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The Second Amendment to the Constitution Act, 1997

ACT NO. 7 OF 1997

An act to amend the Constitution so as to provide for an Independent Electoral Commission, its composition, powers and functions and, consequently, to abolish the Constituency Delimitation Commission, to abolish the office of the Chief Electoral Officer; to reduce the prescribed age limit from twenty years to eighteen years for a person to qualify to be registered as an elector to the National Assembly; to make provision for the vacation of the office of a member of Parliament on grounds of imprisonment or of absence, and for other related matters.

Enacted by the Parliament of Lesotho

Short title and commencement

1. (1) This Act may be cited as the Second Amendment to the Constitution Act, 1997 and shall come into operation on such date as the Minister responsible for Law and Constitutional Affairs may, by notice published in the Gazette, appoint.

(2) A notice under subsection (1) may appoint different dates for the coming into force of different provisions of this Act.

Amendment of section 57

2. Section 57 of the Constitution of Lesotho (hereinafter referred to as "the Constitution") is amended by repealing paragraph (b) of subsection (2) and substituting the following paragraph—

"(b) has attained the age of eighteen years; and"

Amendment of section 58

3. Section 58 of the Constitution is amended by repealing paragraph (a) of subsection (2) and substituting the following paragraph—

"(a) is a citizen of Lesotho; and"

Amendment of section 59

4. Section 59 of the Constitution is amended—

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

"(b) is under sentence of death or sentence of imprisonment for a term exceeding six months, without the option of a fine, imposed on him by a court in Lesotho or a court in any part of the Commonwealth;" and

(b) by adding the following subsection after subsection (1)—

"(1A) For the purposes of paragraph (b) of subsection (1) in relation to imprisonment, where a person is sentenced to two or more

terms of imprisonment that are required to be served consecutively, account shall be taken only of any of those terms that exceeds six months.”.

Amendment of section 60

5. Section 60 of the Constitution is amended —

- (a) in subsection (1) by adding the following new paragraph after paragraph (f) —
 - “(g) if, in any one year and without the written permission of the President of the Senate or, as the case may be, the Speaker of the National Assembly he is absent from one-third of the total number of sittings of the House of which he is a member,”; and
- (b) in subsection (2) by inserting after the words “sentenced to death” the words “or imprisonment in terms of paragraph (b) of section 59(1)”.

Amendment of section 66

6. Section 66 of the Constitution is repealed and substituted with the following section —

“Independent Electoral Commission

- 66. (1) There shall be an Independent Electoral Commission (in this Constitution referred to as “the Electoral Commission”) which shall consist of the following members, being persons of high moral character and proven integrity, appointed by the King acting in accordance with the advice of the Council of State —
 - (a) a Chairman, being a person who holds, has held or qualifies to hold high judicial office; and
 - (b) two other members, each of whom possesses any of the qualifications referred to in paragraph (a) or who possesses considerable experience and demonstrated competence in administration or in the conduct of public affairs.
- (2) In its advice to the King under subsection (1), the Council of State shall submit to him —
 - (a) in relation to the Chairman, the name of a person selected by the Council from a list of not less than three names; and
 - (b) in relation to the other members, the names of two persons selected by the Council from a list of not less than five names,
 and for the purpose of enabling the Council of State to select the names of persons to be submitted to the King under this subsection, the Council shall request all registered political parties in accordance with a procedure agreed upon by them, to jointly propose to the Council within a period of thirty days as may be determined by the Council, a list of not less than three names in respect of the Chairman and a list of not less than five names in respect of the other members.
- (3) Notwithstanding subsection (2), for the purpose of enabling the Council

of State to select the names of persons to be appointed as the first members of the Electoral Commission under subsection (1), the Council shall request all political parties in accordance with a procedure agreed upon by them, to jointly propose to the Council within a period of thirty days as may be determined by the Council, a list of not less than three names in respect of the Chairman and a list of not less than five names in respect of the other members.

- (4) If at the expiry of the period of thirty days prescribed in subsection (2) or (3), as the case may be, the lists referred to therein have not been proposed to the Council of State, the Council shall itself submit in its advice to the King under subsection (1), in relation to the Chairman the name of one person and in relation to the other members the names of two persons.
- (5) In this section, a registered political party means a political party registered under the provisions of the National Assembly Election Order
- (6) A person shall not be qualified to be appointed as a member of the Electoral Commission or, if he is a member, to continue holding that office if he is or, as the case may be, becomes —
 - (a) a member of the National Assembly or of the Senate;
 - (b) an office-bearer of a political party, whether or not the party is a registered political party;
 - (c) a public officer, other than a Judge of the High Court or the Court of Appeal;
 - (d) a member of a local authority; or
 - (e) a person disqualified, by any other law enacted by Parliament, from being a member.
- (7) A member of the Electoral Commission shall hold office for a term not exceeding six years and his appointment may be renewed for only one further term not exceeding six years.
- (8) If the office of Chairman of the Electoral Commission is vacant or if the person holding that office is for any reason unable to exercise the functions of his office, then, until a person has been appointed to and has assumed the functions of that office or until the person holding that office has resumed those functions, as the case may be, those functions shall be exercised by such one of the other members of the Commission as may for the time being be designated in that behalf by the King, acting in accordance with the advice of the Council of State.
- (9) If at any time there are less than two members of the Electoral Commission besides the Chairman or if any such member is appointed to act as Chairman or is for any reason unable to exercise the functions of his office, the King, acting in accordance with the advice of the Council of State, may appoint a person who is qualified to be appointed as a member of the Electoral Commission to act as a member, and any person so appointed shall, subject to the provisions of subsection (5), continue to act until the office in which he is acting has been filled or, as the case may be, until

the holder thereof has resumed his functions or until his appointment to act has been revoked by the King, acting in accordance with the advice of the Council of State.

- (10) The Chairman or any other member of the Electoral Commission may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.
- (11) The Chairman or any other member of the Electoral Commission shall be removed from office by the King if the question of his removal from office has been referred to a tribunal appointed under subsection (12) and the tribunal has recommended to the King that he ought to be removed from office for the inability or for the misbehaviour referred to in subsection (10).
- (12) If the Council of State represents to the King that the question of removing a member of the Commission under this section ought to be investigated, then —
 - (a) the King shall appoint a tribunal consisting of a Chairman and not less than two other members, selected by the Chief Justice from among persons who hold or have held high judicial office; and
 - (b) the tribunal shall enquire into the matter and report on the facts thereof to the King and recommended to him what action is to be taken in relation to the Chairman or any other member.
- (13) If the question of removing the Chairman or a member from office has been referred to a tribunal under subsection (11), the King, acting in accordance with the advice of the Council of State, may suspend the Chairman, or as the case may be, the member, from the exercise of the functions of his office and any such suspension may at any time be revoked by the King, acting in accordance with that advice, and shall in any case cease to have effect if the tribunal advises the King that the Chairman or the member should not be removed from office.”.

Addition of sections 66A, 66B, 66C and 66D

7. The Constitution is amended by adding the following sections after section 66 —

“Powers, duties and functions of Electoral Commission

- 66A. (1) The Electoral Commission shall have the following functions —
- (a) to ensure that elections to the National Assembly and local authorities are held regularly and that every election or referendum held is free and fair;
 - (b) to organize, conduct and supervise, in an impartial and independent manner, elections to the National Assembly and referenda under the provisions of this Constitution and any other law;
 - (c) to delimit the boundaries of constituencies in accordance with the provisions of this Constitution and any other law;
 - (d) to supervise and control the registration of electors;
 - (e) to compile a general register of electors and constituency registers of electors for the several constituencies and to maintain such register or registers up to date;
 - (f) to promote knowledge of sound democratic electoral processes;

- (g) to register political parties;
 - (h) to ascertain, publish and declare the results of elections and referenda;
 - (i) to adjudicate complaints of alleged irregularities in any aspect of the electoral or referendum process at any stage other than in an election petition; and
 - (j) to perform such other functions as may be prescribed by or under any law enacted by Parliament.
- (2) For the purposes of subsection (1), the Minister responsible for the Public Service shall, when so requested by the Electoral Commission, make available to the Commission any public officer of any authority of the Government for the purpose of the discharge of its functions; and the appointment, exercise of disciplinary control or removal of any such public officer in relation to the performance of his electoral functions shall be vested in the Commission.

66B Decisions of Commission

- (1) Every decision of the Commission shall, as far as possible, be by consensus.
- (2) Where on any matter consensus cannot be obtained, the matter shall be decided by voting; and the matter shall be taken to have been decided if supported by the votes of a majority of all the members of the Commission.
- (3) In any vote under subsection (2), each member of the Commission, including the Chairman, shall have one vote and none shall have a casting vote.
- (4) The Electoral Commission —
 - (a) may regulate its own procedure; and
 - (b) may act notwithstanding any vacancy in its membership or the absence of any member and its proceeding shall not be invalidated by the presence or participation of any person not entitled to be present at or to participate in those proceedings.

Independence of Commission

- 66C. The Electoral Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

Funds and expenses of Commission

- 66D. (1) Parliament shall provide funds to enable the Commission to perform its functions effectively.
- (2) The funds required to meet the expenses of the Commission in the performance of its functions, including the salaries, allowances and terminal benefits

payable to or in respect of the members of the Commission, shall be a charge on the Consolidated Fund.”.

Amendment of section 67

8. Section 67 of the Constitution is amended —

- (a) by replacing the sub-heading “Constituencies” with “Delimitation of Constituencies”;
- (b) by replacing the words “Constituency Delimitation Commission” and all references thereto with the words “Electoral Commission”;
- (c) by adding the following new subsection after subsection (3) —
 - “(3)(A) In conducting a review of boundaries of the constituencies under this section, the Commission shall, in accordance with such procedure as may be prescribed by the Commission, enable representations to be made regarding any matter relating to a proposed review.”.

Repeal of section 68

9. Section 68 of the Constitution is repealed.

Addition of section 84A

10. The Constitution is amended by adding the following new section after section 84 —

“Power of Parliament to enact further provisions

84A. Parliament may, subject to the provisions of this Constitution, enact such laws as may be necessary for the purposes of this Chapter, including laws for the registration of electors, the conduct of elections, the powers, duties and functions of the Electoral Commission and the registration and regulation of political parties.”.

Amendment of section 85

11. Section 85 of the Constitution is amended in paragraph (b) of subsection (3), by inserting after the number 66, the following —
 “66A, 66B, 66C and 66D.”.

Amendment of section 115

12. Section 115 of the Constitution is amended in subsection (5) —

- (a) by replacing the words “Constituency Delimitation Commission” with the words “Electoral Commission”; and
- (b) by deleting the words “The Chief Electoral Officer.”.

Amendment of section 137

13. Section 137 of the Constitution is amended by deleting paragraph (b) of subsection (3).

Repeal of section 138

14. Section 138 of the Constitution is repealed.

Amendment of section 151

15. Section 151 of the Constitution is amended in subsection (3) by deleting the words “Chief Electoral Officer”.

Amendment of section 155

16. Section 155 of the Constitution is amended in paragraph (a) of subsection (4) by deleting the words "or the Chief Electoral Officer".

Amendment of section 159

17. Section 159 of the Constitution is amended by repealing subsection (3) and substituting the following subsection —

“(3) Notwithstanding section 67(3), the Electoral Commission shall, as soon as practicable before the first dissolution of the National Assembly following the commencement of this subsection, review the boundaries of the constituencies into which Lesotho is divided in order to give effect to the provisions of section 67 and may, for the purpose of that review, take into account, modify or where necessary, repeal any review undertaken by the Constituency Delimitation Commission in existence before the commencement of this subsection.”

Transitional provisions relating to registers of electors

18. Notwithstanding the repeal of section 68 of the Constitution, the Electoral Commission shall, in carrying out its functions under section 66A(1), take into account, modify or where necessary, repeal the general register of electors and the constituency registers of electors compiled by the Chief Electoral Officer in accordance with that section.

Note:

¹ Order No. 10 of 1992

GOVERNMENT NOTICE NO. 33 OF 1997

The Second Amendment to the Constitution Bill, 1997

Memorandum of Objects and Reasons

The main object of this Bill is to amend the Constitution of Lesotho in order to make provisions establishing an Independent Electoral Commission, to abolish the Constituency Delimitation Commission and to abolish the post of Chief Electoral Officer.

The Bill also seeks to empower Parliament to make laws specifically for the purposes of Chapter VI of the Constitution (which contains provisions relating to Parliament) including laws for the registration of electors, the conduct of elections, further powers, duties and functions of the Electoral Commission and for the registration and regulation of political parties.

Other provisions of the Bill seek to introduce disqualifications relating to membership of Parliament on the grounds of imprisonment and unauthorised absence from Parliamentary sittings and to provide for consequential matters.

Clause 2 of the Bill seeks to reduce the prescribed age limit from 21 years to 18 years for a person to qualify as an elector to the National Assembly.

Clause 3 of the Bill sets out qualifications as to citizenship for membership of Parliament.

Clause 4 of the Bill seeks to introduce additional grounds for disqualifying a person from designation as a Senator or from nomination or election as a member of the National Assembly if at the date of the designation, nomination or election he is under a sentence of imprisonment for more than six months without the option of a fine.

Clause 5 of the Bill contains provisions for the vacation of office by a member of Parliament (other than a Principal Chief) if, without the written permission of the President of the Senate or the Speaker of the House of Assembly, he is absent from an aggregate of one-third of the total number of sittings in any one year.

Clause 6 of the Bill provides for the establishment of an Independent Electoral Commission consisting of a Chairman and two other members, all appointed by the King acting in accordance with the advice of the Council of State. It is proposed in this Clause that all members be persons of high moral character and proven integrity, that the Chairman should be a person who holds, has held or qualifies to hold high judicial office and that each of the other members should possess either the same attributes as the Chairman or should be a person with considerable competence in the field of administration or in the conduct of public affairs.

The procedure proposed in this Clause gives the Government and registered political parties the right to participate jointly in the nomination of the names of persons to be submitted to the Council of State before the Council advises the King. A transitional provision provides for the appointment of the first members of the Commission.

The Clause also sets out the tenure of office of members of the Commission, disqualifications for membership and the circumstances and procedure under which a member of the Commission is to be removed from office upon the recommendation of a tribunal appointed by the King.

Clause 7 of the Bill provides for the broad powers, duties and functions of the Electoral Commission which include the delimitation of constituencies, the registration of electors, the compilation and maintenance of a general register of electors and constituency registers of electors, the registration of political parties and the conduct of elections. In the performance of its functions, the Commission will be independent of and free from the direction or control of any person or authority.

The Clause also makes provision for the appointment, disciplinary control and removal of officers made available to the Commission from the public service, in relation to the performance of their electoral functions.

Clause 8 of the Bill contains provisions requiring the Commission to enable representations to be made regarding the delimitation of constituencies.

Clause 9 of the Bill seeks to repeal section 68 of the Constitution relating to the appointment and functions of a Chief Electoral Officer.

Clause 10 of the Bill seeks to empower Parliament, in more specific terms, make laws for the purposes of Chapter VII of the Constitution including laws on the registration of electors, the conduct of elections, further powers, duties and functions of the Electoral Commission and for the registration and regulation of political parties.

Clause 11 of the Bill seeks to entrench the more important new provisions of the Constitution, consisting of sections 66A, 66B, 66C, in the same manner as other important provisions which can only be amended by two-thirds of the votes of all the members of each House of Parliament.

Clauses 12 to 16 of the Bill contain consequential amendments to the Constitution in order to reflect the status of the Commission and its members.

Clause 17 of the Bill seeks to enjoin the Electoral Commission to review the boundaries of constituencies before the dissolution of the current Parliament as to establish a total of eighty constituencies in accordance with section 67 of the Constitution and, in the process, to take into account, and modify where necessary, any review of those boundaries undertaken by the Constitutional Delimitation Commission.

Clause 18 of the Bill contains transitional provisions requiring the Commission, in the performance of its functions, to take into account, modify or where necessary, repeal the general register of electors and the constituency registers of electors compiled by the Chief Electoral Officer.