

THE CONSTITUTION (AMENDMENT No. 2) BILL
(No. XXX of 2003)

Explanatory Memorandum

The main object of this Bill is to amend the Constitution to enhance the role and status of the President of the Republic by conferring additional powers on him whilst maintaining the Prime Ministerial form of Government.

25 July 2003

Sir Anerood Jugnauth
Prime Minister, Minister of Defence & Home Affairs
and Minister of External Communications

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Section 28 of Constitution amended
3. Section 38 of Constitution amended
4. Section 57 of Constitution amended
5. Section 75 of Constitution amended
6. Third Schedule to Constitution amended
7. 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. 2) Act 2003.

2. Section 28 of Constitution amended

Section 28 of the Constitution is amended -

- (a) by repealing subsection (1) and replacing it by the following subsection -

- (1) There shall be a President who shall -

- (a) be the Head of State and Commander-in-Chief of the Republic of Mauritius;

- (b) uphold and defend the Constitution and ensure that -

- (i) the institutions of democracy and the rule of law are protected;

- (ii) the fundamental rights of all are respected; and

- (iii) the unity of the diverse Mauritian nation is maintained and strengthened.

- (b) by inserting immediately after subsection (1), the following new subsection –

- (1A) Subject to section 64, the President shall, in the exercise of his functions under this Constitution or any other law, act in accordance with the principles set out in subsection (1)(b).

3. Section 38 of Constitution amended

Section 38 of the Constitution is amended –

- (a) in subsection (1), by deleting the words “acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition” and replacing them by the words “acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons as appear to the President,

acting in his own deliberate judgement, to be leaders of parties in the Assembly”; and

- (b) in subsection (2) –
 - (i) by deleting the words “appointed by the President in accordance with the advice of the Judicial and Legal Service Commission”; and
 - (ii) by deleting the words “acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition” and replacing them by the words “acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons as appear to the President, acting in his own deliberate judgement, to be leaders of parties in the Assembly”.

4. Section 57 of Constitution amended

Section 57 of the Constitution is amended by deleting paragraph (a) of the provision to subsection (1) and replacing it by the following paragraph –

- (a) where the Assembly passes a resolution that it has no confidence in the Government and -
 - (i) the Prime Minister does not within 3 days either resign from his office or advise the President to dissolve Parliament within 7 days or at such later time as the President, acting in his own deliberate judgement, may consider reasonable, the President, acting in his own deliberate judgement, may dissolve Parliament; or
 - (ii) the Prime Minister resigns from his office and, before resigning, advises the President to dissolve Parliament, the President may, where he has reason to believe that another person is capable of forming a government with the confidence of a majority in the Assembly, and acting in his own deliberate judgement, decline to act on the advice of the Prime Minister and may invite that other person to form a government.

5. Section 75 of Constitution amended

Section 75 of the Constitution is amended in subsection (4) –

- (a) by lettering the existing provision as paragraph (a); and
- (b) by adding the following new paragraph –
 - (b) The President may request the Commission to reconsider any advice tendered by it and shall act in accordance with such advice as may be tendered by the Commission after such reconsideration.

6. Third Schedule to the Constitution amended

The Third Schedule to the Constitution is amended by deleting the words –

“OATH OF PRESIDENT

I, do swear (or solemnly affirm) that I will faithfully execute the office of President and will, to the best of my ability, preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of Mauritius.”

and replacing them by the words –

“OATH OF PRESIDENT

I do swear (or solemnly affirm) that I will faithfully execute the office of President and will, to the best of my ability without favour or prejudice, defend the Constitution and the institutions of democracy and the rule of law, ensure that the fundamental rights are protected and the unity of the diverse Mauritian nation maintained and strengthened.”

7. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.