



Discussion Paper: Strengthening extradition and mutual legal assistance in the Pacific

**27th PILON Meeting
5-9 December 2008 - Vanuatu**

1. Key issues

- Extradition and mutual legal assistance are essential tools for combating domestic and transnational crime. They are increasingly important in fighting cross-border crimes such as drug and people trafficking, money laundering and terrorism.
- At the 2007 PILON annual meeting, officers considered a PILON Secretariat background paper on potential avenues for harmonising extradition standards and processes between PILON member countries (**Attachment A**, together with an updated table of extradition relationships).
- Members indicated that further information about the extradition arrangements currently in place in the Pacific would be helpful in considering future reform.
- There is significant variation in the evidential standards applied to extradition requests throughout the Pacific region. This variation imposes higher administrative burdens and compliance costs upon PILON member countries. These costs are increased when the evidential standards applied are higher than the backing of warrants / no evidence standards.
- PILON officers are asked to encourage their national governments to consider further streamlining and harmonising extradition processes between PILON members, through the adoption of regionally consistent standards.

2. Recommendations

The PILON Secretariat recommends that PILON members agree to encourage their governments to consider ways in which the extradition process between PILON members could be streamlined and expedited, with a particular view to:

- a) harmonising the evidential standards required to extradite a person, by implementing the backing of warrants procedure or the no evidence standard
- b) harmonising grounds of objection to extradition applications, and
- c) exploring options to reduce or share the burden of extradition costs.

3. Background

This paper builds on the PILON Secretariat's paper submitted to the 26th PILON meeting at **Attachment A**.

Extradition is the formal surrender by one country, on request of another, of a person who has been accused or convicted of a crime committed within the requesting country's jurisdiction.

PILON members have been considering a regional approach to extradition since the *Honiara Declaration on Law Enforcement Cooperation* in 1992. Under the Declaration, Pacific Islands Forum leaders agreed that an adverse law enforcement environment threatens the sovereignty, security and economic integrity of Forum members and jeopardises economic and social development. The Honiara Declaration identified extradition legislation as a key priority area for action.

The Forum agreed that its members should review their extradition legislation and, if required, introduce legislation based on the United Nations Model Treaty on Extradition or the London Scheme for Extradition within the Commonwealth (London Scheme).

In 1992 the Forum Secretariat invited PILON (formerly PILOM) as a body of legal experts to jointly participate in implementing the legal issues under the Honiara Declaration. PILON members formed a Law and Order Committee to develop Honiara declaration legislation for Pacific island countries beginning with extradition legislation. In the late 1990s a model bill for a backing of warrants extradition scheme within the Pacific was developed. The model legislation was drafted with the assistance of the Forum Secretariat, Australia and the Commonwealth Secretariat informally under the auspices of PILON. The model has been implemented in seven Pacific island countries.

In 2000 the United Nations Convention against Transnational Organized Crime was established. Since that time, a number of PILON member countries have ratified or acceded to the Convention.¹ Article 16 of the Convention provides an alternative system for extradition in relation to transnational crimes covered by the provisions of the treaty, where the proposed extradition is to take place between two States Parties to the Convention. The Convention also encourages States Parties to take steps to expedite their extradition procedures and to simplify evidentiary requirements.

The Forum Regional Security Committee (FRSC) considered the issue of further regional harmonisation at its June 2007 meeting. The Committee referred the matter to PILON to consider whether this might be achieved by further model legislation or by treaty. At the 26th meeting PILON members agreed that the PILON Secretariat would examine a means of facilitating extradition and mutual legal assistance across the region with a view to harmonising standards to the extent possible. The Secretariat reported the outcomes of the 26th PILON meeting at the following FRSC meeting in June 2008. PILON will again report to the FRSC on the outcomes of its consideration at the 2009 FRSC meeting.

¹ Australia, Cook Islands, Kiribati, Federated States of Micronesia, Nauru, New Zealand and Vanuatu.

This paper identifies that the key area for legislative reform to facilitate further international criminal cooperation in the Pacific is extradition, rather than mutual legal assistance. The paper recommends PILON members agree to consider ways to harmonise extradition legislation to provide for minimum standards in certain areas and encourages discussion about overcoming practical barriers to international crime cooperation.

4. Current issues with extradition systems in the Pacific

Extradition has been increasingly recognised as a major element of international cooperation in combating crime, particularly transnational crimes such as drug and people trafficking, money laundering and terrorism. Other cooperative international law enforcement arrangements, such as mutual legal assistance, have also been developed to facilitate the investigation of crime and recovery of proceeds of crime (mutual legal assistance in the Pacific is discussed in more detail below).

Transnational crime has increased in relevance in the Pacific since the Honiara Declaration. The Forum Secretariat's Pacific Transnational Crime Assessment 2008 identifies that Pacific island countries are targeted by individuals and groups attempting to undertake a range of transnational criminal activity. The Assessment states that "Pacific island countries will remain vulnerable to this threat while legislation and capacity impede effective law enforcement activity." On the basis of this report, FRSC members in 2008 once again encouraged members to implement model legislation, including for extradition, as part of a comprehensive strategy to effectively tackle transnational crime in the Pacific region.

Effective extradition processes are an important element of domestic law enforcement and the ability to combat transnational crime and terrorism. A regional approach to extradition is important for consistent action against criminal activity within the region. Inconsistent adoption of extradition standards within the region may significantly reduce the deterrent effect of the legislation. At present, gaps within Pacific extradition legislation mean that a person could commit a serious crime in one Pacific country and flee to another Pacific country from which extradition is unlikely.

The Secretariat understands that, outside of the regional backing of warrants scheme, there are relatively few extradition applications made by PILON member countries. It is understood that this is partly attributable to the level of resources required to meet the high evidential burden imposed by some countries before an extradition request will be accepted. The Secretariat suspects that the lack of action may also be due to:

- capacity constraints which may result in extradition action not being prioritised
- a lack of familiarity of extradition processes, and
- practical barriers, such as requirements that the requesting country meet the costs of a transfer.

5. Evidential standards and procedures in the Pacific

There is significant variation in the evidential standards or procedures required by PILON member countries when making or receiving an extradition request (see **Attachment A**). Seven of the 16 PILON member countries facilitate extradition using a backing of warrants system when dealing with Forum member countries. Of those Pacific island countries that do not apply the regional backing of warrants scheme, there are substantially different evidential standards being applied:

- a) the Republic of Marshall Islands has adopted the ‘no evidence’ standard
- b) Australia, Nauru, New Zealand, Solomon Islands and Tonga predominantly apply the ‘prima facie evidence’ standard
- c) Samoa has adopted the ‘record of the case’ standard
- d) Palau has adopted the ‘probable cause’ standard, and
- e) the Federated States of Micronesia requires a bilateral treaty to facilitate extradition, with the evidential standard varying depending on the terms of individual treaties.

Accordingly, the requirements for extradition applications to countries across the Pacific region vary considerably. The Secretariat understands that one of the reasons for the low number of extradition requests to PILON members not participating in the backing of warrants scheme may be the significant practical barriers associated with making extradition requests where a standard higher than no evidence is required. Some PILON members may not be able to meet these requirements from within existing resources.

5.1 Regional backing of warrants scheme

The backing of warrants procedure for extradition is currently in place in Cook Islands, Fiji, Kiribati, Niue, Papua New Guinea, Tuvalu, and Vanuatu.²

Backing of warrants imposes the lowest evidential barrier to extradition in the region. It is also the timeliest and least resource intensive. The procedure generally does not require a formal extradition request. Instead, it simply requires a country requesting extradition to provide documents establishing:

- the identity of the person to be extradited
- a statement of the offence and the penalty that could be imposed, and
- a copy of the warrant to apprehend the person or documents providing evidence of the person’s conviction.

A requesting country must also provide an affidavit that the person is in, or is suspected of being in or travelling to, the requested country. With this information the original warrant can be endorsed as a valid warrant in the requested country, subject to objections set out in the legislation.

² These countries apply the backing of warrants procedure for Forum member country extradition requests. However, Kiribati and Tuvalu require Australia and New Zealand to meet the prima facie or record of the case standards as Commonwealth countries.

5.2 *No evidence standard*

In the Pacific, only the Republic of the Marshall Islands currently accepts extradition requests from Pacific island countries under the no evidence standard.

Under the no evidence standard the receiving country would generally only require an extradition request to contain an authenticated statement of the alleged conduct constituting the offence, the nature of the offence and the applicable penalty. The standard gets its name because it does not require a requesting country to provide sworn evidence relating to the offence.

The no evidence standard is most commonly used in civil law countries. Because of differences between the civil law and common law systems, civil law countries are effectively unable to conduct extradition relations on any basis other than the no evidence standard. Commonwealth countries generally use the no evidence standard to establish extradition relationships with civil law countries.

Some Commonwealth countries are now using the no evidence standard in extradition relationships with other Commonwealth countries. For example, Australia utilises the no evidence standard for its extradition relationships with 43 countries,³ including some Commonwealth countries such as Canada, South Africa and the United Kingdom. By lowering its evidential standard Australia has been able to participate more effectively in international efforts to combat serious and transnational crime and to demonstrate its commitment to the joint international fight against crime.

5.3 *Record of the case and prima facie standards*

In their dealings with other Pacific countries Australia, Nauru, New Zealand, Samoa, and Solomon Islands generally require extradition requests to satisfy requirements under the prima facie standard or the record of the case procedure.

The record of the case standard and prima facie standard require the same supporting documents as the no evidence procedure. However, they also require sworn evidence sufficient to meet the record of case or prima facie standard.

Extradition requests satisfying the record of the case or prima facie standards require significantly more time and resources to complete than the no evidence standard. For example, a prima facie request would include a sworn affidavit by an investigator involved in the case which details and annexes the evidence that is being relied upon to make out the prima facie case. The annexures to the affidavit might include witness statements, telephone intercept transcripts, crime scene photographs, copies of bank statements, drug analysis results and toxicology test results. Accordingly, these standards impose a procedural barrier for law enforcement agencies and law officers

³ Argentina, Belgium, Brazil, Cambodia, Canada, Croatia, Denmark, Ecuador, Estonia, France, Germany, Greece, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Korea, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Marshall Islands, Mexico, Monaco, Netherlands, Paraguay, Philippines, Poland, Portugal, South Africa, Slovenia, Spain, Switzerland, Thailand, Turkey, United Kingdom and Venezuela.

of smaller jurisdictions which may not have resources to assemble the documents required to satisfy the request at the time of making the extradition request.

5.4 Application of evidential standards in the Commonwealth (London Scheme)

PILON member countries which are also members of the Commonwealth⁴ have established extradition relationships under the London Scheme for Extradition within the Commonwealth (1992).

The London Scheme stipulates that the default standard in committal proceedings involving an extradition application between Commonwealth countries is to be the 'prima facie case' standard (unless countries have agreed to the alternative 'record of the case' standard). However, clause 23 of the scheme permits the making of arrangements between Commonwealth countries that involve further or alternative standards for extradition.

The trend internationally for countries to adopt the no evidence standard, including examples where Commonwealth countries including Australia, Canada and the United Kingdom have moved to adopt the no evidence standard in their relations with each other, may suggest that the prima facie case standard required by the London Scheme is not well adapted to modern law enforcement challenges posed by increasingly sophisticated transnational crime and terrorist networks. The London Scheme (which is a less than treaty status agreement for common law countries) may be becoming less relevant given the spread of transnational crime, which does not operate on the basis of the division between civil law and common law countries.

5.5 Proposed approach to evidentiary standards for all Pacific island countries

The PILON Secretariat suggests that Pacific island countries consider enabling more flexible and efficient standards to facilitate extradition internationally. In the Pacific context, the most effective and efficient approach to extradition may be for PILON member countries to facilitate extradition on the basis of either the backing of warrants or no evidence standards. This would provide a robust and pragmatic extradition regime across the Pacific which is equipped to meet contemporary developments in transnational crime. A dual-standard approach providing minimum standards in the Pacific would promote flexibility, efficiency and compatibility of extradition systems within the region and internationally, while recognising limitations inherent in the legal systems of PILON member countries.

The PILON Secretariat recommends that member countries already operating under a backing of warrants procedure maintain those arrangements. For PILON member countries with constitutional or administrative arrangements which preclude adopting the backing of warrants procedure, the PILON Secretariat recommends applying the no evidence standard as the highest standard of extradition between Pacific island countries.

⁴ Commonwealth members in the Pacific comprise Australia, Fiji (currently suspended), Kiribati, New Zealand, Solomon Islands, Samoa, Tonga, Tuvalu and Vanuatu.

6. Grounds for objection

There is significant variation in the legislation of PILON members setting out the grounds upon which a country may object to, or refuse, an extradition request. A comprehensive list of the grounds of objection currently in the legislation of PILON members is at **Attachment B**. Examples of common grounds for objection amongst PILON members include:

- the extradition offence is a political offence
- the extradition offence is based on the race, sex status or religion of the alleged offender
- the case is trivial, and/or
- proceedings are already on foot for the offence in requested country.

Not all PILON members have adopted all of these grounds of refusal in their legislation. Further, there are some grounds of objection which apply under the legislation of just a few PILON member countries. For example, Solomon Islands, Samoa and Tonga may object to a request for extradition if the person is serving a sentence of imprisonment in the requested country. Similarly, prison conditions in the requesting country are a statutory ground of objection in Kiribati, Fiji and Cook Islands.

Harmonising grounds for objection may facilitate more consistent decision making across the region. It is recommended that PILON members consider whether a group of core objections to extradition applications should be developed.

7. Cost

There are a number of costs associated with making a successful extradition application. These include:

- administrative costs in preparing an application (borne by the requesting country),
- court and other processing costs in the requested country (borne by the requested country), and
- costs of returning the person to the requesting country (borne by the requesting country making the extradition application).

The administrative costs associated with making an extradition request are considerably lower under the backing of warrants or no evidence standard than under the other evidentiary standards. In order to save further administrative costs and time, countries considering making extradition requests should contact the central authority of the relevant country as early in the process as possible. This may avoid the need to have requests returned for the inclusion of further information.

In the normal course, the costs of returning a person the subject of an extradition order will be met by the country making the request. These costs include the costs of return airfares for two escorts to supervise the person's physical transfer and the cost of an

airfare for the person the subject of the order. These costs may be a key practical barrier to some countries in the region making extradition requests.

The Secretariat understands that some PILON member countries may consider requests to contribute to these costs on a discretionary case-by-case basis when a requesting country cannot meet the full costs of the extradition process. Officers may wish to make inquiries to the Central Authority of the requested country about whether that country is willing to meet part of the costs of an extradition request when making initial enquiries about potential requests.

8. Mutual legal assistance

The framework for mutual legal assistance within the Pacific is generally sound. However, there are currently limits on the capacity of some PILON members to provide assistance. It is established practice within a number of PILON members to offer technical assistance in the execution of any mutual legal assistance requests made, which goes some way to addressing this issue.

One area in which countries would benefit from further developing their capacity in mutual legal assistance is the recovery of proceeds of crime. The Australian Attorney-General's Department runs an annual International Crime Cooperation workshop which provides technical and capacity building training for Pacific police and prosecutors. The workshop focuses on building capacity within the region in the areas of proceeds crime, money laundering, mutual legal assistance and extradition. The next workshop will be held in late March 2009. That Department is also available to provide in-country training on these issues at other times during the year.

9. Donor technical assistance

PILON members interested in seeking technical assistance in reviewing their extradition legislation may contact the following agencies for assistance:

- Pacific Islands Forum Secretariat
- Pacific Section of the Australian Attorney-General's Department, and
- United Nations Office of Drugs and Crime.

The PILON Secretariat also understands the Australian and New Zealand central authorities (Attorney-General's Department and Ministry of Foreign Affairs and Trade) may be able to assist Pacific island countries to make an extradition request on a case by case basis.

PILON BACKGROUND PAPER - EXTRADITION AND MUTUAL ASSISTANCE MULTILATERAL TREATY AND MODEL LEGISLATION

Background

On 28 June 2007 at its meeting in Nadi, the Pacific Islands Forum Regional Security Committee (FRSC) discussed the legislative priorities of the region. Fiji suggested that FRSC should consider developing a multilateral regional treaty⁵ on extradition and mutual assistance. It was suggested a regional treaty may assist in overcoming discrepancies in the different types of extradition and mutual assistance legislation enacted across the Pacific. However it was also noted that the developments of such a treaty would give rise to a number of practical and legal issues. FRSC referred the matter to PILON for further consideration.

The purpose of this background paper and the attached tables of extradition relationships in the Pacific is to assist PILON members in considering this matter and, in particular, to consider the following issues:

- whether a multilateral treaty on extradition and mutual assistance would help establish more compatible processes in the Pacific, and
- whether a particular evidentiary standard should be adopted to encourage Pacific Island countries to develop and use their extradition relationships.

Present status of extradition and mutual assistance laws

All PILON member countries have enacted extradition and mutual assistance legislation. However not all countries have enacted the same model legislation. In particular, there are major differences in the ways in which different countries deal with extradition requests. The attached tables summarise the extradition systems used in PILON members countries.

Extradition in the Pacific

Basis of extradition

As demonstrated by the table, the existence and nature of extradition relationships between Pacific island countries varies considerably. Many Pacific island countries rely on established treaties or formal arrangements before extradition can take place. This includes the London Scheme which applies to Commonwealth countries and provides the bases for many extradition relationships. Some countries deem Pacific Island Forum countries to be 'extradition countries' and use the backing of warrants scheme. There are also administrative arrangements used to facilitate extradition in some Forum countries, which are not legislative or treaty based agreements.

⁵ This paper refers to one multilateral treaty. However the FRSC meeting record also refers to multilateral treaties.

If appropriately supported and implemented new model legislation or a multilateral treaty could offer a means to improve extradition relationships between Forum countries and better facilitate extradition internationally.

Standards of evidence

One of greatest difficulties with extradition relationships in the region arises as a result of the different standards of evidence required by Pacific island countries. The five standards used in the Pacific in order of the extent to which evidence must be provided, from highest to lowest, are:

1. **Prima facie evidence** – This standard requires evidence to be provided in affidavit form which if uncontroverted would, had the offence occurred in the requested country, provide sufficient grounds to put the person sought on trial in the requested country. Documentary evidence must be supplied in relation to all elements of the extradition offence and be assessed against the laws of the requested country.
2. **Record of the case** – The record of the case procedure was developed as an alternative to the higher *prima facie* standard for Commonwealth countries. The record of the case requires a recital of all of the available evidence, including a description of witness statements and real evidence. An affidavit from the investigating officer is required, stating that the recital of evidence was prepared by the officer or under that officer's direction and that the evidence has been preserved for use in Court. A certificate from the appropriate authority of the requesting country is also required which states that there is sufficient evidence to justify prosecution.
3. **Probable cause** – This standard is used only by Palau and is similar to the record of the case standard, requiring a recital of evidence in an affidavit from the investigator. However a formal certificate is not required.
4. **No evidence** – Under this procedure, no evidence is required for the purpose of considering a request. Instead a detailed statement of the acts and omissions alleged against the person sought must be provided. These statements need to be sufficient to allow the authorities in the requested state to determine whether dual criminality is satisfied.
5. **Backing of warrants** – This procedure involves endorsement of warrants issued in the requesting country and greatly simplifies the extradition process. It does not require the making of a formal extradition request or include issues such as dual criminality or specificity. Australia and New Zealand use this method as the basis for their bilateral extradition relationship. The Cook Islands, Fiji, Kiribati, Papua New Guinea, Niue, Tuvalu and Vanuatu also apply the backing of warrants scheme with most Forum countries.

As demonstrated in the attached extradition relationships table, the most common evidence requirements used in the region are the backing of warrants scheme and the *prima facie* evidence standard. The use of these different standards means there are major differences in the way the region as a whole deals with making and receiving extradition requests.

The London Scheme provides that countries may either require that extradition requests satisfy the *prima facie* standard, or may require a 'record of case'. Many bilateral treaties between Pacific countries also use the *prima facie* evidence standard. On the other hand countries which use the backing of warrants scheme simply endorse a warrant executed in the requesting country. This scheme is appropriate for countries which have a close relationship and a high level of cooperation in criminal matters.

PILON may wish to consider the promotion of a unified evidentiary standard for the region, either through model legislation or a multilateral treaty. This would ensure compatibility and simplify extradition relationships in the region. The 'no evidence' standard is favoured internationally. This standard simplifies the documents required to accompany an extradition request streamlining the extradition process, and making it more efficient and more compatible with countries internationally.

Options

Applying a *uniform* evidentiary standard could require many countries to move away from the backing of warrants scheme towards a higher standard. PILON may wish to look at the possibility of retaining the backing of warrant scheme by those countries who wish to. Providing for a 'no evidence' standard in either legislation or in a treaty would also enable the Pacific to better utilise extradition relationships with Australia and other countries internationally. Accordingly, a two-tier approach could be taken to help build extradition relationships with countries outside of the region. It could also assist to unify the evidentiary standards for those Pacific island countries that do not use the backing of warrants scheme.

Mutual assistance

The mutual assistance legislation across the region is relatively standardised compared to the extradition legislation. Most Forum countries are able to make and receive requests from all foreign countries.⁶ It would appear that the existing mutual assistance legislation across the region is sufficient to allow for assistance to be given in criminal matters and that this would not be enhanced significantly by either new model legislation or a multilateral treaty.

Extradition multilateral treaty

Possible advantages

A multilateral treaty would simplify the extradition law within the region and would have the following benefits:

⁶ Only the Republic of the Marshall Islands requires an agreement to be in place, or to enter into a reciprocal agreement, before a request can be accepted or made.

- it would provide a clear formal and legally binding basis for handling extradition requests
- if agreed, a multilateral treaty could provide a simpler and uniform approach governing the documents required in support of an extradition request, and
- if extradition relationships were consistent throughout the region, line officers dealing with extradition would become familiar with a single process, increasing the ease with which extradition requests may be made and received.

Possible disadvantages

There are a number of negative aspects to a multilateral extradition treaty, including that:

- it may take considerable time for a treaty to be negotiated
- it may not be practicable to achieve consensus on a formal binding treaty document, and
- once a treaty is signed it may take considerable time for countries to ratify the treaty into domestic legislation, given the shortage of legislative drafting resources in the region.

Extradition model legislation

Model legislation has been agreed to at PILOM in the past. However, not all countries have implemented the same model legislation, or even implemented the legislation in the same way. For example, legislation in some countries still requires the existence of a formal treaty or other agreement. The documentation required to accompany an extradition request also varies greatly.

As noted above the two most common evidentiary requirements in the Pacific are the *prima facie* evidence standard and the backing of warrants scheme. To address the disparity in the evidentiary requirements, new model legislation could be developed which enables the application of more consistent requirements to facilitate greater compatibility and cooperation on extradition matters.

Possible advantages

- establishing new model extradition legislation would facilitate greater consistency throughout the region and thereby promote effective handling of extradition requests, and
- new model legislation may be more expedient than negotiating a multilateral treaty, and could allow for the development of further extradition relationships with other countries outside the region.

Possible disadvantages

- the lack of legislative drafting resources in the Pacific may make it difficult for model legislation to be implemented without technical assistance from major donors, and
- model legislation will be ineffective unless all countries in the region are committed to its implementation. This has not been achieved to date with previous models.



PILON
Secretariat

	Australia	Cook Is	FSM	Fiji	Kiribati	Nauru EFOA 1973	NZ	Niue
<i>Surrender restrictions for determination by the Court</i>	EA 1988	EA 2003	12 FSMC 15	EA 2003	EA 2003		EA 1999	EA 2007
Extradition offence a political offence	s 7 (a)			s 4 (a)	s 6 (a)	s 6 (1)(a)	s 7 (a)	s 10 (i)
Person sought so as to prosecute/punish for race, religion etc	s 7 (b)			s 4 (b)	s 6 (b)	s 6 (1)(b)	s 7 (b)	s 10 (ii)
Request re another political offence (not extradition offence)	s 7 (b)			s4(b)			s 7 (b)	
Potential objectionable trial for offence committed before extradition offence		s 13		s18 (2)(a)		s 6 (3)		s 16 (1)-(3)
Potential prejudice at trial, or punishment, detention or restraint of liberty for race, religion, nationality, political opinions, sex or status	s 7 (c)			s 4 (c)	s 6 (c)	s 6 (1)(c)	s 7 (c)	s 10 (ii)
Extradition offence military offence only in requesting country							s 7 (d)	
Extradition offence military offence only in requested country	s 7 (d)			s 4 (d)	s 6 (d)			
Final judgment already given (including in third country)				s 4 (e)	s 6 (e)			
Immunity from prosecution due to lapse of time, amnesty or any other reason, under law of requesting country or requested country				s 4 (f)	s 6 (f)			
Acquitted, pardoned or punished for offence/conduct in requesting country or requested country	s 7 (e)			s 4 (g)	s 6 (g)		s 7 (e)	s 10 (iii)
Judgment given in absence; no entitlement to appear/defend				s 4 (h)	s 6 (h)			
Person is a 'special patient' or a 'special care' recipient by law							s 7 (f)/s 7 (g)	
Prosecution for extradition offence pending in requested country				s 18(2)(d)				
No jurisdiction over offence were it committed in requested country				s 18(2)(e)				
If charged in requested country, would be entitled to be discharged						s 6 (2)		
No consent of offender/if under 18, consent of parent or Court			§ 1501(2)					
Offender is not a citizen of the requesting country			§ 1501(2)					
Offender NZ citizen, no treaty provides for extradition of NZ citizen							s 48(1)(a)	s 11 (1)(iv)*
Offence within territory of requested country				s 18(2)(f)				
Potential death sentence				s 18(2)(b)			s 48 (1)(b)(ii)	s 11(1)(iii)*
Likely to be tried or sentenced by court not authorised by law								
Trial or sentence by extraordinary/ad hoc court in requesting country				s 18(2)(g)				

Likely subject to torture, cruel/inhuman treatment or punishment				s 18(4) ⁷			s 48 (1)(b)(i)	
Has been subject to torture, cruel/inhuman treatment or punishment				s 18(2)(h)				
Requesting govt authoritarian or non-democratic (citizens only)								
Offence punishable by death (citizens only)								
Trivial nature of the case		s 37 (2)(a) [#]		s 36(2)(a) [#]			s 8 (1)(a)*	s 11(1)(i)(I)*
Accusation not made in good faith/ in interests of justice		s 37 (2)(b) [#]		s 36(2)(b) [#]			s 8 (1)(b)*	s11(1)(i)(II)*
Amount of time elapsed since occurrence of offence		s 37 (2)(c) [#]		s 36(2)(b) [#]			s 8 (1)(c) *	s11(1)(i)(III)*
Unjust or oppressive to surrender the person		s 37 (2)(d) [#]		s 36(2)(d) [#]			s 8 (1)* [†]	s 11(1)(i)* [†]
Prison conditions are not substantially equivalent to minimum standards for imprisonment in requested country		s 37 (2)(e) [#]		s 36(2)(e) [#]				
Having regard to national interests and the severity of the offence				s 18(2)(i) [#]				

	Australia	Cook Is	FSM	Fiji	Kiribati	Nauru	NZ	Niue
<i>Surrender restrictions to be determined by A-G or Minister</i>	EA 1988	EA 2003	12 FSMC 15	EA 2003	EA 2003	EFOA 1973	EA 1999	EA 2007
Discretion of responsible Minister	s 22 (3)(f)	s11(1)(b)(iii)-(iv)					s 21 (3)-(4) s 30 (3) (e)	
Responsible Minister considers that there is an extradition objection	s 16 (2)(b) s 22 (3)(a)					s 5	s 30 (2) - (3)	
Person is a citizen of requested country					s 19 (2)(b)			
Potential objectionable trial for offence committed before extradition offence	s 22 (4)(d)-(e)				s 19 (2)(a), s 19 (3)		s 30(5)	
Trivial nature of the case		s 19 (2)(a)(i)			s 36 (2)(a) [#]		s 30(b)	s 11 (1)(i)(I)
Accusation not made in good faith/ in interests of justice		s 19 (2)(a)(i)			s 36 (2)(b) [#]		s 30(b)	s 11 (1)(i)(II)
Amount of time elapsed since occurrence of offence		s 19 (2)(a)(i)			s 36 (2)(c) [#]		s 30(b)	s 11 (1)(i)(III)
Unjust or oppressive to surrender the person		s 19					s 30(3)(d)	s 11 (1)(i) [†]
Proceedings on foot for another offence in requested country					s 19 (2)(d)		s 8 (2)	s 11 (1)(ii)
Prison conditions are not substantially equivalent to minimum					s 36 (2)(d) [#]			

⁷ The *Extradition Act 2003* (Fiji) provides that a request may not be refused on the grounds of torture if the requesting country has signed the Convention on Torture or the ICCPR.

standards for imprisonment in requested country								
Serving sentence of imprisonment in requested country								
Offence within territory of requested country					s 19 (2) (f)			
Trial or sentence by extraordinary/ad hoc court in requesting country					s 19 (2)(g)			
No jurisdiction over offence were it committed in requested country					s 19 (2)(e)			
Likely subject to torture, cruel/inhumane treatment or punishment	s 22 (3)(b)	s 19 (3)			s 19 (2)(h) ⁸		s 30 (2)(b)	
Potential death sentence	s 22 (3)(c)	s 19 (2)(b)			s 19 (2)(c)		S 30 (3)(a)	s 11 (1)(iii)
Having regard to national interests and the severity of the offence					s 19 (2)(i)			

* 'Discretionary' restrictions/ grounds for objection.

† This a necessary precondition for the three preceding discretionary restrictions on surrender.

for South Pacific Countries only.

△ For designated Commonwealth countries and treaty states.

⁸ The *Extradition Act* 2003 (Kiribati) provides that a request may not be refused on the grounds of torture if the requesting country has signed the Convention on Torture or the ICCPR.

Surrender restrictions for determination by the Court	Palau ETA 2001	PNG EA 2005	RMI 32 MIRC 2	Samoa EA 1974	Solomon Is LSI ch 59 (1988)	Tonga LT ch 22 (1988)	Tuvalu EA 2004	Vanuatu EA 2002
Extradition offence a political offence	s 6 (a)	s 8 (2)(a)		s 6 (1)(a)	s 6 (1)(a)	S 6 (1)(a)	s 6 (a)	s 4 (a)
Person sought so as to prosecute/punish for race, religion etc	s 6 (b)	s 8(2)(b)		s 6 (1)(b)	s 6 (1)(b)	s 6 (1)(b)	s 6 (b)	s 4 (b)
Request re another political offence (not extradition offence)		s 8(2)(b)		s 6 (1)(a)			s 6 (b)	s 4 (b)
Potential objectionable trial for offence committed before extradition offence	s 14	s 8 (2)(b)		s 6(3)-(4) s 16 ^Δ	s 6(3)-(4) s 16 ^Δ	S 6 (3)-(4) s 16 ^Δ		
Potential prejudice at trial, or punishment, detention or restraint of liberty for race, religion, nationality, political opinions, sex or status	s 6 (b)	ss 8 (2) (c)		s 6 (1)(c)	s 6 (1)(c)	s 6(1)(c)	s 6 (c)	s 4 (c)
Extradition offence military offence only in requesting country				s 6 (1)(aa) ⁹			s 6 (d)	s 4 (d)
Extradition offence military offence only in requested country	s 6 (c) ¹⁰	s 8(2)(d)					s 6 (d)	s 4 (d)
Final judgment already given (including in third country)		s 8(2)(g)				s 6 (2)	s 6 (e)	s 4 (e)
Immunity from prosecution due to lapse of time, amnesty or any other reason, under law of requesting country or requested country	s 6 (e) ¹¹	s 8(2)(f)					s 6 (f)	s 4 (f)
Acquitted, pardoned or punished for offence/conduct in requesting country or requested country	s 6 (f)	s 8(2)(g)					s 6 (g)	s 4 (g)
Judgment given in absence; no entitlement to appear/defend	s 6 (g)						s 6 (h)	s 4 (h)
Person is a 'special patient' or a 'special care' recipient by law								
Prosecution for extradition offence pending in requested country	s 6 (h)							
No jurisdiction over offence were it committed in requested country	s 6 (i)							
If charged in requested country, would be entitled to be discharged				s 6 (2)	s 6 (1)(2)	s 6 (2)		
No consent of offender/ if under 18, consent of parent or Court								
Offender is not a citizen of the requesting country								
Offender NZ citizen, no treaty provides for extradition of NZ citizen								
Offence within territory of requested country	s 6 (j)							
Potential death sentence	s 6 (k)							
Likely to be tried or sentenced by court not authorised by law	s 6 (l)							
Trial or sentence by extraordinary/ad hoc court in requesting country								

⁹ The *Extradition Act 1974* (Samoa) provides for refusal where the extradition offence is a military offence but not a criminal offence in the requesting country.

¹⁰ The *Extradition and Transfer Act 2001* (Palau) provides for refusal where the extradition offence is a military offence in the requesting country but not a criminal offence in Palau.

¹¹ The *Extradition and Transfer Act 2001* (Palau) provides for immunity due to lapse of time, amnesty or any other reason under the law of the requesting country only.

Likely subject to torture, cruel/inhumane treatment or punishment	s 6 (m)							
Has been subject to torture, cruel/inhuman treatment or punishment								
Requesting govt authoritarian or non-democratic (citizens only)	s 6 (n)							
Offence punishable by death (citizens only)	s 6 (o)							
Trivial nature of the case		s 17 (1)(a)		s 10 (3)(a)	s 10 (3)(a)	s 10 (3)(a)		
Accusation not made in good faith/ in interests of justice	s 22 (4)	s 17 (3)(b)		s 10 (3)(c)	s 10 (3)(c)	s 10 (3)(c)		
Amount of time elapsed since occurrence of offence		s 17 (3)(c)		s 10 (3)(b)	s 10 (3)(b)	s 10 (3)(b)		
Unjust or oppressive to surrender the person		s 17 (3) [†]		s 10 (3) [†]	s 10 (3) [†]	s 10 (3) [†]		
Prison conditions are not substantially equivalent to minimum standards for imprisonment in requested country								
Having regard to national interests and the severity of the offence	s 22 (4)							
No undertaking from requesting country that person will not be charged with another offence				s 6(3)	s 6(3)	s 6(3)		

	Palau ETA 2001	PNG EA 2004	RMI 32 MIRC 2	Samoa EA 1974	Solomon Is LSI ch 59 (1988)	Tonga LT ch 22 (1988)	Tuvalu EA 2004	Vanuatu EA 2002
<i>Surrender restrictions to be determined by A-G or Minister</i>								
Discretion of responsible Minister			§ 205.				s 9 (1)-(2)	s 9 (1)-(2)
Responsible Minister considers that there is an extradition objection				s 6	s 6	s 6 (1) – (5)		
Person is a citizen of requested country		s 35(2)(d)		s 11 (6)			s 17 (2)	s 17 (2)
Potential objectionable trial for offence committed before extradition offence		s 35(2)(a)					s 17 (2)	s 17 (2)
Trivial nature of the case				s 11(3)	s 11 (3)	s 11 (3)		
Accusation not made in good faith/ in interests of justice				s 11(3)	s 11 (3)	s 11 (3)		
Amount of time elapsed since occurrence of offence				s 11(3)	s 11 (3)	s 11 (3)		
Unjust or oppressive to surrender the person		s 13 (2)(b)		s 11 (3) [†]	s 11 (3) [†]	s 11 (3) [†]		
Proceedings on foot for another offence in requested country				s 11(2)(b)	s 11 (2)(b)	s 11 (2)(b)		
Prison conditions are not substantially equivalent to minimum standards for imprisonment in requested country								
Offence within territory of requested country		s 35(2)(f)					s 17 (2)	s 17 (2)
Trial or sentence by extraordinary/ad hoc court in requesting country		s 35(2)(g)					S 17 (2)	S 17 (2)
Serving sentence of imprisonment in requested country				s 11 (2)(a)	s 11 (2)(a)	s 11 (2)(a)	S 17 (2)	S 17 (2)
No jurisdiction over offence were it committed in requested country							S 17 (2)	S 17 (2)

Likely subject to torture, cruel/inhumane treatment or punishment							S 17 (4) ¹²	S 17 (4)
Has been subject to torture, cruel/inhuman treatment or punishment		s 35(2)(h)					S 17 (2)	S 17 (2)
Potential death sentence				s 11 (4)	S 11 (4)	S 11 (4)	S 17 (2)	S 17 (2)
Having regard to national interests and the severity of the offence		s 35(2)(i)					S 17 (2)	S 17 (2)
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		s 35(2)(c)						
A prosecution for the offence for which surrender has been sought is pending against the person the requested country		s 35(2)(d)						

* 'Discretionary', where separated into mandatory and discretionary restrictions/ grounds for objection.

† This a necessary precondition for the three preceding discretionary restrictions on surrender.

For South Pacific Countries only.

△ For designated Commonwealth countries and treaty states.

¹² The *Extradition Act* 2003 (Vanuatu) provides that a request may not be refused on the grounds of torture if the requesting country has signed the Convention on Torture or the ICCPR.