

THE CRIMINAL PROCEDURE (AMENDMENT) BILL
(No. VIII of 2007)

Explanatory Memorandum

The object of this Bill is to abolish fixed sentences in relation to offences under the Criminal Code and the Dangerous Drugs Act and to restore the sentencing discretion of the Court.

J. VALAYDEN

13 April 2007

*Attorney-General and Minister of Justice
and Human Rights*

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Principal Act amended
4. Consequential amendments
5. Transitional provisions
6. Commencement

A BILL

To amend the Criminal Procedure Act

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Criminal Procedure (Amendment) Act 2007.

2. Interpretation

In this Act –

“principal Act” means the Criminal Procedure Act.

3. Principal Act amended

The principal Act is amended by inserting immediately after section 150, the following new section –

150A Sentence of penal servitude for life

Where under any enactment a Court is empowered or required to pass a sentence of penal servitude for life, the sentence may, at the discretion of the Court, be for a term of not less than 3 years and not exceeding 60 years.

4. Consequential amendments

(1) The Criminal Code is amended –

- (a) in sections 61 and 64, by deleting the words “for life or for a term not exceeding 20 years” and replacing them by the words “for a term not exceeding 60 years”;
- (b) in section 222 -
 - (i) in subsection (1), by deleting the words “for 45 years” wherever they appear and replacing them by the words “for a term not exceeding 60 years”;
 - (ii) in subsection (2), by deleting the words “for life or for a term not exceeding 15 years” and replacing them by the words “for a term not exceeding 35 years”;
- (c) in section 223(3), by deleting the words “for life or for a term not exceeding 20 years” and replacing them by the words “for a term not exceeding 45 years”;
- (d) in section 231, by deleting the words “suffer the severest” and replacing them by the words “be liable to the”;
- (e) in section 236(2), by deleting the words “for life or for a term not exceeding 20 years” and replacing them by the words “for a term not exceeding 45 years”.

(2) The Dangerous Drugs Act is amended –

- (a) in section 41(3), by deleting the words “for 45 years” and replacing them by the words “for a term not exceeding 60 years”;

- (b) in section 47(4), by deleting the words “150,”.

5. Transitional provisions

(1) Where a person has, before the commencement of this Act, been sentenced to penal servitude for life or for a mandatory term of 45 or 30 years which he is still serving, an application shall be made to the Supreme Court by the Director of Public Prosecutions for the Court to review the sentence.

(2) The Director of Public Prosecutions shall cause a notice of an application under subsection (1) to be served on the person undergoing sentence, requiring him to appear on a day to be fixed by the Court for him to take a stand on the application.

(3) The Court, in considering an application under subsection (1) –

- (a) may consult the record of the original case; and
- (b) may take into consideration a report on the original case by the Judge or Magistrate, as the case may be, who presided at the trial, or, where a report cannot be obtained from that Judge or Magistrate, a report by the Chief Justice, together with such other information derived from the record of the original case or from any other relevant official source.

(4) (a) The Court, after considering an application under subsection (1), shall, subject to paragraph (b), substitute for the sentence of penal servitude for life, 45 or 30 years, as the case may be, a sentence of penal servitude for such term not exceeding 60, 45 or 30 years respectively as the Court may determine to be appropriate.

- (b) Where a sentence of penal servitude for life was imposed in respect of the offence of manslaughter, the Court shall substitute for that sentence, a sentence of penal servitude for such term not exceeding 30 years as the Court may determine to be appropriate.

(5) For the purposes of this section, “original case” means the case in which the person who is the subject of the application was tried at first instance before the Supreme Court or the Intermediate Court, as the case may be.

6. Commencement

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