

THE EXTRADITION (AMENDMENT) BILL

(No. XVII of 2024)

Explanatory Memorandum

The object of this Bill is to amend the Extradition Act to provide for timely and fair determination of extradition proceedings.

M. GOBIN

*Attorney-General, Minister of Foreign
Affairs, Regional Integration and
International Trade*

30 August 2024

THE EXTRADITION (AMENDMENT) BILL

(No. XVII of 2024)

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 2 of principal Act amended
4. Part III of principal Act amended
5. Consequential amendment

A BILL

**To amend the Extradition Act to provide for timely and fair
determination of extradition proceedings**

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Extradition (Amendment) Act 2024.

2. Interpretation

In this Act –

“principal Act” means the Extradition Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended, in subsection (1), by inserting, in the appropriate alphabetical order, the following new definition –

“extradition hearing” means a hearing held for the purpose of section 14(4) or 16(6);

4. Part III of principal Act amended

Part III of the principal Act is amended –

- (a) by repealing Sub-part B and replacing it by the following Sub-part –

Sub-Part B – Grant of Request for Extradition

14. Application for extradition

(1) The Attorney-General may, pursuant to a request from a foreign State under this Act, make an ex parte application to the Supreme Court supported by affidavit for the arrest and extradition of a person sought.

(2) Where, on an ex parte application under subsection (1), the Court is satisfied that there are reasonable grounds that the person sought may have committed an extraditable offence, it shall order the Commissioner of Police or such other police officer he may depute to arrest the person sought and bring him before the Court without undue delay.

(3) Where the Commissioner of Police or such other police officer he has deputed arrests a person under subsection (2), he shall –

- (a) inform that person of the reason for the arrest;
- (b) communicate to that person a copy of the application under subsection (1); and
- (c) cause that person to be brought without undue delay before the Court.

(4) Where a person is brought before the Court under subsection (3), the Court shall, subject to section 20, fix a date and a time for it to determine whether –

- (a) the person brought before the Court is the person sought;
- (b) the requirements of the relevant extradition treaty are met;
- (c) the offence is an extraditable offence; and
- (d) in case extradition is requested for the purpose of prosecution in the requesting State, there is sufficient evidence to justify the committal of the person sought for his trial for the relevant offence.

15. Orders following application for extradition

(1) Where the Court is satisfied that the conditions under section 14(4) have been met, it shall order that the person sought is eligible for extradition.

(2) The Court shall not order that the person sought is eligible for extradition where –

- (a) mandatory grounds for refusal specified in the relevant extradition treaty have been established; or
- (b) any other requirement specified in this Act for the extradition of the person sought is not met.

(3) Where the Court orders that the person sought is eligible for extradition, it –

- (a) shall remand that person in custody; and
- (b) may make such other order as is necessary for his extradition.

(4) Where the Court orders that the person sought is not eligible for extradition, it shall order the discharge of that person, unless the person sought had been the subject of simultaneous applications for extradition under this Act.

16. Arrest with a view to extradition

(1) Notwithstanding section 14, the Attorney-General may, pursuant to a request from a foreign State, make an ex parte application to the Supreme Court supported by affidavit for the

arrest of a person pending an application for extradition where the Attorney-General is satisfied that there are reasonable grounds to believe that –

- (a) the person is in, or is on his way or routinely travels to, Mauritius;
- (b) the request relates to an extraditable offence; and
- (c) the foreign State will submit a request for extradition in accordance with an applicable extradition treaty or, in any case, not later than 3 months from the date of the request.

(2) Where following an application for the arrest of a person under subsection (1), the Court is satisfied that –

- (a) the application relates to an extraditable offence;
- (b) a warrant for that person's arrest or an order of a similar nature has been issued in the requesting State, or the person has been convicted in that State or is unlawfully at large in Mauritius;
- (c) the information available would have justified the issue of an arrest warrant if the person were accused of the relevant offence in Mauritius; and
- (d) it is necessary to arrest that person in the public interest or prevent him from escaping or committing an offence,

it shall order the Commissioner of Police or such other police officer he may depute to arrest the person sought and bring that person before the Court without undue delay.

(3) Where the Commissioner of Police or such other police officer he has deputed arrests a person under subsection (2), he shall –

- (a) inform that person of the reason for the arrest;
- (b) communicate to that person a copy of the application under subsection (1); and

(c) cause that person to be brought without undue delay before the Court.

(4) Upon receipt of a request under subsection (1)(c), the Attorney-General shall, within 21 days, make an application to the Court supported by affidavit for the extradition of person sought.

(5) A copy of an application under subsection (4) shall be communicated to the person sought.

(6) Upon receipt of an application under subsection (4), the Court shall –

(a) fix a date for the person sought to be brought before it;

(b) determine the application in the manner set out in section 14(4); and

(c) make such orders as are appropriate in accordance with section 15.

(7) A person who is arrested pursuant to subsection (2) shall be discharged where –

(a) (i) the arrest was requested pursuant to an extradition treaty that provides for a period after the date of arrest within which a request for extradition should be made and the requesting State has not made a request for extradition within that period; or

(ii) the requesting State has made a request for extradition within the period specified in subsection (1)(c) but the Attorney-General has not applied for an order under subsection (4) within 21 days after the expiry of that period; or

(b) (i) the arrest was not requested pursuant to an extradition treaty or was requested under an extradition treaty which does not provide for a period within which a request for extradition shall be made and the requesting State has not made a request for extradition within 3 months

after the date of the arrest; or

- (ii) the requesting State has made a request for extradition within the period specified in subparagraph (i) but the Attorney-General has not applied for an order under subsection (4) within 21 days after the expiry of that period.

(8) The discharge of a person pursuant to subsection (7) shall not prevent his re-arrest where a request for extradition is subsequently made by a requesting State.

17. Constitution of Court and procedure

(1) For the purpose of hearing and determining an application under this Part, the Court shall be constituted by 2 or 3 Judges as the Chief Justice shall in any case direct.

(2) Any application under this Part shall be governed by the Supreme Court Rules 2000 and such other Rules as the Chief Justice may make.

- (b) by repealing Sub-part C and replacing it by the following Sub-part –

Sub-Part C – Bail and Ancillary Orders

18. Release pending extradition hearing

(1) Notwithstanding any other enactment but subject to subsection (2), the Court may, where the proceedings for the extradition of the person sought are not likely to be determined within a reasonable time, order that the person be released either unconditionally or upon conditions as are reasonably necessary to ensure that he appears for an extradition hearing.

(2) The Court may not order the release of a person sought under subsection (1) where –

- (a) the person sought, if released, is likely to fail to appear before the Court or to surrender to custody as and when required;
- (b) there are reasonable grounds to believe that the release of the person sought –
 - (i) would represent a serious risk to the

timely disposal of the extradition proceedings; or

- (ii) may hinder the implementation of the extradition procedure in conformity with the Act.

19. Search and seizure

(1) The Court may order that any premises occupied or controlled by that person be searched and all property found in his possession at the time of arrest or discovered subsequently be seized or otherwise secured in Mauritius, where he is satisfied that there are reasonable grounds to believe that the property –

- (a) has been acquired as a result of, or been used in the commission of, the offence for which the application for arrest, or the request for extradition, was made; or
- (b) may be required as evidence in proving the offence referred to in paragraph (a).

(2) (a) The Attorney-General may, at the request of the requesting State, order that any property referred to in subsection (1) be surrendered to the requesting State.

(b) Where the laws of Mauritius and the rights of bona fide third parties so require, the Attorney-General shall not order the surrender of any property referred to in subsection (1) unless the requesting State has given assurances which, in his opinion, are sufficient to ensure that the property shall be returned to Mauritius free of charge as soon as the criminal proceedings in that State have been completed.

- (c) by repealing section 20 and replacing it by the following section –

20. Consent

(1) At any time after the Attorney-General has made an application under section 14(1) or 16(4), the person sought may, after having been informed of his rights and the legal consequences of a simplified extradition procedure, consent to be extradited to the requesting State without an extradition hearing.

- (2) A consent given pursuant to subsection (1) –

(a) shall be recorded by the Court; and

(b) may not be revoked.

(3) A copy of the consent of the person sought shall be transmitted to the Attorney-General with a view to arranging for his extradition under section 22.

(d) in section 21, by repealing subsection (1) and replacing it by the following subsection –

(1) Where the Court decides that the person sought is eligible for extradition, the Attorney-General may, subject to this section, order the extradition of that person to the requesting State.

5. Consequential amendment

The Bail Act is amended, in section 2 –

(a) in the definition of “defendant”, by adding the following new paragraph, the word “but” being added at the end of paragraph (b) –

(c) does not include a person who is arrested or detained pursuant to the Extradition Act;

(b) by repealing the definition of “detainee” and replacing it by the following definition –

“detainee” –

(a) means a person who is under arrest upon reasonable suspicion of having committed an offence; but

(b) does not include a person who is arrested or detained pursuant to the Extradition Act;
