THURSDAY 2ND JULY 2009

The Speaker, Rt. Hon Sir Peter Kenilorea took the Chair at 10.06 am.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of the Ministers for Planning & Aid Coordination; Justice & Legal Affairs; Culture & Tourism; Foreign Affairs & External Trade; Commerce, Industries & Employment; National Unity, Reconciliation & Peace; Environment, Conservation & Meteorology; Communication & Civil Aviation; Lands, Housing and Survey; Mines, Energy & Rural Electrification and the Members for East Are Are, North West Choiseul, Temotu Pele, South Vella La Vella, Temotu Nende, East Makira, North Guadalcanal, Shortlands, North West Guadalcanal, Malaita Outer Island, South New Georgia/Rendova.

QUESTIONS AND ANSWERS

Caucus Upgrade

2. **Hon. SOGAVARE** to the Prime Minister: What specific aspects of Caucus were upgraded under the $600,000 budgetary allocations in the 2009 Development Budget?

Hon. SIKUA: Mr Speaker, I would like to thank my good friend and colleague, the honorable Leader of Opposition and Member for East Choiseul for his question.

Mr Speaker, the $600,000 budgetary allocation in 2009 Development Budget is for upgrade of the offices of Caucus. Due to the current financial crisis, the project of upgrading the Caucus Office has been deferred until such a time the financial situation improves. We are yet to utilize the $600,000 budgetary allocation in the 2009 Development Budget for upgrade of the Caucus office.

The upgrade is going to include building of a meeting or conference room, reception and offices as well as the installation of bathroom and toilet facilities, which the current Caucus office does not have and therefore the Government Caucus office is not work-friendly and conducive for our officers to do their work effectively.

I am sure the honorable Leader of Opposition would remember this project where under the GCCG the design of this office was already done and also at that time the upgrade of this office a contractor was also already identified because at that time the cost to build this facility is just up to $500,000. But because of the increasing prices of building materials the cost went up to $600,000. When work is ready to proceed and when money is available we would have to go out to tender and then the CTB will make the award to the contractor that is going to build this office. That is my response to the question and thank you.

Hon. Sogavare: Mr Speaker, I think the question is straightforward and the Prime Minister has answered it and so I thank him for the answer.

Administrative procedures on ROC assistance

6. **Mr SOGAVARE** to the Minister for Finance and Treasury: Can the Minister inform Parliament what administrative and control procedures have been put in place to ensure that the ROC assistance for specific national projects are properly utilized?

Hon. RINI: Mr Speaker, I would like to thank the honorable Leader of the Opposition and MP for East Choiseul for this question.

Mr Speaker, ROC funding assistance like all other public moneys are held in the Consolidated Fund at an account established with the Central Bank of Solomon Islands. As the other ROC funds are appropriated in the annual appropriation act and held in consolidated fund, the expenditure of funds are subjected to and compliant with the Public Finance and Audit Act and also Financial Instructions.

Mr Speaker, the administrative and control procedures that are put in place is that prior to incurring of expenditure for ROC funded development programs and projects, the executing ministry must submit the necessary project work program to the Ministry of Development Planning and Aid Coordination for scrutiny and approval consistency with project objectives.

Mr Speaker, upon approval the executing ministry then requests payment through the normal SIG procedures upon which programs and projects are funded and disbursed.

Hon. Sogavare: Mr Speaker, what the Minister has outlined to us is exactly the existing processes. Implied in that question is not really clear. Are there any new measures we have put in place to ensure that funds given by our friends go

straight to what they are intended for and therefore we request financial assistance from them. Whether there are any new control measures put in place?

Hon. Rini: Sir, these are the only control measures that are in place. There is no new control measures put in place from the funding of the Republic China. These are the only control measures we have put in place and they are working very well. Thank you.

Hon. Sogavare: Mr Speaker, the question really is trying to address the criticisms that continued to be leveled at the SIG on how we are using assistance of the Republic of China (ROC) to us. The fact that there are no strings attached to it is the kind of picture that is placed.

I just want to get the view of the Minister, like other donors whether it is necessary to continue to involve the Republic of China (ROC) down through the process of implementing projects that they fund so that there is continual involvement of ROC down through the completion of the project. I want to know whether that is necessary.

Hon. Fono: Mr Speaker, the question is too general in terms of national projects. But if I can relay the Republic of China funding through rural constituency development funding like the RCDF, MICRO and Millennium, the new control measure is that it is a requirement that all Members of Parliament and their constituency committees retire funds allocated to them the previous year before new allocations or new funds are disbursed the following year. For example, it is now a requirement that all 2008 funds be retired before we are eligible to receive 2009 funds. That is a requirement also agreed to by the Republic of China Government.

In terms of other national projects, I believe the Minister of National Planning should in a better position to advise us on that but as the Finance Minister has said work plans for those programs must be submitted to the National Planning for approval before any disbursement or implementation of these national projects are done by the line ministries.

Hon. Sogavare: Mr. Speaker, I thank the Deputy Prime Minister for clarifying the control measures on funds directed to his Ministry. If we are to go to specific projects, the National Parliament project, for example, the Republic of China is going to give us quite a substantial amount of money in that area, is there any sort of specific administrative and control measures the Republic of China would want to see included in the management and implementation of that project?

Hon. Rini: Mr. Speaker, funding for that will come through the consolidated fund, and as I have said all funds, including the Republic of China's funds are all appropriated in the Appropriation Act and it is up to the Ministry concerned or the Department concerned to control the disbursement of funds.

Mr. Waipora: Mr. Speaker, supplementary question. I cannot agree more with the honorable Deputy Prime Minister in saying that this question is general. If it is for a specific area like the RCDF, and because he mentioned it, I just want to ask what is going to happen now since 19 Members of Parliament have not yet retired their 2008 RCDF but last week the Prime Minister has received those funds from the Republic of China. I am just talking through what I have read in the papers. I just want to ask what is going to happen to all 50 Members of Parliament at the moment when 19 Members of Parliament have not retired their RCDF and 31 have already retired theirs.

Hon. Fono: Mr. Speaker, thank you MP for West Makira. I think the information he has is out of date, may be it was for the last two months when initial acquittals were made, and also you do not have to believe every statement that goes to the media. The up to date information is that all MPs or constituencies have retired their RCDF for the 2008 funds. Those who are yet to retire their funds, the funds are still with the Central Bank and as long as they retire the funds they will be disbursed. The up to date information is that all constituencies have retired their 2008 RCDF as of two or three weeks ago.

Mr. Waipora: Mr. Speaker, does the honorable Deputy Prime Minister mean to say that it was after 15th June that they were all retired? I asked because the letter I am talking about is dated June 2009 written by his Permanent Secretary. Thank you.

Hon. Fono: Mr. Speaker, this is totally a different question from the original question, however, I can assure the House that all retirements have been already done, and ROC has already disbursed the 2009 RCDF to the government. Those that were left were handed over with the ROC-micro beginning this week. Thank you.

Hon. Sogavare: Mr. Speaker, in fact the Minister has answered the question and I did not want to pursue any further supplementary questions but the reason why I am going to ask this question before I sit down is that in our experiences in the recent past where some projects funded by the Republic of China agriculture were not properly implemented. Our friends have been so kind in giving us a

freehand on how we have been using their funds and I think we have a duty to protect that as well, thus these questions. If there are any more questions it probably will amount to new areas. But I would like to see that maybe we need to review the way we utilize their funds so that they are not subject to unnecessary criticisms by the international community. Thank you.

Mr Speaker: Thank you. That is a comment.

Hon. RINI: That is a very valid comment we will take note of.

Hon. Sogavare: I thank the Minister for answering the question.

Question No. 25 postponed.

Mr Speaker: I must remind the honorable Member that when a question is postponed and not withdrawn, it must be asked the next question day, and so tomorrow I hope you would be ready to ask your question. Thank you.

Mr. Waipora: Thank you, Mr. Speaker, for your correction.

27. Mr. **WAIPORA** to the Minister for Provincial Government and Institutional Strengthening: Can the Minister inform Parliament which Provinces have had their offices and housing rehabilitated under the SIG funded "Rehabilitation of Provincial Government Offices and Housing" project in the 2009 Budget?

Hon. MAELANGA: Mr. Speaker, I would like to thank the honorable Member for West Makira for this very important question.

Mr. Speaker, the answer to the MPs question is as follows: The rehabilitation of provincial government offices and housing project that appeared in the 2009 Provincial Budget 2009 is a government contribution to the Provincial Capacity Development Fund, which is a new Solomon Islands Government grant established in 2008 to provide provincial government with funds for development and capital investment projects.

This new grant is funded by donors contributing $5.4million annually and the Solomon Islands Government is expected to contribute the same amount of $5.4million annually under a memorandum of understanding signed between the Solomon Islands Government and donors.

From October 2008 to March 2009 seven provinces had access to the grants and out of the total of $10.8million made available to them they spent over $9million to improve services to our rural people, rehabilitation in secondary

schools, community high schools and primary schools being done in Malaita Province, Temotu Province, Choiseul Province, Western Province and Guadalcanal Province. As for clinics and hospitals, the hospital in Taro, Choiseul Province has a new rest house to accommodate families of patients admitted at the hospital. Clinics and health posts in Makira/Ulawa, Savo in Central Province and Guadalcanal have been renovated and provided with radios and solar panels. Sports centres have been built in Taro, Choiseul Province and Gizo, Western Province. In terms of fisheries, fisheries centers, in Lambi and Marau in Guadalcanal Province have been renovated and by now should be operational.

Mr. Speaker, in the next round of disbursement of grants to the qualifying provinces, in April 2009 Isabel, Makira, Ulawa and Choiseul Provinces have received or have been granted access to receive their share of the PCDF grant for this financial year to provide the much needed services to our good people of those provinces. The remaining six provinces should receive their share in July 2009 when the final formalities are done.

Mr. Speaker, I would like to highlight that for provincial governments to access this grant they have to prove to be able to keep up to date, transparent and accurate accounts of the use of the public funds as well as detailed plans for the use of the grants they receive in full spirit of the Public Finance and Audit Act 1978 and of the Provincial Government Act 1997.

In a time of financial crisis as the one we are currently in, my Ministry is committed to fully support the PCDF grant that has proven to be a transparent, accountable and effective mechanism to provide much needed capital investment and services in our provincial rural areas.

Hon. SOGAVARE: Mr. Speaker, I thank the Minister for briefing Parliament on the progress of that project. When answering the question the Minister made reference to an MOU that was signed between the Solomon Islands Government and donors, in terms of contribution of funds towards that particular project. He made mention of a figure of $5.4million that donors are giving annually, maybe the Minister can correct us on that, but we take it that the contribution of Solomon Island should also be $5.4million every year as well.

Now, if you look the 2009 Budget, I think only $2million appeared there. Can the Minister confirm that the Solomon Islands Government has also fulfilled its part of the understanding under the MOU, and how much has the SIG contributed already towards this fund in building the facilities and infrastructures the Minister made reference to? Thank you.

Hon. Maelanga: Mr. Speaker, I would like to thank the Leader of Opposition for the supplementary question.

Sir, the $5.4million contributed annually by donors is there for a five year period. The SIG is also expected to contribute $5.4million but it will however only give $2million for this period because of this financial crisis that we are now facing. But in the next supplementary that is coming up the Minister will put in another $2.4million to fulfill its understanding. But in the MOU agreement that is the amount the Solomon Islands Government has to put in under this partnership program. Thank you.

Mr. Waipora: Supplementary question, Mr. Speaker. I thank the honorable Minister very much for that answer. What I heard is a bit vague in that my question is on rehabilitation of office and housing. I question this because I thought it is for rehabilitation of provincial houses and offices in substations or headquarters. But what I heard from the honorable Minister is that he is stepping into the shoes of education, agriculture and health, which specifically should be dealt with out of this project. Why have you gone into those fields rather than look into the offices and houses of the administration per se there in the provinces? I thought that is the intention of that project.

Hon. Maelanga: Sir, in responding to that supplementary question, my Ministry just provide funds and it is up to the provinces to submit their proposals and see how funds are expended according to their provincial plans. The Ministry just manages funds and allocates to the provinces and it is up to the provinces to see how the funds are utilized and expended according to their own plans and that is whether they are going to use the funds to build houses or schools, clinics and so forth. Thank you.

Mr. Waipora: Supplementary question. I think the provincial government ministry should be the one guiding the provinces. Mr Minister, is this not diversion of funds into where funds should be spent but as you said they have the authority to decide on where to spend the funds. But if we go by the rules in my humble view, we need to look into it because when I was there in the Ministry these funds were mainly for administration purposes. Are you going to re-look at this or just leave it as it is?

Hon. Maelanga: Mr. Speaker, as I have already said provinces are supposed to submit their proposals according to development plans indicating what the funds given to each province will be used for whether it is for rehabilitation of housing, clinics, schools and so forth and the Ministry is only responsible of managing the funds. My Ministry is monitoring how funds are expended and

therefore maybe say quarterly reports must be produced to the Ministry to explain how funds are expended. Thank you.

Mr. Agovaka: Mr. Speaker, supplementary question to the principal question. On rehabilitation of provincial houses, let me bring the Minister's attention to Honiara, Guadalcanal Province. Up at Lengakiki are G-Province houses. I want to ask the Minister is there any submission from the G-Province to rehabilitate the appalling state of staff houses up at Lengakiki or have you submitted funds to assist G-Province to rehabilitate staff houses that are in very appalling state up at Lengakiki. Thank you.

Hon. Maelanga: Mr. Speaker, I would like to thank the Member for Central Guadalcanal for his supplementary question. As I have stated earlier, funds are also provided to Guadalcanal Province. Thank you.

Mr. Waipora: Mr. Speaker, I would just like to thank the Hon. Minister for his answers.

Questions No.39, 41, 71 & 73 deferred

Bills - Committee Stage

The Evidence Bill 2009

Mr Speaker: Hon. Members, yesterday this Bill was read the second time and was committed to the committee of the whole house. Accordingly the House will now resolve into the committee of the whole house.

Committee Stage

Mr Chairman: Hon. Members, the Bill before us now for the consideration by the Committee of the Whole House is the Evidence Bill 2009. In our deliberations, I kindly remind all Members to adhere to Standing Orders when making your contribution.

Given the length of this Bill and the technicalities involved, I propose to go through the Bill in terms of parts and I will be doing that under Standing Order 52(2). This, I believe, will allow us to consider related clauses and allow wider discussions before I put any questions. Let us begin with Part 1. Are there any different opinions to the suggestion of going in parts? We normally go by clauses but with respect to this particular bill and its length, Standing Order also provides for using parts rather than clauses.

Hon. Sogavare: Mr. Chairman, we do not have any problem with that suggestion and we will go by that.

Part 1 - Clauses 1 – 10

Hon. Sogavare: Page 10 on the definition of 'document' whether that one also includes electronically generated document. Thank you.

Hon. Chan: Mr. Chairman, if we go through in the documentary evidence, it does include things generated from machines or electronically generated producing a document or a transcript. Yes it does include that.

Hon. Sogavare: Mr. Chairman, thank you for the explanation. In terms of drafting, if it is cleared right from the beginning the definition of 'document' rather than leaving it to the main body of the Act to do it. Because mind you, Mr. Chairman, in defining it there, then its general application throughout the bill. When it is specifically mentioned in the specific sections then it applies in that context. That is why ask this question. Thank you Mr. Chairman.

Attorney General: Mr. Chairman, the definition under section 2 is a general definition but when we come to specific parts there will be specific definitions, and when there is a specific definition, this specific definition takes prevalence over the general definition. That is how the bill is worked out. Thank you.

Hon. Sogavare: Mr. Chairman, in the government's definition, would the same reasoning I guess will apply here. Does 'government' there includes foreign governments?

Attorney General: Chairman, the general definition of 'government' here refers only to the government of Solomon Islands because this bill is our bill and so it only includes the provincial governments of the country. In parts of the bill when reference is made to a foreign government there will be specific naming of the words 'foreign governments'. Thank you.

Hon. Sogavare: Mr. Chairman, clause 4, I just want to get the views of the AG and the Minister of the clause, which reads like this: "this Act applies to all proceedings in all courts including proceeding that", and it goes down to mention things there.

Mr. Chairman, why the affirmative provision? Can there be a situation where the Act does not apply, and so we have this kind of wording?

Attorney General: Mr. Chairman, where it says 'all proceedings in all courts' it looks like the totality of the kind of proceedings that go to court. If the drafting does not include (a), (b) and (c) there will be an argument to say that some of the general provisions do not apply to proceedings relating to bail or interlocutory application and that is why it must be specifically mentioned. Because, as we will see there are some rules that do not apply to bails strictly, there are some rules that do not apply to interlocutory and there are some rules that apply to interlocutory proceedings but not to general proceedings. Because of those variances in the rules it is better to have this kind of definition. Thank you.

Hon. Chan: Mr. Chairman, also section 9 of this Bill allows the court in the interest of justice to do away by themselves in their own initiative as well as the consent of the parties to dispense with any applications of any one or more of the provisions in this Bill.

Mr. Agovaka: Mr. Chairman, clause 4. Are all courts here in reference to all courts in the magistrate or is it from the Magistrate Court to the Court of Appeal. Is that what this is referring to?

Attorney General: Mr. Chairman, there is no definition of courts in the preliminary part but when it uses all courts it means courts of records, which means the Magistrates Court, High Court, Court of Appeal and even the local courts. But when it comes to land cases in the local courts and the magistrates they have to be very careful because not all the rules would apply to them, they will have to be selective. Courts when used are courts of records which are properly constituted courts using the proper adversarial system.

There is no definition of courts here but when it uses the courts concerning that definition then it will apply to all courts. Otherwise if it says it only applies to the High Court it will be mentioned in each section where it only applies to the High Court. Thank you.

Mr. Agovaka: The reference to 'public document', perhaps the learned Attorney General could explain part (d) of the public document – archives. Does archives include public document? I understand that certain documents in archives are held for a certain number of years before the information is released. Does this public document include documents held in archives?

Attorney General: The definition of (d) would cover documents kept by archives because it says 'is being kept by or on behalf of the crown or government". Although many of the documents may have private origin but since they are accumulated, kept in the government department for the purpose of government and on behalf of government, they will be treated as a public document.

Mr. Folotalu: Mr. Chairman, clause 7. I just want to know why this law of evidence is so tough on the evidence of corroboration, especially in this nation. Do other Commonwealth countries not apply laws of corroboration?

Hon. Chan: Mr. Chairman, a lot of countries, especially in our region have done away with corroboration rule in regards to evidence. We also have to be mindful of this section that the law does away with corroboration only on certain evidences. From a policy standpoint we are looking at taking that away in things like women, children, victims of morality, those are the things we are looking into, but certainly in terms of corroboration if judges look at certain evidences.

Hon. Sogavare: Mr. Chairman, clause 8. Mr. Chairman, if you can brief us on the principles and rules of the common law that relate to the means of providing confidence of documents. That has been abrogated now under this Act. What is this rule talking about and what is the reason for abrogating it?

Hon. Chan: Mr. Chairman, I think the old rule was called the best evidence rule where you have to have a witness and an original document. Sometimes those things are not available and this is why this Bill allows copies of documents if they are legitimate they can be used in our courts.

Hon. Sogavare: Mr. Chairman, in terms of original documents since the Minister raise up, are we conscious of the fact that with modern technologies people can do anything with any document.

With the increased wisdom in terms of knowledge and technology, on the part of courts, how can they be really sure that documents presented are really genuine and original document would have more weight in proving that a document is true? If we rely on copy anything can happen to a copy, even if it is stamped to say this is the true copy of the original document. What is the view of the Minister and the Ministry on this one?

Attorney General: Mr. Chairman, as the Minister has said, the main rule relating to documents which are abrogated is based on evidence rule and the common law principle is that the original document must be produced.

What this Bill is doing is abrogating the original document rule and brings in new rules instead in Part 8 on how to use and accept documents that are not original documents but will nonetheless be acceptable to court. Take, for example, just for purposes of explanation if I can jump to clause 88 on page 44, clause 88 says that a party who intends to use and rely on copy must give notice to any other party that it proposes to offer a document and then that party who receives the notice must then state whether it would object or accept the copy that is being attached to the notice. If that party objects and wants to argue the authenticity of the document then the other rules follow to deal with that. There are rules to replace the best evidence rule that is being abrogated.

Hon. Chan: Also if you look at all the documentary evidence, if you go forward to those parts, most of them proved to the contrary, and so there are a lot of checks and balances.

Part one agreed to.

Part 2 - Clauses 11 to 19

Hon. Sogavare: For the sake of discussions and maybe another level of discussions again here in Parliament, under Clause 19 the court does not need to exercise its caution before it convicts an accused in reliance to whatever class of evidence listed down there; one of which is evidence given by a child, evidence given by a victim of an offence against morality and another one is evidence in relation to an offence against morality where there was delay in the crime.

During the debate I made some comments to the effect of saying that this bill comes up because there is the assumption that these people are vulnerable and people always assume them to be telling lies. A victim of a rape, for example; there is always the assumption that the woman is telling lies and until it is proven that what she alleges is true. That is one. This is shifting to the person that actually commits the rape. How do you see this, Mr. Chairman? We are right now putting a person who is alleged to have committed the crime in a disadvantaged position, now that the court will not caution itself when it passes judgment.

The same concern also goes to the evidence of a minor under (a) where the court does not need to caution itself although we appreciate that the judge must satisfy himself that the evidence presented before him even by this minor or a

person who is a victim is something that can be relied on. But as it is structured now, Mr. Chairman, because of these assumptions we are moving, I guess, the burden more heavily on the person committing the crime. In any criminal offence, the burden of proof is really with the state.

In terms of part (c), that one too will probably remain an issue that the court does not need to caution itself even if the person reported the offence a long time after. Maybe the specific question on part (c) is what would be a reasonable time the court will consider it, if the offence is reported after one year, six months, two years after, will the courts still entertain such evidence? That is a mouthful of questions but that is a matter of discussion.

Hon. Chan: Mr. Chairman, when it says the court will not exercise caution, it does not mean the courts can be reckless. It just does not have to caution itself. I think overseas where there is a jury it does caution the jury about it as well.

I am trying to remember all your questions but the part (c) on the difference in time I would give you an example of a defilement case where a child is being lured by a lollipop or ice-cream and if there is an offence created at that time, the child will not know anything, the child will be frightened. It is usually the parents who will find out later and then go to the police and reports what they think is wrong. This is an opportunity given to the victim.

What we have done is that the matter will still have to be proven beyond reasonable doubt as the evidences arises and so it is still quite a difficult thing to prove. What we are looking at here is that as long as the courts are satisfied that the victim is telling the truth, then as the evidence comes out and proven beyond reasonable doubt the victim should get judgment.

Perhaps the Attorney general can add more to that. But the proof necessary beyond reasonable doubt is way higher than what we have in, say in other civil proceedings say balance probabilities, and so they still have to prove it.

Attorney General: Mr. Chairman, clause 19 does send reverse the burden of proof to the defense. The burden of proof always lies with the crown. What section 19 is talking about is that before the court makes any order or judgment as to conviction, the practice now is that it must caution itself and it develops from a system where in jurisdictions where there are juries and peer groups or peers are sitting on the jury. In our system the judge is the judge of the law and of both, performing the work of the jury as well.

When the requirement for cautioning is removed here, it does not mean there is no safety measure in place. We will be coming across provisions later in the bill that deals with the assistance offered to vulnerable victims or witnesses.

In that way you will see that the witnesses who once or used to be vulnerable are given the courage and the confidence to give evidence very competently. Seeing that there is that balance of improvement on the other side, it is reasonable that the court can now, in listening to a child, we will see the rules later that if a child needs assistance the court will make directions for assistance. Or if a victim of a sexual offence needs assistance that assistance will be given. The assistance provided under rules will now make the witnesses who were now currently unable to give their evidence confidentially will be able to give their evidence confidentially this time. Therefore, the court is able to rely more on their evidence this time.

There is a balance exercise that comes around and it is not just a total disregard of the requirement of cautioning. Thank you.

Hon. Sogavare: I thank the Minister and the Attorney General's explanations. I think the ultimate objective of bringing up a case eventually is to come up with a just outcome for the alleged person who is being alleged to have committed the crime and all the parties. I think the only concern here is that the way we are going now is giving an unfair advantage to prosecution. We see a trade off here. The burden of proof when it comes to criminal offences remains with the government. The state must prove that a person committed the crime. The burden to defend someone, to say that he did not commit the offence remains with the defence representing the person being brought to court. Now what seems to appear here is that we seem to move some ammunition which the defence normally has. In the interest of arriving at a just and fair outcome, we are moving that and giving it to the other side of the court. In fact this is helping the prosecutions a lot because the court does not need to even think about caution itself if the evidence comes from a minor or evidence comes from a person who reports it five years later.

I am just sort of concerned about that. Is that seen as that or are the circumstances surrounding the reason why we came up with such a policy is so that it will always disadvantage the victims that it is necessary for the state and the people of Solomon Islands to step in and say, "we need to have this kind of law to protect the vulnerable people". I think this is the issue here.

Hon. Chan: Mr. Chairman, I probably do not know whether it is a question but I will try and answer. My answer is that the court will take evidence as it arises in that evidence is evidence. Now whether evidence is how much weight the evidence is given by the courts is very much dependant on the circumstances around it but evidence is evidence. If the evidence does not suggest that the accused did the crime then he is let go. If the evidence suggests that the accused

did the crime then he would be convicted. That is all. Evidence, whether it is good or bad evidence, any evidence admitted is evidence and we have to take it as that from the objective value of evidence. We are not trying to hijack the whole thing. Thank you.

Attorney General: Mr. Chairman, there is a trend in a lot of countries already to move away from the Commonwealth practice of treating children, women and vulnerable witnesses with suspicion about the quality of evidence they normally provide in court. There has been a great debate and research that what we have now is not compatible with international laws and for women it is clearly not compatible with CEDAW. There is also great argument that there is discrimination under the Constitution because we are applying one standard to children, women and another different standard applicable to men. These inequalities must be removed and only one standard is applied but, of course, recognizing the weakness of children and women the rules will also ensure that there are mechanisms to ensure that their evidences when given are reliable and that is why earlier on I spoke about rules relating to special arrangements which I see in clauses 41 going up to 42 and so it is in the next part. Thank you.

Hon. Sogavare: In terms of part (c), and sorry we are not courts, but what would be seen as reasonable delay by court if somebody comes say 20 years later and report an offence. Would court take serious caution on this one or would it question the genuineness of that evidence?

Hon. Chan: Mr. Chairman, it really depends and there is no hard and fuss rule about it. It depends on circumstances. In terms of a defilement of a child sometimes the crime happened in a very young age and the evidence only comes out in adult age. What we are trying to do is no matter what and who did the crime we will get you now or later. That is all. Thank you.

Attorney General: The other public policy reason is that it is not good to use time technically to protect criminals. Evidences must be tested on their merits and not to be suppressed just because of time. Thank you.

Part 2 agreed to

<u>Part 3 - Clauses 20 to 23</u>

Hon. Sogavare: Mr. Chairman, maybe the AG and the Minister can explain to us what clause 22 is trying to say on this provisional relevance. Does that mean the

evidence that came first is treated as provisional relevance? Can we have some education on that by the AG and the Minister on what this clause is talking about?

Attorney General: Mr. Chairman, perhaps the best example I can give on clause 22 is, say if a technical instrument is tendered as evidence in court but the question on the authenticity of that technical document is raised and therefore the issue that has to be decided first is perhaps the authorship or the identity of the author. Those kinds of issues are necessary to be determined first before the technical document can be considered for admissibility or for use in court. That is an example where evidence depends on something and you need to prove it first before you can use that evidence.

Part 3 agreed to

Part 4 - Clauses 24 to 42

Hon. Sogavare: Mr. Chairman, clause 28, the word after 'a person', is the word 'summonsed' correct? You need to look at that.

Clause 29 says 'A person who is incapable of understanding that, in giving evidence, he or she under an obligation to give truthful evidence is not competent give sworn evidence but the person maybe competent to give unsworn evidence. I would have thought that swearing and everything is quite a very important exercise to rely on whatever is presented to court. The level of reliance is what I want to be clear on whether it is the same for both or not?

Hon. Chan: Unsworn evidence and sworn evidence, I guess, would be treated with the same probative value, it does not lessen it. I guess in this instance it is someone who is not competent to give sworn evidence would be perhaps every time we take an oath in terms of the Bible maybe someone would be of a different religion or certainly maybe in the case of say a child who is not competent to know the truth in those circumstances. But definitely unsworn and sworn evidence will be treated equally.

Mr. Agovaka: Mr. Chairman, in a circumstance when a person gives a statement to say, for example, the media newspaper or the radio, could that medium, the newspaper or the radio personal who was given the statement in regards to certain things give evidence in regards to what was said to him as news or media release as unsworn evidence on this matter?

Hon. Chan: I think there are a lot of sections in this bill that may treat that sort of evidence as hearsay evidence or opinion evidence. I am not so sure how to answer that but if any evidence falls in unsworn and is admitted to court, of course, it will be treated as of equal value.

Hon. Sogavare: We will go ahead with unsworn and sworn evidence. If a person refuses to swear would that immediately bring up some doubts as to the authenticity or the genuineness of what he is trying to put across? Do you think that should bring out some great light in saying this person does not want to swear on this statement then something is really wrong here, unless this person is very, very religious that, for example, in holding the Bible to swear because he feels his relationship with God is more important than holding the Bible to swear. Then it brings up another issue of proving whether this person is a genuinely religious person. Would that bring up issues like that too?

If the same weight of reliance is placed on these two real big different ways in which statements are given, we could end up accepting evidence that is unsworn we are putting reliance on therefore casting a lot of doubt because this person does not want to swear on the statement. Should that bring some red light? What the Minister is saying is that reliance on those two kinds of statements is just the same - sworn or unsworn then reliance on them is just the same.

I am afraid of that. If a person refuses to swear, which is a very important thing to do so that you prove what you are saying is true then that should throw out a lot of red light that something is wrong with the statement the person is giving.

Attorney General: Mr. Chairman, there could be reasons why a witness does not take an oath on the Holy Bible probably because he or she wants a Koran or probable he or she is a heathen or probably he or she does not understand what taking an oath on Bible means. In such situations, clause 29(2) clearly says that "prior to a person giving unsworn evidence, the court must inform the person of the importance of telling the truth". The duty is therefore upon the court to ensure that the witness tells the truth because that is the main reason why a witness has to swear on the Bible, and that is to tell the truth. If he or she cannot tell the truth or cannot take the oath just because he/she belongs to another religion or a heathen then it is obligatory on the court to tell the witness that he/she has to tell truth. That obligation on the court is there on Clause 29(2).

On the other matter on the probative value of sworn or unsworn evidence can be seen in Clause 31. Thank you.

Mr. Folotalau: Mr. Chairman, if I am a committed Christian and I do not want to use the word swear but instead use the word "affirm" that the evidence I shall give to this court shall be the truth and nothing but the truth, would that be taken as sworn testimony?

Attorney General: Mr. Chairman, that is the current practice that if anyone does not feel comfortable holding the Bible in the right hand and swears then the court accepts affirmation.

Hon. Sogavare: Mr. Chairman, Clause 32 can the AG and the Minister tell us on this "None of the following persons is compellable to give evidence" and then the first one is "the sovereign". Can you explain this to us? I guess when it comes to establishing liability or whatever who are we looking at when it comes to this person called "the sovereign"?

Hon. Chan: Mr. Chairman, 'the sovereign' means in respect of the queen where she does not have to give evidence.

Mr. Folotalu: Mr. Chairman, I am on clause 32(1)(b) which says "the Governor General while in office" is not compellable to give evidence. Assuming that the Governor General is taken hostage and is required to give evidence in court is he not going to give evidence at all or can he still give evidence?

Hon. Chan: Mr. Speaker, basically a Governor General while in office does not have to give evidence but he can if he wants to and if he is allowed to. Thank you.

Attorney General: Chairman, just in addition to that. We have to put emphasis on the word 'compellable'. That does not stop the Governor General voluntarily coming and giving evidence if the case perhaps concerns him directly. It is the word 'compelling' that is not allowed under Clause 32. Let us take particular note of that word.

Hon. Sogavare: Mr. Speaker, Clauses 34 and 35 are still on this issue of compellability of a person giving evidence in the case of a close relative. I think a point that was raised during the debate yesterday was if a serious crime is committed by a close relative. Because of these rules, for example, if a wife or a child is the only reliable source of evidence there is in a case of a murder committed in the house or somewhere else, how are we going to treat that? Because of this rule close relatives are not compelled and the knowledge of the

risk of having a murderer still walking freely on the streets because this rule says that the only reliable source of evidence is compelled to come, let us just assume that he refused to come, he does not want to come willingly to give evidence, how do we handle a situation like that. Thank you.

Hon. Chan: Maybe the AG will come after me on this one. When they say that a close relative of an accused is not compellable it means they do not have to, he or she does not have to. In a situation where the conscience of the close relative knowing that perhaps the accused has committed the crime, this section does not stop the close relative wanting to give evidence to come forward giving evidence. She does not have to but does not stop her from not giving evidence if he/she wants to.

Attorney General: Further to that, Mr. Chairman, in Clause 34 we see a close relative of a person charged, in Clause 35 we see the close relative of an accused and then in 35(2) we can see the requirement in determining whether a close relative has to be excused, the court will have to carry out a balancing exercise because there are two public interests. One public interest is public interest in terms of the criminal law that has to be balanced with the other public interest, public interest in ensuring the relationship of the close relatives is not harmed. Then in sub clause 3 it goes further to give some guidance to the court, the tools that court can use in carrying out the balancing exercise. It will be a very difficult balancing exercise, and this is where the humanity of court comes in considering public interest in regards to the criminal law and public interest in ensuring no harm is done to the relationship. But there are guiding principles there or tools for the court to use in doing that balancing exercise. Thank you.

Hon. Sogavare: Thank you for that clarification, which eases the minds.

Sir, Clause 36 talks about the compellability of a former spouse of an accused. In terms of coming up with a just outcome for the accused, would a former spouse be a competent person to give evidence? For example, I do not know whether the court needs to see the reason why they broke up in the first place and they might have ill feelings still exist between them. If a spouse of that person commits whatever, and here it says that that person is compellable to come and give evidence. Would his/her evidence not tainted by the fact that there have been some sour relationships which could influence the way evidence is taken from persons like that in that kind of relationship?

Hon. Chan: Mr. Chairman, Clause 36, I would assume from an ex-spouse point of view what it does is that it allows ex-spouses to testify against the accused as

well as they may have to testify or forced. The evidence deduced from a case really depends on how much weight the judges or the courts will put on that sort of evidence taken into account, as you put it, the sourness of that relationship.

Attorney General: Mr. Chairman, it is important to note in Clause 36 that the compellability of the former spouse is not only for the purposes of prosecution. If you look at the second line from the bottom, it says, 'prosecution, the accused or any person being tried jointly with the accused'. So a former spouse can be compelled to give evidence on behalf of prosecution or on behalf of an accused or on behalf of any other person tried jointly with the accused.

As to the probative value of his/her evidence is a matter for the court to judge, doing his best to judge reliability of the evidence. The court is very aware of those kinds of situations.

Hon. Sogavare: Clause 37, Can the AG and the Minister can give a legal rationale behind section 37 and how this restriction is read with the proposed Clauses 38, 39 and 40. Thank you.

Hon. Chan: I assume one of the reasons why an accused in a criminal proceeding is not allowed to give evidence for the prosecution is because he may go to the prosecution and say the accused is innocent. I think it is illogical that a person who has been accused gives evidence for someone who is trying to prosecute him and so he cannot be a competent, it is only commonsense, I assume.

Attorney General: Mr. Chairman, Clause 37 is saying that in terms of the prosecution an accused is not competent to give evidence for prosecution and that is logical because why should an accused become a witness for the prosecution. That is why the word 'not competent' is used there. An accused is not competent to become a witness for prosecution as he is an accused.

The other part of Clause 37 is also saying, 'and he is not compellable to be a witness for defense'. The accused voluntarily can become a witness for defense but cannot be compelled. It looks reasonable why the rule is made that way.

Further questions on how that relates to Clauses 38 and 39, I do not get quite clearly what the Leader is trying to ask about. The two clauses are different. Clause 38 is a clause dealing with the questioning of an accused about his bad character and then Clause 39 deals with propensity evidence like the tendency of an accused in doing such a thing. They are two different clauses and have two different purposes and are different from Clause 37.

Hon. Sogavare: Mr. Chairman, the connection I see is in the last part of Clause 37, which says "is not compellable as a witness for the defence in that proceeding". Maybe because of bad character we already rule out that he is not a competent witness. Clauses 39 and 40 are about a co-accused, and the way I read it here is that a co-accused can be compelled to give evidence. Is that the way it is read here in that Clauses 37 is saying is not compellable. But if he is a co-accused he can be compelled to give evidence, and if such is the case then are Clauses 39, 40 and maybe 38 be subject to Clause 37?

Hon Chan: I just want to clarify. The reason why the accused is not compellable to be a witness for the defenses is because the accused has the right of silence. I do not understand the question in terms of what the questioner wants from 38 and 39. Can you be more specific on what you want to ask about in Clause 38, please?

Hon. Sogavare: Mr. Chairman, Clauses 39 and 40 are dealing with a co-accused. If that accused person is a co-accused but if he is only accused then he is not compellable as a witness for the defense in a proceeding. Say that proceeding, we talk about that proceeding, that particular proceeding and then he is a co-accused in that proceeding. Clause 40 seems to suggest the circumstances when a co-accused is compellable. Unless they are stand alone sections then it is alright. But if it is read with Clause 37 referring to an accused then he is not compellable. But if he becomes a co-accused then he is compellable. Should Clauses 38, 39, and 40 be subjected to the restrictive provision of Clauses 37?

Attorney General: Mr. Chairman, when they are co-accused they are on the defense side. Clause 37 is saying that an accused since he is on the defense side is not compellable as a witness for the defense.

I tried to look at the other clauses which have the word 'co-accused' but I come to Clause 39. Is that the clause you referring to?

Clause 39 says, 'An accused in criminal procedure may offer propensity evidence against a co-accused", and this is the qualification "only if that evidence is relevant to the defense raised or proposed to be raised by the accused". It is only if that evidence is relevant to the defense raised or proposed to be raised by the accused.

Propensity evidence is a kind of evidence which will show a tendency to act in a particular way or to have a particular state of mind. That is the kind of evidence that a co-accused can give and is described as propensity evidence. Thank you.

Hon. Sogavare: Mr. Chairman, Clause 41 on arrangements for vulnerable witnesses. May be this is a bit too specific, and so my question is let us put ourselves in a situation where we are caught now in a case of a minor who witnessed a crime, say against morality or whatever. How would this section apply in practice, Mr. Chairman?

Attorney General: If I repeat your description of the facts again where you said that there is a morality case, for example, and a minor is required to give evidence as a witness.

Hon. Sogavare: Yes, Mr. Chairman, I used minor as one of those witnesses as probably a vulnerable or a witness as an example. But anyone can be vulnerable like a polio man, a deaf man, a blind man and so forth.

Hon. Chan: If you look at subsection 4 where it says special arrangements that the court may make is closing of the court, restriction on publication of evidence, obscuring of the witness from the view of the accused in a criminal trial, remote audio visual taking of evidence, allowing a support person to accompany the witness, and those sorts of things.

Mr. Agovaka: Mr. Chairman, going back to compellability under Part 4. If a person who has a good witness and because of his compellability he did not give evidence. Are there any other jurisdictions or any other laws that may subject him to give evidence or will he be subject to prosecution under other laws because he is withholding good evidence that can be used but because of his compellability does not give evidence.

Attorney General: Mr. Chairman, it is important that we do not make speculation without any particular reference to any section. We need to consider a particular section if that question is asked. It is important for us to answer specifically on particular sections.

Mr Chairman: Could you be specific on the points you want to raise honorable Member?

Mr. Agovaka: Maybe if we go back to where the Governor General is concerned. When giving evidence the GG is not compelled to give evidence. If the Governor General has good evidence that can be used in court but because of his non compellability he is not compelled to give evidence, is there any law that can

subject him to prosecution or is there any law that would compel him to give evidence?

Attorney General: Mr. Chairman, when it comes to evidence this is the law because evidence is procedural law. Since Clause 32 says that the Governor General is not compellable he is not compellable. This is the procedural law. There maybe a substantive law somewhere, which I am not aware of, but this is the procedural law. Thank you

Mr. Boseto: Clause 40(2) says, "When two or more persons are jointly charged with any offence, the evidence of any person called as a witness for the prosecution or the defence under this section maybe received as evidence either for or against any of the persons so charged."

Now here are both lawyers of the prosecution and the defence know how to tell the truth. How would the court decide which side to accept because these two are in conflict? Can you clarify? Thank you.

Hon. Chan: Mr. Chairman, Clause 40(2), I think for two or more persons jointly charged of an offence, the witness can actually give evidence against more than one accused. I think that is what the clause means. The evidence can be evidence either for or against any of the persons charged.

Attorney General: Mr. Chairman, it depends very much on how a witness talks in court where maybe some parts of his story might be in favor of the prosecution and along the line some of his stories might switch to defence too. What he says in prosecution maybe is good for defence. This kind of sub-clause will deal with the treatment of that kind of evidence. Thank you Mr. Chairman.

Part 4 agreed to

Part 5 - Clauses 43 to 74

Hon. Sogavare: Mr Chairman, the way this part is presented is clear. The only question I have is on Clause 62, which says "All witnesses as to fact in a criminal proceeding other than an accused should remain outside of the court until required to give evidence". The question is when it comes to an expert witness who needs to listen to, say if his expert evidence relies on him sitting inside the court to listen to the argument on some technical matters or something to form a technical judgment as an expert witness, how do we deal with this kind of person? I think it deals with provisions in expert witnesses but how would you

be in a situation where an expert witness must be in court to listen to technical arguments on technical issues that are raised by defence and prosecution and so when he is called he gives his technical expert advice or evidence when he is called.

Hon. Chan: It is Clause 62? It usually happens in a court where expert reports are already tabled beforehand. What it does say is that there is only to be one witness inside the court room because the witnesses have to be outside. This is to stop the influence of witness testimony to influence other witnesses in how they look at what they have to say in court. That is why we have Clause 62 here. Other witnesses should be outside of the court while the witness is testifying in terms of his influence, the testimony that witnesses may influence the other witnesses in how they give their evidence. But an expert evidence is usually tendered to the courts prior to those hearings anyway.

Part 5 agreed to

Part 6 - Clauses 75 to 80 agreed to

Part 7 – Clauses 81 to 86

Mr. Agovaka: Mr. Chairman, in providing identification for evidence, does this Bill also take into consideration medical evidence or DNA tests or does it falls into other categories of evidence, Mr. Chairman?

Attorney General: If it is medical evidence then it depends on what kind of medical evidence. This part deals with identification of evidence, identification of accused and so forth. That is what this part is dealing with. Is sexual offence what you are saying?

Mr. Agovaka: Not only sexual offences but also blood tests, DNA tests and the likes of it.

Hon. Chan: Mr. Chairman, I think medical evidence as such would be more appropriately catered for under Clause 133 on expert reports. I think this is where what the questioner wants can be looked at in provision 133. Thank you.

Part 7 agreed to

Part 8 - Clauses 87 – 116

Hon. Sogavare: Mr. Chairman, the proposed Clause 93 talks about seal of body corporate established. Can you explain to us what kind of body corporate is established under royal charter? What kind of body corporate, an example of this in Solomon Islands where a body corporate like this will be established here and whether this provincial law refers to our provincial governments?

Attorney General: Mr. Chairman, royal charter is a legal instrument that can establish an institution or can establish a corporate body. The normal royal charter is left as patent and is created by royal prerogative and it can also be created by statute.

This clause actually deals with a seal of the body corporate or establishment of a royal charter or a law. I am not aware at this stage of any body established locally as yet by royal charter establish. My mind cannot touch anyone at the moment, but perhaps in the future because the law is not only for today but is suppose to be progressing into the future. If in future the queen kindly exercises her royal prerogative for us to create a body and a royal charter then there is already provision. But I am aware that royal charters can also be created not only under latest patent but by statute as well. Thank you.

Hon. Sogavare: A law of a province would refer to the law of our provinces in this country? Is that correct?

Attorney General: That would be correct.

Hon. Sogavare: Clause 95, and just a general question in regards to opinion rule. Could Parliament be briefed on what this rule is and how it works and how does evidence maybe expressed in terms of opinion the court is going to deal with?

Hon. Chan: Mr. Chairman, this clause is just basically about if a notice is agreed to by all the parties to those documents, if the documents are complex to be summarized, say the documents are just too many and so another document is done to summary those documents if it is accepted by the court and inspected by the parties, the original documents, if it is accepted it can form part of the evidence deduced from.

Part 8 agreed to

<u>Part 9 - Clauses 117 – 135</u>

Hon. Sogavare: Mr. Chairman, I have several questions here on how Clause 118 works, and I guess the policy and legal rationale behind those provisions. I guess the first question is the words "reasonable assurance". What would amount to 'reasonable assurance'? I guess that is the first question.

The second question is 118(1)(a) & (b), which says "A hearsay statement is admissible in any proceeding if the maker of the statement is unavailable as a witness or in any case where the court considers that undue expense and delay would be caused if the maker of statement were required to be a witness". I guess this is exception to the hearsay rule. If the case here, and I do not know how you will explain to us, but will it depend on the kind of case that appears before the court, say in a murder case, for example. Of course, hearsay would not count in a murder case or you might need to explain it to us.

If the case is so serious what is difficult in making that person available if you need to get to the truth of this issue. The maker of the statement is unavailable as a witness, just like that and so we depend on hearsay.

Again Point 2 there, the way I see it amounts to a lame excuse. If the evidence is important then cost should not be a cause of concern. We are talking about somebody who will be spending lifetime or years in jail. Here it says because of the circumstances hearsay evidence will be alright. That is how I read this clause.

Hon. Chan: Mr. Chairman, I read it differently. I think the courts have a contingency in respect of that. I guess the courts would always like a witness to be there so that they can cross-examine the witnesses. But hearsay statement is basically a statement and not witnesses to be cross-examined. This is the reason why they have an elaborate rule that goes throughout this whole hearsay is because the witnesses are not there to be cross examined about the truth of the assertion of a statement. This is the reason why some of these rules are quite strict. And as long as circumstances allow it, Clause 119(4) allows in those circumstances where the evidence is seen as reliable then that evidence can be admitted. But a normal case of hearsay is not reliable evidence and are usually are not admissible. But there are circumstances that they can be and this section will spell out those circumstances.

Attorney General: Mr. Chairman, just to add on to what the Minister had said. We should read sub clause 2 which sets out specific rules for criminal proceedings. Sub-clause 1 deals with rules for any procedure which can also include civil. Subsection 2 in addition to what is in subsection 1, subsection 2 deals specifically with criminal proceedings and it sets a requirement where the

party proposing over the statement to give notice so they can discuss or consider the proposed statement.

The court when it considers circumstances, which you will see in subsection 4 the kind of circumstances the court will see. In subsection 4 (a) down to (e) those are the kind of circumstances the court will look at to form a mind whether there is reasonable assurance and then in subsection 5 it lists down who can be regarded as an available witness. So you will see that (a) is if the witness is dead and therefore cannot be recalled, and (b) if the witness is outside Solomon Islands and is not reasonably practical for him/her probably because something has happened to him/her and so cannot come. (c) is when someone is unfit to be a witness because of age. Subsection 5 lists down the situations where a witness will be unavailable. So the court has to be satisfied that the witness falls into one of those categories and the court has to be satisfied that the circumstances in subsection 4 exists before it can admit any hearsay statement. And so guidelines are there.

Hon. Sogavare: Mr. Chairman, thank you for those explanations in relation to the unavailable witnesses because if he is dead we cannot resurrect them. If a person is outside of Solomon Islands, of course, unless he is a non citizen resident probably we cannot deal with him. But if he is a resident, a citizen of Solomon Islands then if the case is so important I would have thought that we should wait until returns and get him, instead of relying on hearsay or something that he says.

When someone is unfit to be a witness because of age, we have just dealt with one case here where we accepted evidence from a person who is even a minor and so exception to the rule. Are we contracting ourselves here? And the other areas are not compellable.

I guess how the AG reads to us is that section 18 should be read in its totality before we fully appreciate what it is trying to say there. I thank the AG for giving that explanation

And while I am standing, Mr. Chairman, Clause 124 and is still on the same thing on the rules of hearsay, which does not apply to the evidence of reputation concerning whether a person was at a particular time or anytime or a married person and it lists them down. Here the court, and the way the Bill is saying here is that, and I guess this is also the exception to the rule. May be you should explain it to us so that we can understand. Is the court not going to be concerned if somebody says that man is married? Is the court going to accept that he is married when the most sensible thing to do to establish whether that person is married is to show the certificate of marriage or prove a custom ceremony is performed to show that the person is married? The same applies to

a person's age. May be people born after 1960s or something like that should have birth certificates or something to show and prove where they were born.

What I am concerned about is that we are loosen up some areas and tighten up some areas, and that is why some of us draw the conclusion that it is probably leaning more to the case of the prosecution than to people who are defending people in court.

Attorney General: Mr. Chairman, Clause 1 to 4 as we understand the evidence of repetition as is listed in (a) to (d) should be matters of common knowledge. But the other important explanation is that if we go down further on page 87, Part 15 deals with proof of birth, adoption, death and marriage. When documents about marriage are produced then that is sufficient and so hearsay rule should not apply at all because certificates can be produced and then they become evidence. Thank you.

Mr. Boseto: In relation to Clause 119, I just want to seek some assistance here. In Choiseul we are trying to implement the preamble of the national constitution, which says 'we, the people Solomon Islands proud of the wisdom and the worthy customs of our ancestors" have been working on the unwritten and spoken customs and the wisdom of our people, and we hope to finish our handbook either this year or next year.

When we finish that book how would this concern in 119 come in recognizing it as a particular handbook for a specific island or province or what?

Attorney General: Mr. Chairman, these rules do not restrict tendering of evidence relating to custom, it actually encourages it because the Customs Recognition Act 2000 is still to come into force and so it is good that we have some rules in this bill dealing with customs.

Just to answer the question, I would like to refer back to one clause in 17(5) which says, 'for purpose of this section, matters of customs or customary law are not to be considered as common knowledge". What it means is that we must prove it. For purposes of this section matters of custom or customary law are not to be considered as common knowledge because our customs in the islands are many and different, and so we must prove it.

When we come to Clause 119, which the Member has asked about, it says "When the court has to form an opinion as to the existence of any general custom or right, evidence may be given of the general reputation". This means we must prove it. Like in the case of the Lauru Land Conference if the book is already produced and adopted and is tendered in court and is accepted by court then it is accepted by the court for application in the whole island. But it may not be or

cannot be accepted for other provinces. It depends very much on how the court treats it.

But then Clause 119(2) deals with a specific section like a particular transaction, and it says, 'Where in any proceeding a question arises as to the existence of any right or custom evidence may be given". When it says evidence maybe given it means the obligation is on us to prove whether the custom exists. Whether it exists generally or it exists in respect of a particular transaction or a particular instance.

Then in Clause 119(3) it removes the hearsay rule because most of our stories in custom are just hearsay because knowledge is passed from ancestors down to us and therefore if the hearsay rule is applied all our knowledge will be inadmissible. When you look at sub clause 4 it also excludes the opinion rule. Again if opinion rule is applied, all our customs will not qualify to be admitted as evidence in court.

There is flexibility here and the evidence rule will not apply to custom, opinion rule will not apply to custom but the duty is on us to prove our customs in court.

Mr. Folotalu: Mr. Chairman, that is very interesting because in land courts genealogies are very important and so will it not be admissible?

Attorney General: If there is a dispute on right of custom and the way to resolve that dispute is to look at genealogy so that genealogy determines a particular right. The obligation of the parties is to prove which genealogy is the correct genealogy in respect of the matter in dispute. And so the obligation is on us. Thank you.

Mr. Agovaka: Clause 130 is the opinion of an expert. Does this section adequately covers or addresses the concern that I raised earlier regarding medical evidence or medical report, DNA test, blood sample test etc.

Hon. Chan: I think in answering the question, I would say Clause 133 is evidence of a person's opinion maybe adduced by tendering a report signed by the person. I think that would be more likely the case.

Hon. Sogavare: I want to go back to the question I flagged earlier about the need of allowing an expert witness to sit in trials listening to the proceedings. What is the thinking? What the Minister is saying is that the report is enough for an expert to submit a report so that we establish the thinking of that expert only from the report.

Now, if he wants to maybe supplement his expert advice or evidence to the court by listening to maybe some of the new things mentioned in court. Apart from the provision which is legally binding, not to attend that and only allowed the accused to be in there, is there any policy or reason why it should not be there in the interest of arriving at a best expert evidence? Why do we not look at the need to allow an expert witness?

Hon. Chan: Mr. Chairman, an expert opinion can tender its report and the expert witness can also be cross examined or he can also be called as a witness to cross examine his report.

Attorney General: Mr. Chairman, just to add on to that. When expert opinion reports are tendered in court, normally the counsels with the court will ask an expert on his report, and in doing so the counsels would be putting their case forward, the prosecutions would be putting their case forward if they see the report is in favor of their case and the defense will also put their case forward too in perhaps in trying to criticize the report and offer an alternative opinion, perhaps. Any further opinion or any further facts will come through the process of questioning, which the court will also participate in. So there is no need for the expert witness to listen to all the other witnesses otherwise his mind is colored. Any further opinion or facts must come from counsels and the court.

Part 9 agreed to

Committee of the Whole House suspended for lunch break

Committee of the whole House resumed

Mr Chairman: Honorable Members, the Bill before us now for continued consideration by committee is the Evidence Bill 2009. As has been proposed in the morning we will continue to go through the bill in terms of parts and this will follow us to consider related clauses and allow wider discussion before I put any question.

<u>Part 10 - Clauses 136 to 139</u>

Hon. Sogavare: Mr Chairman just on the narrations at the end of the pages. The word 'court discretion' should it be court's discretion. I know these are corrections the AG can do under his powers. Thank you.

Attorney General: Yes, that can be rectified by exercising the power given to the Attorney General.

Mr. Agovaka: On discretion to exclude evidence. On Clause 139(4)(a) does the prejudice the security or defense of international relationships Solomon Islands include also given a circumstance where the state sends an army or a police to do some work and in the event of the line of duty a civilian is injured or killed and the evidence from there, can that evidence be used in court in this circumstance?

Hon. Chan: I do not know how to answer that question but I think all these sections look at basically national security issues and I am not sure whether I can answer hypothetical questions and so I would rather leave that to the judges.

Attorney General: Mr. Chairman, Clause 139(1) deals with a situation where there is a public interest and in this case the public interest to uphold the criminal law. Now when considering admission of evidence given in a criminal law, it is seen that the kind of evidence that would be given in the criminal case relates to matters of state and there is another public interest which demands preservation of oath or secrecy or confidentiality of that kind of information, then the matter of state takes precedence over the other public interest.

Using the kind of case the MP has described, unless the evidence described is such evidence that requires protection, it has to be preserved as secret information of government or confidential information because it is really so much about protecting secret and confidential information of the government. That is why you see in sub clause 4 from (a) down to (f) it lists the kind of matters that can be regarded as matters of state. If there is need to preserve matters of state then that public interest takes precedent over whatever other public interest is. Thank you.

Part 10 agreed to

Part 11 - Clauses 140 to 142 agreed to

Part 12 - Clauses 143 to 161

Hon. Sogavare: Clause 155 deals with the privilege for information disclosing identity of an informer. Can the Minister and the AG help out as well on the possibility of this privilege to be abused? The question is what is the possibility of this provision being abused to rely on evidence that may not exist at all? Is

there a process to prove the existence of such evidence without disclosing the identity of the person?

Somebody could come up and say to me 'I have evidence like this which is confidential' but it might not exist at all, it is just made up. What is the possibility of this abused and there are other ways to counter that kind of evidence coming up?

Hon. Chan: I would also need the AG to come in on this. I think this is in terms of privileges information on informer's identity if they are not being called in as a witness. I am not sure whether they have privilege in terms of information given and that will go through the courts, anyway. It is only in regards to informer's identity. Obviously, if a prosecutor's witness and information cannot be used then it would not be used in court at all. I think this privilege extends to the identity and that they are not being called in as a witness. I think it is basically saying the same thing.

Attorney General: Mr. Chairman, the clause deals with privilege given to an informer so that the informer's identity is not given out.

The policy reason is this kind of clause would encourage people to give important information for purposes of investigation, police investigation or any investigation carried out by an enforcement agency. As to the question of quality of information or reliability of information, it is up to the agency to determine that. But once the agency has determined that the information is true and reliable that they can use it as a lead then the identity of the informer must be protected under the category of privilege information. That is basically what it seeks to do here.

Hon. Sogavare: Mr. Chairman, as I said this information is to support the case of the prosecution, like probably there would be doubt in the mind of the lawyer representing the accused, for example, that the government claims we have reliable information by an informer that needs to be protected, his identity must be protected.

The question is really asking the possibility of that information not existing at all or if we bank on the fact that this person giving information has privilege. In that case to prove the existence of that information that is subject to this privilege, would the defense lawyer, for example, have access to the knowledge that the evidence exists so that it is kept confidentially but they are satisfied that the information does exist and the prosecutions can rely on it.

Attorney General: Mr. Chairman, the informer when giving information can give information on the possible commission of an offense or actual commission of an offence. Actual should be easy because an offense has actually occurred and so you have an informer giving a lead on the commission of that offence. But where there is possibility that offense will be committed then the lead information, as I said today, is up to the enforcement agency to assess whether that information is reliable or not. This kind of privilege is only available if the information is given to an enforcement agency. It is not a privilege to an informer giving information to the defense side. No, it says law to an enforcement agency like the police. Information given to such law enforcement agency as such, the identity of the informer must be protected. It is not for information given to the defense side.

Hon. Chan: This provision is basically the identity that is proven and not the information. It depends on how the party uses the information as evidence in the courts whether they want to rely on it or not.

Part 12 agreed to

Part 13 -Clauses 162-166 agreed to

Part 14 - Clauses 167-174 agreed to

Part 15 - Clauses 175-177 agreed to

Part 16 - Clauses 178-190 agreed to

Mr Chairman: Hon. Members there being no consequential amendment required for the title and no preamble that concludes our proceedings on this Bill. This committee is now dissolved and the Minister in charge of the bill will report to Parliament when the house resumes.

(Parliament resumes)

Hon. CHAN: Mr Speaker, I wish to report that the Evidence Bill 2009 has passed through the Committee of the Whole House without amendments.

BILLS

<u>Bills – Third Reading</u>

The Evidence Bill 2009

Hon CHAN: Mr Speaker, I move that the Evidence Bill 2009 be now a third time and do pass.

The Bill is passed

Hon Sikua: Mr Speaker, I move that Parliament do now adjourn.

The House adjourned at 2.45 pm