

No. 31866

**NEW ZEALAND
and
FIJI**

**Agreement on extradition. Signed at Auckland on 21 March
1992**

Authentic text: English.

Registered by New Zealand on 1 June 1995.

**NOUVELLE-ZÉLANDE
et
FIDJI**

**Accord relatif à l'extradition. Signé à Auckland le 21 mars
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Texte authentique : anglais.

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AGREEMENT¹ ON EXTRADITION BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE REPUBLIC OF FIJI

The Government of New Zealand and the Government of the Republic of Fiji,
Considering it necessary to put in place arrangements between the two countries for the reciprocal extradition of offenders,
Have agreed as follows:

Article I

Both Parties agree to extradite to the other, in the circumstances and subject to the conditions described below, persons found in its territory who have been charged with or convicted of any of the offences mentioned in Article II of this Agreement committed within the territory of the other or committed outside the territory of the other but constituting an offence under the law of both Parties.

Article II

Extradition shall be granted, in accordance with the provisions of this agreement, in respect of the following offences:

1. Murder.
2. Manslaughter.
3. Aiding and abetting suicide.
4. Aggravated wounding, injuring or assault; wounding or injuring with intent to cause grievous bodily harm; disabling.
5. Threatening to kill or do grievous bodily harm.
6. Discharging firearm or doing dangerous act with intent; endangering transport.
7. Unlawful throwing or application of any corrosive or injurious substances; poisoning; infecting with disease.
8. Sexual violation, including rape under Fiji law, or inducing sexual connection by coercion; incest; indecent assault; including sexual intercourse under pretence of marriage; conspiracy to induce sexual intercourse; sexual or anal intercourse with severely subnormal person; compelling indecent act with animal.
9. Killing unborn child.
10. Unlawfully procuring abortion; supplying means of procuring abortion.
11. Unlawful sexual acts, indecency or anal intercourse with or upon children under the age specified by the laws of both the requesting and requested parties.
12. Procuring sexual intercourse.
13. Abandonment of a minor under the age of six years; cruelty to a child.

¹ Came into force on 14 April 1992 by the exchange of the instruments of ratification, in accordance with article XIX.

14. Bigamy.
15. Kidnapping; abduction.
16. Robbery; aggravated robbery; assault with intent to rob; compelling execution of documents by force; demanding with intent to steal.
17. Burglary; entering with intent.
18. Theft.
19. Criminal breach of trust.
20. Obtaining property, money or valuable securities by false pretences or by conspiracy to defraud the public or any person by deceit or falsehood or other fraudulent means, whether such deceit or falsehood or any fraudulent means would or would not amount to a false pretence.
21. Falsifying accounts or registers; false accounting; making of false statement; concealing documents; fraudulent concealment, destruction or procuring of execution of documents; acknowledging instrument in false name; drawing document without authority.
22. Extortion.
23. Receiving any money, valuable securities or other property knowing the same to have been unlawfully obtained.
24. Personation.
25. Forgery; uttering forged documents or false certificates; other offences relating to forgery.
26. The making or the utterance, circulation or fraudulent use of counterfeit money or counterfeit seals and stamps of the government or public authority; other offences relating to counterfeiting.
27. Knowingly and without lawful authority, making or having in possession any instrument, tool, or machine adopted and intended for the counterfeiting of money, whether coin or paper.
28. Perjury.
29. False swearing; fabricating evidence.
30. Unlawful obstruction of justice through corruption and bribery of judicial officers, public servants, members of parliament, law enforcement officers; conspiracy to bring false accusation; corrupting juries and witnesses by threats, bribes, or other corrupt means.
31. Arson; damage to property by fire or explosive.
32. Wilful damage to property.
33. Wrecking.
34. Interfering with means of transport, utilities or communications.
35. Piracy; piratical acts; dealing in slaves.
36. Offences against the bankruptcy laws which are punishable by more than three months' imprisonment.
37. Dealing with controlled drugs; cultivation of prohibited plants; aiding any such offence against corresponding law in another country.

38. Hijacking of aircraft; other crimes relating to aircraft.
39. Crimes, including threats, against internationally protected persons or against premises or vehicles of or used by internationally protected persons.
40. Hostage taking.
41. Committing or being party to an act of torture.

Extradition shall also be granted for attempts to commit or for conspiring to commit or for being a party or an accessory after the fact to any of the offences mentioned in this Article.

Article III

A reference in this agreement to the territory of a Party is a reference to all the territory falling under the jurisdiction of that Party, including territorial waters, and the airspace thereover belonging to or under the control of one of the Parties, and vessels and aircraft belonging to one of the Parties or to a citizen or corporation thereof when such vessel is on the high seas or such aircraft is over the high seas.

Article IV

Extradition shall be granted only if the evidence be found sufficient, according to the laws of the place where the person sought shall be found, either to justify that person's committal for trial if the offence of which the person is accused had been committed in that place or to prove that the person is the person convicted by the courts of the requesting Party.

Article V

Neither of the Parties shall be bound to deliver up its own citizens, but the executive authority of each shall have the power to deliver them up, if, in its discretion, it be deemed proper to do so.

Article VI

Extradition shall not be granted in any of the following circumstances:

1. When the person whose surrender is sought is being proceeded against or has been tried and discharged or punished or is otherwise lawfully detained in consequence of such acquittal or conviction in the territory of the requested Party for the offence for which the extradition of that person is requested.
2. When the person whose surrender is sought has been tried and acquitted or has undergone punishment in a third State for the offence for which the extradition of that person is requested.
3. When the prosecution or the enforcement of the penalty for the offence has become barred by lapse of time under statute law of the requesting Party or would be barred by lapse of time under statute law of the requested Party had the offence been committed in its territory.
4. If the offence for which extradition is requested is of a political character, or if the offender proves that the request for his surrender has in fact been made with a view to try or punish him for an offence of a political character. If any question arises as to whether a case comes within the provisions of this paragraph, it shall be determined according to the laws of the requested Party.

5. If, in the opinion of the requested Party, there are substantial grounds for believing that the offender would be in danger of being subjected after extradition to an act of torture.

6. If, in the opinion of the requested Party, the surrender of the person concerned, although purporting to have been sought in respect of an extradition offence, has in fact been sought for the purpose of prosecuting or punishing the person on account of his or her race, ethnic origin, religion, nationality, or political opinions, or if, in the event that the person concerned is surrendered, he or she may, in the opinion of the requested Party, be prejudiced at his or her trial or punished, detained or restricted in his or her personal liberty by reason of his or her race, ethnic origin, religion, nationality, or political opinions.

7. If the requested Party is satisfied that the offence for which extradition is requested is an offence solely under military law or that the person whose extradition is requested has been sentenced or would be liable to be tried or sentenced in the requesting Party by an extraordinary or *ad hoc* court or tribunal.

Article VII

When the offence for which the extradition is requested is punishable by death under the laws of the requesting Party, extradition may be refused by the requested Party.

Article VIII

When the person whose extradition is requested is being proceeded against or is serving a sentence or is otherwise lawfully detained in the territory of the requested Party for an offence other than that for which extradition has been requested, the surrender of that person may be deferred until the conclusion of the proceedings and the full execution of any punishment he or she may be or may have been awarded.

When the person whose extradition is requested was previously surrendered by a third State for prosecution or execution of sentence no action shall be taken pursuant to such request until such time has elapsed as is required by any treaty with that third State or until the person has had an opportunity of leaving the territory of the requested Party.

Article IX

The determination that extradition based upon the request therefore should or should not be granted shall be made in accordance with the laws of the requested Party and the person whose extradition is sought shall have the right to use such remedies and recourses as are provided by such law.

Article X

The request for extradition shall be made through the diplomatic channel.

The request shall be accompanied by a description of the person sought, a statement of the facts of the case, the text of the applicable laws of the requesting Party including the law defining the offence, the law prescribing the punishment for the offence, and the law relating to the limitation of the legal proceedings.

When the request relates to a person who has not yet been convicted, it must also be accompanied by a warrant of arrest issued by a judge or other judicial officer of the requesting Party and by such evidence as, according to the laws of the requested Party, would justify that person's arrest and committal for trial if the offence had been committed there, including evidence proving the person requested is the person to whom the warrant of arrest refers.

When the request relates to a person already convicted, it must be accompanied by the judgment of conviction and sentence passed against that person in the territory of the requesting Party, by a statement showing how much of the sentence has not been served, and by evidence proving that the person requested is the person to whom the sentence refers.

All documents relating to a request for an extradition authenticated by the appropriate officers and in the appropriate manner in the requesting Party shall be admitted in evidence in the requested Party in the examination of the request.

Article XI

In case of urgency a Party may apply for the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application shall contain a description of the person sought, an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a judgement of conviction against that person, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the requested Party.

On receipt of such an application the requested Party shall take the necessary steps to secure the arrest of the person claimed.

A person arrested upon such an application shall be set at liberty upon the expiration of 45 days from the date of his or her arrest, or such longer period as the Court or a Judge in the requested Party considers reasonable in all the circumstances of the case, if a request for that person's extradition accompanied by the documents specified in Article X shall not have been received. However, the stipulation shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

Article XII

If the requested Party requires additional evidence or information to enable it to decide on the request for extradition, such evidence or information shall be submitted to it within such time as that Party shall require.

If the person sought is under arrest and the additional evidence or information submitted as aforesaid is not sufficient or if such evidence or information is not received within the period specified by the requested Party, he or she shall be discharged from custody. However, such discharge shall not bar the requesting Party from submitting another request in respect of the same offence.

Article XIII

A person extradited under this agreement shall not be detained, tried or punished in the territory of the requesting Party for any offence other than an extraditable offence disclosed by the facts on which that person's surrender was granted

nor be extradited or surrendered under an analogous procedure by that Party to a third State unless the person concerned:

1. Has left the territory of the requesting Party after his or her extradition and has voluntarily returned to it; or
2. Has not left the territory of the requesting Party within 60 days after being free to do so.

These stipulations shall not apply to offences committed after the extradition.

Article XIV

A requested Party upon receiving two or more requests for the extradition of the same person either for the same offence, or for different offences, shall determine to which of the requesting States it will extradite the person sought, taking into consideration the circumstances and particularly the possibility of a later extradition between the requesting States, the seriousness of each offence, the place where the offence was committed, the nationality of the person sought, the dates upon which the requests were received and the provisions of any extradition agreements between the requested Party and the other requesting State or States.

Article XV

The requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition.

If a warrant or order for the extradition of a person sought has been issued by the competent authority and the person is not removed from the territory of the requested Party within such time as may be prescribed by the laws of that Party, he or she may be set at liberty and the requested Party may subsequently refuse to extradite that person for the same offence.

Article XVI

To the extent permitted under the law of the requested Party and subject to the rights of third parties, which shall be duly respected, all articles acquired as a result of the offence or which may be required as evidence shall, if found, be surrendered if extradition is granted.

Article XVII

Expenses related to the transportation of the person sought shall be paid by the requesting Party. The appropriate legal officers of the country in which the extradition proceedings take place shall, by all legal means within their power, assist the officers of the requesting Party before the respective judges and magistrates. No pecuniary claim, arising out of the arrest, detention, examination and surrender of persons sought under the terms of this agreement shall be made by the requested Party against the requesting Party other than that the requested Party shall be reimbursed for the lodging, maintenance and board of the person sought.

Article XVIII

This Agreement shall apply to offences specified in Article II committed before as well as after the date of entry into force of the agreement, provided that no extradition shall be granted for an offence committed before the date of entry into

force which was not an offence under the laws of both countries at the time of its commission.

Article XIX

This Agreement is subject to ratification. It shall enter into force upon the exchange of ratifications, which shall take place as soon as possible.

The agreement may be terminated by either Party giving notice of termination to the other Party at any time. Such termination shall take effect six months after the date of receipt of the notice.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this agreement.

DONE in duplicate at Auckland this 21st day of March 1992.

For the Government
of New Zealand:

[DON MCKINNON]

For the Government
of the Republic of Fiji:

[K. K. T. MARA]