

## THURSDAY 25<sup>TH</sup> MARCH 2010

The Speaker, Rt. Hon Sir Peter Kenilorea took the chair at 9.44 am.

Prayers.

### ATTENDANCE

At prayers, all were present with the exception of the Prime Minister; the Deputy Prime Minister & Minister for Rural Development & Indigenous Affairs; Finance & Treasury; Planning & Aid Coordination; Foreign Affairs; Agriculture & Livestock; Education & Human Resources Development; Health & Medical Services; Fisheries & Marine Resources; Environment & Conservation; Justice & Legal Affairs and the Members for East Are Are and East Makira.

### **ANNOUNCEMENT BY THE SPEAKER**

**Mr Speaker:** Honorable Members, before we proceed I wish to announce that the President of the Republic of China on Taiwan, His Excellency Ma Ying-Jeou will be making an address to Parliament this morning at 10.30 am. In accordance with the resolution of the House made yesterday, to ensure the proceeding runs smoothly, I ask all Members to familiarize themselves with the program and if possible to remain in the chamber when I suspend the House so that the Prime Minister and I may greet His Excellency together with five congressmen on their arrival.

One small but important observation is that there are some empty seats in the front chamber benches. I would ask Members to please fill these seats before His Excellency President Ma enters the chamber. Members can return to their allocated seats when Parliament is resumed after suspension of sitting.

I will suspend the sitting and I expect Parliament to resume at 10.30 am for the address by His Excellency. After the address, I will again suspend the sitting to allow His Excellency to greet Members and depart. Following that, we will resume and continue with our normal business for today as per the Order Paper. We shall now proceed with our first two items of business on the Order Paper before I suspend the sitting.

### **PRESENTATION OF PAPERS AND OF REPORTS**

- Report of the Bills and Legislation Committee on the Protected Areas Bill 2010 (National Parliament Paper No. 8 of 2010)

*Sitting is suspended until 10.44 am.*

**Mr Speaker:** Your Excellency, Ma Ying-Jeou, President of the Republic of China on Taiwan and your honorable delegation, honorable Prime Minister, honorable Ministers of the Crown, Leader of the Opposition, Leader of the Independent Group, Your Excellency, the Ambassador to the Republic of China on Taiwan, Members of Parliament. I am humbled to be honored by this very special privilege as Speaker of our National Parliament, on behalf of all Members to welcome the distinguished President of the Republic of China on Taiwan and his honorable delegation to the National Parliament of Solomon Islands this morning.

I wish to thank His Excellency, the President for sharing the Speaker's podium with me. It is indeed an honor and privilege for this House to be graced with your presence today, Your Excellency. Your personal presence further shows us of the already sincere relations between our two countries and peoples. I have no doubt that following your personal visit here, the important worthy and cordial relationship between our two countries over the past 27 years would be further strengthened and taken to new heights.

As I recall in January of 2005, I have the privilege and honor to invite your predecessor, His Excellency President Chen Shui-bian onto the same podium to address our last Parliament. With great delight, I note that Solomon Islanders have benefitted and indeed continued to benefit greatly from the relationship between our two nations in the fields of education, health, economic infrastructure and agriculture. The new office complex for Members of Parliament is a shining example of this. The project is a very significant milestone in the overall development of the Parliament precincts in our young democracy.

On our part, I wish to reiterate my words to your Foreign Affairs Minister last month and thank the Government of Taiwan and your people for this wonderful gift. Apart from the many other development assistance which our people have received from the Republic of China on Taiwan, this is perhaps the most inspiring and permanent gift given to the Parliament and the people of Solomon Islands. On behalf of our people and Parliament, I thank the Republic of China on Taiwan most sincerely for this enduring and fitting gift. I hope that on this visit to our shores and islands, your Excellency will not only have an opportunity to learn a bit of our diverse cultures but also learn from our challenges and share our dreams and visions for a better future and build new friendship with the people of this country.

As a token of our appreciation, and on behalf of the Parliament, I would like to present Your Excellency with a gift to remind you of your visit to the National Parliament of Solomon Islands. This gift is a ceremonial jewelry made from traditional shell money and commonly won by persons of high rank on special occasions. Please

accept it as a token of the lasting relationship between our countries, but more so between your Excellency and the people of Solomon Islands.

*Presentation of the gift by the Speaker to President Ma*

*applause*

Finally, it is my prayer that you and your delegation will continue to experience the goodness of God in your time here with us and His travelling mercy with you when you return to your people.

Mr President, Parliament resolved yesterday to invite you to make an address to the House and today gives me great pleasure to invite you to make that address. Thank you Your Excellency.

*(applause)*

## **ADDRESS BY THE PRESIDENT OF THE REPUBLIC OF CHINA ON TAIWAN, MA YING-JEOU TO THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS**

Rt Honorable Sir Peter Kenilorea, Speaker of National Parliament, Honorable Dr Derrick Sikua, Prime Minister, Honorable Manasseh Sogavare, Opposition Leader, Honorable Isaac Inoke Tosika, Leader of Independent Group, Honorable Ministers of the Crown and Members of the National Parliament, Mrs Taeasi Sanga, Secretary General of the National Parliament, friends from the Diplomatic Corps, friends from the press and dearest friends from Solomon Islands, good morning.

It is an honor and privilege for me as President of the Republic of China, Taiwan to have an opportunity to speak in the hallow hall of democracy. Although Solomon Islands and Taiwan are far from each other geographically, since we established formal diplomatic ties 27 years ago, we have developed close relations and solid friendship because both our two countries enjoy the common value of democracy, freedom and peace, and our two countries have become faithful friends of each other and the best partners in cooperation.

Under the outstanding leadership of Prime Minister Sikua and the supervision of the Parliament, your esteemed country has engaged in political reform and you have developed close relations with the region and you also promote cooperation with the world. Also, you have been working on the improvement of education quality as well as the promotion of medical care and food security and harmony between different ethnic groups, and all these efforts have borne fruit.

Last August Typhoon Morakat hit Taiwan hard and caused severe damages in Southern Taiwan. My Government mobilized all available resources and worked with

the private sector to carry out relief and reconstruction work. I would like to thank His Excellency, Governor General Kabui and Honorable Prime Minister, Dr Derrick Sikua as well as Members of Parliament and all the people of your good country for the kind concerns expressed through various channels including letters, phone calls, a parliamentary resolution, fundraising dinners and private donations. I was particularly moved to hear that Chief Tali Tapiva from Isabel Province made a long trip by boat to deliver a donation to the Taiwan Technical Mission. Indeed, the whole of Taiwan was extremely touched by the story after it was reported by the media. I have therefore requested to meet Chief Tapiva during my visit so I can thank him in person. On behalf of the people and government of my country I want to extend my sincere gratitude to the people and government of Solomon Islands for your concern and assistance during that difficult time.

Some of you may know that 13 years ago I visited your great country as a professor and back then I felt the friendship, warmth and kind hospitality of the people of your country. I also thank you very much for your concern for the victims of the typhoon in Taiwan. Since our arrival yesterday although it has been three years, I can see that in your country you have made great progress in various aspects but the friendship, warmth and hospitality of Solomon Islanders have remained unchanged.

Over the years, Solomon Islands has been helping the Republic of China, Taiwan in gaining more international space and you have been a staunch supporter of Taiwan. On behalf of the people and the government I want to thank you very much for your unwavering support. All these have borne fruits and achieved substantive results. Just two days ago, we have received an invitation from the World Health Organization (WHO) to Minister Yang of our Department of Health that Taiwan is officially invited to participate in the World Health Assembly this year. This marks the second invitation after Taiwan left the United Nations 38 years ago. We want to thank you very much for your contribution in helping Taiwan to win more international visibility in the international community. On behalf of the government of the Republic of China, Taiwan I want to thank you for your support and friendship.

Since I assumed office in May 2008, I have been working on the development of foreign relations as well as the improvement of cross strait relations so that we can help develop the peace and security in the Asia Pacific Region. I have been working on the improvement of cross strait relations. We have successfully resumed the cross strait negotiations after it has been suspended for 10 years, and both sides across the Taiwan Strait have signed 12 agreements and reached one consensus. The cross strait tensions have greatly reduced and we have reached the new point of the history that I think right at this moment we have established the best relations over the past 60 years.

In terms of our foreign relations we have adopted the policy of flexible diplomacy. We have ceased the vicious competition across the strait in winning diplomatic allies from each other. Instead, we follow the principle of dignity,

responsibility and cooperation, and we do our best to normalize our diplomatic work and all these have achieved substantive results. I will leave that to the members of the International Community. We will do our best and you no longer need to be concerned about the tension across the Taiwan Strait and therefore all of the parties in the region and in the world can benefit from this. I think therefore we can establish a benign circle and create a win-win situation.

In terms of the ROC Government's foreign aid policy we have made some adjustments. Last year we released a white paper on foreign aid and we made some statements, and that is, we have to work on a responsible and professional foreign aid project, and we will honor the spirit allied in the Cairns Compact of the PIF that we will achieve effective coordination so that we can achieve the goals together.

For our foreign aid we have to comply with three important goals. The first one is we have to have a legal purpose, the second one is the process has to be legitimate and the third one implementation has to be effective and therefore we can be responsible and transparent in providing foreign aids to our allies. I think our work will go smoothly because of our efforts. I think this will be extremely helpful for our Pacific Allies.

For aid to our Pacific Allies, we have outlined three important goals for Taiwan's aid to the Pacific region in the future. First of all we are eager to share our valuable development experience with our allies, particularly the knowledge and skills we accumulated during the process. After all, while tangible resources are easily depleted, knowledge and skills can create unlimited possibilities. Second, our cooperation projects will take into account local conditions and meet the real needs of the people. Third, Taiwan helps to strengthen coordination and cooperation with you and other allies to help with the gradual process of adaptation. We will seek to abide by the principles of effective coordination outlined in the Cairns Compact by jointly working with aid recipients and regional organizations, including the PIF and its Regional Assistance Mission to Solomon Islands (RAMSI), we seek to promote the overall development of the region.

Climate change in particular has become a top concern for countries around the world. As a loyal ally to Solomon Islands, the Republic of China, Taiwan is naturally concerned about the negative impacts climate change is having on the environment and on economic developments in Solomon Islands. And for Taiwan, we will do our part to save the energy consumption and carbon emission and at the same time we will work with Solomon Islands to help you adapt during the process of climate change. Therefore, during the process of adaptation, after our careful deliberation, we believe that establishing solar power system is a viable cooperation project. This is not only in line with international trends but can also bring clean energy to the region and help reduce global warming. This is why last year Taiwan successfully promoted solar

power in rural areas here by providing schools in each constituency with 40 solar power lights, which was very well received.

In addition Taiwan is also promoted the Solar Power Generation Demonstration Project in the Prime Minister's Office building. I am honored to have hosted the unveiling ceremony with Prime Minister Sikua earlier today. In the office I also saw the electronic billboard that was manufactured by Maote Corporation from Taiwan. From that billboard we can see how much electricity is produced and can be consumed by how many household each day, and in this way we can help your country to save the energy consumption and reduce carbon emission.

In addition, construction of the Parliament Office building that Taiwan is helping to build, officially began last month and we are also considering installing solar power generation equipment in that building. Afterwards, we plan to establish a solar power training and maintenance centre so as to train skilled workers and create job opportunities. We hope this will enable the people of Solomon Islands to understand the advantages of solar power which can reduce the cost of energy imports, save foreign reserves and conserve the environment by saving energy and reducing carbon emissions, and therefore, we can create a win-win-win situation among our parties.

Actually it is more than a win-win-win situation. We can create a multiple win situation because during our visit to the six Pacific Allies this time, we have found that all of the countries in this region have been exposed to very sufficient sunlight. If this project can work in Solomon Islands then we can establish a regional solar power generation centre in your country which can then be emulated and transported to other countries so your technology and products will be able to be exported to other Pacific nations. In fact, we have adopted this model in the Pacific Allies. For each country we have established a tailor-made project and if this can work in that country it will be copied and reproduced in other countries.

Today, I believe this is a wonderful opportunity for us to reiterate our friendship and our mutual help for each other, and I think our two countries both enjoy the universal values of democracy, freedom and human rights, and I hope that from then on we can press forward to enhance our bilateral relationship.

All of the distinguished Members of Parliament present today are the elites of your country and you have made significant contributions to your country, so once again thank you very much for being here today and I believe that in the future we can work together to improve our relations. I also wish every success for your parliamentary election.

On behalf of the people and government of the Republic of China, Taiwan I want to present Rt. Hon. Sir Peter Kenilorea, the founding father of Solomon Islands with a memorial plaque for the new Parliament office building. This plaque is to be placed in front of the new building, which is sponsored by Taiwan as a token of our sincere and everlasting friendship.

Your Excellency, I want to assure you of the continued friendship and cooperation of my country and I honestly and earnestly hope that the friendship and cooperation between our two countries will continue forever. Long live the friendship between Solomon Islands and the Republic of China on Taiwan. Thank you very much for your attention.

*Applause*

*Sitting suspended for plague presentation*

*(Parliament Resumes)*

### Bills Second Reading

#### The Protected Areas Bill 2010

**Mr Speaker:** Honorable Members, the Honorable Minister for Environment, Conservation and Meteorology moved the second reading of the Protected Areas Bill 2010 yesterday and the debate was adjourned to today but I understand that the Honorable Minister wishes to instead adjourn this debate. I now call on him to take the necessary steps.

**Hon. Lilo:** I move that debate on the Protected Areas Bill 2010, be adjourned until Monday 29<sup>th</sup> March 2010. The reason is that some Members have requested that they be given more time to read through the Bill and to prepare for debate on it, as they have already prepared for debate on the Extradition Bill, so for that reason I move that the debate on the bill be adjourned until Monday.

**Hon. Sikua:** As some Members may know we will be asking the House Committee to grant us permission to use tomorrow as a normal government business day. But we would really want to use that opportunity to move a motion to thank the President of the Republic of China, Taiwan for his speech to Parliament this morning, as well as the fact that the Government would like to use tomorrow to deal with the Foreign Relations Committee report. That is what is intended for tomorrow so I do support the Minister's motion to move the debate on the Protected Areas Bill 2010 to be adjourned until the next sitting day, next week.

*Debate on the Bill adjourned to the next sitting day*

### Bills - Committee Stage

## The Extradition Bill 2010

*Clause 1 agreed to.*

### Clause 2

**Mr. Oti:** Clause 2 on the interpretation of comity country which means a country other than a Commonwealth Country, a Forum Country or a Treaty country. When we look at the Schedule, Schedule 1 is to do with Section 24, Part 1 says “countries to which prima facie evidence scheme applies” and then Part 2 says “countries to which the record of the case scheme applies”, and then Schedule 2 is the Pacific Islands Forum countries. Can the Attorney General perhaps be a bit more specific on what it would mean practically for the committee to know an example of a comity country in this instance, taking into account Schedule 1 and Schedule 2 of the Bill?

**Hon. Chan:** A comity country is all the countries that are not listed in schedule 1 and schedule 2; the rest of the countries not listed in schedule 1 and schedule 2.

**Mr. Oti:** What would be the normal expectation or arrangement with that country? Would we have to have a treaty of extradition between Solomon Islands and that country in that regard, in the treaty arrangement because there is also a provision for treaty country? If you look at page 9, the definition of extradition country means a commonwealth country, a forum country, a treaty country and a comity country. What would be the extradition arrangement between us, just that you are a comity country and therefore you do not need to have a treaty between a comity country and Solomon Islands?

**Hon. Chan:** Part 7 lists the conditions and the provisions that are necessary for a comity country, as a requesting country with the Solomon Islands; the conditions are there in Part 7.

**Mr. Sogavare:** I just want to get the views of the Minister and maybe the Attorney General as well. There are political offences, and clause (d) says, “Any other offence that Solomon Islands and the other country have agreed, not treated as political offence for the purpose of extradition”. But just a thought maybe the offence must be decided by its nature, not the whims of political governments, and I do not know how the Minister would like to look at it. Any offence that although might be political in nature but we do not want to treat as political in nature, what is the Minister’s view on this?

**Hon. Chan:** Basically (a), (b), and (c) are exceptions for a political offence and (d), is basically what our country and a requesting country will put down in a treaty on what sort of political offence can be seen as an exception to extradition. I do not have in mind what sort of political offences will go into these treaties as yet, and so I could not give a proper answer to that because at this stage there is no request from a requesting country or from our country.

**Mr. Oti:** So I am getting the understanding from the Minister's response that (a), (b), and (c) are not offence and are not to be defined as political offences. Is my understanding correct from what the Minister is saying that (a) because of the subjective words at the end of that last paragraph, "but does not include (a) - and offence, (b), offence of genocide, (c) an offence of and so on, 1 & 2, and then (d), I do not see how that can be an exception if the preceding statement says "or does not include", obviously it must apply to (a), (b), (c) and (d).

**Attorney General:** The definition of political offence is structured in a way that first it describes what a political offence is and then it qualifies what exists will not be considered as a political offence. The first rule there is a political offence being described that is something of a political character and then it qualifies it. The first qualification under (a) is a kind of a conduct referred to a multilateral treaty so if Solomon Islands sign a multilateral treaty then this kind of offence cannot be treated as a political offence, it is not a political offence. That is in (a) roman numeral (i) and Roman numeral (ii), where parties have an obligation to extradite or prosecute. For example, there are obligations under the Counter Terrorism Act, as an example. Where there is such kind of obligation although there maybe some elements of political character but there is an obligation there, those elements of political character cannot be used to suppress that obligation. So as in (b), you have the offence of genocide. If an offence is clearly an offence of genocide, one cannot use political situation to try and defend oneself from extradition. That is a qualification also of what a political offence is.

In (c) are the kind of offences that would be committed against heads of states or the heads governments like murder, kidnapping and attacking. Those kinds of offences cannot be suppressed because one wants to rely on an offence of political character. Part (d) is a general provision because we cannot continue writing up the listing, these offenses cannot be regarded as political offences therefore you have (d) as a general provision, and the general provision is that Solomon Islands and the other country can agree to treat a certain kind of offence as not a political offence for purposes of extradition. That is my explanation to the House in an attempt to explain how and why paragraph (d) exists under the definition of political offence.

**Hon. Sogavare:** We understand fully what the Attorney General has explained, and it is a drafting style to cover many areas that they want extended. But the point is that we may be affecting the rights of people so when it is left open like that to the whims of two groups of politicians in here and maybe in the requesting country when there is no clear expressed definition or interpretation as outlined, there is possibility of dragging it outside of what it really intends under (d). But that's normally a provision that can be there as the Attorney General said that we cannot continue listing them. But I just express that concern.

**Mr. Zama:** I am not feeling comfortable at all with this kind of openness, especially with the political offences. It seems that we probably would be giving a free handout. Whether that is deliberate in its drafting or intensions, I do not know, but I find it difficult.

**Hon. Chan:** I thought I might add on this as well that the current Act leaves it a lot more open if that is the suggestion because all it says in the previous act was that it is of a political nature. This, we have actually tried to define it as specific possible.

**Mr. Waipora:** Still on the same subject on the political offences. I just want to know if the Minister or the Attorney General can give an example of a political offence so that it can lead my mind to understand the others. What is an example of a political offense?

**Hon. Chan:** Kidnapping the Prime Minister is an extraditable offence and as well as breaking a lot of international convention protocol that we also sign on.

*Clause 2 agreed to.*

*Clause 3 agreed to.*

#### Clause 4

**Mr Sogavare:** Sub clause 4 says "an offence maybe an extradition offence although". Does that mean taxation offences are not extraditable offences?

**Hon. Chan:** Clause 4 subsection 4 is saying that they are extraditable offences.

**Hon Sogavare:** The word 'although' seems to suggest that an offence maybe an extradition additional offence, the term 'although' seem to suggest that (a) & (b) which refer to taxation might as well taxation and revenue although are this one, although

there are offences outlined in (a) and (b), it seems to suggest that these are not extradition offences. Can you explain that?

**Attorney General:** The explanation I would give has its genesis in the history of extradition law. If we look at all extradition legislations including our current Act Cap 59, you will not see tax law or tax offences listed in the schedule. It has never been an extraditable offence in the history of extradition law even in big countries in Europe until there is a European Convention which then led to the inclusion of tax offences in extradition law. Why tax law is given specific reference here in sub clause 2 is for that historical reason. Subsection 4 is now stating clearly that an offence against the law of a requesting country relating to taxation is now and will now be an extraditable offence, so this is a clear statement of that fact.

**Mr Tosika:** Does that mean if someone does not pay his duty or tax in Solomon Islands, say a million dollar tax and escapes from Solomon Islands; he runs a business here, under this law can he be extradited to return to face this non-payment of tax in Solomon Islands? Is that right; the word 'although' means he has to come back here?

**Attorney General:** That is correct.

**Hon. Sogavare:** Thank you very much for that explanation, it is now clear. Sub clause 2 says "In determining whether conduct constitutes an offence, regard maybe at had to only some of the acts", and so it limits it and so you do not need to take account of everything or conduct.

I just want to get the views of the Minister and the Attorney General that this seems to be too loose. I suggest there needs to be stronger grounds to determine whether a conduct constitutes an offence. What is the view of the Minister and the AG on this? What is the rationale?

**Attorney General:** Sub clause 2 does not dilute or take away other sub clauses like sub clause 1. However, it enhances sub clause 1, and the reason for having sub clause 2 is because of the principle of dual criminality as has been explained by the Minister and the Minister of Education on dual criminality where you have to have the offence in the requesting country and the same kind of similar offence must also be in our country. But the way the law maybe drafted in the requesting country may not be exactly the same as our version or our text of the law in our country. Let us give an example; the law on kidnapping or rape. We may use the same name 'kidnapping or rape', but the elements maybe different; the elements of the law may be different. The way a foreign country drafts the text of its law may be different and not exactly the same way we draft the text of our law. If there are such differences, such differences should not stop

extradition proceedings from taking place. That is why you have sub clause 2 saying that in determining whether a conduct constitutes an offence, regard maybe had only to some of the acts or omissions that make up the conduct. As long as there are similarities in some of the elements or some of the acts that is sufficient for an extradition offence to be established and extradition procedures to be initiated.

**Mr Oti:** Yesterday in my contribution I made reference to Section 4 on this particular issue we are now discussing; extraditable offences and restrictions on Section 4. In the current Act it is on Section 5 of Cap 59, and then it is specific in the schedule. The schedule of Cap 59 gives us the description of extraditable offences, which are 29 of them and so it is quite explicit in existing law. Now it is going to be determined by what we are trying to grapple with now. We are going to determine based on what Section 4 of the Bill is trying to say.

Just for the AG and the Minister perhaps to explain to us, especially (a) & (b), sub section 1 - extradition offence, if it is an offence against the law of the requesting country for which maximum penalty is for a period of imprisonment of not less than 12 months; (b) also talks about it which the maximum penalty is in terms of imprisonment or deprivation of liberty for a period of not less than 12 months. When you have to extradite a request based on after those sections are qualified where the schedule in Cap 59 is more specific, on murder its sentence obviously is going to be more than 12 months. Where inside in this Bill am I going to find that there are exceptions on the limitations where subsections 1(a) and (b) puts so that issues like murder, manslaughter and so on or even for that matter maybe we do not have any law as yet, but it is part of our international obligation in terms of genocide, those that have life sentences, and this is extraditable, particularly in the current situation, transnational crime, terrorism and so on where crime is created elsewhere, the penalty for murder would be lifetime imprisonment. Where inside this law or are we going to work out which murder will become extraditable and therefore subsections 1(a) and (b) on the limitations of 12months or less is not applicable. Am I going to find that anywhere in the bill or somewhere in the clauses that we are yet to cover?

**Hon. Chan:** Due criminality condition here suggests that anything 12 months or above is an extraditable offence with those exceptions in this part. Basically you would have to look at other legislations or the penal code to find out the maximum punishment periods.

**Attorney General:** The listing of extraditable offences in legislation is beginning to phase out in jurisdictions which have extradition law now. It is an old system where extraditable offences are listed. What is becoming apparent is that when faced with new situations you are stuck with the list. By listing offences that is all you have, you

cannot extradite person on offences that are not on the list because it is restricted only to the list. That is not helpful in international cooperation nor is it helpful in ensuring that we perform our obligations.

Rather than sticking to the listing scheme, we adopt the modern scheme which is to lay the kind of formula we have in 4(1) (a) and (b), and that is the formula that will be used for determination of whether an offence is an extraditable offence rather than having a restrictive list. So if we want to know whether a particular law is an extraditable offence, we have to check the specific law that is the subject of consideration. For example, if it is a murder case then obviously it comes under the penal code, and kidnapping is an offence falling under the penal code, so you just have to look at the penal code and see the maximum penalties there. The first stage will be the consideration of that offense under their specific laws that if they meet the formula in 4(1)(a) then it is an extraditable offence.

In 2008 we passed the Civil Aviation Act and in 2009 we passed the Counter Terrorism Act 2009. In the Civil Aviation 2008, we included provisions which added the offences in the Civil Aviation Act onto the list in the current Extradition Act. We also did the same with the Counter Terrorism Act. We do that because we have a listing system. Now with the new extradition bill because we are using the formula in 4(1)(a) and we will not be using the listing system, every time we come up with a new law we do not have to enter them into a list or have a provision for them in the new legislation. All that we need to refer to is the new formula that is established here under clause 4(1)(a) and (b) and all the other requirements in the Bill.

**Mr. Folotalu:** What if someone is accused of multiple offenses, say maybe 10 counts of offences that are punishable for six months each. If these six months are added together they come to more than 12months. Can a person be extradited back or taken back to the requesting country because each of the offences added up to 12 months? Say if he is a Solomon Islander and he faces multiple offences like this in another country, can he be extradited to be tried for these 10 counts of offences that are punishable from six months?

**Hon. Chan:** The answer to that question is, no, he cannot be extradited, as each offence has to be 12months or more.

**Mr. Oti:** I think it is not less than 12months, the penalty for which is not less than 12months but it is 12months or more. So we are clear on that. Of course, I take back my interpretation of this section today. But because of what the Attorney General has said, in terms of subject 2, perhaps the penalty imposed under the penal code in terms of murder and so on and all the other crimes that are extraditable, their punishments in our country is in the penal code. Why is it not necessary to look at this and subject to

those other legislations so that it is clearer perhaps or maybe it is not necessary? Maybe the Attorney General can explain that what is now on black and white can sufficiently address any areas of potential doubt that might arise.

**Attorney General:** It is not necessary for us to have qualifying provisions like subject 2 because the purpose of this extradition bill is not for the Minister or the court to conduct a trial under this extradition bill. The purposes of this bill is really for the Minister and the court to assess whether there is an extraditable offence and then if the person is extradited will go through the normal trial in the requesting country. It is after a person has been extradited and then subjected to the trial process under that law that the court will then be required to enquire into the evidences fully. If I can perhaps just explain it simply, I would say that the process here is a minimal process of just assessing. For example, in the case of commonwealth countries, we will have the countries that would be listed in Part 1 of schedule 1, the prima facie evidence assessment, so it is not full proof of the evidence because it is not a trial yet. Then in the case of commonwealth countries in Part 2 of the Schedule, all that is required is the record of the case, and in the case of the Pacific Island countries all that is needed is a copy of the warrant whether it is faxed or emailed. We do not have to subject the provision here to other laws like the penal code because the full enquiry is not conducted under this law or this Bill.

*Clause 4 agreed to.*

#### Clause 5

**Mr. Tosika:** When we look at the definition of political offence we relate it to section 5 to be the clause that talks about these activities. For instance the extradition offence is regarded as a political offence, and so in my own view we have not properly defined this term 'political offence'. It talks about political character, and so what is political character. When we closely look at it I see it this way: because this law talks about extradition, extraditing means two parties coming together to agree that when a person commits in offence in one country, like for instance if someone commits an offence in Solomon Islands and then goes to Australia, he has to be sent back to face his trial here if it exceeds 12months under section 4.

What I want to get at here is a situation where the two governments do not agree with each other. You are giving the opportunity for the other person on the other side to get into a boat on the other side using some kind of ways to put down another political government. In such a case, is it possible to define the term political offence properly? Because if this is not properly defined the other government that might be at odds with this government is going to use things inside the country of a political nature

to make it look like an extraditable offence and then that person can be extradited, but at the end of day it is because that government is at odds with this government. What I am saying bounds to happen because we have given much power to the Minister here and the Minister's power is the power of the executive in this case, and in most cases it happens in the country where the government of another country is not in good terms with another government uses the opposition to topple the government for unknown reasons, even if you look for it in the penal code or elsewhere does not exist or that person has been facing trial in that other countries where he commits the offence. All these are what we must try to build upon so that the liberty, the right of the person we wanted to extradite from the country is not denied. Maybe we should try to look again at Section 5. Yes, I understand that (e) gives the final judgment but this word 'political offence' is not defined properly because people can use it for their own ends or use it to meet whatever it is that they want.

**Hon. Chan:** The answer to that question basically is in Section 2. A political offence is not extraditable except if it is an offense like genocide or murder or kidnapping or the breach of multilateral treaties or threatened or attempting to commit or participate as an accomplice in murder and kidnapping, these are extraditable offences, otherwise a political offence is not extraditable. The definition in Section 2 is quite specific.

**Mr. Tosika:** Yes, I can understand the point that a political opinion or political offence is not extraditable but what I am concerned about is otherwise they might see 'political offence' in the nature of an offence that is there that can be extradited. That is my concern.

My fear is otherwise the offence might be political in nature but because they wanted that person to leave that country they twisted it to say this is not a political offence but this offence is made under the penal code like this and that so that he is extradited from the country. That is my fear here.

**Hon. Chan:** I can understand your fear about this but it is very specific here that these are political offences restricted except those in Section 2.

**Mr. Oti:** I can see the difficulty where the Leader of Independent is coming from. The definition of political offence is, "In relation to a country, means an offence against the law of the country that is of a political character". That is not even simplifying what we are trying to grapple with here. It is just adding on another one, which is political character. What is political character? Anyway, we leave that for the time being but if trying to define political character is going to be of any help, maybe the Minister and the Attorney General would further enlighten us on that.

I do not see what the purpose of Section 5(g) is. Section 5 is about something that you cannot extradite a fugitive or a person with. That is what it means. Section 4 is extraditable offence, Section 5 is offences not extraditable and when we come to (g), I do not know why this is put in here because already no one in his right mind on the other side on the other executive who already knows that a person has been acquitted, pardoned by the requesting country or in Solomon Islands, punished under the law of that country already for offence rather than offence constituted by the same conduct as the extradition offence, why would you then be contemplating talking about extradition.

**Hon. Chan:** Section 5(g) has a double jeopardy question and we have just tried to exhaust it to include that in there.

**Mr. Waipora:** Section 5, during the Bills and Legislation Committee hearing I expressed my concern about the Minister and the court. And here I was referring to cases like when the minister decided to sail the ship but other authorities come in. The court says no but the Minister says to sail it.

A case in point here is recently the case of the Minister of Fisheries who gave an order to release the ship but the police interfered. And so I expressed my concern during our committee hearing and now that we are in Parliament I want to say that I am still concerned about when there is the Minister and the court together, we will not know how things will come to a conclusion.

When we come down to Section 5(b), we have political opinions and court decisions there. That is my concern and I want the Minister and the Attorney General or maybe the Prime Minister to explain this. Maybe the court will take care of him but it will be in conflict with political decisions and it will continue.

**Hon. Chan:** I still do not really understand the question but I will try and answer what I think he is asking about. Basically, the Minister and the Court have to be looking at this section, as it is a restriction on extradition, both the Minister and the court that if it does not pass this, he does not get extradited.

**Hon. Sogavare:** So from (a)(b)(c) to (h), which one is the Minister and which one is the court going to look at?

**Hon. Chan:** Every one of this is considered by the Minister as well as the court because this section determines what an extraditable offence is and the exceptions for it.

**Hon. Sogavare:** I think that is an issue. If that is the case then we will be more comfortable with the court than the Minister.

**Attorney General:** There are different roles played by the Minister and the court in the scheme set out in the Bill. Let me give an example here. The Minister deals with authorization that when a request is received from a requesting country or a foreign country, it is the Minister who must decide whether the extradition should proceed and he issues the authority to proceed. After the authorities proceed, then an application is made to the court for a warrant whether it is for a provisional warrant or an original warrant or the warrant. They have different roles to play. What Clause 5 is doing is, it depends on the application, whether the application is made to the Minister when the Minister performs his function or the application is made to the Court.

There are other roles again, if I could give some more examples that even after the court has made an extradition order, making of an extradition order is the function performed by the Court, by the Magistrate. Even after the Court has made an extradition order it will be the Minister who must make the extradition decision. A person is not is not extradited until the Minister makes the extradite decision. There are different functions performed by the Minister and the courts. When we understand the different functions and then we look at Clause 5 which uses words like 'application to the Minister or Court', it refers to the different functions the Minister and the Court would be playing under the law.

**Mr Tosika:** I want the AG to explain (f) which talks about a person has become immune from prosecution or punishment because of lapse of time, amnesty and the phrase 'any other reason'. Can you give an example of 'any other reason' under 4 which gives the opportunity for a person to be extradited?

**Attorney General:** It would be difficult for me to specify a particular reason but it is important for the Member to understand what paragraph (f) is saying there. What it says is that if the law of the requesting country of Solomon Islands has a provision for granting of immunity against prosecution or punishment, and the reasons would be because of lapse of time or because there is a provision for amnesty or any other reason. The reason has to be stated in the law and connected with the immunity provision in that law.

Any other reason is put in there only because it depends very much on the law of the requesting country and it depends very much on the laws that the Solomon Islands Parliament will enact in future, enact now or later. I cannot really predict what reasons the law of a foreign country or the laws of Solomon Islands in future will say as the grounds or reasons for granting of immunity. That is why you have that expression 'any other reason' there so that if lapse of time is one of the reasons or amnesty is one of the reasons or probably any other reasons our future law will set up, those will be brought under this paragraph (f).

**Mr Tosika:** So this means the Vienna Convention protocol that governs offices, regional organizations and maybe some people that the Constitution of Solomon Islands are immune from the laws. Are those kinds of people covered under this provision? My question is, what about you, are you immune from this? Can you explain that to us as a person appointed under the Constitution?

**Attorney General:** Well, I as the AG do not have any immunity.

**Hon. Chan:** I could possibly shed some light on this. I do not think this section covers people who are under the Diplomatic and Immunities Privileges Act. It just covers amnesty. We have an Amnesty Act and those people are immune from extradition or lapse of time and that is possibly on taxation matters where there is certainly a number of years later and after those number of years are over then it is no longer an offence if you create an offence after lapse of time.

**Mr Waipora:** This is a question on immunity. The honorable Minister has just explained it and that is why I am going to raise this question.

One kind of immunity comes under the Diplomatic Act and the other one is immunity. Does this mean that RAMSI officers who commit an offence in our country are sent out from our country but they will not be punished? If they are sent away what sort of immunity do they come under? Is this immunity only apply to governor generals and others or what is it?

**Attorney General:** Particular reference was made to RAMSI. Yes, of course, there is an immunity provision in the Facilitation Act and the Facilitation Act is a law of Solomon Islands where there is an emergency provision there. Yes, it can be brought under paragraph (f). Clause 5 may not be the clause for sending officers serving under RAMSI but there are other legal mechanisms in dealing with that kind of situation.

**Mr Agovaka:** Section 5 says, 'a person shall not be extradited under this Act', and then it gives the reasons there. My question is, what happens to this person now, is he or she now becomes a free person in our country or is he or she would be given a refugee status of some sort or is there a provision in this bill that caters for such a person residing in our country?

**Hon Chan:** Section 5 is basically the exception; these people are not extraditable. That is all what it says here; they cannot be extradited.

**Attorney General:** If I understand the Member correctly, perhaps when we come to the miscellaneous part, Part 10, we would be able to see provisions that allow us to deal with persons whom we are unable to extradite but whom we could deal with and prosecute locally. There are provisions here under the miscellaneous part which is Part 10. Probably that will be the part the Member would be interested in looking at.

*Clause 5 agreed to.*

*Clauses 6 & 7 agreed to.*

### Clause 8

**Mr Waipora:** Clause 8(b) says, “An application on behalf of the requesting country by the Director of Public Prosecution is made to a magistrate for a provisional arrest warrant”. You have to excuse me but I do not know the procedures of arresting people or the dealings of the court cases, but does this mean the Director of Public Prosecutions here makes the request on behalf of Australia or Taiwan in arresting a person?

**Attorney General:** What Clause 8 is saying is that if a country sends a request to Solomon Islands either directly or through Interpol, and that notice to our government is saying that somebody they want to be extradited is on his way to Solomon Islands, and the requesting country intends to make an extradition request. Its intention is being communicated to the requested country. The DPP is going to act on behalf of that requesting country to make an application to the magistrate so that the magistrate gives an provisional arrest warrant. It is not the final arrest warrant or the main arrest warrant but this provision is for a temporary arrest warrant. It is the DPP that makes the application and then the magistrate issues that provisional arrest warrant and what the magistrate is going to do is consider the things inside double (aa), double (bb) double (cc) in small letters. The magistrate must see that the application is supported by required documents, the magistrate must be satisfied that the offence is an extradition offence like what we have considered already under clause 4 earlier on today. And the magistrate is satisfied that the extradition country makes request for a provisional arrest warrant. I hope that will assist the Member in his question.

**Hon Sogavare:** I want the Minister and the AG to clarify to us sub clause 2, which makes reference to the required documents and then sub section 1 (aa) lists down the documents here and then (d) is what I want clarification on which says, “the text of the law creating the offence” either supplies that “or if the offence is not created by statute, a statement of the offence”. And then sub-paragraph (e) also made reference to the text

of the law requesting country that prescribes the penalty, or if the penalty is not prescribed by statute, a statement of the penalty that can be imposed. Maybe to assist us, can you give some examples of offences that cannot be created by law? It seems to be suggested here that there are offences that do not have to break the law but they offences.

**Hon Chan:** I think what you are getting at is that offences created by statute are the laws inside these books. A statement of offence is breaking laws and breaking the common law.

**Mr Folotalu:** I just want to find out who is going to execute the warrants. Is it the DPP, the Magistrate, the Immigration or the Police? It is not clear in here.

**Hon Chan:** Can you repeat that question? What sort of warrant are you asking for?

**Mr Chairman:** The provisional warrant.

**Mr Folotalu:** Yes, the provisional warrant.

**Hon Chan:** The provisional arrest warrant is made by the magistrate.

**Mr Folotalu:** Yes, but the execution part of it is what I am asking about. Who is going to serve the warrant on this person? I understand that it is the police that normally serve the warrants or do the arrests or serve it on the accused person or the suspect.

**Hon Chan:** The provisional arrest warrant will be done by the magistrate who will serve it to the police.

*Clause 8 agreed to.*

#### Clause 9

**Hon Sogavare:** I just want the Minister to confirm this. Are the processes in Section 9 are what the Minister referred to as the appeal process? The Minister made reference to appeals in his statements.

**Hon Chan:** Section 9 is about bail determination.

**Hon Sogavare:** Can the Minister repeat his answer?

**Hon Chan:** Section 9 is about bail determination.

**Attorney General:** If I could assist the Member. Clause 9 would relate to Clause 8. In Clause 8, what the Magistrate issues is the arrest warrant, the provisional arrest warrant.

In clause 9, the person arrested under the provisional arrest warrant is brought before the magistrate so that the magistrate can make an order and the orders the magistrate would be able to make is in sub clause 2. The magistrate can make an order for remand of a person in custody or if the magistrate is satisfied that the person is unlikely to abscond, remand the person on bail.

Just remember that when the magistrate makes the provisional arrest warrant he still has not made an order of remand as yet under clause 8. It is in clause 9 that the magistrate can make the order for remand of a person in custody or remand a person on bail. It is in clause 9 that the magistrate makes that decision. Why it is important is because the Minister has not issued authority to proceed yet. This is like a temporary arrangement until the Minister actually issues the authority to proceed.

**Hon. Folotalu:** Clause 9(4) says a person shall not be remanded in custody or on bail for a period longer than 42 days. These 42 days under the Constitution is less than that. Why is this law 42 days whilst the Constitution says, I think, the longest is 14 days and then renew it. But in here it says 42 days. This law could contradict the Constitution by remanding somebody in custody for a longer period of time.

**Hon. Chan:** I do not think you will find remand of a person in custody in the Constitution.

**Attorney General:** Sub clause 4 is not saying that a person should be kept in remand for 42 days but what it basically says is that it must not be over 42 days. The point raised by the Minister is also a valid point. I need to be directed straight to the constitutional provision the Member is referring to.

**Hon. Sogavare:** I just want to follow up on the question I asked earlier. So in terms of any defense that a person is arrested under the provisional arrest warrant, it means he does not have any means of defense. The decision that the Minister is going to make in sub clause 6 is based purely on what is expressed in the law. Is that the case?

**Hon. Chan:** That is correct because he is yet to stand trial.

*Clause 9 agreed to.*

Clause 10

**Hon. Sogavare:** If a person finds out that he is wrongfully arrested, is there any recourse for compensation?

**Hon. Chan:** The person can always appeal to the High Court or take a writ of habeas corpus.

**Hon. Sogavare:** Can that be expressly stated maybe in clause 9 or 10? Should that be made clear in the law?

**Attorney General:** The responsibility to issue authority to proceed is on the Minister. Probably the person is arrested under the provisional arrest warrant but then when it comes to the Minister to perform his role to issue the authority to proceed and he sees that because the information that reaches him shows that a wrong person is arrested, of course, he can decline the issuing of authority.

**Hon. Sogavare:** What I am asking is during the course of being arrested provisionally under clause 9 and he suffered some loss as a result of that action, is there any recourse to compensation?

**Attorney General:** Clause 9(6) can be used in that kind of situation. It says here "If the Minister on the advice of the DPP considers that the extradition request may not be granted" and the reason why an extradition request may not be granted is because a

wrong person was arrested. If the Minister considers that a wrong person was arrested therefore he forms the view that the magistrate may not grant the request, he consults the DPP and gives that advice then that would be the provision the Minister can use.

**Hon. Chan:** I think the Opposition Leader wanted an answer if there was false imprisonment. If there is false imprisonment, yes the person can actually sue for compensation and that will be an act he needs to do later on.

*Clause 10 agreed to.*

#### Clause 11

**Mr. Tosika:** Section 11 talks about the authority to proceed and so if the Minister receives a request for extradition then he considers all these, but it gives the finality to the Minister. But again in section 8 it says if an application is received from a requesting country, the director of prosecution applies to the magistrate to make a provisional arrest. I see that these two are not in harmony with each other. That is my concern here. There are two requests here, one is received under section 8 - application on behalf of a requesting country and the other one is in section 11 where also a request is received by the Minister and the Minister proceeds on. But in here under Section 8(b) it is the DPP that applies for the provisional arrest on a person. I would like the Minister or the AG to clarify these otherwise we are giving so many powers to the Minister to exercise.

**Hon. Chan:** Section 8 is about a provisional arrest warrant basically to tame a person and then it goes to the Minister who gets an extradition request and if he considers looking at whether the offence is an extradition offence and the requesting country is an extradition country, and he looks at Section 19 which gives the discretion and if he is satisfied with that he will issue an authority to proceed with the magistrate and the magistrate will change the provisional arrest warrant to an arrest warrant.

**Mr Tosika:** What I am getting at is that I think it is not necessary to make an application to the Director of Prosecution but apply straight to the Minister according to

Section 11 and the Minister can exercise his power to proceed if he sees Section 19, he can do all these things. Is that right?

**Attorney General:** If a Minister receives a request, he can follow the procedures laid out in Clause 11. Clause 8 is really dealing with situations where there maybe delay in communicating the request to the Minister. If you look at Clause 8(1)(a), it says, “notifies the government of Solomon Islands either directly or through Interpol”. So the request may come through Interpol or the request may come through an embassy here in Honiara or through Foreign Affairs. Given those different channels, there maybe an expected delay. But if you take certain steps further, who knows the person may abscond and run away. That is why you have that kind of provision set out in Clause 8 so that the DPP can go and apply for a provisional arrest warrant only before the Minister can come in. But if things work out well and the request goes directly to the Minister and Minister considers the documents and is able to issue the authority to proceed, the Minister can proceed straight and issue the authority to the magistrate and the magistrate can then issue the warrant for arrest. Clause 8 is really to deal with situations that are urgent where you need the DPP to go and get the provisional arrest warrant first.

**Mr Tosika:** Why I am asking this question is because this is of political nature. If application is made direct to the Minister not using Section 8 for the provisional arrest then it means in some cases the Minister can use his own power for reasons only known to him then he can apply Section 19 to send a person out.

I would like us to look carefully into considering the rights of the people as well. Whilst the Magistrate can consider bails the Minister has the final say in Section 11, which in some cases it will deny the rights of a person that is requested to be extradited. That is purely my concern.

**Hon. Chan:** I will try to answer that question as best as I can. Sometimes documents do not come in on time and so Section 8 is basically trying to hold onto a person before he or she absconds. If all the documents are right, the Minister can be in a position to write to the authority to proceed.

**Mr Oti:** The purpose of Section 11(2) and also the next section, Section 12 which made reference to Section 12(1) making reference to Section 12(2). The purpose of subsection 2 here basically for the Minister or the AG to confirm is the authority that as soon as the

Minister considers the request and issues an authority to proceed, if the Minister is satisfied with one, two, three, four of sub section 1, the purpose of subsection 2 is mainly for arrest, put him in custody so that he takes the first flight out with no further proceedings at the magistrate?

**Hon. Chan:** This is basically asking the Minister putting in writing to the authority to proceed to the magistrate. It does not talk about consent which would go later on, and that would be a different mechanism. I hope that answers your question.

**Mr Oti:** What I was trying to ask is the purpose of subsection 2 of Section 11?

**Hon. Chan:** Subsection 2 says if there is no provisional arrest warrant, if the authority is to proceed is issued by the Minister to the magistrate, the magistrate will have to issue an arrest warrant for the person.

**Attorney General:** The purpose of subsection 2 is to ensure that a person needed for extradition is kept in a safe place. What subsection 2 is saying is that if no provisional arrest warrant has been issued, and this refers to Clause 8 we were looking at today, if no provisional warrant has been issued yet, the magistrate must issue the substantive warrant now if the Minister has issued the authority to proceed. Then we move to the next Clause 12, which deals with what the magistrate will do with a person that is arrested under the warrant.

*Clause 11 – agreed to.*

#### Clause 12

**Mr Oti:** As I alluded to earlier, subsection 1 of Section 12 once again made reference to subsection 2 of the previous section, which is Section 11. I think in subsection 4 of Section 12, “if a magistrate remands the person in custody after the person has made an application for bail, this is the person arrested or put on custody, the person is not

entitled to apply to any other magistrate for bail during that remand period unless the first magistrate is no longer available.

This is different magistrates for different purposes. There are two magistrates, one is not available the other one is not but if you cannot apply to the same magistrate you go to another one. Is that the reading of subsection 4? In the meantime, again perhaps it is somewhere else in the Bill is the right of a person to appeal against the arrest for purposes of proving his innocence that the crime he has been requested under Section 11 to be extradited, as I said his rights, the intention here is to hold him while preparations are being made for his extradition.

The question is, at what point in time in this process under Sections 11 and 12 or is it other sections of this law caters for the rights of a person to appeal against, and in here it is appeal against his bail. Appeal against the decision which the Minister made in considering the request for extradition in Section 11, where are his rights when he is in custody to appeal against the decision issued by the Minister or authorizing the magistrates to arrest him and put him behind bars. As you have said to keep him safe until he catches the first flight out. Those processes are prepared. Perhaps we will come to that but I wonder whether the AG or the Minister to tell us where in this process under Sections 11 and 12 is this person's right for hearing regarding his objection as to why he should not be extradited.

**Hon Chan:** I think the confusion here is when the Minister gives his authority to proceed, it is not the authority to proceed with extraditing, but it is the authority for the magistrate to make the court hearings so that evidences can be taken into account for an extradition order or not.

Section 12(4) is on bail and that is normal criminal procedure so that a person does not go bail shopping; he cannot get a bail from this magistrate and so he goes to another one. That is the reason why that section is put there.

**Mr Folotalu:** I would like the Attorney General to correct me on the language in Clause 12(2)(a) & (b) which says the magistrate shall remand the person in custody and then if the magistrate is satisfied that the person is unlikely to abscond, remand the person on bail". I would have thought that it should be "release the person on bail". This language is a bit new to me. Which one is right, to remand the person on bail or release the person on bail?

**Attorney General:** Remand is correct; it is the location that is different. One location is custody and the other location is on bail where he is not in custody. So it is either a remand in custody or a remand on bail. If you are released on bail it means you are out on bail.

*Clause 12 agreed to:*

### Clause 13

**Mr Oti:** Because Clause 12 has been already explained that it is basically for the person to be brought before the magistrate court so as to apply the charges that he is going to be extradited for, assuming that he is an unwilling victim to be extradited. Section 13 is a person who is willing, a person consents to being extradited for extradition offence. Will the processes in Section 12 no longer required under the conditions in Section 13?

**Attorney General:** Can the Member repeat which part of Clause 12 he was referring to where he said would not apply to Clause 13.

**Mr Oti:** What I am saying is Section 13 is to do with a person where if you take Section 11 again, after the extradition request received by the Minister, he considers the request and he issues an authority to proceed if the Minister is satisfied that the conditions from 1 to 4 are fitting for the person to be extradited. But when you come to Section 13 after the Minister considers the request, Section 13 is basically saying that a person consents to being extradited. The requesting country has asked the person also for another offence that is not extradition offence.

What I am asking the AG and the Minister is Section 13, and the scenario is where this man is already willing, just (a) for that matter, take sub section 2(a), the consent to being extradited for extradition offence. The processes in Section 12 will not be invoked because he is willing to be extradited and so you just prepare his papers and then send him out. Is that the intention of Section 13?

**Hon Chan:** Yes.

*Clause 13 agreed to*

*Clause 14 agreed to.*

### Clause 15

**Mr Oti:** The request for extradition to Solomon Islands under this law is about requesting the authorities here to extradite a fugitive or a person who committed a crime for which he is extraditable under Section 4, in Section 15 should it be required that extradition proceedings shall be conducted in the same manner as criminal proceedings in Solomon Islands. The following rules that apply in criminal proceedings apply to extradition proceedings, and the rules are summoning witnesses, remanding

defendants, especially these two. Now, for a crime committed outside of this country the witnesses are not here in Solomon Islands, so does this mean the government is going to meet the expenses of getting the witnesses to come here; the summoning of witnesses for the crime committed which is not committed here but it is committed outside of the country and that is why extradition is requested to be tried in that country. Here you are summoning witnesses, which witnesses are we talking about in subsection 2 (a) and the remanding of defendants? All of these, by understanding, are not inside Solomon Islands. Am I reading this correctly?

**Hon. Chan:** It is the requesting country that requests the extradition and so basically they have to give us the evidence, they have to come up with the evidences so basically the major burden of the cost will go to them. If they are really seriously about getting a person extradited those the evidences have to come.

**Mr. Oti:** That settles my doubt and that is, of course, the requesting country that there are certain obligations it must meet here. The point is clear but otherwise it falls down back to us, which is not supposed to be. I want the understanding that this is the intention of this section.

*Clause 15 agreed to.*

#### Clause 16

**Hon. Sogavare:** I just want to get the rationale of this extradition in sub-clause 2, which says "in addition to any evidentiary requirements in this Part and subject to Part 4, a magistrate shall not make any extradition order that a person be extradited unless the evidence before the magistrate is such that if the offence for which extradition is sought was committed in Solomon Islands by sufficient evidence to place the person on trial". The question is, if this person is requested by his country that he commits a crime there, and just because we do not have an equivalent law that would make this offence an offence in Solomon Islands, this person obviously will go free.

What gives right to this person committing an offence in his country to come and seek shelter in here? It does not make sense to me because if this person that is being requested is a criminal in his place then he should be sent back to his home for trial as he is an unwanted person.

**Attorney General:** The request is the same here to Solomon Islands. It is obligatory on us to make sure that the request made to us is proper and it is our duty to ensure that when we perform our part, we perform it properly and that is why the magistrate has to be satisfied with all those things listed in sub clause 1(a) down to (f), and further in sub-clause 2, which the Member asked about, the magistrate must also be satisfied that because of the dual criminality principle we have been talking about, if a similar or same offence is enquired into here, the magistrate has to ask him the question, would the magistrate be satisfied, would there be sufficient evidence to place the person on trial. It is really a preliminary kind of enquiry or assessment so that the magistrate has to be satisfied before making an extradition order otherwise we will not be performing our part properly and dually and that is why the magistrate has to be satisfied on that minimum level, on sufficient evidence. This is almost like a preliminary enquiry.

**Hon. Sogavare:** If this is a hypothetical case, on the evidence presented, the documents are provided and he really is a criminal in his place, but just because in hypothetical case our law does not make the offence as offence in this country, in Solomon Islands. The way we read here is that we will not be obliged. This principle of dual criminality is it subject to question, if the evidence presented to this country really proves beyond all shadow of doubt that that offence in his country is really an offence. But just because we do not have laws in here that covers that action as an offence, he is free. Is that a good policy?

**Hon. Chan:** I think we keep on going back to the dual criminality. It has to be also a law broken here, if it is conducted here it would have been an offence, and if we do not have that offence here then he cannot be extradited. I think subsection 2 also refers to this by saying it is subject to Part 4, and I think the meaning of that is basically looking at extradition from Solomon Islands to commonwealth countries where they would be looking at evidentiary requirements that are more prima facie.

**Hon. Sogavare:** This is an area that I will agree to disagree with.

*Clause 16 agreed to.*

*Clause 17 agreed to.*

## Clause 18

**Mr. Oti:** A person who has been destined for extradition under the orders of the magistrate in subsection 2 can apply to the High Court for review of the extradition order. Under subsection 3 an application shall be made within 15 days from the date of the extradition order. Can the Minister or the AG tell us exactly because if the extradition order takes immediate effect, the application must be made within 15 days? Is he going to make that application from outside or is there scope for this process of affording the opportunity to the extraditee in order for him to exhaust all the avenues within our judicial system, hence the number of 15 days given in there. Because how long do you require this person to leave? Is it discretionary on the orders by the magistrate or is there somewhere in the law that gives him 42 days and he satisfies those requirements within the timeframe. The mention of 15 days for him to do this application makes me think that there must be somewhere else he is given enough time to satisfy all the requirements to address the processes of court.

**Attorney General:** We have to understand that an extradition order by itself is not yet sufficient for extraditing of a person. The next step is yet to be done, and that is the Minister has to make the extradition decision. The Minister has to make the decision first before a person can be extradited. We are still at the stage where a magistrate makes an extradition order. At that stage, a person cannot be extradited. A person can only be extradited once the Minister has made the extradition decision, and that comes after the extradition order is made.

This clause is dealing with a situation where the extradition order is subject to review by the High Court and there is a 15 days review yet so obviously the Minister is not going to act yet, he has not made his decision yet. The extradition can only happen after the Minister makes his decision called the extradition decision.

**Mr Oti:** What the AG was saying is straight. In fact, the requesting country has the right as it says here, "A requesting country may apply to the High Court for a review of the extradition order". Why would he be asking the High Court to review the extradition order of the magistrate when in fact we have satisfied him because the person wanted is going to be sent back? What is the purpose or the intention of it?

**Hon. Chan:** That would be in a case where the magistrate orders that a person be released.

**Attorney General:** Released is one ground and the other one is the magistrate makes up an extradition order that a person be extradited for some offences only. Say, the requesting country makes request for extraditing of a particular person in respect of say, five offences. But the magistrate makes a decision in respect of three offences only and so the requesting country is not satisfied because there are some provisions in the law here that we will be looking that, of course, will cause concern to the requesting country.

Basically, it is on three grounds, and these are first, if a magistrate orders that a person be released, second if the magistrate makes an order in respect of some offences only that will give grounds or basis for the requesting country to apply for review in the high court.

*Clause 18 agreed to.*

*Clauses 19 & 20 agreed to.*

#### Clause 21

**Mr Oti:** I raised this matter yesterday and I think the Minister in his summing up remarks on the second reading touched on this particular section in regards to temporary extradition warrant. The issue I raised was because of how it is structured. Someone who is either convicted in custodial sentencing in Solomon Islands and is requested to be extradited for crimes committed in a requesting state for which an arrest warrant perhaps is on him already or even he has been convicted in his absence and therefore is required to be sent back to serve that sentence. If we are satisfied he will be returned after his trial, and trial is what this section talks about, if he is required, which one would take precedence in terms of being convicted for the crime he is extradited for, or can that be done in the midst of him still serving the custodial sentence in here or must he completely serve that sentence before the extradition for that is done or is he going to go for the trial, he comes back and continues with his sentence here?

**Hon. Chan:** The answer is actually the last one that you gave where the person can be extradited because he is still serving custodial sentence here, he is an accused and he would be temporary extradited if the Minister issues an extradition warrant, a temporary extradition warrant, he will go for trial and then the time that he spends in trial will also go towards time reduced in his custodial sentence as well.

**Attorney General:** I was just going to add on to the explanation given by the Minister. If we look at Clause 20, the earlier clause, sub clause 2 on page 29, it says that, 'if a person is serving custodial sentence or has been admitted bail in Solomon Islands, any extradition warrant shall not be executed until the person has been released from custody or the conditions of bail have been met'. I think that is the main rule that we must understand in respect of that question.

When we come to Clause 21, Clause 21 is a request for this person to be sent for trial only. That is why you have Clause 21 and in 1(c) of Clause 21, the Minister must be satisfied that the person will be given a speedy trial in the requesting country and the person will be returned to Solomon Islands after the trial. And then the point mentioned by the Minister is that any time the person spends in custody in a requesting country will be taken into account in calculating the time for him to spend in custody in Solomon Islands.

**Mr Oti:** There are two scenarios here. The first one is national of that requesting state who perhaps commit a crime here and so is subject to that arrangement. Returning after the extradition so that that person comes back, perhaps he is talking about a national of Solomon Islands because I do not see any reason why we should request him to be sent back if he is not a national of Solomon Islands. I assume that this is in reference to a national of Solomon Islands committing a crime in Australia, lives here and somehow he ends up in custodial sentence here, he is being tried for that and because of that he is requested to be extradited also for a crime. However, he must serve his sentence first here in custodial sentence and then we will agree that we will send him, extradite him to you if you are satisfied that you are going to send him back after a failed trial has been completed. But also what if that crime he was extradited for, tried and convicted and he must serve the sentence in that requesting country. I am talking about a Solomon Islands national that can fall into this category.

**Mr Chairman:** Proceedings at the Committee of the Whole House is now interrupted.  
*Parliament resumes*

**Hon. Sikua:** It is now 4.30pm and so I seek your consent to move a suspension of Standing Order 10 in accordance with Standing Order 81.

**Mr Speaker:** Leave granted honourable Prime Minister.

**Hon. Sikua:** I move that Standing Order 10 be suspended in accordance with Standing Order 81 to permit the continuation of the business of the House until adjourned by the Speaker in accordance with Standing Order 10(5).

**Mr Speaker:** Unless any Member wishes to make any comments, I will put the motion to the vote.

**Mr Tosika:** I think most of us have received invitations from the ROC Ambassador to attend a function in the evening, and the timing is 17.30pm. If we are to continue there would not be adequate time for some of us to go back home and prepare ourselves to attend that invitation. That is my only concern about this extension.

**Hon. Sogavare:** I will go along with due respect to the motion moved by the Prime Minister. Unless everyone of us from here we go down then it is fine but if we have to go back to our houses and organize ourselves then I think we would not have enough time to do that, with due respect to the Prime Minister.

**Hon. Tora:** As Chief Whip of the Government, we can see that the Chamber is empty and so I would go along with the Leader of Independent and the Leader of Opposition's views.

**Hon. Sikua:** Being an understanding person that I am, I take into account the points raised by the good Leader of Independent and the honorable Leader of Opposition. In fact I was just looking at my own timing to arrive on the program but with your indulgence, Mr Speaker, if we could just complete Clauses 21 and 22 so that we can neatly start with Part 4 when we start tomorrow morning. That would be a good compromise.

**Mr Speaker:** I will put a question therefore. The question is that Standing 10 be suspended in according with Standing Order 81 to permit the continuation of the business of the House until the consideration of Clauses 21 and 22 is completed and thereafter the Speaker will adjourn Parliament at Standing Order 10(5). We will continue with the Committee of the Whole House for those two clauses.

*The motion agreed to.*

Committee of the Whole House resumes

Clause 21

**Attorney General:** I need to respond to the question raised by the MP for Temotu Nende on Clause 21 on how it will apply to a Solomon Islander. The use of the expression 'person' includes Solomon Islands citizens as well. Let us see how it will

apply to Solomon Islands citizens. If a Solomon Islands citizen is extradited under temporary extradition warrant and say that Solomon Islands citizen has been serving a custodial sentence in Solomon Islands and still has five more months to complete in Solomon Islands, when he or she is extradited overseas to the requesting country and say that the Solomon Islands citizen spends three months in custody in the requesting country overseas for trial, that Solomon Islands citizen needs to come and complete two more months in Solomon Islands. She or he must return back to Solomon Islands to complete the two months. If, however, trial in the requesting country overseas takes longer time and it continues on for five or six months, the full five months spent overseas will be taken as having served in our custody here. In that circumstance, the Minister will then inform the requesting country that the undertaking given by the requesting country about speedy trial and for the person to return back to Solomon Islands will no longer apply because that person has completed his custodial sentence in Solomon Islands. Therefore, that Solomon Islands citizen can stay back in the requesting country overseas to complete the trial in that requesting country or if the trial is already completed and he is acquitted then it is up to him whether he wants to come back or remain in that overseas country depending on the immigration laws of that country.

**Mr. Agovaka:** A question on Clause 21(1)(a). In a case where a person causes serious offence and is serving a custodial sentence of life sentence, is the Minister still going to issue an extradition warrant in this case or is he not going to issue an extradition warrant?

**Hon. Chan:** The answer is yes, he may temporary extradite him and come back to serve the rest of his sentence.

*Clause 21 agreed to.*

*Clause 22 agreed to.*

*(Parliament resumes)*

*The House adjourned at 4.33 pm*