WEDNESDAY 24TH MARCH 2010

Prayers.

ATTENDANCE

At prayers, all members were present with the exception of the Ministers for Lands, Housing & Survey; Foreign Affairs; Agriculture & Livestock; Provincial Government & Institutional Strengthening; Peace & Reconciliation; Communication & Aviation; Health & Medical Services; Mines & Energy; Police & Correctional Services; Forestry and the Members for East Are Are, West New Georgia & Vona Vona, Central Makira, North Malaita, Central Honiara, South Vella La Vella, East Makira, North Guadalcanal, Shortlands, North West Guadalcanal and South New Georgia/Rendova/Tetepare.

MESSAGES AND ANNOUNCEMENTS

Mr Speaker: Honorable Members before we proceed, I wish to announce the following message from the honorable Prime Minister.

Dear Sir,
I write to inform you that the President of the Republic of China on Taiwan, His Excellency Ma Ying-Jeou will be visiting Solomon Islands from the 24th to 26th March 2010. The visit will be a second visit to Solomon Islands by a president of the Republic of China on Taiwan since the establishment of diplomatic relations between the two countries in 1983. This visit, however, will be the first visit by President Ma since he took office in 2008. During his visit the President will also be visiting and addressing Parliament. In this regard, I should be grateful if necessary arrangements could be made to facilitate the President's visit and address to Parliament.
Yours sincerely,

Hon. Dr Derrick Sikua/MP
Prime Minister

Honorable Members, the House is thus informed on the request made by the government and I now call on the Prime Minister to take the necessary steps to facilitate his request.

Hon. SIKUA: I seek your leave under Standing Order 26(1) to move a motion without notice to invite His Excellency, President of the Republic of China or Taiwan, President Ma Ying-Jeou onto the dais of this Chamber in order that His Excellency may deliver and address Parliament together with five congressmen from his Party and the Taiwan Ambassador to Solomon Islands.

Mr Speaker: Prime Minister, leave is granted.

Hon. Sikua: I move that at 10.30am tomorrow, Thursday 25th March 2010, His Excellency, President Ma Ying-Jeou be invited onto the dais of this Chamber in order that His Excellency may deliver and address Parliament together with five Congressmen from his Party and the Taiwan Ambassador to Solomon Islands.

Mr Speaker: I will allow for short debate in case some Members would like to speak on the motion.

Mr Oti: I thank the Prime Minister and support his call for time to be given to President Ma of the Republic of China on Taiwan tomorrow.

Indeed, everyone of us supports the coming of President Ma, a long standing friend of Solomon Islands and his visit is not only as head of government but also as head of state. On that note and understanding, the level whereby we are going to receive him as a guest of this country and to be afforded the necessary protocol and courtesy normally afforded to head of state, perhaps the Prime Minister would be kind enough also to inform Parliament the preparations that have been made, not only in terms of security, which is normal but also as a gesture of appreciation of the people of this country.

Sometimes in showing courtesy, the normal state protocol that applies like the kind of reception, public reception in terms of placards or welcome on the streets where school children lined the streets waving flags and penance, which are normally afforded to visiting heads of states. Of course, everyone is entitled to such protocol and welcome, but as I mentioned Taiwan is a very close friend to us for a long time and we hope that these courtesies are extended to them. Some of us are looking forward that this is going to be done on behalf of the people of Solomon Islands.

Hon. Sikua: By now we should all have a copy of the program of the visit that looks something like this, and the program details all the arrangements that have been put in place for the entire visit of President Ma Ying-Jeou. As has been expressed by the honorable Member for Temotu and I thank him for his comments, security arrangements have been in place and the organizing committee has made arrangements with schools to have our school children and other members of the general public to line the streets or the areas around their schools when the President arrives and comes through from the airport as well as the other trips that he will be making to certain places in his entire visit. All that has been organized by the committee we have set up to organize the entire visit of the President of the Republic of China on Taiwan.

I want to inform the honorable Member and the House that these arrangements have been put in place by the Committee, and I thank honorable colleagues for the support to this motion that I have moved without notice.

The motion is passed.

Mr Speaker: Honourable Members, the resolution that the House has just made allows His Excellency and Congressmen accompanying him and the Taiwan Ambassador to Solomon Islands to enter the Chamber tomorrow, and invites the President to address Parliament. I understand the program for tomorrow is being finalized and will be made available to all Members early tomorrow morning. I will also make further announcements tomorrow in that regard.

While the address to Parliament is set down for tomorrow's business, any Member has the right to move a motion that an address in reply to that address be made, but on another day. We shall now move on to our next item of business.

BILLS

<u>Bills - Second Reading</u>

The Protected Areas Bill 2010

Hon. LILO: I rise to move that the Protected Areas Bill 2010 be now read a second time.

When this government came into office it adopted a policy to take an integrated and holistic approach in dealing with national environmental and resource conservation issues with the view of achieving certain policy outcomes for the environment. And one of the policy outcomes that we expect is to give

legal protection through legislative framework of the country's indigenous flora (plants) and fauna (animals).

As a small developing state with fragile land and marine eco-systems and other vulnerabilities, this policy outcome has envisaged the introduction of appropriate regulatory measures to halt deterioration of the eco-systems, restore damaged eco-systems and ensure their survival in the long term.

The rationale and the substance of this Bill can be surmised as this: Solomon Islands has one of the rich marine and terrestrial diversity in the Pacific Region surpassed only by Papua New Guinea. Despite lack of information on the level of biodiversity in the country, what is known of the Solomon Islands reveals a truly remarkable biota of global significance, both in its patterns of endemism and its relatively intact character. For instance, of the 163 species of land birds that breed in Solomon Islands, 72 (44%) are found nowhere else in the world and the other 62 (38%) are represented in the country by unique sub species.

What is known of the exceptional species diversity endemism within Solomon Islands are that:

- there are approximately about 3,200 species of higher plants described with some groups exhibiting significant endemism, for example, orchids and palms and 16 threatened species under the United Nations Union on Conservation as Red Data criteria.
- At least 51 native mammal species inhabited the archipelago with nearly 20 being endemic and 20 of which indentified as threatened, 3 are likely extinct or near extinction.
- Highest level of avian endemism of any area of its size on earth, as mentioned above, 163 breeding land bird species with nearly two thirds representing endemic species or sub species and well over 20 identified as threatened here in this country.
- Critical wintering and breeding habitat for a variety of internationally threatened or rare and poorly known water bird species such as bristle-thighed curlew, which relies on the Solomons for wintering and pre-breeding habitat.
- Approximately 80 reptiles known with over one third endemic and 5 identified as threatened species.
- Over 30 frog species known with levels of endemism likely in access of about 90%.
- Nearly 300 fresh water fishes described thus far with numerous higher level endemics described within the last several years.
- At least 130 species of butterflies described, 34 of which are endemic.

- With some 500 species of coral organisms described, the Solomon Islands Coral diversity is one of the highest on earth parallel only by Raja Ampat in Indonesia.
- One of the richest concentrations of reef fishes. In fact recent survey indicates that a current total of about 1,019 reef dwelling fish species are here in Solomon Islands waters.

In spite of the rich biodiversity the country has, protected areas is in the country presently only covers less than .5% of the land and seascapes of Solomon Islands. This clearly demonstrates the extent to which the country's terrestrial and marine diversity is rendered vulnerable and susceptible to destruction due to lack of biodiversity planning and effective protection or management . In part, this can be attributed to existing legislation lacking specific and appropriate provisions for creating protected areas in the country.

In recent years there have been concerns expressed both international and nationally at the manner terrestrial and marine resources used practices have affected the country's biodiversity. The laws of biodiversity and its important role in supporting human life underpins the Convention on Biological Diversity signed by all governments including Solomon Islands in Rio de Janeiro in 1992. Even the United Nations Framework Convention on Climate Change is another product of the 1992 Earth Summit in Rio, also has potentials to address biodiversity laws in the country under the National Adaptation Program of Action.

The Convention on Biological Diversity has three objectives and they are the conservation on biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising from commercial and other utilization of genetic resources. Solomon Islands, by virtue of its membership status, is obliged to take appropriate actions to achieve its three objectives. The program of work on protected areas comes under the cross-cutting issues of the Convention and designed to address and implement it as its first objective.

The Protected Areas Bill is one of the important steps initiated under the program of work on protected areas. Although numerous other legislations do exist in the country and touch on the subject of conservation of biodiversity, they are, for most part, piece meal in nature. In any case, existing or related legislative frameworks in their current form are therefore not adequate or do not have specific provisions for protected and/or commercial utilization of genetic resources.

The field of biological prospecting associated with genetic resources, for example, is a completely new area to be regulated in the country under this Bill.

Biological prospecting, however, has been undertaken in the country over the years and therefore the need the have a separate legislation for protected areas has been recognized in various reports that have been produced and tabled in this House. They are the Solomon Islands State of Environment Report 2008, the Solomon Islands National Biodiversity Strategic Action Plan 2009, the Supporting Country Action on the Convention of Biological Diversity Program of Work on the Protected Areas and the Solomon Islands National Adaptation Program of Action 2008. These reports have all highlighted the need to have properly established and effectively managed protected areas.

Besides their conservation function, protected areas, as realized in these reports also alluded to contribution to human welfare, poverty alleviation, resilience to climate change impacts and sustainable development. For instance, under the National Adaptation Program of Action, coastal protection and fisheries and marine resource management are key priority areas to address the effects of climate change in the country. To ensure these priorities are realized and implemented, some form of management regime must be declared for the designated sites. These priorities are complementary and mutually reinforcing to the relevant key thematic areas identified in the Solomon Islands National Biodiversity Strategic Plan of Action that has also been tabled in this House. Even the species conservation and protected areas systems program are important tools for effective coastal protections and fisheries management.

The Bill will strengthen existing relevant institutional arrangements to promote and properly regulate protected areas system and biodiversity conservation in Solomon Islands. It will help to regulate human activities by imposing responsibilities and obligation in managing protected areas. The importance of the Bill is manifest in the establishment of appropriate regulatory and procedural mechanisms to support relevant agencies and stakeholders, to establish and maintain a comprehensive effectively managed and ecologically representative national systems of protected areas in the country.

The development of this Bill has involved various consultation processes with wider representations from line ministries like the Ministries of Forestry, Fisheries and Provincial Government, the private sector and nongovernmental conservation organizations. The consultation processes were not done in isolation but were intended to form the development of this Bill. In fact, if you look at the National Biodiversity Program of Action, it has been signed by the nine premiers of this country. There was wider consultation made with all the provincial governments.

I believe that there is strong justification and reason for the need of a protected areas bill. As you can see in the Bill itself, the Bill is divided into various parts. Part 2 requires the establishment of the advisory committee. The

intention of this body is to assist the government in the implementation of the Bill. It provides an independent and neutral process of assessing submissions that will be given by communities that have the intention to declare certain areas as protected areas.

Part 3 deals with the declaration of protected areas. It defines areas of protected areas consistence with the IUCN definition. It means to preserve and restore plants and animals in their homes and how they live together so as to ensure they continue to exist for our benefit or livelihood now and into the future. That is the whole intention of the protected areas.

Part 4 deals with the protected areas trust fund. We all know that funding of conservation area have always faced the problem of sustainability so there is need for us to establish a funding arrangement to ensure that protected areas are well managed and are properly looked after to achieve what it is being intended under this Bill.

Part 5 deals with the regulation of biological diversity research and bio-prospecting. Part 6, deals with enforcement and other offences, for instance, in areas where an area can be declared as a protected area but then you have people going there to steal; this area will enable enforcement, penalties to be imposed on those that disturb protected areas.

This Bill, we believe, is now time for this country to have and therefore I commend this Bill to this House, and with those remarks I beg to move.

Mr Speaker: Honorable Members, the Minister has moved that the Protected Areas Bill 2010 be read a second time. Normally the second reading debate should continue, but I understand that the Honourable Minister wishes to instead adjourn this debate and therefore I call on him to make the necessary steps.

Hon. Lilo: Thank you for giving me leave to move that the debate on the Protected Areas Bill 2010 be now adjourned until the next sitting day.

I am moving this motion noting that the Bills and Legislation Committee is yet to formally adopt its report on this Bill, and I thought that it would be useful for the Members to have the report of the Bills and Legislation Committee in their debate on this Bill, and in doing that it would also give time for the House to also debate the Extradition Bill 2010. Thank you.

Debate on the Protected Areas Bill 2010 adjourned to the next sitting day.

<u>Bills - Second Reading</u>

The Extradition Bill 2010

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

Hon. WALE: Thank you for allowing me to speak briefly on this Bill. It is a very important bill and I think the importance of this Bill for those of us who were here yesterday, not all of us were here, the Leader of the Opposition has asked some pointed questions that highlights the significance of the issues involved in this Bill.

As movement around the world become easier and crime takes on a larger international dimension, it is increasingly in the interest of all nations, Solomon Islands included, that suspected offenders who flee abroad should be brought to justice. Conversely, the establishment of safe havens for fugitives would not only result in danger for the state obliged to harbor the protected person, but also tend to undermine the foundations of extradition. It simply cannot be an option for Solomon Islands not to have robust and modern extradition legislation.

Extradition has become recognized as a major element of International Corporation as a major element of international cooperation in combating crime, particularly transnational crimes such as drug trafficking and terrorism. I think an eminent Australian Judge recently said and I quote: "in a world of increase mobility, interactive technology and new forms of criminality, extradition represents an essential response to the characteristics of contemporary crime". Crime has simply become very complicated in today's world.

The request in July of 2003 for the extradition of former President Alberto Fujimori to face murder charges in Peru was the latest of a series of high profile extradition cases of former heads of state which also includes Augusto Pinochet, and also other cases of businessmen like in Australia, Christopher's case and the famous Mexican case on Carlos Kabau. In the case of Pinochet the extradition request was from Spain as the requesting state to the UK as the requested state for crimes committed by that leader inside his own country.

It is universally recognized that strictly speaking, extradition is a political, not judicial function and is exercised by the political arm of state. The preliminary steps are judicial, however, and states act only after they have received the reports. Furthermore, the term extradition does not apply to all

modes, as we all know, by which a state effects the return of a fugitive criminal to the state against whose laws he/she might have offended but refers to the act or process by which one sovereign state in compliance with a formal demand surrenders to another sovereign state for trial of a person of a criminal character who sought refuge within the territory of the first state. Although extradition is granted in implementation of international commitments of states, perhaps under treaties, the procedure to be followed in deciding whether extradition should be granted and on what terms is determined by local law. An application for the surrender of a fugitive offender can be delayed, maybe even denied if there are procedural defects.

Having a robust extradition law in itself is an important deterrence to fugitives who might otherwise have been attracted to taking refuge in Solomon Islands to avoid prosecution in the country where the crimes were committed. Solomon Islands could be viewed as an easy touch for criminal fugitives who may perceive rightly or wrongly that our laws and our law enforcement generally is weak, and without robust extradition legislation it would ordinarily be difficult for foreign countries to bring them to justice for crimes committed in their jurisdictions. It is important therefore that two competing objectives must be held in balance by any robust extradition legislation and process.

Firstly, and I think the Leader of Opposition quite rightly alluded to this yesterday in his debate, is the protection of the rights and liberties of the individual who is the requested person and, secondly, the satisfaction of the requesting country's desire to bring suspected or convicted criminals to justice in their jurisdictions.

The scheme contained in the Bill assumes that the rule of law and a fair trial are reasonably guaranteed in some countries as listed on the schedules and therefore the bar is set commensurate with this. If the requested person is guaranteed a fair trial in the requesting country, the extradition process here need not be unreasonably difficult as the person's rights will be treated with respect, not only here but also when they arrive in the requesting country.

There is consensus in international law that it is a principle of sovereignty that a state does not have any obligation to surrender an alleged criminal to a foreign state in that every state has legal authority over the people within its borders. Such absence of international obligation and the desire or the right to demand such criminals of other countries have given rise to a web of extradition treaties or agreements to evolve. Most countries in the world have signed bilateral extradition treaties with most other countries although no country has treaties with all other countries.

By enacting laws or concluding treaties or agreements, countries determined the conditions under which they may entertain or deny extradition

requests, and common bars to extradition include the political nature of the alleged crime, normally referred to as a political exception, most countries refused to extradite suspects of political crimes. This is an important exception and a safeguard contained in Clause 5 of the Bill. The definition of political offence attempts to give some clarity on the offences covered.

The other is the failure to fulfill dual criminality or the double criminality test. Generally the act for which extradition is sought must constitute a crime punishable by some minimum penalty in both the requesting and the requested states. Also the possibility of certain forms of punishment; some countries refuse extradition on grounds that the person, if extradited, may receive capital punishment of face torture. A few go as far as to cover all punishments that they themselves, the requested state, would not administer. And I know the Leader has asked a question on this, on the death penalty yesterday. In Clause 19 of the Bill as conditions for specialties, the Bill includes death penalty as conditions for specialty.

Also, jurisdiction is another bar as well. Jurisdiction over a crime can be invoked by the requested state to refuse extradition, in particular the fact that the person in question is its own citizen, causes a country to have jurisdiction. We hope, subject to the particular circumstances of each case, the DPP will err on the side of exercising jurisdiction.

Another bar as well is citizenship of the person in question. Some countries refuse extradition of their own citizens preferring to hold trials for the persons themselves. The Bill does not explicitly prohibit extradition of a citizen but gives the Minister discretion on the matter.

Lastly is the principle specialty, and this principle says that a requested person is not to be detained, prosecuted or punished by the requesting state for any crimes other than those for which he/she was extradited for. This is a very important principle without which the whole process could be rendered futile.

As with most other countries, this Bill requires Solomon Islands to deny extradition requests if in the Minister's or the Court's opinion the suspect is sought for a political crime. This is an important restriction and safeguard for the personal liberties of the requested person. There is also restriction against extradition for offences based on religion, race, sex and so forth.

The Bill includes the death penalty in Clause 19 as condition for specialty. This aligns us with other countries such as Mexico, Canada and most European nations that will not allow extradition if the death penalty maybe imposed on the suspect unless they are assured that the death sentence will not be passed or carried out. In the very well publicized case of Soreing v. UK, the European Court of Human Rights hailed that it would violate Article 3 of the European Convention on Human Rights to extradite a person to the US from the UK in a

capital case. This was due to the harsh conditions on death row and the uncertain time scale with in which a sentence would be executed. Parties to the European Conventions also cannot extradite people where there would be a significant risk of being tortured, inhumane or degradingly treated or punished. This Bill goes towards holding those values in balance. These restrictions are normally clearly spelled out in extradition treaties that a country signs with other countries. The case of the US, however, is a bit controversial where some of those states have the death penalty and so the process of extradition in overseas jurisdictions could be seen as foreign nations interfering in their domestic criminal justice system.

Countries with the rule of law typically make extradition subject to review by that country's courts, and this Bill is also doing the same thing. These courts may impose certain restriction on extraditions or prevent it all together, if for instance they deem the accusations to be based on dubious evidence or evidence obtained from torture or if they believe that the defendant will not be granted a fair trial on arrival or will be subject to cruel, inhumane or degrading treatment if extradited. The Bill upholds these important safeguards.

Clause 19(2)(b) stipulates that the fact of citizenship in Solomon Islands can be grounds for the Minister refusing extradition. Some countries such as France, Russia, Germany, Japan and others explicitly forbid extradition of their own citizens either by law or by treaty and such restrictions are occasionally controversial in other countries when, for example, in a recent case of the film director we have seen on the BBC news not so long ago, Roman Polanski, was convicted of statutory rape of a 13 year old in the US in 1977 and then he fled to France before sentencing and from there as a French citizen he could not be extradited to the US. The French Government obviously pointed out that Polanski could be prosecuted in France if the US authority so requested; a request that US authorities do not want to make.

Some countries have laws in place that give them jurisdiction over crimes committed abroad by/or against their citizens. By virtue of such jurisdiction they prosecute and try citizens accused of crimes committed abroad as if the crime had occurred within the country's borders. This, I think, was one of the questions raised yesterday by the Leader of Opposition, and in answer to that question I suppose that such legislation in a requesting country would give it jurisdiction over such offenses committed by its citizens abroad or by citizens of other states against citizens of the requesting state. However, Clause 19(2)(e) of this Bill seems to provide for this situation that the Minister may refuse an extradition order if the offence was committed outside the territory of the requesting country. I think this is an important safeguard and answers directly the question that was raised yesterday the Leader of Opposition.

Also, in international law, the federal structure of some countries, for example, in the US can pose particular problems with respect to extraditions when the power of the prosecution or police is at state level and the power of conducting of foreign relations is exercised or held at the federal level, and so a request, for example, to a foreign state for extradition would have to come from the state through the federal government and then to a requesting state. As was seen in the case of Soreing v. UK, Virginia imposed the death penalty and therefore the human rights court in Europe ruled that the UK does not violate its treaty obligation when it refused to send it. And so that too needs to be held in balance and managed obviously in the implementation of this Bill when it becomes an act if a request was received from the government with such a structure.

It is to be anticipated that the Minister will be under immense pressure depending on the profile of the person, I suppose who is the subject of the requesting request or the gravity of the crime involved and perhaps the international standing of the requesting state. This pressure will be worse if the requested person is a citizen and the DPP has not exercised jurisdiction.

The refusal of a country to extradite suspects or criminals to another may lead to international relations being strained. It is important that due legal process here is exhausted to afford protection for the rights of the requested person. The questions involved are often complex when the country from which suspects are to be extradited is a democratic country with the rule of law because typically in such countries, the final decision to extradite lies with the national executive minister or in other jurisdictions the prime minister or president. However, such countries typically allow extradition defendant recourse to the law with appeals. This may significantly slow down procedures. On the one hand this may lead to unwarranted international difficulties as politicians, public and media and so forth to a requesting country is going to put a lot of pressure on their own government and the government of the requested state. But giving perhaps little cognizance or recognition to the fact that there is a juridical process also involved in an extradition case.

As I mentioned earlier on, extradition is the delivery by on sovereign to another of a person accused or convicted of an offence committed within the jurisdiction of the requesting state. That jurisdiction often covers crimes committed by or against citizens abroad. The alleged offender normally is charged with an offence committed solely within the territory of the state seeking his extradition. Situations do arise, however, in interstate relations when more than one state extends and requests simultaneously to the state of asylum for the delivery of the same person for the same act or different acts performed within their territorial jurisdictions. Because traditional law does not impose any duty

or obligation upon a requested state to dispose off the case in a particular way on the multiple requisitions from two or more independent states, the requested states are free to exercise discretion and are not encumbered by any rules of precedence. Consequently, to meet such or similar situations, a requesting state is free in its behavior in the absence of any obligation or stipulation, in a national agreement or treaty to exercise its own discretion.

Because there is no uniform practice among states on this point, the requested state is fully entitled to determine independently which of the requesting states will receive the fugitive offender. In cases of multiple requisitions, states generally take into consideration all circumstances, especially the seriousness and gravity of the alleged offence, the place of commission and the nationality or citizenship of the person sought. Often the principle of the territoriality of a crime will prevail, which dictates that the request of the state in which the crime was actually committed will get a sentencing over the requesting state of which the accused is a national. If for instance, the crime was committed in country (a) by a citizen of country (b), and country (b) also has jurisdiction over such crimes committed abroad and both countries lodged extradition requests for the same person with country (c), the principle of territoriality will favor country (a), in running the risk, to be a bit simplistic.

I want to touch briefly on the principle of specialty because I think it is a key principle that holds this process together or the integrity of the process together. The doctrine of specialty or principle of identity of extradition and prosecution stands for the proposition that the requesting state, which secures the surrender of a person, can prosecute that person only for the offences for which he was surrendered by the requested state or else it must allow that person to leave the prosecuting state to which he or she had been surrendered. This is an important safeguard against fraudulent extradition and protects the person concerned from prosecution and punishment when the demanding state intends on the pretext of an extraditable offence either to try or to punish him for a non extraditable offence.

There is established case law on this point in the commonwealth and the courts are vigilant against allowing abuse of court process and procedure. For this reason, the requesting state is bound to prosecute or punish the surrendered person in accordance with the terms set out in the requisition. Because if surrender means full freedom to the requesting state to deal with the prisoner as it thinks fit, the entire procedure followed in the state of refuge or the requested state becomes absurd or futile.

The doctrine of specialty is designed to ensure against such a contingency. It has developed because extradition is subjected to certain requirements without which the extraditing state will not in effect determine whether the substantive

requirements of extraditable offences and double criminality have been fulfilled. The doctrine therefore is a concomitant of a requested state's right to determine the extraditibility of the person sought for the offence specified in the requisition. It protects against prosecution for offences for which a person was not surrendered. The Bill goes a long way in this direction protecting this important principle. It must be noted however that where the alleged accused voluntarily returns to the demanding state or waves his right to an extradition proceeding between two states or where he has been deported by the requested state, he cannot benefit from the statutory provisions and can be tried for any offence.

On the matter of evidence, after preliminary proceedings, the surrendered fugitive will be tried in accordance with the national law in every respect and is subject to all normal procedural and evidentiary rules which apply to those proceedings. Thus, the evidence produced must comply with fundamental rules of the requesting states evidence. In preliminary proceedings for extradition service, states do not require strict compliance with the rules of evidence as these judicial proceedings in extradition cases, do not decide anything about the innocence or guilt of the fugitive, as the main purpose of this inquiry is to determine whether the evidence produced by the requesting state is such as were justified committal of the alleged fugitive for trial if the same had been committed in the requested state. This is also in the Bill. But after the surrender of the fugitive for trial, there seems no reason why the full strictness of evidentiary laws should not apply. Thus where evidence has been obtained by violating accepted norms of human dignity by keeping the accused, for instance, under continuous, unacceptable, unreasonable physical and mental stress, the courts will likely reject such evidence and release the accused.

On physical offences, a lot of extradition treaties internationally have excluded physical offences. The strengthening of extradition procedures in relation to financial crime has not always been a feature of international extradition law. Historically, some extradition treaties exclude tax and physical offences from the scope of extraditable offences. This Bill includes physical offences in Clause 4, as extradition offences and rightly so. In today's world of instantaneous flow of communications, rapid movement of information, and very fluid movements of capital and the increased greed of the corporate world, it is important that we learn the lessons of the global financial crash brought on by such greed.

While the importance of workable extradition procedures in combating organized crime must not be under estimated, extradition has obvious and very significant consequences for the liberty of the individual. The requested person is generally kept in criminal detention without the possibility of bail for what may be extended periods during the pendency of the extradition proceedings.

Of course, it is up to the magistrates too to look at the question of bail. To some extent the element of administrative detention inherent in extradition is effectively an anticipatory punishment in it and may encourage the accused not to defend the extradition request assuming they have the means to do so. Of course, extradition in many other jurisdictions has long been accompanied by a range of intended restrictions and safeguards expressed to balance the interests of the requested person, and we must not lose sight of this very important consideration. I think the Bill has gone quite some way towards safeguarding or standing against some of these dangers.

I want to touch briefly on the principle of double criminality. The principle is a deeply ingrained one of extradition law. The principle requires that an alleged crime for which extradition is sought be punishable in both the requested and the requesting states. A traditional method of giving effect to the principle has been the adoption in extradition treaties of lists of extraditable offences such as murder, theft and so forth. This approach which emphasized terminology was susceptible to a rigid and technical formality and presented obvious difficulties for emerging categories of more complex crime in today's very complex world.

The approach taken in the Bill is a general requirement that the conduct in question be punishable under the laws of both states; the requested state and the requesting state, attracting a maximum penalty of not less than 12 months. It is to be tested so but on the face of it provisions such as these cannot perhaps totally eliminate the difficulty in the application of the double criminality requirement. Application of the requirement may depend on the extent to which the alleged crime or the criminal acts of the accused are described by the requesting state inside the requisition that was submitted. That is, the court, in determining whether the crime with which a person has been charged corresponds with a crime under local law may want to know, not simply whether the abstract legal elements of the offence correspond to an offence under domestic law, but also whether the particular factual conduct alleged, including the mental state of the accused would be punishable if committed in Solomon Islands. The corresponding domestic offence may not be immediately recognizable from the relevant statutory provisions of the requesting state, and it maybe necessary to look to the alleged conduct to determine whether there is an applicable domestic offence. An inadequate description of the acts of the accused may not enable our court to determine whether the conduct is in fact punishable under our laws. I suppose the Bill proposes this approach because of the relative lack of comprehensiveness in coverage, and it is a bit out of date in our penal legislative regime in the phase of increasing complexity on transnational crime in today's world.

I would like to touch again very briefly on the political exception also contained in this Bill. While the political offence objection or exception involves substantial difficulties of application and has become an increasingly rare consideration in extradition internationally, other safeguards have been developed to protect the human rights of potential extraditees in more defined ways.

The Bill gives recognition to persons the Minister refuse their extradition applications on the basis that the offence submitted by the requesting state constitutes political offence. There are, of course, obvious difficulties in making the assessments and degrees to which an offence is political. The Bill contains mandatory grounds for refusal of extradition which are based on established anti-discrimination and human rights standards. Clause 5, for instance, provides that extraditions shall not be granted interalia, and in (b) it says, "if the requested state has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that persons race, religion nationality, ethnic origin, political opinions and so forth or that persons position maybe prejudiced for any of those reasons. It is one important bar or objection that the Bill contains.

The principle of specialty, which I touched a bit earlier on, is a rule of extradition law which requires that a person extradited to a requesting state is not to be detained, prosecuted or punished by the requesting state for any offence committed prior to the extradition, apart from that for which extradition was granted. The principle of specialty is broadly recognized in international law and practice. The inclusion of the principle of specialty in various international instruments, including the Rome Statute of the International Criminal Court lends support to this view. The traditional rationale for this rule is motivated by the protection of state's sovereignty and one recent commentary puts it this way and I quote: "that underlying the rule is the fact that extradition is a contractual arrangement between states. It is intended to reflect a condition on which the requested state surrenders its sovereign rights over the defendant within its territory and the requesting state surrenders its sovereign powers within its territory upon his surrender.

There is a second and from the perspective of the requested person a critically more important function of the rule of specialty, which is directed to the protection of the rights of the persons subject to extradition. The intention of the rule is to require in respect of all crimes for which an extradited person might be tried, compliance with all of the guarantees of the extradition process such as double criminality and political objections and so forth. This should have the effect of preventing a requesting state from using or perhaps abusing the extradition process for an impermissible purpose. In that sense, the other

guarantees and protections built into extradition procedures such as double criminality, the political exception and the death penalty exception are only as strong as the extent to which the principle of specialty is observed by states.

However, Clause 19(3(b) seems to dilute this principle of specialty by allowing offences committed before extradition to be added with the consent or subject to the consent of the Minister on the advice of the DPP. Therefore, it would appear on the face of it that the specialty principle does not have an absolute operation and the prosecution or punishment of crimes other than those for which extradition was granted is enabled if the Minister gives his consent.

If a requesting state, even at provincial level, in the implementation of this regime does not comply with the requirements or specialty in confining the offenders prosecuted on return, I think it is important that we should decline to cooperate on extradition matters with such states in the future. Otherwise the extradition process is futile and the rights of the requested person maybe diminished or prejudiced.

I am going to touch briefly on the scheme of prima facie evidence contained in Clause 25 of the Bill. I see that it gives adequate protection to a requested person's right. Again the issue to be determined is whether evidence before a court would be sufficient to place the person on trial in Solomon Islands. A determination on whether or not a committal can be ordered by a magistrate is sufficient to meet this requirement to safeguard the rights of an accused or a requested person. And this is in light of the assumption that the extraditee or the requested person will be accorded a fair trial in the requesting country when he arrives there.

I hope that my brief survey on these important principles of the international law and also some of the difficulties contained in some of the extradition treaties and also some of the values we hold dear inside our constitution, in so as far as the rights of individuals are concerned, are held, I think, in fairly reasonable balance in this Bill.

The Bill is robust in trying to achieve a balance between the protection of the rights of the individual who is the subject of an extradition request and the demand of the requesting state to have the requested person tried in their jurisdiction for offences. The Bill is an attempt to improve on existing extradition frameworks around the world and on that it deserves the support of this House. Thank you very much.

Mr. TOSIKA: I want to thank people for their hard work in bringing this Bill to Parliament, especially the Minister for Justice.

This Bill is straightforward. We are a party to international conventions, and one of such is the extradition Bill which we are also a party to. This Bill reflects the views of governments and sovereign states in the arrest of people who commit offences in one country and run away to another country and so that other country must be willing to give up that person to go back to the country where he commits the offence. That is what this Bill is trying to tell us.

I am going to talk very briefly and when we come to the committee of the House we will pinpoint some views we have in regards to the sections of the Bill. One concern I would like to raise here is that this Bill is a political bill, a bill where two executive governments agree to extradite a person out of a country to another country. That is why one section here in the Bill says that if the extraditing request is of a political nature then the Minister cannot allow that person to be extradited to the requesting country. My view is going to be based on the basis that sometimes political governments create human rights problems, the rights of individuals that we want to send out of the country. This is what I would like to strongly emphasize here because this extradition bill depends very much on what sort of government is in power, and if a government has cordial relations with another government, even if the rights of a person is okay, the other country will be willing to give up that person to go out of the country. This is one of the things that we must be mindful of.

Whilst passing this law we must take into account the rights of people. Under section 19 on rights (a) and (b) talks about the human rights and political rights of people.

I have experienced cases where these things have happened where an organization like the magistrates made the decision to hold onto a person but because of political reasons a person is extradited out of the country and their rights are not observed. In a case where the rights of a person are not observed, under law what is going to happen? Because at the end of day the people who are supposed to uphold the laws and strictly follow rules, procedures and the system of delivery of the law do not observe them, and this is my fear.

Whilst dealing with this law, I think when it comes to extradition of people on political grounds, maybe we should be cautious in doing so, and not just to please the other government and give up that person's rights to them. This is one of the concerns I have because it will back fire on us as the extraditing country.

Hon Fono (*interjecting*): He is its citizen.

Mr Tosika: Even if that person is its citizen but the offence is not committed in this country but is committed in another country and a competent court has

already dealt with that issue. This is what I am trying to get us to see. Whilst laws are there and a competent jurisdiction where the offence was committed has already dealt with, then the question that needs to be asked is, is that court in that competent country where the offence is committed is not competent enough to uphold the ruling, and that is why another country is requesting it. That is a question we need to ask and iron out. If it can happen to such a case like this then I think it is our country that does not uphold the law.

This is my fear because this act is a political act where two executives of two countries talk together, give it to the minister or the court to be applied and then the final discretion lies on the minister whether he will extradite that person or not. Even a magistrate can make its decision but the Minister has the final say to it. Because of this reason a Minister can be enticed or can be manipulated by senior persons in his government or his executive. The Minister can be manipulated and the Minister whether he likes it or not will do it because the government tells him to do. With these brief remarks, I support this Bill.

Mr. OTI: I also want to add my voice to the motion moved by the Minister for Justice in regards to the Extradition Bill 2010. Indeed, because of the resurgence or potential for trans-national crimes something that is not highlighted in the global community before, we are now at a stage where we must be able to deal cross borders so that there is no escape for fugitives particularly at this time when terrorism can take many forms and different and we have to be vigilant to ensure that we do not become grounds for harboring those seeking refuge because they would have been tried in the countries they are citizens or originate from. Hence, I recognize the purpose of this Bill.

While I agree with the intentions of the Bill and comparing it with Caps 59, the Extradition Act, the current one which is going to be repealed by this bill, the Extradition act that we currently have, Cap. 59, is much shorter than what is before the House now.

One area I want the Ministry of Justice to perhaps explain is the specificity of extraditable crimes. In the current legislation, under Section 5, extraditable act, contains the crimes and the Schedule to the legislation whereas the existing one does not specify which crimes and therefore the expressions that have been made in relation to making sure the crimes are not politically motivated, it is very difficult to pin it down under Section 4 of the present bill because it does not have specific requirements as the old legislation as contained in Section 5 of the Schedule to the old legislation.

The crimes are the same kind of crimes which have been convicted for offences in the requesting state for which the fugitive escapes and escapes the justice system in that place thinking he can escape that and come to Solomon

Islands. And the same crime too, if committed in Solomon Islands, he would have faced the same consequences in terms of bringing that offender before the courts.

Indeed, as the others have alluded to, extradition is a requirement but is political in a sense that it is done between states at the executive level, although the justice and the court system comes in between to qualify that indeed the requesting states request for the extradition of that person indeed warrants the extradition hence a political decision would have to be made by the Minister.

While this is normal there are other legislations that perhaps do not fall within the scope or the responsibilities or portfolios of justice, for example, on immigration which means that policing of our borders, and our border control mechanisms must be strengthened at the same time because if you look at some sections in this legislation it requires that even a person that is traveling and a request is being made to the state to which that person will land on, that person should be stopped first at the border instead of him entering the country. This saves you the cost of administering the justice system. You put a stop to it at your border. This is why if this particular concern is taken into account you will see that in Cap. 60, the Immigration Act, in section 11, before that person comes in or if he comes in already you can either declare him a prohibited immigrant or an undesirable immigrant under section 11(2)(e & f) of the Immigration Act. That saves you from the burden of doing all the arrangement of taking it through your court system, he is stopped first at the border. This is where cooperation between the immigration department and justice department must be at the forefront. In fact, protection of our border is the first and foremost thing, as it saves you all the costs that you have to go through after that person enters your country.

Another area of concern is in Section 7 of the Bill, especially it regards to the category where the Minister can issue a temporary extradition warrant. This section 7, if applied, if a person serving custodial sentence in Solomon Islands for perhaps a crime that is committed in Solomon Islands, if the requirement is that if that offence requested by the requesting state for extradition is not convicted for here then you allow that convicted offender to be extradited. The requirement there is that after a person has been tried in that extradited state he must be sent back to Solomon Islands. What if that person is then convicted in that country? How is he going to be sent back because he has to serve his sentence in the requesting state? I hope we are clear with the intentions we are trying to underline in section 5 of the Bill in so as far temporary extradition warrant is concerned.

Cap 59(2), as I have already said earlier on is very, very specific in that Cap 59 is the extradition act as is current. Indeed, if you look at the crimes which

are extraditable, they are exactly the same crimes which would be punishable by law in Solomon Islands, and so it is similar, except perhaps the degree of penalty might be different except for murder, manslaughter and so and so forth, but all the other crimes will be the same in Solomon Islands as much as the other states, and therefore if the requirement is not specifically mentioned, and I think the rationale of categorizing the different stages of the schedule of this Bill, the question too as to why these stages are categorized. Crimes are still the same regardless of which state he comes from. And that was, I think, the intention of the current Extradition Act whereby the specifics are mentioned in the treaty between Solomon Islands and those states. Now, you have taken that out and therefore it is now perhaps somewhere in the bill or in the law, and so ultimately it would dictate what crimes we can extradite offenders between Forum Island Member states, which crimes can be dealt with under different scenarios with commonwealth states and thirdly the committee states. Now even within commonwealth states there are different situations and so we cannot lump everything together. The commonwealth states, perhaps in Asia, maybe have different extradition methods to another commonwealth country in Africa and so which one are we going to use, ours or which one. The same applies in the way we would deal with a commonwealth state in Africa and a commonwealth state in Asia. What about Malaysia? Have we explored, and I hope we have done so as it is a federal state system where a lot of powers vest in the state and therefore the issue that has been raised today where the jurisdiction falls outside of the federal level, how do you deal with that when the jurisdiction lies on the state. This has been covered explicitly and well by other speakers who have spoken on this. But I hope those issues I have raised, particularly in reference to why we have departed from the current specific schedule of the existing act and made it more general under section 4 of the bill. Perhaps, this can be explained by the Minister when he replies.

And the question finally is the need for temporary extradition warrant where it is expected the request is made to Solomon Islands and the person is extradited when he is serving a custodial sentence in Solomon Islands but Solomon Islands has been requested to send that fugitive or that offender for trial on a different crime in the requesting state and so he is sent over and the thing is that there must be guarantee that he must be returned to Solomon Islands to complete his custodial sentence. The question is, if he is extradited for the crime he committed in the requesting state and he is sentenced in that state, what happens? Are we going to wait until he completes his sentence there before he comes back to complete the sentence he is supposed to serve here? It is just a practicality of this particular situation whereby a temporary extradition warrant can be issued under section 7 of the Bill. These are questions that for purposes of

administering this Act ultimately, we need to be very vigilant and careful on how we apply this particular section of the extradition requirement.

With those comments, I support the motion.

Mr AGOVAKA: Thank you for allowing me to voice my concern also on this Extradition Bill 2010.

Firstly, allow me to thank the Minister of Justice and Legal Affairs for submitting this important Extradition Bill 2010. I would like to acknowledge the hard work of those public servants and technical advisors of the Ministry of Justice and Legal Affairs as well as the Attorney General's Chamber for their input into this Bill.

The history of the extradition law in the country has shown that we have moved away from the Fugitive Offenders British Solomon Islands Protectorate Order 1967 and other orders dealing with the surrender of fugitive offenders and replace it with the current Extradition Act, Cap 59. Chapter 59 reads: "An Act to make provisions for the extradition of fugitives, persons to and from commonwealth countries, foreign states to regulate the treatment of persons accused or convicted of offences in Solomon Islands who are extradited from commonwealth countries or foreign states and to repeal the fugitive offenders BSIP Order 1967 and other orders dealing with the surrender of fugitive offenders, and to provide for the matters connected herewith or incidental thereto.

The new Extradition Bill 2010 is entitled and I quote: "An Act to regulate the extradition of persons from Solomon Islands to facilitate the making of request for extradition by Solomon Islands to other countries to enable Solomon Islands carry out its obligations under the extradition treaties and to repeal the Extradition Act, Cap 59 for related matters". This is an improvement of the current Extradition Act, Cap 59. The Minister may have already covered these points but I would like to point them out as well in this debate.

The new Extradition Bill 2010 has counter terrorism offences, money laundering offences and other extraditable offences covered in it. It also went on to categorize the extradition partner countries and these are the four categories: the Forum, the Commonwealth Treaty and Committee countries. I would like to point out the importance of this Bill. The world now has gone into sophisticated criminal activities. There are many criminal who are so sophisticated, technical using communications and technologies that we are far behind, even our Telekom cannot match up to some of these telecommunication systems that we have now in the world.

I would like to point out what I noted from the Bills and Legislative Committee's Report. I note that there was no wider consultation with other

public stakeholders. To me, the public hearing is a process in which interested persons, institutions and other stakeholders can participate in the proceedings of the committee by airing their views and opinions on the Bill. Perhaps, we should have invited the Bar Association, the Private Legal Institutions, the Customs and Immigration to participate also at the hearings so that we would be able to hear what they would say in regards to this Bill.

As alluded to by the MP for Temotu Nende, prevention is better cure and prevention is no more than the ports of entry, and our ports of entry is none other than the airport and the Ports Authority, the wharf. If this can be featured in somewhere so that our laws can be rigidly protective of criminals who intend to come and harbor themselves in our country. In this way, like the Minister for Education has said, we would be able to combat international crimes that are now infringing into our country.

The Extradition Bill 2010 is not a law in isolation of itself. There are other governing laws as well such as the Immigration Act, the Customs Act, and others that need to be complied with when moving persons from and to Solomon Islands under the Extradition Bill. As I said, the ports of entry are an important area we should need to look at in relation to this Bill.

I would not be taking much of our time, but I acknowledge the fact that international crime in the world, as I alluded to, is becoming sophisticated and hence our laws need to be strengthened to combat and punish criminal activities and persons who escape prosecution from their country.

I also acknowledge that the Bill provides protection for a person extradited under this legislation. I think the Minister for Education has delved eloquently on this matter and there is no need for me to repeat what he has already said. I would like to point out that this upholds human rights from degrading treatment and the rule of law; and that is a person is innocent until proven guilty. There are other measures as well in the Bill that are placed in this regard to protect persons under extradition. The Minister for Education has already eloquently expressed this. As observed, the Bill will be a good test for political will that the government of the day would have to face, and also a good test of our legal system.

As I said I am not going to dwell long on this Bill, as most of the things I would like to say have been eloquently covered by the Minister for Education. During the committee stage when we go through the Bill, I am going to raise some of the questions that I would like to raise. Therefore, in closing I would like to refer to the Bills and the Legislation Committee recommendation that was presented to this House and this House must take heed of the recommendation that the powers given to the Minister and the court under this Bill be finally defined to avoid conflict in exercising those powers.

Sir, with this recommendation from the Bills and Legislation Committee, I too would like to support this Bill.

Hon. Chan: I would like to thank every one of you who have contributed to the debate on the second reading of the Extradition Bill 2010. Let me start from yesterday. I would like to thanks to the Leader of Opposition for his contribution to the debate on the Extradition Bill 2010. He has raised some very important questions in relation to the aspects of the Bill, which I believe needs to be clarified and further explained so that Members of this House can be confident that they fully understand the proposed legislation that is before us. Also, the same issues were also alluded to by the Leader of Independent Group.

The first question relates to extraterritorial offences. These are criminal offences that an alleged fugitive has committed in a country outside of the requesting country but which the requesting country purports to have jurisdiction. The Extradition Bill allows persons to be extradited for these offences provided that the conduct also constitutes an offence in Solomon Islands. This is the principle of due criminality that underlies the Bill. The act of the alleged offender must be a criminal offence in the requesting country and in Solomon Islands.

If the behavior is not an offence in Solomon Islands for which there is a penalty of at least 12 months imprisonment that then is not an extradition offence under the definition in Section 4 and that is the end of the matter. There can be no extradition order made. The rationale behind this is that we will not extradite a person to face trial and punishment for behavior which is not considered a criminal offence in this country.

If the offence is an offence under the Solomon Islands criminal law then the person can be extradited to a requesting country if that country has jurisdiction over that particular crime committed outside its borders, and even though the offence happens in a third country. However, in these circumstances the provisions of Section 19(e) apply. If Solomon Islands also has jurisdiction over the crime committed in another country, that is the extraterritorial jurisdiction, then the extradition would proceed unless there were other considerations preventing it. If Solomon Islands does not have extraterritorial jurisdiction for the crime then the Minister has discretion to refuse to make the extradition order.

The rationale for the difference is an extension of the due criminality principle if the offense is not one which Solomon Islands needs extraterritorial jurisdiction itself, it may be low to subject a person to a trial in a requesting country for behavior that happens in a third country because the requesting country claims extraterritorial jurisdiction. The discretion to extradite would

depend on an examination of the nature of the crime and the full circumstances of the case. The level of proof required to make the order is either prima facie case standard, record of case standard or a backing of warrant standard depending upon which category of extradition country that the requesting country falls. However, it must be remembered that even if the evidential standard is met, the Clause 19 criteria allows the Minister to exercise his discretion in those cases which meets the criteria.

The question was raised about why the restriction and extradition provided under Clause 5(g does not apply to a third country. That provision prevents the extradition of a person who has been pardoned or acquitted or punished in Solomon Islands or in the requesting country. This applies to a person who has had their criminal case heard and have been finally released with no punishment. It prevents double jeopardy and will not allow an extradition for an offence which has already being tried and finalized. If the person was dealt with in a third country the relevant provision to protect the person from double jeopardy is clause 5(e). This section prevents the extradition of a person if there has been any final judgment or order given and enforced in a third country. It is important to note that both provisions only prevent extradition when the case has been finalized and the punishment has been carried out. Persons that have been tried for an offence found guilty by the state before completing their punishment can still be extradited.

Under the current Act, Section 11 allows the Minister to refuse extradition if the person could be sentenced to death for the offence. A question was asked what happens under the proposed bill in the case of a potential death sentence: will the person go free? I can assure the House that the alleged murderer will not go free. Section 19(c) allows the extradition on the proviso that a requesting country gives an undertaking that it will not impose the death penalty. If the country does not give that undertaking, the Minister may refuse to extradite the alleged offender.

A refusal to extradite does not mean that the person will go free. This brings into play the very important provision in Clause 56, which provides that where the discretion not to extradite has been made because a person may be put to death, the person may be tried for the offence in Solomon Islands as if the offence had occurred in Solomon Islands.

Another question related to the rationale behind different evidentiary standards for different categories of countries, as stated in the second reading speech, we deal with a range of countries with varied legal systems. Because of the range of countries and systems we deal with in the international sphere, it is not possible to have one extradition system circumstances. The Extradition Bill 2010 therefore contains a core for the extradition, which is then modified to suit

four different categories of extradition partners. The core framework in Part 3 is the general provisions. We modified these provisions depending on the trust we have in the judicial system of the requesting country.

The increasing rigors of the system reflect a degree of confidence and trust we have that the legal system of the requesting country would deliver justice to the person whose extradition is sought. These are safeguards designed to ensure that adequate protection is provided to an individual being forced to be returned to another country to stand trial.

There was a question that was asked by the Member of Temotu Nende on temporary extradition and I would refer him to Section 21. The Minister makes a temporary extradition only if he is satisfied that the requesting country has given an adequate undertaking that the person will be given a speedy trial and the person will be returned to Solomon Islands after the trial, and that the Minister is satisfied that the adequate provision has been made for the travel of the person to the requesting country and for the person's return to Solomon Islands. The Member for Temotu Nende asked what happens if he is convicted? If we look further down the column we would see that if a person is the subject of a temporary extradition has been returned to Solomon Islands after trial and sentencing in a requesting country has completed his/her custodial sentence in Solomon Islands, the Minister may issue an extradition warrant for him to go back to face the extradition warrant to the requesting country from that trial.

Another question was asked on the schedule at the back, which looked at commonwealth countries from the Member of Temotu Nende on why we put all these countries in Part 2 of that schedule rather than say Part 1. The reason is because it gives the Minister the power to actually prescribe or to have the option to move one or more of the countries in Part 2 to Part 1 depending on the level of faith in those countries' judicial systems.

I would like to go on to explain a number of other issues that were also raised. I would like to explain the misconception about, I believe, the powers of the Minister that was brought out in the report of the Bills and Legislation Committee as well as the debate in the House. This goes to what the Opposition Leader called duty of care.

Under the current Act, the court under the writ of habeas corpus as well as the Minister has the right to refuse extradition of a person if (1) the offence is trivial in nature, (2) there is a lapse in time since the offence was committed, (3) accusations was not in good faith, and (4) circumstances that make it unjust or oppressive to extradite a person. The Minister's powers in those circumstances are very wide. In fact, in this Bill the powers of the Minister have been finely tuned, it has been very specific, it tries to be as specific as possible. For example, the Minister may not grant an extradition warrant if there is no special

undertaking by a requesting country about trialing a person for other crimes or the person's extraction to a third country and this includes:

(a) Requesting country does not have domestic legislation preventing prosecution for another offence because the person is a Solomon Islands citizen.
(b) No undertaking has been given about the death penalty.
(c) Prosecution is pending in Solomon Islands.
(d) Offence was committed in Solomon Islands.

The Minister may not grant extradition if its exterritorial offence for which Solomon Islands has no equivalent provisions. Requesting country is to sentence persons in an ad hoc or an extraordinary tribunal etc. One must also realize that the extradition of persons between countries will always encompass a government to government international consideration, a sovereign element hence the Minister's involvement.

This Bill attempts to define the powers of the Minister as clear as possible as we can. The Bill also allows more than one requesting country applying for the extradition of the same person. For the benefit of this House, the new Bill has three extra provisions in this section that restricts extradition for the court and the Minister. And the first of these I would like to let the House know.

First of these is the exception involving military offence. Where given that the offence is not in civilian law then there is no guarantee of a fair trial. You and I are aware about the problems of a military court. There is no independent tribunal or jury no legal representation, lack of opportunity for dependents to present his/her case and no public hearing.

Another exemption which extradition may be impossible is when final judgment has been given and enforced. The exemption based on a double jeopardy principle which prevents a second trial for the same offence. The third exemption when extradition can be excused is when a judgment has been made absentia with no right of appeal because it offends the rules of natural justice as a person is not afforded the opportunity to bring evidence to support his case. These restrictions are exceptional, fair and humane. While there is a temptation to advance acquisitions of abuse in relation to the Minister's powers, at least from the Minister's point of view there are transparent guidelines outlined in the Bill in Section 19. It is a balance between our duty to combat crime that the international scale and a person getting a fair trial at the beyond reasonable doubt standard in the extradition country. In fact, this Bill is about trusting our regional courts and jurisdictions that are humane and fair.

The new Bill also by extradition where a person is prosecuted or punished because of their sex or status as well as keeping the categories of racial, religious nationally or political opinion. This is on track with the international obligations under the United Nations Convention Programs, which prohibit discriminatory treatment on those grounds. With this Bill, it is obvious that we are lagging behind a number of our PIF members, which is reason I must congratulate Members of this Honorable House for seeing essence in supporting what the Minister of Education calls a robust and modern bill. That is not a say, we are lagging behind our neighbors in the fight against international crime and meeting our obligations and commitments in an era where national borders have become, so to speak, irrelevant.

This House had debated some bills concerned with international terrorism and crime for which Solomon Islands is quite ahead of its neighbors. This particular Bill, therefore, provides a reasonable administrative efficiency and uniform procedures, evidence requirements and ease networks between member states of PIF.

The second category of extradition countries involved those belonging to the Commonwealth but is a non member of PIF. The difference in extradited procedures between Commonwealth and PIF countries is simple. Among PIF countries, there is a backing of warrant system where there is a high standard of evidence or as known as the record case tested usually accompanies commonwealth extradition procedures.

Beyond the PIF and the commonwealth family of nations there is no escape because we have extradition procedures for treaty countries based on the conditions of the treaty and subject to Part 3 of the Bill and a way of dealing with wanted criminals and suspects who cannot be extradited under the first category as I talked about earlier on.

Sir, there also provisions in this Bill where the Minister can refuse to grant extradition but overall the new Bill provides internal checks and balances in the process of extraditing someone from the police to courts and the Minister.

When I commended this Bill before this House I said that with this Bill, we can easily extradite within a reasonable timeframe while ensuring the right to a fair hearing and appeal. Why I still maintain should there is a much bigger picture to this. Not only will this Bill contribute to the fight against serious and organized crimes but those who miscalculate that Solomon Islands provides a perfect space or safe haven they can get away with their crime will know that Solomon Islands can never be like that like before anymore; thanks for this Bill. The Bill acts as a deterrent and I do agree with the Member for Temotu Nende that better border of controls is essential and will help combat crime.

Once again, I would like to, in conclusion, congratulate everyone in this House for your wonderful contributions to the Bill, and I look forward to the questions at the committee stage. With those few remarks, I thank you very much.

The Bill is passed

Mr Speaker: Honorable Members, as you are aware, His Excellency President Ma Ying-Jeou arrives in the country today and there is an extensive program for His Excellency's arrival. Many Members will be involved in that program. Thus, to allow Members to participate in the program and accord the visiting Foreign Head of State due honor, it would be best for the House to adjourn early.

The Honorable Prime Minister, however, cannot move the normal adjournment because there is business yet to be considered, as you can see in the Order Paper for today. As such, I have been requested to exercise the Speaker's power to adjourn at anytime under Standing Order 10(5), to adjourn the House notwithstanding business yet to be considered. I have agreed to the request and at adjournment outstanding business will be carried over to tomorrow's business.

Accordingly, Parliament is now adjourned under Standing Order 10(5) until 9.30 am tomorrow, Thursday 25th March 2010.

The House adjourned at 111.50 am