

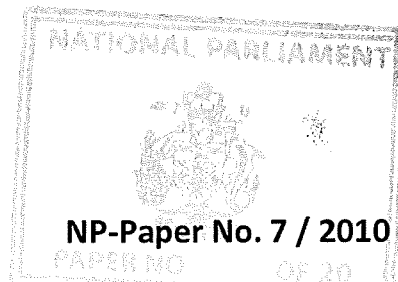


**NATIONAL PARLIAMENT OF SOLOMON ISLANDS  
BILLS AND LEGISLATION COMMITTEE**

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## **Report on the Extradition Bill 2010**

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Presented on Monday 22 March 2010

National Parliament Office

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# 1 INTRODUCTION

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The Bills and Legislation Committee completed its review of the Extradition Bill 2010 (“**Bill**”) introduced in the House during the current (11<sup>th</sup>) meeting of Parliament by the Honourable Minister of Justice and Legal Affairs. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*<sup>1</sup>. The Speaker examined the Bill<sup>2</sup> and authorised it to be introduced into the current Parliament meeting.

On Thursday 11 March 2010, the Minister of Justice and Legal Affairs gave Notice of the Extradition Bill 2010. On Monday 17 March 2010, the Bill was read for the first time in Parliament, according to the Government’s Order of Business, and was left for Bills and Legislation Committee considerations. On Wednesday 17 March 2010, the Committee convened a public hearing and heard evidence from a number of stakeholders. The Committee met again on Monday 22 March 2010 before the House sat and following its deliberations the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament’s consideration.

## Terms of Reference

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

## Functions of the Committee

The Bills and Legislation Committee (“**Committee**”) is established under *Standing Order 71*, an Order made pursuant to the *Constitution*<sup>3</sup>, and under that Order has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;

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<sup>1</sup> *Standing Order 44 (1)*.

<sup>2</sup> As required by *Standing Order 45 (1)*.

<sup>3</sup> Section 62, *Constitution of Solomon Islands 1978*.

- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

## **Membership**

The current members of the Bills and Legislation Committee (8<sup>th</sup> Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

Hon. Patteson Oti, MP

## 2 POLICY BACKGROUND

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### **Purpose of the Bill**

1. The purpose of the Bill is to modernise and improve the efficiency and effectiveness of the extradition system. The Bill repeals the current Extradition Act and replaces it with a system which allows for greater co-operation between Pacific Islands Forum members on evidentiary and procedural aspects of extradition. The Bill provides a simplified and effective procedure for extradition with different processes which reflect our level of faith in the criminal justice systems of the participating nations.
2. The Bill is based largely on the model regional legislation that has been carefully developed and successfully implemented by many of our neighbouring countries. Adaptations have been made to suit local conditions and to reflect the structure and roles of the various agencies within our existing justice system.
3. The Bill contains a core framework for extradition which is then modified to suit four different categories of extradition partners. The simplest extradition system applies to Pacific Islands Forum countries with whom Solomon Islands shares so many similarities and such close physical proximity. The second system applies to Commonwealth countries with which Solomon Islands legal and political system share many commonalities. The third system applies to treaty countries with which we have entered a formal treaty relationship. The fourth, and most rigorous system, applies to countries with which we have not entered a formal relationship but who wish to make an extradition request.
4. The increasing rigours of the systems reflect the degree of confidence and trust in the legal system of the requesting country. These are safeguards designed to ensure that adequate protection is provided to an individual being forcibly returned to another country to stand trial.
5. The Bill also contains provisions relating to the extradition of persons to the Solomon Islands. It sets out the procedures for making the request and contains machinery provisions for holding and transport the person.

## Background

The extradition process is an integral and vital part of our justice system. The extradition process is used to extradite persons accused of committing a crime in one country or of extraditing someone to Solomon Islands to face the justice system. The extradition process in Solomon Islands is currently governed under the Extradition Act, Chapter 59 of the laws of Solomon Islands. It has served us well in the past, and provides for the extradition of persons from designated Commonwealth country or a treaty state to and from Solomon Islands.<sup>4</sup>

As the world advances, it is also now realized that the world of international crime has become much more organized, much more dangerous and much more sophisticated than when our current Extradition Act was legislated more than two decades ago.<sup>5</sup>

In 2008 the Minister for Justice promulgated the 2008 Extradition Regulation and it was recognized by the Ministry that the extradition process should be reviewed to create a modernized and streamlined system that is consistent with the newer legislation that has been commenced by other nations in our region. It is also important that Solomon Islands enact legislation to put in place strong mechanisms to combat, prevent, suppress, detect and punish criminal activities and criminals who cross borders to escape prosecution. Also, it is important that the extradition process provide a simplified and effective procedure for extradition with different processes which reflect our level of faith in the criminal justice system of the participating countries.<sup>6</sup>

In the 1992 Honiara Declaration on Law Enforcement Cooperation, the Pacific Islands Forum agreed to member states of the Pacific Forum to pursue uniformed extradition processes. Thereafter the Pacific Islands Forum has been proactive in developing and supporting model extradition legislation that is suitable for member countries in the region. Some forum countries like Tuvalu, Kiribati, Vanuatu, Cook Islands, Fiji and Papua New Guinea have commenced the model legislation with some variations to suit their local environment and circumstances. In 2008, the Pacific Islands Law Officers Network (PILON) are set up under the auspices of the Pacific Islands Forum, agree to encourage their governments to streamline extradition processes with the view to further harmonizing evidential requirements to extradite a person, noting that most PILON members prefer a move to a backing of warrants procedure or the no evidence standard. They also agree to work

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<sup>4</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p. 1

<sup>5</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p. 2

<sup>6</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p. 2

towards harmonizing grounds of objections to extradition applications and exploring options to reduce or share the burden of extradition costs.<sup>7</sup>

This Bill is based largely on the forum model legislation, which has been carefully developed and successfully implemented by many of our regional neighbours. The Bill has been adapted to suit local conditions and to reflect the structure and roles of the various agencies within our existing justice system.<sup>8</sup>

This Bill is also an important part of the package of legislative reform required to combat money laundering, counter terrorism and international organized crime. Solomon Islands, as a member of the Asia Pacific Group on money laundering has undergone a mutual evaluation by a team of international legal law enforcement and financial experts of its implementation of the financial action taskforce's 40 recommendations on money laundering and nine recommendations on terrorist financing. Non-compliance to those recommendations could have severe consequences for our country's financial sector and economy, particularly a small country like us. The Government has already put in place other legislation in the package like the Counter Terrorism Act 2009 and has agreed to ratify the UN Counter terrorism instruments. The two final bills required to complete the legislative compliance are this Extradition Bill and Anti-Money Laundering and Proceeds of Crime Amendment Bill.<sup>9</sup>

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<sup>7</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p.2-3.

<sup>8</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p. 3.

<sup>9</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p. 3.

### 3 REVIEW OF THE BILL

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In its review of the Bill, the Committee considered secondary materials and also heard from certain key witnesses.

#### **Secondary Material**

In order to review the Bill in its proper context, the Committee received briefings from the Committee Secretariat on the Extradition Bill 2010. The Committee also received a written submission from the Permanent Secretary of the Ministry of Justice and Legal Affairs.

#### **Public Hearing**

The Committee held a public hearing on Wednesday 17 March 2010, with the view to hear from relevant officials of the Ministry and key stakeholders. The following witnesses appeared before the Committee at the hearing:

- Permanent Secretary, Ministry of justice and Legal Affairs;
- Legal Draftsman, Attorney General's Chamber;
- Chief Magistrate, Central Magistrates Court;
- Director of Public Prosecutions
- Deputy Commissioner of Police;

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

## 4 ISSUES ARISING

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The Committee identified a number of issues arising from its review of the Extradition Bill 2010. These are considered in this section, together with responses from witnesses and, where necessary, recommendations of the Committee on a specific issue.

### **Powers vested on the Minister**

The Bill accorded powers to the Minister, to provide an authority to proceed to magistrate for an extradition proceeding, or reject the extradition request. The Committee is concerned that having such powers vested on an individual, creates room and potential for abuse of process and powers when not properly understood.

Similar concern was raised by the Chief Magistrate in his evidence before the Committee. He argued that conflict can arise between the magistrate and the Minister with regards to powers to handle extradition.

In his evidence before the committee, the Director of Public Prosecutions pointed out that extradition is a process that will always involve the executive government's discretion. This is because the executive authority of another country is usually the authority that requests extradition of the fugitive from another country. And the Minister responsible for extradition is usually the person given the authority to decide and respond or not to respond to the any extradition request.

Moreover, with regards to the power vested in the Minister, having the final authority to decide on an extradition case, the Committee raised a concerned as to whether an individual who is implicated to be extradited is allowed under the Bill to lodge an application to the Minister on his or her case.

In response to that concern, the Legal Draftsman in giving evidence to the Committee states that such case would be difficult to deal with, unless there is a request from the country that want to extradite such person. He stressed that the process to follow in such case involves the person implicated for extradition could make representations to the Minister upon knowing that there is an extradition request. Such objections could be made pursuant to clause 5 of the Bill. Upon making representations to the Minister, the Minister will then determine, after thorough considerations, would issue an authority whether to proceed or

not with the extradition. As such, the power whether or not to proceed with a case vested entirely in the Minister as mentioned earlier.

### **Categorising extradition partner countries**

During its deliberations the committee noted in the bill the segregation of countries into four categories-- Forum, Commonwealth, Treaty and Comity countries. The committee's concern is that having categories of countries of extradition means that there would be discrimination in the extraditing process based on the requesting country's category. The bill sets out the requirement for request from a comity country more rigorous than that of Forum countries. For instance, a person requested for extradition by a Forum country can be easily extradited compared to a person requested for extradition by a comity country due to the increasing rigour level in the system

In his submission to the committee, Mr James Remobatu, Permanent Secretary of the Ministry of Justice and Legal Affairs stated that extradition involves the international arena. Each country has its own political, legal and government systems. It is therefore not possible to have one extradition system that suits all circumstances. Mr Remobatu further explained that the increasing rigour of the systems reflect the degree of confidence we have in the legal system of the requesting country will deliver justice to the person whose extradition is sought. These are designed to ensure adequate protection is provided to an individual being forcibly returned to another country to stand trial and to protect the basic human rights of the alleged fugitive.

Permanent Secretary of the Ministry of Justice and Legal Affairs simplified the categorisation of extradition partner countries as follows;

The Bill contains the core framework for extradition which is then modify to suite four different categories of extradition partners. The simplest system applies to Pacific Island Forum Countries with which we share many similarities and close physical proximity. The second system applies to commonwealth countries with which we also share many commonalities. The third system applies to treaty countries in which we have enter into formal treaty relationship. The fourth system applies with which we not entered a formal relationship but who wish to make an extradition request.<sup>10</sup>

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<sup>10</sup>Mr. James Remobatu, Evidence, 17 March 2010,

## **Shortfalls of the current Extradition Act**

While acknowledging that the Current Extradition Act (Cap 59) had served Solomon Islands well in the past, Permanent Secretary of the Ministry of Justice and Legal Affairs submits however, that it does not provide for or does not adequately address some important areas of extradition. He reiterates that the current Extradition Act;

Does not provide in its schedule counterterrorism offences; does not provide for or specifically cover money laundering offences as extraditable offences; does not allow the flexibility to cover other new offences created by newer legislation. This means if newer legislations are enacted which contain offences which should be extraditable offences, the legislation will have to be amended every time to amend the schedule; does not specifically deal with how a person is to be dealt with if he voluntarily consents to be extradited; does not deal with or include the backing of warrants system; and does not take account of our commitments to the Pacific Forum agreements on law enforcements.<sup>11</sup>

As such, this Bill is designed to cater for shortfalls unaccounted for in the current Extradition Act. This will ensure that laws relating to extradition are consistent and modernised, thus improve the efficiency and effectiveness of our extradition system.

## **Police Powers**

The Committee also seeks the Deputy Police Commissioner's view in relation to powers given to police under the Bill. In that regard, the Committee raised issues as to whether police are granted enough power under the Bill with regards to arrest and seizure in the process of extradition.

In evidence to the Committee, Walter Kola, Deputy Police Commissioner concur that the powers given to police under the Bill is consistent to police powers given under the Constitution as well as other relevant legislations in Solomon Islands. Such police powers under the Bill include power to arrest, search and seizure. He further stressed and welcome clause 45 (8) of the Bill, which in his view given wider power to police. In all, he emphasised that such provisions continue to strengthened police powers.

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<sup>11</sup> Submission, Permanent Secretary, Ministry of Justice and Legal Affairs, p. 1-2.

## **Witness Expenses**

The Committee is concerned that payment of witnesses pursuant to clause 33 (3) (e) might be subjected to abuse, thus result in bribing witnesses in proceedings.

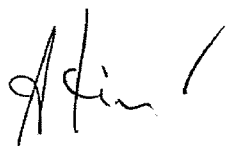
In giving evidence before the Committee, Director of Public Prosecution explained that when conducting extradition proceedings, the rule and procedures that applied in such extradition proceedings is similar to any criminal proceedings that goes before the courts. In terms of witness expenses, the rationale behind such expenses in any criminal proceeding is to cover movement of a witness from one place to another whereby proceedings will be conducted as maybe required by the courts. On such movement to attend a criminal proceeding, a witness is not expected to pay for his or her own expense. This is always the case even if he or she has the money. The bottom line is that a witness is not obligated to pay for his or her own expense to attend a criminal proceeding; rather it is a government obligation. Like any criminal proceeding, such procedures are similar in extradition cases as far as witnesses are concerned.

## 5 RECOMMENDATION

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The Committee has reviewed the Bill and recommends that the government monitor matters raised in the report, in terms of assessing its implementation and effectiveness in achieving its important objectives and report to Parliament 12 months after the commencement of the Act and in particular recommends:

1. That the powers given to the Minister and the Court under the Bill be finely defined to avoid conflict in exercising those powers.



**Hon. Severino Nuaiasi**

Chairman

Bills and Legislation Committee

Tuesday, 22 March 2010

# APPENDIX 1: MINUTES



## BILLS AND LEGISLATION COMMITTEE

### NATIONAL PARLIAMENT OF SOLOMON ISLANDS

#### Minutes of Proceedings

#### Deliberative meeting on the Extradition Bill 2010

**Date:** 11/03/2010

**Time:** 10:50am

**Venue:** Parliament Conference room

#### Members present

Hon Severino Nuaiasi	MP (Chair)
Hon Nelson Ne'e	MP
Hon Isaac Inoke Tosika	MP
Hon Augustine Taneko	MP
Hon Siriako Usa	MP
Hon Japhet Waipora	MP
Hon Patteson Oti	MP

#### Secretariat

Mr David Kusilifu  
Mr Stanley Hanu  
Mr Ian Rakafia

Chair welcomed and thanked committee members for their attendance, and acknowledged the secretariat

Hon Taneko offered a word of prayer

Secretariat briefed the Committee on the extradition Bill 2010

Committee deliberates on stakeholders to be invited to the hearing

The committee agreed to hold a public hearing on Monday 15 March 2010

Meeting ends at 11:00am with a word of prayer by David



## BILLS AND LEGISLATION COMMITTEE

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### NATIONAL PARLIAMENT OF SOLOMON ISLANDS

#### Minutes of Proceedings

#### Minute of the Public Hearing on the Extradition Bill 2010

**Date:** Wednesday 17 March 2010  
**Venue:** Parliament Conference Room II  
**Time:** 2:00pm

#### Members Present

Hon Japhet Waipora	MP (Chair)
Hon Nelson Ne'e	MP
Hon Isaac I. Tosika	MP

#### Secretariat

Mr Ian Rakafia

#### Witnesses

Mr James Remobatu—Permanent Secretary Min. of Justice and legal affairs  
Ms Pamela Wilde—legal advisor to the Min. of Justice and Legal Affairs  
Mr Rupeni Nawaqakuta—Legal Draftsman  
Mr Leonard Maina—Chief Magistrate, Central Magistrate Courts  
Mr Ronald B. Talasasa—Director of Public Prosecution  
Mr Walter Kola—Deputy Commissioner of Police  
Mr Howard Allen—Legal Advisor RAMSI PPF

Witnesses made their presentations before the Committee. This was followed by questioning time. The Committee ask questions regarding the Extradition Bill 2010, and the witnesses respond

#### Closing

Meeting ended at 4:00pm



## BILLS AND LEGISLATION COMMITTEE

### NATIONAL PARLIAMENT OF SOLOMON ISLANDS

#### Minutes of Proceedings

#### Minutes of the deliberative meeting to adopt the report on the Extradition Bill 2010

**Date:** Monday 22 March 2010  
**Venue:** Parliament Conference Room II  
**Time:** 9:25am

#### Members Present

Hon Japhet Waipora	MP (Chair)
Hon Nelson Ne'e	MP
Hon Isaac I. Tosika	MP
Hon Patteson Oti	MP

#### Secretariat

Mr Ian Rakafia  
Mr Stanley Hanu  
Mr David Kusilifu

#### Election of an Acting Chair

According to Standing Order 72 (4), the Secretariat advised Members that the Chair was unable to attend the meeting, and therefore the Committee was requested to elect an acting chair. The Secretariat called for nominations and Hon. Waipora was nominated and there being no other nominations, Hon. Waipora was duly elected as chair for the adoption of the report.

#### Opening Remarks

The Acting Chair welcome Members of the Committee and Secretariat.

### **Briefing on the Committees Report**

Secretariat briefed the Committee on the report on the Extradition Bill 2010.

### **Deliberations**

Deliberations ensued by the Committee.

Committee agrees to adopt the report as it is.

Hon. Inoke moved that the report on the Extradition Bill 2010 be adopted by the Committee.

Hon. Patteson Oti seconded the motion.

### **Close**

Chair thanked the Committee Members and Secretariat.

Meeting close at 09:33am

The following witnesses appeared before the Bills and Legislation Committee in a public hearing on Wednesday 17 March 2010.

Mr James Remobatu—Permanent Secretary Ministry of Justice and legal affairs

Ms Pamela Wilde—Legal Advisor to the Ministry of Justice and Legal Affairs

Mr Rupeni Nawaqakuta—Legal Draftsman, Attorney General's Chambers

Mr Leonard Maina—Chief Magistrate, Central Magistrate Courts

Mr Ronald B Talasasa—Director of Public Prosecutions

Mr Walter Kola—Deputy Commissioner of Police

Mr Howard Allen—Legal Advisor RAMSI PPF