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**Date: October 13, 2008**

**Your Ref:**

**Mr. Laurie Chan,  
Chairman, Foreign Relations Committee,  
National Parliament of Solomon Islands,  
P. O. Box 19,  
Honiara.**

Dear Chairman Chan.

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

There is no doubt the positive change RAMSI has brought to our shores in terms of restoring our laws and public order. Now is the time RAMSI's mandate be properly reviewed to reflect circumstances on the ground and to move forward.

**Is the Facilitation of International Assistance Act, 2003 constitutional in that it has a valid constitutional basis?**

This is a very interesting question with which I would like to simplify it to two further questions before discussing it.

1. Was the Facilitation of International Assistance Act 2003 validly passed by the Parliament?

2. Are there Constitutional implications to some provisions of the Act when the provisions are being put to practice?

## **DISCUSSIONS.**

### ***Was the Facilitation of the International Assistance Act 2003 validly passed by the Parliament?***

Everyone knows that this legislation back to front was drafted and never properly scrutinized by our Attorney General & Legal Draftsmen. It went straight to Parliament and was passed and there we go, RAMSI. From its introduction, to its certification/Gazette, this legislation just walk through and we all know this was happening. There was every single opportunity that our parliament should have voted this legislation out or thrashed this piece of legislation shoved to us by Canberra. That was not the case, the SI parliament passed it. We owned it, we cannot blame it on Canberra to shove it on us. There is no question that section 59 of our Constitution was duly followed by the Parliament and the Governor General. This Act is Constitutionally passed.

### ***Are there constitutional implications to the provision of the Act when the provisions are being put to practice?***

Why do the Parliament allow some alleged Constitutional defects to flow through and sanction it to operate flawlessly for the past five years? The Constitutionality of the forces immunity and power of the Governor General to make regulations are clear examples. Why wasn't there any amendment when these flaws were pointed out? Attorneys and public alike wants to challenge these provisions but the thought of going back to Pre- International Assistance Act 2003 are basically unthinkable. No ordinary Solomon Islander would like to repeat those experiences. So why is this so?

The answer lies further than our Constitution which itself was meaningless during the crises. It comes from an extra Constitutional principle of Necessity.

The Facilitation of International Assistance Act, 2003 was enacted when the police force was compromised, and many functions of the State were severely affected. The law and order situation was terrible. The people were suffering, intimidated, and businesses close down. The public just want some intervention from somewhere. An intervention to restore the Constitution, the laws, and the public order. There was no remedy provided for under our Constitution or laws for an immediate action to redress the crises. An action that needs to protect or preserve some vital functions to the State. The TPA did not work out, so do other attempts. The Cabinet and the Governor General request assistance from Canberra. Our Parliamentarians pass this legislation and allow it to operate. These are bold moves. These conducts reflects desperations and therefore were necessary.

When exceptional circumstances takes place in a country and the public supports a particular move to address that circumstances without any question. Then extra Constitutional principle of **necessity** kicks in provided it is for public good. The Solomon Islands Parliament unknowingly adopts and adapts **necessity** as a Constitutional source of validating this Act and allowed its operation. Necessity cannot go on for ever. The exceptional circumstances have disappeared and necessity time diminished.

***How the Principle of Necessity usurp the constitutional responsibility of the Executive to Governor General.***

The law and order situation was out of hand. The three arms of the government, the Parliament, Executive and Judiciary operates under the cloud of uncertainty and fear. There were many occasions that individuals intimidate the leaders including Ministers

and Parliamentarians. There were some MPs who involved in the crises or any other unlawful activities. The question of the ability of the Executive to independently and for public interest advice the Governor General was called to question? The necessity comes in, the Governor General in this exceptional circumstances therefore through the collective mandate of the Parliament be allowed to make regulations. An overstep of the boundaries of the Constitution by necessity.

***What has the immunity provision to do with Necessity.***

The pre-requisite of liability, be it criminal or civil is the availability of enforcement mechanisms. For litigants to go to court without the fear of somebody showing up armed later. For one to enforce a debt and be able to collect. For one to execute writ of possessions without the fear of being shot at etc. The law that should protect the citizens, the police force that should guide the law was severally compromised. The intervention force was to put back that enforcement mechanism and to do so effectively. The question of liability was pretty much pointless during the crises let alone the immunity question. The immunity was a necessity to restore the enforcement mechanism. Now that the enforcement mechanism is back, the immunity may need to be restricted or removed.

***Way Forward.***

Let us look at this Act differently to start of with. This is legislation like no other. This was an Act to initiate stability in Solomon Islands to put us back on the road to address a social problem of a magnitude that affects the whole nation. A kind of umbilical code to enable rebirth of the nation. I do not believe that amending the legislation to rectify Constitutional defects is the way forward. Nor do I believe that retro-effect legislation is a way forward. That should only be the case if there was a fully operational

Constitution<sup>1</sup>, law and public Order before the enactment of this legislation. Rather I'd like to put it, "Now that we received our Constitution, law & order back", we exercise our powers to invoke the Constitution and harmonize the legislation with the Constitution. The practical implications of the provisions of this legislation then can now be considered. It was never a question for the past five years. This was out of necessity.

This is the time we review the circumstances on the ground and appropriately amend the legislation. Should we remove the immunity provisions or restrict them? Should we remove the Governor General's power to make regulations now that the Executive cannot be easily intimidated? What does the circumstances on the ground show. Which areas do we need RAMSI. Which areas do we need to remove RAMSI and so forth? The legislation must amend to address the needs on the ground. Let us not forget, we are in a process of recovering and asserting the mandates of our Constitution which was meaningless during the crises.

In light of my view above, I offer no substance on Constitutionality of each provision of this legislation.

#### **Personal observations.**

I for one do not like the RAMSI military personals to carry assault rifles into my village in Isabel. That is not necessary. It scared our kids and the community. For goodness sake, carry concealed weapons if the personals are too scared.

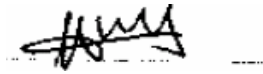
Secondly, RAMSI assist in breaking down our customary traditional dispute mechanisms. We have chiefs to address village problems and only if the chiefs' recommends or serious offences then complaints are raised to the police. This helps in the social harmony of the villagers and smooth community livelihood. Now individuals go for

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<sup>1</sup> Operational Constitution is referred to here as when the rights of citizens are protected practically on the ground during the crises. If the rights of citizens are disrespected, functions of the state are coerced or operated by individuals through unlawful conducts or ways then the Constitution is simply meaningless.

RAMSI as a tool of vengeance, because RAMSI careless of our chiefs but penetrated the community to catch whoever they want. While this scares the villagers and offers a short term satisfaction, it breeds and build hatred between the individuals and families. A recipe for future problems. Most places in Isabel's traditional dispute mechanisms were intact prior to arrival of RAMSI, and personally I'd like to see it that way in the event that RAMSI left in the future. We are here to face the consequences into the future.

Thagio Bio Fara,

A handwritten signature in black ink, appearing to be 'Thagio Bio Fara', written over a horizontal line.

Whitlam Khalegedi  
Isabel Province.