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I assent.

(L.S.) **GEORGE VELLA**
President

20th April 2021

ACT No. XX of 2021

AN ACT to amend the Constitution of Malta and the General Elections Act to ensure de facto equality between men and women in politics.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title.

1. The short title of this Act is the Constitution of Malta and the General Elections (Amendment) Act, 2021.

PART I
Amendments to the Constitution of Malta

Amendments to the Constitution of Malta.

2. This Part amends the Constitution of Malta and this Part shall be read and construed as one with the Constitution of Malta, hereinafter in this Part referred to as "the Constitution".

Addition of new article 52A to the Constitution.

3. Immediately after article 52 of the Constitution there shall be

added the following new article:

"Additional seats for under-represented sex.

52A. (1) If at a general election which is contested by two or more political parties and in which only candidates of two parties are elected or in the eventuality of an election result as provided for in sub-paragraphs (i) and (ii) of the proviso to sub-article (1) of article 52 and in the event that the number of Members of Parliament of the under-represented sex, elected by virtue of article 52, inclusive of those members elected at a casual election in terms of the relevant regulations, is less than forty per cent (40%) of all the Members of Parliament, then the number of Members of Parliament shall increase by not more than twelve (12) Members of the under-represented sex:

Provided that the number of Members of Parliament of the under-represented sex elected by virtue of article 52 added to the members of the under-represented sex elected by virtue of this article shall not exceed forty per cent (40%) of the total number of elected Members of Parliament making up the House.

The candidates elected by virtue of this article are to be apportioned equally between the absolute majority party or the relative majority party and the minority party.

(2) Such candidate or candidates belonging to the under-represented sex and who are candidates of the party or parties which shall be credited with the additional seats, and which were credited by the Electoral Commission at the last count with the highest or next higher number of votes without being elected, irrespective of the division in which such highest or next higher number of votes occur, shall be declared by the Electoral Commission as elected to fill the additional seats created by sub-article (1):

Provided that in the event that the number of candidates established under this article is not reached, following the application of the preceding sub-article, such candidates belonging to the under-represented sex shall be declared by the Electoral Commission to be elected to fill the remaining additional seats created by this article who, being candidates of the party which is to be credited with the additional seats, were ranked on a national basis by the Electoral Commission with the highest or next higher number of percentage quota obtained on the basis of their respective final count vote before elimination in relation to the quota of the electoral division contested:

Provided further that in the event that the number of candidates established under this article is not reached as foreseen in this sub-article, the seats thereafter remaining vacant shall be filled by the co-option of a Member or Members by the House and such Member or Members shall be qualified to be elected as a Member of the House as established under article 53, shall not be subject to any disqualifications for membership of the House as provided under article 54 and shall belong to the under-represented sex.

(3) For the purpose of this article, elected and unelected candidates who are identified as gender-neutral persons in their official documentation, shall be counted with the under-represented sex.

(4) This article shall remain in force until the expiry of the period of twenty (20) years from the date of its coming into force, unless revoked or re-enacted with or without modification by means of an Act of Parliament according to the provisions of this Constitution.".

Amendment of article 61A of the Constitution.

4. In paragraph (b) of sub-article (2) of article 61A of the Constitution, the words "the voters therein." shall be substituted by the words "the voters therein:" and immediately thereafter there shall be added the following new proviso:

"Provided that this paragraph shall not apply for the purpose of the first proviso of sub-article (2) of article 52A of the Constitution.".

Amendment of article 66 of the Constitution.

5. In paragraph (b) of sub-article (2) of article 66 of the Constitution, for the words "articles 51, 52, 56, 57, 60, 61 and 64A," there shall be substituted the words "articles 51, 52, 52A, 56, 57, 60, 61 and 64A,".

PART II
Amendments to the General Elections Act

Amendments to the General Elections Act. Cap. 354.

6. This Part amends the General Elections Act and it shall be read and construed as one with the General Elections Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 7 of the principal Act.

7. In sub-article (2) of article 7 of the principal Act, the words "eight members as Electoral Commissioners." shall be substituted by the words "ten (10) members as Electoral Commissioners; such members shall reflect equal representation between sexes, in any case not having less than four (4) members of every sex.".

8. Immediately after the Annex to the Thirteenth Schedule to the principal Act, there shall be added the following new regulation:

Addition of new regulation in the Thirteenth Schedule to the principal Act.

"Additional members in terms of article 52A of the Constitution.

24. For the purpose of electing the additional members, if any, required in terms of article 52A of the Constitution, the Commission shall:

(a) establish the number of members elected to the House by sex and determine the under-represented sex as the sex with the lowest number of members elected to the House;

(b) establish the percentage of seats attained by the under-represented sex based on the number of elected members of the under-represented sex elected to the House as a proportion of the number of elected members to the House by dividing the number of elected members of the under-represented sex with the number of elected members multiplied by hundred; and

(c) in the event that the percentage of the under-represented sex is below forty percent (40%), the Commission shall assign up to a maximum of twelve (12) additional seats by applying the following equation:

A = total number of seats attained by the under- represented sex;

B = total number of members elected to the House;

x = additional seats created in terms of article 52A of the Constitution;

0.40 = the denominator that represents the total number of seats, including the additional seats created in terms of article 52A of the Constitution.

$$\frac{(A)+x}{(B)+x} = 0.40$$

Subject to the provisions of article 52(1) of the Constitution, the number of additional seats resulting from the application of the equation shall be rounded down to the nearest even integer to ensure that the additional seats allocated to the under-represented sex in terms of article 52A of the Constitution shall be an even integer and the elected members of the under-represented sex elected to the House shall not exceed forty percent (40%).".

Addition of new Annex to the Thirteenth Schedule to the principal Act.

9. Immediately after regulation 24 of the Thirteenth Schedule to the principal Act, as added by clause 8, there shall be added the following new Annex:

"**Annex to the Thirteenth Schedule**

Art. 52A of the Constitution

Regulation 23A of the General Elections (Sorting of Ballot Papers, Casual Elections, and Co-Opting) Regulations 1991

Examples for calculating additional seats in terms of article 52A of the Constitution

Examples in terms of sub-article (1) of article 52A of the Constitution

Example A

The total number of seats attained by the under-represented sex is nine (9) from a total of sixty-seven (67) seats in the House.

The proportion of seats assigned to the under-represented sex is thirteen point forty-three per cent (13.43%). This percentage is below the forty per cent (40%) threshold and so the provisions of article 52A of the Constitution shall apply.

To establish the number of additional seats to be assigned to the under-represented sex, the Commission shall apply the following equation:

$$\frac{9+x}{67+x} = 0.40$$

$9 + x = 0.40\ (67 + x)$

$9 + x = 26.8 + 0.40x$

$x - 0.4x = 26.8 - 9$

$0.6x = 17.8$

$x = 29.67$

The figure of 29.67 shall be rounded down to the nearest even integer 28, to ensure that the total number of seats does not exceed forty per cent (40%). However, given that the maximum number of additional seats which can be assigned is 12, the 28 are to be reduced to 12.

Example B

The Total number of seats attained by the under-represented sex is twenty-three (23) from a total of sixty-nine (69) seats in the House.

The proportion of seats assigned to the under-represented sex is thirty-three point thirty-three per cent (33.33%). This percentage is below the 40% threshold and so the provisions of article 52A of the Constitution shall apply.

To establish the number of additional seats to be assigned to the under-represented sex, the Commission shall apply the following equation:

$$\frac{23 + x}{69 + x} = 0.40$$

$23 + x = 0.40\ (69+x)$

$23 + x = 27.6 + 0.40x$

$x - 0.4x = 27.6 - 23$

$0.6x = 4.6$

$x = 7.67.$

The figure of 7.67 shall be rounded down to the nearest even integer, hence adjusted to six (6) additional seats.".

Addition of new regulation to the Thirteenth-A Schedule to the principal Act.

10. Immediately after regulation 21 of the Thirteenth-A Schedule to the principal Act there shall be added the following new regulation:

"Additional members in terms of article 52A of the Constitution.

21A. For the purpose of electing the additional members, if any, required in terms of article 52A of the Constitution, the rules and regulations found in Part IV to the Thirteenth Schedule shall be applied.".

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Passed by the House of Representatives at Sitting No. 448 of the 14th April, 2021.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

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