

No. 21 of 2005.

***Extradition Act 2005.***

Certified on: 23/1/2006.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



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***Extradition Act 2005.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Extradition Act 2005,***

Being an Act relating to extradition, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

For Section 38 of the *Constitution*, this Act is a law that is made to give effect to the public interest in public order and public welfare to the extent that it regulates or restricts any of the following rights or freedoms:

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the protection from unjust deprivation of property conferred by Section 53 of the *Constitution*.

**2. DEFINITIONS.**

In this Act unless contrary intention appears:

“country” includes:

- (a) a colony, territory or protectorate of a country; and
- (b) a territory, if a country is responsible for its international relations; and
- (c) a ship or aircraft owned by, or registered in, a country; and
- (d) the International Criminal Court;

“**Court**” means a court of competent jurisdiction;

“**endorsed warrant**” means a warrant:

- (a) issued in a Forum country; and
- (b) endorsed under Section 12;

“**extradition objection**” has the meaning given in Section 8;

“**extradition offence**” has the meaning given by Section 7;

“**extradition request**” means a request by a country for the surrender of a person to the country;

“**extradition treaty, for a country**” means a treaty:

- (a) to which the country and Papua New Guinea 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 and who is authorised by that country to escort the person from Papua New Guinea to that country;

“**Forum country**” means a country that is a member of the Pacific Islands Forum;

“**ICPO-Interpol**” means the International Criminal Police Organisation;

“**magistrate**” means a person who is appointed as a magistrate;

“**Minister**” means the Minister for Justice;

“**original warrant**” means a warrant issued in a Forum country for the arrest of a person;

“**police officer**” means a member of the Royal Papua New Guinea Constabulary;

“**political offence**”, for 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 mentioned in a multilateral to which Papua New Guinea is a party; and
  - (ii) for which parties have an obligation to extradite or prosecute; or
- (b) the offence of genocide of:
- (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 a State, head of Government or Minister of the Government of the country or a member of his or her immediate family; or

- (d) a terrorism offence; or
- (e) any other offence that Papua New Guinea and the other country have agreed will not be treated as a political offence for the purposes of extradition;

**“prison”** means a goal, police cell or other place where a person is ordered under this Act to be detained;

**“provisional arrest warrant”** means:

- (a) for Part 2 – a warrant, in accordance with Form 1 in Schedule 1, issued under Section 10; and
- (b) for Part 3 – a warrant, in accordance with Form 2 in Schedule 1, issued under Section 24;

**“requesting country”** means a country that is seeking the surrender of a person from Papua New Guinea;

**“specially undertaking”** means an undertaking by a requesting country about the treatment of the person whose surrender is sought;

**“surrender warrant”** means:

- (a) for Part 2 – a warrant, in accordance with Form 3 in Schedule 1, issued under Section 16; or
- (b) for Part 3 – a warrant, in accordance with Form 5 in Schedule 1, issued under Section 35;

**“temporary surrender warrant”** means:

- (a) for Part 2 – a warrant, in accordance with Form 4 in Schedule 1, issued under Section 19; or
- (b) for Part 3 – a warrant, in accordance with Form 6 in Schedule 1, issued under Section 37;

**“treaty”** includes a convention, protocol, or agreement between 2 or more countries;

**“treaty country”** means a country with which Papua New Guinea has an extradition treaty;

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

**3. EXTRADITION REQUESTS.**

(1) An extradition request and any supporting documents must be:

- (a) in writing; and
- (b) in English.

(2) The Minister may accept a supporting document that contains some matter in a language other than English if all material parts of the document are in English.

**4. FORM OF WARRANTS.**

An arrest warrant, a provisional arrest warrant and a surrender warrant must be in the appropriate form set out in Schedule 1.

**5. APPLICATION OF THE ACT.**

- (1) This Act applies to all foreign countries.
- (2) Part 2 applies in relation to Forum countries.
- (3) Part 3 applies in relation to countries other than Forum countries.
- (4) The Regulation may modify Part 2 in its application to a foreign country.

**6. ACTING ON BEHALF OF A REQUESTING COUNTRY.**

In proceedings under this Act, a requesting country is to be represented by the Public Prosecutor.

**7. EXTRADITION OFFENCE.**

(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 for a period of not less than 12 months; and
- (b) it is an offence against a law of the requesting country, for which the maximum penalty is death or imprisonment for a period of not less than 12 months; and
- (c) the conduct that constitutes the offence, if committed in Papua New Guinea, would constitute an offence in Papua New Guinea for which the maximum penalty is death or imprisonment for a period of not less than 12 months.

(2) An offence is also an extradition offence if, under an extradition treaty between the requesting country and Papua New Guinea, the conduct that constitutes the offence is required to be treated as an offence for which the surrender of persons is permitted by the country and Papua New Guinea.

(3) In determining whether conduct constitutes an offence regard may be had to only some of the acts and omissions that make up the conduct.

(4) In determining the maximum penalty for an offence for which on statutory penalty is imposed, regard must be had to the level of penalty that can be imposed for the offence by a court in the requesting country.

(5) 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) Papua New Guinea does not impose a duty, tax, impost or control of that kind.

## **8. EXTRADITION OBJECTION.**

(1) An extradition objection is an objection in writing made by a person who is the subject of a request for surrender for an extradition offence.

(2) An extradition objection may be made on one or more of the following grounds:

- (a) the extradition offence is regarded as a political offence;
- (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;
- (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;
- (d) the offence is an offence under the military law, but not also under the ordinary criminal law of Papua New Guinea;
- (e) final judgement has been given against the person in Papua New Guinea or in another country for the offence;
- (f) under the law of the requesting country or Papua New Guinea, the person has become immune from prosecution or punishment because of lapse of time, amnesty or any other reason;
- (g) the person has already been acquitted or portoned in the requesting country or Papua New Guinea, or punished under the law of that country or Papua New Guinea, for the offence or another offence constituted by the same conduct as the extradition offence.

**PART 2. – EXTRADITION FROM PAPUA NEW GUINEA TO FORUM COUNTRIES.**

***Division 1.***

***Preliminary.***

**9. PURPOSE OF THIS PART.**

The purpose of this Part is to provide for the extradition from Papua New Guinea to Forum countries of persons accused or convicted of extradition offences in those countries.

***Division 2.***

***Provisional arrest warrants.***

**10. ISSUE OF A PROVISIONAL ARREST WARRANT.**

If:

- (a) an application is made to a magistrate on behalf of a Forum 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 Forum country; and
  - (ii) the person named in the original warrant:
    - (A) is in Papua New Guinea; or
    - (B) is suspected to be on his or her way to Papua New Guinea; and
- (c) the magistrate is satisfied that it is reasonable in the circumstances to issue a warrant;

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

**11. PROCEDURE AFTER A PERSON IS ARRESTED ON A PROVISIONAL ARREST WARRANT.**

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

(2) Until the Forum Country produces the original warrant on which the provisional arrest warrant was based, the magistrate must:

- (a) remand the person in custody; or
- (b) if the magistrate is satisfied that there are special circumstances – remand the person on bail,

for a period that is necessary for proceedings under Division 3 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 Papua New Guinea; and
- (b) must order that the person's passport and other travel documents be surrendered to the magistrate until the 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.

## **12. ENDORSEMENT OF WARRANTS.**

If:

- (a) an application is made to a magistrate on behalf of a Forum country for the endorsement of a warrant for the arrest of a person, issued in the Forum country (an original warrant); and
- (b) the original warrant is produced to the magistrate; and
- (c) the magistrate is informed by affidavit that the person named in the original warrant is, or is suspected of being:
  - (i) in Papua New Guinea; or
  - (ii) on his or her way to Papua New Guinea, the magistrate must

endorse the original warrant to authorise the arrest of the person under the warrant in Papua New Guinea.

## **13. ARREST AND REMAND ON ENDORSED WARRANT.**

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

(2) The magistrate must:

- (a) remand the person in custody; or
- (b) if the magistrate is satisfied that there are special circumstances – remand the person on bail,

for a period that is necessary for proceedings under Division 3 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 Papua New Guinea; and
- (b) must 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) If a magistrate remands the person in custody after the person has made an application for a 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.

**14. RELEASE FROM REMAND.**

(1) A person must be brought before a magistrate if:

- (a) he or she is on remand in custody or on bail 28 days after the day when he or she was arrested on a provisional warrant; and
- (b) an endorsed warrant for the arrest of the person has not been obtained.

(2) Unless the magistrate is satisfied that the endorsed warrant will be obtained within a particular period that is reasonable in all the circumstances, the magistrate must order:

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

(3) A person must be brought before a magistrate if:

- (a) the 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 15 for proceedings under Division 3 to be conducted.

(4) Unless the magistrate is satisfied that a request under Section 15 for proceedings to be conducted will be made within a particular period that is reasonable in all the circumstances, the magistrate must as the case requires order:

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

***Division 3.***

***Surrender warrants for Forum countries.***

**15. PROCEEDINGS RELATING TO SURRENDER WARRANTS.**

If:

- (a) a person has been remanded after being arrested on an endorsed warrant; or
- (b) a person has been remanded after being arrested under a provisional arrest warrant and an original warrant has been endorsed in relation to the person;

a magistrate may conduct proceedings under this Division at the request of the person or the Forum country that issued the original warrant.

**16. CONSENT TO SURRENDER.**

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

(2) 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 inform the person of the effect of consenting.

(3) The effect of consenting is the person will be:

(a) committed to prison without any further proceedings; and

(b) surrendered to the Forum country as soon as practicable.

(4) If, after being informed of the effect of consenting, the person again consents to being surrendered, the magistrate must:

(a) by a surrender warrant, order that the person be surrendered to the Forum country; and

(b) by warrant, order that the person be committed to prison until the person is surrendered to the Forum country.

**17. ISSUE OF SURRENDER WARRANT.**

(1) A magistrate must decide that the person should be surrendered for an extradition offence unless he or she is satisfied that:

(a) the offence is of a trivial nature; or

(b) if the offence is one of which the person is accused by not convicted – the accusation was not made in good faith and in the interests of justice; or

(c) a lengthy period has elapsed since the offence was committed; or

(d) in the circumstances of the case, to surrender the person would be:

(i) unjust; or

(ii) oppressive; or

(iii) a punishment that is disproportionate to the offence.

(2) If the magistrate decides that the person should be surrendered, the magistrate must:

(a) by a surrender warrant, order that the person be surrendered to the Forum country; and

(b) order that the person be committed to prison until the person is surrendered to the Forum country; and

- (c) inform the person that he or she may, within 15 days of the day on which the order for a surrender warrant is made, seek a review of the order that the person be surrendered; and
- (d) make a written record of:
  - (i) his or her decision; and
  - (ii) the extradition offence for which the person is to be surrendered; and
- (e) give a copy of the written record to the person and to the Minister.

(3) If:

- (a) the person is serving a custodial sentence in Papua New Guinea; and
- (b) surrender is sought for an offence for which the person is accused but not convicted, the magistrate must not issue a surrender warrant for the person but must refer the matter to the Minister to be dealt with under Section 19.

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

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

(5) If the magistrate determines, in respect of all the offences for which surrender was sought, that the person should not be surrendered to the Forum country, the magistrate must order that the person be released.

(6) In proceedings under this section, a person cannot adduce evidence that the person did not commit the offence and the magistrate cannot receive such evidence.

(7) However, the person may adduce evidence about matters mentioned in Subsection (1).

## **18. REVIEW OF MAGISTRATES DECISION.**

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

(2) If a magistrate makes an order for the release of a person, the Public Prosecutor may apply to the Court for a review of the order.

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

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

(5) The Court may, by order:

- (a) vary the order of the magistrate; or



(b) confirm the order of the magistrate and order that the person be surrendered; or

(c) quash the order of the magistrate and order that the person be released.

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

(a) if the person is not in custody – 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 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.

#### **19. ISSUE OF TEMPORARY SURRENDER WARRANT.**

(1) If:

(a) a surrender warrant in relation to a person has been issued:

(i) by a magistrate under Section 16; or

(ii) by the Court under Section 17; and

(b) no proceedings under Section 17 are being conducted or available in relation to the order; and

(c) the person is serving a custodial sentence in Papua New Guinea; and

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

(e) the Minister is satisfied that the Forum country has given an adequate undertaking that:

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

(ii) the person will be returned to Papua New Guinea after the trial; and

(f) the Minister is satisfied that adequate provision has been made for the travel of the person to the Forum country and for his or her return to Papua New Guinea,

the Minister may issue a temporary surrender warrant instead of the surrender warrant.

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

(a) has been returned to Papua New Guinea after trial and sentence in the Forum country; and

(b) has completed his or her sentence in Papua New Guinea,

a magistrate must issue a surrender warrant for the surrender of the person to the Forum country.

(3) Any time the person spends in custody in the Forum country is taken to be time spent in custody in Papua New Guinea for the purpose of completing the sentence for which the person was in custody in Papua New Guinea.

(4) If:

(a) time spent in custody in the Forum country is taken into account in accordance with Subsection (3); and

(b) as a result, the person's sentence in Papua New Guinea is concluded,

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

## **20. FORM OF SURRENDER WARRANTS AND TEMPORARY SURRENDER WARRANTS.**

A surrender warrant or a temporary surrender warrant in relation to a person must:

(a) be in writing in the form specified in Schedule 1; 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 release the person held in custody into the custody of the 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 Papua New Guinea for the purpose of handing the person over to the custody of a foreign escort officer; and

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

(e) authorise the foreign escort officer to hold the person in custody for the purpose of transporting the person out of Papua New Guinea.

## **21. APPLICATION FOR RELEASE IF NOT SURRENDERED.**

(1) A person may apply to a magistrate to be released from custody if the 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 Papua New Guinea – the person has been released from custody or the recognisance has been discharged.

(2) The person must inform the Minister of the application.

(3) If the magistrate is satisfied that:

(a) the Minister has been informed 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.

(4) Without limiting Subsection (3)(b), it is a reasonable cause for delay if:

(a) there would have been a danger to the person's life, or prejudicial to the person's health, if the person were surrendered; or

(b) there were 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 a delay by Papua New Guinea in responding to a request for permission to transport the person, and all reasonable steps were taken to obtain the permission.

**PART 3. – EXTRADITION FROM PAPUA NEW GUINEA TO COUNTRIES  
OTHER THAN FORUM COUNTRIES.**

***Division 1.***

***Preliminary.***

**22. PURPOSE AND APPLICATION OF THIS PART.**

(1) The purpose of this Part is to provide for the extradition from Papua New Guinea to foreign countries of persons accused or convicted of extradition offences in other countries.

(2) This Part applies to extradition from Papua New Guinea to a country other than a Forum country.

***Division 2.***

***Extradition to treaty countries.***

**23. EXTRADITION TO A TREATY COUNTRY.**

(1) This Part applies to the extradition of a person to a country with which Papua New Guinea has an extradition treaty.

(2) However, this Part is modified in relation to the extradition in accordance with:

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

***Division 3.***

***Arrests in relation to extradition offences.***

**24. ISSUE OF PROVISIONAL ARREST WARRANT.**

(1) A magistrate must issue a provisional arrest warrant for a person if:

- (a) a country, either directly or through ICPO-Interpol, notifies Papua New Guinea that:
  - (i) a person whose surrender is desired is, or is believed to be:
    - (A) in Papua New Guinea; or
    - (B) on his or her way to Papua New Guinea; and
  - (ii) the requesting country intends to make a formal request to Papua New Guinea for the extradition of the person; and
- (b) an application on behalf of the requesting country is made to a magistrate for a provisional arrest warrant; and

- (c) the application is supported by the documents mentioned in Subsection (2); and
  - (d) the magistrate is satisfied that the offence is an extradition offence.
- (2) The following documents are required for a provisional arrest warrant:
- (a) a copy of the warrant for the arrest of the person issued in the requesting country;
  - (b) a description of the person sought;
  - (c) a description of the acts and omissions that constitute the offence;
  - (d) the text of the law creating the offence or, if the offence is not created by the statute, a statement of the offence;
  - (e) 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.

**25. PROCEDURE AFTER A PERSON IS ARRESTED ON A PROVISIONAL ARREST WARRANT.**

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

(2) Until the Public Prosecutor commences extradition proceedings under Section 30, the magistrate must:

- (a) remand the person in custody; or
- (b) if the magistrate is satisfied that there are special circumstances – remand the person on bail.

(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 Papua New Guinea; and
- (b) must order that the person's passport and other travel documents be surrendered to him or her until the extradition proceedings in relation to the person are concluded.

(4) Subject to Section 13, a person must not be remanded in custody or on bail for a period longer than 42 days.

(5) After remanding the person, the magistrate must:

- (a) inform the Minister of the following:
  - (i) that he or she has remanded the person;
  - (ii) the name of the requesting country;
  - (iii) the offence for which surrender is being sought; and

- (b) give a copy of the documents on which the issue of the provisional arrest warrant is based to the Minister and the person who has been remanded.

**26. RELEASE FROM REMAND.**

(1) If:

- (a) a person is on remand (in custody or on bail) either:
  - (i) 42 days after the date on which the person was arrested; or
  - (ii) if an extradition treaty between Papua New Guinea and the requesting country provides for another period – at the end of that period; and
- (b) the Public Prosecutor has instigated extradition proceedings under Section 30,

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 extradition proceedings will be commenced within that period.

(3) If the magistrate is not satisfied that extradition proceedings will be commenced within the remand period mentioned in Subsection (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.

**27. WHAT HAPPENS WHEN AN EXTRADITION REQUEST IS RECEIVED BY PAPUA NEW GUINEA?.**

(1) If a request for the extradition of a person is received by Papua New Guinea:

- (a) the request must be given to the Public Prosecutor for the purpose of instigating extradition proceedings under Section 35 on behalf of the State; and
- (b) the Public Prosecutor must send a copy of the request to the Minister.

(2) The Public Prosecutor must apply to a Magistrate for a determination under Section 35, if the Public Prosecutor is satisfied that:

- (a) the offence for which extradition is sought is an extradition offence; and
- (b) either:
  - (i) a warrant is in force for the arrest of the person for an offence or offences against the law of the country; or

- (ii) the person has been convicted of an offence or offences against the law of the country, and:
  - (A) it is intended to impose a sentence on the person as a consequence of the convicted; or
  - (B) the whole or part of a sentence imposed on the person as a consequence of the conviction remains to be served; and
- (c) the supporting documents:
  - (i) have been received or are likely to be received within a reasonable time; and
  - (ii) satisfy the requirements of Section 35; and
- (d) either:
  - (i) the costs to Papua New Guinea for proceedings relating to the extradition will not be excessive; or
  - (ii) the requesting country has given an undertaking to pay any excessive costs that may arise in relation to the request.

(3) The Public Prosecutor must give a copy of the extradition request and the application to the person.

(4) If the Public Prosecutor is not satisfied of the matters mentioned in Subsection (2) and the person was arrested under a provisional arrest warrant, the Public Prosecutor may apply to the magistrate for an order for:

- (a) the person to be released; or
- (b) the discharge of the recognisance on which bail was granted.

(5) If an application for extradition proceeding under Section 30 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 arrest of the person.

**28. MINISTER TO NOTIFY PUBLIC PROSECUTOR OR DECISION NOT TO SURRENDER.**

(1) If a request for the extradition of a person has been received but extradition proceedings in relation to that request have not been concluded, the Minister:

- (a) may decide that, if the Minister were making a decision under Section 35, the Minister would not surrender the person; and
- (b) must notify the Public Prosecutor of the decision as soon as possible.

(2) Where the Public Prosecutor has received a notification under Section 28(1)(b) he shall immediately discontinue the extradition proceedings.

(3) The fact that:

- (a) proceedings for the extradition of a person in relation to an extradition offence have been discontinued because of a notification under Section 28(1)(b) or for any other reason; or
- (b) a Magistrate has made a finding that a person is not eligible for extradition in relation to an extradition offence;

does not prevent the Public Prosecutor from commencing proceedings in relation to that person for the same offence at a later time.

(4) However, if proceedings were discontinued following a notification under Section 28(1)(b) new extradition proceedings must not be commenced without the Minister's approval.

## **29. ARREST AND REMAND.**

(1) A person who is arrested under a warrant issued under Section 27(5) must be brought before a magistrate as soon as practicable after the person is arrested.

(2) The magistrate must:

- (a) remand the person in custody; or
- (b) if the magistrate is satisfied that there are special circumstances – remand the person on bail;

for a period that is necessary for proceedings under this Part 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 Papua New Guinea; and
- (b) must 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) 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.

### ***Division 4.***

#### ***Consent to surrender.***

## **30. CONSENT TO SURRENDER.**

(1) At any time, a person may inform a magistrate that he or she 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 requested 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 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 inform the person of the effect of consenting.

(4) The effect of consenting is:

- (a) the person will be committed to prison without any extradition proceedings to determine whether the person should be surrendered for an extradition offence; and

- (b) if the Minister issues a surrender warrant – the person will be surrendered to the requesting country.

(5) If, after being told of the effect of consenting, the person again consents to being surrendered, the magistrate must:

- (a) by warrant, order that the person be committed to prison; and

- (b) inform the Minister in writing:

- (i) that the person has been committed to prison; and

- (ii) of the offence or offences for which the person has consented to be surrendered.

(6) After being informed under Subsection (5)(b), the Minister may issue a surrender warrant for the person under Section 35.

### ***Division 5.***

#### ***Extradition proceedings.***

## **31. DETERMINATION THAT A PERSON IS ELIGIBLE FOR SURRENDER.**

(1) If:

- (a) an application is made to a magistrate by or for a person or a requesting country for extradition proceedings to be conducted in relation to the person; and

- (b) the person has not consented to surrender for the offence; and

- (c) the magistrate considers that the person and the requesting country have had reasonable time since the person received a copy of the extradition request in which to prepare for the proceedings;

the magistrate must conduct extradition proceedings as soon as practicable to determine whether the person is eligible for surrender for the extradition offence.

(2) The magistrate must determine that the person is eligible for surrender only if the magistrate is satisfied that:

- (a) the offence for which surrender is sought is an extradition offence; and
- (b) all supporting documents:
  - (i) have been produced to the magistrate; and
  - (ii) satisfy the requirements of Section 32; and
- (c) surrender should not be refused because the person has established an extradition objection.

(3) If the magistrate determines that the person is eligible for surrender, the magistrate must:

- (a) order that the person be held in custody until the Minister makes a decision under Section 35;
- (b) issue a warrant, ordering that the person be committed to prison to await the Minister's decision on surrender under Section 35; and
- (c) inform the person that he or she may, within 15 days after the day when the order is made, seek a review of the order under Section 35; and
- (d) record in writing his or her decision and the extradition offence for which the person is eligible to be surrendered; and
- (e) give a copy of the record to:
  - (i) the person; and
  - (ii) the Minister.

(4) If:

- (a) the magistrate orders that the person be held in custody; and
- (b) the requesting country has requested 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.

(5) If the magistrate determines that the person is not eligible for surrender to the requesting country in relation to all the offences for which extradition was sought, the magistrate must:

- (a) order that the person be released; and
- (b) inform the Minister in writing of the order and of the magistrate's reasons for determining that the person is not eligible for surrender.

**32. SUPPORTING DOCUMENTS.**

(1) For Sections 27 and 30:

**“supporting documents”**, for an extradition offence, means:

- (a) a description 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 has not been convicted of the offence – a warrant issued by the requesting country for the arrest of the person for the offence, or an authenticated copy of the warrant; and
- (f) if the person has been convicted of the offence – documents, or authenticated copies of documents, that provide evidence of the following:
  - (i) the conviction;
  - (ii) the sentence imposed or intended to be imposed;
  - (iii) whether the sentence imposed has been carried out;
  - (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;

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

(3) A 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 authenticated if it purports to be sealed with an official or public seal of:

- (a) the requesting country or of a Minister, Department of State or Department or officer of the Government of the country; or
- (b) if the requesting country is a colony, territory or protectorate – the person administering the Government of the country or any person administering a Department of the Government of the 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 Papua New Guinea.

### **33. CONDUCT OF EXTRADITION PROCEEDINGS.**

(1) The rules that apply to the following matters in criminal proceedings also apply in extradition proceedings:

- (a) summoning witnesses;
- (b) remanding defendants;
- (c) ordering the production of documents;
- (d) administering 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 extradition proceedings, a person cannot adduce evidence that the person did not commit the offence and the magistrate cannot receive such evidence.

### **34. REVIEW OF MAGISTRATES DECISION.**

(1) If a magistrate orders that a person be held in custody until the Minister makes a decision under Section 35, the person may apply to the Court for a review of the order.

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

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

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

(5) The Court may:

- (a) by order, confirm, vary or quash the order of the magistrate; and
- (b) order that the person:
  - (i) be held in custody until the Minister has made a decision under Section 21 on surrender; or
  - (ii) be released.

(6) If the court orders that the person be held in custody until the Minister has made a decision under Section 35 on surrender, the Court must include in its judgement 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 has made the decision; or
- (b) if the person is in custody, order that the person remain in custody until the Minister has made the decision.

### 35. SURRENDER DECISION BY THE MINISTER.

(1) If:

- (a) a magistrate has reported to the Minister that a person is eligible for surrender; and
- (b) either:
  - (i) the period during which an appeal may be lodged has ended and no appeal was lodged; or
  - (ii) on appeal, the court ordered that the person be held for surrender; the Minister must make within a reasonable time a final decision whether the person should be surrendered.

(2) The Minister may refuse to issue a warrant for the surrender of the person if:

- (a) the requesting country has not given a specialty undertaking; or
- (b) the requesting country is not a country with which Papua New Guinea has a bilateral treaty containing a specialty undertaking; or
- (c) 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
- (d) the person is citizen of Papua New Guinea; or
- (e) a prosecution for the offence for which surrender has been sought is pending against the person in Papua New Guinea; or
- (f) the offence for which surrender has been sought is regarded by Papua New Guinea as having been committed wholly or partly within Papua New Guinea; 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 subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment; or
- (i) having regard to:
  - (i) the national interest of Papua New Guinea, including its interests in effective international cooperation to combat crime; and
  - (ii) the severity of the offence;

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

(3) For 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 offence for which surrender is granted; or
  - (ii) an offence of which the person could be convicted on proof of the facts constituting the offence for which surrender is sought, for which the penalty is no greater than the penalty for the offence for which surrender is sought; or
- (b) be determined in the requesting country for surrender to another country for an offence committed before surrender to the requesting country; unless the Minister consents to the trial or the surrender to the other country.

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

(5) If the Minister decides that the person is not to be surrendered to the requesting country, the Minister must, in writing, order that the person be released immediately.

### **36. SURRENDER WARRANT.**

- (1) A surrender warrant must:
  - (a) be in writing in the form specified in Schedule 1; 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 release the person into the custody of 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 Papua New Guinea for the purpose of handing the person over to the custody of a foreign escort officer; and
    - (ii) hold the person in custody for as long as is necessary to enable the person to be placed in the custody of the foreign escort officer; and
  - (e) authorise the foreign escort officer to hold the person in custody for the purpose of transporting the person out of Papua New Guinea.

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

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

### **37. TEMPORARY SURRENDER WARRANT.**

(1) The Minister may issue a temporary surrender warrant instead of a surrender warrant if:

- (a) the person is serving a custodial sentence in Papua New Guinea; 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 is satisfied that the requesting country has given an adequate undertaking that the person is subject to a trial in the requesting country and the person will be returned to Papua New Guinea; and
- (d) the Minister 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 Papua New Guinea.

(2) The temporary surrender warrant must:

- (a) be in writing in the form specified in Schedule 1; 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 release the person into the custody of 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 Papua New Guinea 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 hold the person in custody for the purpose of transporting the person out of Papua New Guinea.

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

- (a) is in Papua New Guinea after trial and sentence in the requesting country; and
- (b) has completed his or her custodial sentence in Papua New Guinea,

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

(4) The time that a person spends in custody in the requesting country as a result of the temporary surrender warrant, is taken to be time spent in custody in Papua New Guinea for the purpose of completing the sentence, for which the person was in custody in Papua New Guinea.

(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 Papua New Guinea is concluded;

the Minister must inform the requesting country that the undertaking mentioned in Subsection (1)(c) no longer applies.

### **38. EXECUTION OF SURRENDER WARRANT.**

(1) A person may apply to a magistrate to be released from custody if the 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 Papua New Guinea:
  - (i) the person has been released from custody; or
  - (ii) the recognisance has been discharged.

(2) The person must inform the Minister of the application.

(3) If the magistrate is satisfied that:

- (a) the Minister has been informed 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.

(4) Without limiting Subsection (3)(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 4. – SEARCH, SEIZURE AND TRANSIT.****39. PURPOSE OF THIS PART.**

This Part provides for:

- (a) the search of persons; and
- (b) the seizure of property; and
- (c) the arrest of certain persons; and
- (d) the transit of extradited persons through other countries.

**40. SEARCH AND SEIZURE ON ARREST UNDER A WARRANT.**

(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 the 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, anything (including a sum of money) that:
  - (i) may be material as evidence in proving any offence for 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) Subsection (3) does 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 Minister about how the thing is to be dealt with.

(7) Nothing in this section prevents or restricts the search of:

- (a) a person; or
- (b) clothing worn by a person; or
- (c) property under the immediate control of a person,

after the person is admitted to a prison after having been arrested for an offence.

#### **41. SEARCH AND SEIZURE WARRANTS.**

(1) This section applies 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 the 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.

(2) The magistrate may issue a warrant authorising a police officer, with such assistance, and by such force, as is necessary and reasonable:

- (a) to seize the thing; or
- (b) to enter the place and seize the thing; or
- (c) to enter the place, search the place for a thing of that kind and seize any thing of that kind found in place.

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

- (a) the magistrate has received by affidavit, 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.

(4) The warrant must contain the following information:

- (a) the purpose for which it is issued, including a reference to the nature of any offence mentioned in Subsection (1)(a);
- (b) whether it authorises entry at any time of the day or night or during specified hours of the day or night;
- (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.

(5) 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; and

- (b) the thing is not of a kind stated in the warrant; and
- (c) 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.

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

(7) In this section:

“**place**” includes a public place, area of water, premises, vessel, aircraft or vehicle in any part of Papua New Guinea;

“**thing**” includes a vessel, aircraft or vehicle.

#### **42. RETURN OF SEIZED PROPERTY.**

(1) If a surrender warrant or temporary surrender warrant is in force after all proceedings under this Act are concluded, the Minister may direct that any property seized under Section 39, or property 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 sent to the country that sought the surrender.

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

#### **43. ARREST OF PERSONS ESCAPING FROM CUSTODY.**

(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).

#### **44. ARREST OF PERSON RELEASED ON BAIL .**

(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 after the arrest of the person.

**45. TRANSIT OF SURRENDERED PERSONS THROUGH PAPUA NEW GUINEA.**

(1) If:

- (a) a country (the receiving country) requests the Minister to permit the receiving country to transport a person (who is being surrendered by another country (the sending country) to the receiving country) through the territory of Papua New Guinea; and
- (b) the receiving country makes the request before the person departs from the sending country,

the Minister may permit the transport of the person.

(2) If permission is given:

- (a) a police officer in Papua New Guinea may assist the foreign escort officer escorting the person; and
- (b) the person may be held in custody in Papua New Guinea until the person's journey can continue.

**PART 5. – EXTRADITION TO PAPUA NEW GUINEA.**

**46. PURPOSE OF THIS PART.**

The purpose of this Part is to provide for the extradition of persons to Papua New Guinea.

**47. SURRENDERED PERSONS TO BE BROUGHT INTO PAPUA NEW GUINEA.**

(1) A person, surrendered to Papua New Guinea for an offence against a law of Papua New Guinea of which the person is accused or has been convicted, must be brought into Papua New Guinea 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.

**48. TREATMENT OF PERSONS TO BE BROUGHT INTO PAPUA NEW GUINEA.**

(1) A person surrendered to Papua New Guinea must not be detained or tried in Papua New Guinea for an offence that is alleged to have been committed, or was committed, before the person was surrendered, other than:

- (a) an offence for which the person was surrendered; or
- (b) 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
- (c) another offence for which the surrendering country consents to the person being determined or tried.

(2) A person surrendered to Papua New Guinea must not be detained in Papua New Guinea for surrender to another country for trial or punishment for an offence that is alleged to have been committed, or was committed, before the person was surrendered to Papua New Guinea.

(3) Subsections (1) and (2) do not apply if:

- (a) the country that surrendered the person to Papua New Guinea consents to the person being so detained, and tried or surrendered; or
- (b) the person has left, or has had the opportunity of leaving, Papua New Guinea.

**49. PERSONS TEMPORARILY SURRENDERED TO PAPUA NEW GUINEA.**

(1) This section applies to a person surrendered to Papua New Guinea; if

- (a) if the person has not completed a custodial sentence in the surrendering country immediately before being surrendered; or
  - (b) Papua New Guinea has undertaken to hold the person in custody and return the person to the surrendering country.
- (2) The person:
- (a) while in Papua New Guinea and travelling to and from Papua New Guinea, – must, be kept in custody in accordance with an order in writing by the Minister; and
  - (b) may only be tried for an offence for which the person was surrendered; and
  - (c) must be returned to the surrendering country after the trial.
- (3) The Minister must order that a person be released from custody if:
- (a) the person is held in custody only because of an order of the Minister under Subsection (2)(a); and
  - (b) the surrendering country notifies Papua New Guinea that the surrendering country no longer requires the person to be returned.

**50. EVIDENCE FOR PURPOSES OF SURRENDER OF PERSONS TO PAPUA NEW GUINEA.**

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

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

- (a) cause the evidence to be written;
- (b) certify that the evidence, as written, has been taken; and
- (c) send the evidence and the certificate to the Minister.

(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 6. – MISCELLANEOUS.

## 51. PROSECUTION, INSTEAD OF EXTRADITION, OF PAPUA NEW GUINEA CITIZENS.

(1) If:

- (a) a country requests the surrender of a person under this Act; and
- (b) the Minister refuses to order the surrender of the person because of a circumstance mentioned in Subsection (2); and
- (c) the person would have committed an offence against a law in force in Papua New Guinea if the person had engaged in the conduct or equivalent conduct in Papua New Guinea at that time,

the person may be prosecuted and punished in Papua New Guinea for the offence mentioned in Paragraph (c).

(2) The following are the circumstances for Subsection (1)(b):

- (a) the person is citizen of Papua New Guinea;
- (b) 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;
- (c) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment;
- (d) the offence for which surrender has been ordered is punishable by death in the requesting country but not in Papua New Guinea 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;
- (e) the person has been sentenced or would be liable to be tried or sentenced in the requesting country by an extraordinary or *ad hoc* or tribunal.

(3) For the purpose of the prosecution, the person is taken to have engaged in the conduct in Papua New Guinea.

(4) The person must not be prosecuted unless the Minister:

- (a) considers that there is sufficient evidence in Papua New Guinea to justify prosecuting the person for the offence; and
- (b) consents to the person being prosecuted for the offence.

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

(6) A person to whom Subsection (1) applies may be:

- (a) arrested for an offence mentioned in Subsection (1)(c); and
- (b) charge with the offence; and



- (c) remanded in custody or on bail,

although the Minister has not given consent under Subsection (4).

**52. PROVISION OF EVIDENCE FOR PROSECUTION BY OTHER COUNTRIES.**

If:

- (a) another country has refused to order that a person be surrendered to Papua New Guinea; but
- (b) the country is prepared to prosecute the person for the offence for which Papua New Guinea sought surrender of the person,

the Public Prosecutor must give the other country all available evidence to enable the other country to prosecute the person.

**53. SURRENDER FOR PURPOSES OF TRIAL ONLY.**

(1) This section applies if Papua New Guinea refuses to surrender a person because:

- (a) the person is a citizen of Papua New Guinea; or
- (b) the person has been subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment,

and the requesting country requests that the person be surrendered for the purposes of trial only.

(2) Papua New Guinea may surrender the person to the requesting country for the purpose of being tried in the requesting country for the offence for which extradition is sought if:

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

**54. REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters which are:

- (a) by this Act required or permitted to be prescribed; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting Subsection (1), the regulation may:

- (a) set out the text extradition treaties; and
- (b) make any modifications to this Act that are necessary to give effect to an extradition treaty; and
- (c) amend the forms in Schedule 1.

**55. EXTRADITION TREATIES.**

An extradition treaty does not form part of the law of Papua New Guinea unless it is set out in Regulations made under Section 54.

**56. REPEAL OF EXTRADITION ACT.**

The *Extradition Act 1975* is repealed.

**SCHEDULE 1 – FORMS OF WARRANTS (SUBSECTION 5 (1)).**

<b>Form 1. Provisional Arrest Warrant (Forum country) – s.9</b>
Papua New Guinea
<b><i>Extradition Act 2004</i>, s.9</b>
<b>Provisional Arrest Warrant</b>
TO all police officers:
An application has been made to me on behalf of [ <i>Forum country</i> ] for the issued of a provisional warrant for the arrest of [ <i>name of person</i> ]
I am satisfied, on the basis of the documents produced to me on behalf of [ <i>Forum country</i> ], that:
(a) [ <i>name of person</i> ] is in, or on his or her way to, Papua New Guinea; and
(b) an original warrant for the arrest of [ <i>name of person</i> ] has been issued in [ <i>Forum country</i> ]; and
(c) it is reasonable in the circumstances to issue a warrant for the arrest of [ <i>name of person</i> ]; and
I, [ <i>name and designation of Magistrate</i> ], under Section 9 of the <b><i>Extradition Act 2004</i></b> , authorised and requested you to arrest [ <i>name of person</i> ] and bring him/her before a magistrate in Papua New Guinea as soon a practicable to be dealt with according to law.
Dated
Signature and title of
Magistrate issuing warrant

**Form 2. Provisional Arrest Warrant (Country other than a Forum country) –s.23**

Papua New Guinea
<b><i>Extradition Act 2004</i> s.23</b>

<b>Provisional Arrest Warrant</b>	
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 way to, Papua New Guinea; and	
(b) [requesting country] intends to make a formal request for the extradition of [name of person]; and	
(c) the offence for which the extradition of [name of person] is sought is an extradition offence.	
I, [name and designation of magistrate], under Section 23 of the <b>Extradition Act 2004</b> , authorise and request you to arrest [name of person] and bring him/her before a magistrate in Papua New Guinea as soon as practicable to be dealt with according to law.	
Date	
Signature and title of	
Magistrate issuing warrant	
Form 3. Surrender Warrant (Forum country) – s.16	
New Guinea	
<b>Extradition Act 2004</b> , s.16	
<b>Surrender Warrant</b>	
TO all police officers:	

I, [*name and title of Magistrate*], have decided under Section 16 of the **Extradition Act 2004** that [*name of person*] is to be surrendered to [*Forum country*] for the offence of [*specify each offence for which the person is to be surrendered*].

I, [*name of Magistrate*]:

(a) order that [*name of person*] be surrendered to [*Forum country*]; and

(b) order that [*name of person*] be committed to prison until he/she is surrendered to [*Forum country*]; and

(c) require any person who has custody of [*name of person*] to deliver the person to the police officer who has this warrant; and

(d) authorise you to bring, [*name of person*] to a place in Papua New Guinea for the purpose of delivering [*name of person*] to the custody of a foreign escort officer authorised by [*Forum country*] to escort [*name of person*] to [*Forum country*]; and

(e) authorise you to hold [*name of person*] in custody for so long as is necessary to deliver him/her to the foreign escort officer; and

(f) authorise the foreign escort officer to transport [*name of person*] and of Papua New Guinea.

Date

Signature and title of

Magistrate issuing warrant

Form 4. Temporary Surrender Warrant (Forum country) – s.18

Papua New Guinea
Extradition Act 2004, s.18
<b>Temporary Surrender Warrant</b>

TO all police officers:
I, [ <i>name of Minister</i> ], Minister, have decided under Section 18 of the <b>Extradition Act 2004</b> that [ <i>name of person</i> ] is to be temporarily surrendered to [ <i>Forum country</i> ] for the offence of [ <i>specify each offence for which the person is to be surrendered</i> ].
[ <i>name of person</i> ]:
(a) is serving a custodial sentence in Papua New Guinea; and
(b) has not been convicted of the offence(s) for which his/her surrender is sought.
I am satisfied that:
(a) [ <i>Forum country</i> ] has given or adequate undertaking that [ <i>name of person</i> ] will be given a speedy trial in [ <i>Forum country</i> ] and will be returned to Papua New Guinea after the trial; and
(b) adequately provision has been made for [ <i>name of person</i> ]: to travel to [ <i>Forum country</i> ] and to return to Papua New Guinea.
I, [ <i>name of Minister</i> ]:
(a) require any person who has custody of [ <i>name of person</i> ] to deliver the person to the police officer who has this warrant; and
(b) authorise you to bring [ <i>name of person</i> ] to a place in Papua New Guinea for the purpose of delivering [ <i>name of person</i> ] to the custody of a foreign escort officer authorised by [ <i>requesting country</i> ] to escort [ <i>name of person</i> ] to [ <i>requesting country</i> ]; and
(c) authorise you to hold [ <i>name of person</i> ] in custody for as long as is necessary to deliver him/her to the foreign escort officer; and
(d) authorise foreign escort officer to transport [ <i>name of person</i> ] out of Papua New Guinea.

Date
<i>Signature of Minister</i>
Form 5. Surrender Warrant (Country other than a Forum Country) – s.33
Papua New Guinea
<b><i>Extradition Act 2004</i></b> , s.33
<b>Surrender Warrant</b>
TO all police officers:
I, [ <i>name of Minister</i> ], Minister for Justice, have decided under Section 33 of the <b><i>Extradition Act 2004</i></b> that [ <i>name of person</i> ] is to be surrendered to [ <i>requesting country</i> ] for the offence of [ <i>specify each offence for which the person is to be surrendered</i> ].
I, [ <i>name of Minister</i> ]:
(a) require any person who has custody of [ <i>name of person</i> ] to deliver the person to the police officer who has this warrant; and
(b) authorise you to bring [ <i>name of person</i> ] to a place in Papua New Guinea for the purpose of delivering [ <i>name of person</i> ] to the custody of a foreign escort officer authorised by [ <i>requesting country</i> ] to escort [ <i>name of person</i> ] to [ <i>requesting country</i> ]; and
(c) authorise you to hold [ <i>name of person</i> ] in custody for as long as is necessary to deliver him/her to the foreign escort officer; and
(d) authorise the foreign escort officer to transport [ <i>name of person</i> ] out of Papua New Guinea.
Date
<i>Signature of Minister</i>

Form 6. Temporary Surrender Warrant (Country other than a Forum Country) – s.35

Papua New Guinea
<b><i>Extradition Act 2004</i></b> , s.35
<b>Temporary Surrender Warrant</b>
TO all police officers:
I, [ <i>name of Minister</i> ], Minister for Justice, have decided under Section 35 of the Extradition Act 2004 that [ <i>name of person</i> ] is to be surrendered to [ <i>requesting country</i> ] for the offence of [ <i>specify each offence for which the person is to be surrendered</i> ].
[ <i>name of person</i> ]:
(a) serving a custodial sentence in Papua New Guinea; and
(b) has not been convicted of the offence(s) for which his/her surrender is sought.
I am satisfied that:
(a) [ <i>requesting country</i> ] has given an adequate undertaking that [ <i>name of person</i> ] will be given a speedy trial in [ <i>requesting country</i> ] and will be returned to Papua New Guinea after the trial; and
(b) adequate provision has been made for [ <i>name of person</i> ]: to travel to [ <i>requesting country</i> ] and to return to Papua New Guinea.
I, [ <i>name of Minister</i> ]:
(a) require any person who has custody of [ <i>name of person</i> ] to deliver the person to the police officer who has this warrant; and



(b) authorise you to bring [ <i>name of person</i> ] to a place in Papua New Guinea for the purpose of delivering [ <i>name of person</i> ] to the custody of a foreign escort officer authorised by [ <i>requesting country</i> ] to escort [ <i>name of person</i> ] to [ <i>requesting country</i> ]; and
(c) authorise you to hold [ <i>name of person</i> ] in custody for so long as is necessary to deliver him/her to the foreign escort officer; and
(d) authorise the foreign escort officer to transport [ <i>name of person</i> ] out of Papua New Guinea.
Dated
Signature of Minister
Papua New Guinea
<b><i>Extradition Act 2004</i>, s.35</b>
<b>Temporary Surrender Warrant</b>
TO all police officers:
I, [ <i>name of Minister</i> ], Minister for Justice, have decided under Section 35 of the Extradition Act 2004 that [ <i>name of person</i> ] is to be surrendered to [ <i>requesting country</i> ] for the offence of [ <i>specify each offence for which the person is to be surrendered</i> ].
[ <i>name of person</i> ]:
(a) serving a custodial sentence in Papua New Guinea; and
(b) has not been convicted of the offence(s) for which his/her surrender is sought.
I am satisfied that:

(a) [ <i>requesting country</i> ] has given an adequate undertaking that [name of person] will be given a speedy trial in [ <i>requesting country</i> ] and will be returned to Papua New Guinea after the trial; and
(b) adequate provision has been made for [name of person]: to travel to [ <i>requesting country</i> ] and to return to Papua New Guinea.
I, [ <i>name of Minister</i> ]:
(a) require any person who has custody of [name of person] to deliver the person to the police officer who has this warrant; and
(b) authorise you to bring [ <i>name of person</i> ] to a place in Papua New Guinea for the purpose of delivering [ <i>name of person</i> ] to the custody of a foreign escort officer authorised by [ <i>requesting country</i> ] to escort [ <i>name of person</i> ] to [ <i>requesting country</i> ]; and
(c) authorise you to hold [ <i>name of person</i> ] in custody for so long as is necessary to deliver him/her to the foreign escort officer; and
(d) authorise the foreign escort officer to transport [ <i>name of person</i> ] out of Papua New Guinea.
Dated
Signature of Minister