

# CONSTITUTION (AMENDMENT) ACT, 1999

No. 2



of 2002

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title
2. Amendment of section 95 of the Constitution
3. Amendment of section 96 of the Constitution
4. Amendment of section 97 of the Constitution
5. Amendment of section 99 of the Constitution
6. Amendment of section 100 of the Constitution
7. Amendment of section 101 of the Constitution
8. Amendment of section 103 of the Constitution
9. Amendment of section 127 (1) of the Constitution

### **An Act to amend the Constitution**

*Date of Assent:* 12th February, 2002.

*Date of Commencement:* 22nd February, 2002.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Constitution (Amendment) (No. 2) Act, 1999.

Short title

2. Section 95 of the Constitution is amended —

Amendment  
of section 95  
of the  
Constitution

(a) in subsection (2) thereof —

(i) by substituting the words “of the Court” for the words “(hereinafter referred to as ‘puisne judges’)” appearing therein, and

(ii) by substituting the words “judge of the High Court” for the words “puisne judge” which appear in the proviso to the subsection; and

(b) by adding at the end of subsection (6) thereof, the following new subsection —

“(7)The Chief Justice may appoint a Rules of Court Advisory Committee to assist him in reviewing and overhauling the rules made under subsection (6) and to advise on proposals to update and amend such rules.”.

3. Section 96 of the Constitution is amended —

Amendment  
of section 96  
of the  
Constitution

(a) in subsection (2) thereof, by substituting the words “other judges of the High Court” for the words “puisne judges” which appear therein;

(b) in subsection (3) thereof, by substituting for paragraph (b) therein, the following provisions —

“(b) he is qualified to practise as an advocate or attorney in such a court and has been qualified for not less than ten years to practise as an advocate or attorney in such a court.

(c) he is qualified to practise as an advocate or attorney and he has had the experience in the teaching of law in a recognised university for not less than ten years; or

(d) he is a Chief Magistrate who has held that office for not less than five years.”.

(c) in subsection (5) thereof by substituting —

(i) the words “judges of the High Court” for the words “puisne judges” which appear therein;

(ii) the words “judge of the High Court” for the words “puisne judge” which appear in the proviso to the subsection;

(d) by substituting the words “judge of the High Court” for the words “puisne judge” wherever they appear in subsections (6) and (7).

(e) by substituting the figure “70” for the figure “65” which appears in proviso (i) to subsection (5) and the proviso to subsection (6).

4. Section 97 of the Constitution is amended by substituting the figure “70” for the figure “65” which appears in subsection (1) thereof.

5. Section 99 of the Constitution is amended by substituting the word, “other” for the word “puisne” which appears in subsection (2) (c) thereof.

6. Section 100 of the Constitution is amended —

(a) in subsection (3) thereof by substituting for paragraph (b) therein, the following provisions —

“(b) he is qualified to practise as an advocate or attorney in such a court and has been qualified for not less than ten years to practise as an advocate or attorney in such a court; or

(c) he is qualified to practise as an advocate or attorney and he has had experience in the teaching of law in a recognised university for not less than ten years;”.

(d) by substituting the figure “70” for the figure “65” which appears in proviso (i) to subsection (5) and the proviso to subsection (6).

7. Section 101 of the Constitution is amended by substituting the figure “70” for the figure “65” which appears in subsection (1) thereof.

8. Section 103 of the Constitution is amended —

(a) by substituting for subsections (1) and (2) thereof, the following new subsection —

“(1) there shall be a Judicial Service Commission for Botswana which shall consist of —

(a) the Chief Justice who shall be Chairman;

(b) the President of the Court of Appeal (not being the Chief Justice or the most Senior Justice of the Court of Appeal;

Amendment of section 97 of the Constitution

Amendment of section 99 of the Constitution

Amendment of section 100 of the Constitution

Amendment of section 101 of the Constitution

Amendment of section 103 of the Constitution

- (c) the Attorney-General;
- (d) the Chairman of the Public Service Commission;
- (e) a member of the Law Society nominated by the Law Society; and
- (f) a person of integrity and experience not being a legal practitioner appointed by the President.

(2) A member nominated under paragraph (e) or appointed under paragraph (f) of subsection (1) shall hold office for a period of two years, but shall be eligible for re-nomination or re-appointment, as the case may be, for another term of office for two years:

Provide that —

- (i) a member nominated under paragraph (e) may be removed from office by the rest of the members of the Commission acting together only for inability of the member to discharge the functions of his office whether arising from infirmity of mind or body or any other cause or for gross misbehaviour, or
- (ii) a member appointed under paragraph (f) may be removed from office by the President only for inability of the member to discharge the functions of his office whether arising from infirmity of mind or body or any other cause or for gross misbehaviour.”;

(b) in subsection (5) thereof by substituting for proviso appearing at the end of the subsection, the following new subsection —

“(6) The decisions of the Commission shall be by the vote of a majority of the members present, and in the event of an equality of votes, the Chairman shall have a casting vote.”.

9. The definition of the words “subordinate court” in section 127 (1) of the Constitution is amended —

- (a) by deleting the word “or” appearing at the end of paragraph (b) of the definition;
- (b) by adding the word “or” immediately after the word “martial” appearing in paragraph (c) of the definition; and
- (d) by adding at the end of paragraph (c), the following new paragraph —  
“(d) The Industrial Court.”.

Amendment of  
section 127  
of the  
Constitution

PASSED by the National Assembly this 10th day of August, 2000.

C.T. MOMPEI,  
*Clerk of the National Assembly.*