

THE TRANSFER OF PRISONERS (AMENDMENT) BILL

(No. XXXV of 2003)

Explanatory Memorandum

The object of this Bill is to amend the Transfer of Prisoners Act 2001 to allow Mauritius to accede to the Strasbourg Convention on the Transfer of Sentenced Persons.

15 August 2003

Sir Anerood Jugnauth

Prime Minister

Minister of Defence & Home Affairs, and

Minister of External Communications

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. New section 3A added to principal Act
4. Section 4 of principal Act amended
5. Section 6 of principal Act amended
6. Section 10 of principal Act amended
7. Commencement

A BILL

To amend the Transfer of Prisoners Act 2001

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Transfer of Prisoners (Amendment) Act 2003.

2. Interpretation

In this Act –

“principal Act” means the Transfer of Prisoners Act 2001.

3. New section 3A added to principal Act

The principal Act is amended by inserting immediately after section 3, the following new section –

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.

4. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) by inserting immediately after subsection (2), the following new subsection –
 - (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.
- (b) in subsection (3), by inserting immediately after the words “subsection (1)”, the words “or (2A)(c)”;
- (c) in subsection (4), by adding after the words “with the consent of the Minister”, the words “, or at the request of the Minister and with the consent of the responsible authority of that country.”;
- (d) in subsection (5) –
 - (i) by adding immediately after the words “subsection (1)”, the words “or (2A)”;
 - (ii) by inserting immediately after paragraph (f), the following new paragraphs, the existing paragraph (g) being relettered (j) accordingly –
 - (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;
 - (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;

- (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;

(e) by adding the following new subsection -

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

5. Section 6 of principal Act amended

Section 6 of the principal Act is amended –

- (a) in subsection (3), by deleting the words “exceeds that for which, on conviction in Mauritius for the same or kindred offence, he would have been liable,” and replacing them by the words “is, by its nature or duration, incompatible with the law of Mauritius”;

(b) by adding the following new subsection –

- (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.

6. Section 10 of principal Act amended

Section 10 of the principal Act is amended –

(a) in subsection (2)(b) –

- (i) in subparagraph (i), by deleting the word “and”;
- (ii) in subparagraph (ii), by deleting the full stop at the end and replacing it by the words “; and”;

- (iii) by adding the following new subparagraph -
 - (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.

- (b) by inserting immediately after subsection (3), the following new subsection –
 - (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.

- (c) in subsection (4), by inserting immediately after the words "subsection (3)", the words "or (3A)";

- (d) by adding immediately after subsection (4), the following new subsection -
 - (5) The Commissioner of Prisons shall cause the offender to be informed in writing of any action taken on a request for transfer.

7. Commencement

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