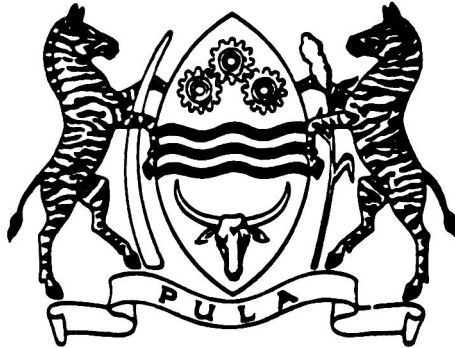


REPUBLIC OF BOTSWANA



GOVERNMENT GAZETTE

EXTRAORDINARY

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9th March, 1987

CONTENTS

	<i>Page</i>
The following Supplement is published with this issue of the Gazette —	
Supplement B — Constitution of Botswana (Amendment) Bill, 1987 —	
Bill No. 5 of 1987	B.11—B.14

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Bill No. 5 of 1987

CONSTITUTION OF BOTSWANA (AMENDMENT) BILL, 1987

(Published on 9th March, 1987)

MEMORANDUM

A draft of the above Bill which it is proposed to present to the National Assembly is set out below.

2. The amending Bill seeks inter alia to incorporate the amendments agreed upon at the all party conference at Francistown.

3. Subsection (1) of the new sections 33 and 39 require that a person must be a citizen by birth or descent to hold office as President or Vice-President. Under the law prior to 1982, children born in Botswana would, subject to two exceptions, become citizens of Botswana by birth. They do not anymore, unless they are of a Botswana father or, if out of wedlock, of a Botswana mother. Also under the law prior to 1966 children born abroad to parents who were citizens of Botswana were nevertheless required to be registered as citizens and thus became citizens by registration as opposed to citizens by descent. The 1982 Citizenship Act has rectified this position. In order to remove this disqualification from those persons who, being born abroad prior to 1982, are affected by it, the definition of "descent" has been enlarged in its application to section 33 and 39 of the Constitution to include those persons.

4. The new section 66 makes the office of the Supervisor of Elections an independent office. He will be appointed by the President and will, unless removed on the recommendation of an investigation commission for misbehaviour or infirmity of body or mind, hold office up to the age of sixty five. He is not obliged, in the performance of his duties, to accept the direction of any person or body of persons. Citizenship by birth has been defined to include only those who became citizens by birth under the law prior to 1982, to avoid doubt.

5. The amendments to sections 96, 97, 100 and 101 are intended to raise the age limit for judges of the High Court and the Court of Appeal from sixty two to sixty five.

P.H. KEDIKILWE,
*Minister of Presidential Affairs and
Public Administration.*

ARRANGEMENT OF SECTIONS

SECTION

1. Short Title
2. Amendment of section 33 of the Constitution
3. Amendment of section 39 of the Constitution
4. Amendment of section 66 of the Constitution
5. Amendment of section 96 of the Constitution
6. Amendment of section 97 of the Constitution
7. Amendment of section 100 of the Constitution
8. Amendment of section 101 of the Constitution

A BILL

—entitled—

An Act to amend the Constitution of Botswana Act

Date of Assent:

Date of Commencement:

ENACTED by the Parliament of Botswana.

Short title

1. This Act may be cited as the Constitution of Botswana (Amendment) Act, 1987.

Amendment
of section
33 of the
Constitution

2. The Constitution of Botswana (hereinafter referred to as "the Constitution") is hereby amended by the substitution for section 33 thereof of the following new section:-

"33 (1) A person shall be qualified for election as President if, and shall not be qualified unless, he —

- (a) is a citizen of Botswana by birth or descent;
- (b) has attained the age of thirty years; and;
- (c) is qualified to be elected as a Member of the National Assembly.

(2) Notwithstanding any other law to the contrary, for the purposes of this section and section 39: —

- (a) the term "citizen by birth" shall be understood to include only those persons who became citizens of Botswana prior to its amendment by the Citizenship Act, 1982;
- (b) any person who, although his father was a citizen of Botswana at the time of that person's birth, had, by virtue of his having been born outside Botswana, to be registered as a citizen of Botswana, under the law relating to citizenship in force at that time, shall be regarded as a citizen by descent."

Act 25 of 1982

Amendment
of section
39 of the
Constitution

3. Section 39 of the Constitution is hereby amended by the substitution of the following new subsection for subsection (1) thereof:

"39 (1) There shall be a Vice-President of the Republic of Botswana who shall be appointed by the President from among the Members of the National Assembly who are citizens of Botswana by birth or descent."

4. The Constitution is hereby amended by the substitution for section 66 thereof the following new section —

Amendment
of section
66 of the
Constitution

“66 (1) There shall be a Supervisor of Elections whose duty it shall be to exercise jurisdiction over the registration of voters for elections of the Elected Members of the National Assembly and over the conduct of such elections.

(2) The Supervisor of Elections shall be appointed by the President.

(3) A person shall not be qualified to be appointed as Supervisor of Elections unless —

- (a) he is a citizen of Botswana and holds or has held senior office in or outside the public service, in any country;
- (b) he has not been declared insolvent or adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged, or has made a composition with his creditors and has not paid his debts in full; and
- (c) he has not been convicted of any offence involving dishonesty in any country.

(4) A person shall not enter upon the duties of the office of Supervisor of Elections until he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as may be prescribed by Parliament.

(5) For the purposes of the exercise of his functions under subsection (1) of this section, the Supervisor of Elections may give such directions as he considers necessary or expedient to any registering officer, presiding officer or returning officer relating to the exercise by that officer of his functions under any law regulating the registration of voters or the conduct of elections, and any officer to whom directions are given under this subsection shall comply with those directions.

(6) The Supervisor of Elections shall, on the completion of any election of an Elected Member or Elected Members of the National Assembly, submit a report on the exercise of his functions under the foregoing provisions of this section to the Minister for the time being responsible for matters relating to such elections, and that Minister shall, not later than seven days after the National Assembly first meets after he has received the report, lay it before the Assembly.

(7) In the exercise of his functions under the foregoing provisions of this section the Supervisor of Elections shall not be subject to the direction or control of any other person or authority.

(8) Subject to the provisions of this section, a person holding office as Supervisor of Elections shall vacate that office on attaining the age of sixty five years or such other age as may be prescribed by Parliament:

Provided that the President may permit a holder of the office of Supervisor of Elections to continue in office for such period as may be necessary to enable him to complete any electoral proceedings commenced before he attained that age.

(9) A holder of the office of Supervisor of Elections may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(10) If the President considers that the question of removing the Supervisor of Elections ought to be investigated then —

- (a) he shall appoint a tribunal which shall consist of not less than two members who hold or have held high judicial office;
- (b) the tribunal shall enquire into and report on the facts thereof to the President and advise the President whether the Supervisor of Elections ought to be removed from office under this section for inability as aforesaid or for misbehaviour:

Provided that, pending the determination by the tribunal, the President may suspend the Supervisor of Elections from his duties and appoint a person to act in his place.

(11) Where a tribunal appointed under subsection (6) advises the President that the Supervisor of Elections ought to be removed for inability as aforesaid or for misbehaviour, the President shall remove the Supervisor of Elections from office."

Amendment
of section
96 of the
Constitution
Amendment
of section
97 of the
Constitution
Amendment
of section
100 of the
Constitution
Amendment
of section
101 of the
Constitution

5. Section 96 of the Constitution is hereby amended by the substitution for the words "sixty two" appearing in subsections (5) and (6) thereof of the words "sixty five".

6. Section 97 of the Constitution is hereby amended by the substitution for the words "sixty two" appearing in subsection (1) thereof of the words "sixty five".

7. Section 100 of the Constitution is hereby amended by the substitution for the words "sixty two" appearing in subsections (5) and (6) thereof of the words "sixty five".

8. Section 101 of the Constitution is hereby amended by the substitution for the words "sixty two" appearing in subsection (1) thereof of the words "sixty five".