

THE PRELIMINARY INQUIRY (MISCELLANEOUS PROVISIONS) BILL
(No. XII of 2011)

Explanatory Memorandum

The object of this Bill is to amend the relevant provisions of the Courts Act, the Criminal Procedure Act and the District and Intermediate Courts (Criminal Jurisdiction) Act to provide that the Director of Public Prosecutions may, at his sole discretion, decide whether or not a preliminary inquiry shall be held before a person is made to stand trial before a Judge and a jury.

Y.N. VARMA
Attorney-General

20 May 2011

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Courts Act amended
3. Criminal Procedure Act amended
4. District and Intermediate Courts (Criminal Jurisdiction) Act amended
5. Transitional provisions

A BILL

To amend relevant enactments to provide that the Director of Public Prosecutions may, at his sole discretion, decide whether or not to require the holding of a preliminary inquiry before a trial before a Judge and a jury

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Preliminary Inquiry (Miscellaneous Provisions) Act 2011.

2. Courts Act amended

The Courts Act is amended –

- (a) in section 115, by deleting the words “, with the consent of the Director of Public Prosecutions, proceed to hold a preliminary inquiry in accordance with the District and Intermediate Courts (Criminal Jurisdiction) Act” and replacing them by the words “refer the matter to the Director of Public Prosecutions who, in accordance with section 3(1A) of the Criminal Procedure Act, may, at his sole discretion, decide whether or not a preliminary inquiry shall be held before the person is made to stand trial before the appropriate Court”;
- (b) in section 134(3), by deleting the words “shall, in accordance with Part II of the District and Intermediate Courts (Criminal Jurisdiction) Act, hold a preliminary inquiry, and, if the evidence so warrants, commit him to stand trial” and replacing them by the words “shall refer the matter to the Director of Public Prosecutions who may, at his sole discretion, decide whether or not a preliminary inquiry shall be held before the person is made to stand trial before the said District Court”.

3. Criminal Procedure Act amended

The Criminal Procedure Act is amended –

- (a) in section 3, by inserting, after subsection (1), the following new subsection –

(1A) Where a person is charged with an offence referred to in section 116 of the Courts Act, the Director of Public Prosecutions may, at his sole discretion but subject to any other enactment, decide whether or not a preliminary inquiry shall be held before the person is made to stand trial and prosecute the case –

- (a) before a Judge and a jury, without holding a preliminary inquiry;
- (b) before a Judge without a jury;
- (c) before the Intermediate Court; or
- (d) before the appropriate District Court for the Magistrate to inquire into the charge and commit the person for trial.

- (b) in section 9, by deleting the word “The” and replacing it by the words “Where a preliminary inquiry has been held pursuant to Part II of the District and Intermediate Courts (Criminal Jurisdiction) Act, the”;
- (c) in section 64(1), by deleting the word “Any” and replacing it by the words “Where a preliminary inquiry has been held pursuant to Part II of the District and Intermediate Courts (Criminal Jurisdiction) Act, any” ;
- (d) by repealing section 65 and replacing it by the following section –

65. Prosecution evidence available

- (1) Every person charged with an offence –
 - (a) before a Judge and a jury where the trial has not been preceded by a preliminary inquiry;
 - (b) before a Judge without a jury; or
 - (c) before the Intermediate Court,

shall be entitled to have, on demand, copies of the statements recorded from the witnesses for the prosecution and of any documentary evidence to be produced at the trial.

(2) Where the trial has been preceded by a preliminary inquiry, the person charged shall, in addition to the statements and documentary evidence referred to in subsection (1), be entitled to copies of the depositions taken against him by the committing Magistrate.

4. District and Intermediate Courts (Criminal Jurisdiction) Act amended

The District and Intermediate Courts (Criminal Jurisdiction) Act is amended, in section 44 –

- (a) by inserting, after the word “Where”, the words “, in accordance with section 3(1A)(d) of the Criminal Procedure Act,”;
- (b) by deleting the words “Magistrate may” and replacing them by the words “Magistrate shall”.

5. Transitional provisions

(1) This Act shall apply in respect of an offence committed before the commencement of this Act.

(2) Where a Magistrate has, before the commencement of this Act, started to hear the depositions of any witnesses in a preliminary inquiry, the Director of Public Prosecutions may require him not to proceed further with the inquiry.
