

THE CONSTITUTION (AMENDMENT) BILL, 2013

MEMORANDUM

1. Object

The object of this Bill is to amend the Constitution-

- (a) to rename and reconstitute the Electoral Commission as the Independent Electoral Commission;
- (b) to provide for the process of identifying and selecting persons who may be appointed as members of the Commission;
- (c) to provide for the independence and impartiality of the Commission;
- (d) to provide the procedure for removing members of the Electoral Commission which is similar to the procedure for the removal of Judges of the High Court.

2. Defects in the existing law

Presently, the Electoral Commission is designated as the Electoral Management Body. The name of the Commission does not underscore the principle of independence that is critical to an election management body.

Although article 62 of the Constitution provides for the Electoral Commission to be independent in the performance of its functions, the Constitution does not require the Commission or its members to be impartial and to discharge their constitutional functions without fear, favour or prejudice. A member of the Commission can still be under apprehension or prejudiced even when they are not under the direction or control of any person or authority.

In addition, whereas the Constitution provides for members of the Electoral Commission to be appointed by the President with the approval of Parliament, there is no clear procedure on the identification of the persons to serve as or to be appointed as members of the Commission. This is compounded by the fact that there are several participants in the electoral process, including the political parties and the general public, whose confidence in the Electoral Commission is critical to the credibility of the Commission, the electoral system and the outcome of any election, yet they are not consulted or involved in the identification or selection of persons to be appointed as members of the Commission.

Article 60(5) of the Constitution presupposes that persons who have been holding political positions in a political party or political organisation or those

who have been contesting elections can immediately become non partisan and become members of a body that is required to be independent and impartial merely by resigning these positions. The appointment of such persons to the Electoral Commission would undermine the impartiality of the members and compromise and threaten the independence of the Electoral Commission.

Further, whereas the Judges have a detailed and rigorous procedure of removal under article 144 of the Constitution which provides security of tenure and fortifies their independence, the removal of the members of the Commission is merely restricted to specifying the grounds of removal.

3. Remedies

The Bill therefore seeks to amend the Constitution to re-designate the existing Electoral Commission as the Independent Electoral Commission, to emphasize the independence of the Electoral Commission.

The Bill proposes to empower Parliament to specify a procedure which ensures that the identification and selection of members of the Electoral Commission is participatory and all-inclusive. The procedure may be provided by Parliament in the Electoral Commission Act.

In order to enhance the security of tenure of the members of the Commission and the independence of the Electoral Commission, the Bill provides for the removal of a member to be investigated and recommended by a tribunal where the removal is based on incompetence or misconduct or by a medical board where the removal is based on health grounds.

The Bill proposes to restrict a recent Member of Parliament or a local government body Chairperson or Councillor and the members of the executive of a political party or political organisation from being appointed members of the Electoral Commission.

Finally, the Bill seeks to make miscellaneous amendments to the marginal or head notes in certain provisions of the Constitution to reflect the change in the designation of the Electoral Commission. The articles in which the term appears are article 60, 61, 63, 64, 65 and 67.

Member of Parliament

THE CONSTITUTION (AMENDMENT) BILL, 2013
ARRANGEMENT OF CLAUSES

Clause

1. Amendment of article 60 of the Constitution
2. Replacement of article 62 of the Constitution
3. Miscellaneous Amendments to the Constitution

A Bill for an Act

ENTITLED

THE CONSTITUTION (AMENDMENT) ACT, 2013.

An Act to amend the Constitution to rename and reconstitute the Electoral Commission as the Independent Electoral Commission; to provide for the identification and recommendation of persons to be appointed members of the Commission; to provide for the impartiality of the Commission; to specify the procedure for removing a member of the Electoral Commission and for related matters.

BE IT ENACTED by Parliament as follows:

1. Amendment of article 60 of the Constitution

Article 60 of the Constitution is amended -

(a) by substituting for clause (1) the following-

“(1) There shall be an Independent Electoral Commission which shall consist of a Chairperson, a Deputy Chairperson and five other members.”;

(b) by inserting immediately after clause (1) the following-

“(1a) Subject to clause (1b), the Members of the Commission shall be appointed by the President with the approval of Parliament.

(1b) The President shall appoint the members of the Commission from a list of persons identified and recommended for appointment in the manner prescribed by Parliament by law.”;

(c) by substituting for clause (3), the following-

“(3) A member of the Commission shall hold office for seven years and is not eligible for reappointment.”;

(d) by substituting for clause (5), the following-

“(5) A person shall not be appointed as a member of the Commission if that person has within the preceding five years, held office, stood or contested for an election as -

- (a) a Member of Parliament or a local government;
- (b) a member of the executive of a political party or political organisation.”;
- (e) by inserting immediately after clause (8), the following-

“(9) The removal of a member of the Commission under clause 8(a) shall be investigated by a medical board appointed by the President on the advice of the Health Service Commission.

(10) The question for removal of a member of the Commission under clause (8) (b) or (c) shall be referred to a tribunal appointed by the President.

(11) Any person may, through the Judicial Service Commission, petition the President to appoint a tribunal or medical board to remove a member of the Commission.

(12) The Judicial Service Commission shall, upon establishing a *prima facie* case against a member of the Commission, recommend to the President to appoint a tribunal or a board to investigate the member.

(13) The President shall suspend the member of the Commission in respect of whom a tribunal or board has been appointed under this article.

(14) The President shall act appropriately after considering the recommendation made by the tribunal or the medical board.

(15) A suspension under clause (13) shall cease to have effect if the tribunal or medical board advises the President that the member should not be removed.”

2. Replacement of article 62 of the Constitution

For article 62 of the Constitution there is substituted the following-

“62. Independence and impartiality of the Commission.

(1) Subject to the provisions of this Constitution, the Commission shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority.

(2)The Commission shall be impartial and shall perform its functions in accordance with this Constitution, without fear, favour or prejudice.”

3. Miscellaneous amendments to the Constitution.

The Constitution is amended by inserting "Independent" immediately before "Electoral Commission" wherever it appears in the Constitution.