

NEWS

Law Society challenges amendment



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MASERU – THE Law Society of Lesotho wants certain sections of the newly assented 10th Amendment to the Constitution declared null and void.

The Law Society says sections 4, 5 and 6 required a referendum before they could be passed to the king for royal assent, which did not happen.

It says the sections should therefore be declared unconstitutional, null and void from the start.

Section 4 introduces affirmative action in favour of marginalised groups.

“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,” the newly inserted section says.

“Parliament shall make laws for the purpose of giving effect to this section.”

Section 5 inserts a public interest provision.

It says a person acting in his or her own interests, on behalf of another who cannot act on their own, as a member of or in the interest of a group or class of people, in the public interest, and an association acting in the interests of its members or any other members of society “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”.

Section 6 introduces establishment of parliament, making it tri-cameral in that it consists of the National Assembly, the Senate and the King.

The amended section made parliament bicameral, not including the King as its member and yet he makes law.

It also gives parliament autonomy and independence.

“The budgetary allocation for Parliament shall be done through a percentage or a model to be determined by an Act of Parliament,” it reads.

The Law Society’s argument is that these amendments needed to be approved by a two-thirds majority in parliament “failing which a referendum would be absolutely necessary in terms of Section 85 of the Constitution”.

The Law Society president, Advocate Lintle Tuke, told the court in an affidavit that “the Bill should have never been submitted to the King for royal assent with the impugned sections”.

“This was a clear error of law which the King would have never assented to had he been aware,” Advocate Tuke said.

He asked the court to strike off the three sections “for being unconstitutional for failure to attain two-thirds majority in parliament and for failure to go via a referendum”.

“This is the crux and the purpose of this application,” he said.

“There is no other reasonable, adequate alternative relief available to the Law Society than to approach the Honourable Court for the appropriate rectification relief.”

This comes after Prime Minister Sam Matekane pushed for the passing of the 10th Amendment to the Constitution ahead of the SADC summit that was going to ask him how far Lesotho had gone with the constitutional changes that would allow national reforms.

He presented the amendment to SADC two weeks ago.

While the government was celebrating the achievement at the Prime Minister’s official residence, Law Minister Richard Ramoetsi conceded to the press that the sections could not be submitted to the King for assent unless first approved in a national referendum, as the opposition and civil organisations had warned.

Ramoetsi had earlier said “the mistake can only be remedied by the judiciary, by severing the sections requiring a referendum and leaving the remainder of the Act intact”.

Staff Reporter

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