

Tuesday 23rd MARCH 2010

The Deputy Speaker, Mr. Kengava took the chair at 2.30 pm.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of the Ministers for Planning and Aid Coordination; Foreign Affairs; Commerce, Industries & Employment; Women, Youth & Children's Affairs; Peace & Reconciliation; Infrastructure Development; Fisheries & Marine Resources; Mines & Energy; Police & Correctional Services; Public Service; Home Affairs; Forestry and the Members for East Are Are, Baegu Asifola, West New Georgia/Vonavona, Lau Mbaelele, Ngella, Central Honiara, West Are Are, East Honiara, East Makira, North Guadalcanal, Shortlands, West Honiara, North West Guadalcanal, Malaita Outer Islands, West Makira.

Bills - Second Reading

The Extradition Bill 2010

Mr Speaker: Honorable Members, yesterday Monday 22nd March 2010, the Honourable Minister for Justice and Legal Affairs moved the second reading of the Extradition Bill 2010 and adjourned debate to the next sitting day being today. Debate on the Bill continues and Members may now speak on the general principles of the bill. In so doing, I kindly remind Members to comply with the rules of debate as set out in our Standing Orders.

(The Bill is open for debate)

Hon. SOGAVARE: Seeing that no one would like to speak on this Bill, I will talk briefly on it. Thank you very much for giving me the opportunity to take the floor first to participate in the debate of this Extradition Bill 2010, moved by the Minister yesterday and then adjourned the debate to today.

The objects and reasons of the Bill are clear there on page 60 and so Parliament should be fully informed of the objects and reasons. We also have the benefit of listening to the Minister when he moved this Bill on its second reading and so we can participate in this debate.

As rightly pointed out by the Minister responsible for the Bill who alluded to two very important points which in my reading of the Bill itself hinge around those two issues which Parliament will need to be satisfied, I guess, on them.

First the Bill imposes, as the Minister rightly pointed out, a number of responsibilities on Solomon Islands as a country. Firstly, is the duty of Solomon Islands as a country, as a responsible corporate citizen on this planet to ensure that the world is protected from people who are bent on pursuing criminal activities and are seeking the shelter of another country to escape the laws of that first country. Solomon Islands, under that situation, has the duty to cooperate with the international community to bring that person to face justice. The Minister comes out very strongly on that point.

The second responsibility of the country is the duty to exercise due care in dealing with a request for extradition from an extradition country, and that is in keeping with our responsibility of upholding human rights, its principles so that we do not become a party to the persecution whether knowingly or inadvertently of a person that may otherwise be innocent from that offence or offences that a person is alleged to have committed in the jurisdiction of the requesting country. Those are the two points that were outlined very strongly by the Minister, and those are the only two points that come out from this Bill.

Now, as far as those responsibilities are concerned, this House should not have any problem following the argument that Solomon Islands has the duty to conduct itself as a responsible corporate citizen in ensuring that our part of the world is safe from international criminals. And as a member of the international community, we believe that as a country we are obliged to cooperate in the global effort in this regard by actually physically handing over criminals to face the law that they break. And I take it by the reading of the Act that it just stops there, 'the law that they break'.

This is where, I think, the rationale of extradition as a legal mechanism in dealing with criminals who run away from the jurisdiction in which the crime was alleged to have been committed comes into play. It makes all common sense for a criminal to be return to face the law that has been willfully violated, and when it is violated it led to the deprivation of the rights of the people who have been directly affected by the criminal action of that person in that jurisdiction.

The road is clear at least for me. It is clear when a person concerned commits the extradition offence in the jurisdiction of the requesting country, and secondly, where the alleged crime violated the rights of the citizens of that country which the state would normally have the duty to protect under its legal law enforcement system.

The duty of Solomon Islands or any country, in this case the law obligates Solomon Islands and so in this case this law is for Solomon Islands. The duty of Solomon Islands is not clear, however, when the alleged crime is not committed in the jurisdiction of the requesting state, and also against the citizens of a country other than the requesting state and, more importantly when the judicial system of a third country has already disposed off the case.

I would really want, maybe in response or maybe during the committee for the Minister to clarify this, but under that circumstance, and I think the question is, should

Solomon Islands be obliged to handover alleged criminals under that scenario. In this regard, we noted the grounds under which the Minister can refuse any requests for extradition under Clause 5(e), Clause 19(2)(e) and Clause 35(5) of the Bill. Maybe the Minister will clarify the proposed law as it stands regarding the question that was posed.

This brings me to comment on the second responsibility of Solomon Islands under this Bill, and that is, as I stated earlier, the responsibility of the country to exercise due care in dealing with a request for extradition from an extradition country in keeping with our responsibility to uphold the principles of human rights so that we do not become a party to the persecution, whether knowingly or inadvertently, are of a person that may otherwise be innocent from the offence or offences that he or she was alleged to have committed in the jurisdiction of a requesting country." *End of quote.*

I have only questions to ask actually and maybe when the Minister rounds up the debate will outline it. I appreciate that this is tricky and can become very, very complicated if it is dragged too far in the interest of human rights and natural justice. Clearly, we will be caught between two equally important obligations, and that is where which ones are we going to fall under. Firstly, our duty to be satisfied beyond all shadow of doubts that a person requested for extradition did indeed commit the alleged offence, and that the request is not a disguise for detaining or restrict the personal liberty of the person because of his or her race, religion, nationality, political opinions, sex or status. The second obligation has to do with our duty to ensure that criminals face up with their evil deeds. This is not easy at all. So we are caught between two equally important obligations that Solomon Islands has the duty to protect.

This concern, how I see it, strikes directly at the way the proposed extradition law that is before us right now is structured. Of course, the second issue is our capacity in Solomon Islands to establish the true position of the grounds under which the Minister can refuse request for extradition as outlined in Clause 5. It outlines the grounds that the Minister can refuse extradition. I guess what I am saying here is that we must get it right from the very beginning. We must be clear right from the word 'go' that the provisions of the law we are going to pass are what we would agree to, to be held accountable as our international obligations.

As I have said I only have questions I want to pose for the Minister to take note of, and in his response he will clarify to us and maybe at the Committee of the Whole House we will look at them as well. The proposed law as it stands raises a number of questions. The first question is, is it a requirement that the extradition offence be allegedly committed by the offender in the jurisdiction of the requesting country for the request to be granted by the country where the alleged offender takes shelter? Secondly, for the alleged crime to be committed against the citizens of the requesting state, is it a requirement? If not, then what level of proof should the requesting country provide to establish the reliability of the information contained in the request given the fact that the alleged crime is alleged to be committed in a third country? That is the first question.

The second question is, why is that the restriction on extradition provided under Clause 5(g) does not extend the grounds for refusal of extradition to the person

acquitted or pardoned in a third country given the fact that the provisions of clause 4(1) do not confine the commission of the extraditable offence in the requesting country only. So the proposed law as it stands is only recognized in a situation where the person has been acquitted in a requesting country as a ground for refusal.

Thirdly, for the Minister to take note and explain to us, what will happen to a person in the case where Solomon Islands will not agree to an extradition request on the grounds that the offence committed by the person is punishable by death in the requesting country? Do we just let him go because we are not obliged to extradite him or her?

Fourthly, in the case where an offence is committed outside the territory of the requesting country, how would Solomon Islands respond to a request for extradition on the following scenarios:-

- (i) where the laws of Solomon Islands provide jurisdiction over the offence,
- (ii) where the laws of Solomon Islands do not provide jurisdiction over the offence, what would be the legal rationale behind the different responses? What would be the legal rationale?

The next question for the Minister to take note of is, what is the rationale behind having different evidentiary requirements for Commonwealth countries? And why are the evidentiary requirements under clauses 24, 25 and 26 not appropriate for extradition arrangements between Forum countries? There are three more questions and then I will take my seat. Why are the restrictions under Part 3 not applicable in the extradition arrangements between Forum countries? The second last question that I have when reading through this Bill is, how can we justify the application of a series of loose arrangements under Part 5, in relation to extradition arrangements between Forum countries that have the potentials of prejudism, the person because all that a requesting country needs to do is to make a request for provisional arrest without providing sufficient evidentiary requirements, as in the case of a request from a Commonwealth country. The last question is, is it the case that a person can still be extradited for offences alleged to be committed in a third Forum country? These are the questions I have when reading through this Bill. As I have said, the Minister has come out very clear with these two obligations. The first one is for Solomon Islands to protect us, our laws to protect and to ensure that people who commit a crime are hiding here, and we have the duty under our obligation as a member of the International Community to hand over such people. That is clear. And the second obligation, of course, is our duty to ensure that we do not unduly violate the principles of human rights.

That is all I want to say in my contribution to this second reading debate, and I will resume my seat and wait for explanations from the Minister before I make my mind up as to how to vote on this Bill. Thank you, Mr Speaker.

Hon Chan: I would like to thank the Opposition Leader for being the only one who contributed to the debate in its second reading on the Extradition Bill 2010. I will

respond as best as I could with all the questions and perhaps these questions can come again at the committee of supply. I would like to begin by explaining the misconceptions.

Hon. Sikua: Point of order. If it is okay I would ask under relevant Standing Orders for suspension of the debate for consultation before the Minister winds up the debate.

Sitting suspended for 15 minutes

Mr Speaker: I understand that the Prime Minister would like to move a motion to adjourn the debate on this Bill.

Hon. Sikua: I understand that there are some Members who would like to contribute to the debate but not are yet quite ready, and so to allow Members who wish contribute to this debate more time to prepare their contributions, I move that this debate be now adjourned until the next sitting day. Thank you.

Motion open for debate

Hon. Agovaka: Yes, indeed, I think it is important that this Bill be debated properly. It is quite an important Bill for this country and hence the adjournment motion is appropriate and I do support it.

Mr. Zama: In fact, I really want to interject earlier on when you asked the Minister to wind up because this Bill is an important Bill and there are almost replicas of this kind of Bill, existing laws, and so we need to be a little bit broad in our scope in reading this Bill with the other related legislations. Even to extend it to tomorrow, I would rather suggest if we can allow Members to debate this Bill for a day or two instead of quickly winding it up because this is an important Bill that should be given enough opportunity for Members to express their minds freely, openly to raise issues contained in this Bill. I support the motion moved by the Prime Minister to move the debate, not only for one day but maybe two days. Thank you.

Second Reading debate on the Extradition Bill 2010 adjourned to the next sitting day.

Hon Sikua: I move that Parliament do now adjourn.

The House adjourned at 3.20 pm