

**REPUBLIC OF NAURU**  
**BAIL (AMENDMENT) BILL 2020**  
**SECOND READING SPEECH**  
**Honourable Maverick Eoe MP**  
**22 October 2020**

Mr Speaker Sir,

I have the responsibility of introducing to the House today the Bail (Amendment) Bill 2020.

Mr Speaker, the principle of innocence before proven guilty is a cardinal rule of any criminal justice system. Where a person is charged for an offence, his or her trial cannot be dealt with immediately. Ordinarily, it takes a few months and sometimes, years to be dealt with. The question is, what should be done to the accused person during this period?

It is for that purpose, the law of bail pending trial developed. The law on bail can be traced back to Roman law. This dates back to 1,000 years. On its inception, the granting or otherwise of bail was premised on two factors. The first was the preliminary view of the Judge of the probable outcome of the case. The second was ensuring the attendance of the accused person in court for trial. The first is no longer the primary factor because of the presumption of innocence. The second criterion is currently the predominant law.

The Republic until 2018, relied on the *Criminal Procedure Act 1972*. In 2018, as part of legislative reform, a new *Bail Act* was passed by the last Parliament. The Bail Act provides for bail to be granted to a person charged with an offence as of right, except for certain offences. However, the presumption of bail is capable of being rebutted by the prosecution. Therefore, currently the Act makes provision for bail in all cases except those, where bail is not available. The principles on which the court continues to consider the bail applications are whether the accused person will attend the trial or not.

Mr Speaker, there has been a growing trend largely in sexual offence cases and assaults on police officers. Also, in sexual offence cases where normally

children are involved or in cases of a relationship of trust, it becomes difficult when the perpetrators of such crime interfere or use influence on the victims or those who control the victims. The proposed amendment to the Act by this Bill addresses this as a measure to control such conduct and to secure a fair trial without any interference or influence by any person. These prevalent problems need to be addressed. In the proposed Bill, a third category is included which allows for an accused person to be remanded in custody, unless the person charged is able to demonstrate exceptional circumstances as to why he or she should be granted bail. Appropriate amendments will also be made to the *Criminal Procedure Act* for this list of cases to be heard expeditiously. A period of 3 months is allocated for this. After a lapse of 3 months, an accused person who is remanded and whose trial has not begun, may apply for bail which in many cases, the court may grant on the grounds of delay in trial. For the purposes of demonstrating exceptional circumstance, the legislation makes it clear that hardship is not one of them.

The proposed amendment is carefully drafted to ensure there is a balance between the protection of the victim as well as the community and that of the right of the accused person to be treated as innocent until proven guilty. This balancing act is to avoid the deprivation of a person's right to liberty unnecessarily.

Mr Speaker, this Government is concerned with the impact that such crimes are having in our community, in particular, the vulnerable and the children.

Let me refer to the amendments. There is a presumption in favour of bail for a person charged with an offence. This universal principle is retained. Clause 4A retains the non-bailable offences. Clause 4B allows for bail to be granted in exceptional circumstances. Under Clause 4B, the onus is on the accused person to satisfy the court as to why he or she should be granted bail. It is the discretion of the court which will determine the matter.

The addition of offences in the new Clause 4B has now become a means of a last resort in criminal proceedings for such offences. They are designed to ensure there is protection of the society and the victims. Such detention is also acceptable under Clause 6 of the Tokyo Rules, which international rules deal with detention of people pending trial.

The amendment to Clause 13 is to address a decision which was delivered by the court in which the granting of bail was treated as an administrative act: *Republic v Elko-Joe Agir, Cr No: 23/2019*.

Mr Speaker, the granting of bail is a judicial exercise once a person appears in court. It is important that this is ordinarily dealt with by the Resident Magistrate, Judge of the Supreme Court or Justice of Appeal, who has the jurisdiction to hear and determine criminal trials. The Registrar does not have that jurisdiction. Applications for bail must be dealt with. This Clause allows the Registrar to deal with bail only where none of the Judicial Officers are available to deal with an application.

A consequential amendment is also included for the *Administration of Justice Act* for the purposes of contempt of court. The *Bail Act* and *Administration of Justice Act* are now consistent with each other in respect of the provisions for contempt of court.

Mr Speaker, the explanatory memorandum details the provisions of the Bill. Sir, I request that the explanatory memorandum be read and recorded in the Hansard Reports.

I commend the Bill to the House.