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Sixth Amendment to the Constitution Act, 2011

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ACT NO. 13 OF 2011

Sixth Amendment to the Constitution Act, 2011

An Act to amend the Constitution of Lesotho¹.

ENACTED by the Parliament of Lesotho.

Short title and commencement

1. This Act may be cited as the Sixth Amendment to the Constitution Act, 2011 and shall come into operation on the date of its publication in the Gazette.

Protection of victims of crime

2. The Constitution is amended by inserting the following new section after section 31 -

“Protection of victims of crime

31A. Lesotho shall adopt policies designed to make provision for victims of crime support services including mechanisms to ensure compensation for victims of crime, and assist vulnerable groups of victims.”.

Decision of questions as to membership of Parliament

3. Section 69 of the Constitution is amended -

- (a) in subsection (3), by inserting the words “or by a political party which participated in the election” immediately before the words “or by the Attorney-General”;
- (b) in subsection (4), by inserting the words “or by a political party which participated in the elections” immediately before the words “or by the Attorney-General”;
- (c) by deleting subsection (6).

Referendum

4. The Constitution is amended by inserting the following new section after section 84A -

“Referendum

- 84B (1) The King may, on the advice of the Prime Minister order that a referendum be conducted to obtain the opinion of the electors on any matter he considers to be of national interest.
- (2) Parliament may make provision for the conduct of a referendum.”.

Exercise of Prime Minister’s functions during absence or illness

5. Section 90 of the Constitution is amended by inserting the following -

- (a) a comma immediately after the word “Lesotho” wherever it appears;
- (b) “is on leave” after the word “Lesotho,” wherever it appears; and
- (c) a comma immediately after the word “absence” appearing in the proviso to the section;
- (d) “being on leave” after the word “absence,” appearing in the proviso to the section.

Deputy Ministers

6. The Constitution is amended -

- (a) by deleting the word “Assistant” wherever it appears before the words “Minister” or “Ministers” and substituting the word “Deputy”; and
- (b) in section 93(1) -

- (i) in subsection (1) by deleting the words "to assist" and substituting the words "to deputise"; and
- (ii) by inserting the following new subsections after subsection (2) -
 - "(3) Whenever a Minister is absent from Lesotho, is on leave or is by reason of illness unable to exercise the functions conferred on him or her by this Constitution, those functions shall be exercised by the Deputy Minister.
 - (4) If the Minister does not have a Deputy Minister or the Deputy Minister is absent from Lesotho, is on leave or is by reason of illness unable to exercise the functions of the office of Minister, the assignment of responsibility to any Minister under section 89 shall apply."

Attorney-General

7. Section 98 of the Constitution is amended by adding after subsection (4) the following new subsection -

- "(5) The Attorney-General shall take and subscribe such oath of office for the due execution of his functions as may be prescribed by Parliament."

National Advisory Planning Board

8. Section 105 of the Constitution is amended -

- (a) by inserting the word "Advisory" between the words "National" and "Planning" wherever they appear;
- (b) in subsection (2) by deleting paragraphs (a) to (e) and substituting the following -
 - "(a) to advise the Minister responsible for development planning on -

- (i) issues relating to the planning and budgeting systems;
 - (ii) the alignment of the medium-term expenditure framework approach with strategic planning documents;
 - (iii) the integration of district planning activities in the national planning system; and
 - (iv) the preparation of guidelines for planning activities;
- (b) to review progress -
- (i) towards achievement of targets, goals and objectives of the national vision and provide advice on the procedures to be followed in the periodic updating of the national vision; and
 - (ii) on the inclusion of poverty reduction priorities in the planning and budgetary system.”; and
- (c) by adding the following new subsections after subsection (3) -
- “(4) The National Advisory Planning Board shall -
 - (a) prior to each financial year, submit an annual work-plan and budget to the Minister responsible for development planning; and
 - (b) at the end of each financial year, submit an annual report on the activities of the Board to the Minister responsible for development planning.
 - (5) The Minister responsible for finance and development planning shall table the report

before Cabinet and Parliament.”.

Remuneration of certain offices

9. Section 115 of the Constitution is amended by deleting subsection (5) and substituting the following-

“(5) This section applies to the offices of the President of the Senate, the Speaker of the National Assembly, a judge of the High Court, a member of the Independent Electoral Commission, a member of the Public Service Commission, an appointed member of the Judicial Service Commission, the Attorney-General, the Director of Public Prosecutions, the Auditor General, the Ombudsman and such other similar offices as may be established by or under this Constitution.”.

Insertion of new Chapter

10. The Constitution is amended by inserting the following new chapter after Chapter XI:

“CHAPTER XIA

HUMAN RIGHTS COMMISSION

Establishment of the Human Rights Commission

133A. There is established a Human Rights Commission (in this Chapter referred to as “the Commission”) which shall be independent and free from interference and subject only to this Constitution and any other law.

Composition

133B. The Commission shall consist of the chairman and two other members who shall be appointed by the King acting in accordance with the advice of the Prime Minister.

Qualification for appointment

133C. A person shall not be qualified to be appointed a member of the Commission if he is a public officer, and the Prime Minister shall not advise the King to appoint a person as a member unless he or she is satisfied that the person -

- (a) has extensive experience in human rights and related disciplines;
- (b) is of high moral character and integrity and possesses such qualities of mind as to enable him to discharge his duties impartially, fairly and free from bias or prejudice; and
- (c) does not take an active part in, or has retired from, the party politics or political party activity.

Tenure of office

133D. Subject to the provisions of this section, the office of a member of the Commission shall become vacant -

- (a) at the expiration of seven years, in the case of the chairman and five years in the case of other commissioners, from the date of his appointment; or
- (b) if he becomes a public officer; or
- (c) if he becomes a member of either House of Parliament, a local authority, a candidate for election to Parliament or a local authority, or an officer of a political party.

Removal from office

133E. (1) A member of the 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) incompetence in the performance of the functions of his office or misbehaviour (including failure to discharge his duties in a fair manner free from prejudice) and shall not be removed except in accordance with this section.

(2) A member of the 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 (3) and the tribunal has recommended to the King that he ought to be removed from office for inability, incompetence or misbehaviour.

(3) If the Judicial Service Commission, in the case of either the Chairman of the Commission or any other member, 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 which shall consist of a chairman and not less than two other members, selected by the Prime Minister 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 of the enquiry to the King and recommend to him whether the member ought to be removed under this section.

(4) If the question of removing a member of the Commission has been referred to a tribunal under this section, the King, acting in accordance with the advice of the Prime Minister, may suspend that 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 such advice as Prime Minister and shall in any case cease to have effect in the tribunal recommends to the King that the member should not be removed.

Functions of the Commission

133F. The Commission shall perform the following functions -

- (a) monitor the state of human rights throughout Lesotho;
- (b) monitor the human rights situation of detainees;
- (c) investigate violations of human rights and, if necessary, be responsible for instituting proceedings against such violation in the courts of law;

- (d) sensitise the public on its work, the nature and meaning of human rights;
- (e) develop and deliver education and training programmes as necessary to the general public;
- (f) submit opinions, recommendations, propositions and reports to public institutions on human rights issues, using the media and other means;
- (g) advocate for ratification, and recommend the domestication of international and regional human rights instruments;
- (h) promote and monitor the harmonisation of national laws and practices with international and regional human rights instruments ratified by Lesotho;
- (i) develop and maintain working relations with organisations and representatives of civil society in Lesotho;
- (j) work in cooperation with the United Nations, regional mechanisms, national human rights institutions of other countries, in the areas of the promotion and protection of human rights, and
- (k) undertake any other activities or responsibilities that are consistent with the spirit of the promotion and protection of human rights.

Assistance to the Commission

133G. The Government shall accord such assistance as the Commission may require to enable it to protect its independence, dignity and effectiveness, subject to this Constitution and any other law.

Annual report of the Commission

133H. (1) The Commission shall prepare, submit and present an annual report of its activities to Parliament.

(2) If it considers it necessary, in case of an urgent and specific issue, the Commission may submit a special report to Parliament at any time, which will be treated by Parliament in the same manner as an annual report.”

NOTE

1. Constitution of Lesotho 1993