

Extradition Act 2003

REPUBLIC OF KIRIBATI
(No. 7 of 2003)

I assent

(Signed): Anote Tong
Beretitenti
19/12/2003

AN ACT RELATING TO THE EXTRADITION OF PERSONS TO AND FROM KIRIBATI

Commencement:

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I PRELIMINARY

Short title

1. This Act may be cited as the Extradition Act 2003.

Purpose

2. The purposes of this Act are:

- (a) to codify the law relating to the extradition of persons from Kiribati; and
- (b) to facilitate the making of requests for extradition by Kiribati to other countries; and
- (c) to enable Kiribati to carry out its obligations under extradition treaties.

Interpretation

3. In this Act, unless the context otherwise requires:

"comity country" means a country other than a Commonwealth country, a Pacific Island country or a treaty country.

"Commonwealth country" means a country that is specified in Schedule 1.

"country" includes:

- (a) except for a Commonwealth country - a colony, territory or protectorate of a country; and
- (b) except for a Commonwealth country - a territory for the international relations of which a country is

responsible; and

(c) in any case - a ship or aircraft owned by, or registered in, a country.

"endorsed warrant" means a warrant that has been issued in a Pacific Island country and endorsed under section 30.

"extradition country" means:

(a) a Commonwealth country; or

(b) a Pacific Island country; or

(c) a comity country that is declared by the regulations to be an extradition country; or

(d) a comity country certified by the Minister for Foreign Affairs to be an extradition country for the purpose of a particular extradition request.

"extradition offence" has the meaning given by section 5.

"extradition request" means a request in writing by a country for the surrender of a person to the country.

"extradition treaty", in relation to a country, means a treaty:

(a) to which the country and Kiribati are parties (whether or not any other country is also a party); and

(b) that relates wholly or partly to the surrender of persons accused or convicted of offences.

"foreign escort officer" means a representative of the country to whom a person is to be surrendered who is authorised by that country to escort the person from Kiribati to that country.

"ICPO-Interpol" means the International Criminal Police Organisation.

"law of a country" includes a law in force in any part of the country.

"magistrate" means a person appointed as a magistrate under section 7 of the Magistrates' Courts Ordinance (Cap. 52).

"original warrant" means a warrant issued in a Pacific Island country for the arrest of a person.

"Pacific Island country" means a country that is a member of the Pacific Islands Forum.

"police officer" means a member of the Kiribati Police Force.

"political offence", in relation to a country, means an offence against the law of the country that is of a political character (whether because of the circumstances in which it is committed or otherwise and whether or not there are competing political parties in the

country), but does not include:

(a) an offence:

(i) that is constituted by conduct of a kind referred to in a multilateral treaty to which Kiribati is a party; and

(ii) for which parties have an obligation to extradite or prosecute; or

(b) the offence of genocide; or

(c) an offence of:

(i) murder, kidnapping or other attack on the person or liberty; or

(ii) threatening or attempting to commit, or participating as an accomplice in, murder, kidnapping or other attack on the person or liberty;

of the head of State, head of Government or Minister of the Government of the country or a member of his or her immediate family; or

(d) a terrorist offence; or

(e) any other offence that Kiribati and the other country have agreed will not be treated as a political offence for the purposes of extradition.

"prison" includes a gaol, police cell or other place where a person is ordered under this Act to be detained.

"provisional arrest warrant" means:

(a) where the expression is used in Part 2—a warrant, in accordance with Form 1 in Schedule 4, issued under section 8; or

(b) where the expression is used in Part 4—a warrant, in accordance with Form 2 in Schedule 4, issued under section 28.

"requesting country" means a country that is seeking the surrender of a person from Kiribati.

"specialty undertaking" means an undertaking by a requesting country about the treatment of a person whose surrender is sought by the requesting country.

"surrender offence" means an offence for which surrender is sought.

"surrender warrant" means:

(a) where the expression is used in Part 2—a warrant, in

accordance with Form 3 in Schedule 4, issued under section 13 or 19; or

(b) where the expression is used in Part 4—a warrant, in accordance with Form 4 in Schedule 4, issued under section 35 or 36.

"temporary surrender warrant" means:

(a) where the expression is used in Part 2—a warrant, in accordance with Form 5 in Schedule 4, issued under section 21; or

(b) where the expression is used in Part 4—a warrant, in accordance with Form 6 in Schedule 4, issued under section 39.

"terrorist offence" means an offence described in section 4.

"treaty" includes a convention, protocol, or agreement between 2 or more countries.

"treaty country" means a country with which Kiribati has an extradition treaty.

"writing" includes facsimile, electronic mail and any other means of communication that can be reproduced in printed form.

(2) For subsection (1):

(a) Pacific Island countries are specified in Schedule 2; and

(b) treaty countries are specified in Schedule 3.

(3) A Note is for information only and does not form part of this Act.

Terrorist offence

4. (1) An act or omission constitutes a terrorist offence if:

(a) it constitutes an offence within the scope of a counter-terrorism convention listed in subsection (4); or

(b) it is mentioned in subsection (2).

(2) For subsection (1)(b), the act or omission:

(a) must:

(i) involve serious bodily injury to a person; or

(ii) involve serious damage to property; or

(iii) endanger a person's life; or

(iv) create a serious risk to the health or safety of the public or a section of the public; or

(v) [*involve the use of firearms or explosives*]; or

(vi) involve releasing into the environment or distributing or exposing the public to any:

(A) dangerous, hazardous, radioactive or harmful substance;

or

(B) toxic chemical; or

(C) microbial or other biological agent or toxin; or

(vii) be designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, transportation or other essential infrastructure; or

(viii) [*be designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or*

(ix) *involve prejudice to national security or public safety;*] and

(b) must be intended, or by its nature and context, must reasonably be regarded as being intended:

(i) to intimidate the public or a section of the public; or

(ii) to compel a government or an international organisation to do, or refrain from doing, any act; and

[(c) *must be done for the purpose of advancing a political, ideological or religious cause.*]

(3) However, an act is not a terrorist act if:

(a) it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsection (2) (a) (i), (ii), (iii) or (iv); or

(b) it occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

(4) For subsection (1), the counter-terrorism conventions are:

(a) Convention on Offences and certain Other Acts committed on Board Aircraft signed at Tokyo on 14 September 1963;

- (b) Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970;
- (c) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971;
- (d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
- (e) International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
- (f) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
- (g) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
- (h) Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation, done at Rome on 10 March 1988;
- (i) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988;
- (j) Convention on the Marking of Plastic Explosives for the Purposes of Detection, signed at Montreal on 1 March 1991;
- (k) International Convention for the Suppression of Terrorist bombings, adopted by the General Assembly of the United Nations on 9 December 1999;
- (l) International Convention for the Suppression of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

Extradition offence

5. (1) An offence is an extradition offence if:

- (a) it is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more; and
- (b) the conduct that constitutes the offence, if committed in Kiribati, would constitute an offence (however described) in Kiribati for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more.

(2) In determining whether conduct constitutes an offence, regard may be had to only some of the acts

and omissions that make up the conduct.

(3) In determining the maximum penalty for an offence for which no statutory penalty is imposed, regard must be had to the level of penalty that can be imposed by any court in the requesting country for the offence.

(4) An offence may be an extradition offence although:

(a) it is an offence against a law of the requesting country relating to taxation, customs duties or other revenue matters or relating to foreign exchange control; and

(b) Kiribati does not impose a duty, tax, impost or control of that kind.

Extradition objection

6. There is an extradition objection to a request for the surrender of a person if:

(a) the extradition offence is regarded as a political offence; or

(b) there are substantial grounds for believing that surrender of the person is sought for the purpose of prosecuting or punishing the person because of his or her race, religion, nationality, political opinions, sex or status, or for a political offence in the requesting country; or

(c) on surrender, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, because of his or her race, religion, nationality, political opinions, sex or status; or

(d) the offence is an offence under the law governing the disciplined forces of Kiribati but is not also an offence under the ordinary criminal law of Kiribati; or

(e) final judgement has been given against the person in Kiribati, or in a third country, for the offence; or

(f) under the law of the requesting country or Kiribati, the person has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason; or

(g) the person has already been acquitted or pardoned in the requesting country or Kiribati, or punished under the law of that country or Kiribati, for the offence or another offence constituted by the same conduct as the extradition offence; or

(h) the judgment has been given in the person's absence and there is no provision in the law of the requesting country entitling the person to appear before a court and raise any defence the person may have.

PART II **EXTRADITION FROM KIRIBATI—GENERAL PROVISIONS**

Application of Part 2

7. (1) This Part sets out the procedure that is to apply to requests for the extradition from Kiribati to other countries of persons accused or convicted of extradition offences in other countries.

(2) This Part applies to extradition from Kiribati to another country as follows:

(a) to a Commonwealth country—in accordance with Part 3; and

(b) to a treaty country—in accordance with Part 5; and

(c) to any other country other than a Pacific Island country—in accordance with Part 6.

(3) The procedure for extradition to a Pacific Island country is in Part 4.

(4) The fact that extradition proceedings are brought in a circumstance described in subsection (5) does not of itself affect the validity of those proceedings.

(5) For subsection (4), the circumstances are:

(a) extradition to a Pacific Island country is dealt with as if it were extradition to a Commonwealth country, a treaty country or a comity country;

(b) extradition to a Commonwealth country is dealt with as if it were extradition to a treaty country or a comity country;

(c) extradition to a treaty country is treated as if it were extradition to a comity country.

Issue of provisional arrest warrant

8. (1) If:

(a) a country, either directly or through ICPO-Interpol, notifies Kiribati that:

(i) a person wanted for surrender is, or is believed to be, in or on his or her way to Kiribati; and

(ii) the requesting country intends to make a formal request for the extradition of the person; and

(b) an application is made to a magistrate for a provisional arrest warrant;

then the magistrate must issue the provisional arrest warrant for the person if:

(c) the application is supported by the required documents; and

- (d) the magistrate is satisfied that the offence is an extradition offence; and
- (e) the magistrate is satisfied that the request is made by an extradition country.

(2) The required documents are:

- (a) a copy of the warrant for the arrest of the person issued in the requesting country; and
- (b) a description of the person sought; and
- (c) a description of the acts and omissions that constitute the offence; and
- (d) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence; and
- (d) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that can be imposed.

Arrest and remand on provisional arrest warrant

9. (1) A person arrested under a provisional arrest warrant must be brought before a magistrate as soon as practicable.

(2) The magistrate must:

- (a) remand the person in custody; or
- (b) if the magistrate is satisfied that the person is unlikely to abscond—
remand the person on bail;

until the Minister for Foreign Affairs issues an authority to proceed.

(3) A magistrate who remands a person on bail:

- (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Kiribati; and
- (b) may order that the person's passport and other travel documents be surrendered to the court until the extradition proceedings in relation to the person are concluded.

(4) A person must not be remanded in custody or on bail for a period longer than 42 days.

(5) As soon as possible after the person has been remanded, the applicant must:

- (a) tell the Minister for Foreign Affairs:
 - (i) that the magistrate has remanded the person; and

(ii) the name of the requesting country; and

(iii) the offence for which surrender will be sought; and

(b) give a copy of the magistrate's decision and the documents on which the issue of the provisional arrest warrant is based to the Minister for Foreign Affairs and the person.

(6) If the Minister for Foreign Affairs considers that the request for extradition of the person for the offence will not be granted, either because of an extradition objection or because of a matter mentioned in section 16, he or she must order:

(a) the person to be released; or

(b) the discharge of the recognisance on which bail was granted.

Release from remand

10. (1) If:

(a) a person continues to be on remand (in custody or on bail) either:

(i) 42 days after the day on which the person was remanded; or

(ii) if an extradition treaty between Kiribati and the requesting country provides for a shorter period – for that period after the day on which the person was remanded; and

(b) the Minister for Foreign Affairs has not issued an authority to proceed;

the person must be brought before a magistrate.

(2) The magistrate may remand the person, in custody or on bail, for a further period of not more than 42 days if the magistrate is satisfied that an authority to proceed will be issued within that period.

(3) If the magistrate is not so satisfied, the magistrate must order:

(a) the release of the person from custody; or

(b) the discharge of the recognisance on which bail was granted.

Authority to proceed

11. (1) If an extradition request is received, the Minister for Foreign Affairs must:

(a) consider the request; and

(b) issue an authority to proceed if he or she is satisfied that:

- (i) the offence for which extradition is sought is an extradition offence; and
- (ii) the requesting country is an extradition country; and
- (iii) there is nothing in section 19 or any other law that would preclude surrender of the person; and

(c) give the authority to proceed to a magistrate; and

(d) give a copy of the authority to proceed and the extradition request to the person.

(2) If an authority to proceed is received by a magistrate in relation to a person who has not been arrested under a provisional arrest warrant, the magistrate must issue a warrant for the person's arrest.

Arrest and remand on authority to proceed

12. (1) A person who is arrested under a warrant issued under section 11 must be brought before a magistrate as soon as practicable.

(2) A person who is in custody under a provisional arrest warrant must be brought before a magistrate as soon as practicable after the authority to proceed is issued.

(3) The magistrate must:

(a) remand the person in custody; or

(b) if the magistrate is satisfied that the person is unlikely to abscond—
remand the person on bail;

for the period that is necessary for proceedings under section 13 (dealing with consent to surrender) or 14 (dealing with extradition proceedings), or both, to be conducted.

(3) A magistrate who remands a person on bail:

(a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Kiribati; and

(b) may order that the person's passport and other travel documents be surrendered to the court until the extradition proceedings in relation to the person are concluded.

(5) If a magistrate remands the person in custody after the person has made an application for bail, the person is not entitled to apply to any other magistrate for release on bail during that remand, unless the first magistrate is no longer available.

Consent to surrender

13. (1) At any time the person may tell a magistrate that the person consents to being surrendered to the requesting country for the extradition offence for which that country seeks his or her surrender.

(2) If:

- (a) a person consents to being surrendered for the extradition offence; and
- (b) the requesting country has asked that the person also be surrendered for another offence that is not an extradition offence;

the magistrate must ask the person whether the person also consents to being surrendered for that other offence.

(3) If:

- (a) the person informs the magistrate that he or she consents to being surrendered; and
 - (b) the magistrate is satisfied that the consent was given voluntarily;
- the magistrate must tell the person that the effect of consenting will be that:
- (c) the person will be committed to prison without any extradition proceedings to determine whether the person should be surrendered for an extradition offence; and
 - (d) after the Minister for Foreign Affairs issues a surrender warrant, the person will be surrendered to the requesting country.

(4) If the person still consents to being surrendered, the magistrate must:

- (a) by warrant, order that the person be committed to prison; and
- (b) tell the Minister for Foreign Affairs in writing that the person has been committed to prison and the offence for which the person has consented to be surrendered.

(5) The Minister for Foreign Affairs may then issue a surrender warrant for the person.

Extradition proceedings

14. If:

- (a) the Minister for Foreign Affairs has issued an authority to proceed for an extradition offence in relation to a person; and
- (b) the person has not consented to surrender for the offence; and
- (c) an application is made to a magistrate by or on behalf of the person or the requesting country for extradition proceedings to be conducted in relation to the person; and
- (d) the magistrate considers that the person and the requesting country have had reasonable time since the person received a copy of the extradition request to prepare for the proceedings;

the magistrate must conduct proceedings to determine whether the person should be surrendered for the extradition offence for which surrender of the person is sought.

Conduct of extradition proceedings

15. (1) Extradition proceedings must be conducted in the same manner as criminal proceedings. In particular, the rules that apply in criminal proceedings to the following matters apply to extradition proceedings:

- (a) summoning witnesses;
- (b) remanding defendants;
- (c) ordering the production of documents;
- (d) administration of oaths and affirmations;
- (e) payment of witness expenses;
- (f) contempt of court, privilege and other matters relating to the administration of courts;
- (g) the imposition and level of fines for offences.

(2) In the proceedings, the person is not entitled to bring, and the magistrate is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which extradition is sought.

Determination whether person should be surrendered

16. (1) The magistrate must not order that a person be held in custody for surrender to the requesting country unless the magistrate is satisfied:

- (a) that the requesting country is an extradition country; and
- (b) that the surrender offence is an extradition offence; and
- (c) as to the identity of the person; and
- (d) that the supporting documents have been produced to the magistrate; and
- (e) that the supporting documents satisfy the requirements of section 17; and
- (f) that surrender should not be refused because the person sought has established an extradition objection.

(2) If the magistrate determines that the person be held in custody for surrender, the magistrate must:

- (a) issue a warrant, ordering that the person be committed to prison to await the Minister for Foreign Affairs' decision on surrender; and

- (b) tell the person that he or she may, within 15 days after the day on which the order is made, seek a review of the order under subsection 18 (1); and
- (c) record in writing his or her decision and the extradition offence for which the person should be surrendered; and
- (d) give a copy of the record to the person and the Minister for Foreign Affairs.

(3) If:

- (a) the magistrate determines that the person be held in custody for surrender for an extradition offence; and
- (b) the requesting country has asked that the person also be surrendered for another offence that is not an extradition offence;

the magistrate must ask the person whether the person also consents to being surrendered for that other offence.

(4) If the magistrate determines that the person should not be surrendered to the requesting country, the magistrate must:

- (a) order that the person be released; and
- (b) tell the Minister for Foreign Affairs in writing of the order and of the magistrate's reasons for determining that the person should not be surrendered.

Supporting documents

17. (1) In section 16 (1) (d), "supporting documents", in relation to an extradition offence, means:

- (a) as accurate a description as possible of the person sought, together with any other information that may help to establish the identity and nationality of the person; and
- (b) the text of the law creating the offence or, if the offence is not created by statute, a statement of the offence; and
- (c) the text of the law of the requesting country that prescribes the penalty or, if the penalty is not prescribed by statute, a statement of the penalty that can be imposed; and
- (d) a statement of the acts and omissions that constitute the offence, and details of the time and place the offence was committed; and
- (e) if the person is accused of the offence—a duly authenticated warrant issued by the requesting country for the arrest of the person for the offence, or a duly authenticated copy of the warrant; and

(f) if the person has been convicted of the offence—duly authenticated documents that provide evidence of:

(i) the conviction; and

(ii) the sentence imposed or intended to be imposed; and

(iii) whether the sentence imposed has been carried out; and

(iv) whether the sentence is immediately enforceable.

(2) If:

(a) a document relevant to the proceedings contains a deficiency; and

(b) the magistrate considers the deficiency to be minor;

(c) the magistrate must adjourn the proceedings for a reasonable period to allow the deficiency to be remedied.

(3) Any document that is duly authenticated is admissible in the proceedings.

(4) A document that is sought by or on behalf of the requesting country to be admitted in the proceedings is duly authenticated if:

(a) it purports to be signed or certified by a judge, magistrate or other judicial officer in or of the requesting country; and

(b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal:

(i) in any case—of the requesting country or of a Minister, Department of State or Department or officer of the Government of that country; or

(ii) if the extradition country is a colony, territory or protectorate—of the person administering the Government of that country or of any person administering a Department of the Government of that country.

(5) Nothing in this section prevents the proof of any matter or the admission of any document in the proceedings in accordance with any other law of Kiribati.

Review of magistrate's decision by High Court

18. (1) If a magistrate orders that a person be held until a surrender determination is made or refused, the person may apply to the High Court for a review of the order.

(2) If a magistrate orders that a person be released, or that the person be surrendered for some offences only, the requesting country may apply to the High Court for a review of the order.

- (3) The application must be made within 15 days after the day the magistrate makes the order.
- (4) The High Court must have regard only to the material that was before the magistrate.
- (5) The High Court may, by order, confirm or quash the order of the magistrate and order that the person be held for surrender or released.
- (6) If the High Court orders that the person be held until a surrender determination is made or refused, the Court must include in its judgment a statement specifying the offence and must:
 - (a) if the person is not in custody—by warrant commit the person to prison until the Minister for Foreign Affairs has made a decision under section 19; or
 - (b) if the person is in custody—order that the person remain in custody until the Minister for Foreign Affairs has made a decision under section 19.
- (7) If the High Court orders that the person be released, the person must be released accordingly.

Surrender determination by Minister for Foreign Affairs

19. (1) If:

- (a) a magistrate has reported to the Minister for Foreign Affairs that a person should be held for surrender; and
- (b) the period during which an appeal may be lodged has ended and no appeal was lodged or, on appeal, the High Court ordered that the person be held for surrender;

the Minister for Foreign Affairs must make a final decision whether the person should be surrendered.

(2) The Minister for Foreign Affairs may refuse to order that the person be surrendered if:

- (a) the requesting country has not given a specialty undertaking and:
 - (i) the requesting country is not a country with which Kiribati has a bilateral treaty containing a specialty undertaking; or
 - (ii) the law of the requesting country does not contain a provision prohibiting prosecution for an offence other than the one for which the person is surrendered; or
- (b) the person is a citizen of Kiribati; or
- (c) the offence for which surrender has been ordered is punishable by death in the requesting country but not in Kiribati and the requesting country has not given a sufficient undertaking that the penalty either will not be imposed or, if imposed, will not be carried out; or
- (d) a prosecution for the offence for which surrender has been ordered is pending against the person in Kiribati; or

- (e) the offence for which surrender has been ordered was committed outside the territory of the requesting country and the law of Kiribati does not provide for jurisdiction over an offence of that kind committed in similar circumstances outside the territory of Kiribati; or
 - (f) the offence for which surrender has been ordered is regarded by Kiribati as having been committed wholly or partly within Kiribati; or
 - (g) the person has been sentenced, or would be liable to be tried or sentenced, in the requesting country by an extraordinary or *ad hoc* court or tribunal; or
 - (h) the person has been, or may be, subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
- (i) having regard to:
- (i) Kiribati's national interest, including its interests in effective international co-operation to combat crime; and
 - (ii) the severity of the offence;

the Minister for Foreign Affairs is of the view that the person should not be surrendered.

(3) For the purposes of subsection (2)(a), the requesting country is taken to have given a specialty undertaking if it undertakes that the person will not, without having the opportunity of leaving the requesting country:

- (a) be detained or tried for an offence committed before surrender, other than:
 - (i) the surrender offence; or
 - (ii) an offence of which the person could be convicted on proof of the facts constituting the surrender offence, for which the penalty is no greater than the penalty for the surrender offence; or
- (b) be detained in the requesting country for surrender to a third country for an offence committed before surrender to the requesting country;

unless the Minister for Foreign Affairs consents to the trial or the surrender to the third country.

(4) The Minister for Foreign Affairs must not refuse to surrender a person because the person may be subjected to torture or cruel, inhuman or degrading treatment or punishment if the requesting country and Kiribati have ratified:

- (a) the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, being the convention of that title that was adopted by the General Assembly of the United Nations on 10 December 1984; or

(b) the International Covenant on Civil and Political Rights.

(5) If the Minister for Foreign Affairs decides that the person is to be surrendered to the requesting country, the Minister for Foreign Affairs must issue a surrender warrant or a temporary surrender warrant for the person.

(6) If the Minister for Foreign Affairs decides that the person is not to be surrendered to the requesting country, the Minister for Foreign Affairs must in writing order that the person be released.

Surrender warrant

20. (1) The surrender warrant must:

- (a) be in writing, in accordance with Form 3; and
- (b) state the offences for which the person is to be surrendered; and
- (c) require any person who has custody of the person to hand the person over to a police officer; and
- (d) authorise a police officer to:
 - (i) transport the person from the place where the police officer takes custody of the person to another place within Kiribati for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
- (e) authorise the foreign escort officer to transport the person out of Kiribati.

(2) If the person is serving a custodial sentence, or has been admitted to bail, in Kiribati for an offence committed in Kiribati, the surrender warrant must not be executed until:

- (a) the person has been released from custody; or
- (b) the recognisance has been discharged.

Temporary surrender warrant

21. (1) The Minister for Foreign Affairs may issue a temporary surrender warrant instead of a surrender warrant if:

- (a) the person is serving a custodial sentence in Kiribati; and
- (b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted; and

- (c) the Minister for Foreign Affairs is satisfied that the requesting country has given an adequate undertaking that:
 - (i) the person will be given a speedy trial in the requesting country; and
 - (ii) the person will be returned to Kiribati after the trial; and
- (d) the Minister for Foreign Affairs is satisfied that adequate provision has been made for the travel of the person to the requesting country and for his or her return to Kiribati.

(2) The temporary surrender warrant must:

- (a) be in writing, in accordance with Form 4; and
- (b) state the offence for which the person is to be surrendered; and
- (c) require any person who has custody of the person to hand the person over to a police officer; and
- (d) authorise a police officer to:
 - (i) transport the person from the place where the police officer takes custody of the person to another place within Kiribati for the purpose of handing the person over to the custody of a foreign escort officer; and
 - (ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and
- (e) authorise the foreign escort officer to transport the person out of Kiribati.

(3) If a person who was the subject of a temporary surrender warrant:

- (a) has been returned to Kiribati after trial and sentence in the requesting country; and
- (b) has completed his or her custodial sentence in Kiribati;

the Minister for Foreign Affairs must issue a surrender warrant for the surrender of the person to the requesting country, unless the Minister for Foreign Affairs is satisfied that it would be unjust or oppressive to surrender the person because of changed circumstances in the requesting country.

(4) Any time the person spends in custody in the requesting country as a result of the temporary surrender is taken to be time spent in custody in Kiribati for the purpose of completing the sentence for which the person was in custody in Kiribati.

(5) If:

(a) time spent in custody in the requesting country is taken into account as mentioned in subsection (4); and

(b) because of this, the person's sentence in Kiribati is concluded;

the Minister for Foreign Affairs must tell the requesting country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

Execution of surrender warrant

22. (1) If a person is not surrendered under a surrender warrant within 2 months after:

(a) the date the surrender warrant was issued; or

(b) if the person is serving a custodial sentence, or has been admitted to bail, in Kiribati—the person's sentence has been served or the recognisance has been discharged;

the person may apply to a magistrate to be released from custody. The person must tell the Minister for Foreign Affairs in writing of the application.

(2) If the magistrate is satisfied that:

(a) the Minister for Foreign Affairs has been told of the application; and

(b) there is no reasonable cause for delay in surrendering the person;

the magistrate must order that the person be released from custody.

(3) Without limiting subsection (2)(b), reasonable cause for delay exists if:

(a) it would have been a danger to the person's life, or prejudicial to the person's health, to surrender the person; or

(b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport; or

(c) there was delay by a country in responding to a request by the requesting country for permission to transport the person, and all reasonable steps were taken to obtain the permission; or

(d) because of the remoteness of the requesting country, it would be unreasonable to expect the person to have been surrendered within the period mentioned in subsection (1).

PART III

EXTRADITION FROM KIRIBATI TO COMMONWEALTH COUNTRIES

Procedure applying to extradition to Commonwealth countries

23. The procedures set out in Part 2 apply to the extradition of a person from Kiribati to a Commonwealth country.

Evidentiary requirements for Commonwealth countries

24. The evidentiary requirements set out in section 26 (the record of the case scheme) apply to all extradition proceedings conducted at the request of a Commonwealth country.

The record of the case

25. (1) In this section:

"record of the case", in relation to a surrender offence, means:

- (a) a document containing a recital of the evidence acquired to support the request; and
- (b) an authenticated copy, reproduction or photograph of all exhibits and documentary evidence.

(2) In addition to any evidentiary requirements in Part 2, a magistrate must not determine that a person should be surrendered to a requesting country unless a record of the case is produced for the surrender offence.

(3) The record of the case must be accompanied by:

(a) an affidavit of an officer of the authority that investigated the matter, stating that:

- (i) the record of the case was prepared by him or her, or under his or her direction; and
- (ii) the evidence in the record of the case has been preserved for use in the person's trial; and

(b) a certificate of the Minister responsible for Foreign Affairs of the requesting country stating that, in his or her opinion, the record of the case discloses the existence of evidence that is sufficient under the law of the requesting country to justify a prosecution in the requesting country.

PART IV **EXTRADITION FROM KIRIBATI TO PACIFIC ISLAND COUNTRIES—BACKING OF WARRANTS PROCEDURE**

Procedure applying to extradition to Pacific Island countries

26. This Part sets out the procedure that is to apply to the extradition from Kiribati to Pacific Island countries of persons accused or convicted of extradition offences in those countries. The procedure is known as "backing of warrants".

Provisional arrest warrant

27. (1) If:

(a) an application is made to a magistrate on behalf of a Pacific Island country for the issue of a warrant for the arrest of a person; and

(b) the magistrate is told by affidavit that:

(i) an original warrant for the arrest of the person has been issued in the Pacific Island country but the warrant is not available in Kiribati; and

(ii) the person named in the original warrant is, or is suspected of being, in or on his or her way to Kiribati; and

(c) the magistrate is satisfied that it is reasonable in the circumstances to issue a warrant;

the magistrate must issue a provisional arrest warrant for the arrest of the person.

(2) The provisional arrest warrant must be in accordance with Form 2.

Arrest and remand on provisional arrest warrant

28. (1) A person arrested under a provisional arrest warrant must be brought before a magistrate as soon as practicable.

(2) The magistrate must:

(a) remand the person in custody; or

(b) if the magistrate is satisfied that the person is unlikely to abscond—
remand the person on bail;

until the Pacific Island country produces the original warrant on which the provisional arrest warrant was based.

(3) A magistrate who remands a person on bail:

(a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Kiribati; and

(b) may order that the person's passport and other travel documents be surrendered to the court until the extradition proceedings in relation to the person are concluded.

(4) A person must not be remanded in custody or on bail for a period longer than 28 days.

Release from remand – provisional warrant

29. (1) If:

- (a) a person is on remand in custody or on bail 28 days after the day on which the person was arrested on a provisional warrant; and
 - (b) an endorsed warrant for the arrest of the person has not been obtained;
- the person must be brought before a magistrate.

(2) The magistrate must order:

- (a) the release of the person from custody; or
- (b) the discharge of the recognisances on which bail was granted;

unless the magistrate is satisfied that the endorsed warrant will be obtained within a particular period that is reasonable in all the circumstances.

Endorsement of warrant

30. (1) If:

- (a) an application is made to a magistrate on behalf of a Pacific Island country for the endorsement of a warrant issued in the Pacific Island country for the arrest of a person (an "original warrant"); and
- (b) the magistrate is told by affidavit that the person named in the original warrant is, or is suspected of being, in or on his or her way to Kiribati;

the magistrate must endorse the original warrant to authorise the arrest of the person under the warrant in Kiribati.

Arrest and remand on endorsed warrant

31. (1) A person who is arrested under an endorsed warrant must be brought before a magistrate as soon as practicable.

(2) The magistrate must:

- (a) remand the person in custody; or
- (b) if the magistrate is satisfied that the person is unlikely to abscond—
remand the person on bail;

for the period that is necessary for proceedings under section 35 (dealing with consent to surrender) or 36 (dealing with extradition proceedings), or both, to be conducted.

(3) A magistrate who remands a person on bail:

- (a) has the same powers in relation to recognisances and reporting conditions as he or she has under the criminal laws of Kiribati; and

- (b) may order that the person's passport and other travel documents be surrendered to the magistrate until the extradition proceedings in relation to the person are concluded.

(4) A person must not be remanded in custody or on bail for a period longer than 28 days.

(5) If a magistrate remands the person in custody after the person has made an application for bail, the person is not entitled to apply to any other magistrate for release on bail during that remand, unless the first magistrate is no longer available.

Release from remand – endorsed warrant

32. (1) If:

- (a) a person is on remand in custody or on bail 28 days after the day on which the person was arrested on an endorsed warrant; and
- (b) no request has been made under section 33 for extradition proceedings to be conducted;

the person must be brought before a magistrate.

(2) The magistrate must order:

- (a) the release of the person from custody; or
- (b) the discharge of the recognisances on which bail was granted;

unless the magistrate is satisfied that a request under section 33 for extradition proceedings to be conducted will be made within a particular period that is reasonable in all the circumstances.

Extradition proceedings

33. If:

- (a) either:
 - (i) a person has been remanded after being arrested under an endorsed warrant; or
 - (ii) a person has been remanded after being arrested under a provisional arrest warrant and the original warrant has since been endorsed; and

- (b) a request is made to a magistrate by or on behalf of the person or the Pacific Island country for extradition proceedings to be conducted in relation to the person;

the magistrate must conduct proceedings as soon as practicable to determine whether the person should be surrendered to the Pacific Island country.

Conduct of extradition proceedings

34. (1) A magistrate must not conduct extradition proceedings unless he or she is satisfied that both the person sought and the Pacific Island country have had reasonable time to prepare for the conduct of the proceedings.

(2) Extradition proceedings must be conducted in the same manner as criminal proceedings. In particular, the rules that apply in criminal proceedings in relation to the following matters apply to the extradition proceedings:

- (a) summoning witnesses;
- (b) remanding defendants;
- (c) ordering the production of documents;
- (d) administration of oaths and affirmations;
- (e) payment of witness expenses;
- (f) contempt of court, privilege and other matters relating to the administration of courts;
- (g) the imposition and level of fines for offences.

(3) In the proceedings, the person is not entitled to adduce, and the magistrate is not entitled to receive, evidence to contradict an allegation that the person has engaged in conduct that constitutes the offence for which extradition is sought.

Consent to surrender

35. (1) In the proceedings the magistrate must ask the person if he or she consents to being surrendered.

(2) If:

- (a) the person tells the magistrate that he or she consents to being surrendered; and
- (b) the magistrate is satisfied that the consent was given voluntarily;

the magistrate must tell the person that he or she will be:

- (c) committed to prison without further proceedings; and
- (d) surrendered to the Pacific Island country as soon as practicable.

(3) If the person still consents to being surrendered, the magistrate must:

- (a) by warrant (a "surrender warrant"), order that the person be surrendered to the Pacific Island country; and
- (b) by warrant, order that the person be committed to prison until the person

is surrendered to the Pacific Island country.

Determination whether person should be surrendered

36. (1) In the proceedings, the person may bring evidence about the matters mentioned in subsection (2).

(2) The magistrate must determine that the person should be surrendered unless he or she is satisfied that:

- (a) the surrender offence is of a trivial nature; or
- (b) if the offence is one of which the person is accused but not convicted—
the accusation was not made in good faith and in the interests of justice; or
- a lengthy period has elapsed since the offence was committed; or
- (c) it would be unjust, oppressive or too severe a punishment to surrender the person; or
- (d) the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Kiribati.

(3) If the magistrate determines that the person should be surrendered, the magistrate must: by warrant (a "surrender warrant"), order that the person be surrendered to the Pacific Island country; and

- (a) by warrant, order that the person be committed to prison until the person is surrendered to the Pacific Island country; and
- (b) tell the person that he or she may, within 15 days of the day on which the order is made, seek a review of the order under section 37 (dealing with review of the decision); and
- (c) record in writing his or her decision and the extradition offence for which the person is to be surrendered; and
- (d) give a copy to the person and to the Minister for Foreign Affairs.

(4) In spite of subsection (3), if:

- (a) the person is serving a custodial sentence in Kiribati; and
- (b) surrender is sought for an offence for which the person is accused but not convicted;
- (c) the magistrate must not issue a surrender warrant for the person but must refer the matter to the Minister for Foreign Affairs to be dealt with under section 39 (temporary surrender warrants).

(5) If the magistrate determines that the person should not be surrendered to the Pacific Island country, the magistrate must order that the person be released.

Review of magistrate's decision

37. (1) If a magistrate makes an order for the surrender of a person, the person may apply to the High Court for a review of the order.

(2) If a magistrate makes an order for the release of a person, the Pacific Island country may apply to the High Court for a review of the order.

(3) The application must be made within 15 days after the day on which the magistrate makes the order.

(4) The High Court must have regard only to the material that was before the magistrate.

(5) The High Court may, by order, confirm or quash the order of the magistrate and order that the person be surrendered or released.

(6) If the High Court orders that the person be surrendered, the Court must include in its judgment a statement specifying the offence and must:

(a) if the person was remanded on bail—by warrant commit the person to prison until the person is surrendered; or

(b) if the person is in custody—order that the person remain in custody until the person is surrendered.

(7) If the High Court orders that the person be released, the Court must:

(a) if the person is in custody—order that the person be released; or

(b) if the person has been remanded on bail—order that the recognisance be discharged.

Surrender warrant

38. (1) The surrender warrant must:

(a) be in writing, in accordance with Form 5; and

(b) require any person who has custody of the person to hand the person over to a police officer; and

(c) authorise a police officer to:

(i) transport the person from the place where the police officer takes custody of the person to another place within Kiribati for the purpose of handing the person over to the custody of a foreign escort officer; and

(ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and

(d) authorise the foreign escort officer to transport the person out of Kiribati.

(2) If the person is serving a custodial sentence, or has been admitted to bail, in Kiribati for an offence committed in Kiribati, the surrender warrant must not be executed until:

(a) the person has been released from custody; or

(b) the recognisance has been discharged.

Temporary surrender warrant

39. (1) The Minister for Foreign Affairs may issue a temporary surrender warrant instead of a surrender warrant if:

(a) the person is serving a custodial sentence in Kiribati; and

(b) surrender is sought for an offence of which the person is accused but of which the person has not been convicted; and

(c) the Minister for Foreign Affairs is satisfied that the Pacific Island country has given an adequate undertaking that:

(i) the person will be given a speedy trial in the Pacific Island country; and

(ii) the person will be returned to Kiribati after the trial; and

(d) the Minister for Foreign Affairs is satisfied that adequate provision has been made for the travel of the person to the Pacific Island country and for his or her return to Kiribati.

(2) The temporary surrender warrant must:

(a) be in writing, in accordance with Form 6; and:

(b) state the offence for which the person is to be surrendered; and

(c) require any person who has custody of the person to hand the person over to a police officer; and

(d) authorise a police officer to:

(i) transport the person from the place where the police officer takes custody of the person to another place within Kiribati for the purpose of handing the person over to the custody of a foreign escort officer; and

(ii) hold the person in custody for so long as is necessary to enable the person to be handed over to the foreign escort officer; and

(e) authorise the foreign escort officer to transport the person out of Kiribati.

(3) If a person who was the subject of a temporary surrender warrant:

(a) has been returned to Kiribati after trial and sentence in the Pacific Island country; and

(b) has completed his or her custodial sentence in Kiribati;

the Minister for Foreign Affairs must issue a surrender warrant for the surrender of the person to the Pacific Island country, unless the Minister for Foreign Affairs is satisfied that it would be unjust or oppressive to surrender the person because of changed circumstances in the Pacific Island country.

(4) Any time the person spends in custody in the Pacific Island country as a result of the temporary surrender is taken to be time spent in custody in Kiribati for the purpose of completing the sentence for which the person was in custody in Kiribati.

(5) If:

(a) time spent in custody in the Pacific Island country is taken into account as mentioned in subsection (4); and

(b) because of this, the person's sentence in Kiribati is concluded;

the Minister for Foreign Affairs must tell the Pacific Island country that the undertakings given by that country about the speedy trial and return of the person no longer apply.

Execution of surrender warrant

40. (1) If a person is not surrendered under a surrender warrant within 2 months after:

(a) the date the surrender warrant was issued; or

(b) if the person is serving a custodial sentence, or has been admitted to bail, in Kiribati—the person's sentence has been served or the recognisance has been discharged;

the person may apply to a magistrate to be released from custody. The person must tell the Minister for Foreign Affairs in writing of the application.

(2) If the magistrate is satisfied that:

(a) the Minister for Foreign Affairs has been told of the application; and

(b) there is no reasonable cause for delay in surrendering the person;
the magistrate must order that the person be released from custody.

(3) Without limiting subsection (2)(b), reasonable cause for delay exists if:

- (a) it would have been a danger to the person's life, or prejudicial to the person's health, to surrender the person; or
- (b) there was no suitable means of transporting the person to the requesting country, and all reasonable steps were taken to obtain suitable transport; or
- (c) there was delay by a country in responding to a request for permission to transport the person, and all reasonable steps were taken to obtain the permission.

PART V **EXTRADITION FROM KIRIBATI TO TREATY COUNTRIES**

Procedure applying to extradition to treaty countries

41. The procedures set out in Part 2 apply to the extradition of a person from Kiribati to a country with which Kiribati has an extradition treaty.

Part 2 applies subject to treaty

42. However, Part 2 applies subject to:

- (a) any limitations, conditions, exceptions or qualifications that are contained in the extradition treaty between Kiribati and the treaty country; and
- (b) any modifications to this Act made by the regulations.

PART VI **EXTRADITION FROM KIRIBATI TO COMITY COUNTRIES**

Procedure applying to extradition to comity countries

43. Subject to section 46, the procedures set out in Part 2 apply to the extradition of a person from Kiribati to a country other than a Commonwealth country, a Pacific Island country or a treaty country.

When comity country an extradition country

44. (1) The Minister for Foreign Affairs may:

- (a) by regulations, specify a comity country as an extradition country; or
- (b) if an extradition request is received from a comity country that is not specified in the regulations - certify that the country is an extradition country for the purpose of that extradition request.

(2) When the Minister for Foreign Affairs certifies that the country is an extradition country, he or she must also specify the provisions of this Act that are to apply to the extradition request.

(3) In determining whether a comity country is an extradition country, the Minister for Foreign Affairs must consider:

- (a) the public interest of Kiribati; and
- (b) the public interest of the requesting country; and
- (c) the seriousness of the offence for which extradition of the person is sought.

Limitation on extradition proceedings

45. Proceedings may not be commenced on a request from a comity country for the surrender of a person unless:

- (a) the Regulations specify that the country is an extradition country; or
- (b) the Minister for Foreign Affairs has certified that the country is an extradition country in accordance with section 44.

Other modifications of Part 2

46. When the Minister for Foreign Affairs specifies a comity country as an extradition country, he or she may also by Regulations modify Part 2 in its application to the country under this Part.

PART VII **GENERAL PROVISIONS RELATING TO SEARCH, SEIZURE AND TRANSIT**

Search and seizure on arrest without a warrant

47. (1) This section applies to a person arrested:

- (a) on a warrant issued under this Act; or
- (b) on an endorsed warrant.

(2) If a police officer who arrests a person under this Act has reasonable grounds for suspecting that property in the vicinity of the person:

- (a) may be material as evidence in proving an offence for which the warrant was issued; or
- (b) has been acquired by the person as the result of the offence for which the warrant was issued;

the police officer may seize the property.

(3) If a police officer:

(a) arrests a person under this Act; and

(b) has reasonable grounds for suspecting that there is on the person, in the clothing that the person is wearing or in or on any property in the vicinity of the person that is under the apparent control of the person, any thing (including a sum of money) that:

(i) may be material as evidence in proving any offence in relation to which the warrant was issued or for which surrender of the person is sought; or

(ii) has been acquired by the person as a result of that offence;

the police officer may search the person, the person's clothing or the property and may seize any thing found as a result of the search.

(4) Subsections (2) or (3) do not authorise a police officer to remove, or to require the person to remove, any of the clothing that the person is wearing.

(5) A person must not be searched except by a police officer of the same sex.

(6) A police officer must retain in safe keeping any property or thing seized pending a direction from the Attorney-General about how the thing is to be dealt with.

(7) Nothing in this section prevents or restricts the search of a person or of clothing worn by, or of property under the immediate control of, a person after the person is admitted to a prison after having been arrested for an offence.

(8) The powers conferred by this section are in addition to any other powers conferred by law.

Search and seizure warrants

48. (1) If a magistrate is informed by affidavit that there are reasonable grounds for suspecting that there may be in a place:

(a) a thing that may be material as evidence in proving an offence for which a provisional arrest warrant was issued or surrender of a person is sought; or

(b) a thing that has been acquired by a person as a result of such an offence;

and the affidavit sets out those grounds, the magistrate may issue a warrant authorising a police officer, with such assistance, and by such force, as is necessary and reasonable:

(c) to seize the thing; or

(d) to enter the place and seize the thing; or

(e) to enter the place, search the place for a thing of that kind and seize any thing of that kind found in the place.

(2) The magistrate must not issue the warrant unless:

- (a) there has been given to the magistrate by affidavit the further information (if any) that the magistrate requires about the grounds on which the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) The warrant must state:

- (a) the purpose for which it is issued, including a reference to the nature of any offence referred to in subsection (1) (a); and
- (b) whether it authorises entry at any time of the day or night or during specified hours of the day or night; and
- (c) the kind of things that may be seized; and
- (d) that it ceases to have effect on a specified day, not being later than 1 month after the day it is issued.

(4) If, in the course of searching in accordance with the warrant:

- (a) a police officer finds a thing that he or she believes on reasonable grounds to be connected with the offence, but the thing is not of a kind stated in the warrant; and
- (b) the police officer believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction;

the warrant is taken to authorise the police officer to seize the thing.

(5) The police officer must retain in safe keeping a thing seized pending any direction from the Attorney-General about how it is to be dealt with.

(6) In this section:

"place" includes a public place, area of water, premises, vessel, aircraft or vehicle in any part of Kiribati;

"thing" includes a vessel, aircraft or vehicle.

Return etc of seized property

49. (1) The Attorney-General may direct that any property seized under sections 47 or 48 that:

- (a) may provide evidence of an offence for which surrender has been ordered; or

(b) may have been acquired as a result of an offence of that kind;

must be returned to the country that sought the surrender, if a surrender warrant or temporary surrender warrant is issued after extradition proceedings have concluded.

(2) If no surrender warrant has been issued after extradition proceedings have concluded, the Attorney-General must direct that the property be returned to the person from whom it was seized, unless the Attorney-General is satisfied that the interests of justice in the requesting country require the property to be returned to the requesting country.

Arrest of persons escaping from custody

50. (1) A police officer may arrest a person without a warrant if the police officer has reasonable grounds for believing that the person has escaped from custody that was authorised under this Act.

(2) The person must be returned to the custody mentioned in subsection (1).

(3) Escaping from custody as mentioned in subsection (1) does not constitute an offence.

51. (1) A police officer may arrest a person who has been remanded on bail under this Act if the police officer has reasonable grounds for believing that the person has contravened, or is about to contravene, a condition subject to which bail was granted.

(2) The person must be brought before a magistrate as soon as practicable.

Transit

52. (1) The Attorney-General must give permission to a country (the "second country") to transport through the territory of Kiribati a person who has been surrendered to the second country by a third country if:

(a) the second country asked for transit permission before the person entered Kiribati; and

(b) the second country is:

(i) a Commonwealth country, a Pacific Island country or a treaty country; or

(ii) a country approved by the Minister for Foreign Affairs for the purpose of the request.

(2) If transit permission is given under subsection (1):

(a) the Attorney-General give details to the Commissioner of Police; and

(b) a police officer in Kiribati may assist the foreign escort officer escorting the person; and

(c) the person may be held in custody in Kiribati until the person's journey can continue.

(3) If it is necessary to hold the person in custody for more than 24 hours, the person must be brought before a magistrate who may issue a warrant to commit the person to custody.

PART VIII **EXTRADITION TO KIRIBATI**

Surrendered persons to be brought into Kiribati

53. (1) A person surrendered to Kiribati for an offence against a law of Kiribati of which the person is accused or of which the person has been convicted must be brought into Kiribati and delivered to the appropriate authorities to be dealt with according to law.

(2) In particular, the person may be remanded in custody or on bail until the person can be brought to trial.

Treatment of person surrendered to Kiribati

54. A person surrendered to Kiribati must not:

(a) be detained or tried in Kiribati for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than:

(i) an offence for which the person was surrendered; or

(ii) another offence (for which the penalty is the same or less) of which the person could be convicted on proof of the conduct constituting the extradition offence; or

(iii) another offence for which the surrendering country consents to the person being detained or tried; or

(b) be detained in Kiribati for surrender to a third country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Kiribati;

unless one of the following circumstances applies:

(c) the country that surrendered the person to Kiribati consents to the person being so detained, and tried or surrendered; or

(d) the person has left, or has had the opportunity of leaving, Kiribati.

Persons temporarily surrendered to Kiribati

55. (1) If a person surrendered to Kiribati:

(a) has not completed a custodial sentence in the surrendering country immediately before being surrendered; or

(b) is a person whom Kiribati has undertaken to hold in custody and return

to the surrendering country;

then the person:

- (c) must, while travelling to and from, and while in, Kiribati, be kept in the custody that the Attorney-General orders in writing; and
- (d) may only be tried for an offence for which the person was surrendered; and
- (e) after the person has been tried—must be returned to the surrendering country.

(2) If:

- (a) a person is held in custody only because of an order of the Attorney-General under subsection (1); and
- (b) the surrendering country notifies Kiribati that the surrendering country no longer requires the person to be returned;

the Attorney-General must order that the person be released from custody.

Evidence for purposes of surrender of persons to Kiribati

56. (1) If the Minister for Foreign Affairs intends to seek a person's extradition to Kiribati, the Minister for Foreign Affairs may, by notice in writing, authorise the taking of evidence for use in any proceedings for the extradition of the person to Kiribati.

(2) A magistrate may take the evidence of each witness on oath or affirmation and must:

- (a) receive any written statement, cause any oral evidence to be reduced to writing, and certify as to the taking of the evidence; and
- (b) cause the evidence and the certificate to be sent to the Minister for Foreign Affairs.

(3) The person in relation to whom the evidence is being taken is not entitled to be represented while the evidence is being taken.

PART IX **MISCELLANEOUS**

57. (1) If:

- (a) a country requests the surrender of a person because of conduct the person engaged in outside Kiribati; and
- (b) the Minister for Foreign Affairs has refused under section 19(2) to order the surrender of the person; and
- (c) the person would have committed an offence against a law in force in Kiribati if the person had engaged in the conduct, or equivalent conduct, in Kiribati at that time;

the person may be prosecuted and punished in Kiribati for the offence.

(2) For the purpose of the prosecution, the person is taken to have engaged in the conduct in Kiribati.

(3) A person must not be prosecuted unless the Attorney-General:

(a) considers that there is sufficient evidence in Kiribati, or will be sufficient evidence in Kiribati at the time of trial, to justify prosecuting the person for the offence; and

(b) orders that the person be prosecuted for the offence.

(4) A person may be prosecuted whether the person engaged in the conduct before or after the commencement of this Act.

(5) A person to whom subsection (1) applies may be:

(a) arrested for an offence mentioned in paragraph (1)(c); and

(b) charged with the offence; and

(c) remanded in custody or on bail;

(d) although the Attorney-General has not made an order under subsection (3).

Provision of evidence for prosecution by other countries

58. If:

(a) another country has refused to order that a person be surrendered to Kiribati; but

(b) the country is prepared to prosecute the person for the offence for which Kiribati sought surrender of the person;

the Minister for Foreign Affairs must give the other country all available evidence to enable the other country to prosecute the person.

Surrender for purposes of trial only

59. (1) If:

(a) Kiribati refuses to surrender a person because:

(i) the person is a citizen of Kiribati; or

(ii) the person has been or may be subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or

(b) a magistrate determines under section 36 that a person should not be

surrendered because the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Kiribati;

and the requesting country asks that the person be surrendered for the purposes of trial only, Kiribati may surrender the person to the other country for the purpose of being tried in the requesting country for the offence for which extradition is sought if:

- (c) the law of the requesting country permits the transfer of convicted offenders to Kiribati; and
- (d) Kiribati is satisfied that if the person is convicted the person will be returned to Kiribati to serve the sentence imposed; and
- (e) Kiribati is satisfied that there is no likelihood that the person will be subjected to torture or cruel, inhuman or degrading treatment or punishment.

(2) A person returned to Kiribati to serve a sentence imposed by a court in the requesting country is taken to be serving a sentence imposed by a court in Kiribati.

Regulations

60. (1) The Minister may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may:

- (a) amend the lists of countries in the Schedules, but so that a country appears in only one Schedule; and
- (b) set out the text of extradition treaties; and
- (c) make any modifications to this Act that are necessary give effect to an extradition treaty.

(3) A reference to a country listed in a Schedule includes a reference to a country listed in the Schedule because of regulations made under subsection (2)(a).

Transitional

61. (1) In this section:

"current extradition request" means an extradition request under the old Act that has not been finalised.

"old Act" means the Extradition Act 1981.

(2) In spite of the fact that the old Act no longer has effect in Kiribati, a current extradition request that was started before the commencement of this Act is to continue to be dealt with under the old Act.

(3) However, nothing in this section prevents a country from making a fresh extradition request under this Act in place of a current extradition request.

Repeal and exclusion of other laws

62. (1) This Act replaces all former laws relating to extradition in force in Kiribati immediately before the commencement of this Act, whether those laws were in force because of legislation of Kiribati or because of the actions of a former governing power of Kiribati.

(2) In particular the following Acts:

(a) The Extradition Act 1981 is repealed; and

(b) any other laws relating to extradition of persons to and from Kiribati that were in force in any part of Kiribati immediately before the commencement of this Act cease to have effect in Kiribati.

(3) An extradition treaty:

(a) to which Kiribati was a party; or

(b) that otherwise bound Kiribati;

immediately before the commencement of this Act remains in force and is taken to be an extradition treaty for the purpose of this Act.

SCHEDULES

SCHEDULE 1

COMMONWEALTH COUNTRIES

Anguilla	Malaysia
Antigua and Barbuda	Maldives
Australia	Malta
Bahamas	Mauritius
Bangladesh	Montserrat
Barbados	Mozambique
Belize	Namibia
Bermuda	New Zealand
Botswana	Nigeria
British Antarctic Territory	Pakistan
British Indian Ocean Territory	Pitcairn Islands
British Virgin Islands	St Helena and Dependencies
Brunei Darussalam	St Kitts and Nevis
Cameroon	St Lucia
Canada	St Vincent and the Grenadines
Cayman Islands	Seychelles
Cyprus	Sierra Leone
Cyprus (Sovereign Base Areas of Akrotiri and Dhekelia)	Singapore
Dominica	South Georgia and South Sandwich Islands
Falkland Islands	
The Gambia	South Africa
Ghana	Sri Lanka
Gibraltar	Swaziland
Grenada	Tanzania
Guyana	Trinidad and Tobago
India	Turks and Caicos Islands
Jamaica	Uganda
Kenya	United Kingdom of Great Britain and Northern Ireland
Lesotho	
Malawi	Zambia
	Zimbabwe

SCHEDULE 2

PACIFIC ISLAND COUNTRIES

Cook Islands	Nauru	Solomon Islands
Federated States of Micronesia	Niue	Tonga
Fiji Islands	Palau	Tuvalu
	Papua New Guinea	Vanuatu
Marshall Islands	Samoa	

SCHEDULE 3

TREATY COUNTRIES

Argentina	Luxemburg
Belgium	Mexico
Bosnia and Herzegovina	Monaco
Chile	Nicaragua
Columbia	Norway
Croatia	Panama
Cuba	Paraguay
Denmark	Peru
Ecuador	Portugal
Federal Republic of Yugoslavia	Rumania
Former Yugoslav Republic of Macedonia	San Marino
France	Slovenia
Greece	Spain
Guatemala	Sweden
Haiti	Switzerland
Hungary	Thailand
Iceland	United States of America
Italy	Uruguay
Liberia	

SCHEDULE 4

Section 4

FORMS OF WARRANTS

Form 1

Provisional Arrest Warrant - General

REPUBLIC OF KIRIBATI

Extradition Act 2003, section 8

Provisional Arrest Warrant

TO all police officers:

An application has been made to me on behalf of [*requesting country*] for the issue of a provisional warrant for the arrest of [*name of person*].

I am satisfied, on the basis of the documents produced to me on behalf of [*requesting country*], that:

- (a) [*name of person*] is in, or on his or her way to, Kiribati; and
- (b) [*requesting country*] intends to make a formal request for the extradition of
of
[name of person]; and
- (c) the offence for which the extradition of [*name of person*] is sought is an extradition offence; and
- (d) [*requesting country*] is an extradition country.

NOW THEREFORE I, [*name and designation of magistrate*], under section 8 of the Extradition Act 2003, authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in Kiribati as soon as practicable to be dealt with according to law.

Dated

*Signature and title of
Magistrate issuing warrant*

**Form 2
Provisional Arrest Warrant– Extradition to Pacific Island country**

REPUBLIC OF KIRIBATI

Extradition Act 2003, section 28

Provisional Arrest Warrant

TO all police officers:

An application has been made to me on behalf of [*Pacific Island country*] for the issue of a provisional warrant for the arrest of [*name of person*].

I am satisfied, on the basis of the documents produced to me on behalf of [*Pacific Island country*], that:

- (a) [*name of person*] is in, or on his or her way to, Kiribati; and
- (b) an original warrant for the arrest of [*name of person*] has been issued in [*Pacific Island country*] but the warrant is not available in Kiribati; and

(c) it is reasonable in the circumstances to issue a warrant for the arrest of
[*name of person*].

NOW THEREFORE I, [*name and designation of magistrate*], under section 28 of the Extradition Act 2003, authorise and request you to arrest [*name of person*] and bring him/her before a magistrate in Kiribati as soon as practicable to be dealt with according to law.

Dated

Signature and title of
Magistrate issuing warrant

Form 3
Surrender Warrant - General

REPUBLIC OF KIRIBATI

Extradition Act 2003, section 2.14

Surrender Warrant

TO all police officers:

I, [*name of Minister for Foreign Affairs*], Minister for Foreign Affairs of Kiribati, have decided under section 19 of the Extradition Act 2003 that [*name of person*] is to be surrendered to [*requesting country*] for the offence of [*specify each offence for which the person is to be surrendered*].

NOW THEREFORE I, [*name of Minister for Foreign Affairs*], under section 19(5) of the Extradition Act 2003:

- (a) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (b) authorise you to bring [*name of person*] to [*name of place in Kiribati*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and
- (c) authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and

authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Kiribati

Dated

Signature of Minister for Foreign Affairs

Form 4
Temporary Surrender Warrant - General

REPUBLIC OF KIRIBATI

Extradition Act 2003, section 19

Temporary Surrender Warrant

TO all police officers:

I, [*name of Minister for Foreign Affairs*], Minister for Foreign Affairs of Kiribati, have decided under section 19 of the Extradition Act 2003 that [*name of person*] is to be surrendered to [*requesting country*] for the offence of [*specify each offence for which the person is to be surrendered*].

[*name of person*]:

- (a) is serving a custodial sentence in Kiribati; and
- (b) has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that:

- (a) [*requesting country*] has given an adequate undertaking that [*name of person*] will be given a speedy trial in [*requesting country*] and will be returned to Kiribati after the trial; and
- (b) adequate provision has been made for [*name of person*]:to travel to [*requesting country*] and to return to Kiribati.

NOW THEREFORE I, [*name of Minister for Foreign Affairs*], under section 19(5) of the Extradition Act 2003:

- (a) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (b) authorise you to bring [*name of person*] to [*name of place in Kiribati*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and
- (c) authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and

authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Kiribati

Dated

Signature of Minister for Foreign Affairs

Form 5
Surrender Warrant – Extradition to Pacific Island country

REPUBLIC OF KIRIBATI

Extradition Act 2003, section 36(3)

Surrender Warrant

TO all police officers:

I, [*name and title of magistrate*], have decided under section 36 of the Extradition Act 2003 that [*name of person*] is to be surrendered to [*Pacific Island country*] for the offence of [*specify each offence for which the person is to be surrendered*].

NOW THEREFORE I, [*name of Magistrate*], under section 36(3) of the Extradition Act 2003:

- (a) order that [*name of person*] be surrendered to [*Pacific Island country*]; and
- (b) order that [*name of person*] be committed to prison until he/she is surrendered to [*Pacific Island country*]; and
- (c) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (d) authorise you to bring [*name of person*] to [*name of place in Kiribati*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*Pacific Island country*] to escort [*name of person*] to [*Pacific Island country*]; and
- (e) authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and
- (f) authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Kiribati

Dated

Signature and title of
Magistrate issuing warrant

Form 6
Temporary Surrender Warrant – Extradition to Pacific Island country

REPUBLIC OF KIRIBATI

Extradition Act 2003, section 39

Temporary Surrender Warrant

TO all police officers:

I, [*name of Minister for Foreign Affairs*], Minister for Foreign Affairs of Kiribati, have decided under section 39 of the Extradition Act 2003 that [*name of person*] is to be temporarily surrendered to [*Pacific Island country*] for the offence of [*specify each offence for which the person is to be surrendered*].

[*name of person*]:

- (a) is serving a custodial sentence in Kiribati; and
- (b) has not been convicted of the offence(s) for which his/her surrender is sought.

I am satisfied that:

- (a) [*Pacific Island country*] has given an adequate undertaking that [*name of person*] will be given a speedy trial in [*Pacific Island country*] and will be returned to Kiribati after the trial; and
- (b) adequate provision has been made for [*name of person*]:to travel to [*Pacific Island country*] and to return to Kiribati.

NOW THEREFORE I, [*name of Minister for Foreign Affairs*], under section 39 of the Extradition Act 2003:

- (a) require any person who has custody of [*name of person*] to hand the person over to the police officer who has this warrant; and
- (b) authorise you to bring [*name of person*] to [*name of place in Kiribati*] for the purpose of handing [*name of person*] over to the custody of [*name and title of foreign escort officer*], a person authorised by [*requesting country*] to escort [*name of person*] to [*requesting country*]; and
- (c) authorise you to hold [*name of person*] in custody for so long as is necessary to hand him/her over to the foreign escort officer; and

authorise [*name and title of foreign escort officer*] to transport [*name of person*] out of Kiribati.

Dated

Signature of Minister for Foreign Affairs

EXTRADITION ACT 2003

EXPLANATORY MEMORANDUM

1. General Summary

This Act is based on a Model Extradition Law developed to assist in providing a uniform approach to extradition among Pacific Island countries. The principles on which the Model Law was based were endorsed at the 1995 Pre-Forum Officials Committee meeting, and the Model Law was tabled at the 1999 Pacific Island Law Officers Meeting in Madang. Kiribati was present at both meetings.

This Act has a number of purposes:

- (a) to modernise the extradition law of Kiribati in line with developments in global extradition practice;
- (b) to reflect developments in the Commonwealth London Scheme for the Rendition of Fugitive Offenders and the United Nations General Assembly adoption of the United Nations Model treaty on Extradition;
- (c) to facilitate the surrender by Kiribati of persons wanted in another country to stand trial for, or serve a sentence imposed for, an offence committed in that country;
- (d) to facilitate the making of requests to other countries for the surrender of persons wanted in Kiribati to stand trial for, or serve a

sentence imposed for, an offence committed in Kiribati.

The Act permits surrender of fugitives to different countries on different bases, for example depending on whether the country is a Pacific Island country. To do this it contains, in Part 2, general provisions governing the handling of all extradition requests. Parts 3, 4, 5 and 6 make special provision to take account of the different classes of country that might seek surrender. These classes can be summarised as:

- (a) Commonwealth countries other than Pacific Island countries. A person can be surrendered to a Commonwealth country on the basis of documents containing a record of the case against the person and using the general procedures in Part 2.
- (b) Pacific Island countries. A person can be surrendered to a Pacific Island country on the basis of endorsed warrants (the "backing of warrants" scheme) using the specific procedure in Part 4.
- (c) Countries with which Kiribati has an extradition treaty (whether entered into by the government of Kiribati or inherited on independence). The general Part 2 procedure applies, subject to any specific requirements in the treaty.
- (d) Comity countries, that is, countries that do not fall into any of those classes, but where it is nevertheless desired to grant extradition on the basis of Kiribati's general international obligations (called "comity"). Again, the general procedure in Part 2 is used.

The 2 Flow Charts attached to this Memorandum give an outline of the 2 basic types of extradition procedure: the general procedure in Part 2, and the backing of warrants procedure for Pacific Island countries.

The Act also contains general provisions to support the main extradition provisions, such as arrest, searching of persons and premises, seizure of things found during a search, and transit of persons through Kiribati.

Special provisions are made:

- (a) to allow Kiribati to prosecute a person where the person should stand trial but it is not desired to surrender the person for reasons set out in the Act (such as the likelihood of the person being subject to cruel or inhuman treatment, or for reasons of national interest).
- (b) to allow surrender of a person for trial only and return to Kiribati to serve the sentence in Kiribati. This is designed to ensure that fugitives whose punishment is in the national interest do not evade justice because their surrender is precluded because they are Kiribati citizens or on humanitarian grounds.

2. Summary of Parts

The Act is divided into the following Parts:

Part I Preliminary:

This Part defines terms used in the Act, including what is an extradition offence and what constitutes an objection to extradition. Among other things, a person has a valid objection to extradition if the

offence is a political offence. However, the Act makes it clear that a person may still be extradited if the political offence is a terrorist offence.

Part II – Extradition from Kiribati – General provisions:

Part 2 sets out the core machinery provisions that apply in all extradition cases, except for extradition to other Pacific Island countries. It deals with the issue of arrest warrants, remand, and the conduct of extradition proceedings generally. Although the issue of warrants and the hearing of extradition proceedings is a matter for a magistrate, the initial decision whether to proceed with extradition proceedings, and the final decision whether to extradite the person, are both decisions of a political nature and are therefore left to the Minister for Foreign Affairs.

In particular, Part 2 deals with the following:

- the matters the Minister for Foreign Affairs must be satisfied of before he can grant an authority to proceed and subsequently make the final decision on surrendering the person
 - the evidence the magistrate is to consider, and supporting documents the requesting country must provide
 - review of the magistrate's decision by the High Court.

Part III – Extradition from Kiribati to Commonwealth countries:

Part 3 deals with the handling of extradition requests from other Commonwealth countries. These are listed in Schedule 1 to the Act. The general procedures in Part 2 apply, with an additional requirement about the standard of evidence. This requires the requesting Commonwealth country to produce a detailed authenticated record of the evidence used in the person's trial in the Commonwealth country.

Part IV – Extradition from Kiribati to other Pacific Island countries:

This Part sets out detailed procedure for the extradition of persons to other Pacific Island countries. The procedure is less complex than the general procedure, and involves the production by the requesting country of the original warrant issued in that country for the arrest of the person. This warrant is endorsed by the magistrate and then becomes the basis for the person's arrest in Kiribati. The magistrate makes the decision whether the person should be surrendered. Again, there is provision for an appeal to the High Court.

Part V – Extradition from Kiribati to treaty countries:

This Part deals with extradition to countries with which Kiribati has an extradition treaty. Basically, it applies the general provisions in Part 2, subject to any modifications needed because of the detail of the treaty.

Part VI – Extradition from Kiribati to comity countries:

This Part deals with extradition to countries that are not Commonwealth countries, not Pacific Island countries, and not countries where there is an extradition treaty. These are countries where Kiribati has no specific international obligation to extradite. In these cases, the Minister for Foreign Affairs is able to decide whether the extradition proceedings should go ahead. If the Minister decides to proceed, the general procedures set out in Part 2 apply, subject to any modifications by Regulation.

Part VII – General provisions relating to search, seizure and transit:

This Part confers powers on members of the Kiribati Police Force to search persons and their property

where the police officer has reasonable grounds for suspecting that material evidence of an extradition offence is on or near the person, and to seize property. It also provides for search and seizure warrants. It also provides for the escorted transit through Kiribati of persons extradited from another country to a third country.

Part VIII – Extradition to Kiribati:

This Part deals with extradition requests by Kiribati for the extradition of a person wanted in Kiribati for an extradition offence. In particular, it provides that the person can basically only be tried for the extradition offence, and that a person who is serving a sentence in the other country must be returned to finish the sentence.

Part IX – Miscellaneous:

This Part deals with the circumstances in which a person can be prosecuted in Kiribati for the extradition offence rather than be extradited. It also deals with certain evidentiary matters. It also repeals the Extradition Act 1981 and makes it clear that the Act will replace all inherited laws relating to extradition.

Part 9 also provides for the making of Regulations to amend the lists of countries in the Schedules, to set out the text of any extradition treaties entered into by Kiribati, and to make any modifications required by the terms of a particular treaty.

Schedules: The Act has 4 Schedules.

Schedule 1 contains a list of Commonwealth countries. The list can be amended by Regulation, to enable it to be kept up to date.

Schedule 2 lists Pacific Island countries, and can also be amended by Regulation.

Schedule 3 lists the countries with which Kiribati has an inherited extradition treaty. This list is based on material from Forum Secretariat. As far as inherited treaties are concerned, the list is based on the assumption that Kiribati was classed as a foreign possession in the terms of the relevant treaties, and as a British possession in terms of the Imperial Acts known as the Extradition Acts 1870 to 1935. On the basis that the Imperial Acts were in force in Kiribati, it can be assumed that the treaties would also have applied. This list can also be changed by Regulation.

Schedule 4 sets out the forms of the arrest warrants and surrender warrants that must be used in procedures under the Act.

Titabu Tabane
Attorney General
15 August 2003