

THE CRIMINAL CODE (AMENDMENT) BILL

(No. XVI of 2003)

Explanatory Memorandum

The object of this Bill is to amend the Criminal Code to give effect to Article 2(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by introducing into our criminal law the offence of torture as contemplated in Article 1 of the Convention.

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Attorney General and
Minister of Justice & Human Rights

23 May 2003

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. Section 77 amended
4. New section 78 inserted in principal Act

A BILL

To amend the Criminal Code

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Criminal Code (Amendment) Act 2003.

2. Interpretation

In this Act -

“principal Act” means the Criminal Code.

3. Section 77 amended

Section 77 is amended by deleting the words "Where a public functionary" and replacing them by the words "Subject to section 78, where a public functionary".

4. New section 78 inserted in principal Act

The principal Act is amended by inserting immediately after section 77, the following new section -

78. Torture by public official

(1) Subject to subsection (3), any person who intentionally inflicts severe pain or suffering, whether physical or mental, on any other person, by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity -

- (a) to obtain a confession or other information from that other person, or a third person;
- (b) to punish that other person for an act which that other person or a third person has committed, or is suspected of having committed;
- (c) to intimidate or coerce that other or a third person; or
- (d) for any reason based on discrimination of any kind,

shall commit the offence of torture and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) Where the act constituting an offence under subsection (1) has been committed outside Mauritius and -

- (a) the victim is a citizen of Mauritius;
- (b) the alleged offender is in Mauritius; or
- (c) the alleged offender is in Mauritius, and Mauritius does not extradite him,

a Court shall have jurisdiction to try the offence and inflict the penalties specified in subsection (1).

(3) Subsection (1) shall not apply to any pain or suffering arising only from, or inherent in, or incidental to, a lawful sanction.

(4) It shall not be a defence for a person charged with an offence under subsection (1) to prove that he acted by order of his superior.