



UNITED NATIONS

E/NL.2007/70-72
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English only*

LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

*In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances,
the Secretary-General has the honour to communicate the following legislative text / texts*

MAURITIUS

Communicated by the Government of Mauritius

NOTE BY THE SECRETARIAT

- (a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [] have been added or changed by the Secretariat.
- (b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

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*Note by the Secretariat: These documents are a direct reproduction of the text / texts communicated to the Secretariat.



EXTRADITION
Acts 20 and 21 of 1970 – 21 September 1970

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PART I – PRELIMINARY

- 1 Short title**
This Act may be cited as the Extradition Act.
- 2 Interpretation**
(1) In this Act –
“Commonwealth country” means a country specified in the First Schedule to the Mauritius Citizenship Act;
“extradition crime” means an offence against the law of, or of part of, a foreign state, the act constituting which would, if it took place in or within the jurisdiction of Mauritius, constitute an offence against the law in force in Mauritius and –
(a) (i) in the case of a non-Commonwealth country, amounts to one of the offences specified in the extradition treaty with that country;
(ii) in the case of a Commonwealth country, the maximum penalty for which is death or imprisonment for not less than 12 months; and
(b) (i) is described in the First Schedule; or
(ii) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence;
“extradition treaty” means, in relation to a foreign state, a treaty or agreement between Mauritius and the foreign state relating to the surrender of offenders and includes any

treaty or agreement made before 12 March 1968, which extends to, and is binding on Mauritius;

“foreign state” means a state with which Mauritius has entered into an extradition treaty, and includes a Commonwealth country;

“foreign warrant” means a judicial or other document issued under the law of, or of a part of, a foreign state and authorising the arrest of a person accused or convicted of an extradition crime;

“Minister” means the Minister to whom responsibility for the subject of external affairs is assigned;

“offender” means a person accused or convicted of an extradition crime committed within the jurisdiction of a foreign state or a part of that state.

(2) For the purposes of this Act, a person shall be deemed not to have been convicted of an offence against the law of, or of a part of, a foreign state where the conviction is, under that law, a conviction for contumacy, but a person so convicted for contumacy shall be deemed to be accused of an offence against that law.

(3) For the purposes of this Act, an offence against the law of a foreign state may be regarded as being an offence of a political character notwithstanding that there do not exist competing political parties in that state.

(4) For the purposes of this Act –

- (a) a colony, territory or protectorate of a foreign state;
- (b) a territory for the international relations of which a foreign state is responsible; and
- (c) a ship or aircraft of, or registered in, a foreign state,

shall, unless the contrary intention appears, each be deemed to be within the jurisdiction, and to be part, of that foreign state.

PART II – EXTRADITION TO FOREIGN STATE

3 Effect of UK Extradition Acts

(1) Where, immediately before 21 September 1970 –

- (a) under an Order in Council in force under the United Kingdom Extradition Acts, 1870 to 1935, those Acts applied to a foreign state specified in the Order; and
- (b) those Acts, as they so applied, were extended to Mauritius,

this Part shall apply in relation to the state so specified in the Order.

(2) Where the operation of the Order in Council was subject to any limitations, conditions, exceptions or qualifications, then, subject to this section and sections 4 and 5, this Part shall apply in relation to that state subject to those limitations, conditions, exceptions or qualifications.

(3) The Minister may, by regulations, direct that this Part shall cease to apply in relation to a foreign state specified in the regulations being a foreign state in relation to which this Act applied by virtue of subsection (1), and, upon the coming into operation of the regulations that so provide, this Part shall cease to apply in relation to that state.

3A Commonwealth countries

(1) Subject to subsection (2), this Part shall apply to all Commonwealth countries.

(2) The Minister may, by regulations, provide that this Part shall not apply to a Commonwealth country or shall apply in relation to a Commonwealth country subject to such limitations, conditions, exceptions or qualifications as may be specified in the regulations and where any regulations so provide, this Part shall apply in relation to that country subject to those limitations, conditions, exceptions or qualifications.

4 Application of this Part

(1) Where an extradition treaty (including an extradition treaty that affects or amends an earlier extradition treaty) comes into operation between Mauritius and a foreign state, the Minister may, by regulations, direct that this Part shall apply to that state.

(2) Any regulations under subsection (1) shall recite the terms of the treaty and may provide that this Part shall apply in relation to the foreign state subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to the treaty.

(3) Subject to section 7, this Act shall be read subject to the terms of the treaty and shall be construed as to give effect to the treaty.

5 Order applying this Part to foreign states

(1) Subject to subsection (2), where regulations are made under section 4 in relation to a foreign state, this Part shall apply in relation to that state.

(2) Where the regulations provide that this Part shall apply in relation to a foreign state subject to any limitations, conditions, exceptions or qualifications, this Part shall apply in relation to that state subject to those limitations, conditions, exceptions or qualifications.

6 Liability of offender to be surrendered

Subject to this Act, where this Part applies to any foreign state, every offender from that state who is in Mauritius shall be liable to be arrested and surrendered in the manner provided by this Act, whether the act in respect of which the request for the surrender of the offender relates occurred before or after the application of this Act to that state, and whether or not any Court in Mauritius has jurisdiction in respect of that act.

7 Restrictions on surrender of persons

(1) An offender shall not be surrendered to a foreign state where –

- (a) the offence in respect of which the request for his surrender is made is one of a political character; or
- (b) he proves to the satisfaction of the Minister that the request for his surrender has in fact been made with a view to trying or punishing him for an offence of a political character.

(2) An offender shall not be surrendered to a foreign state unless provision is made by the law of that state, or in the extradition treaty, or in the case of a Commonwealth country, that country has entered into an agreement with, or given an undertaking to Mauritius, that he will not, until he has left or has had an opportunity of leaving that state –

- (a) be detained or tried in that state for any offence that is alleged to have been committed, or was committed, before his surrender other than –
 - (i) the offence to which the request for his surrender, relates or any offence of which he could be convicted upon proof of the facts on which that request was based; or
 - (ii) in the case of a Commonwealth country, any other extradition crime in respect of which the Minister consents to his being so detained or tried;
- (b) be detained in that state for the purpose of being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to that state, other than an offence to which the request for his surrender relates or any other offence of which he could be convicted upon proof to the facts on which that request for his surrender was based.

(3) A person who is held in custody or has been admitted to bail in Mauritius in respect of an offence that is alleged to have been committed in Mauritius, or is undergoing a sentence for a conviction in Mauritius, shall not be liable to be surrendered to a foreign state unless he has been

discharged from custody or the recognizances upon which he was admitted to bail have been discharged, as the case may be, whether as a result of his acquittal on the expiration of his sentence or otherwise.

(4) A person shall not be surrendered to a foreign state in respect of an offence if he has been acquitted or pardoned by a competent tribunal or authority in any country, or has undergone the punishment provided by the law of, or of a part of, any country, in respect of that offence or of another offence constituted by the same act as that offence.

(5) An offender shall not be surrendered to a foreign state where the Minister has reasonable grounds for believing that –

- (a) the request for his surrender although purporting to have been made in respect of an offence for which, but for this section, he may be liable to be surrendered to that state, was made for the purpose of prosecuting or punishing him on account of his race, caste, place of origin, nationality, political opinions, colour or creed; or
 - (b) if the offender is surrendered to that state he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, caste, place of origin, nationality, political opinions, colour or creed.
- (6) Where in respect of a Commonwealth country, the Minister is satisfied that by reason of –
- (a) the trivial nature of the offence that an offender is alleged to have committed;
 - (b) the accusation against an offender not having been made in good faith or in the interests of justice; or
 - (c) the passage of time since the offence is alleged to have been committed or was committed,

and having regard to all the circumstances under which the offence is alleged to have been committed, it would be unjust, oppressive or too severe a punishment to surrender the offender or, as the case may be, to surrender him before the expiration of a particular period, the offender shall not be surrendered or shall only be surrendered after that period, as the case may be.

8 Request for surrender

Every request for the surrender of an offender who is, or is suspected of being, in Mauritius, shall be made to the Minister for transmission to the Attorney-General –

- (a) by a diplomatic or consular representative, or a Minister, of the foreign state which requests the surrender; or
- (b) by such other means as may be specified in the extradition treaty, or in the case of a Commonwealth country, as may be agreed upon.

9 Notice to Magistrate by Attorney-General

(1) Subject to subsection (2), where a request for the surrender of an offender is transmitted to the Attorney-General under section 8, the Attorney-General may, by notice in writing in Form A of the Second Schedule directed to a Magistrate, inform the Magistrate that a request for the surrender of an offender has been made and authorise him to issue a warrant for the arrest of the offender.

(2) Where the Attorney-General is of opinion that the offender is not liable to be surrendered to the foreign state requesting his surrender, he shall not issue a notice under subsection (1) in respect of the offender.

10 Issue of warrant

(1) A warrant for the arrest of an offender who is, or is suspected of being, in Mauritius, may be issued –

- (a) by a Magistrate on receipt of a notice from the Attorney-General under section 9, in Form B of the Second Schedule; or
- (b) by a Magistrate on the production to him of a foreign warrant or on such other evidence as in his opinion shows there is reasonable ground for believing that the

offender has been accused or convicted of an extradition crime, in Form C of the Second Schedule.

(2) Where a Magistrate issues a warrant under subsection (1) (b), he shall forthwith report the issue of the warrant to the Attorney-General, and send to him a certified copy of any foreign warrant or other documentary evidence produced to him and a note of any other evidence so produced.

(3) On receipt of a report under section 9, the Attorney-General may, if he thinks fit, by notice in writing, direct that the warrant be cancelled or state that a request has been transmitted to him under section 8 for the surrender of the offender.

11 Proceedings after arrest

(1) A person who is arrested under a warrant issued under section 10 shall, unless he is sooner released, be brought as soon as practicable before a Magistrate.

(2) The Magistrate may remand in custody a person brought before him under this section or admit him to bail for a period or periods not exceeding 7 days at any one time and, where a Magistrate remands him in custody or admits him to bail, he may, at the expiration of the period, be brought before that Magistrate or any other Magistrate.

(3) Where a person was arrested under a warrant issued without the authority of the Attorney-General under section 9, the Magistrate shall remand him in custody or admit him to bail until the Magistrate receives a notice in writing from the Attorney-General either directing that the warrant be cancelled or stating that a request has been transmitted to him under section 8 for the surrender of the offender.

(4) Where the Magistrate –
(a) does not receive the notice from the Attorney-General within such reasonable time as the Magistrate may fix having regard to all the circumstances; or
(b) receives a notice directing him that the warrant be cancelled,
the Magistrate shall –
(i) where the person arrested is held in custody, order that he be released; or
(ii) where he has been admitted to bail, make an order discharging the recognisances upon which he was admitted to bail.

(5) Where the person was arrested under a warrant issued with the authority of the Attorney-General under section 9 or after receipt of a notice from the Attorney-General stating that a request has been transmitted to him under section 8 for the surrender of the offender and –

(a) there is produced to the Magistrate a duly authenticated foreign warrant in respect of the person issued in the foreign state that made the request for the surrender of the person;
(b) there is produced to the Magistrate –
(i) in the case of a person who is accused of an extradition crime, such evidence as would, in the opinion of the Magistrate, according to the law in Mauritius, justify the committal for trial of the person if the act or omission constituting that crime had taken place, in, or within the jurisdiction of Mauritius; or
(ii) in the case of a person who is alleged to have been convicted of an extradition crime, sufficient evidence to satisfy the Magistrate that the person has been convicted of that crime; and
(c) the Magistrate is satisfied, after hearing any evidence tendered by the person, that is liable to be surrendered to the foreign state that made the request for the surrender, the Magistrate shall, by warrant in Form D of the Second Schedule, commit him to prison to remain there until he is surrendered to the foreign state.

(6) Where the Magistrate is of the opinion that it would be dangerous to the life or prejudicial to the health of the person to commit him to prison, he may, in lieu of committing him to prison, by

warrant, order that he be held in custody at the place where he is for the time being, or at any other place to which the Magistrate considers that he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be committed to prison or until he is surrendered.

(7) Where, under this section, a Magistrate commits a person to prison or otherwise orders that he be held in custody, he shall forthwith send to the Attorney-General a certificate to that effect and such report, if any, relating to the proceedings as he thinks fit.

12 Surrender of offender to foreign state

(1) Where, under this Part, a Magistrate commits a person (in this section referred to as the prisoner) to prison, or otherwise orders that he be held in custody, pending his surrender to a foreign state, the Magistrate shall inform the prisoner that he will not be surrendered until after the expiration of the period of 15 days from the date of the committal or order and that he may, within that period, apply for the issue of a writ of habeas corpus.

(2) After the expiry of the period specified in subsection (1) or, where a writ of habeas corpus is issued in respect of the prisoner, after the Supreme Court has decided, on the return to the writ, that he is not to be discharged from custody, whichever is the later, the Attorney-General may, if he is satisfied that the prisoner is liable to be surrendered to the foreign state, by warrant in Form E of the Second Schedule, order that the prisoner be delivered into the custody of the person specified in the warrant and be conveyed by that person to a place in the foreign state or within the jurisdiction of, or of a part of, the foreign state and there surrendered to some person appointed by the foreign state to receive him.

(3) Until the prisoner is conveyed out of Mauritius he shall be deemed for the purposes of the law of Mauritius to be a person in lawful custody.

(4) Any property in the possession of the prisoner at the time of his arrest that may be material as evidence in proving the offence to which the request for his surrender relates shall, if the Attorney-General so directs, be delivered up on his surrender.

13 Discharge of offender

Where a person who, under this Part, has been committed to prison, or otherwise ordered to be held in custody, is in custody in Mauritius at the expiration of 2 months –

- (a) after the date of the committal or order; or
- (b) where a writ of habeas corpus is issued, after the Supreme Court has decided on the return to the writ,

whichever is the later, the Supreme Court shall, on application and on proof that reasonable notice of the intention to make the application has been given to the Attorney-General, order that the offender be released, unless sufficient cause is shown against the release.

PART III – EXTRADITION FROM FOREIGN STATES

14 Extradition crime

In this Part “extradition crime” means an offence (wherever committed) against the law of Mauritius, being an offence the act constituting which –

- (a) is described in the First Schedule; or
- (b) would be so described if the description concerned contained a reference to any intent or state of mind on the part of the person committing the offence, or to any circumstance of aggravation, necessary to constitute the offence.

15 Surrender of escaped offenders

(1) Where a person accused or convicted of an extradition crime in Mauritius is, or is suspected of being, in any foreign state with which there is an extradition treaty applicable to that offence, a request for his surrender may be transmitted by the Minister to a diplomatic or consular representative, or a Minister, of that state, or to such other authority as may be specified in the treaty.

(2) Where a person accused or convicted of an extradition crime in Mauritius is, or is suspected of being in, or on his way to a Commonwealth country, or within the jurisdiction of, or of a part of, that country a request for his surrender may be transmitted by the Minister to a diplomatic or consular representative, or a Minister, of that country, or to such other authority as may be agreed upon.

(3) Any person surrendered pursuant to a request under subsection (1) or (2) may be brought to Mauritius and delivered to the proper authorities to be dealt with according to law.

16 Persons surrendered not triable for other offences

Where, any person accused or convicted of an extradition crime in Mauritius is surrendered by a foreign state, pursuant to any extradition treaty, or otherwise by a Commonwealth country, that person shall not, until he has left or has had an opportunity of leaving Mauritius –

- (a) be detained or tried in Mauritius for any offence that is alleged to have been committed or was committed, before his surrender other than –
 - (i) the offence to which the request for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that request was based; or
 - (ii) in the case of a Commonwealth country, any other extradition crime in respect of which that country consents to his being so detained or tried, as the case may be; or
- (b) be detained in Mauritius for the purpose of being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to Mauritius, other than an offence of which he could be convicted upon proof of the facts on which the request for his surrender was based.

PART IV – MISCELLANEOUS

17 Offences committed at sea or in the air

Where the offence in respect of which the surrender of an offender is sought was committed on board any vessel on the high seas or any aircraft while in the air outside Mauritius, or the territorial waters of Mauritius, which comes into any port or airport of Mauritius, the Minister, the Attorney-General or any Magistrate may exercise the powers conferred by this Act.

18 Simultaneous requests

(1) Where requests for the surrender of an offender are received from more than one foreign state, the Minister may, having regard to the circumstances of the case, surrender the offender to such foreign state as he thinks fit.

(2) The Minister in determining to which foreign state the offender should be returned shall consider all the circumstances of the case and, in particular –

- (a) the relative seriousness of the offences;
- (b) the relative dates on which the requests were made; and
- (c) the nationality, citizenship or the ordinary residence of the offender.

19 Official documents and their authentication

(1) In any proceedings under this Act –

- (a) a document, duly authenticated, that purports to set out testimony given on oath, or declared or affirmed to be true, by a person in proceedings in a foreign state, shall be admissible as evidence of the matters stated in the testimony;
- (b) a document, duly authenticated, that purports to have been received in evidence, or to be a copy of a document that has been received in evidence in proceedings in a foreign state shall be admissible in evidence;

- (c) a document, duly authenticated, that certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, a foreign state shall be admissible as evidence of the fact and date of the conviction; and
- (d) a document, duly authenticated, that purports to be a foreign warrant shall be admissible in evidence.

(2) A document shall be deemed to be duly authenticated for the purpose of being admitted in evidence in proceedings under this Act where, in the case of a document that –

- (a) purports to set out testimony given, declared or affirmed by a person in proceedings in a foreign state, the document purports to be certified by a Judge, Magistrate or officer in that foreign state to be the original document containing or recording that testimony or a true copy of that original document;
- (b) purports to have been received in evidence, or to be a copy of a document that has been received in evidence, in proceedings in a foreign state, the document purports to be certified by a Judge, Magistrate or officer in or of that state to have been, or to be a true copy of a document that has been so received in evidence;
- (c) certifies that a person has been convicted of an offence, the document purports to be certified by a Judge, Magistrate or officer in or of that state; or
- (d) purports to be a foreign warrant, the document purports to be signed by a Judge, Magistrate or officer in or of the state in which the document was issued and the document purports to be authenticated by the oath of a witness or by being signed by or sealed with the official seal of a Minister in or of that state.

(3) Every Court in Mauritius shall take judicial notice of the signature or seal of a Minister authenticating any document specified in subsection (2).

(4) Nothing in this section shall be construed as preventing the proof of any matter, or the admission in evidence of any document, in accordance with any enactment in Mauritius.

20 Taking of evidence

(1) The Attorney-General may, by notice in writing require a Magistrate to take evidence for the purposes of a criminal matter pending in a Court or tribunal of a foreign state other than a matter relating to an offence that is, by its nature or by reason of the circumstances in which it is alleged to have been committed, an offence of a political character.

(2) Upon receipt of the notice, the Magistrate shall –

- (a) take the evidence of each witness appearing before him to give evidence in the like manner as if the witness were giving evidence in respect of a charge against a person for an offence against the law of Mauritius;
- (b) cause the evidence to be reduced to writing and certify at the end of that writing that the evidence was taken by him; and
- (c) cause the writing so certified to be sent to the Attorney-General.

(3) For the purposes of this section –

- (a) the evidence of a witness may be taken in the presence or absence of the person charged with the offence against the law of, or of a part of, the foreign state and the certificate by the Magistrate that the evidence was taken by him shall state whether the person so charged was present or absent when the evidence was taken;
- (b) any enactment with respect to the compelling of persons to appear before a Magistrate and to give evidence or to produce documents, upon the hearing of a charge against the person for an offence against the law of Mauritius, shall apply, so far as it is capable of application, with respect to the compelling of persons to attend before a Magistrate or to produce documents.

21 Regulations

(1) The Attorney-General may make such regulations as he thinks fit for the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the regulations may provide for –

- (a) the removal of persons in custody under this Act and their control and maintenance until their surrender; and
- (b) the seizure and disposal of any property which is the subject or required for proof of any alleged offence to which this Act applies.

22 Amendment of Schedules

The Attorney-General may by regulations amend the Schedules.

FIRST SCHEDULE (sections 2 and 14)

- A
- 1 Murder of any degree
 - 2 Manslaughter
 - 3 An offence against the law relating to abortion
 - 4 Maliciously or willfully wounding or inflicting grievous bodily harm
 - 5 Assault occasioning actual bodily harm
 - 6 Rape
 - 7 Unlawful sexual intercourse with a female
 - 8 Indecent assault
 - 9 Procuring, or trafficking in, women or young persons for immoral purposes
 - 10 Bigamy
 - 11 Kidnapping, abducting or false imprisonment, or dealing in slaves
 - 12 Stealing, abandoning, exposing or unlawfully detaining a child
 - 13 Bribery
 - 14 Perjury or subornation or perjury or conspiring to defeat the course of justice
 - 15 Arson
 - 16 An offence concerning counterfeit currency
 - 17 An offence against the law relating to forgery
 - 18 Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud
 - 19 Burglary, housebreaking or any similar offence
 - 20 Robbery
 - 21 Blackmail or extortion by means of threats or by abuse of authority
 - 22 An offence against bankruptcy law or company law
 - 23 Malicious or willful damage to property
 - 24 Acts done with the intention of endangering vehicles, vessels or aircraft
 - 25 An offence against the law relating to dangerous drugs or narcotics
 - 26 Piracy
 - 27 Revolt against the authority of the master of a ship or the commander of an aircraft
 - 28 Contravention of import or export prohibitions relating to precious stones, gold and other precious metals
- B
- Aiding and abetting, or counseling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the offences listed in paragraph A.

SECOND SCHEDULE

FORM A
(section 9)

EXTRADITION ACT

NOTICE BY THE ATTORNEY-GENERAL

To.... District Magistrate... of...

Whereas a request has been made to me... Attorney-General, for the surrender of..., who is accused (or has been convicted) of the offence of... alleged to have been committed (or committed) in (or within the jurisdiction of)... and is or is suspected of being, in or on his way to Mauritius.

Now, therefore, I..., Attorney-General, inform you that the request has been made and authorise you to issue a warrant for the arrest of... provided that the provisions of the Extradition Act relating to the issue of such a warrant, have, in your opinion, been complied with.

Given under my hand at Port Louis this.....day of... 20...

.....

Attorney-General

FORM B
(section 10)

EXTRADITION ACT

WARRANT OF ARREST

To all members of the Mauritius Police Force.

Whereas the Attorney-General has notified me, District Magistrate of..., that a request has been made to him for the surrender of... who is accused (or has been convicted) of the offence of ... alleged to have been committed (or committed) in (or within the jurisdiction of)... and is, or is suspected of being, in or on his way to Mauritius.

This is, therefore, to authorise and command you forthwith to find... in Mauritius and, having found him, to arrest him and, if he is arrested, to bring him before the District Magistrate of...to show cause why he should not be surrendered to...under the Extradition Act.

Given under my hand at... this...day of... 20 ...

.....

District Magistrate

FORM C
(section 10)

EXTRADITION ACT

WARRANT OF ARREST

To all members of the Mauritius Police Force.

Whereas it has been shown to me District Magistrate of... that... is accused (or has been convicted) of the offence of... alleged to have been committed (or committed) in (or within the jurisdiction of)... and the said... is, or is suspected of being, in or on his way to Mauritius.

This is, therefore, to authorise and command you forthwith to find... and, having found him, to arrest him and, if he is arrested, to bring him before the District Magistrate of... to be further dealt with according to law.

Given under my hand at... this... day of... 20...

.....
District Magistrate

FORM D
(section 11)

EXTRADITION ACT

WARRANT OF COMMITMENT

To all members of the Mauritius Police Force and to the Commissioner of Prisons.

Whereas on this... day of... 20... has been brought before me, District Magistrate of... to show cause why he should not be surrendered under the Extradition Act, on the ground of his being accused (or having been convicted) of the offence of... alleged to have been committed (or committed) in (or within the jurisdiction of)...

And whereas no sufficient cause has been shown to me why... should not be surrendered under the Extradition Act.

This is therefore to authorise and command –

- (a) you, members of the Mauritius Police Force to convey... to the prison at Beau Bassin and deliver him there to the Commissioner of Prisons together with this warrant; and
- (b) you, the Commissioner, to receive... into your custody in the prison and there safely to keep him until he is delivered from prison in accordance with law.

Given under my hand at... this... day of... 20...

.....
District Magistrate

FORM E
(section 12)

EXTRADITION ACT

WARRANT FOR THE SURRENDER OF OFFENDER

Whereas... who is accused (or has been convicted) of the offence of... alleged to have been committed (or committed) in (or within the jurisdiction of)... was delivered into the custody of you the Commissioner of Prisons by warrant dated the... day of... 20... in pursuance of the Extradition Act.

Now, therefore, I... the Attorney-General, under the Extradition Act order –

- (a) you, the Commissioner of Prisons, to deliver... into the custody of... and
- (b) you,... to receive... into your custody and to convey him to a place in or within the jurisdiction of... and there surrender him to the person appointed to receive him.

Given under my hand at Port Louis this... day of ... 20...

.....

.....

Attorney-General

MUTUAL ASSISTANCE IN CRIMINAL AND RELATED MATTERS ACT 2003
Act 35 of 2003 – 15 November 2003

P 29/03; Amended 34/04 (P 40/04); 35/04 (P 39/04); 14/05

ARRANGEMENT OF SECTIONS

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PART I - PRELIMINARY

1. Short title

This Act may be cited as the Mutual Assistance in Criminal and Related Matters Act 2003.

2. Interpretation

In this Act-

“authorised person” means a law officer or a police officer designated in writing by the Attorney-General;

"Central Authority" means the Attorney-General, who shall, for the purposes of a request from a foreign State or an international criminal tribunal, or a request from Mauritius to a foreign State or an international criminal tribunal, be the appropriate competent authority;

"confiscation" –

(a) means the permanent deprivation of property by order of a Court; and

(b) includes forfeiture, where applicable;

“data” means representations, in any form, of information or concepts;

“document” means any material on which data, capable of being read or understood by a person, a computer system or other device are recorded or marked;

“evidence-gathering order” means an order made pursuant to section 6;

"financial institution" means an institution or person regulated by an enactment specified in the First Schedule;

“foreign confiscation order” means an order made by -

(a) a Court in a foreign State in relation to a serious offence; or

(b) an international criminal tribunal in relation to an international criminal tribunal offence,

for the purpose of a confiscation of property in connection with that offence, or of the recovery of the proceeds of that offence;

“foreign document” means a document, article or thing obtained pursuant to a request made by Mauritius under this Act;

“foreign restraining order” means an order made in respect of-

(a) a serious offence by a Court in a foreign State; or

(b) an international criminal tribunal offence by an international criminal tribunal,

for the purpose of restraining a person from dealing with property;



“foreign State” means-

- (a) a state other than Mauritius; and
- (b) every constituent part of such state, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;

“international criminal tribunal” means an international criminal tribunal specified in the Second Schedule and includes any investigatory, prosecutorial or adjudicatory organ of such tribunal;

“international criminal tribunal offence” means any offence for which an international criminal tribunal has power or jurisdiction to prosecute a person;

“proceedings”-

- (a) means any proceedings conducted by or under the supervision of a judge, magistrate or judicial officer, however described, in relation to any alleged or proved offence, any property derived from such offence or any related proceedings; and
- (b) includes –
 - (i) any inquiry or investigation into a serious offence; or
 - (ii) preliminary or final determination of facts relating to a serious offence;

whether or not conducted by or under the supervision of a judge, magistrate or judicial officer;

“proceeds of crime” –

- (a) means any property derived or realised, directly or indirectly, from a serious offence; and
- (b) includes, on a proportional basis, property into which any property derived, or realised, directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;

“property” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

“related proceedings”, in relation to criminal proceedings, means any civil proceedings arising from the same subject matter as that from which the criminal proceedings arose;

“serious offence” -

- (a) means –
 - (i) an offence against a law of Mauritius, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months; or
 - (ii) an offence against a law of a foreign State for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months;
- (b) includes an international criminal tribunal offence.

3. Application of Act

- (1) This Act shall apply to -
 - (a) any foreign State, subject to any condition, variation or modification in any existing or future agreement between Mauritius and that State; and
 - (b) any international criminal tribunal.
- (2) This Act shall apply to requests for assistance in relation to serious offences committed before the coming into operation of this Act.
- (3) This Act shall, in relation to any proceedings, have effect notwithstanding the Letters of Request Rules.
- (4) Nothing in this Act shall prevent informal assistance and continued informal assistance between Mauritius and any other State.

PART II - REQUESTS

4. Request from Mauritius

- (1) The Central Authority may make a request on behalf of Mauritius to the competent authority of a foreign State, or to an international criminal tribunal, for mutual assistance in any proceedings commenced in Mauritius in relation to a serious offence.
- (2) A request under subsection (1) may require the foreign State or, as the case may be, the international criminal tribunal, to provide such assistance as may be specified in the request and, in particular to -
 - (a) have evidence taken, a statement or information taken, or documents or other articles produced;
 - (b) have evidence taken by means of technology that permits the virtual presence of the person in Mauritius;
 - (c) obtain and execute a search warrant, or other lawful instrument, authorising a search for things believed to be located in the foreign State, which may be relevant to the proceedings, and if found, seize them;
 - (d) locate or restrain any property reasonably believed to be the proceeds of a serious offence and located in the foreign State;
 - (e) confiscate any property reasonably believed to be located in the foreign State, which is the subject of a confiscation order made by a Court in Mauritius and transmit such property or, any proceeds realised therefrom, to Mauritius;
 - (f) take measures for the freezing or confiscation of proceeds of a serious offence;
 - (g) permit the presence of an authorised person during the execution of any request made under this section;
 - (h) effect service of documents;
 - (i) examine any person with his consent, any object or any site;
 - (j) locate and identify persons;

- (k) facilitate the appearance of witnesses or the attendance of persons in proceedings, subject to such practical and financial arrangements as may be agreed upon;
 - (l) transfer in custody to Mauritius a person detained in the foreign State, or by the international criminal tribunal, who consents to give evidence or to assist Mauritius in the proceedings; and
 - (m) transmit to Mauritius any evidence, statement, report, information, whether in original or a certified copy, document, article, thing or property referred to in this subsection.
- (3) A request under subsection (1) shall be in writing and shall -
- (a) give the name of the requesting authority;
 - (b) give the name of the authority conducting the proceedings to which the request relates;
 - (c) give a description of the nature of the proceedings and a statement setting out a summary of the relevant facts and laws;
 - (d) explain the purpose of the request and the nature of the assistance being sought;
 - (e) give details of any procedure which is required to be followed to comply with the laws of Mauritius;
 - (f) where appropriate, include a statement setting out any wish as to confidentiality of the request and the reasons for that wish ;
 - (g) indicate any time limit within which compliance with the request is desired, stating reasons;
 - (h) indicate the name and address of the person to be served, where necessary;
 - (i) give any other information that may assist in giving effect to the request;
 - (j) be supplemented with such other procedures, formalities, and information as may be required by the foreign State to give effect to the request; and
 - (k) where necessary, be accompanied by a translation into the official language of the foreign State.

5. Request to Mauritius

(1) A foreign State may, in relation to a serious offence, and an international criminal tribunal may, in relation to an international criminal tribunal offence, make a request for assistance to the Central Authority in any proceedings commenced in the foreign State or before the international criminal tribunal, as the case may be.

- (2) The Central Authority may, in respect of a request under subsection (1) from a foreign State -
- (a) promptly grant the request, in whole or in part, on such terms and conditions as it thinks fit or refer the matter to the appropriate authority for prompt execution of the request, in which case the Central Authority may represent the foreign State in proceedings entered to give effect to the request;
 - (b) refuse the request, in whole or in part, on the ground -
 - (i) that compliance with the request would be contrary to the Constitution;

- (ii) of prejudice to the sovereignty, international relations, security, public order, or other public interest of Mauritius;
- (iii) of reasonable belief that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions, or that a person's position may be prejudiced for any of those reasons;
- (iv) of absence of dual criminality, where granting the request would require a court in Mauritius to make an order in respect of any person or property in respect of conduct which does not constitute an offence, nor gives rise to a confiscation or restraining order, in Mauritius;
- (v) that the request relates to an offence under military law, or a law relating to military obligations, which would not be an offence under ordinary criminal law;
- (vi) that the request relates to a political offence or an offence of a political character;
- (vii) that the request relates to an offence, the prosecution of which, in the foreign State, would be incompatible with laws of Mauritius on double jeopardy;
- (viii) that the request requires Mauritius to carry out measures that are inconsistent with its laws and practice, or that cannot be taken in respect of criminal matters arising in Mauritius; or
- (c) after consulting with the competent authority of the foreign State, postpone granting the request in whole or in part, on the ground that granting the request immediately would be likely to prejudice the conduct of proceedings in Mauritius.

(3) The Central Authority may, in respect of a request under subsection (1) from an international criminal tribunal, grant the request, in whole or in part, on such terms and conditions as it thinks fit.

(4) A request under subsection (1) -

- (a) may relate to any matter referred to in section 4(2); and
- (b) shall contain such appropriate particulars as are referred to in section 4(3).

(5) A request shall not be invalidated for the purpose of this Act or any legal proceedings by virtue of any failure to comply with section 4(3), where the Central Authority is satisfied that there is sufficient compliance to enable him to execute the request.

(6) Where the Central Authority refuses a request, either in whole or in part, he shall so inform the foreign State or the international criminal tribunal.

(7) For the purpose of a request referred to in subsection (4), any reference in section 4(2) or (3) to a foreign State or to Mauritius shall be construed as a reference to Mauritius or the foreign State, as the case may be.

PART III - FORMS OF MUTUAL ASSISTANCE

6. Procedure for an evidence-gathering order or a search warrant

(1) Notwithstanding any other enactment, where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to obtain evidence or a search warrant in Mauritius, the Central Authority may apply to a Judge in Chambers for -

- (a) an evidence-gathering order; or
- (b) a search warrant for the search of a person or premises, and removal or seizure of any document or article.

(2) Subject to section 5(5), a request by a foreign State, or an international criminal tribunal, for an evidence-gathering order shall -

- (a) comply with the requirements in section 4(3);
- (b) specify -
 - (i) the name and address or the official designation of the person to be examined;
 - (ii) the question to be put to the person or the subject matter about which he is to be examined;
 - (iii) whether it is desired that the person be examined orally or in writing;
 - (iv) whether it is desired that an oath be administered to the person;
 - (v) any provision of the law of the foreign State as to privilege or exemption from giving evidence which appears especially relevant to the request; and
 - (vi) any special requirements of the law of the foreign State as to the manner of taking evidence relevant to its admissibility in that State;
 - (vii) the document, record or property to be inspected, preserved, photographed, copied or transmitted;
 - (viii) the property of which samples are to be taken, examined or transmitted; and
 - (ix) the site to be viewed or photographed.

(3) A request by a foreign State or an international criminal tribunal for a search warrant shall -

- (a) comply with the requirements in section 4(3);
- (b) specify the property to be searched for and seized; and
- (c) contain such information available to the foreign State or international criminal tribunal, as the case may be, as may be required for the purpose of the application.

(4) (a) Subject to subsection (9), the Judge in Chambers shall grant an application for an evidence-gathering order where he is satisfied that there are reasonable grounds to believe that -

- (i) a serious offence has been or may have been committed against the law of the foreign State or an international criminal tribunal offence has been or may have been committed; and
- (ii) evidence relating to an offence referred to in subparagraph (i) may be -

(A) found in Mauritius; or

(B) given or produced by a person believed to be in Mauritius.

(b) The Judge in Chambers shall not grant an application for a search warrant where it would, in all the circumstances, be more appropriate to grant an evidence-gathering order.

(5) For the purposes of subsection (4)(a)(i), a statement contained in the request to the effect that -

(a) a serious offence has been or may have been committed against a law of the foreign State; or

(b) an international criminal tribunal offence has been or may have been committed,

shall be prima facie evidence of that fact.

(6) An evidence-gathering order-

(a) shall provide for the manner in which the evidence is to be obtained in order to give effect to the request and may require any person named therein to-

(i) make a record from data or make a copy of a record;

(ii) attend before the Master and Registrar to give evidence; and

(iii) produce to the Judge in Chambers, or to any other person designated by him, any article, including any document, or copy thereof; or

(b) may include such terms and conditions as the Judge in Chambers considers desirable, including those relating to -

(i) the interests of the person named therein or of third parties; or

(ii) the questioning of the person named therein by any representative of the foreign state or international tribunal, as the case may be.

(7) Subject to subsections (8) and (9), a person named in an evidence-gathering order may refuse to answer a question, or to produce a document or article, where the refusal is based on -

(a) an enactment which permits the person to decline to give evidence in similar circumstances in proceedings originating in Mauritius or a privilege recognised by the law in Mauritius;

(b) a privilege recognised by a law in force in the foreign State that made the request; or

(c) a law currently in force in the foreign State that would render the answering of that question, or the production of that document or article by that person, in his own jurisdiction, an offence.

(8) (a) Where a person refuses to answer a question or to produce a document or article pursuant to subsection (7)(b) or (c), the Central Authority shall notify the foreign State and request the foreign State to provide a written statement on whether the person's refusal was well-founded under the law of the foreign State.

- (b) A written statement received by the Central Authority from the foreign State in response to a request under paragraph (a) shall be admissible before the Judge in Chambers and, for the purposes of this section, be conclusive evidence that the person's refusal is, or is not, well-founded under the law of that state.
- (c) Any person who, without reasonable excuse, refuses to comply with an order of a Judge in Chambers made under this section or who, having refused to answer a question or to produce a document or article on a ground specified in subsection (7), continues to refuse notwithstanding the admission into evidence of a statement under paragraph (b) to the effect that the refusal is not well-founded, shall be in contempt of court.

(9) Notwithstanding section 26 of the Bank of Mauritius Act 2004, section 64 of the Banking Act 2004 and section 33 of the Financial Services Development Act 2001 and subsections (7) and (8), a Judge in Chambers hearing a request from a foreign State or an international criminal tribunal may grant an evidence-gathering order or search warrant against the Bank of Mauritius, a bank or financial institution where he is satisfied that -

[Amended 34/04 (P 40/04); 35/04 (P 39/04)]

- (a) the information is material and necessary to the proceedings in the foreign State or before the international criminal tribunal; and
- (b) the law of the foreign State permits the disclosure of information to foreign States in circumstances similar to the one relating to the request.

(10) The Central Authority shall inform the foreign State of the date and place of the taking of evidence pursuant to this section.

(11) The Judge in Chambers may authorise the presence of representatives of the foreign State, and of parties to the relevant proceedings in the foreign State, at the proceedings under this section.

(12) The Central Authority shall provide such authenticated report as may be required by the foreign State, or international criminal tribunal, concerning -

- (a) the result of any search;
- (b) the place and circumstances of seizure; and
- (c) the subsequent custody of the property seized.

7. Foreign request for a virtual evidence-gathering order

(1) Where the Central Authority grants a request by a foreign State, or an international criminal tribunal, to order a person to give evidence by means of technology that permits the virtual presence of the person in the territory over which the foreign State has jurisdiction or in the International Criminal Tribunal, it may apply to a Judge in Chambers for an order for the taking of the virtual evidence of the person.

(2) Where there exist in Mauritius facilities for the taking of evidence by technology permitting the virtual presence of a person in the foreign State, the Judge in Chambers shall grant the application where he is satisfied that there are reasonable grounds to believe that -

- (a) a serious offence has been or may have been committed against the law of the foreign State or, as the case may be, an international criminal tribunal offence has been or may have been committed; and
- (b) evidence relating to an offence referred to in paragraph (a) may be given by a person believed to be in Mauritius.

- (3) A virtual evidence-gathering order made under subsection (2) may require any person named therein to-
- (a) attend at a time and place fixed by the Judge in Chambers to give evidence by means of the technology;
 - (b) answer any question put to him by the foreign State, or the international criminal tribunal, or a person authorised by any of them in accordance with the law that applies to that State, or to the tribunal; and
 - (c) produce at the time and place fixed by the Judge in Chambers, or exhibit, any article, including a document, by means of the technology.
- (4) Where a witness gives evidence under subsection (3) -
- (a) the evidence shall be given as though the witness were physically before the court, or tribunal, outside Mauritius for the purposes of the laws relating to evidence and procedure, but only to the extent that giving the evidence would not entail disclosure of information otherwise protected by any law on non-disclosure of information or privilege;
 - (b) the law of Mauritius relating to perjury shall apply with respect to any evidence given by the person as though the person was a witness before a court in Mauritius.
- (5) Where a witness refuses-
- (a) to attend at the time and place fixed by the Judge in Chambers; or
 - (b) to answer a question, or produce, or show a document or article as ordered by the Judge in Chambers under subsection (3),

he shall be in contempt of the court.

8. Request for transfer of detained persons to Mauritius

(1) Where a foreign State or an international criminal tribunal grants a request made by Mauritius under section 4(2)(l), the Central Authority may, by written notice addressed to the Commissioner of Prisons, authorise -

- (a) the temporary detention in Mauritius, for such period as may be specified in the notice, of a person detained in a foreign State, or by an international criminal tribunal, who is to be transferred to Mauritius; and
- (b) the return in custody of the person to the foreign State, or international criminal tribunal, when his presence is no longer required.

(2) A person in respect of whom a notice is issued under subsection (1) shall, so long as the notice is in force-

- (a) be permitted to enter and remain in Mauritius for the purposes of the request, and be required to leave Mauritius when no longer required for those purposes; and
- (b) while in custody in Mauritius for the purposes of the request, be deemed to be in lawful custody for the purposes of section 170 of the Criminal Code.

(3) The Central Authority may, at any time, vary a notice issued under subsection (1), and where the foreign State, or the international criminal tribunal, agrees to the release of the person from custody, either immediately or on a specified date, the Central Authority shall direct that the person be released from custody accordingly.

(4) Any person who escapes from lawful custody while in Mauritius pursuant to subsection (1) may be arrested without warrant and returned to the custody authorised under subsection (1)(a).

9. Safe conduct guarantee

(1) Subject to subsection (2), where a person, whether or not a detained person, is in Mauritius, pursuant to a request by the Central Authority under section 4(2)(l), to give evidence or to assist in any proceedings, the person shall not, while in Mauritius, be -

- (a) detained, prosecuted, punished or subjected to any other restriction of personal liberty; or
- (b) subjected to civil process,

in respect of any act or omission that occurred before the person's departure from the foreign State, or international criminal tribunal, pursuant to the request.

(2) The person specified in subsection (1) shall not, without his consent, be required to give evidence in any proceedings other than those to which the request relates.

(3) Subsection (1) shall not apply to the person where he -

- (a) leaves Mauritius and subsequently returns voluntarily to Mauritius; and
- (b) has had the opportunity to leave Mauritius but remains in Mauritius for more than 10 days after the Central Authority has notified him that he is no longer required for the purposes of the request.

10. Foreign request for consensual transfer of detained persons from Mauritius

(1) Where the Central Authority approves a request under section 5 to have a person, who is detained in custody in Mauritius by virtue of a sentence or order of a court, transferred to a foreign State or to an international criminal tribunal to give evidence, or otherwise assist in any proceedings, he may apply to a Judge in Chambers for a transfer order.

(2) The Judge in Chambers may make a transfer order under this section where he is satisfied, after having considered any document filed or information given in support of the application, that the detained person consents to the transfer.

(3) A transfer order made under subsection (2) shall-

- (a) set out the name of the detained person and his current place of confinement;
- (b) order the person who has custody of the detained person to deliver him into the custody of a person designated in the order;
- (c) order the person receiving him into custody to take him to the foreign State, or to the international criminal tribunal, as the case may be, and, on return of the detained person to Mauritius, to return that person to a place of confinement in Mauritius specified in the order, unless the person is no longer required to be held in custody;

- (d) state the reasons for the transfer; and
- (e) fix the time within which the detained person has to be returned.

(4) The time spent in custody by a person pursuant to a transfer order shall count toward any sentence required to be served by that person, so long as the person remains in such custody and is of good behaviour.

11. Foreign request for restraining order

- (1) Where-
 - (a) a foreign State or an international criminal tribunal requests the Central Authority to obtain the issue of a restraining order against the proceeds of crime which are believed to be located in Mauritius; and
 - (b) proceedings relating to the proceeds of crime have commenced in the foreign State, or before the international criminal tribunal,

and there are reasonable grounds to believe that the proceeds of the crime are located in Mauritius, the Central Authority may apply to a Judge in Chambers for a restraining order under this section.

(2) Where, upon an application made under subsection (1), the Judge in Chambers is satisfied that the proceeds of crime are located in Mauritius, he may make a restraining order in respect of the proceeds of the crime, on such conditions as he may deem fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

12. Foreign request for enforcement of foreign restraining order or confiscation

(1) Notwithstanding any other enactment, where a foreign State, or an international criminal tribunal, requests that necessary measures be taken for the enforcement of-

- (a) a foreign restraining order; or
- (b) a foreign confiscation order,

the Central Authority may apply to the Supreme Court for registration of the order.

(2) The Supreme Court shall register the foreign restraining order where it is satisfied that, at the time of registration, the order is in force in the foreign State or before the international criminal tribunal.

(3) The Supreme Court shall register the foreign confiscation order where it is satisfied that -

- (a) at the time of registration, the order is in force in the foreign State, or before the international criminal tribunal; and
- (b) in the case of a person who did not appear in the proceedings in the foreign State, or before the international criminal tribunal -
 - (i) the person was given notice of the proceedings in sufficient time to enable him to defend himself; or
 - (ii) the person had absconded, or died before such notice could be given.

(4) For the purposes of subsections (2) and (3), a statement contained in the foreign request to the effect that -

- (a) the foreign restraining or confiscation order is in force in the foreign State, or before the international criminal tribunal; or
- (b) the person who is the subject of the order was given notice of the proceedings in sufficient time to enable him to defend himself, or had absconded, or died before such notice could be given,

shall be prima facie evidence of the fact, without proof of the signature or official character of the person appearing to have signed the foreign request.

(5) Where a foreign restraining order or foreign confiscation order is registered in accordance with this section, a copy of any amendment made to the order in the foreign State, or before the international criminal tribunal, shall be registered in the same way as the order.

(6) Notice of the registration of any foreign confiscation order or foreign restraining order, shall be published in the Gazette and 2 daily newspapers, one of which shall be specified by the Supreme Court.

(7) Subject to subsection (9), where the foreign restraining order, or foreign confiscation order, comprises a facsimile copy of a duly authenticated foreign order, or amendment made to such an order, the facsimile shall be regarded for the purposes of this Act, as the duly authenticated foreign order.

(8) Any registration effected upon production of a facsimile shall cease to have effect up to the end of the period of 14 days commencing on the date of registration, unless a duly authenticated original of the order is registered by that time.

(9) Where a foreign restraining order, or foreign confiscation order, has been registered pursuant to this section, section 13 shall apply to such registration.

(10) A foreign restraining order shall stay in force until the determination of the proceedings in the foreign State, or by the international criminal tribunal.

13. Effect of registration of foreign confiscation order or foreign restraining order

(1) Subject to subsections (2) and (3), where an order has been registered under section 12 and the Supreme Court is notified that it has been established to the satisfaction of a foreign court or international tribunal that the property or any part thereof constitutes the proceeds of crime of a serious offence or of an international tribunal offence, order that the property be confiscated and be vested in the State until such arrangement is made under section 19 by the Central Authority with the foreign State.

(2) The Court may make an order under subsection (1) on such conditions as it may deem fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

(3) Any person who claims to have an interest in property subject to an order registered under section 12 shall, within 21 days from the last publication of the registration under section 12, apply to the Court for an order under subsection (4).

- (4) Where the Court is satisfied that the applicant under subsection (3) -
 - (a) was not in any way involved in the commission of the offence in respect of which the confiscation or restraining order was sought; and
 - (b) acquired the property without knowing, and in circumstances such as not to arouse a reasonable suspicion, that the property was, at the time of acquisition tainted property,

the Court shall make an order declaring the nature of the interest of the applicant.

14. Cancellation of registration of foreign restraining order or foreign confiscation order

The Supreme Court shall, on application by the Central Authority, cancel the registration of -

- (a) a foreign restraining order, if it appears to him that the order has ceased to have effect;
- (b) a foreign confiscation order, if it appears to him that the order has been satisfied, or has ceased to have effect.

15. Foreign request for the location of the proceeds of crime

(1) Where-

- (a) a foreign State requests the Central Authority to assist in locating property believed to be the proceeds of a serious crime committed in that State; or
- (b) an international criminal tribunal requests the Central Authority to assist in locating property believed to be the proceeds of an international criminal tribunal offence,

the Central Authority may apply to a Judge in Chambers for an order -

- (i) that any information relevant to -
 - (A) identifying, locating or quantifying any property; or
 - (B) identifying or locating any document necessary for the transfer of any property,
belonging to, or in the possession or under the control of that person be delivered forthwith to the Central Authority; or
- (ii) that a bank or financial institution forthwith produces to the Central Authority all information obtained by it about any business transaction relating to the property for such period before or after the date of the order as the Judge may direct.

(2) Notwithstanding section 26 of the Bank of Mauritius Act 2004, section 64 of the Banking Act 2004, section 33 of the Financial Services Development Act 2001 and section 6(7) and (8), a Judge in Chambers may grant an order under subsection (1) on being satisfied that -

[Amended 14/05]

- (a) the document is material and necessary to the proceedings in the foreign state or before the international criminal tribunal; and
- (b) the law of the foreign State authorises the granting of such an order in circumstances similar to the one relating to the request.

16. Enforcement of request for the location of the proceeds of crime

A Judge in Chambers may, on good cause shown by the Central Authority that a person is failing to comply with, is delaying or is otherwise obstructing an order made in accordance with section 15, order the Central Authority, or an officer authorised by the Central Authority, to enter and search the premises specified in the order and remove any document, material or other thing therein for the purposes of executing such order.

PART IV - MISCELLANEOUS

17. Proof of service of documents abroad

The service of documents in a foreign State may be proved by a certificate issued by the Central Authority of that State.

18. Certificates relating to foreign documents

(1) The Central Authority may certify that a foreign document was obtained as a result of a request made to a foreign State or international criminal tribunal pursuant to section 4.

(2) It shall be presumed, unless evidence sufficient to raise reasonable doubt is adduced to the contrary, that the foreign document specified in the certificate was obtained as a result of that request.

(3) A foreign document referred to in this section shall be admissible in evidence in a Court in Mauritius.

19. Sharing confiscated property with foreign States

(1) The Central Authority may enter into such arrangement as he thinks fit with the competent authorities of a foreign State for the reciprocal sharing with that State of such part of any property realised -

- (a) in the foreign State, as a result of action taken by him pursuant to section 4; or
- (b) in Mauritius, as a result of action taken by him pursuant to section 5.

(2) Where the Minister to whom the subject of finance is assigned considers it appropriate, either because an international arrangement so requires or permits or in the public interest, he may order that the whole or any part of any property confiscated under this Act, or the value thereof, be returned or remitted to the foreign State or the international criminal tribunal.

20. Privilege for foreign documents

(1) Subject to subsection (2), a document sent to the Central Authority by-

- (a) a foreign State; or
- (b) an international criminal tribunal,

in accordance with a request made by the Central Authority under this Act shall be privileged.

(2) No person shall disclose the document referred to in subsection (1), or its purport, or the contents of the document, before the document, in compliance with the conditions on which it was so sent, is made public, or disclosed, in the course of and for the purpose of any proceedings.

(3) No person in possession of a document referred to in subsection (1), or a copy thereof, or who has knowledge of any information contained in the document, shall be required by any court or other person to produce the document or copy thereof or to give evidence relating to any information that is contained therein except for the purpose of any proceedings.

(4) Except to the extent required under this Act to execute a request by a foreign State or an international criminal tribunal, no person shall disclose –

- (a) the fact that the request has been received; or
- (b) the contents of the request.

21. Return of materials

Any property, record or document handed over to Mauritius in relation to a request made under this Act shall be returned to the foreign State or tribunal as soon as it is no longer required, unless the foreign State or tribunal waives its right of return.

22. Offences

Any person who contravenes section 20 shall commit an offence and shall be liable, on conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

23. Regulations

- (1) The Attorney-General may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide for-
 - (a) the taking of fees and the levying of charges;
 - (b) matters necessary or convenient for carrying out or giving effect to this Act;
 - (c) the amendment of the Schedules;
 - (d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and imprisonment not exceeding one year.

24. Rules

The Chief Justice may -

- (a) make such rules; or
- (b) issue such practice directions,

as he thinks fit for the purposes of this Act.

25. Consequential amendments

(1) The Banking Act is amended in section 51(2), by inserting immediately after the words "the Bank of Mauritius Act", the words "and the Mutual Assistance in Criminal and Related Matters Act 2003".

- (2) The Financial Intelligence and Anti-Money Laundering Act 2002¹ is amended -
 - (a) in the heading of Part VI, by deleting the words "MUTUAL ASSISTANCE AND";
 - (b) by repealing sections 23 to 28.
- (3) The Prevention of Corruption Act 2002² is amended by repealing Part VIII.
- (4) The Prevention of Terrorism Act 2002 is amended -
 - (a) in the heading of Part IV, by deleting the words "MUTUAL ASSISTANCE AND";
 - (b) by repealing sections 18 to 24.

¹ Note by the Secretariat: E/NL.2003/3.

² Note by the Secretariat: E/NL.2003/2.

26. Transitional provisions

(1) Every matter or proceedings commenced under any enactment repealed by this Act and pending immediately before the coming into operation of this Act may be continued, completed and enforced under this Act.

(2) This Act shall not affect the rights of any party to any proceedings commenced before the coming into operation of this Act.

27. 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.

FIRST SCHEDULE (section 2)

Enactments

Financial Services Development Act 2001

Immigration Act insofar as it relates to section 5A

Insurance Act

Securities (Central Depository, Clearing and Settlement) Act

Stock Exchange Act

Trusts Act 2001

Unit Trusts Act

SECOND SCHEDULE

(section 2)

1. The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law committed in the Territory of Rwanda and Rwandan Citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by Resolution 995 (1994) of the Security Council of the United Nations.
 2. The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Law committed in the Territory of Former Yugoslavia since 1991, established by Resolution 827 (1993) of the Security Council of the United Nations.
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TRANSFER OF PRISONERS ACT 2001
Act 10 of 2001

Rp 5/01; P 9/02; Amended 39/03 [P32/03 (Rp 1/04)]; cp GN 40/05

ARRANGEMENT OF SECTIONS

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10. Transfer of offenders from Mauritius

PART IV - GENERAL

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-

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Transfer of Prisoners Act 2001.

2. Interpretation

(1) In this Act -

“agreement” includes a treaty which has been entered into with a foreign State for the transfer of prisoners;

"application" means an application by a person pursuant to section 4 or 10, as the case may be;

"Convention" means the Convention on the Transfer of Sentenced Persons adopted in Strasbourg on 23 March 1983 by the Committee of Ministers of the Council of Europe;

“designated country” means a country designated in accordance with section 3;
"foreign offender"-

(a) means a person who -

- (i) is not a citizen of Mauritius;
- (ii) is a citizen of, or is ordinarily resident in, or appears to the Minister to have close ties with, a designated country; and
- (iii) has been convicted and sentenced in Mauritius to-
 - (A) a term of imprisonment of which the unexpired portion at the time that an application is made is not less than 6 months; or
 - (B) an indeterminate periods of imprisonment; and

(b) includes a foreign offender released on licence from such a sentence;

"foreign State" includes a Commonwealth country which has not notified the Commonwealth Secretary-General that it has enacted legislation to give effect to the Scheme;

“imprisonment” includes -

- (a) placement of a juvenile in a place of detention referred to in section 25 of the Juvenile Offenders Act;
- (b) confinement following an order issued pursuant to section 115 of the Criminal Procedure Act;
- (c) any other similar form of restraint of liberty that applies in a designated country;

"Minister" means the Prime Minister;

[Reprint 5/01]

"offender"-

(a) means a person who -

- (i) is a citizen of Mauritius or a person whose transfer appears to the Minister to be appropriate having regard to any close ties that person may have with Mauritius; and
- (ii) has been convicted and sentenced in a designated country to-
 - (A) a term of imprisonment of which the unexpired portion at the time that an application is made is not less than 6 months; or
 - (B) an indeterminate period of imprisonment;

(b) includes an offender released on licence from such sentence;

“prisoner” means a foreign offender or an offender;

"release on licence" means release in accordance with –

- (a) Part V of the Reforms Institutions Act; or
- (b) a similar system of conditional release from imprisonment operating in a designated country;

“responsible authority”-

- (a) means the person responsible under the law of a designated country for administering the transfer of offenders to and from that country; and

(b) includes a person to whom that person's duties and powers have been lawfully delegated;
 "Scheme" means the Scheme for the Transfer of Convicted Offenders within the Commonwealth agreed by Law Ministers at their 1986 Meeting in Harare;

"transfer" means transfer -

(a) from a designated country to Mauritius; or

(b) from Mauritius to a designated country.

(2) In determining whether or not a person has close ties with a country, the Minister shall take into account -

(a) whether or not he was born in that country or is descended from persons who were born in that country ;

(b) whether or not he has resided in that country and, if so for how long ;

(c) whether or not he has any relatives by birth or marriage in that country, and if so, the degree of relationship;

(d) any cultural or religious ties he may have with that country.

3. Application of Act

(1) (a) Where an agreement has been, or is deemed to have been, entered into between Mauritius and a foreign State, for the transfer of prisoners or the enforcement of sentences, the Minister may, by regulations, designate that country as a country to which this Act shall, notwithstanding any other enactment but subject to this subsection, apply.

(b) Regulations made under subsection (1) may provide that this Act applies in relation to that country subject to such exceptions, adaptations, modifications or other provisions as may be specified in the regulations.

(c) Regulations made under subsection (1) in relation to a country other than one referred to in subsection (2) or (3) shall -

(i) contain the text of the agreement entered into between Mauritius and that country; and

(ii) not remain in force for any longer period than the agreement.

(2) Where a Commonwealth country notifies the Commonwealth Secretary-General that it has enacted legislation to give effect to the Scheme, that notification shall be deemed to be an agreement between Mauritius and that country.

(3) The accession by Mauritius to the Convention pursuant to paragraph (1) of Article 19 of the Convention shall be deemed to be an agreement between Mauritius and every other country that is a party to the Convention.

(4) For the purposes of this section, a territory for the external relations of which a designated country is responsible may, where the Government of that country so requests or has so notified the Commonwealth Secretary-General, be treated as -

(a) a part of that country; or

(b) a separate country.

(5) This Act shall apply to any prisoner who is already serving a sentence of imprisonment on the date when its provisions are extended, pursuant to section 3, to the country of which such offender is a citizen.

[cp GN 40/05]

PART II - TRANSFER TO MAURITIUS

3A. Conditions for transfer

- (1) Subject to subsection (2), no prisoner shall be transferred under this Act unless-
- (a) he is a national of, is ordinarily resident in, or has close ties with, the designated country to which he is to be transferred;
 - (b) the judgment imposing the sentence which he is serving is final;
 - (c) at the time of receipt of the request for transfer, he still has not less than 6 months of the sentence to serve or the sentence is indeterminate;
 - (d) he consents to the transfer or, where he is, by reason of his physical or mental condition or his youth, incapable of acting for himself, a person appearing to the Minister to be the appropriate person to consent on behalf of the prisoner has given the prisoner's consent on his behalf;
 - (e) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the designated country to which the prisoner is to be transferred or would constitute a criminal offence if committed on its territory; and
 - (f) both Mauritius and the designated country agree to the transfer.
- (2) In exceptional cases, a transfer may be agreed to where the term to be served by the prisoner is less than 6 months.

[Added 39/03]

4. Request for transfer

- (1) (a) Where the Minister is informed by the responsible authority of a designated country that -
- (i) an offender has applied for a transfer to Mauritius and that country has agreed to such transfer;
 - (ii) that country requests such transfer and the offender consents thereto,
- the Minister shall, after consultation with the Attorney-General, determine whether or not he agrees to the transfer.
- (b) The Minister shall not, save in exceptional circumstances, agree to a transfer where less than 6 months of the sentence remain to be served.
- (c) The Minister shall -
- (i) inform the responsible authority of the designated country of his decision, and
 - (ii) where he agrees to the transfer, issue a warrant in the prescribed form for that purpose.
- [cp GN 40/05]
- (2) The Minister may, on receipt of an application under subsection (1), require the designated country to provide him with such evidence as he thinks fit to show that -
- (a) the offender has applied for or consented to such transfer; or
 - (b) where it appears to the Minister that the offender is, by reason of his physical or mental condition or his youth, incapable of acting for himself, a person appearing to the Minister to be the appropriate person to apply or consent on behalf of the offender has made the application or given his consent on behalf of the offender.
- (2A)(a) Where an offender applies in writing to the Minister for a transfer to Mauritius, the Minister shall, after consultation with the Attorney-General, determine whether or not a request for transfer of the offender shall be made to the designated country.
- (b) The Minister shall not, save in exceptional circumstances, request a transfer where a term of less than 6 months of the sentence remain to be served.
- (c) Where the designated country to which Mauritius has made the request agrees to the transfer, the Minister shall issue a warrant in the prescribed form for the purpose of the transfer.
- [cp GN 40/05]

[Added 39/03]

(3) A warrant issued under subsection (1) or (2A)(c) shall, subject to this Act, authorise -

[Amended 39/03]

- (a) the bringing of the offender from the designated country to Mauritius;
- (b) the taking of the offender by an authorised person to such place of detention as may be designated in the warrant; and
- (c) the detention of the offender in accordance with such a provision as may be contained in the warrant, being provisions appearing to the Minister to be appropriate for giving effect to the arrangements in accordance with which the offender is transferred.

(4) Notwithstanding subsection (1), where a citizen of Mauritius, having been charged with an offence in a designated country, has been -

- (a) ordered by a court of that country to be detained because he has been found to be insane and unfit to stand trial or to be a mentally disordered or mentally defective offender; or
- (b) found guilty of the offence but was insane at the time of the commission of the offence,

that person may be transferred to Mauritius at the request of the responsible authority of that country and with the consent of the Minister or at the request of the Minister and with the consent of the responsible authority of that country.

[Amended 39/03]

(5) An application under subsection (1) or (2A) or a request under subsection (4) shall be accompanied by the following particulars -

[Amended 39/03]

- (a) the name, place and date of birth or, if the date of birth is not known, the approximate age of the offender;
- (b) the offender's address, if any, in Mauritius;
- (c) a certified copy of the judgment or other order of the court, together with a copy of the law on which it is based or a statement of that law;
- (d) a statement of the facts and circumstances upon which the conviction and sentence or other order were based;
- (e) the nature of the sentence, if any, its date of commencement and duration;
- (f) where appropriate, any medical or other report pertaining to the offender, including a report of his treatment in the designated country together with any recommendation for further treatment in Mauritius;
- (g) a document or statement indicating that the offender is a citizen of, is ordinarily resident in, or has close ties with, the designated country;

[Added 39/03]

- (h) a copy of the relevant law of the designated country which provides that the acts or omissions on account of which the sentence has been imposed in the designated country constitute a criminal offence according to the law of the designated country, or would constitute a criminal offence if committed on its territory;

[Added 39/03]

- (i) a statement indicating whether the sentence is to be enforced in the designated country immediately or through a Court or administrative order, or whether it is to be converted into a decision of the designated country or varied;

[Added 39/03]

- (j) any other information which the Minister may require to enable him to consider the desirability of a transfer.

(6) The Minister shall cause the offender to be informed in writing of any action taken on a request for transfer.

[Added 39/03]

5. Revocation of warrant

(1) Where it appears to the Minister that, in order to give effect to any agreement which has been, or is deemed to have been, entered into with a foreign State, it is necessary that a warrant issued under this Act be revoked or varied, he may -

- (a) revoke the warrant; or
- (b) revoke the warrant and issue a new warrant under this Act containing provision superseding any provision of the previous warrant.

(2) A warrant issued in accordance with subsection (1)(b) may provide that -

- (a) a provision contained in it is to be treated as having taken effect when the provision which that provision supersedes took effect;
- (b) anything done under or for the purposes of the superseded provision is to be treated as having been done under or for the purposes of the provision contained in the new warrant.

6. Effect of transfer

(1) Where an offender is transferred to Mauritius, a conviction and sentence recorded by the court in the designated country from which he was transferred shall, subject to subsection (2), be deemed for all purposes to be a conviction recorded and a sentence imposed by a court of competent jurisdiction in Mauritius.

(2) Subject to subsection (3), the conviction of, and the sentence imposed upon, a transferred offender shall not be subject to any appeal or to any form of review in Mauritius.

(3) Where a sentence imposed upon a transferred offender is by its nature or duration, incompatible with the law of Mauritius, he may apply to the Judge in Chambers for a variation of the sentence to accord with the law of Mauritius, and the Judge shall, after hearing the application, grant such relief as he considers appropriate having regard to all the circumstances.

[Amended 39/03]

(4) Where the Judge in Chambers decides to vary the sentence imposed -

- (a) he shall be bound by the findings of facts as they appear from the judgment imposed in the designated country;
- (b) he shall not convert a sanction involving deprivation of liberty to a pecuniary sanction;
- (c) he shall deduct the full period of deprivation of liberty served by the offender;
- (d) he shall not be bound by any minimum term of imprisonment which the law of Mauritius provides for the offence or offences committed.

[Added 39/03]

7. Documentary proof

(1) A certified copy of a judgement or other order referred to in subsection 4(5)(c) shall -

- (a) be accepted as conclusive proof of the facts stated therein; and
- (b) have effect as if it were a judgment or other order of a court of competent jurisdiction in Mauritius.

(2) Any document required under this Act to be certified shall, if that document purports to be certified or signed by a judicial officer or authority or by the person in charge of any penal institution in the country in which the offender was detained, and without proof of the signature or the official character of the person by whom it purports to be signed or certified, be accepted as evidence of the facts stated therein unless the contrary is proved.

(3) A document referred to in this section shall, when accepted -

- (a) be treated as though it was duly certified or signed in relation to a person convicted and sentenced in Mauritius; and
- (b) subject to this Act, have effect according to the terms thereof.

8. Detention of transferred offenders.

(1) Subject to this section, a transferred offender who has been sentenced to a term of imprisonment shall be detained in a prison or such other institution as the Minister may direct for the unexpired portion of his sentence.

(2)(a) A transferred offender sentenced to a term of imprisonment who would, if he had been convicted in Mauritius, have been treated by reason of his age as a young offender within the meaning of the Juvenile Offenders Act and sentenced accordingly, shall be dealt with as his age dictates in accordance with paragraph (b).

(b) An offender to whom paragraph (a) applies shall, pursuant to a warrant in the prescribed form under the hand of the Minister, be produced before the court having jurisdiction to try an offence of a similar nature to that for which he has been convicted, and that court shall sentence him-

- (i) on the basis of the conviction by the court in the designated country;
- (ii) with regard to the nature of the offence;
- (iii) with regard to any observations made by the convicting court in passing sentence; and
- (iv) in accordance with the Juvenile Offenders Act.

(3) A transferred offender referred to in section 4(4) shall be detained in accordance with the law of Mauritius relating to such offenders.

(4) (a) A transferred offender sentenced to a term of imprisonment shall -

- (i) be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law relating to remission of prison sentences in the designated country; and
- (ii) thereafter be eligible to earn remission of that term as if he had been sentenced to a term of imprisonment of the same length by a court in Mauritius.

(b) Any remission of imprisonment referred to in paragraph (a)(i) shall be liable to forfeiture for a disciplinary offence as if it were remission earned by virtue of paragraph (a)(ii).

9. Parole and pardon.

(1) Where a transferred offender has, before his transfer, been released on parole in the designated country in which he was convicted and sentenced, and that parole was subsequently revoked, the time spent on parole shall count towards the completion of his sentence in Mauritius.

(2) A transferred offender who is, at the date of his transfer, on parole in the designated country in which he was convicted and sentenced shall, upon transfer to Mauritius, be treated as a person on parole, notwithstanding that such an offender might not be eligible for parole under the law of Mauritius.

(3) A breach of any condition of parole or of a conditional pardon shall render the offender liable to the same consequences as if he had been granted respite, or had been conditionally pardoned, in accordance with the law of Mauritius.

(4) Nothing in this Act shall be so construed as to limit the President's prerogative of mercy provided for in section 75 of the Constitution.

(5) Where the prerogative of mercy has been exercised in a designated country in respect of a transferred offender, any pardon granted pursuant thereto shall, to the extent to which that prerogative is exercised, have effect as if it were a pardon granted by the President to the transferred offender in terms of section 75 of the Constitution.

PART III - TRANSFER FROM MAURITIUS**10. Transfer of offender from Mauritius**

(1) Where an agreement between Mauritius and a designated country has been, or is deemed to have been, entered into for the transfer of foreign offenders, the Commissioner of Prisons shall cause every such offender to be informed in a language which he understands of the purport of the agreement.

(2) (a) A foreign offender may apply in writing to the Commissioner of Prisons to be transferred to a designated country.

- (b) The Minister shall, where he agrees to the transfer, cause to be sent to the responsible authority of the designated country -
 - (i) the application made by the foreign offender or a certified copy thereof;
 - (ii) particulars of the kind set out in section 4(5); and
 - (iii) a statement indicating the term of the sentence which has already been served, including information on any pre-trial detention, remission and any other factor relevant to the enforcement of the sentence.

[Added 39/03]

(3) Where the designated country agrees to the transfer, the Minister shall issue a warrant in the prescribed form authorising the transfer.

[cp GN 40/05]

(3A) Where a responsible authority makes a request in writing to the Minister for the transfer of a foreign offender to a designated country, the Minister shall –

- (a) cause the Commissioner of Prisons to ascertain whether the foreign offender consents to the transfer and, if so, whether he does so voluntarily and with full knowledge of the legal consequences thereof;
- (b) cause to be sent to the responsible authority –
 - (i) particulars of the kind set at in section 4(5) and subsection (2)(b)(iii);
 - (ii) a declaration containing the foreign offender's consent to the transfer;
- (c) where he agrees to the transfer, issue a warrant in the prescribed form authorising the transfer.

[cp GN 40/05]

[Added 39/03]

(4) A warrant issued under subsection (3) or (3A) shall authorise the taking of the offender from his place of detention to a place of departure in Mauritius and his delivery at that place into the custody of the responsible authority of the country to which the offender is to be transferred.

[Amended 39/03]

(5) The Commissioner of Prisons shall cause the offender to be informed in writing of any action taken on a request for transfer.

[Added 39/03]

PART IV - GENERAL

11. Offenders in lawful custody during transfer.

(1) While an offender is being transferred to or from Mauritius under this Act, he shall be deemed to be in lawful custody of the person duly authorised to accompany him.

(2) Where a person referred to in subsection (1) escapes from such lawful custody, he may be arrested in any part of Mauritius in the same manner as a person escaping from custody under a warrant issued for his arrest in Mauritius.

(3) Any person who does an act referred to in subsection (2) shall commit an offence and shall, on conviction, be liable to the penalty provided in section 170 of the Criminal Code.

12. Termination of sentence

(1) Where an offender is serving a sentence in Mauritius consequent upon his transfer thereto under this Act, and the Minister is satisfied that the designated country from which he has been transferred has exercised the power of pardon or any other power which renders the sentence no longer enforceable in that country, or that the sentence has been completed, the offender shall no longer be subject to detention by reason only of that sentence.

(2) Where a foreign offender is serving a sentence in a designated country consequent upon his transfer from Mauritius under this Act, and the power of pardon or any other power which renders the sentence no longer enforceable in Mauritius has been exercised, or the sentence has been completed, the Minister shall forthwith inform the designated country to which the foreign offender was transferred that he is no longer subject to detention by reason only of that sentence.

13. Cost of transfer of offenders

(1) Subject to this section, the cost of the transfer of a prisoner under this Act shall be met by Mauritius and by the designated country in such proportion as may be agreed upon by them.

(2) (a) Subject to subsection (3), in the case of a transfer of an offender to Mauritius, the expenses of such transfer shall be borne by such offender or by someone on his behalf, and for this purpose the Minister shall have the power to require a person with or without a surety to give an undertaking to pay the expenses to the Minister.

(b) Any expenses referred to in paragraph (a) shall be regarded as a civil debt owed to the Government of Mauritius.

(3) Subsection (2) shall not apply where it appears to the Minister that it would be unreasonable for him to exercise the power conferred by that subsection because -

(a) of the exceptional circumstances of the case; or

(b) the means of such offender are insufficient to meet the expenses, and their recovery, whether immediately or at some future time, from such offender or from any other source, is impracticable.

14. Transit

(1) Where -

(a) a designated country has agreed with a third country to transfer an offender into or out of its territory pursuant to an arrangement relating to the transfer of convicted offenders; and

(b) that country seeks permission for the offender and any escorting officer to land and transit in Mauritius during the course of the transfer,

the Minister shall, subject to subsection (2), issue his authority for the transit in the prescribed form.

(2) The Minister may refuse to issue an authority for transit where -

(a) the person sought to be transferred is a citizen of Mauritius;

(b) the offence for which the sentence was imposed is not an offence under the law of Mauritius; or

(c) the person being transferred is wanted in Mauritius in respect of any offence against the law of Mauritius.

(3) An authority issued under subsection (1) shall authorise the holding of the prisoner in custody in Mauritius for such time as is reasonably necessary to facilitate the transfer between the requesting country and the country of destination.

(4) A person who is being transferred pursuant to an authority issued under subsection (1) shall not, while in Mauritius, be detained or otherwise subjected to any restriction on his liberty in respect of an offence committed or sentence imposed prior to his departure from the territory of the sentencing country.

15. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulation made under subsection (1) may provide for the taking of fees and the levying of charges.

16. Commencement

This Act shall come into force on a day to be fixed by Proclamation.