

**THE JUDICIAL PROVISIONS BILL**  
(No. XXXV of 2008)

**Explanatory Memorandum**

The object of this Bill is to amend a number of enactments –

- (a) to provide for heavier penalties for certain offences and increase the sentencing jurisdiction of the District Courts and the Intermediate Court; and
- (b) to abolish fixed sentences and other mandatory sentences and to restore to the Courts their sentencing discretion in respect of all offences.

**J. VALAYDEN**  
*Attorney-General*

**07 November 2008**

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ARRANGEMENT OF CLAUSES

*Clause*

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|----|---|----|--|
| 1. | Short title                               | 6. | Dangerous Drugs Act amended  |
| 2. | Courts Act amended                        | 7. | District and Intermediate Courts (Criminal Jurisdiction) Act amended |
| 3. | Criminal Code amended                     | 8. | Various enactments amended   |
| 4. | Criminal Code (Supplementary) Act amended |    |  |
| 5. | Criminal Procedure Act amended            |    |  |

## **A BILL**

### **To make better provision in respect of sentencing**

ENACTED by the Parliament of Mauritius, as follows –

#### **1. Short title**

This Act may be cited as the Judicial Provisions Act 2008.

#### **2. Courts Act amended**

The Courts Act is amended –

- (a) in section 113 –
  - (i) in subsection (2)(a), by deleting the words “8 years” and “5 years” and replacing them by the words “15 years” and “10 years” respectively;
  - (ii) in subsection (2)(b), by deleting the words “12 years” and replacing them by the words “20 years”; and
  - (iii) in subsection (3)(a)(ii), by deleting the words “5 years” and replacing them by the words “10 years”; and
- (b) in section 114(2), by deleting the words “2 years” and “10,000 rupees” and replacing them by the words “5 years” and “100,000 rupees” respectively.

#### **3. Criminal Code amended**

The Criminal Code is amended –

- (a) in section 5, by deleting subsection (2);
- (b) in section 11(2), by deleting the words “30 years” and replacing them by the words “40 years”;
- (c) in section 12, by deleting the words “5 years” and replacing them by the words “10 years”;
- (d) in sections 50, 51 and 62, by adding, after the words “for life”, the words “or, where the Court is satisfied that compelling reasons exist which justify the imposition of a lesser sentence and has specified the reasons on the record of the proceedings, for a term not exceeding 60 years”;

- (e) in sections 57 and 60 by deleting the words “shall be punished by penal servitude for life and forfeiture of property” and replacing them by the following words –

“shall be punished –

- (a) by penal servitude for life or, where the Court is satisfied that compelling reasons exist which justify the imposition of a lesser sentence and has specified the reasons on the record of the proceedings, for a term not exceeding 60 years; and
  - (b) forfeiture of property”;
- (f) in section 234 (2), by adding, after the words “for life”, the words “or, where the Court is satisfied that compelling reasons exist which justify the imposition of a lesser sentence and has specified the reasons on the record of the proceedings, for a term not exceeding 60 years;”
- (g) in section 251 –
  - (i) in subsection (1) –
    - (A) in the first column, by deleting the words “qui ne pourra être inférieur à un an mais qui ne pourra excéder 5 ans” and replacing them by the words “qui n’excèdera pas 10 ans”; and
    - (B) in the second column, by deleting the words “of not less than one year nor more than 5 years” and replacing them by the words “not exceeding 10 years”; and
  - (ii) in subsection (2) –
    - (A) in the first column, by deleting the words “qui ne pourra être inférieur à 2 ans mais qui n’excèdera pas 8 ans” and replacing them by the words “qui n’excèdera pas 15 ans”; and
    - (B) in the second column, by deleting the words “of not less than 2 years nor more than 8 years” and replacing them by the words “ for a term not exceeding 15 years ”;
- (h) in section 253(4), by deleting the words “not less than 2 years nor more than 10 years” and “100, 000” and replacing them by the words “not more than 20 years” and “200,000” respectively;

- (i) in section 301A (1), by deleting the words “ which shall not be less than 5 years and not more than 15 years” and replacing them by the words “not exceeding 30 years”;
- (j) in section 323 –
  - (i) in the first column, by deleting the words “qui n’excèdera pas 6 mois, et à une amende qui n’excèdera pas 250 roupies et à 4 roupies par jour de dommages – intérêts envers le maître. L’amende sera appliqué moitié au Consolidated Fund et moitié au dénonciateur” and replacing them by the words “qui n’excèdera pas un an et à une amende qui n’excèdera pas 10,000 roupies”; and
  - (ii) in the second column, by deleting the words “not exceeding 6 months, and to a fine not exceeding 250 rupees and to damages of 4 rupees per day to the master. One half of the fine shall go to the Consolidated Fund and the other half to the informer.” and replacing them by the words “ not exceeding one year and to a fine not exceeding 10,000 rupees”; and
- (k) in section 347, by adding, after the words “for life” the words “or, where the Court is satisfied that compelling reasons exist which justify the imposition of a lesser sentence and has specified the reasons on the record of the proceedings, for a term not exceeding 60 years”.

#### **4. Criminal Code (Supplementary) Act amended**

The Criminal Code (Supplementary) Act is amended, in section 86(2)(a), by deleting the words “of not less than 3 months nor more than 2 years” and “25,000 rupees” and replacing them by the words “not exceeding 4 years” and “100,000 rupees” respectively.

#### **5. Criminal Procedure Act amended**

The Criminal Procedure Act is amended –

- (a) in section 135 –
  - (i) by deleting the words “ although the minimum of the term of imprisonment to which he is liable on conviction is limited,”; and
  - (ii) by inserting, after the words “ in passing sentence,” the words “shall take into account the time spent by the accused in custody and”;

- (b) in section 140(2), by deleting the word “shall” and replacing it by the word “may”;
- (c) in section 151, by deleting the words “2 years” and replacing them by the words “5 years”; and
- (d) in section 152, by deleting the words “with or without hard labour” wherever they appear.

**6. Dangerous Drugs Act amended**

Section 41(2) of the Dangerous Drugs Act is amended by deleting the word “maximum”.

**7. District and Intermediate Courts (Criminal Jurisdiction) Act amended**

The District and Intermediate Courts (Criminal Jurisdiction) Act is amended in section 72 (5), by deleting the words “10,000 rupees” and “2 years” and replacing them by the words “100,000 rupees” and “5 years” respectively.

**8. Various enactments amended**

The enactments specified in the first column of the Schedule are amended in the sections specified in the second column –

- (a) by deleting the fines specified in the third column and replacing them by the corresponding fines specified in the fifth column; and
  - (b) by deleting the terms specified in the fourth column and replacing them by the corresponding terms specified in the sixth column.
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**SCHEDULE**  
(section 8)

Enactment	Section		Fine (Rs)	Term of Penal Servitude/Imprisonment	Fine (Rs)	Term of Penal Servitude/Imprisonment
<b>Criminal Code</b>	58	Causing risk of war		10 years 15 years		20 years 30 years
	66(3)	Plundering public property with armed band		10 years		20 years
	67	Harbouring armed band		10 years		20 years
	74	Penalty for failing to reveal plot other than of high treason	2,000	10 years	25,000	20 years
	76A (3)	Prohibition on the use of Arms of Mauritius	100,000		200,000	
	77	Abuse of authority by public officer	3,000		25,000	
	78(1)	Torture by public official	50,000	5 years	150,000	10 years
	80	Arbitrary detention by public officer	2,000		25,000	
	83	Public officer resigning with intent to paralyse public service	10,000		100,000	
	84	Violation of domicile by public officer	5,000	6 months 6 mois	25,000	one year un an
	88	Public officer ordering use of force to prevent operation of law		10 years		20 years
	95(1)	Knowingly offering counterfeit gold or silver coin		one year un an		5 years cinq ans

	96(1)	Knowingly uttering counterfeit gold or silver coin		3 years		10 years
	98 (a) and (c)	Counterfeiting copper coin		7 years		15 years
	98 (b)	Counterfeiting copper coin		one year		5 years
	103	Counterfeiting mark of Government or trader	10,000	10 years	100,000	20 years
	105	Altering manufacturer's label	10,000	one year un an	100,000	5 years 5 ans
	109	Making use of forged public writing		10 years		20 years
	111	Forgery of private writing		10 years		20 years
	115	Public officer delivering unauthorized passport		one year un an		5 years 5 ans
	117	Forgery of medical certificate		5 years		10 years
	118(1)	Medical officer issuing false certificate		5 years 5 ans		10 years 10 ans
	118(2)	Medical officer issuing false certificate		10 years 10 ans		20 years 20 ans
	121	Fine for forgery	25,000		100,000	
	123(1)	Embezzlement and larceny of deed by public officer		10 years		20 years
	124(1)	Extortion by public officer		10 years		20 years
	124(2)	Extortion by public officer	5,000		25,000	
	137	Public officer exercising functions without lawful authority	10,000		100,000	

	139(1)	Taking part in unlawful assembly	10,000	2 years	100,000	5 years
	140(1)	Having offensive weapon at unlawful assembly	25,000	5 years	100,000	10 years
	142 (2)	Remaining in unlawful assembly after warning	10,000	2 years	100,000	5 years
	143(1)	Taking part in riot	25,000	5 years	100,000	10 years
	146	Rebellion by 3 but not more than 20 armed persons		10 years		20 years
	147	Rebellion by less than 3 armed persons		6 months 6 mois		5 years 5 ans
	152	Inciting rebellion		1 year		10 years
	153	Fine for rebellion	10,000		100,000	
	156(1)	Outrage against depository of public authority	10,000		100,000	
	156(2)	Outrage against depository of public authority	8,000	one year un an	100,000	5 years 5 ans
	156(3)	Outrage against depository of public authority	5,000	6 months 6 mois	25,000	one year un an
	157	Outrage against commander of civil or military authorities		6 months 6 mois		one year un an
	158(1)	Assault against member of the Assembly or judicial officer	10,000	3 years	100,000	6 years
	158(2)	Assault against member of the Assembly or judicial officer	10,000	10 years	100,000	20 years



	159	Assault against agent of civil or military authorities	3,000	one year	25,000	2 years
	162	Witness giving false excuse	10,000	one year un an	100,000	2 years 2 ans
	164	Aiding prisoner charged with misdemeanour		3 months 2 years		one year 4 years
	165	Aiding prisoner charged with crime		6 months 5 years 6 mois 5 ans		one year 10 years un an 10 ans
	166	Aiding prisoner to escape by violence		5 years		10 years
	167	Third party aiding prisoner to escape by violence		10 years		20 years
	168(1)	Aiding prisoner to escape by supply of arms		10 years		20 years
	169	Supplying prisoner with instrument for escape		one year un an		2 years 2 ans
	173	Failing to prevent breaking of Government seal		6 months 6 mois		one year un an
	175	Breaking of seal relating to criminal proceedings		5 years 10 years		10 years 20 years
	176	Breaking of other seal		5 years		10 years
	178	Failing to prevent purloining of document entrusted to depository	10,000	one year un an	100,000	2 years 2 ans
	179(1)	Purloining of document from place of public deposit		10 years		20 years

	180	Breaking of seal, and purloining of document, by violence		10 years		20 years
	181 (1)	Damaging monument	10,000	one year un an	100,000	2 years 2 ans
	181(3)	Damaging monument	10,000	one year un an	100,000	2 years 2 ans
	181(4)	Damaging monument	15,000		100,000	
	181A (1)	Protection of flag	10,000	2 years	100,000	5 years
	182A (4)	Usurping wearing of uniform	10,000	2 years	100,000	4 years
	183	Interference with freedom of conscience	10,000	2 months 2 mois	100,000	2 years 2 ans
	184	Disturbing religious ceremony	10,000	6 months 6 mois	100,000	2 years 2 ans
	185	Outrage on religious worship	10,000	one year un an	100,000	2 years 2 ans
	186	Assaulting and outraging minister of religion	10,000		100,000	
	191	Forming part of, and aiding or harbouring, association of malefactors		10 years		20 years
	196(1)	Begging		one month un mois		6 months 6 mois
	196(2)	Begging		15 days 15 jours		one month un mois
	196(3)	Begging	1,000		2,000	
	202	Publishing matter without description of author	10,000	6 months 6 mois	100,000	one year un an
	204(2)	Publishing matter conducive to crime		3 months 3 mois		one year un an

	206(1)(a)	Outrage against public and religious morality	10,000	one year	100,000	2 years
	209	Penalty for assisting illegal publication		2 months 2 mois		3 years 3 ans
	226	Threatening verbally		one year un an		2 years 2 ans
	227	Demanding by threat of false accusation		10 years		20 years
	228(1)	Assault with aggravating circumstances	10,000		100,000	
	228(2)	Assault with aggravating circumstances	10,000	10 years	100,000	20 years
	228(3)	Assault with aggravating circumstances		10 years 10 ans		20 years 20 ans
	229	Assault with premeditation		10 years		20 years
	230(1)	Assault	5,000	one year un an	50,000	2 years 2 ans
	230(2)	Assault	10,000		100,000	
	233(1)	Dealing in offensive weapon		6 months 6 mois		5 years 5 ans
	233(2)	Dealing in offensive weapon	2,000		25,000	
	233A(2)	Sale or offer for sale of offensive instrument in the open	2,000	one year	25,000	10 years
	233B(3)	Sale or offer for sale of offensive instrument to person under 12	2,000	2 years	25,000	4 years
	236(1)	Administering noxious substance		10 years		20 years

	236(3)	Administering noxious substance		5 years		10 years
	237	Selling adulterated liquor	10,000		100,000	
	239(1)	Involuntary homicide and wounds and blows	50,000		150,000	
	239(2)	Involuntary homicide and wounds and blows	10,000	2 months 2 mois	100,000	one year un an
	244	Penalty in case of excusable offence		6 months 6 mois		one year un an
	248	Indecent act in public	10,000	12 months	100,000	2 years
	249(1)	Rape, attempt upon chastity and illegal sexual intercourse		5 years		10 years
	249(1A) (a) and (b)	Rape, attempt upon chastity and illegal sexual intercourse		20 years		40 years
	249(2)	Rape, attempt upon chastity and illegal sexual intercourse		5 years		10 years
	249(3)	Rape, attempt upon chastity and illegal sexual intercourse		5 years		10 years
	249(4)	Rape, attempt upon chastity and illegal sexual intercourse		10 years		20 years
	249(5)(b)	Rape, attempt upon chastity and illegal sexual intercourse		8 years		16 years

	254(1)	Sexual harassment	100,000	2 years 2 ans	200,000	10 years 10 ans
	254(2)(a)	Sexual harassment	100,000		200,000	
	257(1)	Bigamy		10 years		20 years
	258(1)	Unlawful arrest, detention and sequestration	10,000	10 years	100,000	20 years
	259	Penalty for unlawful arrest in certain cases		10 years		20 years
	260(5)	Family abandonment	10,000	2 years	100,000	5 years
	261(1)	Failure to pay alimony	5,000	one year un an	50,000	2 years 2 ans
	262	Change of domicile	5,000	6 months 6 mois	50,000	one year un an
	272	Burying corpse without lawful authority	10,000		100,000	
	273	Concealing corpse	10,000		100,000	
	274(2)	Declaration in case of sudden or violent death	5,000		50,000	
	275	Violating tomb	5,000	one year un an	50,000	2 years 2 ans
	276(1)	Giving false evidence in case of crime		10 years		20 years
	277	Giving false evidence in case of misdemeanour	10,000	10 years	100,000	20 years
	278	Giving false evidence in civil matter	10,000	10 years	100,000	20 years
	279(1)	Giving false evidence for reward	10,000		100,000	
	281	Giving false evidence on decisory oath	20,000	10 years 10 ans	100,000	20 years 20 ans
	282(1)	Stirring up racial hatred	25,000	10 years	100,000	20 years
	282(2)	Stirring up racial hatred	25,000	2 years	100,000	4 years
	283(1)	Sedition	20,000	one year	100,000	2 years
	284	Inciting to	2,000	one year	25,000	2 years

		disobedience or resistance to law				
	287B	Penalty for seditious publication	10,000	one year	100,000	2 years
	288(3)	Interpretation of "defamation"	5,000	one year	50,000	5 years
	289(2)	Publication of reply by newspaper	10,000		100,000	
	291	Criminal intimidation	10,000	one year	100,000	5 years
	296(a)	Insult	5,000		50,000	
	296(b)	Insult	10,000		100,000	
	296(c)	Insult	10,000	3 months	100,000	2 years
	297	False and malicious denunciation in writing	10,000	one year	100,000	5 years
	298	Effecting public mischief	10,000	one year	100,000	2 years
	299(a)	Publishing false news	10,000	one year un an	100,000	2 years 2 ans
	300	Disclosing professional secret	10,000	6 months	100,000	2 years
	300A (5)	Data protection and security	100,000	10 years	200,000	20 years
	301(1)	Larceny	10,000		100,000	
	302(1)	Larceny of produce of soil	5,000		50,000	
	308(2)	Looting	50,000	10 years	150,000	20 years
	309(1)	Larceny with breaking and larceny by servant		6 years 6 ans		12 years 12 ans
	321(1)	Counterfeiting key	2,000	one year un an	25,000	2 years 2 ans
	321(2)	Counterfeiting key		10 years		20 years
	322(1)	Larceny of obligatory writing and purloining seizure		10 years		20 years
	322(3)	Larceny of obligatory writing and		one year un an		2 years 2 ans

		purloining seizure				
	323A(1)	Falsely obtaining credit	10,000	one year un an	100,000	2 years 2 ans
	330(1)	Swindling	50,000	10 years 10 ans	150,000	20 years 20 ans
	330A (2)	Dealing unlawfully in lottery ticket	10,000		100,000	
	330B (1)	Issuing cheque without provision	10,000		100,000	
	331	Breach of trust of minor	10,000		100,000	
	332	Fraudulently using unsigned document	10,000	5 years 5 ans	100,000	10 years 10 ans
	333(1)	Embezzlement	10,000		100,000	
	333(2)	Embezzlement		10 years		20 years
	333A	Embezzlement of security or charge	10,000	2 years	100,000	4 years
	334	Removing document produced in Court	10,000		100,000	
	336	Pawnbroking and money lending without lawful authority	5,000	3 months 3 mois	50,000	one year un an
	337(1)	Hindering judicial sale	10,000	3 months 3 mois	100,000	one year un an
	338	Speculating fraudulently	10,000		100,000	
	343(1)	Deceiving purchaser	10,000	one year un an	100,000	2 years 2 ans
	344	Failing to honour public contract	10,000	10 years	100,000	20 years
	345	Public officer assisting defaulting contractor		10 years 10 ans		20 years 20 ans
	346	Arson		10 years		20 years
	349(1)	Damaging public property, private enterprise or vehicle	3,000	10 years	25,000	20 years

	349(2)	Damaging public property, private enterprise or vehicle	25,000	10 years	100,000	20 years
	350(1)	Hindering public works by force	10,000		100,000	
	351	Destroying document	10,000	10 years	100,000	20 years
	352(1)	Damaging property by band	25,000	10 years 10 ans	100,000	20 years 20 ans
	352(2)	Damaging property by band	50,000	10 years	150,000	20 years
	353	Damaging goods used for manufacture	10,000		100,000	
	354	Damaging crop	10,000		100,000	
	355(1)	Damaging tree	10,000	one year un an	100,000	5 years 5 ans
	356	Damaging agricultural product	10,000	6 months 6 mois	100,000	2 years 2 ans
	357	Damaging agricultural instrument	10,000	one year un an	100,000	2 years 2 ans
	358	Poisoning animal	10,000	10 years 10 ans	100,000	20 years 20 ans
	359(1)(a)	Killing animal	10,000		100,000	
	359(1)(b)	Killing animal		one year un an		2 years 2 ans
	360(1)	Injuring animal	10,000	6 months 6 mois	100,000	one year un an
	360(2)	Injuring animal		3 months 3 mois		one year un an
	361	Penalty for offence by keeper of animal		10 years		20 years
	362	Damaging enclosure	10,000	one year un an	100,000	2 years 2 ans
	363	Damaging building	10,000	one year un an	100,000	2 years 2 ans
	364	Flooding road or property	10,000		100,000	
	365	Damaging property by fire	10,000		100,000	



	366	Failing to notify of infected animal	10,000		100,000	
	367	Allowing infected animal to communicate with others	5,000	2 months 2 mois	50,000	one year un an
	368	Permitting contagion of disease	5,000	one year un an	50,000	2 years 2 ans
	369	Damaging goods and chattels	10,000	12 months 12 mois	100,000	2 years 2 ans
<b>Criminal Code (Supplementary) Act</b>	4(2)(a)	Defacing road or building	10,000	12 months	100,000	2 years
	5(3)	Absent minor	10,000	2 years	100,000	4 years
	11(3)	Recruiting for service outside Mauritius	5,000	7 years	50,000	14 years
	16(1)	Impairing coin		14 years		28 years
	16(2)	Impairing coin		one year		2 years
	16(3)	Impairing coin	10,000		100,000	
	26(3)	Idle and disorderly person	5,000	one month 3 months	50,000	one year one year
	28(2)	Rogue and Vagabond	5,000	one year	50,000	2 years
	29(1)	Offensive weapon	10,000	one year	100,000	2 years
	31(1)	Damaging electric line	5,000		50,000	
	36(1) and (4)	Protection of defence works	10,000		100,000	
	36(2)	Protection of defence works		2 years		4 years
	36(3) and (5)	Protection of defence works	10,000	6 months	100,000	one year
	64	Damaging uninhabited ship or building		10 years		20 years
	86(1)	Dealing in obscene matter	10,000	3 months	100,000	one year
	88(3)	Exhibiting slide and video tape in public	10,000	2 years	100,000	4 years
	90(1)	Brothel keeping	100,000	5 years	200,000	10 years

	91A	Importuning	5,000	12 months	50,000	2 years
	97	Fencing well	5,000		50,000	
	101(1)	Raising false alarm of fire	10,000		100,000	
	102(3)	Bomb hoaxes	10,000	5 years	100,000	10 years
	103	Impersonating living or dead individual		5 years		10 years
	104	Making false acknowledgment		5 years		10 years
	105	Impersonating individual named in certificate		5 years		10 years
	106	Impersonating individual named in testimonial		one year		5 years
	106A (1)	Impersonating individual in examination	5,000	one year	50,000	5 years
	106B (1)	Impersonating individual at interview	5,000	one year	50,000	5 years
	107 (1) & (2)	Impersonating prisoner		5 years		10 years
	109	Conspiracy	10,000	5 years	100,000	10 years
	110	Obstructing passage of pedestrian on seashore	10,000		100,000	
	111	Disclosure of examination papers	10,000	2 years	100,000	4 years
	112	Prohibition of water skiing etc	5,000	6 months	50,000	one year

<b>Child Protection Act</b>	13A(1), (2), (3), (4)(a), 4(b)	Child trafficking		15 years		30 years
	13A(5)(b)	Child trafficking	100,000	one year	200,000	2 years
	13B(1)	Abandonment of child		8 years		20 years
	13B(2)	Abandonment of child	500,000	15 years	700,000	30 years
	13B(3)	Abandonment of child	250,000	5 years	500,000	10 years
	13B(5)	Abandonment of child	100,000	2 years	200,000	5 years
	13C(1)	Abducting child		12 years		25 years
	13C(2)	Abducting child	100,000	2 years	200,000	5 years
	13C(3)	Abducting child		8 years		20 years
	18(4)	Offences and penalties	10,000	2 years	25,000	5 years
	18(5)(a)	Offences and penalties		15 years		30 years
	18(5)(b)	Offences and penalties	50,000	10 years	100,000	20 years
	18(6)	Offences and penalties	5,000	one year	25,000	2 years
<b>Public Gathering Act</b>	9	Possession of offensive weapon	10,000	5 years	100,000	10 years
	18	Penalty	2,000	2 years	25,000	4 years