

THE EXTRADITION BILL
(No. VI of 2017)

Explanatory Memorandum

The object of this Bill is to make better provision for the extradition of persons from, and to, Mauritius.

2. The present Extradition Act, which dates back to 1970, has become outdated. It makes a distinction between Commonwealth and non-Commonwealth countries in matters of extradition. It can be inferred from that Act that an extradition treaty should necessarily exist between Mauritius and non-Commonwealth countries for the purpose of extradition.

3. With a view to enabling and facilitating extradition even in the absence of treaties, the Extradition Act is being repealed and replaced by a new legislation to do away with the distinction which exists between Commonwealth and non-Commonwealth countries, to simplify extradition procedures and to promote cooperation, without for that matter neglecting to make adequate allowance for the rights of persons whose extradition or arrest is sought.

4. The Bill will, inter alia –

- (a) place all foreign States on the same footing regarding extradition of persons from Mauritius;
- (b) make special provision for offences of a fiscal or military nature;
- (c) make particular reference to counterterrorism conventions;
- (d) bring out more clearly the dual criminality requirement for extradition;
- (e) afford better protection against extradition from Mauritius to citizens of Mauritius;
- (f) enable the Attorney-General to refuse to grant, in the public interest, a request for the extradition of a person from Mauritius; and

- (g) generally provide better guidance to the relevant authorities that are required to deal with requests for extradition.

R. R. YERRIGADOO
Attorney-General

12 May 2017

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A BILL

To make better provision for the extradition of persons from, and to, Mauritius

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Extradition Act 2017.

2. Interpretation

(1) In this Act –

"extradition treaty" –

(a) means an agreement, an arrangement or a bilateral treaty between Mauritius and a foreign State, or a multilateral treaty to which Mauritius is a party; and

(b) includes a treaty made before 12 March 1968, which extends to, and is binding on, Mauritius,

which contains provisions governing the extradition of persons from Mauritius;

"person sought" means a person whose extradition, or arrest with a view to extradition, is requested by a foreign State;

"receiving State" –

(a) means a foreign State to which a person is to be extradited from Mauritius; and

- (b) includes a foreign State to which a person is to be extradited, through Mauritius, from another foreign State;

"requesting State" means a foreign State which requests the extradition of a person or the arrest of a person with a view to extradition;

"transferee" means a person who is extradited, through Mauritius, from a foreign State to another foreign State.

(2) For the purposes of this Act –

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

shall be taken to be within the jurisdiction of, and be part of, that State.

3. Application of Act

(1) This Act shall be in addition to, and not in derogation from, the Deportation Act.

(2) This Act shall bind the State.

(3) Unless otherwise provided for in an extradition treaty, the procedure for extradition proceedings under Part III and Part IV, or transit proceedings under Part V shall be the procedure specified in this Act.

4. Basis for extradition

(1) Subject to this Act, a person may, on the request of a foreign State, be extradited pursuant to an extradition treaty for the purpose of prosecuting that person for an extraditable offence, or imposing or executing a sentence of an extraditable offence against that person.

(2) Notwithstanding subsection (1), a request for the extradition of a person by a foreign State may be considered by virtue of comity where that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure that it would comply with a comparable request from Mauritius or where, in his opinion, it is otherwise in the interests of justice to do so.

PART II – EXTRADITABLE AND NON-EXTRADITABLE OFFENCES
Sub-Part A – Extraditable Offences

5. Offences punishable under laws of Mauritius

(1) (a) An offence shall be an extraditable offence where –

- (i) it is punishable under the laws of the requesting State by imprisonment or other deprivation of liberty for a term of not less than 2 years; and
- (ii) the act which constitutes the offence would, if committed in Mauritius, constitute an offence which is punishable under the laws of Mauritius by imprisonment or any other deprivation of liberty for a term of not less than 2 years.

(b) In determining whether an offence is an offence punishable under laws of Mauritius or those of the requesting State, it shall not matter that –

- (i) the laws of Mauritius and those of that State do not place the act constituting the offence within the same category of offences, denominate the offence by the same terminology, or define or characterise it in the same way; or
- (ii) the constituent elements of the offence are different under the laws of Mauritius and those of that State, subject that the totality of the act constituting the offence as presented by that State shall be taken into account.

(2) (a) An act which contravenes the laws of a requesting State in relation to tax, duty, customs or exchange control shall be an extraditable offence where it corresponds to an offence of the same nature under the laws of Mauritius.

(b) A request shall not be refused on the ground that the laws of Mauritius do not impose the same kind of tax, duty, customs or exchange control, or do not contain tax, duty, customs or exchange control laws of the same kind as the laws of that State.

(3) For the purposes of this Act, a person sought shall not be considered

to have been convicted of an offence against the laws of a requesting State where the conviction is, under the laws of that State, a conviction for contumacy, but he shall be considered to have been charged with that offence.

6. Counterterrorism conventions

(1) Where Mauritius is a party to a prescribed counterterrorism convention, and an extradition agreement or arrangement exists between Mauritius and a requesting State which is also a party to that convention, the extradition agreement or arrangement shall, for the purposes of this Act, be taken to include provision for extradition in respect of offences falling within the scope of the convention, and those offences shall be extraditable offences.

(2) Where Mauritius is a party to a prescribed counterterrorism convention, and there exists no extradition agreement or arrangement between Mauritius and a requesting State which is also a party to that convention, the convention shall, for the purposes of this Act, be treated as an extradition agreement or arrangement between Mauritius and that State in respect of offences falling within the scope of the convention, and those offences shall be extraditable offences.

Sub-Part B – Non-extraditable Offences

7. Offences of political nature

(1) A request for the extradition of a person by a foreign State shall not be favourably considered where, in the opinion of the Attorney-General, there are substantial grounds to believe that the offence for which that person is sought is of a political nature.

(2) An offence against the laws of a requesting State may be considered as an offence of a political nature even where there are no competing political parties in that State.

(3) Subsection (1) shall not apply to an offence in respect of which Mauritius has, pursuant to an extradition treaty, assumed an obligation not to consider that offence as an offence of a political nature.

(4) The following acts shall not constitute offences of a political nature –

- (a) murder or manslaughter;
- (b) inflicting serious bodily injury;

- (c) kidnapping, abduction, hostage-taking or extortion;
- (d) using explosives, incendiaries or other devices or substances in circumstances where human life is likely to be endangered or serious bodily injury or substantial property damage is likely to be caused;
- (e) an attempt or conspiracy to commit, or an act of complicity in, an act referred to in paragraphs (a) to (d).

(5) Where a request for the extradition of a person may be refused on the ground that the offence for which that person is sought is an offence of a political nature, Mauritius and the requesting State shall consult with a view to facilitating the resolution of the matter.

8. Protection of human rights

A request for the extradition of a person by a foreign State shall not be favourably considered where, in the opinion of the Attorney-General, there are substantial grounds to believe that the person sought –

- (a) is likely to be prosecuted or punished in that State on account of his race, religion, nationality, ethnic origin or political opinions;
- (b) is likely to be subjected in that State to torture or cruel, inhuman or degrading treatment or punishment;
- (c) is not likely to receive the minimum fair trial guaranteed in criminal proceedings in that State;
- (d) is liable to be tried or sentenced in that State by an extraordinary or ad hoc court or tribunal, unless that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure that the judgment will be passed by a court which is empowered under the rules of judicial administration of that State to try criminal offences.

Sub-Part C – Other Grounds for Refusal

9. Other grounds for refusal

A request for the extradition of a person by a foreign State –

- (a) may not be favourably considered where –

- (i) in so far as it relates to the imposition or execution of a sentence –
 - (A) judgment has been rendered in absentia in that State; or
 - (B) that person has not had sufficient notice of the trial or opportunity to prepare for his defence, and he has not had or will not have the opportunity to have the case retried in his presence, unless –
 - (I) that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure to that person the right to a re-trial which safeguards his rights of defence; or
 - (II) that person has been duly notified and has had the opportunity to appear and prepare for his defence and has elected not to do so;
 - (ii) the offence for which extradition is requested is an offence under military law and is not an offence under the criminal law of that State; or
 - (iii) that person is a citizen of Mauritius; or
- (b) shall not be favourably considered where –
- (i) there has been a final judgment rendered and enforced against that person in respect of the offence for which extradition is requested;
 - (ii) at the time of receipt of the request, prosecution or punishment against that person is barred under the laws of Mauritius or those of that State, by lapse of time, prescription or a statute of limitation;
 - (iii) the offence for which extradition is requested carries death penalty under the laws of that State, unless that State gives assurances which, in the opinion of the Attorney-General, are sufficient to ensure that death penalty will not be imposed or, if imposed, will not be carried out;
 - (iv) the offence for which extradition is requested has been committed outside the territory of that State and the laws of

Mauritius do not allow prosecution for the same offence when committed outside the territory of Mauritius; or

- (v) less than 6 months of the sentence of imprisonment of any other deprivation of liberty remains to be served.

PART III – EXTRADITION FROM MAURITIUS
Sub-Part A – Request for Extradition

10. Request through diplomatic channels

(1) A request for extradition shall be made, through diplomatic channels, by a foreign State and shall be accompanied by –

- (a) a statement describing the person sought, together with any other information that may assist in establishing that person's identity, nationality and location;
- (b) the text of the law creating the offence in that State and specifying the penalty for the offence or, where the offence is not created by statute, a description of the elements of the offence and its origin, and a statement of the penalty that may be imposed for the offence;
- (c) a statement that the offence is not time-barred by the laws of that State; and
- (d) where the person sought is charged with an offence –
 - (i) a statement of the offence for which extradition is requested;
 - (ii) a certified copy of a warrant issued by a competent judicial authority of that State; and
 - (iii) a summary of the admissible evidence sufficient to justify the committal of the person for trial if the offence had been committed in Mauritius; or
- (e) where the person sought is convicted of an offence –
 - (i) a statement of the offence for which extradition is sought;

- (ii) a certified copy of the judgment or other document setting out the conviction and the sentence imposed, the fact that the sentence is enforceable and the extent to which the sentence remains to be served;
- (iii) a statement that he was summoned in person or otherwise informed of the date and place of the hearing which led to the decision, or specifying the legal means available to him to prepare his defence or have the case retried in his presence; and
- (iv) a statement that there is an intention, where the sentence has not been imposed, to impose that sentence.

(2) A request for extradition and the documents in support, together with any other material supplied in response to a request under section 13(2), shall not require certification or authentication unless the relevant extradition treaty provides, or the laws of Mauritius provide, otherwise.

11. Requests by different foreign States for one person

(1) Where requests for the extradition of a person are received from more than one foreign State, the Attorney-General may, having regard to the circumstances, determine which of the requests shall be considered first.

- (2) The Attorney-General shall, in so determining, consider, in particular –
- (a) the relative seriousness of the offences;
 - (b) the dates on which the requests were made; and
 - (c) the nationality, citizenship or ordinary residence of the person sought.

12. Request for extradition for offences some of which are non-extraditable

Where the extradition of a person is requested for several offences, out of which some are extraditable offences and some are not extraditable offences, the Attorney-General shall consider only the extraditable offences.

13. Examination of request

(1) The Attorney-General shall, on receipt of a request for extradition, examine whether the requirements of the relevant extradition treaty, the

documentary requirements under section 10 and any other requirements under this Act are met.

(2) Where the Attorney-General considers that the information provided by the requesting State in support of the request does not suffice to enable a decision to be made, he may request for additional information to be furnished within the period specified in the relevant extradition treaty or otherwise as soon as practicable.

Sub-Part B – Arrest of Person Sought

14. Application for arrest prior to extradition application

(1) The Attorney-General may, pursuant to a request for the arrest of a person from a foreign State, apply to a Magistrate for an order for the arrest of the person pending an application under section 18(1), where he is satisfied that the requirements of the relevant extradition treaty are met and there are reasonable grounds to believe that –

- (a) the person sought is in, or is on his way or routinely travels to, Mauritius;
- (b) the request relates to an extraditable offence;
- (c) the other requirements under this Act are met; and
- (d) the State will submit a request for extradition in accordance with the relevant extradition treaty or, in any case, within 3 months from the date of the request.

(2) The Magistrate shall order the arrest of the person sought where he is satisfied that the requirements of the relevant extradition treaty are met and there are reasonable grounds to believe that –

- (a) 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;
- (b) the information available would have justified the issue of an arrest warrant if the person were accused of the relevant offence in Mauritius; and
- (c) it is necessary to arrest that person in the public interest or prevent him from escaping or committing an offence.

(3) The arrest of the person sought shall be ordered by means of a warrant issued by the Magistrate which shall include the name of the requesting State, the date of the request, any relevant information regarding that person and the offence in respect of which arrest was requested.

(4) 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 subparagraph (i) but the Attorney-General has not applied for an order under section 18(1) 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 section 18(1) within 21 days after the expiry of that period.

(5) The discharge of a person pursuant to subsection (4) shall not prevent his re-arrest where a request for extradition is subsequently made by a requesting State or a fresh examination of the request is made pursuant to section 13.

15. Application for arrest after extradition application

(1) Where the Attorney-General has made an application under section 18(1), he may, unless the person sought has already been arrested, apply to the Magistrate for an order for the arrest of that person.

(2) The Magistrate shall order the arrest of the person sought where he is satisfied that the requirements of the relevant extradition treaty are met and that there are reasonable grounds to believe that –

- (a) 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;
- (b) the information available would have justified the issue of an arrest warrant if the person were accused of the relevant offence in Mauritius; and
- (c) it is necessary to arrest that person in the public interest or prevent him from escaping or committing an offence.

(3) The arrest of the person sought shall be ordered by means of an extradition arrest warrant issued by the Magistrate which shall contain the information referred to in section 14(3).

16. Proceedings after arrest

A person arrested pursuant to section 14 or 15 shall be brought without undue delay before the Magistrate who shall –

- (a) order the detention of the person in custody or admit him to bail; and
- (b) set a date for the extradition hearing.

17. Search and seizure

(1) A Magistrate may, after a person sought has been arrested pursuant to section 14 or 15, order that the premises in which that person was found 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.

Sub-Part C – Eligibility for Extradition

18. Application for extradition

(1) Where the requirements referred to under this Act are met, the Attorney-General shall apply for an order from a Magistrate that the person sought is eligible for extradition.

(2) Subject to subsection (3), the Magistrate shall order that the person sought is eligible for extradition where he is satisfied that –

- (a) the requirements of the relevant extradition treaty are met;
- (b) the offence is an extraditable offence;
- (c) the person brought before the Magistrate is the person sought;
- (d) in case extradition is requested for the purpose of prosecution in the requesting State, there is admissible evidence considered sufficient to justify the committal of the person sought for trial for the relevant offence if that offence had been committed in Mauritius; and
- (e) any other requirement specified in this Act is met.

(3) The Magistrate 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 is not met.

(4) Where the Magistrate orders that the person sought is eligible for extradition, he shall –

- (a) remand that person in custody; and
- (b) inform the person sought of his right to seek judicial review of his order.

(5) Where the Magistrate orders that the person sought is not eligible for extradition, he shall order the discharge of that person, unless the person sought had been the subject of simultaneous applications for extradition and a fresh application is made pursuant to this section.

19. Judicial review

(1) An application for judicial review may be lodged before the Supreme Court within a period of 21 days after the date of the order of the Magistrate under section 18 by –

- (a) the person sought, where the Magistrate has found him eligible for extradition; or
- (b) the Attorney-General, where the Magistrate has found the person sought not eligible for extradition.

(2) Where the Supreme Court makes a final decision that the person sought is eligible for extradition, it shall transmit to the Attorney-General a copy of the decision.

(3) Where the Supreme Court makes a final decision 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 and a fresh application is made pursuant to section 18.

Sub-Part D – Consent of Person Sought to be Extradited

20. Consent

(1) At any time after the Attorney-General has applied for an order under section 14(1), 15(1) or 18(1), 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 a hearing under section 18.

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

(a) shall be recorded by the Magistrate; 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.

Sub-Part E – Extradition to Requesting State

21. Extradition of person sought

(1) Where the Magistrate or the Supreme Court, as the case may be, 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.

(2) The Attorney-General may seek from the requesting State –

(a) any of the assurances referred to in section 9(a)(i)(B)(I) or (b)(iii); or

(b) the assurance that the person sought shall not be detained, prosecuted, sentenced or subjected to any other restriction of personal liberty in that State or, be re-extradited to another foreign State, for any offence committed by him prior to being extradited, other than for the offence for which extradition is requested, unless Mauritius gives its consent.

(3) Where the Attorney-General subjects the extradition of the person sought to the assurance specified in subsection (2), the order of extradition shall not be executed until the Attorney-General is satisfied that the assurance is given by the requesting State.

(4) The Attorney-General may refuse to order the extradition of the person sought to the requesting State where he is satisfied that there are substantial grounds to believe that –

(a) a prosecution against that person in respect of an offence for which extradition is requested is pending in Mauritius;

(b) the offence for which extradition is requested is regarded under the laws of Mauritius as having been committed in Mauritius; or

- (c) the extradition of that person would be dangerous to his life or would be incompatible with humanitarian considerations in view of his age, health, disability or other similar personal circumstances.

(5) Where the Attorney-General refuses to order the extradition of the person sought to the requesting State, that person shall be discharged, unless he had been the subject of simultaneous applications for extradition and a fresh application has been made pursuant to section 18(1).

22. Procedure for extradition

(1) Where the Attorney-General orders that a person sought is to be extradited to the requesting State or the person has given his consent pursuant to section 20, he shall arrange for the extradition of that person and inform the requesting State of the decision, the place and date of extradition and the length of time for which the person was detained for the purpose of his extradition.

(2) The extradition of the person sought shall be ordered by means of an extradition warrant, issued by the Attorney-General, which shall –

- (a) contain the name of that person;
- (b) state the name of the requesting State to which that person is to be extradited;
- (c) state, in accordance with the laws of Mauritius or those of the requesting State, the offence for which that person is to be extradited to the requesting State;
- (d) authorise an escort officer to hold the person in custody for so long as it is necessary for carrying out his extradition;
- (e) authorise a foreign escort officer to accompany that person out of Mauritius; and
- (f) make provision for any other steps that may be taken in accordance with the relevant extradition treaty.

(3) Where the person sought is not extradited to the requesting State within the period provided for in the relevant extradition treaty or in the absence of any such period, within 21 days after the date the extradition warrant was issued in accordance with subsection (2), the Attorney-General shall seek an order from the Judge in Chambers for the discharge of that person.

23. Postponement of extradition

(1) The Attorney-General may postpone the extradition of a person sought to the requesting State where –

- (a) proceedings are pending in Mauritius against that person or that person is to serve a sentence in Mauritius for an offence other than that for which extradition was requested; or
- (b) the extradition of that person would be dangerous to his life or would be incompatible with humanitarian considerations in view of his age, health, disability or other similar personal circumstances.

(2) Where extradition is postponed –

- (a) pursuant to subsection (1)(a), the extradition warrant issued in accordance with section 22(2) shall not take effect until the person sought has been discharged, whether by acquittal, by expiry of the sentence or otherwise;
- (b) pursuant to subsection (1)(b), the extradition of the person sought shall take place as soon as the humanitarian reason has ceased to exist.

24. Temporary extradition

(1) Where a person sought is serving a sentence in Mauritius for an offence other than that for which extradition is requested, the Attorney-General may, instead of postponing his extradition in accordance with section 23, order his temporary extradition to the requesting State where –

- (a) the extradition is requested for an offence with which the person sought is charged but has not been convicted; and
- (b) the requesting State has given an assurance which, in his opinion, is sufficient to ensure that the person sought –

- (i) shall remain in custody while temporarily extradited; and
- (ii) shall be returned to Mauritius within 7 days after the completion of the trial or, in case of an appeal, after the completion of proceedings for which the presence of that person in the requesting State is required.

(2) Where the extradition of a person sought is requested for the purpose of prosecution for an offence committed outside Mauritius and is refused on the ground referred to in section 9(a)(ii), the Attorney-General may order the temporary extradition of that person to the requesting State where it gives assurances which, in his opinion, are sufficient to ensure that the person shall, after his trial or sentence, be returned to Mauritius.

(3) Any assurance referred to in subsection (1)(b) or (2) that is included in a relevant extradition treaty shall be repeated as a specific assurance.

(4) The temporary extradition of a person sought under subsection (1) or (2) shall be ordered by means of a temporary extradition warrant issued by the Attorney-General which shall contain the information referred to in section 22(2).

(5) A temporary extradition warrant issued under subsection (4) shall prevail over a prior warrant under which the person to whom it applies is otherwise detained in Mauritius.

(6) A person sought shall, unless the Attorney-General orders his earlier extradition, be extradited to the requesting State without a further request for extradition after that person –

- (a) has been temporarily extradited;
- (b) has been convicted in the requesting State and had a term of imprisonment imposed on him;
- (c) has been returned to Mauritius; and
- (d) has finished serving the period of sentence imposed in Mauritius at the time of the temporary extradition.

(7) Where the sentence that the person sought is serving in Mauritius expires within the period during which that person is temporarily extradited to the requesting State, he shall be deemed to have been permanently extradited.

Sub-Part F – Prosecution of Person Sought

25. Prosecution of person sought

Where an act committed outside Mauritius by a person sought constitutes an offence under the laws of Mauritius, the Director of Public Prosecutions may, where the person sought is not extradited, and notwithstanding any other enactment, institute proceedings against that person as if that act has been committed in Mauritius.

PART IV – EXTRADITION TO MAURITIUS

26. Extradition or related request

The Attorney-General may make a request to a foreign State –

- (a) for the extradition of a person for the purpose of prosecuting an offence, or imposing or executing a sentence in respect of an offence, over which Mauritius has jurisdiction;
- (b) for the arrest of a person pending a request for extradition; or
- (c) after the extradition of a person to Mauritius, for its consent pursuant to section 27(1)(a).

27. Person extradited to Mauritius

(1) A person who has been extradited from a foreign State to Mauritius shall not be detained, prosecuted, sentenced or subjected to any other restriction of personal liberty in Mauritius or, be re-extradited to another foreign State, for any offence committed before his extradition, other than that for which he was extradited, unless –

- (a) that State from which that person has been extradited to Mauritius has expressly given its consent; or
- (b) that person, having had an opportunity to voluntarily leave Mauritius, has not done so within 21 days of his final discharge in respect of the offence for which he was extradited.

(2) A request for the consent of the foreign State to be given under subsection (1)(a) may be accompanied, as appropriate, by the documents referred to in section 10 and a record of any statement made by the extradited person with respect to the offence.

(3) Where the description of the offence charged is altered in the course of proceedings in Mauritius, the extradited person may only be detained, prosecuted, sentenced or subjected to any other restriction of personal liberty insofar as the offence is based on the same facts and, under its new description, is shown to be an offence which would allow extradition and carry the same penalty as, or a lesser penalty than, the original offence for which extradition to Mauritius was granted.

28. Temporary detention of person extradited to Mauritius

(1) Where the charge for which a person has been extradited has been dismissed in Mauritius, and that person has been discharged from custody for such charge, the Attorney-General may apply to a Magistrate for a detention warrant for a period not exceeding 21 days in order to enable the submission of a request to the foreign State to give its consent pursuant to section 27(1)(a) and, if the request is granted, to allow the initiation of proceedings against the person for a charge other than that for which he was extradited.

(2) The application for a detention warrant made pursuant to subsection (1) shall specify the charge for which assurance is sought, a summary of the evidence in support of such charge and such other information as may be relevant to the determination by the Magistrate that there is good and sufficient cause to issue the warrant.

(3) Where the request for consent is not granted, the person shall be discharged.

(4) Where the request for consent is not granted within the period specified in subsection (1), an application may be made for, and the Magistrate may grant, an extension of the warrant where there is just cause for doing so.

29. Temporary extradition to Mauritius

(1) Where a person is serving a term of imprisonment or has otherwise lawfully been deprived of his liberty in a foreign State and has been temporarily extradited to Mauritius for the purpose of a prosecution or an appeal, a Magistrate shall, on an ex parte application made by the Attorney-General at any time before the temporary extradition, order the detention in custody of that person.

(2) An order referred to in subsection (1) shall contain a provision that the person shall not be detained –

(a) after a date specified in the order;

- (b) in the case that person is extradited for prosecution, more than 21 days after the completion of the trial; or
- (c) in case that person is extradited for an appeal, more than 21 days after the completion of the proceedings for which the presence of the person is required.

(3) An order made under subsection (1) shall prevail over an order made by any judicial authority in Mauritius in respect of anything that occurred before the person is extradited to Mauritius.

(4) On completion of the proceedings in Mauritius for which the person was temporarily extradited or on the expiry of the period specified in the order, whichever is the sooner, that person shall be returned to the foreign State.

(5) The enforcement of a sentence imposed on a person who has been temporarily extradited and convicted in Mauritius shall not commence until his final extradition to Mauritius.

PART V – TRANSIT PROCEEDINGS

30. Transit request

(1) Where a person is being extradited, through Mauritius, from a foreign State to a receiving State, the Attorney-General may, at the request of that receiving State, allow the transit of that person in Mauritius on such conditions as he may impose.

(2) Transit of a person under subsection (1) shall be allowed where –

- (a) the act that constitutes the offence in respect of which transit permission is requested would, if committed in Mauritius, constitute an offence which is punishable under the laws of Mauritius; and
- (b) it is in the public interest to do so.

(3) Where transit is allowed under subsection (1), the transferee shall be detained in custody for a period not exceeding 24 hours or, pursuant to subsection (4), for a longer period if so requested by the receiving State.

(4) (a) On a request by the receiving State, a Magistrate may, on an ex parte application made by the Attorney-General, issue a warrant authorising

detention in custody of the transferee for such period exceeding 24 hours and on such conditions as the Magistrate considers necessary to facilitate his transfer to that State.

(b) The ex parte application under paragraph (a) shall include information on the transferee, the foreign State that extradited him, the receiving State and the reason for the extension of his detention.

(5) Where the conditions under subsection (1) or 4(a) are not complied with, the Attorney-General or the Magistrate, as the case may be, may, where it is in the public interest to do so, direct the person having custody of the transferee to discharge him.

31. Unscheduled landing

(1) Section 30 shall not apply where a person transits in Mauritius as a result of an unscheduled landing of an aircraft in Mauritius.

(2) Where an unscheduled landing occurs, the transferee may, at the request of the person escorting the transferee, be detained in custody for a period not exceeding 48 hours pending receipt of the transit request from the foreign State to which the transferee is to be extradited.

(3) Where the foreign State to which the transferee is to be extradited does not submit a transit request within the period specified in subsection (2), the Attorney-General may, where it is in the public interest to do so, direct the person having custody of the transferee to discharge him, or the Attorney-General may initiate deportation proceedings against him.

PART VI – MISCELLANEOUS

32. Costs of extradition proceedings

(1) Mauritius shall meet the normal costs of any proceedings within its jurisdiction arising out of a request for extradition, and the costs incurred in Mauritius in connection with seizure and surrender of property or the arrest and detention of a person sought.

(2) The requesting State shall bear the costs related to the translation of documents, and the costs incurred in conveying a person, sought from Mauritius, including transit costs.

33. Regulations

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

(2) Regulations made under subsection (1) may provide –

(a) for the taking of fees and levying of charges;

(b) that any person who contravenes the regulations 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 one year.

34. Repeal

The Extradition Act is repealed.

35. Saving provision

Any process initiated under the repealed Extradition Act shall, notwithstanding this Act, proceed and be brought to completion as if the repealed Extradition Act were still in force.

36. 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.
