

**THE PREVENTION OF TERRORISM
(INTERNATIONAL OBLIGATIONS) BILL**
(No. XL of 2008)

Explanatory Memorandum

The main object of this Bill is to allow Mauritius to adhere to international counter-terrorism instruments to which it is not yet a party.

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*Prime Minister, Minister of Defence
and Home Affairs*

05 December 2008

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To allow adherence to various international counter-terrorism instruments

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Prevention of Terrorism (International Obligations) Act 2008.

2. Interpretation

“act of terrorism” has the same meaning as in the Prevention of Terrorism Act;

“Conventions” means the Conventions, and includes the Protocol, specified in the Schedule;

“Minister” means the Minister to whom responsibility for the subject of national security is assigned.

3. Conventions to have force of law in Mauritius

(1) Notwithstanding any other enactment, the Conventions shall have force of law in Mauritius.

(2) Any word in this Act which is defined in one of the Conventions shall have the same meaning as in that Convention.

4. Offences related to nuclear material

(1) Any person who imports or causes to be imported, or exports or causes to be exported, nuclear material, without obtaining assurances that such nuclear material will be protected at all times –

(a) during international nuclear transport; or

(b) during transportation from one part of Mauritian territory to another part of Mauritius through international waters or airspace,

shall, without prejudice to the application of any other enactment relating to nuclear material, commit an offence and shall, on conviction, be liable to penal servitude for a term of not less than 5 years nor more than 35 years.

- (2) Every person who knowingly –
- (a) does an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, or disposal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;
 - (b) commits a theft or robbery of nuclear material;
 - (c) embezzles or fraudulently obtains nuclear material;
 - (d) makes a demand for nuclear material by threat or use of force or by any form of intimidation;
 - (e) threatens to use nuclear material to cause death or serious injury to any person or damage to substantial property; or
 - (f) threatens to commit an offence described in paragraph (e) in order to compel a natural or legal person, international organisation or the State of Mauritius to do or to refrain from doing any act,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term of not less than 5 years nor more than 35 years.

5. Nuclear terrorism

- (1) Any person who wilfully and unlawfully –
- (a) possesses radioactive material or makes or possesses a device –
 - (i) with the intent to cause death or serious bodily injury; or
 - (ii) with the intent to cause substantial damage to property or to the environment;
 - (b) uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material –
 - (i) with the intent to cause death or serious bodily injury; or

- (ii) with the intent to cause substantial damage to property or to the environment; or
- (iii) with the intent to compel a natural or legal person, an international organisation or a State to do or refrain from doing an act;
- (c) (i) threatens under circumstances which indicate the credibility of the threat, to commit an offence referred to in paragraph (b); or
- (ii) demands unlawfully and intentionally radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term of not less than 5 years nor more than 35 years.

(2) It shall not be a defence for a person charged with an offence under subsection (1) to aver that his act was justifiable by consideration of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

(3) Any person who wilfully does a preparatory act –

- (a) in Mauritius for the commission outside Mauritius of an act constituting an offence under subsection (1);
- (b) outside Mauritius for the commission in Mauritius of an act constituting an offence under subsection (1),

shall commit an offence and shall, on conviction, be liable for a term of not less than 5 years nor more than 35 years.

6. Prohibition on manufacture, possession, transport, import or export of unmarked plastic explosives

(1) Any person who manufactures unmarked plastic explosives, other than unmarked plastic explosives that are approved in writing by the Commissioner of Police solely for use in training in explosives detection or in the development or testing of explosives detection equipment, shall commit an offence.

(2) Subject to subsection (3), no person shall possess or transport unmarked plastic explosives, other than unmarked plastic explosives approved in writing by the Commissioner of Police under subsection (1) solely for the uses specified in that subsection.

(3) Where any unmarked plastic explosives have been –

- (a) manufactured in; or
- (b) imported into,

Mauritius prior to the date of coming into operation of this Act, such unmarked plastic explosives shall –

- (i) if held by authorities performing military or police functions and not incorporated as an integral part of a duly authorised military device, be destroyed or marked or rendered permanently ineffective, within a period of 15 years from the date of coming into operation of this Act;
- (ii) if held by any other person, be destroyed or marked or rendered permanently ineffective, within a period of 3 years from the date of coming into operation of this Act.

(4) No person shall import or export unmarked plastic explosives unless such explosives are incorporated as an integral part of a military device.

(5) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to penal servitude for a term of not less than 5 years nor more than 35 years.

7. Jurisdiction to try offences

The Judge without a jury shall have jurisdiction to try an act of terrorism or an offence under this Act if the said act or omission constituting the offence is committed –

- (a) in the territory of Mauritius, on board a ship flying the flag of Mauritius or an aircraft registered in Mauritius at the time the offence is committed or against or on board a fixed platform while it is located on the continental shelf of Mauritius;
- (b) by or against a Mauritian citizen;

- (c) by a stateless person having his habitual residence in Mauritius;
- (d) against an internationally protected person;
- (e) against a State or governmental facility of Mauritius, including an embassy or other diplomatic or consular premises of Mauritius; or
- (f) in an attempt to compel the Government of Mauritius to do or abstain from doing an Act.

8. Consequential amendment

The Criminal Procedure Act is amended in the Fifth Schedule by inserting immediately after paragraph (k), the following new paragraph –

- (ka) Prevention of Terrorism (International Obligations) Act, sections 4 to 6

9. Regulations

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

(2) Regulations made under subsection (1) may provide 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 to imprisonment for a term not exceeding 3 years.

10. 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.

SCHEDULE
(*section 2*)

1. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March, 1980.
2. Convention on the Making of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March, 1991.
3. International Convention for the Suppression of Acts of Nuclear Terrorism, signed in New York on 14 September, 2005.

