



HIGH COURT OF SOLOMON ISLANDS

CHAMBERS OF THE CHIEF JUSTICE  
HIGH COURT OF SOLOMON ISLANDS  
P.O. BOX G21, HONIARA,  
SOLOMON ISLANDS.

TELEPHONE: (677) 21632; FAX: (677) 22702



Date: 23<sup>rd</sup> September 2008

Your ref.: NP/05/2/4

My ref.: CJ16/21

The Hon. Laurie Chan MP  
Chairman Foreign Relations Committee  
National Parliament Office  
PO Box G. 19  
Honiara.

Dear Chairman,

**Re: INQUIRY INTO THE FACILITATION OF INTERNATIONAL ASSISTANCE NOTICE**

I wish to thank you for the opportunity to appear before your Committee regarding the inquiry and review of the Facilitation of International Assistance Notice and to make submissions.

I have had opportunity to revise some of my comments which I now submit in writing to your Committee for your further consideration as you see fit.

Please do not hesitate to let me know if there is anything else that your Committee may require.

Yours sincerely,

Sir Albert R. Palmer Kt., CBE  
Chief Justice.



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**Date: 18<sup>th</sup> September 2008**

Revised Submissions by Chief Justice.

### **INQUIRY INTO THE FACILITATION OF INTERNATIONAL ASSISTANCE NOTICE**

Thank you for the opportunity to make some comments and suggestions to this inquiry and review.

I wish to take this opportunity on behalf of the Judiciary and join with everyone else in thanking God Almighty for the intervention which took place in July 2003. The intervention was a gift; an answer to the prayers of the People of Solomon Islands and a manifestation of the Grace of God to us.

One of the fundamental characteristics of a gift is that it places a very heavy onus or responsibility on us on how we use it. But, it also places the same responsibility on the Regional Assistance Mission to Solomon Islands ("**RAMSI**") regarding how that assistance is given and administered in the country.

As a gift both the Solomon Islands Government (“**SIG**”) and RAMSI are accountable on how this assistance is carried out; accountable to God, accountable to the Pacific Islands Forum (“**PIF**”) countries and accountable to the people of Solomon Islands.

### **1. The Focus of the Mission was Restoration of Law and Order and Security.**

RAMSI was invited to intervene and come to the assistance of SIG because it could no longer govern the country effectively. The Rule of Law and processes of democratic governance were being flouted, ignored and ineffective. We all know that democratic governance only flourishes where the Rule of Law flourishes and peace and stability is on the ground; where people do not take the law into their own hands when they have a grievance or dispute but allow the law to take its course.

Every major and successful country in the world today will trace their success to this foundational cornerstone. People live in peace and harmony together because this fear, reverence and respect for the rule of law is ingrained in their hearts and mind. That is one of the challenges of our developing nation to develop the culture of the rule of law in our city, provincial towns and communities.

**The primary purpose and reason** for the intervention was *“to assist in the restoration of law and order and security”*.

### **2. Approach was interventionist, direct involvement at the outset.**

**The approach initially was direct and interventionist.** It had to be because of the circumstances on the ground. In many instances the army and participating police officers of the Visiting Contingent had to intervene directly in enforcing and applying the

laws of Solomon Islands because the Solomon Islands Police Force (“**Police Force**”) and Prison Service were not in a position or did not have the capacity to do so. That was understandable and we accepted it and tolerated it. There were misunderstandings and disagreements sometimes in how things were being done, because many of those members of the Visiting Contingent were not familiar with our laws and so when carrying out their enforcement duties, relied on their knowledge and understanding of procedures, processes and the law as applied in their countries.

The same happened in the civil service with advisers and expatriates engaged under RAMSI. Many had to quickly learn our processes and procedures to serve effectively. In the Judiciary we emphasized this point because there were some lawyers for instance who were using processes and procedures which were different to ours.

Many expatriates holding line positions or as advisers were engaged in Government Service and assisted in restoring Government functions, service and processes.

In the Judiciary for instance, judges were recruited and advisers for the Registrar of High Court (“RHC”) and Chief Executive Officer (“CEO”) etc. were engaged, apart from numerous lawyers for the Office of the Director of Public Prosecutions and Public Solicitor’s Office etc.

Criminal activities were curbed overnight, offenders arrested and charged and prosecuted. Restoration was the key word and was the focus in that period. To that extent it has been very successful.

#### **Assistance to the Judiciary.**

1. The assistance to the Judiciary has been remarkable. The following is a summary of the form that the assistance has taken.

- Strengthen and support the criminal and civil justice system to establish confidence in the rule of law; cross-sectoral assistance, police, prosecutions, defence, prisons
- Institutional strengthening; support to the courts, legal sector agencies (DPP, PubSol, LRC, AGC), court processes, infrastructure activities;
- Capacity building, development on an individual and organizational basis; provision of technical assistance;
- Delivery of justice, (making justice visible, tangible and accessible); upholding the Rule of Law, Delivery of independent impartial and fair justice; regular sittings of Court of Appeal, Provincial Outreach, court circuits, access to legal materials, internet (research), library assistance, improve delivery of juvenile services; revamping of local courts and CLAC, legal services available for our communities;
- Effective and efficient services to support access to and delivery of justice; support services, Case Support Unit, Transcription, Court Interpreters; corporate services (administration and accounts) enhancing managerial and administrative skills, IT support (equipment and technical expertise), addressing case management issues, support and strengthen sheriff's office, implement financial management system.

## **2. Five years on. Focus is on rebuilding and development of services.**

Five years ago Solomon Islands was on its knees crawling. Today Solomon Islands is standing tall and walking solidly and confidently.

The inquiry and review is timely. While it is a review about RAMSI it is as much a review about us.

Do we know where we are going? Do we know what we want? Only then will we be able to review RAMSI effectively. Only then will we be able to enter into effective discussions or negotiations on how best that assistance can be provided, on how it can be better and more effectively provided.

This brings me to the issue of **coordination of funding**.

The progress and achievements made through the re-strengthening and rebuilding exercise must be seized upon and enhanced.

That assistance provided must be honed, focused and streamlined.

For example: Money should be paid into say a supplementary fund in the Ministry of Finance ("MOF") and administered directly from there. The MOF in the usual way can make regular reports to RAMSI or the aid donor, for instance to AusAID or NZAid, as to how the money is being used or administered. But the administration of such aid money should be done locally; this is the change in this inquiry and review that I am proposing. In terms of costs, it will mean reduced costs on consultancy and administration charges, some of which are very expensive. It will mean immediate savings which can then be utilized for direct aid usage and assistance.

If MOF need extra persons to administer that fund, they can recruit locals at much less pay and costs; immediate savings therefore are made.

The disbursement of funds will become subject to normal Financial Instructions requirements and controls and be accessed through normal tender processes for major projects or activities.

For example, to have court houses built, repaired, extended etc. in Gizo, Kira Kira and Lata, these should go through normal tender requirements etc. We will then work with the Ministry Head Office and Infrastructure Officer there or the Civil Engineer at the Ministry of Infrastructure and Development, or engage a local architect or engineer to design the sort of court houses, offices etc. that we require and which will be suitable for our purposes and use.

So for example, if the project will cost us \$1 million for each District Court Houses and Offices, then we will need \$3 million from the Fund (RAMSI) to pay for that in Gizo, Kira Kira and Lata. Finance Department will administer that money from beginning to end, and no extra administrative, consultancy costs will be incurred. The aid money will be fully utilized and can be spread out further to cover other needs than under the current set up.

Under the current set up, requests go to the Law and Justice Program. Decisions are made by them. If any project is to be done, for example the Auki Court house, then they administer it themselves and coordinate it through their own consultants, etc. You will appreciate the massive costs that are entailed in this. Delay is also inherent in the system. The Auki Court house for example is taking about three years now to get off the ground and the costs are around AUD\$1.2m and increasing as it continues to be delayed. At this point of time we do not know how much money is available for what. While the current system has worked for us in the last five years, it must now undergo a paradigm shift in terms of how it is disbursed.

**RECOMMENDATION.** There should be a paradigm shift so that the assistance is channeled through SIG.

- This will bring certainty to the funds that are available and release more funds;
- Middle management levels are removed, reducing costs and releases more funds, currently middle-management levels are costly;
- Sustainable; local expertise and skills utilized, local materials used – reduces costs;
- Directly supports other institutions to become directly involved, eg. Ministry of Finance;
- Reduces delays;
- More responsive and flexible;
- Maximizes the assistance provided;
- Ownership of activity clear and driven by stakeholders and SIG;
- Enhances the rebuilding and re-strengthening exercise;
- Re-focuses the assistance towards the SIG sector agencies;
- Increased transparency in terms of resources used, decision making process as well as accountability not only from our side but also from RAMSI in terms of how the funds have been used;

Goals and aims remain the same. What changes is the way and manner in which the assistance is dissipated.

**RECRUITMENT OF EXPATRIATE OFFICERS AND ADVISERS IN THE NATIONAL JUDICIARY.**



The request for these will come from each justice sector agency as to what their needs are.

Expatriates who come to work here should have no doubt in their minds that they come to work here for us. While RAMSI may be responsible for paying their salaries etc., there shouldn't be any doubt in their minds as to their loyalty and commitment.

RAMSI's role is to facilitate their services in the country. Expatriate Officers and Advisers are recruited for their skills, experience and expertise to serve us. They are therefore accountable to us and we determine how long we would want such officers or advisers for as a minimum. Too many come for only 12 months and leave and is simply unsatisfactory. In terms of continuity, developmental goals, sustainability, training and mentoring, minimum returns are attained and achieved in such an environment.

We must be able to recruit people who can stay for up to 2 years and even longer if the need is there and we should be able to determine where they should be placed. If we want an expatriate magistrate to be based in Malaita, then we should have that flexibility. Changing the coordination of funding to the MOF will give us that flexibility to do it. Compare with CFTC funded expatriate workers, or Technical Advisers under European Union Funding.

There should be no confusion as to whose image we are rebuilding, restoring or developing.

So this inquiry and review is more about us than RAMSI. If we do not know what we want then of-course there will be confusion and uncertainty and we cannot blame RAMSI if it does not know what its role or what its purpose is here for or even confuses itself, or

somehow misdirects that assistance or aid! We should be telling them in very clear terms what we need and want to do.

### **Army and Police Contingent.**

#### **Personnel Observations and comments:**

Five Years on, the army personnel should be reduced to a bare minimum. I do not think maintaining such a huge number five years on is justified. Costs will be saved and diverted to other areas. I understand the army contingent now numbers around 200 personnel. There is no reason why this number should now be reduced to only a platoon of soldiers, which would consist of about 30 soldiers – 50 soldiers. That is all that you need now in the country where the law and order situation on the ground has been stabilized. **This will reduce unnecessary extra or excessive costs being spent on them and release more money for other sectors, including the Law and Justice Sector.**

**The Police Contingent (Participating Police Force) should be absorbed fully into the Solomon Islands Police Force.**

Reasons:

- This will mean the assistance provided is not divided and spread thin.
- Current system is not sustainable, no continuity;
- Re-focuses assistance to what it should be, to strengthen and re-build the image of the Police Force and Prison Service as a professional police force;

- Re-direct focus to actual policing issues that are central to the law and order issues in this country with all the challenges facing the country in terms of its geographical location, transport and communication difficulties etc.;
- Maximizes assistance, funds, training, equipment and every support towards the Police Force, and again releases more money towards strengthening and addressing the underlying problems plaguing the effectiveness and efficiency of our Police Force.
- Enhances and focuses institutional strengthening, capacity building and development on the SI Police Force;
- Removes image of a parallel force or dual force, while the PPF may have been justified in the last five years, that is now obsolete and no longer a relevant force in terms of addressing and dealing with the substantive issue of having an effective law enforcement agency in the country;
- Helps build the image of the SIPF, having the PPF to continue merely perpetuates the view or perception that the PPF is better and the SIPF is second class or second grade,
- On the ground (hands on) training and mentoring will be provided by experienced and senior police officers from PIF countries (we should be recruiting only the best from the PIF countries and not junior police officers etc.), there should be counter-part experienced Police Advisers at key positions working with counter-part local officers employed by the Solomon Islands Government, directly engaged as SIPF Police Advisers or Officers;
- Helps to break in or condition the public into seeing SIPF officers (expatriates) carrying weapons and eventually conditions them into seeing senior or a selected unit or members of the SIPF when they start handling weapons as part of their policing duty. When the public sees an expatriate officer, whether a Papua New Guinean or a Vanuatuan or an Australian carrying a weapon they see that he is a

SIPF officer and not a member of the PPF. The issue of rearmament therefore slowly becomes part of the SIPF again over time through this process.

- It is no longer necessary to have a separate PPF. All focus and attention should now be concentrated on getting the SIPF on full strength again.

Five years done the line, much more effort and assistance should be done and given to supporting and strengthening the SI Police Force to regain its image, its professionalism and to enable it to carry out its duties more effectively and efficiently.

The money currently spent on the Army and PPF Contingent should now be diverted and used to support the SI Police Force whether in terms of increasing their numbers or in terms of providing more facilities, equipment, housing, improving their terms and conditions etc., etc.

A handwritten signature in black ink, appearing to read 'A. Palmer', enclosed within a hand-drawn rectangular box.

Sir Albert R. Palmer Kt., CBE

Chief Justice.

**INQUIRY INTO AND REVIEW OF THE FACILITATION OF INTERNATIONAL ASSISTANCE NOTICE 2003**

**QUESTIONS AND ANSWERS – Revised.**

- 1. Could you please explain to the Committee your understanding of the legal framework of RAMSI (i.e., how it was set up, the legal basis for its operations etc)?**

RAMSI came about through the request of our Government led then by the Government of Sir Allan Kemakeza, so I understand there was a treaty between Solomon Islands and the Pacific Island Forum countries which culminated in the enactment of The Facilitation of International Assistance Act 2003 (“**the Facilitation Act 2003**”) which paved the way for RAMSI to enter the country.

Civilians and non-civilian members of RAMSI.

It is important to appreciate that members of RAMSI comprise both civilian members and non-civilians (army and PPF members).

The Facilitation Act 2003 confers special or additional powers to members of RAMSI to undertake certain duties and work in the country where necessary or as required. For instance, the army and PPF can exercise powers of arrest and the carriage and use of weapons which other civilian members of RAMSI do not have.

There are many members of RAMSI in the country who have come in without the necessity of the Facilitation Act 2003 to legitimize or legalise their activities in the country. Many examples of these are lawyers and other advisers working in Government Offices. They have come as civilians with funding under RAMSI but do not require the Facilitation Act 2003 to legitimize their activities in the country.

**2. What do you understand as the functions of RAMSI and what would you consider as the legal source of such functions – the RAMSI Treaty or the *Facilitation Act 2003*?**

**Functions:**

The Facilitation Act 2003 sets out in very broad terms the role or functions of RAMSI, which is **the restoration of law and order and security**. If you look at the articles of the treaty between SIG and the PIF countries it spells out in some more detail what was envisaged:

- A package of strengthened assistance to SI;
- A policing operation;
- Armed peace keepers;
- Program of assistance to strengthen the justice system and restore the economy and basic services;
- assist in the effective functioning of government;
- restore confidence in law and order; and
- economic recovery.

## **LEGAL SOURCE OF SUCH FUNCTIONS – RAMSI TREATY OR FACILITATION ACT 2003?**

The legal source would be comprised in the formal request made on behalf of the Government, culminating in the RAMSI Treaty and the Facilitation Act 2003. So it is all of them.

- **If, there was an inconsistency between the RAMSI Treaty and the *Facilitation Act*, which, in your view, would prevail in our courts?**

I am not sure if this is the right question to ask because the RAMSI Treaty is a government to government agreement and is binding on that basis whereas the Facilitation Act 2003 actually addresses the activities of RAMSI on the ground in the country. So I do not know whether a conflict will ever arise in that regard.

The issue or perhaps more appropriate question is whether the matter in issue is a matter which is covered by the Facilitation Act, or needed the Facilitation Act to validate it in the country.

What the Facilitation Act 2003 does for example is to provide additional legal powers to do things in the country which any ordinary visitor in the country may not be able to do. Eg powers of arrest and use of force, weapons etc.

**3. Concerning privileges and immunities provided under the Facilitation Act, what is the difference between the PNG Supreme Court matter that was thrown out as it was unconstitutional and our Constitution**

The offending article in the PNG case to put it very simply is article 3.4 of the Joint Agreement between Australia and Papua New Guinea which formed part of the schedule to the **Enhanced Cooperation between PNG and Australia Act 2004**. That article was therefore part of the law of Papua New Guinea. It stated *inter alia* that the head of the *Assisting Australian Police* shall be responsible to the Commissioner of the AFP in Australia. The PNG Supreme Court held this to be inconsistent with sections 197 (which dealt with police functions) and 198 (which dealt with the command and control of the PNG Police Force) of the PNG Constitution.

The difference with the situation in Solomon Islands is that the Head of the PPF is appointed as Deputy Commissioner of Police in the SIPF as well and so directly accountable to the Police Commissioner under the Constitution and Police Act. It therefore did not offend any provision of our Constitution in terms of command and control or police functions.

**4. If there was a reduction in the number of RAMSI lawyers working in Solomon Islands, or if there were to be a shift in the focus of these lawyers/advisors away from practicing to capacity building only,**



**what effect do you think this would have on the performance of local lawyers?**

There is already a reduction in the number of lawyers and advisers serving in the country. If there is a **further reduction**, then the answer is yes it will affect capacity building and development. In mentoring and training of skills, knowledge and experience, it occurs both inside and outside of the courtrooms. The best form of training is to have a lawyer observing and doing a hands on training in the floor of the courtroom. Many skills of the courtroom are caught or learnt by direct observation of a skilful and experienced lawyer doing examination in chief, cross examination and re-examination in court of say a criminal trial. Watching and observing a senior lawyer doing this is the best form of mentoring and training that can be passed on to our local lawyers etc. With the reduction fewer lawyers will be available to take on that role.

Capacity building occurs both ways, observing but also participating.

- **In your opinion, how much longer would RAMSI lawyers need to remain in practice alongside local lawyers before we can consider our own lawyers in public institutions as competent enough to take over the work currently headed by RAMSI lawyers?**

Our lawyers are competent enough but it is experience, training and mentoring that is needed to make them productive, efficient and effective. To produce good lawyers takes time. They can learn good skills and work habits and practices or they can learn bad habits and practices. By making available that opportunity, they can become very proficient in the discharge of their duties.

It is also important to appreciate that in complex cases, they may simply not have enough experience to enable them do a proper job. Again having an experienced and skilful lawyer in such matters will help to pass on those vital skills, knowledge and training to our local lawyers.

**5. In your view, is it time to re-arm the Police Force?**

Rearming the Police Force is a non-issue. Rearming is something which should occur naturally as the tarnished image of the Police Force is repaired and rebuilt and confidence and trust restored. Naturally the Police must be able to protect themselves and the public, and to be able to respond effectively when confronted. Having the PPF absorbed into the SIPF will enable this smooth transition and without any controversy. It will mean that the public will start to see senior and experienced expatriate officers carrying weapons wearing SIPF uniforms and help break in the perception of the public into acceptance mode rather than keeping them separate. Over time, the Commissioner of Police of SIPF and his senior officers and other trusted and senior officers will start carrying weapons and the acceptance of this will slowly evolve over time. Also a particular

response unit can be trained specifically to handle weapons and so this issue can be dealt with in a very sensitive manner rather than in a sensational, insensitive and controversial manner. It doesn't have to be sensationalized, it should come naturally over time. In the meantime the police must be well equipped in terms of other non-lethal weapons that they can use, like truncheons, batons, capsicum spray, shields, helmets, tear gas (riot gear) etc.

The focus is not rearmament but rebuilding the image of the SIPF. When that is done successfully, confidence and trust will be restored and the public will be more ready to accept the carriage and use of guns by the police. This can be done in stages and by having PPF officers appointed directly as SIPF officers then they will be seen and accepted as SIPF officers carrying guns in the first instance and help to rebuild that image of the SIPF. By having a separate PPF force on the ground that will be detrimental to the image of our police in the long run and will perpetuate in the minds of the public that the SIPF will always be second best or second grade as compared to the PPF. That distinction should now be removed.

- 6. In the beginning of your address, you spoke of the intervention being a gift and we should be thankful and accountable to God, the PIF countries and the people of Solomon Islands. How do you see our job as bringing heaven down and not hell up? How do we become accountable to God, is this a role of the Church and if so what role does the Church play?**

I agree the Church has a crucial role to play in the spiritual development of our people. The spiritual part of man is crucial to the development of man. You can have a very clever and smart man but if he is a very selfish, proud or greedy person then he can become a dictator or a tyrant. Many nations have been traumatized and destroyed through the rise of this type of personality in other countries. Many of these tyrants and dictators or corrupt leaders are the result of persons who suffer from spiritual poverty or development. The heart of the message of the Church is the Lordship of the Lord Jesus Christ. And the fundamental characteristic of his Kingship or rulership is Love. A Christian Nation will produce enlightened leaders who will truly have a heart and love for their nation.

#### **7. What role do you see traditional justice playing in the future?**

Many decisions and disputes are settled through the traditional justice system and never end up before the formal justice systems or the courts. Our traditional systems through chiefs and chiefs committee continue to function and to serve our communities and people. Many types of petty crimes and offences and even serious offences or incidents are resolved peacefully through this traditional system.

An area that we are moving into to capture is to see how this informal structure can be brought or dovetailed into the current formal justice system. The key to the traditional justice system is agreement or consent.

If however one of the parties to the dispute refuses to comply with the directions or orders of the chief or chiefs committee then the system falls down as there is no enforcement mechanism that is available like in the formal justice system.

We are looking into bringing the traditional system into the formal structure and that chiefs or chiefs committees should be recognized for the roles or part they play by the Government paying them some sort of allowances etc. for the discharge of their duties and responsibilities in the same way that local court justices and CLAC justices are currently being paid allowances.

In terms of ownership, sustainability and continuity purposes this is the way to push forward so that people see the administration of justice as not a foreign or introduced concept but something relevant and belonging to us, that it is not merely the responsibility of the courts in the formal structures but also the responsibility of our community leaders, elders and people.

**8. In your opening address you spoke of this review being more about us than RAMSI. In your view, is legislative reform needed to move us forward, to address the needs that we have ignored in the past. Could it be said that RAMSI has woken us to the need to move forward and this needs to be done through legislative reform.**

Many of our laws are obsolete. This is not a new thing. We have been aware of this all along but it is the will of Parliament to change that needs to be addressed. If Parliament focuses its mind on legislative reform may

be we will have less infighting and more pulling of heads and ideas together to address the glaring problems and needs in our country through legislative reform. An active Parliament is a healthy sign of a growing and alert nation that is aware of the needs of its citizens and working hard to ensure that the legal framework is there to address changes and effect changes.

Many of the laws that our courts deal with while satisfactory are old and have not kept up to date or on par with the changing times and in particular the demands of a modern and changing society.

Our Parliament perhaps do not realize the enormous power that is in their hands especially where the ruling Government rules with an absolute majority. They can almost do anything including changing the entrenched provisions in our Constitution.



Sir Albert R Palmer CBE