

## FRIDAY 3<sup>rd</sup> JULY 2009

The Speaker, Hon Clement Kengava took the Chair at 09.57 am.

Prayers.

### ATTENDANCE

At prayers, all were present with the exception of the Ministers for Planning & Aid Coordination; Justice & Legal Affairs; Foreign Affairs & External Trade; Commerce; National Unity, Reconciliation & Peace; Lands, Housing and Survey; Agriculture & Livestock Development; Forestry and the Members for South Choiseul, West New Georgia/Vona Vona, East Are Are, Temotu Pele, West Are Are, South Vella La Vella, East Makira, North Guadalcanal, Shortlands, North West Guadalcanal, West Makira and South New Georgia/Rendova.

### **STATEMENT OF GOVERNMENT BUSINESS**

#### **MOTIONS**

##### Motion No. 3

**Mr Speaker:** Honorable Members, I wish to advise that the Honorable Speaker is unable to preside today has received correspondence from the Honorable Chairman of the Parliamentary House Committee and the mover of Motion No. 3 as it appears on today's Order Paper that due to health reasons the Honorable Chairman is unable to move the motion today. He has however, delegated the right to move the motion to the Honorable Member for Temotu Nende.

For Members information I wish to quote from the Honorable Chairman's letter. I quote ... *'due to my ill health, I will not be able to attend the Meeting tomorrow. Therefore, I seek your permission to allow leave of the House for Honorable Patterson Oti to move the motion on my behalf. I recommend Honorable Oti on the basis that he is not only a member of my Committee, but importantly was also the former Chair of the Special Select Committee on Privileges, Immunities and Powers of Parliament and has better knowledge and insights of the contents of the report'*, end quote.

I understand that the Honorable Speaker gave his approve to this proposal yesterday and I support that approval.

Our Standing Orders does not address the situation where another Member wishes to move a motion on behalf of another. I am flexible on this as we must always try to interpret our Standing Orders with practicality in mind, particularly where it is silent on an issue. The fact that our Standing Order is silent on an issue does not mean the House is handicapped. Ultimately, the House can take any action it wishes during our sitting and it can do so by way of leave. However, whilst the Speaker and I have given approval, perhaps I should give the House the final say on this matter. On that basis, I call on the Honorable Member for Temotu Nende to seek leave.

**Mr. OTI:** Mr. Speaker, I seek leave of the House to move Motion No. 3 on behalf of the Chairman of the Parliamentary House Committee.

**Mr Speaker:** Honorable Members, the Honorable Member seeks leave. Does any Member objects to this request?

**Hon. SIKUA:** Mr. Speaker, the government side of the House has no objections to the leave sought by the Member for Temotu Nende to move Motion No. 3 on behalf of the Chairman of the Parliamentary House Committee. Thank you.

**Mr Speaker:** There being no objection, leave is granted and I call on the honorable Member for Temotu Nende to move Motion No.3

**Mr. Oti:** Mr. Speaker, on behalf of the Chairman of the Parliamentary House Committee I move that Parliament resolves itself into a committee of the Whole House to consider National Paper No. 19 of 2009 - the Report of the Special Select Committee on Privileges, Immunities and Powers of Parliament.

Mr. Speaker, as Chair of the Special Select Committee on Privileges, Immunities and Powers of Parliament during its life, I am delighted to initiate the debate on the motion that the House resolves itself into a Committee of the Whole House to debate the Report of the Select Committee on Privileges, Immunities and Powers of Parliament.

Mr. Speaker, on 17<sup>th</sup> August 2007 I moved a motion to address the issue of the privileges of this Parliament for two reasons. Firstly, to ensure immediate clarity of the privileges, immunities and powers by applying those of the House of Commons and, secondly the resolution created a special select committee, which was mandated to prepare a report to the Parliamentary House Committee for consideration and report to the House on appropriate rules and regulations for prescription by Parliament according to Section 69 of the Constitution.

Mr. Speaker, the Special Select Committee carried out its terms of reference between November 2007 and April 2009. The Committee undertook the inquiry by receiving written and oral submissions at various hearings in Honiara and through substantial research work undertaken by the Committee Secretariat. Five public hearings were held in Honiara, including a hearing held at the Government House.

Mr. Speaker, on 16<sup>th</sup> April 2009 the Committee submitted its report to the Parliamentary House Committee as required by Clause 2 of the terms of reference so that the House Committee may examine, approve and table the report in Parliament hence the present motion. The report of the House Committee and the report of the Special Select committee were tabled together on Friday, 19<sup>th</sup> June 2009.

Mr. Speaker, before going into the issues which support the current motion, let me outline some historical backgrounds to parliamentary privileges for the benefit of Members. Mr. Speaker, the battle for rights and immunities of Parliament started in the early fifteenth century in the House of Commons, United Kingdom. At that time the House of Commons was subjected to continued threats from the monarch in terms of its role and authority.

Mr. Speaker, in the seventeenth century, members of the House of Commons were imprisoned by the King when he was offended by what he considered to be seditious words expressed in Parliament. It was also, incidentally, the last time that a monarch set foot in the House of Commons.

Mr. Speaker, a civil war ensued which resulted in the beheading of the King as a result and over time parliamentary privileges were entrenched as part of the constitutional framework and parliamentary law and practice in Great Britain.

Mr. Speaker, the passing of Article 9 of the Bill of Rights gave statutory force to privileges which had been claimed by the House of Commons. An author recently noted therefore and I quote, "that the conflict between Parliament, the Executive and the courts over parliamentary privileges was political in origin and not legal. Parliamentary privileges can be located within what has been called the 'rough' doctrine of separation of powers that operates in Westminster parliamentary system. The fundamental rights of the House of Commons were asserted against the prerogatives of the Crown and the authority of the courts. The assertion of privilege was a declaration of its independence from the other branches of government".

Members may also be aware that parliamentary privilege is not about member's entitlements or benefits, but rather it is a term that describes the sum of peculiar rights enjoyed by the House collectively as a constituent part of this Parliament and by Members individually to allow them to discharge their

functions. The essence, therefore, of these rights is to preserve the freedom, the authority and the dignity of Parliament. The privilege of Parliament essentially belongs to the House as a whole. Individual Members of Parliament can only claim privilege to the extent that some actions proposed or otherwise, would impede them in carrying out their duties as members of the House. It is not available to members for their personal benefit but to enable them discharge the functions of their office without fear of civil suit or criminal prosecution. Like all such rights, there is an overarching responsibility on Members to use such powers and privileges wisely and for the good of the nation.

Mr. Speaker, privileges for a legislature have been justified in law on a number of grounds:

- that a legislature must enjoy an autonomy from control by the crown and the courts (an aspect of the constitutional separation of powers).
- that it must possess certain powers to facilitate the carrying out of its functions, and
- that its members and others participating in its proceedings must enjoy certain immunities, if the legislature is to discharge those functions effectively.

Mr. Speaker, parliamentary privilege is therefore designed to remove any impediments or restraints to the legislature going about its work and to enable it to deal with challenges and discharge its authority in more direct ways. Mr. Speaker, in the case of the Solomon Islands Parliament, at independence in 1978, no attempt was made to comprehensively codify the inherent privileges. It was not until the recent legislation that the matter was made clear.

Mr. Speaker, the parliamentary immunities and powers that existed in the House of Commons as at 7<sup>th</sup> July 1978 and which by virtue of the 2007 Act were made applicable in Solomon Islands and which merit further consideration by Parliament are as follows:

- (a) Freedom of speech
- (b) Freedom from arrest in civil case
- (c) Exemption from jury service
- (d) Exemption from attendance at a court of tribunal as a witness
- (e) Exclusive control of the proceedings of the House
- (f) Control of reports of proceedings of the House
- (g) Control of access to the sitting of the House
- (h) The power to conduct inquiries and call witnesses
- (i) The power to order the production of documents

- (j) The power to maintain the attendance and services of its Members
- (k) The power to control the precincts of Parliament
- (l) The right to administer an oath
- (m) The power to discipline for contempt
- (n) The power to discipline members
- (o) The power to suspend a Member
- (p) The power to expel a Member which exists in the House of Commons is in all probability limited by the current Constitution of Solomon Islands
- (q) The power to imprison.

Mr. Speaker, before that Act was enacted in August 2007, parliamentary privileges were available to our Parliament through the Constitution, and this is recognized in the Standing Orders and in various pieces of legislation. This position however remained unclear and on occasions became part of certain contentious issues that the courts had to deal with. The 2007 Act settled any question on the existence of privileges but it was up to the special committee to provide final clarity on this matter.

Mr. Speaker, during the inquiry the Committee considered four different approaches to the issue of parliamentary privileges for Parliament to consider. The first approach suggests the status quo, and that is doing nothing with effect that privileges are left as they are and apply to our Parliament following the enactment of the 2007 Act. This, of course, may involve constant interpretation and reliance on how the House of Commons applies its privileges. The second option Mr. Speaker, recommends the codification of certain key privileges in the Standing Orders but leaving the rest as they currently are. The third approach envisages clarifying privileges through a Guide whilst legislating in certain specific ways. The Committee felt that the advantage of this approach was that key privileges are codified whereas the rest are left in their current flexible state but with clarity on application, limitation and so forth by way of the Guide.

Mr. Speaker, the fourth approach would see legislating for all privileges. The risk of taking this approach, however, is that it opens up parliament privileges to interpretation of the courts – a situation that clearly defeats the purpose of privileges, and which is also highly susceptible to abuse (for instance to disrupt parliamentary processes and business).

Mr. Speaker, the Committee recommends the third approach, and that is the semi-legislative one and the recommendations of the Committee should be considered in light of that principal recommendation on which all the other recommendations are made.

Mr. Speaker, the Committee strongly supports the recommendation for the formulation and adoption of a Guide Book on parliamentary privileges. This would not only assist Members, especially new ones, to quickly understand the issue, but it would also capture many of the sub-rules, limitations and exceptions in respect of each privilege, immunity or power that are set out in chapter four of the report. Mr. Speaker, such a Guide needs to be developed and approved by the House Committee before it is tabled in Parliament for its consideration.

Mr. Speaker, we received a great deal of evidence from expert witnesses and I would like to thank them and mention particularly, His Excellency the outgoing Governor General of Solomon Islands, Mr Speaker, yourself as the Member of the House Committee and the Committee and the substantive Speaker, Mr. Speaker, the Clerk, the Deputy Clerk, and the Secretariat staff of particularly Secretariat to this particular Committee. Special mention must be made also for those who assisted us from outside, in particular the former Clerk of the Legislation Council, Parliament of New South Wales, and Law Professor Don Peterson and Mr Joseph Foukona of the USP law school in Port Vila, the UNDP Project Manager and the UNDP Parliamentary Strengthening Project. Mr. Speaker, their attendance was made possible under the UNDP Parliamentary Strengthening project and through additional generous additional funding provided by the Commonwealth Parliamentary Association or (CPA). In this regard, Mr. Speaker, and on behalf of the Committee, I wish to sincerely thank the Secretary General of the Commonwealth Parliamentary Association, Dr William F Shija. Finally, but not the least Mr. Speaker, and most importantly I would like to thank the members of my Committee who are drawn from both sides of the House, for their support throughout the inquiry. I would like to thank them most sincerely for their contribution and their commitment and support to this inquiry. I am confident that members of the Committee will be pleased with the results, findings and recommendations made herein, Mr. Speaker, I beg to move.

*(The floor is now open for debate.)*

**Hon. HILLY:** Mr. Speaker, I would like to contribute to the motion on the Paper before Parliament this morning.

At outset, I would like to congratulate the Committee for the effort put in producing this report. It is a report that tries to define what powers and privileges should be practiced or accorded to Members of Parliament when they are Members of Parliament.

My only disappointment is that this report was thrown on me just before Parliament starts this morning and so I did not really have much time to study it

and therefore will be unfair on my part to try and pretend that I understand the report.

Mr. Speaker, just browsing through the report very quickly, it talks about amending Standing Orders to provide for certain aspects of the report. Again the Standing Orders are also yet to be discussed and finalized. Therefore, these two documents have to be treated together so that there are some connections made so that everybody understands the powers and privileges and whether they should come in as an act of Parliament or become part of our Standing Orders.

Mr. Speaker, as you know, Members of Parliament are not only legislators, but they are also now becoming development officers of the various constituencies. In Solomon Islands, the role of parliamentarians is also changing and therefore we have to look at the powers and privileges of Members of Parliament in a changing situation or whether it is wrong to become a development officer and a legislator at the same time, in which case we have to rule out the line somewhere so that a Member of Parliament is only a legislator and not a development officer.

Mr. Speaker, as I said, very unfortunately that I did not have time to look at the report. It is a very important report as it deals with the powers and privileges of Members. At this point in time those privileges and powers are for those of us who are sitting now in this Chamber of this Honorable House, and it is also for Members of Parliament in future as well.

I think it will be fair and just for the report to be properly understood by Members of Parliament before we go into the Committee of the Whole House to look at the various recommendations made in this report.

**Mr Speaker:** Before another Member speaks, I just want to remind Members that the report was tabled on the 19<sup>th</sup> June 2009 and distributed to all Members in their pigeonholes on the same date. Thank you.

**Hon. LILO:** Mr. Speaker, I also wish to join in the debate of the motion moved by the Member for Temotu Nende on behalf of the Chairman of the House Committee. Mr. Speaker, thank you for clarifying that the report was actually tabled some days earlier. In fact, I just got the report this morning too. I was going to fall into the same trap of the Minister of Commerce, but thank you for clarifying that.

Mr. Speaker, it is quite an extensive and a well written report, I must say. Just taking a cursory glance into the report, I thought it was a well written report. The set out of the report provides a good guidance for readers to follow through logically the ideas that have been presented and therefore in this regard I have no doubt at all in the way the report has been written and the message it intends

to present to us. Therefore, I just want to congratulate the members of the Committee who have been involved in conducting the inquiries, the hearings in coming up with this report.

Just turning to page 2, I would like to individually congratulate the committee members on page 2. Your photos look really nice, except that it is black and white. Had they been colored photos it would have been a splendid edition to the outfit of this report, including yourself too, Mr Speaker, you look very, very splendid indeed in the report.

Mr. Speaker in terms of the organization of the report in itself and the organization of the work of the Committee, I am quite impressed with the selection of people or experts that have been called upon to give evidence and air their views to the Committee in the process of you conducting the proceedings of your hearing. They are people of very high eminent standing in the community, in the country, in the field of professions that relate to this particular subject that we are talking about; the rights, privileges and powers of the legislature. In that respect, I wish to congratulate the Committee for the way you have organized your work as well.

Looking through the references of the report in itself, it is a very much an in-depth reference to the subject involved. It can be seen that some of this report even traced back to some of the early literatures in the eighteenth hundreds, for instance, that relates to the early development of how the parliamentary system operates in the United Kingdom. It was eloquently presented by the honorable mover when moving the motion as to when the monarch ceased to be part of parliament, and very interestingly too that it marks the time when the monarch was beheaded. I do not know why some Members of Parliament did not want to attach themselves to the monarchical rule trying to push for republican agenda, but it sets a very good historical background to this whole subject, and I am so impressed.

The report started off with two distinctions, which are the privileges and powers that are available to the house collectively versus individual member, which I believe is a very foundational distinction of how the privilege operates in any legislature based on the Westminster system. One is that relates to Parliament as a collective body to us collectively and the other one relates to the powers and privileges relating to individual Members. We have to draw distinction between those two things. And I am pleased that that distinction is made right at the outset of the report so that it sets our mindset, it sets us to fully understand what it is that we are talking about here, what are the rights and privileges of this House, the House that belongs to the people, the house that belongs to this country and the people of this country who elected us to represent them in this house and what are the rights and privileges of us as

individual Members of Parliament performing our constitutional duties, discharging our responsibility in this house. This is very important because sometimes, even our own constituents, our own members of our constituents, the public at large, sometimes mistaken us in that regard. They have mistaken us as collective members of the house versus us as individual members. And therefore sometimes when they make statements or react to anything we are doing in here, individual members are targeted and individual members become victims of certain decisions that we are doing in this house collectively. We need to draw the distinction on that and make our people to understand it too because if we do not do that then our people will still have the misunderstanding of the role of parliament, what are the powers and privileges available to parliament as a collective body versus us as individual members.

Further down the content of the report there is specific recommendation on coming up with the code of conduct of Members of Parliament that directly hinges on the individual rights as Members of Parliament, both within and outside of Parliament. It is how we conduct ourselves inside and outside of Parliament. These are the things we need to properly devise so that they can be explicitly stipulated inside any amendments that we are going to cause to the Standing Orders of the house.

Why I dwell too much on these two things is simply because of this. The dignity of the house and the dignity of us as individual members are two separate things and sometimes we cover ourselves under the collective entity of this Parliament whereas some of these actions link directly to our own intention, our own motives, our own hidden agenda and yet we are using that collective immunity of this house to hide. At the same time those who are outside looking into this house sometimes are mistaking us too for exercising our collective responsibility together this house as legislators are also taking us wrongly too. And so as soon as we go outside, some of them come and pull our hands to go to some corners out there or they do something to us or stones come flying to us and so forth. These are some of the misunderstandings that people have on us and so we need to clearly draw the distinction and at the same time we have to educate our people about these differences as well. Because understand how we are going to operate ourselves in this house under the privileges and the powers vested on us is so critical to us advancing the whole democratic development in this country. Because if we do not, then we will continue to go through the same kind of situation we are facing now.

One interesting recommendation here that I would like to point out is in relation to the freedom of expression, the freedom of speech and the rights of an individual member inside this house in the context of the new development that we are trying to do at this time. For instance, the push for us to try to instill

integrity, stability by regulating the association of individual members to some kind of a party but at the same time in this whole body of literature that we have here, debating the privileges, immunities and the powers of the Members of Parliament we are saying, no, individually they have the right to express their views in this house. In this literature in here we are saying that they have the right to express it in this house, but then here comes another argument in our finding to instill integrity, stabilizing the situation in parliament, we are saying, no, we have to regulate too what an individual member is saying in this house otherwise he is talking against certain factions in the house which might cause unfavorable environment in the house leading towards instability and therefore this kind of thing should be stopped. But in this literature here, it is saying it should be promoted as it is a good thing, it is a good democratic outcome and a good democratic value. That is what we are saying in this body of literature here. And so it is a very interesting case, it is a very interesting case. Here we are wanting to provide privilege to individual Members to express himself/herself in this House in the way that may be his constituents want him to come and express it in this House, but at the same time we have another part too and that is we are trying to say no, we should not be doing it this way because once we give freedom to individual Members we are causing instability too inside this House, inside Parliament.

Let us think about that. We have to think seriously about that because it has direct interface on us as individual Members and our relationship to this House too. It has that direct interface. But I believe and I am inclined to lean towards what this literature here is saying, and that is for us to have a healthy exercise of our function, it is healthy for us to give and that is why we have to have rules, privileges and rights properly defined in the context of our Standing Orders and whatever rules and orders we pass in this House to enable us to effectively and democratically discharge our responsibilities, including expressing our own views on issues and matters affecting the governance of the country, national development in the country, and a whole lot of public goods and interests affecting the lives of our people and the people we represent in this House. So think about it in that context.

I am just raising these issues in the context of us debating recommendations contained in this report because it is a good thing. This will be the first time, Mr. Speaker, and one thing we should welcome about this particular report is that this will be the first time since we have imported other rules upon attainment of independence as part of the importation of our constitution in this country that whatever that has been practiced in the United Kingdom and the Northern Island also applies to us here under the general rules of application. Now, this is the first time that we will have to make our own

rules and orders, and so let us make it right otherwise we just allow ourselves to pick something that looks good in its face in the way it is written in the literature but its real application is not right.

Mr. Speaker, if you look at the way the arguments are presented in this report, it is really convincing. I am sorry that I could not follow my colleague Minister of Commerce to express support or not on this report. By having a glance through the report, I thought it canvases major issues, principles and aspects relevant to the way that privileges, powers and immunities of Parliament relating to individual members is a concern.

In that regard, Mr. Speaker, I support the motion, and this is for me personally because as a Member of Parliament, whatever we will come up it is important that we have some kind of privileges. Because if we do not have it, we will be subject to some kind of scrutiny from outside, because we say something in here, we express views in this House. For instance, just yesterday the Leader of Opposition expressed good concerns about our judiciary in the context of the Evidence Bill by qualifying himself in a very professional way to say that yes, we believe the judges in the way the Evidence Bill is presented, but we must know too that they are only human beings too. They are just human being. There are judges who committed some of the worse crimes around the world. Some have been convicted for perjury, some for child abuse, and all sorts of things. And quite rightly the Leader finds a way in trying to qualify the way he is making that statement. Why? I am just using this as an example to show that that is the kind of argument normally made in this House. And so we need good protection to say it and we have to say it in a logical way.

Mr. Speaker, it is a good thing and I think we should support this report and allow it to move forward so that we can come up with a set of rules or orders that will clearly define the privileges and immunities available to Parliament and Members of Parliament as well.

With those remarks, Mr. Speaker, I support this motion. Thank you.

**Hon. SOGAVARE:** Mr. Speaker, I too would like to join my two colleague Members Parliament and Ministers of the Crown who have spoken to this Motion. The motion is clear, its intention is very clear in that it wants the Parliament to resolve itself into a Committee of the Whole House to consider National Paper Number 19 of 2009, Report of the Special Select Committee on the Privileges, Immunities and Powers of Parliament. So the intention of the motion is noble and very, very straight forward. If we have, I guess, issues and concerns that we want to raise, the opportunity is given in the committee of the Whole House to express those views. I think that is the whole purpose of getting this report to be considered at the Committee of the Whole House. And so I would

like to render my support right from the very beginning and join the Minister of Environment who has just spoken and taken his seat.

In doing so as well, Mr. Speaker, I would also like to may be just reflect on some of the views they have expressed and fully endorse the views and thoughts they have expressed which are very relevant to the issue we are discussing as put out in this report.

If there is any report, Mr. Speaker, that needs the full support of this House then it is this one, as it is to do with our privileges, immunities and powers. This should get the full support of the House. In fact before the coming into force of the 2007 Act moved in here to define our powers, immunities and privileges, the powers and privileges that we assumed to have before the coming into force of the 2007 Act are not there, we do not have them. All the parliaments that started in 1978 up to 2007 when we came up with an act to define our powers, privileges that we assumed to have, we do not have them. And so we are in quite a vulnerable situation. The question that will be posed here is what would happen to the defamatory statements that were made prior to the coming into force of the 2007 Act.

We were lucky that people did not actually challenge us in court for the big statements that were made, and some were very defamatory statements. Not one has actually taken them up, may be they do not know about their rights, they assumed that we have privileges, in fact people who speak in Parliament always assume that we have privileges and immunities to make those statements that we do not have. Therefore, this report and what it is leading to is something that all of us, every Member of this House must support so that we formalize the powers, privileges and immunities that we think we have, and of course we have regularized that in 2007 when we adopted the powers that the House of Commons has in Great Britain. That is on the support of this Paper and what it is leading to, and I would like to encourage all of us to look at it that way.

Sir, I think to be a Member of Parliament everywhere is a job that does not need a set of qualifications to get it. It also does not have a set time and number of hours of work. In fact, it is a voluntary job. We go and present ourselves to our constituents telling them that we are fit to represent them in Parliament. We contest against other people who are also saying that they are better people to represent our people too in this House. The very fact that people cast their votes on you and on me, all of us in here is already a very important privilege that we come here as representatives of our people.

What this Paper is eventually leading to is quite important because we are here on representative capacity, and we are not here to represent ourselves. That is a very, very heavy responsibility; we are representative somebody else who cannot come and stand up in here and express their own views. The

responsibility that is placed upon us is quite heavy, and so it is important that we come here and perform the functions of Parliament and what is required of us as Members of Parliament.

I am saying this because very, very lately I think Members of Parliament, all of us, are beginning to be complacent and may be weak when it comes to exercising responsibility as Members of Parliament. Recently the number of meetings has improved a bit because the Constitution only says at least one meeting in one year. That is not only really tasking, putting heavy burden on Members of Parliament if it is at least one meeting, but we have had several meetings now. In fact, that is the only thing we are elected to come and do. I think the weaknesses we are now seeing where MPs are starting to be relaxed, not taking seriously our responsibility as Members of Parliament is something that should be a real concern to the people who voted us into this Parliament.

I am pleased with the work the new Chief Whip of government is doing now in whipping people to come inside Parliament and we see some improvements in the attendance to meetings of Parliament on the government side. I congratulate him for that work and the wisdom of Cabinet and Caucus for giving him the job. I guess that is the kind of thing we are talking about; seriousness.

Also, Mr. Speaker, we are custodians of people's trust and so it is important that our privileges, powers and immunities that we are entitled to are really defined as people who are custodians of the trust put on our shoulders by our people to come and represent them in this very important House.

I listened to what the Minister of Commerce and former Prime Minister said, and he is quite right in that while we are dealing with the privileges, immunities and powers of individual Members of Parliament, we also have to look at the environment we are exercising that responsibility as Members of Parliament and the evolving role of Members of Parliament. The decision, as rightly pointed out by the Minister of Commerce is whether to formalize that. May be we really need to define the role of Members of Parliament as he rightly pointed out or we just need to say that we are legislators. And I would like to believe that we are first and foremost legislators, and that is why when parliament meeting is called, full attendance of MPs is required; we must come to support the sittings.

The government is tabling almost 13 bills this time round, and I want to see the government bench in this House packed because that is the first and foremost responsibility placed on our shoulders; because we are lawmakers. When parliament is not called, you can do the other responsibilities the Minister has pointed out.

I think the concern is right because the evolving role of parliamentarians is more becoming project directors and project managers in constituencies, and very often not driven by real concern for development. This is more motivated by "the next election I must win again". That is really what is driven and is motivating those assumptions of responsibility by Members of Parliament. I am saying this because the system is already there. The point made by the Minister of Commerce is that right now there is already a delivery mechanism set in place. I think what we are doing is that we carry forward some hangovers here. When things like the RCDF and the direct involvement of Members of Parliament in the constituency were thought of, when they came up with this thinking, there was genuine reasons for that because the funds that were directed to the provincial government system did not reach the people in the rural area. It got stuck there, eaten up by administrations and nothing is really addressing development, and so our leaders at that time came up with a system that creates another service delivery body, and in the persons of Members of Parliament. And so we establish this fund and it is increasing in amount. Members of Parliament become more involved in ensuring the projects happen because we become directly responsible of delivering projects and services to our people.

At some point in time we really have to decide. May be a good opportunity is right now when this report is looked at now, when we look at all the recommendations there, may be the recommendations should actually define the role of Members of Parliament, and we stuck there. This will make our people to know that our role is only here in Parliament and we inform our people that the delivery mechanism is like this and that so that it is clear to them so that they do not directly hold us responsible. They judge us on how we perform our roles inside Parliament as lawmakers and participate in select committees and in other parliament programs. That is one point. And picking from the comment made by the Minister of Commerce whether we need to seriously go down that direction and really define our roles as Members of Parliament, as lawmakers, as full time employees of Parliament, and not project directors and project coordinators or whatever in our constituencies. I would think that there is a lot of merit in what the Minister of Commerce has said, although he did not read the report.

Following from that, Mr. Speaker, the important supporting issues we need to ensure is a fully functioning Parliament with its members fully conscious of what our roles are in Parliament. I think that also brings up the concern that the Minister of Environment raised whether we want a stable Parliament or a rigid Parliament. There is a very big difference between these two words. When we want a stable Parliament we do not need to go as far as legislating the conscience of people so that they associate this way or that way. That is too

rigid. You get the law in now and force people on how they should think, legislate how they think, where they move and how they associate. That is too rigid.

If you want to address a stable Parliament, I think there is a shuttle way of doing it. We should address issues that really cause instability in Parliament. And that is simple if we sit down and analysis what is causing stability in Parliament, you can almost count 1, 2, 3, 4 and there is no need to come up with a legislative framework to address a stable parliament because Parliament is really about us, we, you, all of us here and so if you want to be stable we can be stable. But may be the supporting institutions, administrative arrangements, structural arrangements, is all it needs to get a stable parliament.

If we look at the constitutional amendment that has come through, there are some amendments there that make a lot of sense. We need to tear it down to find out which one really addresses a stable parliament and which one is aimed at coming up with a very rigid Parliament so that we only take the areas we feel we need to attend to that will address a stable parliament. And I am referring to things like shadow ministers, parliamentary secretaries, select committees of the house, improve the remunerations of Members of Parliament so that shadow ministers have the same logistics and support as Ministers. Put that and you have a stable Parliament because that is the only thing that made people to run away to the government for because there is nothing there for them. We are working because of love, those of us up there. I guess it is a commitment to this nation that we continue to be there. These are issue that we really need to seriously think about and the directions we want to go.

Sir, I really have no problem with this report and I really commend it. In fact, I want to congratulate everyone who is involved for the very professional work put into this report. The amount of work and the quality of materials made reference to is very high and demonstrate a high degree of professionalism. It is something we should be proud of as Members because these are all colleagues of ours and are not people from outside. No, these are all Solomon Islanders are all sitting down here, and only a few are absent from the House. They have done a splendid job by coming up with 25 recommendations. I think that is what they want to do, they came up with some serious shot that this is the direction they want us to go and they made recommendations 1, 2, 3 up to 25. When this report reaches the committee of the whole house, we will sit and look at the recommendations they have made the directions that they want to take us to.

Mr. Speaker, I have nothing more to say on this report and I fully support the intention of this report.

**Hon. GUKUNA:** Mr. Speaker, I also want to join my colleagues who have already spoken to thank this Committee, in particular the Chairman himself who only made his picture in color and every one in black and white in this report, which is very selfish apart from the fact that he raised a very good motion and we have this very nice report.

This report is addressing a situation that has been inexistence in this Parliament for almost 30 years, which has been working until all of a sudden 29 years after, it somehow did not work. But if you remember the year was 2007, that year was the year of the devil, if you can excuse me for saying that, but there was a lot of political infighting in this house. There was motion after motion and I believe the context to this motion was that there were some disagreements between the government, the opposition and this house. What really happened in that year 2007 was that there were some fighting about motions and motions of no confidence. So the real context to this was not about privileges and our ability to talk.

Sir, we have been talking all the time, we can say anything we want, but the real context to this motion that was there was a struggle about whether a motion is qualified to be tabled or not. That is how this motion came about in August 2007. It has been extended to cover our privileges on what we talk about. As you know, Mr. Speaker, not anyone in this house has been taken to court yet for mouth fouling anybody inside or mouth fouling anybody outside, not yet. Whilst this report is very good, clearly defined being extended to the privileges of what we can say in here, the real intention was to stop the judiciary and parliament from playing around with motions whether it is qualified or not qualified.

Again, what happened between the judiciary and the Speaker at that time was that there is the need according to this motion to clearly define our privileges and powers. I hope after we pass this report today it will lead us to improve our debates. I do not know how it will make us improve our ability to make laws but our ability to make laws has been there for the last 34 years now. I hope this report will stop the power struggle and the continuous refusal of motions of no confidence in this house because that is really what this motion is trying to address. I hope it will make us behave to accept the right to change government according to the procedures of this house and will stop us Members of this House from hunger for power. Whether we pass this report, effect or not, it comes down to us, the MPs that if we continue to play up, if we continue to hunger for power and using all means to give us power, this motion will not be of any use.

Whilst I appreciate this report and the enormous effort put into it, I also think Members of Parliament should respect it, abide by it so that we can make the

intention of the motion of use to us and of use to this House instead of us just passing it for the sake of passing another report. This is my short comment, Mr. Speaker, and I fully support this motion.

**Hon. FONO:** Mr. Speaker, I will be very brief in contributing to this motion. From the outset, let me thank the MP for Temotu Nende for spearheading a motion that was moved some years back to set up the Special Select Committee to look at the privileges, powers and immunities of Parliament, which as a result came up with this report that we are now debating. I must congratulate him and the members of his committee for a work well done in presenting this report to Parliament.

Mr. Speaker, Section 69 our constitution states that Parliament may prescribe the privileges, immunities and powers of Parliament and its members. Yet over the years, since independence, there are no such prescriptions except for the Parliamentary Entitlements Regulation set up under the Parliamentary Entitlements Commission in terms of the remunerations of Members of Parliament. However, the other areas relating to privileges, immunities and powers are not put in place by successive parliaments. Therefore, I must congratulate our Parliament this term for seeing it fit in coming up with this report.

Mr. Speaker, when I look through the report and the recommendations attached to it, I tend to think it needs further work to develop the recommendations into actual guidelines or rules or regulations that Parliament can adopt. It therefore raises the call for the whereabouts of the code of conduct that the Parliament House Committee has been working on. It is very important that the ethical code of conduct of Members of Parliament must come out as rules or regulations to conduct the behavior of Members of Parliament not only in the Chamber but outside as well. Being national leaders we should be responsible. It does not imply some of us may be acting irresponsibly but who knows in future houses. That code of conduct is very, very important and I see it as one of the recommendations in here, Recommendation 21 is very important that the Committee should be allowed to further come up with the code of conduct for parliamentarians so that they are adopted as rules or regulations of Parliament so that future parliamentarians can be assessed based on the code of conduct of Members of Parliament.

This is also very important so that when we go to the polls, those guidelines or rules can be weighed against candidates, whether a candidate meets those guidelines to represent his/her people in this House or not because the dignity and integrity as Members of Parliament should always be upheld and should always be respected. I reiterate again the importance of the

recommendation on the code of conduct, like other previous speakers have said is very, very important that we have it so that we can be assessed against as well as future Members of Parliament who are intending to contest can also be assessed against whether they meet that standing in the communities, whether they meet the code of conduct or guidelines in representing their people.

Mr. Speaker, I also see here Recommendation No. 7 - freedom from arrest in civil cases. May be civil cases, however, in criminal cases I know that no one is above the law, a famous saying that some of us always say in this House. Whilst we may call for privileges or immunities not to appear in court during the term of parliament, it is important that we are not seen as being given special treatment from our ordinary citizens in the sense that we can be seen as being above the law. No, Mr. Speaker, as responsible citizens there must be some equality in terms of our rights so that we are not seen as being above the law when it comes to appearing in courts or facing charges in court.

But I understand that in some democratic countries, cases against Members of Parliament are pending until they lose their seat. In a way, this is giving respect and dignity to a Member of Parliament because when a Member is elected by his people, the trust and confidence of his people is given to the Member, and for a Member of Parliament to appear in court or face court proceedings whilst still being a Member does not reflect well on his people. That is why it is important for this recommendation to be pursued.

I say this because in 2007 being the Leader of Opposition then, I almost went to prison over a politically motivated summon given to me. But that has been passed, that was history. Mr. Speaker, it is very important that such a recommendation is further pursued giving immunity or privilege to Members of Parliament not to appear in court when they are still a member. Maybe after they lose their seat or maybe after their term is finished before they can be prosecuted. I see that as important.

Mr. Speaker, the other recommendations in terms of the Standing Orders is very important. As highlighted in this report, there have been a number of recommendations calling for modernization of the Standing Orders. May be the House Committee should also allow us to look at the draft Standing Order that is distributed to us so that we modernize or update the current Standing Orders to address certain weaknesses or certain areas that need to be improved.

Mr. Speaker, this report is very, very good for us adopt. Maybe the Committee should move another motion requesting another special committee or mandate the House Committee to further pursue these recommendations so that the actual privileges, immunities and powers are spelled out to be adopted as guidelines or rules and regulations for Parliament. I see that as very important rather than just tabling this report and no further work is done on it.

With those few comments, I support the motion.

**Mr Oti:** Mr. Speaker, I thank the Ministers and the Leader of Opposition for adding their comments to the report, particularly in relation to the motion moved this morning. Yes, Mr. Speaker, the House Committee and Parliament in this process take note of some of the issues and some of the concerns raised by speakers and all of those who supported the motion.

Mr. Speaker, indeed for purposes of record and for the future work of the House Committee that once this report is adopted by Parliament through the Committee of the Whole House, yes the Committee recognizes and as you can see from the report, the powers and immunities mentioned in the report and the cases that have gone before the courts, and the situation that arose, particularly in 2007, basically was the culmination of processes whereby decisions of Parliament by the presiding officer have been taken out of Parliament and put to the courts. Basically by doing this, we will be trying to ensure to limit what goes to the court and what belongs to the House must be drawn and must be guided through a guidebook as mentioned in the report on the one hand and the others can be accommodated through the new Standing Orders, which is now also being circulated.

Mr. Speaker, make no mistake to think that these immunities of Parliament is license for you to commit any crime or something. You are not protected by this parliamentary privilege outside of the precincts of Parliament. That is absolutely not the intention, neither the purpose. Neither will it ever be designed to protect you as an individual if you are going to go and use these as a license to commit what we want to do outside of Parliament. Even within the floors of parliament, the precincts of Parliament, I do not think this is also giving you the license to kill anyone inside the floor of Parliament. Mr. Speaker, you will continue to be subject to the rules. This is for purposes of enabling Members of Parliament, individually and collectively to discharge their functions as representatives of people that elected them. Full stop, no more no less, and so do not take it take it out of context.

Yes, one of the main purposes is basically to stop continually referring decisions of the House to be tested in courts. As the introduction I made today, the separation of powers must continue to remain where they are supposed to, and not for any of the three arms of government impinging on the powers and limitations placed by the Constitution on their powers.

Basically I think for 30 years for many reasons, Section 69 of the Constitution has never been invoked but events leading up to 2007 made it that there must be a codified privileges and immunities, powers of Solomon Islands as applied in Solomon Islands.

Mr. Speaker, finally on the evolving nature and perhaps member of the legislature, Solomon style, is one thing and the other, the report and the references made herein in the report are basically on the context of parliament as a legislature based on the Westminster model, and not on the evolving nature or the role of a Member of Parliament Solomon style not yet. If we want to do that, maybe it will come another time. But on that score, these are not all by design. I moved a motion in 2007, in 2008 I also moved another motion on constituency funding. If you look at the two motions, actually I was trying to separate and make policy and legislator totally different from project officer or accountant or something. Those two motions, if we do not read them, are exactly what we were trying to do or I was trying to do by separating that role so that they go in their own directions and maintained, because it is not only these that we are going to consider. We are just inheriting the system, but a whole lot of them, you just cannot break one part of it in the middle and then forget about the rest. It is either it or no and therefore these motions are important.

All motions that come to the House must be examined properly and taken in the context of what is happening and whether or not in future we want to have a system that is truly Solomon Islands or a cut and paste of another situation elsewhere and put in here or let it evolve in accordance with our culture, with our tradition and with our environment.

That said, Mr. Speaker, I thank all the contributors once again and I beg to move.

*The motion is passed*

#### Committee of the Whole House

**Mr Chairman:** Honorable Members, the Paper before this Committee is the Report of the Special Select Committee on the Privileges, Immunities and Powers of Parliament which was presented to Parliament on Friday the 19<sup>th</sup> of June 2009.

Before we go through the Paper, I wish to remind all Honorable Members that while I will allow discussion on all details contained in the Paper, I will not put any question or allow any amendments in relation to the paper. I propose that we go through that Paper page by page, and we shall start on page 12 Chapter 1.

*Pages 12 to 16 – no comments*

Page 17

**Hon. Sogavare:** Mr. Chairman, the Attorney General is not here but maybe the Chairman of the Committee and the Committee probably has discussed this, and this is on the point I raised earlier during the debate. What would happen if any one takes a case against any Members of Parliament before the coming into force of this legislation we passed in 2007 which defines our immunities and privileges and attaching it to the House of Common practice in the United Kingdom? Mr. Chairman, if anyone can remember whether they are only covered after 2007 and they have a case against them or they remember that somebody has made a statement in this Parliament that is defamatory in nature and decides to take it up? What would happen in such a situation?

**Mr. Oti:** Mr. Chairman, just for the Leader to indicate where our story starts, whether on page 17 or page 16?

**Hon. Sogavare:** Mr. Chairman, it is a general question that I have on this whole exercise.

**Mr. Oti:** Mr. Chairman, actually the report as reflected on page 17 contains a bit of historical background of parliamentary privileges in Solomon Islands, and therefore the Committee's consideration on this matter, particularly on the background report is really part of the report. But in terms of us falling under our terms of reference so that we question or look into these cases, I think that fell outside of our terms of reference. But the question raised by the Leader of Opposition would best be considered when we come to the immunities which apply ultimately then of course that question can be raised in relation to what happens with the cases prior to 2007 or for that matter even this one here. Because any new code will probably, as we see in here, even the 2007 Act is full legislative law. Now the proposed new law is going to be semi-legislative and so it is not going to be even like a full text of the law, like the 2007 text which will be subject to court interpretation.

Mr Chairman, our view and as our recommendation shows, certain parts of it that appropriately can be captured in the Standing Orders will be those that cannot and should not and rightfully can be tracked to the legislative process or become law will remain so. In that regard, like immunities on acts of what has been said in Parliament. It will be captured as to whether or not it will be legislated for or it becomes a privilege and what you say in parliament you will be immune from being prosecuted for defamation outside of Parliament, and anyone taking it up as a case against a Member who said something on the floor of Parliament.

Until we come up with that new semi-legislative mechanism, I think we will have time to consider what happens to those cases prior to 2007. How would they fit into it? Only the lawyers know but we do not have the Attorney General here to explain particularly in terms of retrospective enforcement of the law or its application backdated to 1978 so that we cover the immunities to cover those statements whether the rights of those people who feel that they have been defamed over the years, have a right, even after 31 years to take a matter up in the courts.

These are legal issues that perhaps when we come to the final product, the Parliament through the government will be able to see and put it in perspective. Thank you.

*Pages 18 to 25 – no comment*

Page 26

**Hon Hilly:** Mr Chairman, page 26 says ‘use of legal actions to question proceedings of Parliament’. I do not know where in here but Parliament makes legislation and the courts define the legislations. Sometimes what the Members of Parliament think about what the law says is interpreted differently by the courts. Can we take the court to court?

**Mr Oti:** Mr Chairman, again this page is to do with historical happenings that have happened in the past. As you would see in paragraph 3.4 there says ‘the call for prescriptions and clarification of the privileges’. The discussions herein on those cases is to show why we must have prescribed and clarification of privileges so that those situations do not arise whereby who takes who to court.

The court cannot take itself to court, the parliament cannot take itself to parliament or the court and situations like that. It is a known clarity of situations like this and that is why that paragraph says, ‘the call for prescription and clarification of privileges’ so that there is no ambiguity as to where the matter is resolved once and for all, and whether it is a subject for further deliberation outside of Parliament.

Basically that is how I can say about this, but these pages are telling you about the historical background that we have come through and the reasons why we need to change.

**Hon Sogavare:** Mr Chairman, I think that is a better option. I think Parliament is placed in a much better position than the courts in here. If court sees it differently as to how politicians see it, then we bring back that law into here

again and refine it in here. We are lawmakers and I think that puts us in a very advantageous position when it comes to the difference in opinion where the court has a different opinion and the parliament has a different opinion, bring it back in here and amend the law inline with our thinking. I think we are placed in a better position on this matter.

**Hon. Wale:** Mr Chairman, following on from that, that probably is why the framers of the Constitution keep the three arms of government to be able to hold each other in check. It is one important consideration that balances it out and allows Parliament to exercise its role.

The question raised by my Honorable Colleague Minister of Commerce is that a question of original jurisdiction of the court has to be taken back to the court. It is almost as if the court itself has conflict of interest in considering its own jurisdiction on matters that perhaps impinge on parliamentary privilege. But as I said I think it is largely a matter for academic discussion.

I would like to express appreciation on pages 26 and 27 for the clarity with which I think the report and therefore perhaps the mind of the Chairman and his committee members where they hold the balance very clearly in terms of the privilege of parliament that the court impinges because in our context we have a written constitution as opposed to the UK and it is a matter of proceedings that courts cannot interfere in. That clarity if maintained right throughout and the review of the Standing Orders would enhance the role of Parliament overall so that the integrity and dignity of Parliament is maintained and its effectiveness to discharge its function is also safeguarded.

**Mr. Oti:** Mr. Chairman, just to clarify the historical background I gave today is that the original fight between the monarch and the House of Commons was political and not legal. For instance, some of the things that we are trying to deal with the privileges and powers are political and you cannot solve them in courts because they are not legal matters. That is the background from which this separation of power comes. What is political should be left on the floor of Parliament and only what is legal should be taken to the courts, but do not mix both of them. Do not mix the two. Do not take politics and go and test it in court. I think that is where this is coming from.

**Hon. Hilly:** This is a very good proposition where if the court interprets the law differently from Parliament, the advice by the Leader of the Opposition is that we have the privilege of bringing the law back to be amended here in Parliament. Who is going to take the law back to Parliament? Is it an individual Member or

the government or anybody who sees the court interprets the law differently from the original intention of the law?

**Hon. Sogavare:** Mr. Chairman, nothing really stops any private Member to bring bills to Parliament. Members can bring bills to parliament under the existing standing orders. But I think more appropriately it should come from the government whose portfolio a subject comes under its portfolio. But I think bringing bills to Parliament can be done by anyone.

**Hon. Chairman:** Just to reiterate on that that is correct. As individuals we can bring a bill to parliament on a matter or the government in the normal way of bringing bills.

Pages 29 & 30 – no comment

Page 31

**Mr. Agovaka:** The first paragraph on page 31 on the ‘privilege and freedom of speech applies only to proceedings in Parliament and not on proceedings or debates published by newspapers, television and others outside of Parliament’.

On debates published in the newspaper, I noticed in a number of newspapers that our debates in parliament are published on the newspapers and even televised by One News. Does our freedom still applies there or can somebody in a case of defamation take us to court for saying something that is televised or printed in the newspaper?

**Mr. Oti:** Mr. Chairman, yesterday we have just passed the Evidence Bill where modern technology comes in as evidence, and this is where the question raised by the Hon. MP for Central Guadalcanal is important. But if you read that sentence, it applies only to proceedings in Parliament. The moment it is already transmitted, it is live and instantaneous and therefore once again testing it on the definition of proceedings in Parliament, telecast live instantly will be covered. On the hand, this can be looked at as repeating what has been debated in Parliament or strictly speaking what is telecasted as what you said in Parliament and shown outside is still covered under parliament privileges because it is seen in the context of that debate taking place in parliament.

I think that is how this definition of privilege of freedom of speech which applies only to proceedings in Parliament because of modern telecommunication medium and such, telecast through television or the voice media, and after 24 hours in the print media and the print media is easy to tell them late. So the

relaying it or actually carrying it, and relaying it is in terms of interpreting what the debate is, only to the extent that the comments we make adversely affects the rights of others, then of course we can question that. I think the Parliament of Solomon Islands has been very culturally sensitive. We have not gone out of way to demean others with intention.

I think there are other underlying issues that protect our behavior on what we say in Parliament. It is something that does not exist. A lot of these is seen in other parliaments where there is no boundary, everything is possible.

What I am saying is that perhaps when we develop the new immunities and privileges of Parliament out of the recommendations in this report, there will be further scope to refine and define what can be seen in the context of issues raised in this report.

**Hon. Wale:** I think this point hinges on the word 'published'. Freedom of speech, as we know, is the basis of democracy and that is enshrined in the Constitution. The supremacy of Parliament can only be effective if that freedom of speech is protected and safeguarded and therefore to safeguard the extent of the privileges and immunities must be absolutely clear. Therefore, the instantaneous publication by television or other mediums of the proceedings of Parliament is not as if, for instance, the Member for Central Guadalcanal speaking on the floor of Parliament is publishing in the media. You are actually speaking on the floor of Parliament and therefore any instantaneous publication of that is protected from perhaps the interference of defamatory suits and things like that. But I think it is not as if a Member is publishing in the Solomon Star or publishing on One News. We are actually speaking on the floor of Parliament and that must be safeguarded and be protected because if we are to allow technology to begin to interfere with how that is understood then I think it will undermine the basis of an effective parliamentary democracy in so far as freedom of speech is concerned.

**Hon. Sogavare:** Another checking mechanism that the Committee is considering and I think Recommendation No. 4 when we get there, but just to get the view of the Committee on how this matter was discussed, and that is the right of reply by our people when they hear what we say in here and exercising that right. The possibility of Parliament being bogged down in replying, the way Parliament conducts itself now and the things we are saying in here, probably we will end up receiving two applications every day on the right of reply.

Are there other ways of doing it than giving the public the right to directly respond to Parliament when we make statements that they feel offended by it and exercise that right to reply? As I have said, the way it is rated, we probably

will be receiving two or three applications a day and Parliament will be bogged down with the reply of these people.

**Mr. Oti:** Mr. Chairman, this particular issue was raised at both Committees, the Special Select Committee and ultimately at the House Committee when it came to consider this report. Although as part of our findings and therefore the recommendation emanated from the audience and from those we gave audience to, and it is captured in the report.

Although our Standing Orders say we cannot amend it nor do anything to the report, the concerns that are raised in some of the issues here will be taken note of when we further develop this document we will come up with governing our privileges, immunities and powers. It is important therefore maybe when we come to the recommendations that the comments by the Committee will be taken into account but not immediately effecting the changes.

We hope this will be considered but that is as far as chair of the Special Select Committee inform the Committee, particularly the area of concern raised by the Leader of the Opposition.

**Hon. Tozaka:** I just want to add a little bit more onto that. This point is very important, and as a member of the Committee we discussed this. For example, if we stand up in here making an allegation on a Member of Parliament or a citizen and he is aggrieved on what we say here, I think the citizen is also protected that he must also be heard. How are we going to do it, was the question. In our thinking we thought that this citizen has to be heard but are we going to invite him/her to come into the Chamber to challenge us? Is he going to come and answer us? That was the question we have. The Committee considered it and thought it cannot be done that way because he is not a Member of Parliament. So what are the ways that we are going to allow this private citizen to be still heard? That is the question posed by the Leader of Opposition.

Our views on that is that a committee, a special committee on privileges and powers also has to be established in the House so that any reply to allegations against our private citizens has to go through the procedure and that is through the Standing Orders to be referred to the Speaker and then to the Committee to be dealt with so that he does not have to come inside the House.

The important thing here is that a private citizen who is aggrieved by some allegations made in the House has to be heard. I think this is in the Bill of Rights, and so he is protected. That is one point that we discussed.

The other important point here is that we do not want to legislate for that, we do not want to put in law so that the judiciary comes in. But we leave it to the Standing Orders to deal with.

**Mr. Tosika:** I think the recent trips taken by the FRC to places outside of parliament, and this is on the question of anything said outside of Parliament is when you go outside of Parliament, but when the Foreign Relations Committee went out to the provinces they encountered debates that affected parliamentarians too. Some people alleged that their MP is not using the RCDF on where it should be used and so this affects the privilege of that person when Parliament actually goes down to the provinces and the rural areas. How are we going to deal with situations where the privilege of a parliamentarian is breached in a case where there is no proof but is televised accusing the MP of misusing such and such a fund. In one particular case, it grieved an honorable MP when someone made a statement publicly. Now we are beginning to get parliament into committees of the house to go down to the provinces. The question is if it affects a parliamentarian then I have fear otherwise somebody might punch an MP in the provinces.

**Mr Chairman:** In a situation like that, I am sure the Chairman of the committee will come in to clarify that in the meetings.

**Hon. Wale:** Mr. Chairman, I think this is a very important point that the House Committee must seriously consider as it develops this whole thing. I suppose two basic principles are at play here; one is, of course natural justice and getting a fair hearing. We all know there have been a lot of misinformation, perhaps and all sorts of allegations made in Parliament and perhaps even through committees of Parliament and therefore there must be, under natural justice, a right of reply. The procedure for doing that is what we are trying to look at now. Currently that is available through public media, people can answer and perhaps through the courts to test the veracity of any claims or allegations that are made but the immunity of Parliament precludes much of that. I think this would be part of the natural growth and maturity in our Parliament so that we understand and this is the second principle that freedom of speech is the absolute bedrock upon which a democracy can be vibrant and can grow and therefore it is absolutely essential and safeguarded for parliament, but with the right comes responsibility. That right is so important that we allow its use even when it extends and perhaps go into defamatory statements. But because that right is so important that we take a certain amount of risk on that. But as Members of Parliament we ought to become a little bit more matured and ensure that we know the truth of the statements that we make and have some research to know that what we are saying is true as opposed to using the floor of Parliament for what Parliament was not meant to be used for in the first place.

In that regard, I suppose the facilities that are going to be built under the second phase of Parliament and offices and parliamentarians having secretaries available to them to do policy research and research into matters of importance so that Parliament keeps the executive accountable, is part of that maturity so that greater responsibility is exercised in the use of the right to freedom of speech in Parliament.

The point raised by the Honorable Leader of Independence is very important and one that I was a member of the Foreign Relations Committee at one time, and I was a bit concerned about the instantaneous broadcast in the television when it is actually out in the community. Perhaps some discretion needs to be exercised by Parliament so that they could be recorded and then played so that there is a little bit of editorial oversight on statements that could be defamatory because it is members of the public that are actually speaking to the Committee, and the committee is an extension of Parliament, and so I am not sure to what extent the immunities of parliament extend to those who are actually doing the presentations and giving evidence, although the Chairman announces to them that nothing they say can be held against them and the rest of it. But it is really stretching this principle very, very thinly, and I think we may have crossed the line from responsibility to irresponsibility somewhere there. I am not alleging anything in case I am in breach of this myself, but it is just a thought. Thank you.

**Mr. Oti:** Mr. Chairman, our parliamentary mechanisms under the Standing Orders, the protection that is afforded to Members of Parliament in proceedings of Parliament whereby parliament committees including standing committees or select committees or special select committees of parliament are also bodies of parliament and so they enjoy the same privileges that Members of Parliament are enjoying, I mean the protection. Article 9 of the Bill of Rights also gives absolute protection and they protect the Members of Parliament and protect the witness at the same time too. The rights are there but are also limited and are protected by the law. I think when a citizen thinks that an MP has been unfair to him by making unfair comments, then this is where in the proposal that we have an establishment of one of the new parliamentary committees, a standing select committee on privileges, immunities and powers of Parliament so that the grievances of the public are channel through this committee. It will quarantine whether the statement amounts to or qualifies for a right of reply or not. Of course, it is not really opening the door or opening the floodgates and everything we say therefore will be subjected to this. Over time people will come to learn. But it will be quarantined by a select committee whereby reply would be given and explained what the citizen is complaining about does not amount to denying

his rights or he has a right of reply to give in relation to what has been said by a Member of Parliament.

It will not be automatic like we used to be doing. I ask a question, the Minister answers and we throw it across the floor of Parliament. It will be subject to these processes. I think that is the mechanism that we will use once we set up our own institution to address the issues that have been raised. Thank you Chairman.

Page 32

**Mr. Gukuna:** I just want to seek clarification on Recommendation No. 4 on page 32 and it is about the right of reply. What if a Member of Parliament says something in parliament which he believes to be true and then later on finds out that it is absolutely not good and he really defames somebody in here, what does that right of reply means? Is that the recourse or would that require the Member to apologize on the floor or what is it?

Think about the other side where a person has been damaged, my information was totally wrong, which also happens in some other parliaments. I think that right off reply is insufficient to address the damages that have been caused on this poor person. Does that depend on them?

**Mr. Oti:** As I have just explained, apparently when we went through this issue, I think the Honorable Minister has taken a break and so he is late to catch up. But as I said, one of the pertinent issues that is before us now in addressing this particular point, is that Parliament needs to establish or also include in the Standing orders a standing select committee on parliamentary privileges and immunities so that it can become the channel of whereby complaints like that can be raised by the public through that committee and to qualify whether or not it amounts to or to prove before the Committee that indeed substantial damage has been done to an aggrieved person because of a statement that has been made there.

All the mechanisms will be put in place, and so it is not automatic because we are trying not to resort to the court, taking a member to court, sue a Member in court for what you say because you are protected under Article 9 of the Bill of Rights says all citizens have rights and therefore we just look at the mechanism on how it will be addressed.

But also perhaps for the Minister and for the committee, if I am going to repeat what I mentioned earlier on today, and that is that there is no finality in the recommendations of the report. Although we cannot change it, as it is not permitted by our Standing Orders, but in the development of the codification of

the privileges and immunities, what needs to go under the Standing Orders, what needs to go under the guide, all those will be brought together again but the comments of the Committee at this sitting will be taken into account when this work is being developed.

On the other hand, if the Privileges Committee, and there is assumption that it will come in the future, thinks that a citizen is correct, the allegation brought about is correct, the Committee can report to Parliament and recommend that the house or the Member apologizes or you can also see in what I read out earlier on today, to discipline the Member because what he said is affecting some of our private citizens. The explanation can also be found in our records here in Parliament, particularly in Hansard.

Mr. Chairman, I think that is all I can explain for the time being. Thank you.

*Pages 33 to 48 – no comments*

Page 49

**Hon. Sogavare:** Mr. Chairman, I am just sort of thinking forward on what would happen after this and the mover of the motion reports. The committee came down and strongly recommends Recommendation No. 25 for Parliament to adopt. We really need to be clear on the merit of that recommendation and if Parliament agrees to it, because I take it that the mover will move another motion for us to adopt it. The effect of that is a concern. But I think the Committee is very clear on what it wanted us to adopt here, and I have no reason to question or to reject the recommendations it made, I think it is the best option that it recommended to us a semi legislation approach and not something that is legislated, otherwise everyone of us ends up in court. Any time people are not happy with us, we end up in court. I would like to support Recommendation No. 25 put forward by the Committee to us. Thank you.

**Mr. Oti:** Mr. Chairman, the Chairman of the House Committee is not available but these recommendations that you see in the pink, red or purple report or Paper No. 19 are recommendations to the House Committee whose report is this, and the House Committee reports to Parliament that if you look at page 8 of the blue one, you will see what the House Committee has requested that (i) 'that the House', and now this is the House, 'considers in detail the issues raised in this report' which we have just completed, (b) 'that the House adopts the recommendations made in the SSC Report' hence the point by the Leader of Opposition and lastly (c) 'that the House takes the necessary steps to ensure that such recommendations are implemented.

I do not know how we are going to match these together but that is my reading of this, into this, into the House. Thank you, Mr. Chairman.

**Mr Chairman:** I think that is correct. I think what the Committee would like is the adoption of the report first, and once we adopt the report, which means that we also accept Recommendation 25, then the House Committee will again come up with other further motions. That should be taken care of. Thank you.

I think that concludes our deliberation of the report in the committee of the Whole House.

Honorable Members, pursuant to Standing Order 18(2), the only question before the Committee now is that the Honorable Member for Temotu Nende, as the mover of the motion, reports to Parliament that the Committee has considered the Report of the Special Select Committee on the Privileges, Immunities and Powers of Parliament.

*It was agreed upon by the Committee of the Whole House that the MP for Temotu Nende reports to the House the report of the Special Select Committee on the Privileges, Immunities and Powers of Parliament.*

*Parliament resumes*

**Mr. Oti:** Mr. Speaker, I wish to report to the House that the report of the Special Select Committee on the Privileges, Immunities and Powers of Parliament, National Parliament Paper No, 19 of 2009 has passed through the Committee of the Whole House.

**Mr Speaker:** The honorable Member for Temotu Nende reports due consideration of the Paper.

**Mr. Oti:** Mr. Speaker, in accordance with Standing Order 18(3), I now move that now Parliament agrees to the proposals contained in National Paper No. 19 of 2009.

*The Paper agreed to*

**Hon. Sikua:** Mr. Speaker, I move that Parliament do now adjourn.

*The House adjourned at 12.47 p.m.*

