MONDAY 22ND MARCH 2010

The Speaker, Rt Hon. Sir Peter Kenilorea took the Chair at 9.39 a.m.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of the Ministers for Planning and Aid Coordination, Provincial Government; Women, Youth & Children's Affairs; Peace & Reconciliation; Communications & Aviation; Health & Medical Services; Police & Correctional Services; Agriculture and Livestock; Infrastructure Development; Public Service; Environment and Conservation; Forestry and the Members for East Are Are; Central Guadalcanal; Temotu Pele; North West Choiseul; West New Georgia & Vona Vona; North West Choiseul; West Are Are; Temotu Nende; Central Makira; East Makira; North Guadalcanal; North West Guadalcanal; and Malaita Outer Islands.

PRESENTATION OF PAPERS AND OF REPORTS

- The Extradition Bill 2010 (National Parliament) Paper No. 7 of 2010

BILLS

Bills – First Reading

The Protected Areas Bill 2010

Bills – Second Reading

The Extradition Bill 2010

Hon. CHAN: I rise to move that the Extradition Bill 2010 be now read a second time.

I am honoured and indeed am greatly privileged to present to this Honorable House the Extradition Bill 2010 on behalf of this Government. This is a worthwhile and necessary Bill, which will modernize and improve the efficiency and effectiveness of our extradition system.

Extradition law requires a fine balancing act, between the need to prevent and punish crimes in an increasing international atmosphere, and the requirement to protect people who are within our jurisdiction from human rights abuses, whether or not these people are Solomon Islands citizens. This Bill aims to assist us in achieving that balance.

From the time of independence, Solomon Islands has continued to recognize that extradition processes are an integral and vital part of our justice system. This is true whether it is a matter of extraditing a Solomon Islands citizen accused of committing a

crime in another country or of extraditing someone to this country to face our justice system. The Bill provides a fair and just means of achieving that aim.

In the world of international relations and international obligations, all countries must continue to work together to combat crime and criminals who cross borders. We must do our part in the fight. We cannot be seen as a country who will give sanctuary to criminals. It is our sincere belief that people should not avoid justice simply because they have managed to slip over a border before the police could catch or arrest them.

Solomon Islands has always taken its extradition obligations very seriously. The current Extradition Act was commenced in 1988 and has served us well in the past. However, we must recognize that the world of international crime has become much more organized, much more dangerous and much more sophisticated than when our legislation was put in place two decades ago.

You may recall that in 2008 I promulgated the Extradition Regulations 2008. These regulations facilitated the smooth and successful extradition to Australia of a man who came to our country for the sole purpose of escaping facing a trial for the charge of murder committed in Australia. When preparing these regulations, officers in my Ministry had to critically examine the workings and structure of our current Extradition Act. At that time, my Ministry's advice was that in the long term, 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.

The Pacific Islands Forum has been proactive in developing and supporting model legislation that is suitable for member countries in the region. Member states agree to pursue uniform extradition in the Honiara Declaration. Between 2002 and 2005, the model Extradition Act Legislation has been commenced in Tuvalu, Kiribati, Vanuatu, Cook Islands, Fiji and Papua New Guinea.

Work continues to be done in harmonizing Pacific region extradition processes in 2008. In that year, the Pacific Islands Law Officers Network (PILON) agreed to encourage their governments to streamline extradition processes, with a 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 agreed to work towards harmonizing grounds of objection to extradition applications and exploring options to reduce or share the burden of extradition costs.

The Bill I have placed before Parliament is based largely on the model regional legislation that has been carefully developed and successfully implemented by many of our neighboring 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.

This Extradition Bill 2010 is also an important part of the package of legislative reform required to combat money laundering, counterterrorism and international organized crime. In 2007, Solomon Islands became a member of the Asia-Pacific Group on Money Laundering. A condition for membership is that each country must undergo

a mutual evaluation by a team of international legal, law enforcement and financial experts, of its implementation of the Financial Action Taskforce 40 Recommendations on money laundering and 9 recommendations on terrorist financing. Non compliance can have severe consequences for the country's financial sector and economy, including closure of its banks. For example, under the US Patriot Act, sanctions can be applied to prohibit US businesses from dealing with banks in the non-compliant jurisdiction.

This Government has gone a long way in preparing for this evaluation and ensuring that Solomon Islands is playing its part in combating crime. Ratification of the UN Counter terrorism instruments, enactment of tough counter terrorism, and now newer and more effective extradition legislation is a clear indication to the international community that the Solomon Islands Government is serious about protecting the integrity of its legal and financial institutions and fighting criminal and terrorist activities.

Solomon Islands faces the evaluation process in early December 2009. It is essential that there are effective legal and administrative frameworks in place by this time to meet the recommendations of the taskforce. The Government has already put in place the required Counter Terrorism Act 2009 and has agreed to ratify the UN counter terrorism instruments. The two final bills required to complete the legislative compliance for the evaluation are the updating/improvement of the Extradition Act and the Anti-Money Laundering and Proceeds of Crime Act. We are committed to progressing with these Bills.

As a member of the United Nations, the Commonwealth of Nations (PILON), the Pacific Islands Forum and the Asia Pacific Group on Money Laundering, and consistent with the United Nations Security Council Resolution 1373, it is essential that Solomon Islands enact legislation to put in place strong mechanisms to combat, prevent, suppress, detect and punish criminal activity and criminals who cross borders to escape prosecution.

An important element of this is to provide 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. The Extradition Bill 2010 repeals the current Extradition Act and replaces it with a system which allows for greater cooperation between Pacific Islands and Forum members on evidentiary and procedural aspects of extradition.

Let me now take some time to explain the structure of the Bill and the reasons for maintaining different processes for extradition to and from different categories of countries. Solomon Islands, currently, has extradition arrangements with a range of countries. With increased international movements of persons and increased transportation availability and options, it is envisaged that citizens of many more nations will come to our country in the future. Also, citizens from Solomon Islands will increasingly travel to destinations all over the world for a wide variety of reasons including tourism, employment, study, healthcare and family reunion. Some of these countries have political, legal and government institutions very much like or our own, based on the democratic traditions from the British Westminster style of government

and the common law. However, other countries have entirely different systems of government and systems of justice. It must also be recognized that our relations with other nations can change over time as their institutions and practices evolve.

Because of the range of countries and systems we deal with in the international sphere, it is not possible to have one extradition system which suits all circumstances. The Extradition Bill 2010, therefore, contains a core framework for extradition which is then modified to suit four different categories of extradition partners.

The simplest system applies to the Pacific Islands Forum Countries with whom we share so many similarities and such close physical proximity. The second system applies to Commonwealth countries with which we also share many commonalities. The third system applies to treaty countries with which we have entered a formal treaty relationship with. 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.

The increasing rigors of the system reflect the degree of confidence and trust we have that the legal system of the requesting country will deliver justice to the person whose extradition is sought. These are safeguards designed to ensure that adequate protection is provided to an individual being forcibly returned to another country to stand trial. The Bill allows the core extradition framework to be amended incrementally in order to protect the basic human rights of the alleged fugitive.

I think it is important for me to highlight the major changes to the current system that are introduced in the Bill. In line with the recommendations of PILON and the Pacific Islands Forum, the Bill introduces a fast-track extradition regime for Pacific Island Forum members. This recognizes that mutual recognition of judicial decisions made in Forum countries should be the cornerstone of judicial cooperation in criminal matters. These swift, simple procedures set out in the Bill recognizes the integrity of other legal systems in our region and demonstrates our confidence in the ability to conduct a fair and just trail for accused persons.

The Extradition Bill 2009 introduces a system for accepting and acting upon judicially issued warrants emanating from those countries without the country having to provide further evidence about the crime. This is referred to as a backing of warrants system. The backing of warrants system is a process for returning accused or convicted persons only between Solomon Islands and the Pacific Islands Forum member countries.

I would like to explain how this system works in practice. A warrant is issued by a judicial authority in the jurisdiction seeking an offender's return. This is then sent by the police force which obtained the warrant to the police force in Solomon Islands. If the police are satisfied that the offender is likely to be found here, the warrant is produced to a magistrate. If the Magistrate is satisfied that a warrant has been issued in compliance with the law in the other jurisdiction, and that the person is in Solomon Islands or on his way to Solomon Islands, the Magistrate issues an arrest warrant. The police will then arrest the person and bring him before a magistrate as soon as possible. The Magistrate then conducts extradition proceedings and if the Magistrate is satisfied that the person should be extradited, the Magistrate refers the matter to the Minister. The person has a right to appeal. After the appeal or if no appeal is commenced, the

Minister must be satisfied that the Act has been complied with and that the extradition should proceed. The Minister then orders the extradition of the person. If the Minister is not satisfied that the extradition order complies with all the criteria in the Act, the person is released.

To put it simply, the requesting jurisdiction does not have to provide evidence of the offence to a judicial officer in the second jurisdiction. The issue of a warrant by a judicial officer in the requesting jurisdiction is sufficient to secure and arrest and return of the alleged offender. However, the Magistrate and the Minister provide an important safeguard to ensure that the rights of the person are carefully protected and that the application for extradition is lawful.

The current legislation does not allow the regional backing of warrants system. Solomon Islands requires Pacific Islands states to satisfy the prima facie evidence test in making extradition requests. This test is considered more difficult and costly to satisfy than the test preferred by PILON members. It makes the process of extradition to and from Solomon Islands more complex and expensive than it is between other Pacific Island nations and may lead to criminals coming to this country to escape the law enforcement net.

Papua New Guinea, Fiji, Tuvalu, Kiribati, Vanuatu and the Cook Islands have the backing of the warrants system. This greatly simplifies and streamlines the extradition process between those countries and makes it a lot cheaper and faster to administer. Legal officers from all the other Pacific Islands Forum (PIF) countries have agreed to work towards adopting this system in their jurisdictions.

The backing of the warrants system would only apply to selected countries who are members of the Pacific Islands Forum. The reason for this restriction is that the streamlined procedure would only be used by countries whose legal systems adhere to human rights conventions and who do not use torture, racial or religious discrimination or double jeopardy. Participating countries must have a legal system that ensures fair trials, an independent judiciary and allows an accused the opportunity to put their case and to be heard.

There are two major advantages of enacting legislation based on the model that has been developed for our region. One is the administrative efficiency created by uniform procedures for all member states; and the second is that it provides a simpler and more streamlined method for extraditing between member states in the region.

The second category of extradition countries are those that belong to the Commonwealth but are not Pacific Islands Forum countries. Extradition to these countries requires a higher standard of evidence. This requires a "record of case" test. For Commonwealth countries, the prima facie case test is not required and they face a simpler scheme, which involves supplying a 'record of the case'. This requires a list of all available evidence and an affidavit from an investigating officer stating that the listed evidence has been preserved for use in the trial. The evidence is also accompanied by a certificate from the appropriate authority stating that there is sufficient evidence for the case to go to trial in the requesting country.

The record of case procedure was developed specifically for use by most Commonwealth countries because those countries have been assessed by the Commonwealth community as basically having the same robust, just and fair criminal justice system as Solomon Islands. Whilst some of their statutory offences may differ, we can be confident that matters such as standards of proof and criminal trial procedure and practices are substantially the same. This means there is a very high probability that the amount and type of evidence which would be sufficient to justify prosecution in another Commonwealth country would also be sufficient to place the person on trial in this country if the offence has been committed here. The record of case scheme provides uniformed and consistent procedures used throughout the Commonwealth so that extradition countries know precisely what documents need to be produced and certified in order to secure an extradition order from each other.

The next category of extradition concerns requests made by treaty countries. These countries must comply with the general schemes set out in Part 3 of the Bill. They must also comply with any further requirements set out in the treaty they have made with Solomon Islands. Depending on the degree of confidence that the Solomon Islands Government has about the legal procedures and systems in a treaty country, it can nominate in the treaty which standard of evidence should apply to that country. Thus, treaty countries can fall under the general scheme, the backing of warrants scheme, the record of case scheme or the prima facie evidence scheme depending on agreed terms of the treaty.

Part 7 of the Bill applies to countries that are not members of the Pacific Islands Forum or Commonwealth countries and have not entered into an extradition treaty with Solomon Islands. These countries are permitted to make an application to the Minister to be prescribed and certified as extradition countries. If the Minister agrees to the request, these countries must make the extradition application in compliance with the general procedures set out in Part 3, or in accordance with any necessary modifications made by the Minister.

Part 9 of the Extradition Bill, like the current Extradition Act, also contains provisions relating to the extradition of persons to Solomon Islands. It sets out the procedures for making the request and contains machinery provisions for holding and transporting the person.

I believe that this Bill represents a sound and sensible basis for extradition to and from Solomon Islands. It safeguards the rights of those who are subject to extradition while ensuring that requests are dealt with in a streamlined and effective manner. It will help ensure that victims of crime have a chance to see justice done fairly and swiftly. In a world where travel is so cheap and easy, we have to recognize that crime, particularly organized crime, is much more transnational. We need mechanisms to cope with foreign fugitives if we are to be serious about combating crime in our country and our region.

The Government should be rightfully proud of this Bill and the contribution it makes to the betterment of the nation. This Bill modernizes our extradition system to ensure that we can extradite people within a reasonable timeframe while at the same

time, still ensuring that those people have a right to a hearing before a Solomon Islands magistrate and an appeal before a Solomon Islands judge. It will contribute an important element in our strong armory for the fight against serious and organized crime.

I have great pleasure in commending the Bill to this Parliament. With those few remarks, I beg to move.

Mr Speaker: Honourable Members, the Minister has moved that the Extradition Bill 2010 be read the second time. Normally, the second reading debate should continue but I understand that the Honourable Minister wishes to instead adjourn this debate. I now call on him to take the necessary steps.

Hon. Chan: I move that the debate on the Extradition Bill 2010 be adjourned until the next sitting day. I am moving adjournment today because the government wishes to leave this debate until tomorrow as reflected in the statement of government business this week as announced by the Honorable Prime Minister last week.

Debate on the Extradition Bill 2010 adjourned to the next sitting day.

MOTIONS

Hon. CHAN: I move that Parliament resolves itself into a Committee of the Whole House to consider the Solomon Islands Courts (Civil Procedure) Fees Rules 2009, *National Parliament Paper No. 36 of 2009.*

First, let me thank you all for allowing me this opportunity to move this motion in this House. At the outset, let me thank the courts in Solomon Islands for the tremendous work they are doing for our nation despite the many challenges our country is facing and they as an institution and being one of the three arms of our democratic system of government face in their efforts to deliver professional and affordable justice to the many citizens and people of this country.

Turning to this motion, this motion seeks to ask that this Parliament resolves itself into a committee of the whole house to consider and approve the Solomon Islands Courts (Civil Procedure Amendment) Rules 2009, National Parliament Paper Number 36 of 2009.

The Courts in Solomon Islands have been allowed by the laws which govern them to collect fees as contribution towards the cost of court services offered to the parties and the public. The fees are a very tiny part in the overall cost of litigation. The Solomon Islands Government continues to be the main source of resource provider for the courts in Solomon Islands and over the years we have also had the privilege of donor partners assisting the government towards the cost of providing court services to our people.

The Solomon Islands Courts (Civil Procedure) (Amendment) Rules 2009 which appear as National Parliament Paper Number 36 of 2009 revises the fees payable to the

court registry by litigants to file matters, issue court process and use court facilities in the High Court and the Magistrate Courts throughout Solomon Islands. In 2008 a new Solomon Islands Court Civil Procedure Rules came into force. These Rules are called the "Solomon Islands Courts Civil Procedures Rules 2007". To be precise, these rules commenced on the 1st March 2008. These Rules replaces the 1964 High Court Civil Procedure Rules, the Magistrate Courts (Civil Procedure) Rules 1969. The work to assist the Rules Committee established under section 90 of the Constitution came up with the Solomon Islands Courts Civil Procedure Rules 2007, which was done by a subcommittee chaired by the Chief Justice himself and had representatives from the office of the Director of Public Prosecutions, the Public Solicitor's Office, the Solomon Islands Bar Association and private legal professions. As a result of the reform brought about by the Solomon Islands Courts Civil Procedure Rules 2007, it was also necessary to reform the civil court fees payable in respect of matters brought before the civil courts.

The reform of the civil court fees was conducted in conjunction with the reform of civil procedure that culminated in the introduction of the Solomon Islands Courts (Civil Procedures) Rules 2007. The objective of this review was to ensure that the civil courts provide the public with an accessible, high quality system of dispute resolution. The system should operate by a set of principles that aim to ensure that it:

- Is fair in its procedures and practices
- Is able to secure just outcomes of disputes
- Is accessible to those who need to use it
- Encourages mediation and early settlement
- Is as quick and cheap as it is consistent with delivering justice
- Makes efficient use of its resources
- Has regard to effective and efficient use of client resources.

It is essential that civil courts have sufficient, judicial, administrative and physical resources to meet the demands that are placed upon them consistent with those principles.

Section 90 of the Constitution provides for a Rules Committee to make rules of court regulating the practice and procedure of the High Court and the Court of Appeal, prescribing the fees to be paid in respect of any proceedings and generally for making provisions for the proper and effectual exercise of the jurisdiction of the High Court and the Court of Appeal including procedure for making and hearing of appeals to the High Court from subordinate courts and for making and hearing of appeals to the Court of Appeals from the High Court.

Colleagues will note that the Solomon Islands Courts (Civil Procedure) (Amendment) Rules 2009 contains both the fees payable for the High Court and Magistrate courts matters. This motion seeks Parliament's approval for fees payable for High Court civil matters as required under the provision to section 90 of the Constitution.

The Solomon Islands Courts (Civil Procedure) Rules 2007 was approved by the Rules Committee in 2007 and commenced on the 1st of March 2008. The Constitution requires that fees increases sought by the Courts and approved by the Rules Committee need to be approved by Parliament, thus this motion.

Solomon Islands Court resources are provided from the public purse. Modest filing and court fees are recovered from litigants but this forms a very small part of court revenue and is a tiny part in the overall cost of litigation. As a matter of public policy in the common law world, it is considered prudent and fair that those who use the civil court system should make some contribution towards the cost of the service. This provides some deterrent against frivolous and vexatious claims. However, it is important to ensure that the level of fees is not set at the scale that would prevent parties from accessing the court system. The current fees are very low and the proposed increases sought in this rule are very modest. The fees have not been increased for six years and the small rise sought is approximately one-third of the estimated rise in the Consumer Price index over that same period. It must also be remembered that the civil system generally works on a "loser pays" basis so a successful litigant can recover any fees paid from the losing party.

Court fees are payable at each stage of the litigation process as the case progresses through the system. Thus parties that settle their matter at an early stage pay less cost. Those parties that use the full range of the court resources pay the most. This encourages early settlement of disputes and ensures that parties do not have to pay for service that they do not need to use.

The filing fees are set on a scale that increases with the value of the claim. Parties with small claims using the magistrate's court, for example, pay a very low filing fee of $35.00. Fees increase over eight (8) categories with the highest fee being $1,700 for a claim in the High Court which is over $500,000.00. This ensures that litigants seeking redress for small claims are not discouraged by the high fees. Most importantly, the court has discretion to waive the fees to litigants who cannot afford to pay the fees. This ensures that no-one is denied their right to a day in court through inability to pay court fees.

The last increase sought to the High Court fees was in 2003 when a similar motion was also moved in this Parliament. The fees increases sought by the High Court are modest and well below the increases in the general cost of living over the same period. The courts have greatly improved the efficiency of the civil system and the service delivery to the community. The increase in revenue will assist the court in a small way to subsidize and maintain improved service delivery. The increases do not affect the affordability of court services as the fees may be waived on the grounds of poverty or hardship.

The proposed new fees scale for the High Court as contained in the Solomon Islands Courts (Civil Procedures) (Amendment) Rules 2009 as National Parliament Paper Number 36 of 2009 is a fair and just cost subsidization strategy for the provision of a vital service delivered with a high level of reliability and professionalism.

With those few remarks, I beg to move.

Mr Speaker: Before the debate commences I wish to kindly remind Members who may contribute to please confine your contribution to the general principles of the paper, and to adhere to our rules of debate.

(The motion is open for debate)

Hon. SOGAVARE: I rise to speak in support of the motion moved by the Minister for Justice, pursuant to Section 90; which is a requirement of the Constitution that the Minister requests the approval of Parliament on the increase in fees before it starts to implement and so it is a clear requirement of the Constitution.

In saying that, I would like to join the Minister as well in thanking the court system in the country for the professional nature in their conduct themselves in delivering justice to this country. I think those of us who have come through the dark period of 2000 can well remember that when all the other systems of the country collapsed, the justice system of this country continues to be alive and protects its integrity. That is an achievement that is commendable and something that deserves the praise of leaders of this country in the way our justice system continues to protect its integrity. I would like to take this opportunity to congratulate and speak in support of the work that the justice system of the country continues to deliver to this country.

The Minister took the pain in trying to explain to the House that Parliament should not really be concerned about the level of increases, and I think that is a very important concern because access to legal services is important. If the fees are set too high and it has the effect of putting people off to resort to the legal system to sort out disputes, then it is defeating the whole purpose of establishing the legal and judiciary system of this country. Its accessibility must always be guaranteed, and in many ways, and one is by setting fees that are affordable. I think from the explanation given by the Minister we can be comfortable that that is the case. People, maybe for reasons that they have to resort to the legal system, but cannot afford the fee, that can be waived. I think that is a comforting position that the Minister has put to the House, to comfort this House when we look through the increases suggested by the paper that is presented before Parliament.

Six years ago, of course, is quite long time ago for any fees that are around not to be reviewed. In fact, it is a requirement of the Public Finance Audit Act and Financial Instructions that fees are reviewed almost annually. Before budgets are set, it is a requirement for all Ministers who have powers over acts of Parliament to review their fees. Because review is review, it is strictly review, and it is either a review up or a review down, and so it should not be just a review up all the time. Of course, this review and what the Minister has been saying is because of inflation and so there is need to keep in tune with the rising costs of delivering legal services. So, we take it that when the inflation goes down the fees will also go down. Otherwise they just get stuck at the top without coming down again.

I think with what the Minister has stated earlier, I would like to join him to basically comfort the House that from what he has been telling us we can be rest assured that the needs of the people who otherwise would not be able to afford the fees, is well catered for in the explanation given by the Minister.

With that, I support this motion.

Mr. WAIPORA: Just a very short contribution that I would like to make here in regards to these new rates. Every responsible people have considered these new rates that are now before Parliament for deliberation. I wonder when they were reviewing these rates, whether they also bear in mind the services that private legal practitioners are doing. Like for example, if I won a case, I will have to end up with a legal private legal practitioner and I have to pay some fees. If you are dealing with a private lawyer and how long it takes you to be with him, you will certainly end up with $20,000, plus the fees to be paid to the high court. For example, an application for divorce at the High Court, the High Court fee is $85. That fee is paid to the high court but you also have to pay some fees to your private lawyer so that he takes up your case. That is my only concern when I come across this. I thought although they are very reasonable increases but some people find it very hard to use the services of the private lawyers. Sometimes they end up with $20,000 or $30,000 fee to pay depending on how long they use the services of the private lawyer and they end up at the High Court and then this fee comes in with the additional fees paid. I think I may have a wrong idea about this, but if you start off with your case, and only the Public Solicitors are free, but when you want them to take your case, of course, you will have to pay some fees. You start off with $3,000 as legal fee for your private lawyer and as you go along you will keep on paying your lawyer for some amount of money until your case is completed after, of course, you have already settled your fee with the High Court or Magistrate for that matter.

In my short and humble contribution that is the only concern I have because even if we have these increases here the increases always happen at the beginning of a case. That is the point I would like to raise here but otherwise I support this motion.

Mr. FOLOTALU: I would like to contribute briefly to this motion. First of all, I would like to thank the Minister for Justice and Legal Affairs for bringing this motion to Parliament.

I see these increases as justified because it has been a while since there have been no changes to the fees. Last year we brought to the House some changes to certain penalties for certain offences under the Criminal Act. But this is a small contribution towards revenue that courts normally receive from litigants, and so it is good to bring these small increases. These are not very big increases, like divorce cases it is only $85. If anyone files a divorce case and divorce litigation it is only $85. And nowadays when we see 01, 02, 03 being common these days that amount is reasonable. It is normally the disadvantaged ones, especially divorcees are the disadvantaged ones and so this amount is reasonable for anyone who is divorced to file a case at the courts.

We can also see here when we go through that election petitions too is only $2,000. I think it should go up to $5,000 or something like that so that the courts can receive some money from people who are very keen on taking up petitions. That amount of $2,000 is reasonable.

There is a fee here on people who borrow on credit and cannot repay the money, it is also here and it is a very small amount. These are reasonable fees. I see these fees as justifiable and reasonable to be changed and also timely so that our courts can work effectively and efficiently. But there are times when I think justice is not delivered is when cases are delayed. At the magistrates, some civil cases that have been already paid for a long time are still filed as pending so justice is delayed. I think if people paid their fees the magistrate should execute their judgment.

There are some people too who have paid their writs of execution, which the court has already made judgments but the people did not pay up and so they have to go back to the court to pay the writs of execution. Many writs of execution, and I am talking about before, I do not know about time, but during our time it was usually the police that went to execute the writs, and so there are many writs too lying around inside the prosecution offices that are not executed. So people are just paying for nothing but there is no execution of court judgments.

Those are the things I want to raise, but otherwise I can see the reasonableness of this motion.

Mr. TOSIKA: I think this increase in High Court fees came about because last year we passed increases to penalties on other laws or most of the laws of the country. This increase as rightly mentioned by the Minister is an increase of almost one third on top of existing fees. I think the present fees that we are now trying to enforce through the motion moved by the Minister, is relatively within the means that people can afford to meet. With these few words I support this change to the fees.

Hon. Chan: I would like to thank everyone who contributed to the motion, and almost everyone of them have spoken positively in their debate to the Solomon Islands Court Civil Procedure Fees Rules 2009, National Parliament Paper No. 36. Thank you very much for those contributions.

Let me remind this House also that the increase in these fees for the courts contributes to a very small percentage of the cost of running court services offered to parties and the public. It is always the intention to provide the public with accessible and high quality system of dispute resolution, and so increase in these fees will contribute to a justice system that ensures there is fairness in these procedures and practices, it is able to secure outcomes of disputes in a very timely manner, it encourages mediation and early settlement, it is a quick and cheap and consistence to delivering of justice and makes efficient use of its resources.

Some of the concerns raised were about the fees, and I am heartened to hear that this honorable House has no problem with the modest increase in fees, and also the

dispensation process for these fees due to hardship and poverty. So accessibility to the courts for the parties, the public will always be there.

A query came out on the issue about the user-pay system, of course, the courts like any other business is a user pay, the more you use those services the more you have to pay. With those few remarks I thank all those who participated in the debate of this motion.

The motion agreed to

Committee of the Whole House
Clause 1

Mr. Oti: Will we look at this document, which starts off when these rules are made, and there are sections, (A) & (B), is that the one.

Thank you, I know. Pursuant to section 19 of the Constitution, in the Minister's remarks and also as has been brought up in the general debate, this is made in pursuant to section 90 of the Constitution. Also, these rules are made pursuant to Section 76 of the Magistrates Court Act, Cap 20, section 115 of the Bankruptcy Act Cap 3, and section 5 of the Foreign Judgments Reciprocal Enforcement Act, Cap by the Chief Justice, and then the rules follow.

I have access to Section 90 of the Constitution which (a) is making reference to. Perhaps the Minister or the AG could tell us what those other laws mentioned in (b) are in so far as these rules are concerned.

Attorney General: I do not have those Acts with me at the moment, but basically those Acts empower the making of fees in respect of the magistrate courts and bankruptcy, and bankruptcy has its own fees under the Bankruptcy Act and so as the Foreign Judgment Reciprocal Enforcement Act. But the general making power is section 90 of the Constitution. That is the general and the supreme power and then there are specific powers also in those three legislations mentioned in paragraph (b).

Mr Oti: I could well understand what Cap 20 of Section 76 of the Magistrate Courts Act says, because if you look at the schedule you will find perhaps where the fees are, the charge in so far as the magistrates courts are concerned. When you come to those columns that are blank, probably because it comes from the other three legislations mentioned therein, if you look at the Bankruptcy Act Cap 3, a provision for application for bankruptcy is also in here, the bankruptcy Notice, item 14 in terms of application for bankruptcy notice is $350.

Now inside the magistrate, it does not fall within the jurisdiction of the magistrate, but only at the High Court. Because of that I could well understand the sections in the Magistrate Court Act Cap 20, but the others are not there. Of course, I also take note that a bankruptcy notice will come out from the requirement of that section of the Bankruptcy Act that is mentioned in item (b), perhaps that is why it shows

that the amount of $350.00 mentioned on fees payable for you to apply to the High Court.

Foreign jurisdiction, unfortunately, is not there and that is why I am asking that question but I accept the explanation by the AG on this matter.

Mr. Zama: I wish to further reiterate the point raised by my colleague here that in the absence of the appropriate sections where the AG has confirmed that he even does not have them.

I think it will be very unfair to Parliament to just go through these sections without even seeing them and knowing what their contents are so that we just blindly approve or not approve or endorse what is before us.

I am strongly of the view that this Parliament must be given the appropriate papers, those sections of the law so that we see them. This is an important issue so why should we be not given the opportunity to even have a look at the papers. I am strongly of the view that Members of Parliament must be given the appropriate sections of those laws. Thank you.

Hon. Chan: We come to this House because of the High Court fees using Section 90 of the Constitution. We do not have to come back to this House for the Magistrate Courts Act because they can do that themselves without coming to this House for approval.

The reason why some of these fees are related to the Magistrates Act, the Bankruptcy Act and the Foreign Judgment Act is because when they did the Civil Procedure Rules in 2007 it was combined, they combined the High Court fees with the Magistrate fees, and that is why it sort of tagged along with those. But really we should be looking at pursuing section 90 of the Constitution with the High Court fees. But it has been combined when the High Court looked at increasing all those fees at that time.

Mr Waipora: Just a question. Could this kind of rules go through the Bills & Legislation Committee? Maybe it went through the Committee but I was absent during that meeting and so I do not know. Maybe my colleague here can confirm it to me, but I have not seen it come through the Bills & Legislation Committee. Can this come through the Committee too or is it only big bills that come through? I never remember anytime the Committee has looked through this Bill.

Mr Zama: I am the legislature and this is Parliament. I am honestly not convinced by what the Minister has said. Parliament must be accorded the appropriate papers and no one will convince me as to whether they are absent here or whether they are present. But parliament must be given the appropriate papers whether it is a jurisdiction of the Magistrate Courts or the Constitution or the High Court, I still demand that those papers must be presented so that we can have a fair reading of those papers and fill my mind and very confident and comfortable with what I am reading before I can make the appropriate judgment and decisions on the floor of Parliament.

Mr Chairman: Committee of the Whole House is suspended for half an hour so that the necessary papers are produced.

Committee of the Whole House suspended for 30 minutes

Mr Chairman: We will continue our consideration of clause 1.

Mr. Zama: I want to thank you chairman for granting that short break to allow for these papers to be provided.

Attorney General: I wish to further explain the rules in addition to what the Minister has said because of the questions asked by the Members.

It is important to note that section 90 of the Constitution creates the Rules Committee and then gives the Committee the power to prescribe fees to be used in the High Court and Court of Appeal for the proper and effectual exercise of the jurisdiction of those courts. That is the first point the House needs to take note of. I wish to emphasize that that power is made in respect of the High Court and the Court of Appeal. That is the first point I want the House to take particular note of.

The Rules you have here is a combined rule or unified rule and so you see the High Court and also the Magistrate Courts; you see the Magistrates Court coming into these rules. Rather than having separate rules for the Magistrates Court, this rule is a combined rule bringing the Magistrates Court as well.

What the House is required by section 90 is to approve the rules in respect of the High Court and the Court of Appeal. The House is not asked to approve rules in respect of the Magistrate Court. That is not in section 90 of the Constitution. Section 90 makes specific reference to the Court of Appeal and the High Court. But because of the approach we are taking to combine the fees in one rule, a unified system, and that is why we have the Magistrates Courts fees appearing in the Schedule. And it was for that purpose that you see paragraph (b) inserted on the first page of the Rules, which makes reference to section 76 of the Magistrates Court Act, and the Magistrates Court Act is on the copies that are distributed. It merely says that the Chief Justice may make rules of court under this Act; that is the Magistrates Court Act for all or any of the following purposes, and then you have a list of specific matters or things which the Chief Justice can make rules on.

Also on the copies distributed you have section 115 of the Bankruptcy Act. That section 115 also vests on the Chief Justice the power to make rules providing generally the carrying into effect the objects of the Bankruptcy Act.

Also in the copies distributed you have section 5 of the Foreign Judgments Reciprocal Enforcement Act. Again, that section 5 gives the Chief Justice the power to make rules for the matters listed therein.

As I said, only when the fees are made in respect of the High Court or the Court of Appeal that we are concerned with in this House for approval pursuant to section 90 of the Constitution. Thank you.

Clauses 2, 3 & 4 no comments

Schedule 1

Mr. Oti: I guess this really goes back to clause 4. We are not given the current fees applicable for which the ones that are now set down here are replaced. Just note it so that we know the increase by how much. I do not think that is necessary but I am just making that point.

Mr. Zama: Maybe just moving a little bit further from the question raised, and this is on the different category of fees; the Magistrates Court, the High Court and more so, on the High Court fees. For instance like the starting proceedings on (1) application for divorce, adoption, probate and any other, the $85 application, on what basis or how did they arrive at that figure? I think it is important for us to really understand how they arrived at those figures. Do they just think of a number and put it down?

Hon. Chan: No, these figures are basically across the board increase duty CPI rises. Since 2003 it would be a third of the CPI rises.

Mr. Zama: We have to accept the fact that the charges maybe are outdated and given the situations or the circumstances we are in these days, it is no longer the same. But say if there is an increase in salary, it is pinned against something. There are certain rates you need to base the increases on. And in the case of these fees, what really is the basis is what I would like to question. Is it just a general increase without substantiating it? Is there any basis for these increases or whether these increases here really reflect what we need to take on board given the circumstances and the basis on which there is need for increase? This must be justified for Parliament to accept and approve.

Mr Chairman: I think the Minister made references for the basis of the increase during his general debate, but he may like to explain in detail.

Hon. Chan: Basically, the Committee itself is very wide with the Chief Justice involved and the Attorney General to consider all the increases in cost. Let me give an example say in terms of applying for registration on foreign judgment on filing on a counter claim, in 2003 it was $1,500, and with CPI rise it would be $1,950 but we have put it at $1,700 here because it is a third of the CPI rise. It is just basically an across the board increase. It is due to CPI rises but we have only taken a third of it across the board.

Hon. Sogavare: Item 21 – interlocutory applications, applications in a case where consent orders or other orders not requiring attendance at court are sought. This has been free all along. Basically, the rationale to charge fees. If the fees relate to the use of court service, the service that the court renders, we take it that these fees are for that

purpose. In the case of item 21, why has it been free? It does not require the attendance of people, the contending parties do not attend, so why has it been free although some services of the court are required here.

Attorney General: Perhaps if I could give a practical explanation to this kind of service may help Members to understand why that particular work is not being charged by the court. It deals with cases of consent orders. What normally happens is when making consent orders the parties merely agree outside of court, and the lawyers for the parties write up the consent order. It does not involve courts time in writing up the consent order. The parties themselves write up the consent orders with the assistance of their lawyers and they sign it; the parties sign the consent order themselves. All that is required from the court is for the court just to countersign it, to sanction it.

In some court consent orders, yes, it may require actual appearance before a judge if a judge has a question to ask like, is this a matter that you should just settle by consent or is there an issue that is yet to be inquired into? In that kind of matter court will normally not sign the consent order but ask parties to make submissions, and once they reach that kind of stage then that is the kind of stage that will require the service of the court. Otherwise consent orders are normally signed outside, the lawyers just file it and the judge just countersigns it to sanction it.

Then there is an extended part there applying to the situation of children. I think that can be understood. We do not want to impose strenuous onus on matters dealing with children as far as fees are concerned because fees can, if not properly used, cause blockage to access to court.

Mr. Oti: Item 28 there is perhaps a renumbering error there. There are two 28 and then 30, there is no 29. All those are debts - enforcement order for judgment for debts less than $25,000 to debts more than $100,000. I guess these are for clients who want the courts to enforce an order of judgment which has been passed by the courts and seeking an order for that court to enforce that judgment so that the debtor is met to pay those amounts.

Where the state is the one that is owed these amounts, there is no need to resort to court. Can I get confirmation from that, as it is settled outside of the court? There are other mechanisms for which debts are pursued by the government which people owe to the government and then in order to resort to the courts. This is for peoples outside, for example.

But if the government owes someone amounts of money and the judgment is brought on the crown to pay and the crown does not pay, this is where an individual enforces it. I want to seek clarification on the other way around whether there are other mechanisms other than the courts to enforce judgment orders by the courts.

Attorney General: Once a judgment has been issued or delivered it is up to the parties to enforce, because they must see the benefit of their judgment. Otherwise the judgment will just lie and sometimes can become stale. So the onus is upon the parties, especially

the winning party to enforce the judgment. Therefore, the winning party has to utilize whatever resources available to him or her to enforce the judgment using his or her lawyers. Where, however, the winning party finds it is difficult for him or her to enforce the judgment against the judgment debtor, perhaps because the judgment debtor is becoming aggressive, threatening like that, then the wining party may want the assistance of the court sheriff to assist in the enforcement of the judgment, therefore, that wining party has to pay the fee in applying for the assistance of the sheriff of the courts. But in practice that amount may also be quite low depending on the location the sheriff is going to, how much difficulty the sheriff will face up with, and all that. That is a quite generous or reasonable fee for these rules to set up.

Hon. Sogavare: Just to seek the clarification of the Attorney General on item 15. There are two different terms used here, 21 uses the term free and item 15 on debtors petition, no fee. What is the difference between these two in legal terms?

Attorney General: They are both the same. I cannot explain the choice of words there but they are both the same.

I earlier today referred to the service of the Sheriff which appears in items 33 & 34. What it means if we connect it back to item 28 is that that is the fee paid by a party to initiate enforcement, but when it comes to the cost that is expected to be incurred by the Sheriff then that is what items 33 and 34 are set up there for. There is a differentiation already there in 33 and 34 relating to distances the Sheriff is expected to cover in the performance of his duties.

Mr. Oti: A correction there to item 29, perhaps, if I can be excused. Why are both of these costs the same, the same in the Magistrate and the same in the High Court, unlike the others? The Magistrates is $55, the High Court is $55, Magistrate is $85, the High Court is $85 whereas for the others you will see that the Magistrates is less than the High Court charges. Is there any reason why when it comes to amounts less than $25,000 or less than $50,000? Because it means, if you deal with it at the Magistrates Court and you are not satisfied and you take it to the High Court, it is the same amount that you pay two times. There is no difference in the service that is going to be provided in either of the two levels of court.

Hon. Chan: I guess the answer I can give is that these enforcement orders, which are judgments, the figures are the same, maybe the services are the same whether you take it to the Magistrates or the High Court. Those numbers are the same $25,000 or between $25,000 or $50,000 or $50 and less than a hundred, they are all the same, the services are the same. In items 28 and 29, the services are the same provided by the Magistrates as well as the High Court.

Mr. Zama: I suppose this is just a draft document, and there maybe some typing. But looking at it, there is no date to show when this paper was signed. I suppose if the date

was there and the High Court stamp because otherwise this would have to go back to the date on which it was signed for retrospect approval and application.

Attorney General: That is not a draft. The Ministry and I will check why this is so, but under Standing Order 90, no rules shall come into operation unless approved by Parliament. It is the decision of this Parliament that will commence the rules. It is not a fatal omission if it is an omission but we will check.

Mr Chairman: Honorable Members, that concludes our deliberation of this particular paper. The only question left for our determination is the mover of the earlier motion to report to Parliament when the House resumes.

The Paper agreed to

(Parliament resumes)

Hon. Chan: I wish to report to the House that the Committee of the Whole House has considered the Solomon Islands Courts Civil Procedure Fees Rules 2009, National Paper No. 36 of 2009.

Mr Speaker: The honorable Minister reports due consideration of the paper.

Hon. Chan: Under Standing Order 18(3) I beg to move that Parliament agrees to the Solomon Islands Courts Civil Procedures Fees Rules 2009, National Paper No. 36 of 2009.

The motion is passed.

ADJOURNMENT

Hon. Sikua: Thank you for granting me permission again to move this Special Adjournment Motion. I move that at its adjournment today, Monday 22nd March 2010, Parliament still stand adjourned until 2pm on Tuesday the 23rd March 2010.

The main reason for this special adjournment motion is to enable a number of Ministers, Members of Parliament as well as the honorable Leader of Opposition, the Deputy Prime Minister and myself to attend a commencement of project development ceremony of the Gold Ridge Project at the Gold Ridge mine site tomorrow, Tuesday 23rd March 2010 starting from 10am to early in the afternoon. As all of us are aware, the Gold Ridge Project is a national project that this government as well as the previous government have worked hard in facilitating its reopening. The eventual reopening of this important national project is a very welcomed development that we should all be proud of because it will contribute towards our economic development.

The reopening of the Gold Ridge mine also sends a strong and positive signal to investors that Solomon Islands is indeed recovering from the difficulties it has had seven to eight years ago, and that our environment, our business environment is again conducive for investment and business.

The government looks at the Gold Ridge project as one of its flagship projects, and with the declining revenues from our logging industry, we are working to ensure that our mining industry is one of the alternatives to logging as well as tourism, fisheries, and agriculture. This is indeed an important signal to investors that, we are, as a country is now open for business. Hence, our presence at the commencement of the project development ceremony of the Gold Ridge Project is important and demonstrates our continued support for this very vital national project.

I trust that all colleague Members of Parliament will appreciate and welcome the fact that after several years of striving to reopen the mine, we have finally come to a stage where the project is now ready to commence its operations. I might as well add that the finances for commencement of operations and the ongoing operations of the mine are available.

On this note, I wish to thank the investors both Gold Ridge Mining Limited and the Allied Gold Limited for their tremendous efforts and confidence in working towards the reopening of the Gold Ridge mine. I wish also to thank the landowners and the communities in and around Gold Ridge for their support and cooperation in allowing this national project to finally proceed after it was closed during the times of trouble. This Government will continue to work closely with the investors and resource owners as we strive together to attain our development aspirations. With these brief remarks, I beg to move.

(The motion is open for debate)

Hon. SOGAVARE: I would like to rise to speak in support of the motion, and to join the Prime Minister in congratulating everyone who are involved in the reopening of this Mine, and the only mine that is now in operation. I think as alluded to by the Prime Minister what is at stake in this country is the confidence and trust that investors have on this country. As a result of the problems that plagued our country, the trust and confidence that investors have on this country has dwindled and the efforts to build the confidence and trust that investors must have for this country is something that is commendable and something that we must congratulate and recognize.

Solomon Islands is a very small country. In terms of its own effort to general internal internal capital to progress its development, we basically do not have that capacity and we will continue to rely on foreign investment to do that. And so this occasion that will be commemorated tomorrow is something that leaders should support. And so if you received an invitation I would encourage all Members of Parliament to join the team that will go up to witness the reopening of a very important development that happens in our country, which I hope will send the signal to investors

that the environment in Solomon Islands is now back to normal for investors to come back to this country to invest.

I join the Prime Minister to encourage those that have invitations to go up. I have no problem supporting this motion.

Mr OTI: I would also like to thank the Prime Minister for this motion and also, Mr Speaker, your office, I mean the business of Parliament is meeting, but with the discussions that have taken place we have all agreed, your office and the Office of the Prime Minister have agreed that we dispense with tomorrow morning's normal schedule time of meeting and give time for those of us who have been invited to be onsite for this important project.

Indeed, I can only reiterate what the Prime Minister has stated and also reiterated by the Leader of Opposition on bringing back investor confidence to Solomon Islands. Of course, this is perhaps the beginning after a long process of trying to work on and offering Solomon Islands as a safe, secure country in doing investment. After all, we are competing different countries, not only in the region or elsewhere but more so in the region we are competing for investment. And critical to this would be, not the availability so much of the resources, what can be turned into financial benefit either for the country or for the investor, but most important at stake is whether I can get a return on my investment based on the confidence that I have in the country and therefore, this is the beginning.

But this must apply throughout Solomon Islands. Guadalcanal does not necessarily represent Solomon Islands, and investors must also know that this island is not the only island in the Solomon Islands. Solomon Islands constitutes of many, many other islands and therefore the environment for investment in the different islands in some must be the environment that Solomon Islands is representing.

While we are glad of this, we have a lot of work to do in other places, in other islands where prospect for investment is also high. So we must not be complacent now that this Gold Ridge Mine will resume and then, of course we do not pay much attention to other parts of the country. The onus is equally there on other islands to open up for investment so that we can truly say that Solomon Islands is now safe and secure for investment by foreign investors, not only foreign investors but also domestic investors. I want to invest in the Western Province as a Solomon Islander. I want to invest in Malaita as a Solomon Islander. At the moment it is not happening that way and this is because the environment we are now in, let us not imagine that it is that simple as we would like to believe.

Finally, also as alluded to by the Prime Minister, with the dwindling and the ever decreasing returns on the forestry sector, of course, fisheries is there, mining is now trying to pick up, but perhaps as always has been, it is the fiscal responsibility of the government to make sure that moneys earned from these investments actually go to the actual services that our people need. And the time is now right more than ever before, for example, in education sector where we have just advanced a policy on free education in primary, with fiscal responsibility if we are not careful this income will not address

those issues and those policies that we are now trying to address. In the health sector, equally, these moneys must go to investment in those public institutions.

The report by the Special Select Committee on the National Referral Hospital shows that. And when you translate that approach to hospitals and clinics throughout the country, you see the same picture, and that is to do with lack of resources, particularly financial resources or the lack of proper management of those resources to address the requirements that our people need.

I congratulate Gold Ridge for having confidence in this country or this part of the country for that matter and also I would like to assure Gold Ridge that as governments we will be responsible to make sure that what we earn from that investment will be put to better use. With those remarks, I support the motion.

Mr. ZAMA: I am yet to receive an invitation card for this motion, and if that has also been extended to your office. If Parliament is to be adjourned to enable MPs to attend this occasion then all Members of Parliament must be given that opportunity and that invitation to attend this grand occasion. That is my first point.

Secondly, whilst acknowledging this important occasion on the opening of the Gold Mine, I must register here on the floor of Parliament that it has taken us long time and slow to get this operation started. The reason why I raise this is that they have already produced gold and gold bars at Gold Ridge, and so why should it take us almost 10 years to restart and re-open a gold mine when gold is already found there.

That said, I truly salute the efforts that these companies have put into their investment and the money and the confidence they have in this country. Not only that but there are also other smaller mining operations, especially in the same area that must also be encouraged, and not only the big mines. I say this because in recent weeks the other small operations, particularly the alluvial mining, the resource owners have already received benefits. I think if that is the way that Solomon Islands needs to develop the mining sector that is more efficient, environmentally friendly then I strongly believe that is the direction this country must take in terms of developing the mining sector.

Whilst still having the floor I wish to call on the Minister of Fisheries to quickly speed up the license for the new fishing company for the Western Province because it has taken them two months to do this. I want the Minister of Fisheries to quickly issue that license for that fishing company in the Western Province so that they can start fishing because Solomon Taiyo is going down the drain. Whilst this is not really related to this adjournment motion, I want to raise this as a matter of national interest. That would be subject of another issue, but I thank the Prime Minister and this may also give opportunity to those who will not be attending, especially the Bills Committee to maybe take a break to look at some other bills and also everybody must be granted the opportunity to attend this grand occasion. Thank you and I support.

Hon. Sikua: I simply want to say thank you to the Hon. Leader of Opposition, the Hon. Member for Temotu Nende, and the Hon. Member for Rendova/Tetepare who have

contributed to the motion favorable. Thank you very much indeed for your support, and with that I beg to move.

The special adjournment motion agreed to

Hon. Sikua: I beg to move that this House do now adjourn

The House adjourned at 12.00 pm