrary in this Chapter, the rights of any political party to register under the Societies Act shall not be prejudiced.”.

#### **Amendment of section 46**

19. Section 46 of the Order is replaced with the following new section —

#### **“Other qualifications for membership of the National Assembly**

46. A person shall be qualified to be elected as a member of the National Assembly if he is so qualified in accordance with section 58 of the Constitution and is not disqualified under the provisions of section 59 of the Constitution and section 47 of this Order.”.

**Amendment of section 47**

20. Section 47 of the Order is amended —

(a) by deleting subsection (1) and substituting the following —

**“Other disqualifications from membership of the National Assembly**

(1) In addition to the disqualifications specified in section 59 of the Constitution, a person shall not be qualified —

- (a) to be elected as a member of the National Assembly if, in terms of subsection (2) of section 59 of the Constitution, at the date of his nomination for the election in which he seeks to be elected, he holds or is acting in an office referred to in this Order and which involves responsibility for the conduct of that election or the compilation of any register of electors for the purposes of that election;
- (b) to be nominated for election as a member of the National Assembly if, in terms of subsection (3) of section 59 of the Constitution —
  - (i) at any time prior to the date of his nomination, he has been convicted or reported guilty by a court trying an election petition, of any offence under Part 2 (except sections 114 and 118), Part 3 or Part 4, of Chapter 9 of this Order; and
  - (ii) at the date of his nomination, a period of five years following his conviction or the report of the court has not elapsed; or
- (c) to be elected as member of the National Assembly if, in terms of subsection (4) of section 59 of the Constitution —
  - (i) he is a member of the Defence Force, the Police Force, the National Security Service or the Prison Service; or
  - (ii) he holds, or is acting in, a public office.’’;

(b) in subsection (2) by deleting the introductory words and substituting the following —

“(2) For the purposes of subparagraph (ii) of paragraph (c) of subsection (1) “public office” does not include the office of — ”; and

(c) by adding the following subsection after subsection (2) —

“(3) For the purpose of section 60(2) of the Constitution, the decision of a court in relation to a member of the National Assembly who is sentenced to death or to imprisonment for a term exceeding six months, adjudged or declared to be of unsound mind, adjudged or declared insolvent, or convicted or reported guilty of an offence referred to in paragraph (b) (i) of section 47(1) shall have effect from such time or date as is specified in section 29(2).”.

**Addition of new Chapter 6A**

21. The Order is amended by adding immediately after Chapter 6 the following new Chapter —

**“CHAPTER 6A - ELECTION CAMPAIGNS****Application and construction of this Chapter**

- 47A. (1) This Chapter shall apply to campaigns by independent candidates in the same manner as it applies to political parties and, wherever the context so permits, reference to a political party includes reference to a candidate.
- (2) In this Chapter, a meeting includes a procession, rally or demonstration.

**Objective of campaigns**

- 47B. The objective of election campaigns shall be to enable political parties, their candidates, members and supporters to disseminate their intended policies to the electors for discussion and consideration.

**Campaigning**

- 47C. (1) All political parties and candidates shall have the right to campaign in an election.
- (2) Campaigning by or in the name of any political party or a candidate shall not be conducted in any public place unless the political party has notified the Local Authority in writing, with a copy of such notification to the Police Officer in charge of the ward where the campaigning is to take place.
- (3) Where two or more political parties have given notification under subsection (2) to hold a public meeting at the same venue and at substantially the same time, the political party whose notification was first received by the Local Authority shall have priority over any other party to hold its meeting and the Local Authority shall notify the other party or parties as to what other time they may hold their meetings.

**Period of campaigning**

- 47D. For the purposes of this Order, the period of campaigning in public by every political party under this Chapter shall be a period of two months closing forty-eight hours before the opening of the poll on the first polling day.

**Equal treatment of political parties and candidates**

- 47E. Every public officer and public authority shall give and be seen to give equal treatment to all political parties to enable each political party to conduct its campaign freely.

**Freedom of expression and information**

- 47F. Every political party and every representative, member or supporter thereof shall enjoy complete and unhindered freedom

of expression and information in the exercise of the right to campaign under this Order and no person shall, during or after the period of campaigning, be subjected to any criminal prosecution for any statement he or she made or any opinion he or she held or any campaign material he or she produced, published or possessed while campaigning in the election.

**Freedom of assembly**

Subject only to section 47C (2) every political party and any representative, member or supporter thereof shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in an election.

**Norms during campaigning**

- 47H Notwithstanding guarantees of freedom of expression, information and assembly under this Order, no person shall in campaigning in an election, act contrary to the commitments, undertakings and stipulations set out in section 3 and 4 of the Electoral Code of Conduct set out in Schedule 4 to this Order.

**Access to public facilities**

- 47I. All public facilities the uses of which is subject to the payment of a fee shall be available to all political parties and candidates to hold meetings on the basis of equal charges.

**Prohibited places for campaigning**

No person shall hold a campaign meeting under this Order in or within the premises of —

- (a) any premises reserved for use by the Defence Force, or the Police Force for official duties or for residence;
- (b) public institutions and workplaces during normal working hours;
- (c) educational institutions during periods of classes.

**News broadcasts and reports**

- (1) Every political party shall have the right to have the substance of its campaign propaganda reported on news broadcasts of the Government-owned media and in any newspaper in circulation in Lesotho:

Provided that in the case of news broadcasts by Government-owned media —

- (a) the content of the news shall be professionally determined by that media;
  - (b) the media shall maintain neutrality in the manner of reporting the news of the campaign propaganda of political parties and generally in its commentaries;
  - (c) the Commission shall monitor such news broadcasts and shall ensure news coverage of the campaigning by all political parties.
- (2) The Commission shall, by arrangement with the

Government-owned media, allocate time on the radio or television during which political parties may be allowed to speak or appear in campaigning for an election and the Commission shall determine the allocation of time to each political party.

- (3) For the purposes of this section, "campaign propaganda" means any activity, statement, appearance or any other form of expression aiming directly or indirectly at promoting votes for any candidate or political party contesting in an election.
- (4) No political party or candidate shall be entitled to broadcast commercial advertisements for its or his campaign on Government-owned media.

**Publication of books, pamphlets, etc.**

47L. During the campaign period any political party may publish campaign materials in the form of booklets, pamphlets, leaflets, magazines or newspapers and shall, in any such publication, specify particulars sufficient to identify the political party.

**Campaign posters**

47M. The Commission shall, in consultation and co-operation with the District Secretary and the Local Authority of any area provide and designate places or spaces in parts of such area on which may be posted or affixed election education materials and campaign materials of political parties and every political party shall be entitled to equal access to such place or space.

**Campaign financing**

- 47N. (1) A political party may, for the purpose of financing its campaign, appeal for and receive voluntary donations from any individual or organization in or outside Lesotho and the source of every donation exceeding M20,000 shall, within thirty days of its receipt be disclosed to the Commission by the Secretary of the party concerned.
- (2) All such donations shall be deposited into, and all election expenses paid from, the bank account referred to in subsection (3) (d) of section 35."

**Amendment of section 48**

22. Section 48 of the Order is amended —

- (a) in subsection (1) by replacing the words "the Chief Electoral Officer" with the words "the Commission";
- (b) by replacing subsection (2) with the following subsection —  
 "(2) If the National Assembly is dissolved or stands dissolved, the King; acting in accordance with the advice of the Council of State, shall make a proclamation under subsection (1) not later than four days after such dissolution."; and
- (c) in subsection (4) by replacing the words "if there is in existence a Parliament of Lesotho" with the words "if Parliament does not stand dissolved."

**Amendment of section 49**

23. Section 49 of the Order is amended by deleting subsection (5) and substituting the following —

“(5) A person may only withdraw his consent to nomination for election not later than five days before the date on which the nomination of candidates is to close, as determined under section 48, by lodging with the presiding officer a written notice of withdrawal and, if he is a party candidate, a copy of the notice to the political party which endorsed his candidature.”.

**Amendment of section 53**

24. Section 53 of the Order is amended in subsection (2) by deleting from paragraph (b) the words “the appropriate Executive Authority” and substituting the words “the King.”.

**Amendment of section 55**

25. Section 55 of the Order is amended —
- (a) in subsection (5) by replacing the word “Government” with the word “Parliament”; and
  - (b) by deleting subsection (7).

**Amendment of section 58**

26. Section 58 is amended in subsection (2) by replacing the words “Electoral Officer” with the words “Director of Elections”.

**Amendment of section 61**

27. Section 61 of the Order is amended —
- (a) in subsection (1) by inserting in paragraph (e) after words “candidate’s agent” the words “or an authorized representative of a political party”; and
  - (b) in subsection (3) by deleting from paragraph (a) the words “if the applicant is a person to whom section 10 (4) applies, nearest to the applicant’s place of business or employment.”.

**Amendment of section 62A**

28. Section 62A of the Order is amended in paragraph (c) by deleting the words “section 9” and substituting the words “section 9H”.

**Amendment of section 64**

29. Section 64 of the Order is amended —
- (a) in subsection (2) by deleting from paragraph (b) the words “electoral officials and candidates’ agents” and substituting the words “electoral officials, candidates’ agents and authorized representatives of political parties”; and
  - (b) in subsections (3) and (4) by inserting before the word “representatives” the word “authorized”.

**Amendment of section 65**

30. Section 65 of the Order is amended in subsection (2) by inserting, in paragraph (c), after the words “candidates’ agents” the words “or authorized representatives of political parties”.

and substituting the words the “candidates, candidates’ agents and the authorized representatives of the political parties which endorsed any of those candidates;

- (b) in subsection (4) by deleting from paragraph (b) the words “electoral officials and candidates agents” and substituting the words “electoral officials, candidates agents and authorized representatives of political parties which endorsed any of those candidates”;
- (c) in subsection (9) by deleting from paragraph (b) the words “candidates or agents” and substituting the words “candidates, agents or the authorized representatives of the political parties which endorsed any of those candidates”; and
- (d) in subsection (10) by deleting from paragraph (b) the words “candidates or agents” and substituting the words “candidates or candidates’ agents or the authorized representatives of the political parties which endorsed any of those candidates.”.

**Amendment of section 85**

38 Section 85 of the Order is amended by deleting paragraph (c) and substituting the following paragraph —

“(c) candidates, one agent for each candidate and one authorized representative of each political party which has endorsed a candidate for the election to which those proceedings relate;”.

**Amendment of section 87**

39. Section 87 of the Order is amended in subsection (1) by deleting from paragraph (b) the words “candidates and the agents” and substituting the words “candidates, candidates’ agents and authorized representatives of political parties which endorsed any of those candidates”.

**Amendment of section 91**

40. Section 91 of the Order is amended in subsection (1) by deleting the words “candidates and candidates’ agents” and substituting the words “candidates, candidates’ agents and authorized representatives of the political parties which endorsed any of those candidates”.

**Amendment of section 93**

41. Section 93 of the Order is amended —

- (a) in subsection (1) by replacing the introductory part of that subsection with the following —
 

“As soon as the Director of Elections knows the names of the persons who have been elected as members of the National Assembly at a general election, he shall inform the Commission and the Commission shall —”; and
- (b) by deleting subsection (2) and substituting the following subsection —
 

“(2) As soon as the Director of Elections knows the name of the person who has been elected as a member of the National Assembly at a by-election or fresh election for a constituency, he shall inform the Commission and the Commission shall publish in the Gazette the full name, address and occupation of the member, together with the name

**Amendment of section 67**

31. Section 67 of the Order is amended —

- (a) in subsection (2) by inserting, in paragraph (b), after the words “their agents” the words “and authorized representatives of political parties”;
- (b) in subsection (3) by inserting after the words “their agents” the words “and authorized representatives of political parties”.

**Amendment of section 68**

32. Section 68 of the Order is amended in paragraph (b) by inserting after the words “their agents” the words “and authorized representatives of political parties”.

**Amendment of section 72**

33. Section 72 of the Order is amended by deleting paragraph (d) and substituting the following new paragraph —

- “(d) candidates, one agent for each of those candidates and one authorized representative of each political party which has endorsed any of those candidates;”.

**Amendment of section 78**

34. Section 78 of the Order is amended in subsections (6) and (8) by inserting after the words “candidate’s agent” the words “or an authorized representative of a political party which has endorsed that candidate”.

**Amendment of section 79**

35. Section 79 of the Order is amended in subsection (11) by inserting after the word “agents” in paragraph (b) the words “or authorized representatives of political parties which endorsed any of those candidates;”.

**Amendment of section 83**

36. Section 83 of the Order is amended —

- (a) in subsection (1) by inserting after the word “agents” the words “or the authorized representatives of political parties which endorsed those candidates”;
- (b) in subsection (4) by inserting after the word “agent” the words “or the authorized representatives of political parties which endorsed those candidates”;
- (c) in subsection (9) —
  - (i) by deleting from paragraph (b) the words “candidates and candidates’ agents” and substituting the words “candidates, their agents and authorized representatives of the political parties which endorsed any of those candidates”;
  - (ii) by deleting from paragraph (e) the words “candidate or to his or her agent” and substituting the words “candidate or candidate’s agent or an authorized representative of the political party which endorsed the candidate.”.

**Amendment of section 84**

37. Section 84 of the Order is amended —

- (a) in subsection (2) by deleting the words “candidates’ and their agents

**Amendment of section 101**

47. Section 101 of the Order is repealed and the following section substituted —  
**“How and by whom an election may be disputed**  
 101. An election may be disputed, in accordance with section 69 of the Constitution and the provisions of this Order by means of an application to the High Court and as may be prescribed by rules made under section 112 of this Order.”.

**Amendment of section 102**

48. Section 102 of the Order is amended by deleting subsections (2) and (3).

**Amendment of section 104**

49. Section 104 of the Order is amended by deleting subsection (2) and substituting the following —  
 “(2) In determining a petition, the High Court shall be guided by the substantial merits of the case and good conscience, without regard to legal form or technicalities, and shall not be bound by the rules of evidence.”.

**Amendment of section 110**

50. Section 110 of the Order is amended —  
 (a) by deleting subsection (1) and substituting the following —  
 “(1) The High Court shall cause a copy of a determination under section 107, and of any orders made under that section, to be delivered to the Commission and the Speaker of the National Assembly.”; and  
 (b) in subsection (2) by deleting the words “The Chief Electoral Officer” and substituting the words “The Commission”.

**Insertion of a new Chapter 8A**

51. The Order is amended by inserting immediately after Chapter 8 the following new Chapter —

**“CHAPTER 8A - ELECTION OBSERVATION****Meaning of election observation**

112A. For the purposes of this Order, election observation means the verification of the various stages of an election by national and international organizations, non-governmental organizations, foreign governments and individuals duly recognized for the purpose in accordance with this Chapter.

**Scope of election observation**

- 112B. (1) Election observation shall consist of the following activities —  
 (a) to verify and monitor the impartiality and the functioning of the Commission and its officers in conformity with this Order;  
 (b) to verify and monitor the impartiality and legality of the decisions taken by the Commission and its officers in settling disputes;  
 (c) wheresoever possible, to verify and monitor the registration of voters;  
 (d) to observe the course of the campaigning for elections;

- (e) to verify and monitor the voting process;
  - (f) to verify and monitor the determination of the results of the elections at all stages of determination;
  - (g) to observe access to and the use of the media.
- (2) Any irregularities noted by election observers shall be reported to the Commission or to competent officers of the Commission and the Commission or such officers shall examine the activities reported as irregularities and shall, where the irregularities are confirmed, take corrective measures necessary to bring the elections into conformity with this Order.

**Beginning and end of election observation**

112C. Election observation shall begin at the onset of the period of campaigning referred to in section 47D and end with the determination of the results of the election or the settlement thereafter of all election disputes.

**Collaboration by competent authorities**

112D. It shall be the duty of the Commission, every officer thereof and every competent public officer or other public authority in Lesotho to co-operate with election observers in their role and to offer to them the guarantees and other facilities necessary to fulfil their role.

**Invitation to election observers**

112E. The Commission may send invitations for election observation and may do so on its own initiative or on request by a political party to any government, organisation or person competent under this Order to undertake election observation.

**Categories of observers**

- 112F. (1) For purposes of recognition under this Order, election observers shall be categorized as follows —
- (a) observers from the United Nations Organization and its agencies, the Organization of African Unity and its agencies, the Commonwealth Secretariat and other election organizations;
  - (b) observers from non-governmental organizations constituted and operating in Lesotho or in any foreign country;
  - (c) observers from foreign governments; and
  - (d) individual observers.
- (2) A person shall not be recognized as an election observer unless —
- (a) in the case of the first three categories specified in subsection(1), he has been designated by the relevant organization or foreign government in writing to the Commission disclosing his particulars and credentials;

- (b) in the case of the category of individual observers, he or she is a person of recognized election experience and prestige.

**Recognition and identification of election observers**

112G. Recognition of election observers shall be granted by the Commission which, for that purpose, shall—

- (a) establish adequate administrative procedures for the proper and timely recognition of the observers; ;
- (b) devise an identity card for each category of election observers and issue to every recognized observer the card corresponding to his category;
- (c) devise a common and easily identifiable badge for all election observers and issue the badge to every recognized election observer.

**Compulsory use of identity cards and the common badge**

112H. Every election observer recognized under this Order shall while exercising his functions, use the identity card and the badge issued to him.

**Rights of election observers**

112I. Election observers shall, in Lesotho, have the right —

- (a) where required, to obtain a multiple entry visa to enter Lesotho for the duration of the period of election observation as specified in section 112C;
- (b) to have unimpeded access to all election events and to observe all aspects of the civic education programmes, the registration of voters wheresoever possible, the nomination of candidates, the campaign, the voting and the counting of vote, at all stages;
- (c) to enjoy freedom of movement throughout Lesotho;
- (d) to seek and obtain information on the official organs involved in the conduct of an election and regarding the election itself;
- (e) to communicate freely with any political party and with any organization or person;
- (f) to have access to information transmitted by or to the Commission and its officers;
- (g) to have access to complaints and responses about any occurrence or matter relating to the conduct of elections;
- (h) to open offices within Lesotho for the performance of their functions;
- (i) to communicate any specific concerns they may have to members and officers of the Commission; and
- (j) to communicate to the local and election media.

**Obligations of election observers**

112J. (1) Election observers shall have the following obligations —

- (a) to exercise their role with impartiality, independence and

- objectivity;
  - (b) to respect the Constitution and the laws of Lesotho;
  - (c) not to interfere in, or to impede, the normal course of the election;
  - (d) to maintain the secrecy of the ballot;
  - (e) to provide to the Commission copies of written information and statements which they have produced; and
  - (f) to return the identify cards, the badge and any other identification material issued to them by the Commission after the end of their mission as observers.
- (2) The Commission may revoke the accreditation of any election observer who violates the obligations laid down in subsection (1) and thereupon his or her status as an election observer shall cease.

#### **Position of diplomats**

112K. Diplomats accredited to Lesotho who are designated and recognized as election observers under this Order shall exercise their functions as such elections observers without prejudice to their status and positions as such diplomats.

#### **Separate and joint operation of election observers**

112L. Election observers may operate separately or jointly with other election observers of the same or different categories.

#### **Insertion of new Chapter 8B**

52. The Order is amended by inserting immediately after Chapter 8A the following new Chapter —

#### **“CHAPTER 8B — ELECTORAL CODE OF CONDUCT**

##### **Electoral Code of Conduct**

- 112M. (1) The Electoral Code of Conduct (hereinafter referred to as “the Code”) set out in Schedule 4 —
- (a) shall be subscribed to by —
    - (i) every political party registered in terms of section 35; and
    - (ii) every candidate nominated in terms of section 49, as a condition of their respective rights to be so registered or nominated; and
  - (b) shall, in so far as it is applicable, be binding on every political party or on the leader or any office-bearer, member or supporter of such political party or candidate.
- (2) Subject to section 112N, any political party referred to in subsection (1) which, or the leader or any office-bearer, member or supporter of such political party, or candidate

- so referred to who, infringes any provision of the Code shall, upon finding that any such provision has been so infringed, be liable —
- (a) in the case of any political party which has infringed the provisions of the Code, to one or more of the following penalties or sanctions, of which any or all may be suspended on specified conditions —
    - (i) a formal warning;
    - (ii) a fine not exceeding M10 000;
    - (iii) an order prohibiting such political party, whether permanently or for a specified period, from utilizing any media time, including any such television or broadcasting services as have been or may be made available to such political party, for electoral purposes by the Commission.
    - (iv) an order prohibiting such political party or limiting the right of the political party —
      - (aa) to hold particular public meetings, demonstrations or marches, or any kind of such meetings, demonstrations or marches;
      - (bb) to enter any specified electoral district or area for purposes of canvassing for membership, or for any other electoral purpose;
      - (cc) to erect placards or banners, or to publish and distribute campaign literature or electoral advertising;
  - (b) in the case of a political party which has infringed the provisions of the Code —
    - (i) by any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, an order cancelling the registration of the political party in terms of section 35 and consequently its right to participate in the election concerned;
    - (ii) by any fraudulent act by virtue of which votes have been obtained, an order reducing the number of votes counted in favour of that political party by a specified number of votes;
    - (iii) by any act by virtue of which free and safe access by any other political party has been prevented, an order excluding such political party from any voting station situated in the area where such other political party has been prevented free and safe access; or
  - (c) in the case of the leader or any office-bearer, member or supporter of such political party or any candidate —

- (i) who has infringed the provisions of the Code, to one or more of the penalties or sanctions referred to in paragraph (a) (i), (ii) or (iii);
- (ii) who has infringed the provisions of the Code by any act or omission involving violence or intimidation or a gross or systematic party, candidate or elector, an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.

**Institution of proceedings by Director of Elections: Monitoring in High Court**

112N. (1) The Director of Elections may, either on his own motion or in consequence of any report made to him or her at any time, institute proceedings in the case of an alleged infringement of the Code or any alleged prescribed electoral irregularity or contravention or, or failure to comply with any provision of this Order, in the High Court.

(2) The High Court adjudicating an alleged infringement of the Code or other failure to comply with any provision of this Order, may only impose a penalty or sanction contemplated in section 112M(2) (a) (i) or (ii) or recommend to the Commission in a prescribed manner the imposition of any other penalty or sanction contemplated in section 112M(2) which it may consider appropriate.

(3) (a) Upon the recommendation of the High Court in accordance with subsection (2), the Commission may impose the recommended penalty or sanction or impose any other penalty or sanction contemplated in section 112M(2) which it may consider appropriate.

(b) There shall be no appeal from an order of the Commission imposing a penalty or sanction under paragraph (a).

(4) In making its decision regarding appropriate penalties or sanctions, the High Court or the Commission, as the case may be, shall have regard to any other legal consequence that may result from civil or criminal proceedings instituted by reason of the same occurrence.”.

**Amendment of section 122**

53. Section 122 of the Order is amended in subsection (3) by deleting from paragraph (a) the words “candidate or candidate’s agent” and substituting the words “candidate, candidate’s agent or authorized representative of a political party”.

**Amendment of section 134**

54. Section 134 of the Order is amended in the section heading by replacing the words “election officials” with the words “electoral officials”.

**Amendment of section 144**

55. Section 144 of the Order is amended in subsection (10) by inserting the

words “engaged in” after the words “a person has”.

**Amendment of section 145**

56. Section 145 of the Order is amended by deleting the words “Chief Electoral Officer” wherever they occur and substituting the word “the Commission”.

**Amendment of section 146**

57. Section 146 of the Order is amended —

(a) in subsection (1) —

(i) by deleting the word “If” and substituting the words “Subject to subsection (6) if —”;

(ii) by deleting the words “the appropriate Executive Authority” and “the Chief Electoral Officer” and substituting the words “the King” and “the Commission”, respectively;

(b) in subsection (2) by deleting the words “the Chief Electoral Officer” and substituting the words “the Commission”; and

(c) by adding the following new subsection after subsection (5) —

“(6) No by-election or fresh election for a constituency may be held within the period of six months preceding the dissolution of Parliament pending a general election.”.

**Repeal of section 148**

58. Section 148 of the Order is repealed.

**Amendment of section 153**

59. Section 153 of the Order is amended —

(a) in subsection (1) by deleting the words “appropriate Executive Authority” and substituting the word “Commission”; and by deleting the full stop at the end of the subsection and adding thereafter the words “and may amend any of the Schedules (other than Schedules 3 and 4) to this Order”; and

(b) by deleting subsection (3).

**Insertion of new section 153A**

59A The Order is amended by inserting the following new section after section 153 —

**“Power to Prescribe Forms, Amend Schedules etc.**

153A The Minister may, by an Order publish in the Gazette, prescribe the forms to be used for the purposes of this Order and may vary, amend or replace, the provisions of any Schedule.”

**Addition of Schedules 3 and 4**

60. The Order is amended by adding the following Schedules —

**“SCHEDULE 3-OATH OF A MEMBER OF THE ELECTORAL COMMISSION**

**(Section 3)**

I ..... having been appointed Chairman/Member of the Electoral Commission, do swear (or solemnly affirm) that I will well and truly perform the functions of Chairman/Member of the Commission in accordance with the Constitution and the Laws of the Kingdom of Lesotho without fear or favour, affection or ill will.

So help me God. [To be omitted in affirmation.]

**SCHEDULE 4 - ELECTORAL CODE OF CONDUCT**

**(Section 112M)**

1. The object of this Code shall be to promote conditions conducive to the conduct of free and fair elections and a climate of democratic tolerance, in which political activity may take place without fear or coercion, intimidation or reprisals.
2. All political parties and other persons bound by this Code shall endeavour to promote its object in order to enable free political campaigning and open public debate to take place in all parts of Lesotho throughout the election period.
3. Political parties and candidates further commit themselves —
  - (a) to give wide publicity to this Code;
  - (b) to promote voter education campaigns;
  - (c) to condemn violence and intimidation;
  - (d) to instruct their candidates, office-bearers, members and supporters accordingly; and
  - (e) generally, to affirm the rights of all participants in the election —
    - (i) to express divergent political opinions;
    - (ii) to debate and contest the policies and programmes of other political parties;
    - (iii) to canvass freely for membership and support from voters;
    - (iv) to hold public meetings;
    - (v) to attend public meetings convened by others;
    - (vi) to distribute electoral literature and campaign materials;
    - (vii) to publish and distribute notices and advertisements;
    - (viii) to promote free electoral campaigns by all lawful means.
4. All those bound by this Code in terms of sections 112M shall, throughout the election period, give effect to the following undertakings and stipulations —
  - (a) to publicly and repeatedly condemn violence and intimidation, and to avoid the use of language or any kind of action which may lead to violence or intimidation, whether to demonstrate party strength, gain

- 
- any kind of political advantage, or for any other reason;
- (b) to refrain from any action involving violence or intimidation;
  - (c) to ensure that no arms or weapons of any kind are carried or displayed at political meetings or in the course of any march, demonstration or other event of a political nature;
  - (d) to refrain from publishing or repeating false, defamatory or allegations concerning any person or political party in connection with the election;
  - (e) to co-operate and liaise in good faith with other political parties to avoid, in so far as possible, arrangements involving public meetings, demonstrations, rallies or marches taking place at the same time and venue as similar political events organized by other political parties;
  - (f) to do nothing to impede the democratic right of any political party, through its candidates, canvassers and representatives, to have reasonable access to voters for the purposes of conducting voter education, fund raising, canvassing membership and soliciting support;
  - (g) to avoid plagiarizing the symbols, colours or acronyms of other political parties; and to discourage and, if possible, prevent the removal, disfigurement or destruction of political campaign materials of any political party;
  - (i) to refrain from abusing a position of power, privilege or influence for political purposes, including —
    - (a) incumbent governmental power such as state facilities and transport; and
    - (b) parental, patriarchal or traditional authority;
  - (j) to avoid any discrimination based on race, sex, ethnicity, class, gender or religion, in connection with the election and political activity;
  - (k) in relation to the role of women —
    - (i) to facilitate full participation by women to all political activities on the basis of equality;
    - (ii) to ensure free access by women to all public political meetings, facilities and venues;
    - (iii) to respect the right of women to communicate freely with political parties; and
    - (iv) generally, to refrain from forcing women to adopt a particular political position or to engage in, or to refrain from engaging in, any political activity otherwise than in accordance with their free choice;
  - (l) in relation to the Commission —
    - (i) to acknowledge its authority in the conduct of the election;
    - (ii) to ensure the attendance and participation of representatives at meetings by or on behalf of the Commission;

- (iii) to implement its orders and directions;
  - (iv) to facilitate its right of access through official monitors or other representatives to all public political meetings or other electoral activities;
  - (v) to co-operate in the official investigation of issues and allegations arising during the election period; and
  - (vi) to take all reasonable steps to ensure the safety of monitors and other representatives of the Commission from exposure to insult, hazard or threat in the course of their official duties;
- (m) to reassure voters with regard to the impartiality of the Commission, the Secretary, and integrity of the ballot, and furthermore, that no one will know how any other person has voted;
- (n) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters from —
- (i) infringing this Code;
  - (ii) committing any offence in terms of this Act or any other law;
  - (iii) committing prescribed electoral irregularity; and
  - (iv) contravening or failing to comply with any provision of this Act.
- (o) to establish and maintain effective lines of communication with the Commission, and with other political parties at national, provincial and local level, including the exchange of names, addresses and contact telephone and facsimile numbers of party election agents and of other relevant office-bearers and representatives; and
- (p) to accept the final outcome of the election, and the Commission's declaration and certification of the results thereof.''

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NOTE:

Act No. 10 of 1992

GOVERNMENT NOTICE NO. 34 OF 1997

**The National Assembly Election (Amendment) Bill, 1997**

**Memorandum of objects and reasons**

The object of this Bill is to amend the National Assembly Election Order, 1992 in order to make new provisions, in accordance with the Constitution, for particular powers and functions of the Independent Electoral Commission established by that Constitution, to make further provisions regarding the qualifications and disqualifications of electors and Members of the National Assembly, to enhance

the democratisation of the electoral process through orderly election campaigns, observation and monitoring of elections, registration of political parties for the purpose of enabling them to sponsor candidates for election as well as through an Electoral Code of Conduct for registered political parties.

The Bill also seeks to harmonise the provisions of the National Assembly Election Order enacted in 1992, to bring it into conformity with the Constitution promulgated in 1993 and to effect consequential amendments to the Order.

**Clauses 2, 3 and 4** of the Bill are designed to define or redefine some words and expressions used in the provisions of the Order and in the proposed amendments.

**Clause 5** of the Bill is designed to replace the whole of Chapter 2 of the Order with additional provisions relating to the Electoral Commission established by section 66 of the Constitution. The provisions of this clause set out particular powers and functions of the Commission, particular means of safeguarding its independence, the right of political parties to nominate delegates to the Commission in order to establish systematic co-operation and liaison between the Commission and political parties, the obligation of the Commission to make annual reports of its activities and reports on elections and referenda, all of which are to be laid before parliament, and also the appointment of a Director of Elections, other staff of the Commission and the appointment of electoral officers.

**Clauses 7 and 8** of the Bill provide for additional qualifications and disqualifications required of an elector for his registration in a particular constituency; and disqualification for five years from the entitlement to be registered as an elector or to vote, as provided for in the relevant enabling provisions of the Constitution.

**Clause 9** of the Bill seeks to introduce a new system of identifying voters through official electors' registration cards with distinct identity numbers and personal photographs.

**Clause 10** of the Bill is designed to empower political parties to monitor the registered political party to make representations to the Electoral Commission on matters relating to electoral list for a constituency before it is printed.

**Clause 15** of the Bill sets out the manner in which the boundaries of constituencies are to be publicized and allows objections to be made to the Commission.

**Clause 17** of the Bill enables appeals to be made from decisions of the Commission on delimitation of constituencies to designated magistrates.

**Clause 18** of the Bill seeks to replace the whole of Chapter 4 of the Order with new provisions relating to the registration of political parties as a condition precedent for sponsoring candidates for elections. Registration of political parties is not compulsory except in so far as a political party intends to present candidates for election.

The provisions proposed in the new Chapter 4 also set out the qualifications and conditions for the registration of political parties, the grounds upon which registration may be cancelled and the right of a political party to appeal against the Commission's refusal to register it or to cancel its registration.

**Clause 20** of the Bill, in pursuance of the relevant enabling provisions of the Constitution, is designed to provide for further disqualifications from membership of the National Assembly in relation to nomination or election and, more particularly, for disqualification for a period of five years from the date of a conviction or a court's report of some offences connected with elections.

**Clause 21** of the Bill seeks to introduce a new Chapter 6A into the Order so as to provide for the orderly and peaceful conduct of election campaigns. Among other things, the proposed provisions set out the objective of election campaigns and the right of every political party to campaign in an atmosphere of freedom, equal treatment and equal access to public facilities and Government-owned media.

**Clauses 29 to 40** and some other clauses of the Bill contain proposed amendments to Part 3 of Chapter 7 of the Order which are designed to facilitate the full participation of authorized representatives of political parties to monitor closely the whole of the electoral process by entitling them to be present at every stage at polling stations up to the conclusion of the poll.

**Clauses 41 and 43 to 50** contain miscellaneous amendments relating to the publication of the results of by-elections and fresh elections and other matters concerning election petitions.

**Clause 42** obliges the candidate to provide a return as to election expenses.

**Clause 51** of the Bill is intended to introduce a new Chapter 8A into the Order so as to provide for the verification of various stages of the election by national and international observers. Any irregularities noted by the election observers are to be reported to the Commission and where such irregularities are confirmed upon examination, the Commission would be required to take such irregularities are confirmed upon examination, the Commission would be required to take corrective measures to bring the elections into conformity with this Order.

**Clause 52.** of the Bill is intended to introduce a new Chapter 8B into the Order so as to provide for an Electoral Code of Conduct (as set out in Schedule 4). This Clause also sets out the penalties or sanctions for infringement of any provision of the Electoral Code of Conduct by any political party, its leaders, office-bearers, members and supporters or candidate. It provides for the institution of proceedings by the Director of Elections in the High Court and for the High Court to impose penalties or sanctions, or recommended to the Commission in a prescribed manner, the imposition of any other penalty or sanction stipulated in the Code.

**Clause 61** of the Bill seeks to amend the Order by adding Schedule 3 which prescribes the Oath of a Member of the Electoral Commission and Schedule 4 which sets, out, in detail, the Electoral Code of Conduct.

The object of the Code is to promote conditions conducive to the conduct of free and fair elections and a climate of democratic tolerance, in which political activity may take place without fear or coercion, intimidation or reprisals. The Code specifies a series of commitments, undertakings and stipulations which are applicable, throughout the election period, to political parties and other persons bound by it.

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