

THE EXTRADITION (COMMONWEALTH AND FOREIGN TERRITORIES) (AMENDMENT) BILL, 2003

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport.)

This Bill seeks to amend the Extradition (Commonwealth and Foreign Territories) Act, 1985 (Act No.36 of 1985) (hereinafter referred to as "the Act"). The amendments aim to modernize and simplify the Act to provide against new forms of criminal activity and to cater for increasing international obligations, while preserving the fundamental rights of the alleged fugitive offenders.

Clause 1 would provide the short title of the proposed Act.

Clause 2 would provide the interpretation provision.

Clause 3 would amend the definition of "extraditable offence" in section 2 of the Act by deleting the reference to section 7 which is to be repealed and substituted.

Clause 4 would amend section 5 of the Act by clarifying that persons can be extradited whether or not the conduct complained of occurred in territory over which the requesting territory has jurisdiction.

Clause 5 would repeal and replace section 6 of the Act. The list of extraditable offences in the First Schedule would be abolished and the new section 6 would provide new criteria to be applied in determining what is an extraditable offence. An offence would be an extraditable offence -

- (a) if it is an offence in the requesting State punishable by death or imprisonment for not less than twelve months; and
- (b) if the conduct constituting the offence would be, under Trinidad and Tobago law, an offence punishable by death or imprisonment for not less than twelve months if committed in Trinidad and Tobago or, in the case of an extra-territorial offence, if committed in corresponding circumstances outside Trinidad and Tobago.

In the case of a declared foreign territory, the extradition treaty between Trinidad and Tobago and that territory must also provide for the extradition of persons for the offence in question.

The new section 6(4) would provide a modern framework for the implementation of this country's multilateral obligations. It would make any conduct over which Trinidad and Tobago is obliged to establish jurisdiction for the purposes of an international Convention an extraditable offence, once this country has made the conduct an offence under its domestic legislation.

Clause 6 would repeal and replace section 7 of the Act to make it clear that the discharge of a person under the Act would not preclude further proceedings, whether or not they are based on the same conduct, with a view to the extradition of the person unless the High Court is of the opinion that such proceedings would be an abuse of process.

Clause 7 would amend section 8 of the Act to prevent an accused person's return to a declared Commonwealth territory or declared foreign territory if it is determined that the request for his return is based on his sex, gender or sexual preference. The section would also be amended to provide that persons accused or convicted of an offence against the life or person of a Head of Government or of a Minister of Government or of certain offences such as murder, manslaughter and kidnapping, would not be able to object to their extradition on the ground that the offence is of a political character.

Clause 8 would amend section 9 of the Act to provide at subsection (2) for a record of the case to be furnished with any request for extradition. The record of the case should include evidence that under the laws of the requesting territory a person who is returned will only be dealt with for the offence in respect of which he was extradited or a lesser offence. Further, in the case of a request in favour of a person accused of an extraditable offence, there should be provided a document summarising the evidence available to the requesting territory for use in the prosecution of the case against the person.

Clause 8 would also amend section 9 of the Act to permit the Attorney General to receive supplementary evidence, to re-issue an authority to proceed at any time before the extradition hearing begins, to amend the authority to proceed during the hearing on the basis of new evidence and to withdraw the authority to proceed at any time if it was illegally issued.

Clause 9 would amend section 12 of the Act to provide that the Magistrate must, before ordering the extradition of a person, be satisfied that the person is the person sought by the requesting State. Also, where the person is alleged to be unlawfully at large after conviction of an offence, provision is made for the conviction to be in respect of conduct that corresponds to the offence set out in the authority to proceed.

Clause 10 would amend section 13(2)(a) of the Act to enable a person committed to custody to await extradition to waive, in writing, his right not to be extradited before the expiration of fifteen days from the day on which the order for his committal is made.

Clause 11 would amend section 14 of the Act by inserting a new subsection (7) which would require the hearing of applications for judicial review or habeas corpus in extradition matters to be held at an early date, whether or not the date is in or out of the sessions of the High Court.

Clause 12 would amend section 15 of the Act by inserting a new subsection (7) requiring the hearing of appeals to the Court of Appeal in extradition matters to be held at an early date, whether or not the date is in or out of the sessions of the Court of Appeal.

Clause 13 would amend section 16 of the Act by repealing and substituting subsection (2) with a provision which would allow the Attorney General to stipulate conditions for the eventual return to Trinidad and Tobago of persons who are being extradited but who were either serving a sentence of imprisonment or were charged with an offence in Trinidad and Tobago.

Clause 14 would repeal section 19 of the Act and substitute new sections 19, 19A, 19B and 19C. The new section 19 would define "document" as used in the new sections 19A, 19B and 19C to include photographs and copies of documents.

The new section 19A would admit, in addition to evidence otherwise admissible under the laws of Trinidad and Tobago, certain evidence which would not otherwise be admissible under the laws of Trinidad and Tobago. Such evidence would include the contents of documents contained in the record of the case or in supplementary evidence, where a judicial, prosecuting or penal authority of the requesting territory certifies that the evidence in the record of the case or in the supplementary evidence is available for trial, is sufficient to justify prosecution, was gathered according to the law of the requesting territory and is accurate. In addition to the certification, each document in the record of the

case or in the supplementary evidence must also bear the signature of the certifying official. Also under proposed section 19B a translation of a document into English will be admitted only where it is certified by a judicial, prosecuting or penal authority, or a public officer, of the requesting territory and purports to be an accurate representation of the original document. Additionally, a document purporting to have been signed by a judicial, prosecuting or penal authority, or a public officer, of a declared Commonwealth or foreign territory, will be admitted without proof of the signature or official character of the person appearing to have signed it.

The proposed section 19C would provide criteria for proving that the person before the court is the person sought by the requesting State.

Clause 15 would repeal the First Schedule to the Act.

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TERRITORIES) (AMENDMENT) BILL, 2003**

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 2 amended
4. Section 5 amended
5. Section 6 repealed and substituted
6. Section 7 repealed and substituted
7. Section 8 amended
8. Section 9 amended
9. Section 12 amended
10. Section 13 amended
11. Section 14 amended
12. Section 15 amended
13. Section 16 amended
14. Section 19 repealed and substituted
15. First Schedule repealed

BILL

AN ACT to amend the Extradition (Commonwealth and Foreign Territories) Act, 1985

- Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:
- Short title 1. This Act may be cited as the Extradition (Commonwealth and Foreign Territories) (Amendment) Act, 2003.
- Interpretation Act No.36 of 1985 2. In this Act, "the Act" means the Extradition (Commonwealth and Foreign Territories) Act, 1985.
- Section 2 amended 3. Section 2 of the Act is amended in the definition of "extraditable offence" by deleting the words "or section 7, as the case may be".
- Section 5 amended 4. Section 5 of the Act is amended as follows:
- (a) by renumbering section 5 as section 5 (1); and
 - (b) by inserting the following new subsection:

“(2) For greater certainty, a person may be returned under this Act whether or not the conduct on which the declared Commonwealth or foreign territory bases its request occurred in territory over which it has jurisdiction.”
- Section 6 repealed and substituted 5. Section 6 of the Act is repealed and the following section is substituted:

"Extraditable
offences

6.(1) For the purpose of this Act, an offence in respect of which a person is accused or has been convicted in a declared Commonwealth territory, or a declared foreign territory, is an extraditable offence if -

- (a) it is an offence against the law of that territory which is punishable under the law with death or imprisonment for a term of not less than twelve months;
- (b) the conduct of the person would constitute an offence against the law of Trinidad and Tobago if it took place in Trinidad and Tobago, or in the case of an extra-territorial offence, if it took place in corresponding circumstances outside Trinidad and Tobago, and would be punishable under the law of Trinidad and Tobago with death or imprisonment for a term of not less than twelve months; and
- (c) in the case of a declared foreign territory, extradition for that offence is provided for by a treaty between Trinidad and Tobago and that territory.

(2) For the purpose of this section, in determining whether an offence against the law of a declared Commonwealth territory, or a declared foreign territory, is an offence against the law of Trinidad and Tobago, any special intent, state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law of Trinidad and Tobago shall be disregarded.

(3) For greater certainty, it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterised by the declared Commonwealth territory, or the declared foreign territory, in the same way as it is in Trinidad and Tobago.

(4) An offence constituted by conduct, whether in Trinidad and Tobago or not, that is of a kind over which Contracting States to an international Convention to which Trinidad and Tobago is a party are required by that Convention to establish jurisdiction, and which jurisdiction Trinidad and Tobago has so established, is an extraditable offence for the purpose of this Act.”.

Section 7 repealed and substituted

6. Section 7 of the Act is repealed and the following section is substituted:

"Further proceedings 7. For greater certainty, the discharge of a person under this Act does not preclude further proceedings, whether or not they are based on the same conduct, with a view to the return of the person under this Act unless the High Court is of the opinion that those further proceedings would be an abuse of process."

Section 8 amended

7. Section 8 of the Act is amended as follows:
- (a) in subsection (1), by inserting after the words "religion," occurring in paragraphs (b) and (c) the words "sex, gender, sexual preference,";
 - (b) in subsection (7) as follows:
 - (i) in paragraph (a), by inserting after the words "State," the words "Head of Government or Minister of Government,";
 - (ii) by deleting the full stop occurring after paragraph (b) and substituting a semicolon; and
 - (iii) by inserting the following:
 - “(c) murder or manslaughter;
 - (d) inflicting serious bodily harm;
 - (e) sexual assault;
 - (f) kidnapping, abduction, hostage-taking or extortion;
 - (g) using explosives, incendiaries, devices or substances in circumstances in which human life is

likely to be endangered or serious bodily harm or substantial property damage is likely to be caused.”; and

(c) by inserting after subsection (8), the following subsections:

“(9) The Attorney General may, by Order subject to a negative resolution of Parliament, amend the list of offences referred to in subsection (7).

(10) For greater certainty, it is not relevant whether an offence referred to in subsection (7) is named, defined or characterised by a declared Commonwealth or foreign territory in the same way as it is in Trinidad and Tobago.”.

Section 9 amended

8. The Act is amended in section 9 as follows:

(a) by deleting subsection (2) and inserting the following:

“(2) There shall be furnished with any request made for the purposes of this section on behalf of any territory a record of the case which shall include –

(a) in the case of a person accused of an extraditable offence, a warrant for his arrest issued in that territory and a document summarising the evidence available to that territory for use in the prosecution of the person;

- (b) in the case of a person unlawfully at large after conviction of an extraditable offence, a certificate of the conviction and sentence in that territory, and a statement of the amount, if any, of that sentence which has been served;

together in each case with

- (c) particulars of the person whose return is requested;
 - (d) particulars of the facts upon which and the law under which he is accused or was convicted;
 - (e) evidence that provision is made by the law of that territory for the specialty rule provided for by section 8(3), where the specialty rule is not made by an arrangement with that territory; and
 - (f) evidence sufficient to justify the issue of a warrant for his arrest under section 10.”; and
- (b) by deleting subsection (4) and inserting the following subsections:

“(4) The Attorney General may receive supplementary evidence to the record of the case and re-issue an authority to proceed to

replace one issued under subsection (3) or this subsection at any time before proceedings under section 12 begin, and all previous documents issued and orders made by the Magistrate apply in respect of a re-issued authority to proceed, unless the Magistrate, on application of the person or the Attorney General, orders otherwise.

(5) Where the Attorney General re-issues an authority to proceed under subsection (4) and the person applies for another date to be set for the beginning of proceedings under section 12, in order to give the person an opportunity to examine the re-issued authority to proceed, the Magistrate may set another date for the hearing.

(6) The Attorney General may, on an application to the magistrate, amend the authority to proceed after the hearing has begun in accordance with the evidence that is produced during the hearing.

(7) The Attorney General may not issue an authority to proceed or may withdraw one already issued if it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

(8) Where the Attorney General withdraws an authority to proceed after proceedings under section 12 have begun, the Magistrate shall discharge the person and set aside any order made with respect to the remand of the person in custody or on bail.”.

Section 12 amended

9. Section 12 of the Act is amended in subsection (4) by deleting paragraphs (a) and (b) and substituting the following paragraphs:

"(a) where the person is accused of the offence, that -

(i) there is evidence admissible under this Act of conduct that, had it occurred in Trinidad and Tobago, would justify committal for trial in Trinidad and Tobago for the offence set out in the authority to proceed; and

(ii) the person is the person sought by the declared Commonwealth or foreign territory; or

(b) where the person is alleged to be unlawfully at large after conviction of the offence, that -

- (i) the conviction was in respect of conduct that corresponds to the offence set out in the authority to proceed;
- (ii) the person is the person who was convicted; and
- (iii) the person appears to be unlawfully at large,".

Section 13 amended

10. Section 13 of the Act is amended in subsection (2) by deleting paragraph (a) and substituting the following:

“(a) until the expiration of the period of fifteen days beginning with the day on which the order for his committal is made, unless he waives, in writing, the entire period or any part thereof;”.

Section 14 amended

11. Section 14 of the Act is amended by inserting after subsection (6), the following subsection:

“(7) An application for judicial review or habeas corpus under this section shall be listed for hearing by the High Court at an early date whether that date is in or out of the sessions of that Court.”.

Section 15 amended

12. Section 15 of the Act is amended by inserting after subsection (6), the following subsection:

"(7) An appeal under this section shall be listed for hearing by the Court of Appeal at an early date whether that date is in or out of the sessions of that Court.”.

Section 16 amended

13. Section 16 of the Act is amended by repealing subsection (2) and substituting the following:

“(2) Where the Attorney General makes an order under this section in the case of a person who is serving a sentence of imprisonment, or is charged with an offence, in Trinidad and Tobago, the order shall be subject to such conditions for the return of the person to Trinidad and Tobago as the Attorney General shall stipulate.”.

Section 19 repealed and substituted

14. Section 19 of the Act is repealed and the following sections are substituted:

"Definition of document

19. For the purposes of sections 19A, 19B and 19C, “document” means data recorded in any form, and includes photographs and copies of documents.

Admissibility of
evidence

19A.(1) Subject to subsection (2), evidence that would otherwise be admissible under the laws of Trinidad and Tobago shall be admitted as evidence at an extradition hearing.

(2) The following evidence is admissible in proceedings under this Act, even if the evidence would not otherwise be admissible under the laws of Trinidad and Tobago:

- (a) the contents of the documents contained in the record of the case or in supplementary evidence, certified under subsection (5);
 - (b) the contents of the documents that are submitted in conformity with the terms of a treaty with a declared foreign territory; and
 - (c) evidence adduced by the person whose return is sought that is relevant to the tests set out in section 12(4) if the Magistrate considers it reliable.
- (3) The record of the case must include-
- (a) in the case of a person sought for the purpose of prosecution, a document summarising the evidence available to the extradition partner for use in the prosecution; and

- (b) in the case of a person sought for the imposition or enforcement of a sentence –
 - (i) a copy of the document that records the conviction of the person; and
 - (ii) a document describing the conduct for which the person was convicted.

(4) The record of the case may include other relevant documents, including documents respecting the identification of the person sought for extradition.

(5) The record of the case or supplementary evidence shall not be admitted unless -

(a) in the case of a person who is accused of an extraditable offence, a judicial or prosecuting authority of the declared Commonwealth or foreign territory certifies that the evidence summarised or contained in the record of the case or in the supplementary evidence is in a form that would be admissible at the trial; and

(i) was gathered according to the law of that territory; or

(ii) is sufficient under the law of that territory to justify prosecution; or

(b) in the case of a person who is alleged to be unlawfully at large after conviction of an extraditable offence, a judicial, prosecuting or penal authority of the declared Commonwealth or foreign territory certifies that the documents in the record of the case or in the supplementary evidence are accurate; and

(c) each document contained in the record of the case or in supplementary evidence bears the signature of the certifying official.

(6) No authentication of documents is required unless a relevant extradition agreement provides otherwise.

(7) For the purposes of this section, a record of the case includes any supplement added to it.

Admissibility signature
and translation of
documents

19B.(1) A document is admissible whether or not it is under oath or solemnly affirmed.

(2) A document purporting to have been signed by a judicial, prosecuting or penal authority, or other officer administering a Government Department, of the declared Commonwealth or foreign territory shall be admitted without proof of the signature or official character of the person appearing to have signed it.

(3) A translation of a document into English shall be admitted into evidence only where it is certified by a judicial, prosecuting or penal authority, or other officer administering a Government Department, of the declared Commonwealth or foreign territory and purports to be an accurate translation of the original document.

Evidence of identity

19C. The following means of identification constitute evidence that the person before the court is the person referred to in the warrant or the document that records the conviction or any other document that is presented to support the request for the return of the person:

- (a) the fact that the name of the person before the court is similar to the name that is in the document submitted by the declared Commonwealth or foreign territory; and
- (b) the fact that the physical characteristics of the person before the court are similar to those evidenced in a photograph, fingerprint or other description of the person."

First Schedule repealed 15. The First Schedule to the Act is repealed.

Passed in the House of Representatives this day of , 2003.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2003.

Clerk of the Senate

I confirm the above.

President of the Senate.