

REFERENDUM ACT
(Cap. 02:08)

WRIT OF REFERENDUM
BY
HIS EXCELLENCY THE PRESIDENT OF BOTSWANA

TO: THE SECRETARY TO THE INDEPENDENT ELECTORAL COMMISSION

WHEREAS by Section 5 (1) of the Referendum Act it is provided that when any matter is required under any law to be submitted to a vote of the electorate qualified to vote at an election of the elected Members of the National Assembly, the President shall issue a Writ under the Public Seal of Botswana, addressed to the Secretary to the Independent Electoral Commission, for the taking of a poll and setting out the matter on which the poll is to be taken;

AND WHEREAS previously, on the 28th day of May, 2001, the President issued a Writ of Referendum directing that a poll be taken on the 6th day of October, 2001 on matters therein set out, which Writ was not published;

AND WHEREAS the President has proclaimed, in terms of Section 5 (2) read with Section 5 (1) of the Referendum Act, that the poll aforesaid shall be taken at a later date, the matters herein set out having arisen for submission to the said electors;

NOW THEREFORE I, FESTUS GONTEBANYE MOGAE, the President of the Republic of Botswana, do hereby direct that you, the Secretary to the Independent Electoral Commission, shall take a poll on the 3rd day of November, 2001, at 06:30 hours and close at 19:00 hours or at such times as you, the Secretary to the Independent Electoral Commission, may otherwise order, on the following matters:

QUESTION 1

1. A o dumalana le gore Baatlhodi ba Kgotla-Kgolo ya Ditsheko ba bidiwe "JUDGES" eseng "PUISNE JUDGES" jaaka go ntse jaanong ?
1. Do you agree that the designation of High Court Judges as 'PUISNE JUDGES' be altered to 'JUDGES'?

QUESTION 2

2. A o dumalana le gore Moatlhodi Mogolo a fiwe thata ya go bopa Lekgotlana la Bagakolodi go mo thusa go sekaseka le go tokafatsa melawana ya tsamaiso ya Kgotla-Kgolo ya Ditsheko?
2. Do you agree that the Chief Justice be empowered to appoint a Rules of Court Advisory Committee to advise him on the review of the rules of practice and procedure of the High Court?

QUESTION 3

3. A o dumalana le gore motho yo o thapiwang go nna Moatlhodi wa Kgotla-Kgolo ya Ditsheko e bo e le motho yo e leng Mmuedi (Advocate or Attorney), ebile a na le dingwaga tse di seng kwa tlase ga lesome (10) e ntse e le Mmuedi, kgotsa e le Mmuedi (Advocate or Attorney) mme a ratile molao mo Sekolong-Segolo (Recognised University) dingwaga tse di seng kwa tlase ga lesome (10), kgotsa e le Makasetarata yo Mogolwane (Chief Magistrate) yo o ntseng a dira tiro eo lebaka le le seng kwa tlase ga dingwaga tse tlhano (5)?
3. Do you agree that, for a person to be appointed a Judge of the High Court, he must qualify and have been qualified to practise as an advocate or attorney for not less than 10 years, or being qualified to practise as an advocate or attorney, has taught law in a recognized university for not less than 10 years, or be a Chief Magistrate who has held that office for not less than 5 years ?

QUESTION 4

4. A o dumalana le gore motho yo o thapiwang go nna Moatlhodi wa Kgotla-Kgolo ya Boikuelo e bo e le motho yo e leng Mmuedi (Advocate or Attorney), ebile a na le dingwaga tse di seng kwa tlase ga lesome (10) e ntse e le Mmuedi, kgotsa e le Mmuedi (Advocate or Attorney) mme a ratile molao mo Sekolong-Segolo (Recognised University) dingwaga tse di seng kwa tlase ga lesome (10)?
4. Do you agree that, for a person to be appointed a Judge of the Court of Appeal, he must qualify and have been qualified to practise as an advocate or attorney for not less than 10 years, or being qualified to practise as an advocate or attorney, has taught law in a recognized university for not less than 10 years ?

QUESTION 5

5. A o dumalana le gore dingwaga tsa go tlogela tiro ka bogodi tsa Baatlhodi ba Kgotla-Kgolo ya Ditsheko le Kgotla-Kgolo ya Boikuelo di okediwe go tswa mo go masome a marataro le botlhano (65) go ya go masome a supa (70) ?
5. Do you agree that the retiring age of the Judges of the High Court and Court of Appeal should be increased from 65 to 70?

QUESTION 6

6. A o dumalana le gore maloko a Lekgotla le le gakololang Tautona go thapa Baatlhodi (Judicial Service Commission) e nne Moatlhodi-Mogolo e le Modula Setilo, Mogogi wa Kgotla-Kgolo ya Boikuelo, Ramelao Mogolo, Modula Setilo wa Lekgotla la Boikuelo la Badirela Puso (Public Service Commission), Moemedi wa Mokgatlo wa Babueledi (Law Society), le motho yo o tshepegang, a na le boikarabelo, mme e se Mmuedi, a tlophilwe ke Tautona, le gore Modulasetilo a nne le thata ya go ka kgaola kgang fa go le maleka?

6. Do you agree that the members of the Judicial Service Commission, who shall decide by a majority vote, the Chairman having a casting vote in the event of an equality of votes, should be the Chief Justice as Chairman, the President or the most senior Justice of the Court of Appeal, the Attorney-General, the Chairman of the Public Service Commission, a member of the Law Society nominated by it, and a person of integrity and experience who is not a legal practitioner appointed by the President ?

QUESTION 7

7. A o dumalana le gore leloko le le tlhophiwa ke Mokgatlo wa Babueledi, le le tlhophiwa ke Tautona, a nne maloko a Lekgotla le le gakololang Tautona go thapa Baatlhodi dingwaga tse pedi (2), a tswelale fa boloko ja one bontshafaditswe, mme le le tlhophilweng ke Lekgotla la Babueledi le ka ntshiwa mo bolokong ke Lekgotla le le gagokololang Tautona, fa le le tlhophilweng ke Tautona le ka ntshiwa ke Tautona, boo babedi ka mabaka a go tlhoka nonofo kgotsa boitshwaro jo bo siameng?

7. Do you agree that the members of the Judicial Service Commission who are nominated by the Law Society or appointed by the President shall serve a renewable term of two years, and may be removed by the Commission in the first case and by the President in the second for inability or gross misbehaviour?

QUESTION 8

8. A o dumalana le gore Kgotle ya Ditsheko tsa Pereko (Industrial Court) e thatloswe e lekanngwe le Kgotle-Kgolo ya Ditsheko?
8. Do you agree that the Industrial Court should be a superior court of record ?

SCHEDULE

TEXT OF THE PROPOSED AMENDMENT

Amendment
of section 95
of the
Constitution

2. Section 95 of the Constitution is amended –

- (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.”

Amendment of
section 96
of the
Constitution

3. Section 96 of the Constitution is amended –

- (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).

Amendment
of section 97
of the
Constitution
Amendment
of section 99
of the
Constitution

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 –

Amendment
of section 100
of the
Constitution

(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;”

(b) 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.

Amendment
of section 101
of the
Constitution

8. Section 103 of the Constitution is amended –

Amendment
of section 103
of the
Constitution

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

“(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;

(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:

Provided 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) in subsection (5) thereof by substituting for the 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.”

Amendment
of Section
127 of the
Constitution

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
- (c) by adding at the end of paragraph (c), the following new paragraph –
“(d) the Industrial Court”

And that you endorse this Writ with the result of the poll and return it to me.

GIVEN under my hand and the Public Seal of Botswana this 26th day of September, 2001.

F.G. MOGAE,
President.



P.T.C. SKELEMANI,
Custodian of the Public Seal.