

THE CONSTITUTION (AMENDMENT NO. 3) BILL
(No. XXXIV of 2016)

Explanatory Memorandum

The object of this Bill is to amend the Constitution to make provision for a Prosecution Commission which –

- (a) shall determine whether the decision of the Director of Public Prosecutions to institute or not to institute criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts;
- (b) shall determine whether the decision of the Director of Public Prosecutions to discontinue criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts;
- (c) shall make recommendations to the Director of Public Prosecutions for the expeditious disposal of criminal proceedings and for the reduction of systemic delays; and
- (d) may require the Director of Public Prosecutions to furnish a report concerning the discharge of his functions under section 72 at such times and in such manner as it may determine.

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16 December 2016

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Section 47 of Constitution amended
3. Section 72 of Constitution amended
4. New section 72A inserted in Constitution
5. Commencement

A BILL

To amend the Constitution

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Constitution (Amendment No. 3) Act 2016.

2. Section 47 of Constitution amended

Section 47 of the Constitution is amended, in subsection (2)(b), by inserting, after the figure “72”, the words “, 72A”.

3. Section 72 of Constitution amended

Section 72 of the Constitution is amended, in subsection (6), by deleting the words “In the exercise” and replacing them by the words “Subject to section 72A, in the exercise”;

4. New section 72A inserted in Constitution

The Constitution is amended by inserting, after section 72, the following new section –

72A. Prosecution Commission

- (1) There shall be a Prosecution Commission which–

- (a) shall determine whether the decision of the Director of Public Prosecutions to institute or not to institute criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts;
- (b) shall determine whether the decision of the Director of Public Prosecutions to discontinue criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts;
- (c) shall make recommendations to the Director of Public Prosecutions for the expeditious disposal of criminal proceedings and for the reduction of systemic delays; and
- (d) may require the Director of Public Prosecutions to furnish a report concerning the discharge of his functions under section 72 at such times and in such manner as it may determine.

(2) Where the Prosecution Commission determines that the decision of the Director of Public Prosecutions –

- (a) to institute criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts, it shall direct the Director of Public Prosecutions to discontinue criminal proceedings against that person;
- (b) not to institute criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts, it shall direct the Director of Public Prosecutions to institute criminal proceedings against that person;
- (c) to discontinue criminal proceedings against a person is irrational, perverse, against public interest or otherwise erroneous in law or on facts, it shall direct the Director of Public Prosecutions to institute criminal proceedings against that person anew.

(3) (a) The Director of Public Prosecutions shall comply with any direction given by the Prosecution Commission under subsection (2).

(b) Any failure by the Director of Public Prosecutions to comply, without reasonable excuse, with a direction of the Prosecution Commission shall constitute an act of misbehaviour for the purpose of section 93(2).

(4) The Prosecution Commission shall consist of a Chairperson and 2 other Commissioners appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.

(5) (a) Where the Judicial and Legal Service Commission fails to advise the President under subsection (4), within 90 days of the commencement of this section or of any subsequent vacancy arising in the composition of the Prosecution Commission, the appointment of the Commissioners shall be made by an Appointments Committee consisting of the President, as Chairperson, and the Prime Minister and Leader of Opposition as members.

(b) At any meeting of the Appointments Committee, 2 members, including the Chairperson, shall constitute a quorum.

(6) No person shall be appointed by the President as Chairperson or Commissioner unless he is a retired Judge of the Supreme Court or any other Commonwealth State.

(7) The Chairperson and Commissioners of the Prosecution Commission shall hold office for a non-renewable term of 5 years on such terms and conditions as the President may determine.

(8) Notwithstanding any provision to the contrary in this Constitution, any appointment made under this section may only be terminated in accordance with this section.

(9) The Chairperson or any Commissioner of the Prosecution Commission may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind, or any other cause) or for misbehaviour and shall not be removed except in accordance with subsections (10) to (12).

(10) The Chairperson or any Commissioner of the Prosecution Commission shall be removed from office by the President or the Appointments Committee, as the case may be, where the question of his removal from that office has been referred to a tribunal appointed under subsection (11) and the tribunal has recommended to the President or the

Appointments Committee, as the case may be, that he ought to be removed from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(11) Where the President, acting on the advice of the Judicial and Legal Service Commission, considers that the question of removing the Chairperson or any Commissioner of the Prosecution Commission ought to be investigated –

- (a) the President, acting on the advice of the Judicial and Legal Service Commission, shall appoint a tribunal which shall consist of a Chairperson and not less than 2 other members, being persons who hold or have held office as a Judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a Court having jurisdiction in appeals from such a Court; and
- (b) that tribunal shall enquire into the matter and report on the facts to the President or the Appointments Committee, as the case may be, and recommend to the President or the Appointments Committee, as the case may be, whether the Chairperson or any Commissioner of the Prosecution Commission ought to be removed under this section:

Provided that, in its application to a Chairperson or Commissioner appointed by the Appointments Committee, this subsection shall have effect as if for the words “the President acting on the advice of the Judicial and Legal Service Commission”, there were substituted the words “the Appointments Committee”.

(12) Where the question of removing the Chairperson or any Commissioner of the Prosecution Commission has been referred to a tribunal under subsection (11), the President, acting on the advice of the Judicial and Legal Service Commission, may suspend the Chairperson or any Commissioner from performing the functions of his office and any such suspension may at any time be revoked by the President, acting in his own deliberate judgment, and shall in any case cease to have effect where the tribunal recommends to the President that the Chairperson or any Commissioner should not be removed.

(13) There shall be such provision as may be prescribed for such

supplementary or ancillary matters as may appear necessary or expedient in consequence of any provision of this section.

(14) A Bill for an Act of Parliament to make provision for such supplementary or ancillary matters as may appear necessary or expedient in consequence of any provision of this section shall not be passed or altered by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three quarters of all the members of the Assembly.

5. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.
