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ACT NO. 15 OF 2022

Tenth Amendment to the Constitution Act, 2022

An Act to amend the Constitution of Lesotho, 1993.

Enacted by the Parliament of Lesotho.

Preamble

We, the Basotho nation:

Acknowledging the supremacy of God, the Almighty;

Inspired by the legacy of Morena Moshoeshoe I, the Founder of the Basotho Nation, which is based on the values of good governance, prosperity, peaceful co-existence, reconciliation, and unity;

Mindful of the challenges of political instability, conflict, and under-development in our recent history;

Conscious of the need to manage our natural resources sustainably and efficiently for the equitable benefit of the present and future generations;

Determined to build a better future based on a stable democracy, strong economy, peace, equality of opportunity, prosperity, and sustainable development;

Affirming our resolve to uphold, commit and embrace, as pillars of our national cohesion and governance the following foundational values:

- (a) se-Moshoeshoe, nation-building, peace, and unity;
- (b) respect for human rights and freedoms, equality, human dignity, and gender equity;
- (c) supremacy of the Constitution, rule of law, justice, separation of powers and the independence of the judiciary; and
- (d) democracy, accountability, responsiveness, and openness,

now therefore, adopt this Constitution as the supreme law of the Kingdom of Lesotho.

Short title and commencement

1. (1) This Act may be cited as the Tenth Amendment to the Constitution Act, 2022 and shall come into operation on the date of its publication in the Gazette.

(2) Notwithstanding subsection (1), for the purposes of the alteration of the provisions of sections 52, 119 to 133 and 154 of the Constitution, which require to be submitted to the majority vote of electors under section 85(3)(b) and subject to the Referendum Act, 2022, the provisions of sections 8, 28 and 42 shall, if approved by the majority of the electors, come into operation on the date to be appointed by the Minister responsible for law by notice published in the Gazette.

General amendment

2. The Constitution is amended by inserting the words “or she” wherever the word “he” appears, “or her” wherever the word “his” appears and “her” wherever the word “he’ appears, except in respect of the King.

Amendment of section 3: Official languages

3. Section 3 of the Constitution is amended by -

(a) deleting subsection (1) and substituting the following:

“(1) The official languages of Lesotho shall be Sesotho, English, isiXhosa and Sephuthi.”.

(b) inserting the following subsections after subsection (1):

“(1A) Notwithstanding subsection (1), any of official languages may be used -

(a) as a means of communication in legislative, administrative, or judicial processes;

- (b) in any transaction, official document or instrument;
- (c) as a medium of instruction for educational purposes; or
- (d) for any other purpose that may be prescribed by an Act of Parliament.

(1B) A transaction or instrument expressed or conducted in a particular official language pursuant to subsection (1) shall not be declared invalid by reason that it is expressed or conducted in one of the languages.

(1C) The Government shall take legislative, administrative, and other measures to advance the use and development of all official languages.

(1D) The Government shall, in deciding to use a particular language, take the following into account:

- (a) the financial implications of choosing a particular language;
- (b) the balance of the needs and preferences of the population as a whole or population in a particular area;
- (c) the practicality of using a particular language.
- (d) the need for promotion of access to information;
- (e) the local circumstances of a population targeted for business; or
- (f) the need for affirmation and promotion of indigenous languages.

(1E) The Government documents shall be translated into at least two official languages.

(1F) The Government shall ensure that all official Government communication is translated into a sign language and braille subject to subsection (1D).”.

Insertion of new section 3A: Age of majority

4. The Constitution of Lesotho 1993, herein referred to as “the Constitution”, is amended by inserting the following section after section 3:

“Age of majority

3A. (1) The age of majority in Lesotho is 18 years.

(2) Every person who has not yet attained 18 years of age is a minor, without distinction on the grounds of gender, unless the person is an emancipated minor.

(3) Notwithstanding subsection (1), a person under eighteen years of age who has been granted an order of limited emancipation by a court under the conditions provided by an Act of Parliament shall be considered an emancipated minor.

(4) A “child” in terms of this Constitution means a person under the age of 18 years.”.

5. The Constitution is amended by inserting the following section after section 20:

“Affirmative action in favour of marginalised groups

20A. (1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history or law, for the purpose of redressing imbalances which exist against them.

(2) Parliament may make laws for the purpose of giving effect to this section.”.

Insertion of a new section 22A: Public interest

6. The Constitution is amended by inserting the following section after section 22:

“Public interest

22A. (1) The following persons may approach a competent court where any or all of them reasonably believe or believes that a right in this Constitution has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights to:

- (a) a person acting in his or her own interests;
- (b) a person acting on behalf of another person who cannot act on his or her own;
- (c) a person acting as a member of, or in the interest of, a group or class of persons;
- (d) a person acting in the public interest; and
- (e) an association acting in the interests of its members, or any other members of society.

(2) An Act of Parliament may make provision for the exercise of the right under this section.”.

Amendment of section 24: Interpretation and savings

7. The Constitution is amended in section 24 by deleting the words “disciplined force” and wherever they appear in this Constitution and substituting the words “National Security Agencies.”.

Amendment of Section 52: Abdication

8. The Constitution is amended by deleting section 52 and substituting the following:

“52. The King may, at any time and after consultation with the College

of Chiefs, abdicate, but such abdication shall not affect the right of any person who is entitled to succeed to the Office of King.”

Amendment of section 55: Senate

9. Section 55 of the Constitution is deleted and substituted with the following:

“Composition of Senate

55. (1) The Senate shall consist of the following thirty-three Members:

- (a) twenty-two Principal Chiefs;
- (b) two members appointed by the King; and
- (c) nine other members representing professionals and vulnerable groups.

(2) Members of the Senate under subsection (1) (c) shall be appointed by the King acting on the advice of the Council of State.

(3) Parliament may, by law, make provision for the nomination of members of the Senate under subsection (1)(b) and (c).

(4) A Principal Chief may, by notice in writing to the President of the Senate, designate any other person to be a Senator in his or hers place either generally or for any sitting or sittings of the Senate specified in the notice and may, by notice in like manner, vary or revoke any such designation.

(5) The Council of State shall not meet for the purpose of tendering advice to the King for the nomination of Senators following a general election of members of the National Assembly until after the first sitting of the National Assembly following the general election.

Amendment of section 65: Clerks to Houses of Parliament and their staff

10. The Constitution is amended in section 65 by deleting -

(a) the heading “Clerks to Houses of Parliament and their staff” and substituting “Secretaries to Houses of Parliament”; and

(b) subsections (2) and (3) and substituting the following subsection:

“(2) The offices of the Secretary to the Senate and the Secretary to the National Assembly shall be offices in the Parliamentary Service, and an Act of Parliament shall make provision for their functions, terms and conditions of service.”.

Insertion of new sections 65A – 65C

11. The Constitution is amended by inserting the following sections after section 65:

“Establishment of Parliamentary Service Commission

65A. (1) There is established a Parliamentary Service Commission.

(2) The following offices shall be offices in the Parliamentary Service Commission:

(a) the President;

(b) the Speaker;

(c) the Secretary to the Senate and Secretary to the National Assembly; and

(d) other members of staff of Parliament.

(3) Parliament may make provision for powers and functions of the Parliamentary Service Commission and the exercise of such powers and functions, including functions of bodies established under the Parliamentary Service Commission.

(4) The allocation of the budget appropriation contemplated

in section 112 of this Constitution to the Parliamentary Service Commission shall be fixed at a percentage as may be prescribed by an Act of Parliament.

(5) The Parliamentary Service Commission shall be self-accounting and its finances shall be subject to the law regulating public financial management.

Parliamentary Service Commission

65B. (1) There shall be the Parliamentary Service Commission, which shall be an autonomous body.

(2) The Parliamentary Service Commission shall consist of -

- (a) the President of the Senate;
- (b) the Speaker of the National Assembly;
- (c) two members of the National Assembly from the governing party or parties, in the case of a coalition government, nominated by the governing party or parties, and who shall not be a member of Cabinet;
- (d) a member of the National Assembly from the opposition parties nominated by the opposition parties;
- (e) two Senators nominated by the Members of Senate one representing Principal Chiefs and another representing nominated members; and
- (f) two human resource experts nominated by each House of Parliament appointed on part-time basis for a period of five years, which may be renewable once for another period of five years upon satisfactory performance, through a merit based, competitive, transparent and fair process which shall be determined by an Act of

Parliament.

(3) Secretaries to both Houses of Parliament shall be co-secretaries to the Parliamentary Service Commission.

(4) The President and the Speaker shall be alternate Chairpersons to the Parliamentary Service Commission.

(5) Parliament may make provision for powers and functions of the Parliamentary Service Commission and the exercise of such powers and functions, including functions of bodies established under the Parliamentary Service Commission.

(6) The Secretaries to both Houses of Parliament shall be responsible for the implementation of decisions of the Parliamentary Service Commission in respect of the Houses that they serve.

(7) In the performance of its functions and the exercise of its powers under this Constitution or an Act of Parliament, the Parliamentary Service Commission shall not be subject to the direction or control of any other person or authority.

(8) Parliament shall, from the Consolidated Fund, allocate to the Parliamentary Service Commission an annual budget as may be prescribed by an Act of Parliament.

Tenure of Office of members of the Parliamentary Service Commission

65C. (1) A member of the Parliamentary Service Commission nominated under section 65B (2) (c), (d), (e) or (f) shall hold office -

- (a) for the duration of the term of Parliament in which he or she is elected or nominated; and
- (b) until new members are nominated or appointed after the dissolution of Parliament.

(2) A member of the Parliamentary Service Commission nominated under 65B (2)(c), (d), (e) or (f) shall cease to hold office as a Member of the Parliamentary Service Commission -

- (a) if he or she vacates his or her seat in Parliament pursuant to Section 60 of this Constitution;
- (b) if he or she is removed from office by a resolution of Parliament;
- (c) for gross misconduct; and
- (d) if he or she resigns from the Parliamentary Service Commission by giving one-month notice, in writing, to the Chairperson of the Parliamentary Service Commission.

(3) Where the President or Speaker resigns from office, the Deputy President or the Deputy Speaker shall assume the responsibilities of the office of the Parliamentary Service Commission until a new President or Speaker has been elected.

(4) A member of the Parliamentary Service Commission nominated under section 65(2)(c), (d), (e) or (f) is eligible for reappointment as a member for one more term only.”

Amendment of section 66: Independent Electoral Commission

12. Section 66 of the constitution is amended -

- (a) by deleting subsection (1) and substituting the following:

“(1) There shall be an Independent Electoral which shall -

- (a) be an autonomous and independent body;
- (b) be accountable to Parliament; and
- (b) consist of a Chairperson and two members appointed in terms of section 152A(2).”.

-
- (b) by deleting subsection (4) and substituting the following:

“(4) the political parties shall, before making recommendations to the Council of State, establish a selection panel, for the purpose of identifying suitable candidates for appointment through a fair, competitive, transparent and merit-based recruitment process, within a period of sixty days, as may be prescribed by an Act of Parliament.”.

- (c) by deleting subsection 7 and substituting the following:

“(7) A member of the Electoral Commission shall hold office for a term of not more than five years as specified in his or hers instrument of appointment.”.

Amendment of section 66A: Powers, duties and functions of the Independent Electoral Commission

13. The Constitution is amended in section 66A (1) -

- (a) in paragraph (i) by deleting “and”;
- (b) in paragraph (j) by deleting the “full stop” and substituting a “semi-colon”; and
- (c) by inserting the following paragraph after paragraph (i):

“(j) to submit, annually, audited financial reports and statements on the income and expenditure and report on its activities to Parliament.”.

Amendment of section 67: Constituencies

14. The Constitution is amended in Section 67(2) in the proviso, by deleting “a quota of ten percent” and substituting “twenty-five percent.”.

Amendment of section 70: Legislative Authority of Lesotho

15. (1) The Constitution is amended by deleting section 70 and substituting the following section:

“Legislative authority of Lesotho

70 (1) The Legislative authority of Lesotho is vested in Parliament and shall be exercised in a manner that protects the Constitution and promotes democratic governance.

(2) No person or body except Parliament shall have the power to enact legislation or make provisions having a force of law except as conferred by this Constitution or an Act of Parliament.

(3) Nothing in subsection (1) shall be construed as preventing Parliament from conferring on any person or authority the power to make regulations, rules, by-laws or orders or any other instrument having legislative effect as parliament may determine.

(4) Parliament shall for purposes of accountability and ensuring equitable distribution of resources amongst the people of Lesotho -

- (a) oversee the general performance of the executive and judiciary its organs in the discharge of their respective responsibilities under the constitution and any other law enacted by Parliament;
- (b) appropriate funds for expenditure by Government Ministries, Departments, State Institutions, Local Authorities and any other organ of State or body that Parliament may consider necessary to appropriate funds for;
- (c) exercise oversight over public expenditure, special expenditure, constitutional and defence matters; and
- (d) approve international agreement and treaties before they are acceded to or ratified.”.

Amendment of section 83: Dissolution and Prorogation of Parliament

16. The Constitution of Lesotho is amended by deleting section 83 and substituting the following section:

“Dissolution

83. (1) The term of Parliament shall be five years from the date when the two Houses of Parliament first meet after a general election and shall end on the date that Parliament is dissolved.

(2) Notwithstanding subsection (1), the King may, acting on the advice of the Council of State, dissolve Parliament before the end of the five-year term, where -

- (a) three years have passed since Parliament first met after elections, and the National Assembly has passed a resolution to dissolve Parliament with a supporting vote of no less than two-thirds majority of its members; or
- (b) the office of the Prime Minister is vacant and the King, acting on the advice of the Council of State, considers that there is no prospect of him being able, within sixty days, to find a person who is the leader of a political party or coalition of political parties that will command the support of a majority of the members of the National Assembly.”.

Insertion of new sections 83A: Prorogation, 83B: Resolution of vote of no confidence 83C: Caretaker Government

17. The Constitution is amended by inserting the following sections after section 83 -

“Prorogation

83A. (1) The session of Parliament shall be thirty months, and Parliament shall thereafter be prorogued by the King acting on the advice

of the Prime Minister.

(2) The Prime Minister may, at any time before the end of the session, recommend prorogation of Parliament to the King for a period not exceeding fourteen days.

(3) Where the Prime Minister intends to recommend to the King to prorogue Parliament for a period exceeding fourteen days, the Prime Minister shall seek the approval of Parliament before making such a recommendation, and such prorogation shall not exceed sixty days.

Resolution of vote of no confidence

83B. (1) The National Assembly may, at any time, pass a resolution of vote of no confidence in the Government of Lesotho.

(2) The resolution of vote of no confidence in the Government of Lesotho passed pursuant to subsection (1) shall -

- (a) be supported by a resolution of two-thirds majority of the members of the National Assembly; and
- (b) propose a name of a member of the National Assembly, who shall be appointed by the King to take the place of the Prime Minister.

(3) Where the resolution of vote of no confidence is passed, the Prime Minister shall immediately cease to hold office.

(4) A resolution of vote of no confidence shall not be introduced more than once in the same session.

Caretaker Government

83C. (1) There shall be a caretaker government immediately after the dissolution of Parliament and the person who held the office of Prime Minister and his or her Cabinet immediately before dissolution, shall continue as a caretaker government until a new Prime Minister and cabinet is appointed in terms of this Constitution.

-
- (2) The caretaker government shall not -
- (a) implement any major policy initiatives;
 - (b) make appointments of major significance; or
 - (c) enter into major contracts, agreements or undertakings.

(3) Notwithstanding subsection (2), if it is in the national interest for the caretaker government to make any major policy decision, the head of the caretaker Government shall consult with the Council of State.”.

Amendment of section 85: Alteration of Constitution

18. The Constitution is amended in section 85 -

- (a) by deleting subsection (1) and substituting the following subsection:

“(1) Subject to the provisions of this section, Parliament may amend or repeal the Constitution by introducing a Bill expressly providing that the Constitution may be amended or repealed.”;

- (b) by inserting the following subsections after subsection (1):

“(1A) A Bill to repeal this Constitution shall only be introduced at a joint sitting of the Senate and National Assembly summoned specifically for the repeal of the Constitution.

(1B) A Bill under subsection (1A) shall not be introduced, unless the Bill has been published in the Gazette not less than thirty days before the introduction at the joint sitting of Senate and National Assembly.

(1C) After the Bill has been introduced at the joint sitting of Senate and National Assembly, no further

proceedings shall be taken on the Bill in Parliament until the period prescribed in subsection (1B) has lapsed.

(1D) After the period of thirty days has lapsed, at the joint sitting of Senate and National Assembly shall pass the Bill.

(1E) A Bill passed by joint sitting of Senate and National Assembly under subsection (1D) shall be subjected to a referendum by the Parliament.

(1F) If after a prescribed period, the Bill is passed at a referendum with the requisite majority, the Bill shall be submitted to the King for Royal Assent.”.

Insertion of new sections 87A - 87B

19. The Constitution is amended by inserting the following sections after section 87:

“Tenure of office of Prime Minister

87A. A person shall not hold office as Prime Minister for more than two terms for a cumulative period not exceeding ten years.

Formation of Coalition Government

87B. (1) If, after the holding of a general election of members of the National Assembly, it appears that there is no leader of a political party that has won an absolute majority of seats in the National Assembly to form a government, any party with seats in the National Assembly shall have a right to attempt to negotiate formation of a coalition government with other political parties.

(2) The political parties that have successfully negotiated formation of a coalition government shall enter into a written coalition government agreement which shall be binding on the parties.

(3) Where, after twenty-one working days a government cannot be formed under subsection (1), the leader of the political party

with the second highest number of seats -

- (a) shall be given an opportunity to form a government within a period of twenty-one working days; and
- (b) if he or she has not succeeded to negotiate a coalition, the leader of the political party with the third highest number of seats shall be given an opportunity, within a period of twenty-one working days, to negotiate formation of a coalition government.

(4) If there is no political party that is able to negotiate a coalition to form a government in terms of this section, the King shall prorogue Parliament for not more than sixty days.

(5) Where a political party succeeds to negotiate a coalition to form a government in terms of this section, the Speaker of the National Assembly shall submit, within two days of the formation of the coalition government, the name of the member who commands the support of the majority of members of the National Assembly.

(6) An Act of Parliament may provide for the regulation of coalition government.”.

Amendment of section 96: Principal Secretaries

20. The Constitution is amended by deleting section 96 and substituting the following:

“Government Secretary

96. (1) There shall be a Government Secretary whose office shall be an office in the public service.

(2) The Government Secretary shall -

- (a) be appointed by the Prime Minister from a short list of three names recommended by the Parliament through a transparent, merit-based, fair, and competitive process

as may be set out in an Act of Parliament;

- (b) be employed for an initial period of five years which may be renewed for a further period of five years upon satisfactory performance of duties; and
- (c) be the head of the civil service.”.

Amendment of section 97: Government Secretary

21. The Constitution is amended by deleting section 97 and substituting the following:

“Principal Secretaries

97. (1) A Principal Secretary, whose office shall be an office in the public service, shall be responsible for the supervision of a Government Ministry, where a Minister has been charged with responsibility to exercise general direction and control over the Ministry.

- (2) A Principal Secretary shall -
 - (a) be appointed by the Prime Minister from a short list of three names recommended by the Public Service Commission through a transparent, merit-based, fair and competitive process as may be set out in an Act of Parliament;
 - (b) be the Chief Accounting Officer of the relevant Ministry;
 - (c) be employed for an initial period of three years which may be renewed for another three years upon satisfactory performance of duties;
 - (d) be subject to the general direction and control of the Government Secretary, exercise administrative and functional supervision over the department to which he or she is allocated; and

-
- (e) be under the general supervision of the Minister responsible for the Ministry to which the Principal Secretary is allocated.

Amendment of section 105: National Planning Board

22. The Constitution is amended by repealing section 105 and substituting the following:

“Establishment of the National Development Planning Commission

105. (1) There shall be established a National Development Planning Commission which shall be an apex body responsible for formulating strategic development frameworks, policies, and related matters;

(2) The National Development Planning Commission shall report to the Prime Minister.

(3) In execution of its functions the National Development Planning Commission shall take into account -

- (a) the provisions stipulated under Chapter 3 of this Constitution; and
- (b) shall not be subject to the direction or control of any person or authority.

(4) An Act of Parliament shall make provision for -

- (a) the powers and functions of the national development commission; and
- (b) a Secretariat to assist the National Development Planning Commission in exercising its powers and carrying out its functions.”.

Insertion of new sections 105A- 105G

23. The Constitution is amended by inserting the following new sections

after section 105:

Composition of the National Development Planning Commission

105A. (1) The National Development Planning Commission shall consist of the following nine members with qualifications and experience in social and economic matters.

- (a) Chairperson and the Deputy Chairperson recommended by the Prime Minister;
- (b) one person designated by the King on the advice of Council of State;
- (c) one person recommended by the Prime Minister;
- (d) one person representative of local government authorities recommended by the Minister responsible for local government;
- (e) one representative of the business sector recommended by the Minister responsible for trade;
- (f) one representative of the agricultural sector recommended by the Minister responsible for Agriculture;
- (g) one representative of the civil society recommended by the Minister responsible for Development Planning;
- (h) the designated Director General who shall be a member with no voting powers;
- (i) the designated head of Legal Affairs in the Secretariat who shall be the Secretary to the National Development Planning Commission; and

- (j) an economic specialist.

Appointment of members of the National Development Planning Commission

105B. The members of National Development Planning Commission shall be appointed in terms of section 152A.

Tenure of Office

105C. (1) The Chairperson and the Deputy Chairperson shall be appointed on a part-time basis for a term of five years, which may be renewable once for a further period of five years, upon satisfactory performance.

(2) Commissioners, shall be appointed on a part-time basis, for a period of four years, which may be renewable once for a further period of four years upon satisfactory performance.

Removal of Commissioners:

105E. (1) A Commissioner may be removed from office in terms of section 152B.

Secretariat of the Commission -

105F (1) There shall be a Secretariat of the Commission to assist in the carrying out of its functions in terms of this Constitution.

(2) Parliament shall make provision for functions in the Ministry of Development Planning to be incorporated into the Secretariat.

105G Parliament may make provision to give effect to provisions of Section 105.”.

Amendment of section 106: Local Authorities

24. The Constitution is amended by deleting section 106 and substituting the following:

“CHAPTER VIIIA - LOCAL AUTHORITIES

Tiers of Government

106. (1) The Government of Lesotho consists of the national government and the local government.

(2) The national government shall have oversight powers over local government and shall intervene where the local government fails to perform its functions under this Constitution and any other Laws.

(3) The local government comprises of councils established at district, municipal and city levels, and any other level that may be constituted by an Act of Parliament.

(4) A district shall comprise of community, urban and any other type of council as may be constituted by an Act of Parliament.”.

Insertion of new sections 106A – 106C

25. The Constitution is amended by inserting the following new sections after section 106:

“Devolution

106A. (1) Local government in Lesotho shall be anchored on devolution that establishes councils with autonomy and executive powers over functions they perform.

(2) Cooperation between tiers of government is based on the following principles:

- (a) a local government shall have reliable resources and have powers to generate its own revenue that will enable it to govern and deliver services effectively;
- (b) all tiers shall co-operate to -
 - (i) preserve the peace, national unity and

prosperity of Lesotho;

- (ii) secure the well-being of the people of Lesotho;
- (iii) provide effective, transparent, accountable and coherent government in Lesotho; and
- (iv) amicably resolve conflicts that may arise between tiers of government.

(3) A tier of government shall not exercise any power or function except a power or function conferred on it in terms of this Constitution.

(4) A tier of government shall exercise its powers and perform its functions in a manner that does not violate the geographical, functional or institutional integrity of government at another level.

(5) Organs of national government shall have a duty to support the local governments.

Representation of Chieftainship in the local governments

106B. (1) Chiefs shall be represented in the local governments.

(2) An Act of Parliament shall determine the composition and categories of chiefs nominated into the Councils.

Finances of local governments

106C. The Parliament shall, from the Consolidated Fund, allocate to the local government an annual budget prescribed by an Act Parliament.

Amendment of Chapter X – Finance

26. The Constitution is amended by deleting Chapter X and substituting the following:

“CHAPTER X: FINANCE

The Consolidated Fund

110. There is continued in existence the Consolidated Fund into which all revenues or other moneys raised or received for the purposes of the Government of Lesotho shall be paid, except money that:

- (a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose; or
- (b) may, under an Act of Parliament, be retained by a state organ that received it for the purpose of defraying the expenses of the state organ.

Withdrawals from the Consolidated Fund and other public funds

111. (1) Moneys may be withdrawn from the Consolidated Fund only:

- (a) in accordance with an appropriation by an Act of Parliament; or
- (b) as a charge against the Fund as authorised by the Constitution or an Act of Parliament.

(2) Moneys shall not be received into, or withdrawn from, any public fund other than the Consolidated Fund unless the receipt or withdrawal of the moneys has been authorised by an Act of Parliament.

(3) Parliament may prescribe the manner in which -

- (a) receipts shall be channeled into; or
- (b) withdrawals may be made from, the Consolidated Fund or any other public fund.

(4) The investment of moneys forming part of -

-
- (a) the Consolidated Fund; or
 - (b) other public funds,

shall be made in such a manner as may be prescribed by this Constitution or under an Act of Parliament.

(5) Notwithstanding the provisions of subsection (2), provision may be made by or under an Act of Parliament authorising withdrawals to be made from the Consolidated Fund, in such circumstances and to such extent as may be prescribed by or under an Act of Parliament, for the purpose of making repayable advances.

Authorisation of expenditure from the Consolidated Fund by appropriation

112. (1) The Minister responsible for finance shall cause to be prepared and laid before the Parliament in each financial year, estimates of the revenue and expenditure of Lesotho for the next financial year for approval.

(2) When the estimates of expenditure, other than expenditure charged upon the Consolidated Fund by this Constitution or by any Act of Parliament, have been approved by Parliament, a Bill, to be known as an Appropriation Bill, shall be introduced to Parliament, providing for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums, under separate votes for the several heads of expenditure approved, to the purposes specified therein.

- (3) If in respect of any financial year it is found -
 - (a) that the amount appropriated by the Appropriation Act to any purpose is insufficient or that a need has arisen for expenditure for a purpose to which no amount has been appropriated by that Act; or
 - (b) that any moneys have been expended for any purpose in excess of the amount appropriated to

that purpose by the Appropriation Act or for a purpose to which no amount has been appropriated by that Act a supplementary estimate or, as the case may be, a statement of excess showing the sums required or spent shall be laid before the Parliament and, when the supplementary estimate or statement of excess has been approved by Parliament, a supplementary Appropriation Bill shall be introduced in the Parliament, providing for the issue of such sums from the Consolidated Fund and appropriating them to the purposes specified therein.

Authorisation of expenditure in advance of appropriation

113. Parliament may make provision under which, if it appears to the Minister responsible for finance that the Appropriation Act for any financial year will not come into operation by the beginning of that financial year, he or she may authorise the withdrawal from the Consolidated Fund of moneys for the purpose of meeting expenditure necessary to carry on the Government of Lesotho in respect of the period commencing with the beginning of that financial year and expiring three months thereafter or on the coming into operation of the Act, whichever is the earlier:

Provided that -

- (a) the moneys so authorised to be withdrawn in advance of the Appropriation Act for any financial year shall not exceed in total one-third of the sums included in the estimates of expenditure for the preceding financial year approved by Parliament;
- (b) no sums shall be so authorised to be withdrawn to meet expenditure on any head of expenditure in that financial year if no sums had been voted to meet expenditure on that head of expenditure in respect of the preceding financial year;

- (c) any moneys so withdrawn shall be included, under separate votes for the several heads of expenditure in respect of which they were withdrawn, in the Appropriation Act.

Contingencies Fund

114. (1) Parliament may make provision for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, supplementary estimates shall be prepared, and a supplementary Appropriation Bill shall be introduced as soon as possible for the purpose of replacing the amount so advanced.

(3) The use of the Contingencies Fund shall be regulated by an Act of Parliament.

Remuneration of certain officers

115. There shall be paid to the holders of the offices specified in Schedule 4, such salaries and allowances as may be prescribed in an Act of Parliament.

Public debt

116. (1) The following conditions shall be met before the government can conclude any agreement which could have an impact on the country's sovereign debt position:

- (a) proposed project shall emanate from the Minister responsible for the project;
- (b) proposed borrowing shall emanate from the Minister responsible for finance in the instance of budget support;

- (c) a project for which a loan is being proposed shall be assessed by the National Development Planning Commission for feasibility, viability, and compliance with the set national objectives;
- (d) a proposed loan shall be forwarded to the Cabinet for recommendation to Parliament by the Minister responsible for finance, following a report on the status of funds by the Accountant General;
- (e) a proposed borrowing, in the case of a borrowing which is outside the borrowing ceiling, shall be submitted by the Minister responsible for finance to, and approved by Parliament;
- (f) a proposed loan shall be reported to Parliament; and
- (g) an approved loan shall be signed only by the Minister responsible for finance.

(2) An Act of Parliament shall prescribe a minimum amount of a loan to be approved by or reported to Parliament.

(3) Other conditions for the public debt not referred to in this section shall be regulated by an Act of Parliament.

Auditor-General

117. (1) There shall be an Auditor-General who shall be appointed in terms of section 152A.

(2) The Auditor-General shall be -

- (a) the head of the Office of the Auditor-General;
- (b) the supreme audit authority on public finance;
- (c) independent and free from interference from any

person or any authority and subject only to this Constitution and any other law; and

(d) impartial and operate without fear, favour or prejudice;

(3) The Auditor-General shall be accountable to Parliament.

(4) Additional functions and general administration of the office of Auditor General shall be as prescribed by an Act of Parliament.”.

Insertion of new sections 117A – 117E

27. The Constitution is amended by inserting the following sections after section 117:

“Functions of the Auditor-General

117A. The Auditor- General shall, within twelve months after the end of each financial year, audit and report, in respect of each financial year, on -

- (a) the accounts of -
 - (i) the national government;
 - (ii) local authorities;
 - (iii) the judiciary;
 - (iv) the Commissions, authorities and independent offices established under this Constitution or any other law;
 - (v) the National Assembly and Senate;
 - (vi) political parties funded from public funds;

- (vii) any entity funded from public funds; and
 - (viii) any entity that legislation requires the Auditor-General to audit;
- (b) the public debt.

Tenure of office

117B. The term of office of the Auditor-General shall be five years.

Removal from office

117C. (1) The Auditor-General shall be removed from office in terms of section 152B.

Establishment of the Central Bank of Lesotho

117D. (1) There shall be the Central Bank of Lesotho, which shall -

- (a) be a body corporate with perpetual succession;
- (b) be capable of suing and being sued in its corporate name; and
- (c) have powers to hold or dispose of property in the exercise of its functions under this Constitution or an Act of Parliament.

(2) The appointments, powers, functions of the governing body of the Central Bank shall be as prescribed by an Act of Parliament.

Salaries and Remunerations Commission

117E. (1) There shall be a Salaries and Remunerations Commission which shall be answerable to Parliament.

(2) The powers and functions of the Salaries and Remunerations Commission shall be to determine, review, harmonize, payment and benefit thresholds for -

-
- (a) all officers and persons whose salaries and benefits are drawn from the Consolidated Fund, except for members of the Salaries and Remunerations Commission;
 - (b) members of Parliament and Members of the Executive arm of Government;
 - (c) all statutory positions holders specified under section 115(1) of the Constitution; and
 - (d) all Boards, councils, and advisory bodies of parastatals, state owned enterprises and government agencies.
- (3) Salaries and benefits of the Members of the Salaries and Remuneration Commission shall be determined by the Minister responsible for Finance with the approval of Parliament.
- (4) The Salaries and Remunerations Commission shall consist of -
- (a) the Chairperson, Deputy Chairperson who shall be appointed in terms of section 152A (2);
 - (b) one other Member appointed on an ad hoc basis by the King on the advice of the Council of State acting on the recommendation of Public Service Commission following a fair, merit-based, transparent and competitive process which shall be specified in an Act of Parliament; and
 - (c) three ex-officio members, each nominated from the following institutions, who shall have no voting rights:
 - (i) The Central Bank of Lesotho;
 - (ii) National Development Planning Commission; and

(iii) Office of the Accountant General.

(5) The Ministry of Public Service shall provide the Secretariat to the Commission from its own personnel as may be required by the Commission.

(6) An Act of Parliament shall provide any other functions or matter that may be determined.”.

Amendment of Chapter XI: The Judicature

28. The Constitution is amended by deleting Chapter XI and substituting the following:

“CHAPTER XI: THE JUDICATURE PART 1: GENERAL

Judicial authority and guiding principles

118. (1) The judicial authority of Lesotho shall be vested in the court of Lesotho.

(2) The courts shall, in exercising judicial authority under this Constitution, be guided by the principles prescribed in an Act of Parliament.

Independence of the Judiciary

119. (1) The judiciary shall be functionally, administratively and financially independent of Parliament and Executive branches of Government in executing its mandate under this Constitution.

(2) The judiciary shall be subject only to this Constitution and an Act of Parliament and shall function impartially and without any pressure, influence and political interference from any person or authority.

(3) The independence, impartiality and effectiveness of the courts are central to the rule of law and democratic governance and, the Government or any institution or agency of the Government, at any level,

including any other person, may not interfere with the functioning of the courts or threaten judges and other judicial officers and staff of the judiciary.

(4) An organ of Government shall not, directly or indirectly, engage in any activity that has the effect of coercing, hindering, frustrating or impeding, the judiciary in the discharge of its functions.

(5) An order or decision of a court or judicial tribunal shall bind all parliamentary and executive governmental institutions and agencies and all persons to which it applies, and shall be obeyed by all.

(6) An organ of Government, through legislative and other measures, shall assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

(7) The Chief Justice shall be the head of the Judiciary and shall exercise responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts.

Structure of Judiciary

120. The Judiciary consists of the following:

- (a) the Supreme Court;
- (b) the High Court;
- (c) the Court Martial Appeal Court;
- (d) Subordinate Courts;
- (e) Courts - martial; and
- (f) such other specialist courts and tribunals as may be established by an Act of Parliament.

Resources of the Judiciary

121. (1) The allocation of the budget appropriations contemplated in section 112 to the Judiciary shall be fixed at a percentage as may be prescribed by an Act of Parliament.

(2) The Judiciary shall be self-accounting and its finances shall be subject to the law regulating public financial management and accountability.

(3) The budget of the Judiciary shall, after its approval be charged on the Consolidated Fund.

(4) The Judiciary may receive funds donated, contributed or granted from whatever lawful source.

Oath of Office

122. A judge shall, upon assuming his or her office and carrying out the duties of the office under this Constitution, take and subscribe to an Oath of Office as may be prescribed by an Act of Parliament.

Age of retirement

123. (1) The age of compulsory retirement from office shall be the age of seventy years.

(2) Notwithstanding subsection (1), a person may be appointed as a Judge for a period of three years after the retirement age as may be prescribed by an Act of Parliament.

PART 2: THE SUPREME COURT

Establishment of the Supreme Court

124. (1) There is established the Supreme Court, which shall be a superior court of record and shall have jurisdiction and powers conferred on it by this Constitution or any other law.

(2) The Judges of the Supreme Court shall be -

- (a) the Chief Justice;
- (b) the Deputy Chief Justice; and
- (c) not less than five other Judges.

(3) The Supreme Court may, in accordance with any directions issued by the Chief Justice, sit anywhere in Lesotho to dispose of any matter.

Appointment, qualification for appointment of Chief Justice and Judges of the Supreme Court

125. (1) There shall be the Chief Justice and Deputy Chief Justice who shall be appointed in accordance with section 152A (2).

(2) Other Judges of the Supreme Court shall be appointed by the Judicial Service Commission.

(3) A person shall not be qualified to be appointed as Chief Justice, Deputy Chief Justice or Judge of the Supreme Court, unless the person -

- (a) is an indigenous Mosotho in the case of a Chief Justice and Deputy Chief Justice;
- (b) is or has been a judge of the High Court for not less than ten years; or
- (c) is a Senior Counsel who has practiced in the superior courts for a cumulative period of not less than ten years.

(4) Where the office of Chief Justice is vacant or the Chief Justice is, for any reason, unable to perform the functions of his or her office, such functions shall be performed by the Deputy Chief Justice.

Acting appointments

126. (1) If a Judge of the Supreme Court is for any reason unable to perform the functions of his or her office, or if the Chief Justice

advises the King that the state of business in the Supreme Court so requires, the King, acting in accordance with the advice of the Chief Justice, upon the recommendation of the Judicial Service Commission, may appoint a serving or a retired Judge of the High Court or a Judge of the Supreme Court to be appointed and act as a Judge of Supreme Court.

(2) Any person appointed to act as a Judge of the Supreme Court shall act for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the King, acting in accordance with the advice of the Chief Justice.

(3) Where an appointment of a person acting as a judge of the Supreme Court expires or is revoked by the King pursuant to subsection (2), the person may continue to act as a judge of the Supreme Court for as long as it is necessary to enable him or her to complete any outstanding judicial business that he or she was handling at the material time.

Appointment of ad hoc Judges

127. (1) If at any time there is no quorum of the Judges of the Supreme Court available to transact any judicial business of the Supreme Court, the Chief Justice may, after consultation with the Judge President of the High Court, request, in writing, the attendance at the sittings of the Supreme Court of Judges of the High Court duly qualified for appointment as ad hoc Judges of the Supreme Court.

(2) It shall be the duty of the requested Judges, in priority to other duties of their office, to attend the sittings of the Supreme Court at the time and for the period for which their attendance is required, and while so attending, they shall have all the jurisdiction, powers and privileges and duties of Judges of the Supreme Court.

Functions of the Chief Justice

128. (1) The Chief Justice shall be the head of the Judiciary and shall be responsible for the overall administration of the Judiciary.

(2) The Chief Justice shall discharge such judicial functions as may be prescribed by an Act of Parliament.

Tenure of office of Chief Justice, Deputy Chief Justice and other Judges of the Supreme Court

129. Subject to the provisions of this section, a person holding the office of Chief Justice, Deputy Chief Justice or any other judge of the Supreme Court shall vacate the office when he or she attains the age of seventy years or after serving for a term of ten years in case of a Chief Justice and Deputy Chief Justice whichever comes first.

Jurisdiction of the Supreme Court

130. (1) The Supreme Court shall be the final court of appeal and have general jurisdiction with regard to appeals from decisions of the various divisions of the High Court in the following cases:

- (a) the final decisions in any civil or criminal proceedings;
- (b) the final decisions on the determination of questions of interpretation and alteration of the Constitution;
- (c) decisions made on a reference to the High Court under section 137 of this Constitution; or
- (d) any other decision as may be prescribed by an Act of Parliament.

(2) Notwithstanding anything contained in this Constitution, the Supreme Court shall, to the exclusion of the High Court or any other court, have jurisdiction to determine questions relating to:

- (a) the succession to the office of King;
- (b) the designation of a Regent;
- (c) the vacation of the office of King;
- (d) the appointment and removal of the Prime

Minister;

- (e) the appointment and removal of judges; and
- (f) the prorogation and dissolution of Parliament.

(3) Where circumstance so require, access to the Supreme Court shall be direct and an Act of Parliament may prescribe circumstances under which access to the Supreme Court can be direct.

(4) The Supreme Court shall, when hearing a matter, other than an interlocutory matter, sit as a panel of a minimum of five judges.

Ancillary powers of the Supreme Court

131. Parliament may confer, upon the Supreme Court, such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Supreme Court more effective exercise of its jurisdiction under this Constitution.

Removal of Supreme Court Judges

132. (1) The Chief Justice, Deputy Chief Justice and Judges of the Supreme Court may be removed from office for incompetence or inability to perform the functions of his or her office, arising from infirmity of body or mind and for serious violation of the judicial code of conduct and shall not be so removed except in accordance with the provisions of this section.

(2) The Chief Justice, Deputy Chief Justice and other Judges of the Supreme Court shall be removed from office by the King acting in accordance with the advice of the Council of State upon the recommendation of Judicial Service Commission.

(3) If the Judicial Service Commission receives a complaint of inability to perform the functions due to infirmity of body or mind or serious violation of the judicial code of conduct, the Judicial Service Commission shall appoint a tribunal, which shall consist of a chairman and not less than two other members selected by the Judicial Service

Commission from among persons who hold or have held high judicial office.

(4) The tribunal shall inquire into the matter and report on the findings of the inquiry to the Judicial Service Commission and advise the Judicial Service Commission on what action to take.

(5) If the question of removing a judge of the Supreme Court has been referred to the tribunal under this section, the King, acting in accordance with the advice of the Council of State and upon the recommendation of the Judicial Service Commission, may suspend the judge from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the King acting in accordance with such advice as aforesaid and shall in any case cease to have effect if the tribunal has recommended that the Judge should not be removed.

PART 3: THE HIGH COURT

Establishment of High Court

133. (1) There shall be a High Court.

(2) The Judges of the High Court shall be the Judge President, the Deputy Judge President and such number of other Judges as may be appointed.

(3) The High Court shall be a superior court of record with power to commit for contempt of itself as well as all the inherent powers of such a court.

(4) The High Court shall sit in such places in Lesotho as the Judge President may appoint.”.

Insertion of new sections 133A – 133I

29. The Constitution is amended by inserting the following new sections after section 133:

“Jurisdiction of the High Court

- 133A. (1) The High Court shall have the following jurisdiction:
- (a) unlimited and original jurisdiction to hear and determine criminal and civil proceedings;
 - (b) to determine questions in respect of right of access guaranteed by section 17 of this Constitution;
 - (c) to determine questions of violation of fundamental rights and freedoms under Chapter II of this Constitution;
 - (d) hear references by subordinate courts and Parliament s of questions involving the interpretation of this Constitution;
 - (e) save for the appeals from the Court-martial, to hear appeals from Subordinate Courts;
 - (f) to review judgments, orders or proceedings of any subordinate or inferior court, court-martial, tribunal, board or officer and exercise judicial, quasi-judicial or public administrative functions conferred by law; and
 - (g) any other matter as may be prescribed by an Act of Parliament.
- (2) The High Court shall have further jurisdiction and powers conferred by any other provision of this Constitution or an Act of Parliament.

Appointment of Judges of High Court

- 133B. (1) The Judge President, Deputy Judge President and Judges of the High Court shall be appointed by the King acting on the advice of the Judicial Service Commission through a fair, transparent,

competitive and merit-based process.

(2) A person shall not be qualified to be appointed under subsection (1), unless the person -

- (a) is an indigenous Mosotho, in the case of a Judge President and Deputy Judge President;
- (b) is or has been a judge of the High Court for not less than ten years; or
- (c) is a senior counsel who has practiced in the superior courts for a cumulative period of not less than ten years.

(3) In subsection (2) “the specified qualifications” means the professional qualifications specified by the Legal Practitioners Act, 1983, or by or under any law amending or replacing that Act.

(4) If the office of Judge President is vacant or the Judge President is for any reason unable to exercise the functions of his or her office, the Deputy Judge President shall exercise the powers and perform the functions of the office of Judge President.

(5) If for any reason a judge is unable to perform the functions of his or her office or if the Chief Justice advises the King that the state of business in the High Court so requires, the King, acting in accordance with the advice of the Chief Justice upon the recommendation of the Judicial Service Commission, may appoint a person who is qualified to be appointed as a judge of the High Court to act as a judge.

(6) Any person appointed under subsection (5) to act as a judge shall continue to act as judge for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the King, acting in accordance with the advice of the Judicial Service Commission.

(7) Notwithstanding this Section, a person whose appointment has expired or revoked under subsection may thereafter continue to act as a judge for so long as is necessary to enable him or her to deliver judg-

ment or to finish any outstanding judicial business that he or she was handling at the material time.

Functions of the Judge President of the High Court

133C. (1) The Judge President shall be responsible for the administration of the High Court, subject to the direction of the Chief Justice.

(2) The powers and functions of the Judge President shall be prescribed by an Act of Parliament.

Tenure of office of Judge President, Deputy Judge President, and Judges of High Court

133D. (1) A person holding the office of Judge President, Deputy President or judge of the High Court shall vacate office when he or she attains the age of seventy years or after serving for a term of ten years in case of a Judge President and a Deputy Judge President, whichever comes first.

(2) The Judge President, Deputy Judge President or judge of the High Court may be removed from office for incompetency and inability to perform the functions of his or her office due to infirmity of body or mind or for serious violation of the judicial code of conduct, and shall not be so removed except in accordance with the provisions of this section.

(3) The Judge President, Deputy Judge President or Judge of the High Court shall be removed from office by the King acting on the advice of the Judicial Service Commission if the question of his or her removal has been referred to the tribunal appointed under subsection (5) and the tribunal has recommended to the Judicial Service Commission that the Judge ought to be removed.

(4) If the Judicial Service Commission receives a complaint of inability to perform the functions of an office or serious violation of the judicial code of conduct, then -

(a) the Judicial Service Commission shall appoint a tribunal which shall consist of a Chairman and

not less than two other members, selected from among persons who hold or have held high judicial office; and

- (b) the tribunal shall enquire into the matter and report on the findings thereof to the Judicial Service Commission and advise the Judicial Service Commission on what action to take.

(5) If the question of removing a judge of the High Court has been referred to the tribunal under this section, the King acting in accordance with the advice of the Council of State upon the recommendation of the Judicial Service Commission may suspend the judge from the exercise of the functions of his or her office and any such suspension may at any time be revoked by the King acting in accordance with such advice as aforesaid and shall in any case cease to have effect if the tribunal has recommended that the Judge should not be removed.

Reference to High Court in cases in subordinate courts etc. involving interpretation of Constitution

133E. (1) When any question as to the interpretation of this Constitution arises in any proceedings in any subordinate court or tribunal and the court or tribunal is of the opinion that the question involves a substantial question of law, the court or tribunal may, and shall, if any party to the proceedings so requests, refer the question to the High Court.

(2) Where any question is referred to the High Court in pursuance of this section, the High Court shall give its decision upon the question and the court or tribunal in which the question arose from shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal under section 128 in accordance with the decision of the Supreme Court.

PART 4: COURT MARTIAL APPEALS COURT

Establishment of the Court Martial Appeals Court

133F. (1) There is established a Court Martial Appeals Court as a

superior court of record.

(2) The jurisdiction and powers of the Court Martial Appeals Court shall be to hear appeals from the Court Martial.

(3) The Court Martial Appeals Court shall consist of:

(a) a judge, who shall be an indigenous Mosotho and be its President;

(b) two retired senior officers of the Lesotho Defence Force, who possess legal experience and;

(c) a person of high moral integrity.

(4) Members referred to in subsection (3) shall be appointed by the King acting on the advice of the Judicial Service Commission.

(5) Members referred to in subsection (3) (b) and (c) shall be below seventy years of age.

(6) The President and members of the Court Martial Appeals Court may be removed from office for incompetence, inability to perform the functions of his or her office, arising from infirmity of body or mind or any other ground as may be prescribed by an Act of Parliament.

(7) The power to remove the President or members of the Court Martial Appeals Court shall vest in the King acting on the advice of the Judicial Service Commission.

PART 5: SUBORDINATE COURTS

Establishment of the Subordinate Courts

133G. (1) There is established such Subordinate Courts as may be prescribed by an Act of Parliament.

(2) Subordinate Courts shall possess such jurisdiction, qualification for appointment and removal as may be prescribed by an Act of Parlia-

ment.

(3) Parliament may establish specialist courts and Parliament subject to the provisions of this Constitution, in consultation with the Chief Justice, which shall have such jurisdiction and powers as may be conferred on it by or under an Act of Parliament.

PART 6: JUDICIAL SERVICE COMMISSION

Judicial Service Commission

133H. (1) There shall be a Judicial Service Commission which shall promote, facilitate the independence and accountability of the Judiciary and the effective administration of justice.

- (2) The Judicial Service Commission shall consist of -
- (a) the Chief Justice, who shall be a Chairperson;
 - (b) the Judge President of the High Court, who shall be Deputy Chairperson;
 - (c) Judicial Commissioner;
 - (d) the Chief Magistrate;
 - (e) the Attorney-General;
 - (f) two senior legal practitioners, one advocate and one attorney, nominated by the Law Society of Lesotho;
 - (g) a senior Mosotho lecturer of law nominated by the faculty responsible for law at a local university;
 - (h) minister responsible for justice and law or his or her alternate designated by him;
 - (i) two representatives of civil society organizations

elected under the supervision of the Independent Electoral Commission;

- (j) one member of the Senate; and
- (k) four ordinary members of the National Assembly, two from the opposition and two from the Government.

(3) The Judicial Service Commission shall not be subject to the direction or control of any other person or authority in the exercise of its functions under this Constitution.

Procedure for appointments and functions of the Judicial Service Commission

133I. (1) The Judicial Service Commission shall promote and facilitate the independence and accountability of the Judiciary and the effective administration of justice.

(2) The Judicial Service Commission shall -

- (a) appoint judges, judicial officers and other staff of the judiciary through a merit-based, fair, transparent and competitive process;
- (b) promote, transfer and remove other judicial officers and staff of the Judiciary;
- (c) develop and adopt a judicial code of conduct for judges and other judicial officers;
- (d) review and make recommendations on the improvement of the conditions of service of -
 - (i) judges and other judicial officers; and
 - (ii) the staff of the Judiciary;
- (e) remove from office and discipline judges,

judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament; and

- (f) recommend to the Government on improvements on the efficiency of the administration of justice.

(3) An Act of Parliament may confer on the Judicial Service Commission functions in connection with the employment, conditions of service of persons employed in the Supreme Court, High Court, Court Martial Appeals Court, Subordinate Courts and other courts.

Amendment of section 134: The Ombudsman

30. The Constitution is amended by deleting section 134 and substituting the following:

“The Office of Public Protector

134. (1) There shall be the Office of Public Protector which shall be headed by the Public Protector.

(2) The Office of the Public Protector shall -

- (a) be autonomous and independent in executing its functions and exercising its powers under this Constitution or an Act of Parliament;
- (b) not be subject to the control of any person or authority in the execution of its functions and performance of its duties under this Constitution;
- (c) only be subject to this Constitution and an Act of Parliament in the discharge of its function.

(3) The Office of the Public Protector shall be composed of the Public Protector, Deputy Public Protector, and other staff of the Office as may be prescribed by an Act of Parliament.

(4) The Office of the Public Protector shall be impartial and exercise and perform its functions without fear, favour or prejudice.

(5) The Office of the Public Protector shall be accountable to Parliament.

(6) The decisions of the Office of the Public Protector shall be binding and acted upon by the party against whom action has been taken unless set aside by courts of law on review.

(7) The powers and functions of the office of the Public Protector shall be as prescribed by an Act of Parliament.

Amendment of section 135: Functions of Ombudsman

31. The Constitution is amended by deleting section 135 and substituting the following:

“Appointment

135. (1) There shall be a Public Protector who shall be appointed in accordance with section 152A.

(2) The qualifications of a Public Protector shall be as prescribed by an Act of Parliament.”.

Insertion of new sections: 135A – 135O

32. The Constitution is amended by inserting the following new sections after section 135:

“Limitations of powers of Public Protector

135A. The Public Protector shall not investigate a matter which is -

- (a) before the courts or has been decided upon;
- (b) related to an officer in the Parliamentary Service or Judicial Service;

-
- (c) involves the relations or dealings between the Government and foreign government or an international organization; and
 - (d) is criminal in nature.

Tenure of Office

135B. (1) The Public Protector shall hold office for a non-renewable term of eight years.

(2) Subject to the provisions of this section, the office of the Public Protector shall become vacant:

- (a) at the expiration of the eight years of the term of office;
- (b) if the Public Protector becomes -
 - (i) a public officer or resigns from office;
 - (ii) a member of either House of Parliament, a local authority, a candidate for election to Parliament, or an active member of a political party;
- (c) if any circumstances arise that, he or she were not to be a Public Protector, would cause him or her to be disqualified from appointment as provided in this section; or
- (d) if he or she dies.

(3) If the office of the Public Protector becomes vacant before the expiration of a term of office, whether by death, resignation or otherwise, the vacancy shall be filled in accordance with section 134A (1) of this Constitution.

Removal from office

135C. The Public Protector shall be removed from office in terms of section 152B.”.

Insertion of new chapter XIIA: The Human Rights Commission and Lesotho Anti-Corruption and Ethics Commission

33. The Constitution is amended by inserting the following chapter after Chapter XII:

“CHAPTER XIIA: THE HUMAN RIGHTS COMMISSION AND LESOTHO ANTI- CORRUPTION AND ETHICS COMMISSION**Part I - The Human Rights Commission****Establishment of the Human Rights Commission**

135D. (1) There is established a Human Rights Commission.

(2) The Human Rights Commission shall be independent and free from interference from any person or any authority and subject only to this Constitution and an Act of Parliament.

(3) The Human Rights Commission shall be impartial and shall exercise its powers and perform its functions without fear, favour, or prejudice.

(4) The Human Rights Commission shall be accountable to Parliament.

Composition and appointment of the Human Rights Commission

135E. (1) The Human Rights Commission shall consist of three members who shall be the Chairperson, and two members with expertise and experience in human rights.

(2) The composition of the Human Rights Commission shall, as far as possible, be representative of a broad cross-section of society such as women, people with disabilities, youth and other

marginalised groups.

(3) Members of the Human Rights Commission shall be appointed in terms of section 152A.

Functions of the Human Rights Commission

135F. The functions of the Human Rights Commission shall be to -

- (a) promote and protect human rights and freedoms;
- (b) monitor the state of human rights and freedoms throughout Lesotho;
- (c) investigate alleged human rights violations and take steps to secure appropriate redress where human rights have been violated;
- (d) promote and ensure the harmonisation of national legislation, regulations, and practices with the international human rights instruments to which Lesotho is a party, and their effective implementation;
- (e) monitor the implementation of international human rights conventions that Lesotho has ratified;
- (f) report on the performance of its functions to the Parliament at least once a year; and
- (g) perform such other functions as may be determined by an Act of Parliament.

Disqualification for appointment

135G. Disqualification for appointment for a member of the Human Rights Commission shall be as prescribed by an Act of Parliament.

Tenure of office

135H. (1) A member of the Human Rights Commission shall hold office for a non-renewable term of eight years.

(2) Subject to the provisions of this section, the office of a member of the Human Rights Commission shall become vacant -

- (a) at the expiration of eight years in case of the Chairperson and three years in the case of the other members;
- (b) if he or she becomes a public officer or resigns from office;
- (c) if he or she becomes a member of either House of Parliament, a local authority, a candidate for election to Parliament, or an officer of a political party;
- (d) if any circumstances arise that, if he or she were not a member of the Human Rights Commission, would cause him or her to be disqualified from appointment as provided in section 133D; or
- (e) if he or she dies.

(3) If the office of a member of the Human Rights Commission becomes vacant before the expiration of a term of office, whether by death, resignation or otherwise, the vacancy shall be filled in accordance with the manner in which the member was appointed.

(4) A member of the Human Rights Commission appointed under subsection (3) shall hold office for the remainder of the term of the vacating member of the Human Rights Commission.

Removal from office

135I. A Chairperson or any member of the Human Rights Commission shall be removed from office in terms of section 152B.

Part II - Lesotho Anti-Corruption and Ethics Commission

Establishment of the Anti-Corruption and Ethics Commission

135J. (1) There shall be the Directorate on Corruption and Economic Offences which shall be known as the Lesotho Anti-Corruption and Ethics Commission (in this Part to be called “the Commission”),

- (2) The Anti-Corruption and Ethics Commission shall be -
- (a) independent and free from interference from any person or any authority and subject only to this Constitution and an Act of Parliament;
 - (b) impartial and exercise its powers and perform its functions without fear, favour or prejudice; and
 - (c) accountable to Parliament.

Composition of the Anti-Corruption and Ethics Commission

135K. (1) The Anti-Corruption and Ethics Commission shall consist of a Chairperson and two other members who shall be appointed in terms of section 152A(1) but on part-time basis.

Functions of the Anti-Corruption and Ethics Commission

135L. The Anti-Corruption and Ethics Commission shall have the following functions:

- (a) to prevent, detect, investigate, arrest and prosecute cases of corruption, economic crimes, and related matters subject to section 99A (2);
- (b) to advise the Government and other institutions on measures to enhance integrity and accountability;
- (c) to employ staff including the Director-General;

- (d) receive complaints against the secretariat; and
- (e) issue codes of conducts;
- (f) to report on the performance of its functions to the Parliament at least once a year; and
- (g) to perform such other functions as may be prescribed by an Act of Parliament.

Disqualification for appointment

135M. Disqualification for appointment for a member of the Anti-Corruption and Ethics Commission shall be as prescribed by an Act of Parliament.

Tenure and vacancy of office of a member of the Anti-Corruption and Ethics Commission

135N. (1) A member shall hold office for a period of five years which may be renewable once for another period of five years based on good performance.

(2) Subject to the provisions of this section, the office of a member of the Anti-Corruption and Ethics Commission shall become vacant -

- (a) at the expiration of five years;
- (b) if he or she becomes -
 - (i) a public officer;
 - (ii) a member of either House of Parliament or a local authority
 - (iii) a candidate for election to Parliament; or
 - (iv) an officer of a political party;

-
- (c) if he or she resigns from office;
 - (d) if any circumstances arise that if he or she was not a member of the Anti-Corruption and Ethics Commission, would cause him or her to be disqualified from appointment as provided in section 133K; or
 - (e) if he or she dies.

(3) If the office of a member of the Anti-Corruption and Ethics Commission becomes vacant before the expiration of a term of office, whether by death, resignation or otherwise, the vacancy shall be filled in accordance with the way the member was appointed.

(4) A member appointed under subsection (2) shall hold office for the remainder of the term of the vacating member.

Removal from office

135O. A member of the Lesotho Anti-Corruption and Ethics Commission shall be removed from office in terms of section 152B.”.

Amendment of section 136: Public Service Commission

34. The Constitution is amended, by the deleting section 136 and substituting the following provisions:

“Establishment and appointment of the Public Service Commission

136 (1) There shall be a Public Service Commission, whose members shall be appointed in terms of section 152A.

(2) The Public Service Commission shall consist of the following five members:

- (a) a Chairperson; and
- (b) four other members,

who shall be appointed on a full-time basis.

(3) The powers and functions of the Public Service Commission shall be prescribed by an Act of Parliament.

(4) The Public Service Commission shall, in the exercise of its functions under this Constitution -

- (a) establish interdepartmental boards; and
- (b) undertake the process of recruitment of the Boards in different Parastatals in Lesotho through a transparent, merit-based, fair and competitive process,

as may be prescribed by an Act of Parliament.

(5) The Public Service Commission shall, in the exercise of its functions under this Constitution and any other law, not be subject to the direction or control of any person or authority, but is accountable to the Parliament.”.

Insertion of new sections: 136A – 136E

35. The Constitution is amended by inserting the following new sections after section 136:

“Qualification for appointment

136A. (1) A person shall be appointed as a member of the Public Service Commission if he or she -

- (a) is a person of high moral integrity;
- (b) does not take an active part in politics;
- (c) is above the age of fifty-four, and
- (d) must have requisite qualification, skills and experience.

Proceedings and procedure of the Public Service Commission

135B. (1) The decisions of the Public Service Commission shall not be affected by any defect in the membership of the Public Service Commission.

(2) Decisions of the Public Service Commission shall require the concurrence of a majority of its members.

(3) The Public Service Commission may regulate its procedures.

Tenure of office of members of the Public Service Commission

136C. (1) A member of the Public Service Commission shall hold office for a period of five years, which may be renewed for a further period of five years, upon satisfactory performance of his or her duties.

(2) The office of a member of the Public Service Commission shall become vacant -

- (a) at the expiration of five years from the date of his or her appointment;
- (b) if he or she becomes a public officer;
- (c) if he or she becomes a member of either House of Parliament or a local authority or a candidate for election to Parliament or a local authority, or an officer of a political party; or
- (d) on attainment of seventy-years of age.

Vacancy in the Public Service Commission

136D. (1) Where the office of the Chairperson of the Public Service Commission is vacant for any reason, the functions of such office shall be exercised by a member appointed by the King, acting on the advice of the Judicial Service Commission until the Chairperson or member assumes the functions of his or her office or resumes office.

(2) Where -

- (a) there are less than four members of the Public Service Commission besides the Chairperson; or
- (b) the Chairperson is unable to exercise the functions of his or her office for any reason,

the King, acting in accordance with the advice of the Judicial Service Commission, shall appoint persons who are qualified to be appointed as members of the Public Service Commission to fill the vacancies.

Removal from office

136E. A member of the Public Service Commission shall be removed from office in terms of section 152B.”

Amendment of sections 139 and 142

36. The Constitution is amended by deleting sections 139 and 142.

Amendment of sections 145 -149

37. The Constitution is amended by deleting sections 145, 146, 147, 148 and 149 and substituting the following:

“CHAPTER XIIIIB: NATIONAL SECURITY

National Security Agencies

145. (1) There shall be the National Security Agencies which shall consist of -

- (a) the Lesotho Defence Force;
- (b) the Lesotho Mounted Police Service;
- (c) the National Intelligence Service; and
- (d) the Lesotho Correctional Service, which shall be

the only lawful national security Agencies in Lesotho.

(2) The National Security Agencies shall be structured and regulated by Acts of Parliament.

(3) There shall be no other Security Agencies except those established under this Constitution.

(4) Parliament may make provision for the registration and operation of private security companies, which shall conform to national laws.

(5) Private military companies shall not be registered or allowed to operate in Lesotho.

(6) Parliament shall exercise oversight of the National Security Agencies as may be prescribed by an Act of Parliament.

(7) Principles and policies governing the National Security Agencies shall be as prescribed by an Act of Parliament.

(8) The recruitment, appointment, and promotion of candidates into the National Security Agencies shall be through a transparent, competitive, and impartial process based on merit and qualifications.

(9) Only an indigenous Lesotho citizen shall be eligible for recruitment into the National Security Agencies.

National Security Council

146. (1) There shall be a National Security Council which shall be the apex security structure responsible for the state of security in Lesotho.

(2) The National Security Council shall consist of -

(a) the Prime Minister who shall be the Chairperson;

- (b) the Deputy Prime Minister;
- (c) ministers responsible for defence, police, national intelligence, correctional, international relations and finance;
- (d) the Attorney General;
- (e) the Chief of Defence Staff;
- (f) the Chief of Lesotho Mounted Police Service;
- (g) the Director-General of National Intelligence Service;
- (h) the Chief of Lesotho Correctional Service; and
- (i) the Secretary to the Cabinet who shall be the Secretary to the National Security Council and shall record proceedings but shall neither participate nor vote in the meetings of the Council.

(3) The quorum of the National Security Council shall be fifty percent plus one, including the Chairperson and subject thereto the National Security Council may act notwithstanding any vacancy in its membership.

(4) Meetings of the National Security Council shall be summoned by the Prime Minister.

(5) The National Security Council may request any public officer or any other person holding or acting in any office established by or under this Constitution or any authority so established to assist it in the exercise of its functions (whether by way of attendance before the National Security Council or otherwise) and any such officer or authority shall comply with such request.

Functions of the National Security Council

147. (1) The National Security Council shall -
- (a) oversee -
 - (i) the development, implementation, review and dissemination of the National Security Policy and Strategy;
 - (ii) the relations, mandate, and cohesion of the National Security Agencies;
 - (b) advise the King on -
 - (i) the deployment of the Lesotho Defence Force;
 - (ii) matters relating to national security; and
 - (iii) the appointment of the members of the National Security Commission;
 - (c) guard against the politicisation of the National Security Agencies;
 - (d) ensure the collection of information relating to the security of Lesotho and the integration of the domestic and foreign security policies so as to enable the Security Agencies and other departments of government to co-operate more effectively in matters relating to national security;
 - (e) take appropriate measures regarding the consideration of policies on matters of common interest to the departments of the government concerned with national security;
 - (f) foster harmony and understanding between the

National Security Agencies and civilians;

- (g) coordinate and deal with the affairs of veterans;
- (h) report to Parliament, through the Prime Minister, on a regular basis, on the state of security, as may be prescribed by an Act of Parliament; and
- (i) perform any other functions as may be prescribed by an Act of Parliament.

(2) Any advice tendered to the King under this section shall be in writing.

(3) The Council shall determine its own rules of procedure for the execution of its functions except as may otherwise be provided by an Act of Parliament.

National Security Commission

148. (1) There shall be a National Security Commission which shall be appointed by the King, on a part-time basis, on the advice of the National Security Council and shall consist of -

- (a) one member from each House of Parliament nominated by the House he or she represents;
- (b) a member of the Judicial Service Commission nominated by the Judicial Service Commission;
- (c) a member of Public Service Commission nominated by the Public Service Commission;
- (d) a retired Chief of Defence Staff;
- (e) a retired Chief of Police;
- (f) a retired Director-General of the National Intelligence Service; and
- (g) a retired Chief of the Lesotho Correctional

Service.

(2) There shall be a Secretary to the National Security Commission, who shall be appointed by the National Security Commission through a transparent and competitive process, but who shall neither participate nor vote in any meeting of the National Security Commission.

(3) Where there is no person to fill the membership referred to in subsection (1)(c), (d), (e) and (f) a former deputy may be appointed in accordance with this section.

(4) Members of the Commission referred to under subsection (1), (c), (d), (e) and (f) shall be appointed on the basis of their general suitability for appointment through a fair and transparent process as may be prescribed by an Act of Parliament.

(5) Members of the Commission shall elect a Chairperson and Deputy Chairperson from among themselves, and the names of the elected persons shall be published in the Gazette by the Prime Minister.

(6) Parliament may make provision for further functions, procedures for appointment, tenure of office, and other related matters by an Act of Parliament.

(7) Subject to the provisions of this section, the Commission may regulate its own procedures.”.

“Functions of the National Security Commission

149. The National Security Commission shall -

- (a) recommend to the Prime Minister the appointment and retirement of the heads and deputy heads of the National Security Services;
- (b) ensure that there are recruitment and promotion policies and are adhered to in the National Security Agencies;

- (c) determine on the advice of Heads of National Security Agencies the conditions of service of members of the National Security Agencies;
- (d) develop and review the code of conduct for the National Security Agencies;
- (e) ensure that members of the National Security Agencies comply with their code of conduct and any other applicable law; and
- (f) perform such other functions as may be prescribed by an Act of Parliament.

Insertion of new sections 149A – 149M

38. The Constitution is amended by inserting the following new sections after section 149:

Appointment of heads and deputies of National Security Agencies

149A. The heads and deputies of the National Security Agencies shall be appointed by the King acting on the advice of the Prime Minister based on the recommendation of the National Security Commission, following a transparent, fair, merit based and competitive process as may be prescribed by an Act of Parliament.

Lesotho Defence Force

149B. (1) There shall be the Lesotho Defence Force for the defence of the Kingdom of Lesotho, which shall be the only lawful military force in Lesotho.

(2) A member of Cabinet shall be appointed to be the Minister responsible for defence and shall be the channel through which the Lesotho Defence Force shall be answerable to Parliament.

(3) The command of the Lesotho Defence Force shall be vested in the Chief of Defence Staff.

Functions of the Lesotho Defence Force

149C. (1) The primary function of the Lesotho Defence Force shall be to protect, preserve, and defend the sovereignty and territorial integrity of the Kingdom of Lesotho.

- (2) The Lesotho Defence Force may -
- (a) support and co-operate with other Security Agencies to maintain security, law and order in the country upon request;
 - (b) co-operate with other state organs and institutions in times of national emergencies and national disasters;
 - (c) be deployed to fulfil an international obligation; and
 - (d) perform any other function as may be prescribed by an Act of Parliament.

Deployment of the Lesotho Defence Force

149D. (1) The power to deploy the Lesotho Defence Force, except for routine military operations, shall be vested in the King, acting on the advice of the National Security Council.

(2) If the King, on the advice of the National Security Council, deploys the Lesotho Defence Force due to a threat to the Kingdom of Lesotho, the Prime Minister shall, within fourteen days, report the deployment to Parliament stating-

- (a) the nature of the threat and the reason for the deployment;
- (b) the nature of the force, the place of deployment and the number of personnel involved;
- (c) the expected period of deployment; and

(d) any other relevant information.

(3) If Parliament is in recess during the first fourteen days after the Lesotho Defence Force is deployed, the Council of State shall, at the recommendation of the National Security Council, advise the King to convene an emergency session of Parliament to be briefed on the deployment.

(4) Notwithstanding sub-section (1), if circumstances arise that warrant urgent deployment of the Lesotho Defence Force, and it is not practically possible for the National Security Council to meet and advise the King on the deployment, the Chief of Defence Staff shall, with the approval of the Prime Minister and in consultation with the Minister responsible for Defence, authorise such deployment.

(5) The deployment referred to in subsection (4) shall be reported to the National Security Council by the Prime Minister within 3 days.

Lesotho Mounted Police Service

149E. (1) There shall be the Lesotho Mounted Police Service that shall be responsible for the maintenance of law and order in Lesotho and shall be the only Police Service in Lesotho.

(2) A member of Cabinet shall be appointed to be the Minister responsible for the police and shall be the channel through which the police will be answerable to Parliament.

(3) The command of the Lesotho Mounted Police Service shall be vested in the Chief of Police.

Functions of the Lesotho Mounted Police Service

149F. (1) The primary function of the Lesotho Mounted Police Service shall be to -

(a) protect life and property, and ensure human security in Lesotho;

- (b) maintain law and order and preserve peace;
- (c) detect, prevent and investigate crime;
- (d) support and co-operate with other security agencies to maintain security, law and order in the country;
- (e) co-operate with other state organs and institutions in times of national emergencies and national disasters;
- (f) collaborate with international and regional bodies to which Lesotho is party in fostering global, continental, and regional peace that affects the national interests of Lesotho; and
- (g) perform any other function as may be prescribed by an Act of Parliament.

(2) An Act of Parliament shall make provision for the organisation, administration, and discipline in the Police Service, including the appointment of persons to offices or ranks in the Police Service, the removal from office or reduction in ranks, their punishment for breaches of discipline and the regulation of their conditions of service.

National Intelligence Service

149G. (1) There shall be the National Intelligence Service that shall be responsible for the provision of national intelligence and shall be the only National Intelligence Service in Lesotho.

(2) The command of the National Intelligence Service shall be vested in the Director-General of the National Intelligence Service who shall be answerable to the Prime Minister.

(3) The Director-General shall be responsible for the administration and discipline of the National Intelligence Service.

Functions of National Intelligence Service

- 149H. (1) The National Intelligence Service shall -
- (a) collect and analyse information, provide, and act on intelligence necessary for the preservation of national order, peace and security;
 - (b) counter any covert operations against Lesotho;
 - (c) support and cooperate with other National Security Agencies during internal or external operations;
 - (d) guard national secrets in the national interest; and
 - (e) perform any other function as may be prescribed by an Act of Parliament.
- (2) An Act of Parliament shall make provision for the organisation, administration, and discipline in the National Intelligence Service, including the appointment of persons to offices or ranks in the Intelligence Service, the removal from office or reduction in ranks, their punishment for breaches of discipline and the regulation of their conditions of service.

Lesotho Correctional Services

- 149I. (1) There shall be the Lesotho Correctional Service responsible for the administration of correctional facilities in Lesotho and shall be the only Correctional Service in Lesotho.
- (2) A member of Cabinet shall be appointed to be the Minister responsible for the Lesotho Correctional Service and shall be the channel through which the Correctional Service will be answerable to Parliament.
- (3) The superintendence of the Lesotho Correctional Service shall be vested in the Chief of Corrections, who shall be responsible for

the administration and discipline of the Correctional Services.

Functions of Lesotho Correctional Service

149J. (1) The primary functions of the Lesotho Correctional Service shall be to-

- (a) protect the society from criminals through the incarceration, rehabilitation, and reintegration into society of persons convicted of crimes;
- (b) keep offenders in custody while awaiting trial;
- (c) deter offenders during periods of imprisonment;
- (d) administer correctional facilities;
- (e) collaborate with international and regional bodies which Lesotho is party to and other entities in fostering global, continental, and regional peace that affects the national interests of Lesotho; and
- (f) perform any other functions as may be prescribed by an Act of Parliament.

(2) An Act of Parliament shall make provision for the organisation, administration and discipline in the Correctional Service, including the appointment of persons to offices or ranks in the Correctional Service, the removal from office or reduction in ranks, their punishment for breaches of discipline and the regulation of their conditions of service.”.

Establishment and functions of Independent Security Sector Oversight, Inspectorate and Complaints Authority

149K. (1) There shall be an Independent Security Sector Oversight, Inspectorate and Complaints Authority which shall be an oversight authority for the National Security Agencies in Lesotho.

(2) The Independent Security Sector Oversight, Inspectorate and Complaints Authority shall be answerable to Parliament.

Composition and appointment

149L. (1) The Authority shall consist of seven Members of the Authority who shall be appointed by the National Security Commission on a part time basis, as follows:

- (a) a Chairperson who shall be any person with legal background of high moral integrity, with a minimum of ten years experience who shall be a former judge;
- (b) an experienced legal practitioner, of high moral integrity, with a minimum of ten years experience;
- (c) a qualified psychologist;
- (d) a former member of the Lesotho Defence Force from the rank of brigadier or above, who shall be responsible for the portfolio relating to the Lesotho Defence Force in the Authority;
- (e) a former member of Lesotho Mounted Police Service, from the rank of Senior Assistant Commissioner of Police or above, who shall be responsible for the portfolio relating to the Lesotho Mounted Police Service;
- (f) a former member of the Lesotho Correctional Service, from the rank of Senior Assistant Commissioner of Corrections or above who shall be responsible for the portfolio relating to the Lesotho Correctional Service.

(2) All appointments, shall be carried out through a transparent, competitive, and impartial process.

Functions of Independent Security Sector Oversight, Inspectorate and Complaints Authority

- 149M. (1) The functions of the Authority shall be to -
- (a) oversee the conduct of the security agencies in relation to their members and members of the public;
 - (b) carry out inspections and investigate complaints from members of the public with regard to the conduct of the members of the security agencies and take appropriate remedial action, which shall be prescribed by an Act of Parliament; and
 - (c) perform such other function as may be prescribed by an Act of Parliament.
- (2) Parliament may make provision for a Secretariat to assist the office of the Independent Security Sector Oversight, Inspectorate and Complaints Authority in carrying out its functions in terms of this Constitution.”.

Insertion of new Chapter XIIIIC: The Media

39. The Constitution is amended by inserting the following new Chapter after Chapter XIIIIB:

“CHAPTER XIIIIC: MEDIA

PART A: GENERAL PRINCIPLES

General principles on media and Media Council of Lesotho

149N. (1) There shall be diversity of media ownership and media content in Lesotho including freedom of press, access to information and other media of communication which shall play an integral part in the development and democratisation process of the country.

(2) There shall be a Media Council of Lesotho which shall be an independent body that regulates the entire media industry.

(3) In the performance of its functions, the Media Council shall not be subject to the control and direction of any person or authority.

(4) The Media Council shall establish the media ombudsman and other offices as it may be necessary.

(5) The principles regulating media sector and the powers and functions of the Media Council of Lesotho shall be prescribed by an Act of Parliament.

Insertion of new sections 152A and 152B: Appointments and removal

40. The Constitution is amended by inserting the following new sections after section 152:

“Appointments

152A. (1) The Auditor General, Public Protector, members of the Human Rights Commission, members of the Anti- Corruption and Ethics Commission, members of the Public Service Commission, shall be appointed by the King acting in accordance with the advice of the Prime Minister, taking one from the two names selected through a fair, competitive, merit based and transparent parliamentary selection process to be determined by an Act of Parliament.

(2) The Chief Justice and Deputy Chief Justice, Independent Electoral Commission, members of the National Planning Commission and members of the Remuneration Commission, shall be appointed by the King acting in accordance with the advice of the Prime Minister, following a fair, competitive, merit based on a transparent selection process to be determined by an Act of Parliament.

(3) In his advice to the King in respect of the appointment of Chief Justice and Deputy Chief Justice under subsection (2), the Judicial Service Commission shall select and submit to the Prime Minister a list of three names selected by the Judicial Service

Commission through a fair, competitive, merit based on a transparent selection process to be determined by an Act of Parliament.

Removals

152B. (1) A person appointed under section 152A may be removed from office by the King acting on the advice of National Assembly, except the Chief Justice and the Deputy Chief Justice, for-

- (a) inability to exercise the functions of his or her office whether arising from infirmity of body or mind or any other cause;
- (b) gross misconduct;
- (c) incompetence; or
- (d) any other ground that may affect the integrity of his or her office or the discharge of his or her duties and functions, but where both houses do not agree on the removal of a person the National Assembly may by resolution make a determination.

(2) The process of appointing or removing a person under this section shall be as prescribed by an Act of Parliament.”.

Insertion of new section 153A: International law and agreements

41. The Constitution is amended in section 153, by inserting the following section:

“International law and agreements

153A. (1) The Executive branch of Government shall be responsible for initiating, negotiating, signing, acceding to and ratifying international agreements.

(2) Notwithstanding subsection (1), the Executive shall not sign, ratify, or accede to an international agreement unless the Minister

responsible for international relations has -

- (a) considered several variables including the implication costs involved in ratifying, acceding to the agreement or treaty as well as implementing its provisions; and
 - (b) tabled before Parliament, with an explanatory memorandum in respect of the agreement or treaty that it intends to sign, ratify, or accede to as may be prescribed by an Act of Parliament.
- (3) An international agreement which Lesotho has ratified or acceded to shall only become law in Lesotho when its provisions have been incorporated into the national law and enacted by Parliament.
- (4) A self-executing agreement approved by Parliament shall not become law unless their provisions are incorporated into the national law.
- (5) The Kingdom of Lesotho shall continue to be bound by international agreements or treaties which were binding on Lesotho before the coming into operation of this Constitution.
- (6) A court shall, in interpreting any legislation, take into account the general principles consistent with international law unless they are inconsistent with the Constitution or an Act of Parliament.”

Amendment of section 154: Interpretation

42. The Constitution is amended in section 154(5) by deleting paragraph (a).

Amendment of Chapter XV: Transitional and temporary provisions

Amendment of section 156: Existing law and related matters

43. The Constitution is amended in section 156 by deleting subsection (3) and substituting the following:

“(3) All matters that have to be prescribed by an Act of Parliament

and any matter that has to be implemented to bring into effect the provisions of this Constitution shall, immediately after the coming into operation of this Constitution, be prescribed or implemented by the responsible authority within a period of eighteen months.

(3A) If at the expiry of eighteen months period referred to in subsection (3), there is any matter that is incomplete, the Parliament may extend the period of eighteen months for a further term of eighteen months”.

(3B) The Parliament shall by an Act of Parliament establish a body referred to in subsection (3), whose functions shall be to -

- (a) monitor, facilitate and oversee the development of legislation and administrative matters necessary for the implementation of this Constitution, including transitional mechanisms and processes in respect of affected offices; and
- (b) such other functions as the Parliament may consider necessary.

(3C) The body referred to in subsection (3) shall -

- (a) co-ordinate with the Attorney-General and ensure that the letter and spirit of this Constitution is respected in the preparation, development and tabling of legislation required to implement this Constitution; and
- (b) stand dissolved thirty-six months after it is established or at the full implementation of this Constitution of this Constitution as determined by Parliament, whichever comes first, but the National Assembly may, by resolution, extend its life.

Amendment of section 161: High Court

44. The Constitution is amended by deleting section 161 and substituting

the following:

“High Court

161. (1) For purposes of this Constitution the High Court in existence immediately before the coming into operation of this Constitution shall be the High Court.

(2) Any proceedings pending before the High Court immediately before the coming into operation of this Constitution may be continued before the High Court as constituted.

(3) Any judgement or order of the former High Court given, but not satisfied, immediately before the coming into operation of this Constitution, may be enforced accordingly.

(4) Parliament shall within twelve months after the coming operation of this Constitution enact legislation which shall provide for the -

- (a) appointment and removal of the Chief Justice and judge of the High Court; and
- (b) establishment of mechanisms and procedures for implementing the provisions of this section, within a time frame to be determined in the legislation.

(5) The provisions of section 163 of this Constitution shall apply in relation to the offices of Chief Justice and judges of the High Court, and any person who, by virtue of the provisions of this subsection, holds or acts in any such office as from the coming into operation of the Constitution shall be deemed to have taken and subscribed any necessary oath under this Constitution.

Amendment of section 162: Court of Appeal

45. The Constitution is amended by deleting section 162 and substituting the following:

“Supreme Court

162. (1) For the purposes of this Constitution, the Court of Appeal of Lesotho in existence immediately before the coming into operation of this Constitution shall be the Supreme Court of Lesotho.

(2) Until the Supreme Court is established, the Court of Appeal shall have jurisdiction over matters assigned to the Supreme Court.

(3) Any proceedings pending before the Appeal Court immediately before the coming into operation of this Constitution may be continued before the Supreme Court as constituted.

(4) Any judgement or order of the former Appeal Court given, but not satisfied, immediately before the coming into operation of this Constitution, may be enforced accordingly.

(5) Parliament shall within twelve months after the coming operation of this Constitution enact legislation which shall establish mechanisms and procedures for implementing the provisions of this section, within a time frame to be determined in the legislation.

(6) A person holding the office of the President of the Court of Appeal immediately before the coming into operation of this Constitution shall within six months after coming into operation of this constitution vacate office and may choose either -

- (a) to retire from the judiciary; or
- (b) subject to the mechanism and procedures under subsection (5) continue to serve on the Supreme Court.

Amendment of section 163: Existing public officers

46. The Constitution is amended by deleting section 163 and substituting the following:

“Existing public officers, public offices and institutions

163. (1) A person who was before the coming into operation of this Constitution holding an office established under this Constitution shall continue to hold the office in terms of this Constitution subject to -

- (a) consistency and conformity with this Constitution; and
- (b) any amendment or repeal of the legislation applicable to his or her office.

(2) Any person who under this Constitution or any existing law would have been required to vacate his or her office at the expiration of any period shall within a period of six months of the coming into operation of this constitution, vacate his or her office and may choose either -

- (a) to retire from the office; or
- (b) continue to serve in the office subject to appointments, mechanisms and procedure provided in this constitution and any other legislation.

(3) A public office or institution established under this Constitution is the legal successor of the corresponding office or institution established under the Constitution or by an Act of Parliament in force immediately before the coming into operation of this Constitution whether known by the same or a new name.

(4) The provisions of this section do not apply to a person who held or acted in any office established by a law repealed, by this Constitution or otherwise, on the coming into operation of this Constitution.”.

Amendment of Schedules

47. The Constitution is amended by -

- (a) deleting Schedule 1 and substituting the following:

SCHEDULE 1: OATH OF OFFICE

(Section 122)

OATHS

(Oath or Affirmation for the due execution of the office of King of Lesotho)

I do swear (or solemnly affirm) that I, in the office of King of Lesotho will, under the Constitution of Lesotho, preserve, protect and defend the said Constitution; that I will, as King, govern the people of Lesotho according to the said Constitution and other laws of Lesotho; that I will, as King preserve the character of the Monarchy as symbol of unity of the Basotho Nation; and that I will, as King and so far as lies within my power, cause law and justice to be administered in mercy to the people of Lesotho.
 So help me God.

.....

Sworn before me aton this
 the..... day of"

(b) inserting the following new schedule after Schedule 3:

“Schedule:4

(Section 115)

1. Appointed Member of Council of State
2. Chief Justice
3. Deputy Chief Justice
4. Judge President
5. Deputy Judge President
6. Judge of the High Court
7. Attorney General
8. Member of Parliamentary Service Commission
9. Member of Judicial Service Commission
10. Member of Public Service Commission
11. Member of the National Security Commission
12. Member of Human Rights Commission
13. Member of Lesotho Anti-Corruption and Ethics Commission
14. Member of Independent Electoral Commission
15. Member of National Development Planning Commission
16. Auditor-General
17. Public Protector
18. Director of National Public Prosecutions Authority
19. Any other office that may be prescribed by an Act of Parliament.”.

NOTE

1. Act No. 10 of 2022

GOVERNMENT NOTICE NO. 48 OF 2022

The Parliament of Lesotho

Statement of Objects and Reasons of the Constitution of Lesotho, 2022

(Circulated on the Authority of the Minister of Justice and Law, Honourable Lekhetho Rakuoane)

The purpose of the Act is to amend the Constitution of Lesotho 1993, to give effect to the resolutions of the Multi-Stakeholder National Dialogue on comprehensive national reforms as espoused in the Plenary II Report.

The Act is a result of consultations and debates among members of the National Reforms Authority and a wide number of Stakeholders.

Currently Members of Parliament cannot call a meeting of Parliament. The amendment Act now makes it possible for them to do so.

The Act also recognises isiXhosa and isiPhuthi as official languages of Lesotho as well.

The Act introduces the age of majority in Lesotho and sets it at 18 years.

The Act further provides for the establishment of the Parliamentary Service. The offices of the President of the Senate, Speaker, clerks of both houses of Parliament will be offices in the Parliamentary Service. According to the Act, there is the Parliamentary Service Commission whose function shall, amongst other things, be the appointment and removal of the Clerks and other staff of the Parliamentary Service.

The Current Constitution does not have provisions on joint sittings of both houses of Parliament to discuss issues whenever it is necessary. The Act therefore makes provision for the King to summon both the Senate and the National Assembly to a joint sitting for purposes of delivery of the speech from the throne, presentation of the budget speech, state of the nation address and to resolve a disagreement between the two houses.

The Act limits the powers of the Prime Minister to prorogue Parliament, in that the Prime Minister can only recommend prorogation of Parliament for fourteen

days, and even then, the Prime Minister would require approval from the Parliament.

Should a further period be required, then approval by Parliament would be required. Notwithstanding this provision, prorogation would not exceed sixty days.

The Act makes provision for a Caretaker Government to temporarily be in charge of the Government after the dissolution of Parliament until a new Prime Minister is appointed. The person who immediately held the office of the Prime Minister shall be appointed by the King to head the Caretaker Government.

The Act also limits the tenure of office of the Prime Minister to two terms only.

The Act proposes citizenship requirements for the Prime Minister and makes provision for formation of coalition governments in a situation where there is no outright winner of a general election and sets the ceiling for the size of Cabinet. Currently the constitution only sets the minimum number of ministers.

The Bill makes chieftainship a fundamental part in the devolved government. It further provides for the basic principles in the role it plays in local and national development. The functions of chiefs are specified in Schedule 4 to the Constitution.

The Act elevates the status of the National Development Planning Board to that of the Commission which shall be an Apex body responsible for formulating strategic development frameworks, policies and related matter and not be subject to the direction and control of any person or authority in executing its functions. The Commission is obliged to report to the Prime Minister.

The Act provides that the Government of Lesotho consists of both the national and local government. According to the Act, the local government consists of councils established at district, city and municipal levels and district councils comprise community, urban and any other type of Council that may be prescribed by an Act of Parliament. Councils established under this Constitution shall have autonomy and such executive powers as will enable them to perform their functions as set out in an Act of Parliament. The Act further makes provision for the following: District Assembly in which the legislative authority of a district vests, District Executive in which the executive authority vests. The governance and management of the City of Maseru and other cities shall be by the city council.

Chapter Ten which deals with financial matters is completely overhauled and replaced with a new chapter which deals with, among others issues, the Consolidated Fund, the Public debt and the Office of Auditor-General.

The Act introduces the Salaries and Remuneration Commission, which shall be responsible for determining, reviewing and harmonising pay and benefit threshold for all officers and persons whose salaries and benefits are drawn from the Consolidated Fund, including salaries and benefits for all members of Parliament, the Executive, all statutory position holders, all boards, councils, advisory bodies, parastatals state owned enterprises and government agencies.

The Act establishes the Central Bank of Lesotho as an independent body responsible for determining, formulating and implementing the monetary policy as well as maintaining financial and price stability. The Central Bank is responsible for supervising and regulating financial institutions and financial activities of the banks and non banking financial institutions. The Central Bank is answerable to Parliament.

The Act makes provision for the new structure of the judiciary which includes the Supreme Court as the highest court in the Country and abolishes the Court of Appeal. According to the Act, the Chief Justice is the head of the Judiciary.

The Bill further provides for the establishment of the Office of a Public Protector, formerly known as the Ombudsman. The Office shall be headed by the Public Protector who is appointed by the King acting in accordance with the advice of the Judicial Service Commission. The status of the Office of the Public Protector has been elevated to that of an independent and autonomous body accountable to Parliament. Its mandate is to investigate actions where there are allegations or suspicions that a person has suffered injustice or has been prejudiced in any manner as a result of an action of an officer or authority.

The Act introduces the media sector which shall form a basis for the role of media in Lesotho. According to the Act, the entire media industry shall be regulated by a Media Council, which shall be an independent body comprising persons from different sectors such as journalism and media, legal, labour, dispute resolution, civil society, human rights and communications.

The Act makes provision for the existence of the public service, whose structure and operations are to provide for the effective and efficient public service. The Bill also provides for the establishment of the Public Service Commission. Mem-

bers of the Public Service Commission are to be appointed by the King acting on the advice of the Judicial Service Commission through a transparent, merit based, fair and competitive process. According to the Act, appointments, confirmations of appointments, promotions and dismissals shall be the responsibility of the Commission.

The Human Rights Commission is also deleted in its entirety and replaced with a new version, which provides it with a large degree of independence from the executive branch of Government.

The Act establishes the Anti-Corruption and Ethics Commission which is currently established by an Act of Parliament. Likewise it is also given more independence from the Executive branch of Government and the element of 'ethics' is also added

The Act makes it mandatory for the Executive arm of the Government to obtain approval from Parliament before ratification or accession of international agreements.

Finally, the Act converts the disciplined forces into a National Security Service under the authority of the National Security Council headed by the Prime Minister. The Act further establishes the Independent Security Sector Inspectorate Oversight and Complaints Authority mandated to investigate complaints from members of the public in respect of the conduct of members of the security agencies.