TUESDAY 6TH APRIL 2010

The Deputy Speaker, Hon. Clement Kengava took the Chair at 10.20 a.m.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of the Ministers for Planning & Development; Agriculture & Livestock; Provincial Government & Institutional Strengthening; Women, Youth & Children; Works & Infrastructure; Fisheries & Marine Resource; Mines & Energy; Police & Correctional Services; Justice & Legal Affairs and the Members for East Are Are, Central Guadalcanal, Temotu Pele, Lau/Mbaelelea, Central Makira, Ngella, South Vella La Vella, East Makira, North West Guadalcanal, Malaita Outer Islands and South New Georgia/Rendova/Tetepare.

BILLS

Bills – Committee Stage

The National Parliament Electoral Provisions Amendment Bill 2010

Clause 1

Mr Waipora: I am just asking for legal clarification on the title of the Bill. If you look at it, it says the National Parliament Electoral Provisions Amendment Bill 2010 but when we turn to page 5 it reads as "This Act may be cited as the National Parliament Electoral Provisions Amendment Act 2009". My question is why there is conflict in the years? I am not clear about this, so I want some clarification on it?

Attorney General: Clause 1 should be 2010. I think the error came about because this Bill was prepared last year but has been delayed and then brought up again this year, and so it should be 2010.

Mr Chairman: That would be corrected later on under section 58(2).

Hon. Sogavare: I was going to ask for more clarifications but you have explained it. I just want to express some views and maybe get the thinking of the Government as to how we see this forward. We understand that the reason for bringing into force this Act is that the ones dealing with polling are brought into force immediately and those that deal with registrations will come into force later on.

Picking from the various contributions by Members of Parliament when this matter was debated, and just getting the views of the Minister, how the government is seeing this and how we are going to take it forward in terms of getting voter registration ready at all times. I think this is the view expressed by so many who have contributed to this Bill.

The other matter is the merging together of the various sources of data so that voter registration is kept updated at all times, probably a civil list of those that die and born at the hospital and things like that. What is the government's plan on getting voter registration ready at all times, and I think picking from what the Member for Temotu was saying as well, the Constitution provides for progression of Parliament voting itself out at anytime and then elections should happen as soon as His Excellency makes the declaration. That particular section, as rightly pointed out by the Member for Temotu Nende, is just sitting down there for nothing, it cannot be effectively used. I just want to get the views of the government on what it is planning to do. Thank you.

Hon Tom: Thank you for the question by the Leader of the Opposition. What he asked, is as soon as this bill is passed at this meeting, the Electoral Commission will come up with the new process of registration as early as October.

Clause 1 agreed to.

Clause 2

Mr Waipora: We might have had a general understanding of this section, but I think it would be to the advantage of some of us who still do not understand this very well that I want the Honorable Minister to explain when sections 1 to 4 and 15 to 21 will come into effect on the date the Minister will sign and gazette it.

Hon Fono: The question he is asking is under clause 1 which we have already passed.

Mr Chairman: Yes, that is right. We are now on clause 2.

Clause 2 agreed to.

Clause 3

Mr. Oti: In relation to the powers we are now, perhaps giving to the Commission under this amendment, which was not in the original electoral laws, in clause 3(b)(2) &(3), the response that was given to the Bills and Legislation Committee when that was asked was that it is basically to reflect only what is in the Constitution, but this law does not have. The need to have that explicitly mentioned in the electoral Act that the Commission is responsible for the conduct of elections of Members of Parliament, and the Commission may direct any person whose functions under this Act relate to the conduct of elections to the performance of those functions. The fact that the Constitution already mentions what is for the last eight elections found to be deficient of the existing law now that we have to put on the Commission specifically and explicitly in the Electoral Act, whereas it could have been or has always been inferred that by virtue of the authority of the Constitution there is no need to bring that again into the subsidiary legislation, such as this one here. The explanation by the legal counsel then was that it is only to reflect it. I think that is not enough; there must be something of substance in nature that must be put in here.

I raise this question because of the point raised by the MP for West Makira during the debate in so far as the Commission now taking over the role that has been by law under the Local Government Act. YOu have taken this whole electoral process out from the Local Government A**ct** and now vest it on the Commission. That is basically what we expect to get as a rationale for inclusion of this provision. Can I have some clarification, perhaps to put this whole thing where it should be because just to take it out from the Constitution and put it in a law is not sufficiently convincing?

Attorney General: The constitutional provision that is being referred to is section 58 of the Constitution. Section 58 of the Constitution clearly states that the Electoral Commission has the general responsibility to supervise the registration of electors and to conduct the election of members.

When that general provision in the Constitution stays as it is, we were instructed that when it comes to implementation there is confusion between the role and functions of the Commission and the returning officer and officers. We were therefore instructed to bring it out into this Bill and to set it out in the way it is in this clause so that it is more clear and easy for officers in the electoral office and the Electoral Commission to implement their functions properly. But if there is any other reason I will leave it to the Minister to state that.

Mr. Oti: Also, perhaps for me to dispel any thinking that it is to do with what I brought up in this question and as brought up by the MP for West Makira in his debate on this Bill, can the Attorney General give us a distinction between what this provision now entails and that which is contained in the Local Government Act or orders to do with registration. How are these two differ or are they self reinforcing, this one reinforcing another one.

Attorney General: I seem to understand the question as in two parts. The first part, as I understood it is that the main distinction you can see in this new clause here is in sub-clause 3 which gives clear express powers to the Commission to direct any person. I think that is the very clear expression in law that comes out very clearly in this Bill.

Whilst the Constitution says the Commission has the power to supervise, it does not use phrases like 'directing', so by having sub-clause 3, you would see that the functions centralized back on the Commission so that it can give appropriate directions. Whereas in sub-clause 2 it paraphrases in a clear way what is already in section 58(1).

The second part of the question, which I also understood in reference to local government voters' registration, is that the application of the local government voter registration is that as far as the National Parliament Electoral Provisions Amendment Bill is concerned, it is applicable when Part 2 of the National Parliament Electoral Provisions Act does not apply. It is more like a transition as far as the National Parliament Electoral Provisions Act is concerned. It is clear in section 6(2), which says that if Part 2 of the Act does not apply then the local government registration of voters' regulation can be used.

Part 2 of the National Parliament Electoral Provisions Act is the part dealing with registration of electors, so it is like a precursor. As far as the Local Government registration of voters' regulation relates to the Provincial Government Act, that is what the provinces are using. When you want to compare a registration or list that is produced under Part 2 of the National Parliament Electoral Provisions Act and the list under the Local Government Registration of Voters Regulation, there maybe a difference, but it has its purpose for provincial government elections, whereas a list produce under Part 2 of the National Parliament Electoral Provisions Act is for national elections. That is the difference.

Mr. Waipora: My question is, the normal practice up to this time and whether it follows the regulations for elections or not, but at this time the provincial

governments are required every year to do registration or revise their voters' rolls. That should be a normal exercise for the provincial governments.

My question is why can the Government not just come up with a policy to strengthen that kind of exercise so as to give, especially at the beginning of the year, money for a registration of a particular registration period instead of making amendments to give or add more powers to the Electoral Commissioner in doing this work, because after all it is the people down there, but why are you taking it away from them. The rationale policy we are coming up with right now, what is the problem, what is the actual problem that made us to give power to the Electoral Commission to make the directive for you to make registration, which is already a usual exercise required by the Electoral Commission to do. I am not sure in terms of law, but if that is the rationale behind this then just leave it as it is, just give the Commission enough money for that period of time for it to do that exercise. Thank you.

Hon. Sikua: When this Government came into power, very clearly there are two reforms that it wanted to undertake. The first reform is political reform which involves the Political Party Integrity Bill. The second set of reforms that go with it is reform of the electoral process for introduction, at least for the coming election, limited preferential voting. Because those policies are in place at the beginning of 2008, I want to quickly move on with the PPI and the limited preferential voting for the coming elections.

When we were trying to put in place mechanisms to move on with the political reform process, I find it to be very difficult. It has been very difficult even for us to update the rolls, so we had to drop the idea and bring in what is before us today. Because the normal course of doing this work, you also find the provinces dragging it too, and therefore the policy of the government is to give it to the Commission to do the work. There will be no confusions if the Commission so decides to direct any person to do it, it can still do so, and this may even mean the provinces. That is the policy reasons behind the moves leading to this decision that we came up with in this Bill.

Mr. Tosika: The intention to get rid of section 58 and explicitly put it in this Act is a good intention. But the fact remains as to why it is put to 1st October as the effective date because the intention here is to conduct the elections in a way we wanted it to be so that the constitutional provision is explicitly brought up here in this Bill for conduct of the elections. But section 5(2) says it will be effective as from 1st October this year, and by that time election would have been already over.

Whilst we appreciate the amendment here, it must take effect at this coming election. It will be futile for us to pass this legislation when it would not affect the conduct of the elections this year. That is my view on this amendment. This amendment is good but the effective date will not be meaningful to us.

Hon. Sikua: It is a question of time factor, we are running out of time. But going into the future, these things would have to be done. That is the whole reason why this Bill should have come in here in December last year to give us more time. But we have run out of time and therefore the different commencement of the sections referred to in the Constitution. But we are not repealing anything. It is just different commencement dates because of the fact we have actually run out of time for some things to come in because the elections are coming up.

Mr Speaker: This particular Clause 3 is within the sections that will be applicable, I think, as soon as it is gazette. Clause 3 is still applicable if passed.

Mr. Waipora: I just want to thank the Prime Minister for his clarification of this section that provincial governments too are dragging their responsibilities in carrying out the annual registration of voters. We have seen that, and so I want to make the comment that that is why the Ministry of Provincial Government has become the ministry of provincial government and institutional strengthening. During my time in the ministry, that is one of the weaknesses we have been looking into. Therefore, I thought that when you took over from us, if this is strengthened we would not have come here amending this, but the problem could be the Provincial Government may not be effective in their role of revising and updating the registration lists. But I still feel very strongly that this responsibility belongs to provincial governments. Although the Electoral Commission is the umbrella body but the actual taking of names and registration of voters in provinces, I still feel very strongly is not the responsibility of the central government through the Electoral Commission. However, we are here with this amendment, and so the intention I want to put on record is that I still feel very strongly that the responsibility belongs to provincial governments.

Attorney General: I feel obliged to explain section 12 of the Provincial Government Act that gives power to the Minister to make regulations relating to conduct of elections to members of provincial assemblies. This section 12 allows the Minister, when making the regulations, to apply the provisions of the National Parliament Electoral Provisions Act as well. It means the minister when making regulations for provincial assemblies, he can apply the provisions of the National Parliament Electoral Provisions Act. It would seem that the scheme of

the law is that if Parliament can settle the national law on election and then the Minister when producing the regulation can refer to it, and if he sees there is a part in the national law that needs to be applied to provincial assemblies, then he can use power under section 12 of the Provincial Government Act.

Hon. Wale: The point raised by West Makira is a substantive important point. I think, at best in terms of the policy backdrop, it is also sort of more centralized moving to the Commission leaving no doubt as to the powers of the Commission over and above the others working at the provincial level. It is also trying to avoid the kind of registration of people registering in more than one place, and so a more centralized authority over this process allows the matching of names.

Of course, a person can register under a different name in Kirakira and a different in Honiara. But we hope that is a problem that is transitional as we move to a much more greater integration of our different civil lists. We hope that names will be less dynamic and less fluid and that therefore at the Commission level, at a more central level would be easy to look at the data base and say this same name appears in Kirakira and also appears in West Honiara. If they are totally independent of each other then it might not be possible to do such comparisons like that. But at best in the form that it is in this Bill is like a transition too because the wider reform coming hopefully as early as next year are the issues the honorable Leader of Opposition raised in his first question today, as to how the civil lists would be integrated, what mechanisms would make them instantaneous so that each year they are updated and so forth. But it is a very important point raised by the MP for West Makira.

Clause 3 agreed to.
Clauses 4, 5, 6, 7 & 8 agreed to.

Clause 9

Mr Waipora: When registering people from 18 years and up, and I cannot remember whether the form indicates how long a person resides in a certain place before he/she is eligible to register. The schedule of this new form does not seem to indicate that. But I thought the previous form mentions that if a person resides in a certain place for 12 months then he/she is eligible to be registered, but if you are less than 12 months then your name is still in the place where you come from before you come to this place and so you are still not eligible to be registered here in Honiara unless you live here for 12 months. This is what I want clarification from the Attorney General on. Is this still imposed or not? I am talking about Form B, not Form C or Form C(1).

Attorney General: If I understood the question by the Member rightly, he wants to know whether there is space in Form B to enable the Commission determine the length of period an elector or voter resides in a particular constituency.

The information on the form, the first part of the form states the province, the constituency and ward and then the next page, on page 20 you would see various paragraphs, and the second paragraph refers to Section 55 of the Constitution for a person to declare he/she is eligible to register for election of the National Parliament for the constituency, and that brings us to the strict constitutional criteria that talks about, for example, section 55(2)(b) says, "in any constituency in which he is not ordinarily resident." I also think the questions that follow on pages 20 and 21 will also enable the Commission to determine the question raised by the Member.

Clause 9 agreed to.

Clause 10 agreed to.

Clause 11

Mr Agovaka: In the event where two people having the same name they will be, of course, entitled to be registered. In an event where one person tries to emulate the other person's name, thereby making him registered under a particular constituency or ward and also registering in another constituency or ward. How would the Electoral Commission or the registration office for this matter identify and revoke the duplication of names or a person trying to register his name using another person's name under his name.

Hon Tom: Thank you for the question raised by the Member for Central Guadalcanal. The Commission will have time to look into names that are similar. It is not easy but it will try it, it must have time to look into this. Some comments may be raised or something like that and so the Commission will look into areas like that.

Mr Waipora: I just think about the use of the word 'commission' when dealing with objections or omissions and any administrative matter. I take it that the Commission is a body of a group of people but in this Bill we are going through, it says that the Commission will also consider objections and so forth.

I am raising this point because it looks like the Commission is involved in a lot of the normal and routine administrative matters. Why not put it as the

electoral officer or others as this is an executive, administrative and routine matter instead of nearly everything to be done by the Commission. When objections and omissions come in, is the Commission going to sit down and object these things or what?

Attorney General: The question raised by the Member for Central Guadalcanal and West Makira is a difficult question in that there is no easy answer to it. But there is a scheme proposed in this Bill to address those difficult questions. For us to understand it needs me to take us through the scheme but I will try and make it brief.

Form (A) is published by the registration officer where he puts a notice to the public inviting persons who would like to be registered. Then persons who want to be registered delivered form (B) to the registration officer, and then the Commission makes the alphabetical listing, and that is form (c) or form (C1). This is where we are and questions have been asked.

In the process of making the list, is when the Commission can detect and identify whether there is double registration or there is anything of concern to the Commission and therefore at that stage the Commission should be able to raise its objection to what it finds in the course of preparing the alphabetical listing. The list that the Commission produces will be given to the registration officer and the registration officer then will publish the list, the list is published. Remember the objection of the Commission will go parallel. The list is published for the public to see, and then anyone who has already submits his/her claim but finds his/her name missing or omitted from the list can lodge form (D) giving notice to the registration officer. At the same time, anyone whose name is on the list but finds his/her name similar to another person when he should not be registering himself/herself under that name, then that person can lodge form (E).

There are two opportunities here in that the Commission when preparing the list can make its own objection because of what it sees when preparing the list or when the list is published and somebody who is already on the list sees that another person also has a similar name or a same name like him/her can lodge in Form (E).

The process is a bit long but there will be public enquiries, and the objection of the Commission and objection of any other person can be considered at those public enquiries. That is a brief explanation to the scheme in this Bill.

Mr Agovaka: I think that clarifies my question. In terms of timing, is there a time limit put that one has to meet to qualify for complaints and re -registration or is timing not a matter here.

Attorney General: There are time limits set in the clauses. As we go along we will see the times set out in the clauses.

Mr Tosika: In the last election, the difficulty of people finding their names in polling stations has created some kind of delay to people casting their vote, especially if it is listed as from (a) to (c) or (d) in a polling station and then it appears in alphabetical order in another different polling station. Take for example a person that registers in a particular ward, but his name appears in another different ward. This is causing delay to people having to go around looking for their names as to where they are going to vote when they are registered under that particular ward. This is what people have experienced and sometimes ended up not voting at all because their names did not appear in wards they are registered. Their names appeared in a different ward they were not registered in. How are we going to deal with this problem? Many times by the time people find their names it was already late to cast their votes, it was already after 5pm, and this is because their names appear in a different place. I want under 19(A) for the Electoral Commission and the people working there to take care of that people who register in a particular ward must ensure their names also appear in that ward.

Attorney General: It will be practically difficult for the Commission to really know whether somebody who is in constituency A should be in constituency D or C, and so it is incumbent upon voters or electors to assist the Commission, and how they could assist is when the registration officer publishes the list given by the Commission. The obligation of voters is to go and see the list and if their names do not appear in that constituency or in that ward, yes it might take time but some energy to go to the next constituency, and then if they can lodge a notice with the Commission on Form D that I talked about earlier on today. If voters or electors do not do that, it would be practically difficult for the Commission to sort out issues like that.

Clause 11 agreed to.

Clause 12 agreed to.

Clause 13

Hon. Sogavare: Just for the Attorney General to confirm to us page 11, sub-clause 5, amendments to the new 20(A) that if the claim is proper, we take it that the cost of inquiring into that falls on the Commission.

Attorney General: Sub-clause 5 refers to section 19, and it says that if the revising officer finds a claim or objection without foundation or frivolous, the revising officer will order such persons to pay the sum as seen fitting by the revising officer to represent the actual cost of inquiry. So it is not the Commission, but it is the person who lodges a frivolous or a claim objection without foundation.

The legal reasoning for this kind of clause to be in many laws is to ensure people just do not lodge objections for the sake of lodging objections and people just do not lodge claim or frivolous claim just wanting to play up with the list. If the revising officer finds that someone is just in the habit of just lodging objections for the sake of lodging objections or making claims just for the making of claims without any serious concern, then he must pay the cost because there is a cost in the inquiry.

Hon. Sogavare: So the question is if the claim is really proper and true, who pays for the cost?

Attorney General: If the claim is true and proper then it is a cost in the inquiry, it is part of the inquiry and there is no need for anyone to be responsible as it is a cost of the inquiry on the government.

Mr. Waipora: I just want to make a comment on registration. The registration we are talking about now seems to be very free for us. If I want to be registered I can do so, it is up to me. For example, if you live at home you would hear people saying provincial officers are coming around to register names of people for voting. You would always hear some people saying they do not want to register, so they do not care about registering. Is it possible for us to put a section in laws like this that requires all citizens to be registered as voters? Or is this a breach of the freedom of an individual under the Constitution?

Hon. Sikua: Compulsory registration would require amendments to the Constitution, and as we continue these reforms into the future, I am sure that consideration would be made by any new government. But for the time being, this is what we have and so the question by my good colleague for West Makira is something that can be looked into in the future, and if there is a need for it then, of course, the Government would have to bring in a bill for amendment to the Constitution.

Clause 12 agreed to.

Clauses 13 & 14 agreed to

Clause 15 agreed to.

Clause 16

Mr Chairman: I understand there is an amendment in respect of this clause and so I call on the Minister to move the amendment before we consider the clause.

Hon. Tom: I move that Clause 16 be amended by omitting all words after paragraph (g), and inserting instead "deleting no other person being present or within hearing" in line 2 and inserting instead "in the presence of a police officer or another polling assistant".

Clause 16 proposes to amend section 38 of the principal act. Section 38 in its current form provides in effect that if a voter cannot cast his/her vote because he/she is blind or otherwise suffering from other forms of physical impairment, the presiding officer may cast the vote on behalf of that disable voter.

Clause 16 was originally intended to amend section 38, so that the words "in the presence of a police officer or another polling assistant" be inserted at the end of paragraph (g). The intention was to ensure that when the presiding officer casts a vote on behalf of the disable voter. That must be done in the presence of a police officer or another polling assistant.

It was subsequently discovered that the original Clause 16 would create inconsistency in that on the one hand section 38(g) requires that discussions between the disable voter and the presiding officer be made without any other person around or within hearing distance, while on the other hand the amendment proposed by Clause 16 in its current form demands that a police officer or another polling assistant be present at this time. Obviously, the presence of such an officer or polling assistant would clash with the current provision against the presence of any other person. For this reason, the amendment proposed to Clause 16 would ensure that the original intention to allow the presence of a police officer or another polling assistant is retained but removing the contradictory prohibition against third parties being present.

Mr Chairman: Clause 16 be amended by omitting *all* after paragraph (g) and inserting instead *"deleting no other person being present or within hearing" in line 2 and inserting instead "in the presence of a police officer or* another *polling assistant".*

If this amendment is passed Clause 16 will read "Section 38 of the principal act is amended in paragraph (g) by deleting no other person being

present or within hearing in line two, and inserting instead "in the presence of a police officer or another polling assistant". Does any Member wish to comment on this amendment before I put the question?

Mr. Agovaka: This is quite an important amendment as it allows the blind and the illiterate to cast their votes.

I was listening to the debate by the Member for West Makira on this Bill and a concern he raised was on those people working during the Election Day were not given the opportunity to cast their votes, especially and in particular police officers or prison officers who are being used as security during the polling day.

I would also like to add essential workers as well working during the Election Day, in particular nurses and doctors, police officers and prison officers, the fire brigades, and those in the civil aviation who are unable to go to the polling stations in their electorates, must also be given the opportunity to cast their votes. This amendment is fine but I would rather have it much more elaborated to extend the opportunity to vote to those people I have just mentioned. Is there any proposal by the government to extend this to officers who are on duty on that particular day so that they are able to cast their votes on Election Day? Is there such a plan?

Hon. Sikua: As I have said, at this stage not yet, but this will form part of the larger reforms that will be looked at into the future.

The amendment agreed to.

Clause 16 as amended

Mr Oti: When we come to the end of this consideration by the Committee in Schedule 22, in terms of the schedules because the schedules attached made reference to those sections of the Bill, especially when you come to the schedule on page 20, in fact, it tarts from page 18. I am trying to work out how these schedules are related to section 16 of the Bill. Will it also apply to Schedule 17 and Schedule 18 making reference to sections of the Bill? I cannot see it clearly in here; if these schedules could be explained, in particular the schedule in form (b) says "National Parliament Electoral Provisions Act, sections 16 and 17". Are we making reference to this section we are considering this time?

Attorney General: I just had a quick look at the principal act, and it appears that the sections quoted are referring to section numbers in the principal act.

Hon. Sogavare: Just the wisdom that goes into this amendment. The whole idea is if you say this blind person is led in to the polling station vote, would it be proper in the presence of representatives of all the candidates instead of just a police officer? Anything could happen; one vote could make a big difference to the whole result. So instead of one person it would be the whole representative of the entire group go and observe when that person says it in the presence of the police officer.

Attorney General: That is a very difficult question to answer because we are trying to balance certain constitutional principles. One is that this kind of provision advances the principle that a registered elector must cast his vote. This advances that principle and enhances it.

The other principle that we need to balance is the principle of secrecy, secret balloting. The best we could do here is he or she calls the presiding officer aside and tells him or her, his or her preference, but then they have gone a little bit just to bring in a police officer and a polling assistant just to witness it. This is a difficult balance exercise we are doing here.

Mr. Oti: I have a point I raised earlier. If that is the case then section 22, the second schedule of the principal act is repealed and the new one contains the forms, in which case the reference we have to make there is either the old section 16 becomes section 7 of the amendment, so those forms should be talking about reference to section 7, 11, 12 of this amendment bill, after the old one is repealed in section 16 in Clause 7. It would run that way otherwise when you make reference to the old section 16, the old section 16 has been amended.

Attorney General: I have just recently corrected that kind of wrong cross referencing in respect of an act that was passed a long time ago, exercising the power given to the Attorney General under the Interpretations Act.

I am happy to do what is suggested by the Member for Temotu Nende but considering the time whether we are able to make a list before third reading, I am not sure whether we can quickly do that. Otherwise I can do like what I have done last week.

Mr. Oti: These are substantial legal requirements that you must leave no room for it to be challenged in terms of the intentions of the laws. Come what may, that has to be substantively changed before we come to third reading.

Mr Chairman: Considering the importance of this particular need, I suspend the committee of the whole House until 2 pm this afternoon to allow the Attorney General sort this out.

Committee of the whole house suspended for lunch break at 11.34 am.

Committee is resumed

Mr Chairman: Honorable Members, proceedings of the Committee of the Whole House is now resumed. I understand that the proceedings were suspended this morning when the Committee reached Clause 16. I am told that the amendment to Clause 16 was passed but Clause 16 as amended is yet to be voted on. I have been further advised that the reason for early suspension was to allow the learned Attorney General ample time to provide further clarification to the Committee on a few points raised by the Member for Temotu Nende regarding relationship between Clauses 16 and 22 of the Bill under Second Schedule of the Principal Act. I now call on the AG to provide such clarification before we conclude our discussions on Clause 16.

Attorney General: During the break I have consulted the Legislative Drafting Advisor and we discussed the points raised by the Member. It is clear that the Second Schedule is intended to be as it is; there is no need for any amendment as proposed.

The explanation to that is that if we look at Clause 7 on page 6, Clause 7 intends to repeal the current Section 16 of the Principal Act and re-substitute it with a new Section 16. What we see in Clause 7 is a new Section 16 and a new section 16 has subsections 1, 2 and 3 which appear on top of page 7. That is the whole new Section 16. In subsection 2, we will see that it mentions the Second Schedule. Here we can see the Second Schedule appearing in the body of the new section 16. That is what we are seeing; the Second Schedule appears in the body of the new Section 16 and therefore when we see the new Second Schedule on page 18 and we see below the headings Second Schedule on page 18 the words, "Section 16", it is correct because it refers to the new Section 16.

It is a different case if Clause 7 introduces a new schedule or a new form. If there is a new schedule or a new form, the new schedule or new form would refer to this Clause 7. But that is not the case here. What we have here is the Second Schedule which is already inserted in the body of the new Section 16. That is the explanation for the Second Schedule and therefore there is no need for any amendment.

Clause 16 as amended agreed to.

Clause 17

Mr Waipora: We are coming to the end of the book now and I was trying to find a relevant section to ask this particular question I have. But since Section 17 mentions the word 'candidate', I have a question in regards to candidate and also the fee.

My question is that in the Principal Act we see under Section 27 the fee for candidates contesting the election is $5,000, but the High Court has ruled this off. My question is why this figure of $5,000 still remains in the law? This question could be outside of this clause, but I must have this chance to ask this question.

If we look at the Principal Act it says, "a person shall not be validly nominated unless the sum of $5,000 is deposited by him or on his behalf with the Returning Officer within the time allowed for the delivery of nomination papers". I think it is in order that I get clarification to this legal question.

Attorney General: The question as I understand it refers to Section 45 of the Principal Act, which is not in the Bill we are dealing with. However, because of the significance of the matter raised, I am happy to answer it.

There were two amendments made to Section 45 of the Bill. One amendment was made in 1997 by way of Act No. 3 of 1997. Act No. 3 of 1997 increases the deposit amount from $500 to $2,000 and then there was a subsequent amendment in 2001 by Act No.5 of 2001, which increases the amount from $2,000 to $5,000. It is that subsequent amendment in 2001 that was challenged in the High Court in the case of Walter Folotalu against the Attorney General. The ruling of the High Court on that case was that the amendment in 2001 was unconstitutional and therefore void. That amendment in 2001 therefore is no longer in an existence by virtue of the ruling of the High Court. Void means there is nothing. That being so we are reverted back to the amendment that was made in 1997, which was not declared void by the High Court and therefore we are stuck with $2,000.00.

In my view the ruling of the High Court has therefore cleared the situation and we do not have to rely or refer again to the 2001 amendment but the 1997 amendment.

Hon Sogavare: So maybe the AG can tell us how to remove that $5,000.00 from that particular section.

Attorney General: There is no $5,000.00 in the law at the moment, so we cannot remove something that is not inexistence. However, when it comes to law revision, that can be either done by the Law Revision Commission or when we do our own revision we should the change the figure from $500.00 to $2,000.00 so that we take cognizance of the amendment made in 1997. But to answer the question there is nothing inexistence for us to amend because of the ruling of the High Court.

Clause 17 agreed to.

Clause 18 agreed to.

Clause 19

Mr Agovaka: I noted in the recent bye-election in our constituency some of the voters instead of marking the box they were marking either the name of the person as well as the symbols. Is this amendment here allows for that?

Hon Tom: Thank you for the question raised by the Member for Central Guadalcanal. The amendment here gives power to the Commissioner to look into areas like that where if a voter ticks outside the box and the intention is right, the Commissioner has the power to make the decision that the person's intention is right but his mistake is in the ticking. So it is up to the Commissioner to make decisions like that.

Hon Sogavare: The Minister made reference to the Commissioner, who is this person. Does that means that ballot papers that are like that would be given to the Commission to make decisions on or when the ballots are counted they can exercise or do what the Minister has stated as referring to the Commissioner to make the decision?

Hon Tom: The officers who are working when they come across cases like that can refer it to the Commission to make the decision.

Attorney General: We will find the answer if we go back to sections 48 and 49 of the Principal Act. Section 48 says the returning officer in the presence of counting agents will open each ballot box and take out ballot papers and with the assistance of assistant returning officers they count and record the number of votes cast.

When we come to the new Section 50 of the Bill it says, "A ballot paper shall be counted if it is clear which candidate the voter intended to vote for". We still refer back to Section 48 of the Principal Act because he is the one doing the counting. If it is clear to him what the vote is intended for, even though it is a tick outside of the box. Subsection 2 of the new Section 50, however, says that when the returning officer makes the determination, he must make it in the presence of a police officer and counting agents for candidates in a constituency. That is what we must take particular note of.

The returning officer makes the determination so that the determination is consistent with the intention of the voter. But he must make that determination in the presence of a police officer and the counting agents. That is what subsection 1 and subsection 2 says. There are, however, disqualifications in subsection 3 that the ballot paper must bear the official mark and a ballot paper on which anything is written or marked by which an elector can be identified other than printed matters. Those are the two qualifications in (a) and (b).

Mr Agovaka: Is the Attorney General saying that the returning officer can validate a ballot paper in spite of the fact it is marked outside of the box.

Attorney General: The intention of the voter is what they are going to try to ascertain. If the way he votes intends the candidate he prefers, although his tick might be outside of the box or at the corner of the box, if the intention of the voter is clear then the returning officer must make a decision on it, but in the presence of a police officer and the counting agents.

Mr Waipora: In my view, we must come out very, very strongly and clear on this. I say this because if a voter's intention is clear and somebody else considers it then we are compromising things here, and it will be opened to disputes. I think it should be put clearly in the law that if the mark is outside of the box then it is wrong and is wrong. Sin is sin.

In law it must be put that if it is wrong then it is wrong. But what I am hearing now that it will be referred to the Commission, in my thinking is not right. Because if the Commission comes to me and our candidate is wrong but he says it is right because our candidate is going to win, that will be a big fight during the election. I listen to that explanation and I can see we are trying to compromise these things when talking about the law. If it is wrong then it is wrong. That is my comment on this.

Clause 19 agreed to.

Clause 20

Hon. Tom: I move that Clause 20 be amended by omitting 50(2) and substituting instead 50(3).

The amendment agreed to.

Clause 20 as amended agreed to.

Clause 21

Mr Chairman: I understand the Minister wishes to omit this clause from the Bill and I now call on him to move the necessary motion.

Hon. Tom: I move that Clause 21 does not stand part of the Bill.

Mr Chairman: Is there any explanation, Minister, before I put the question?

Attorney General: This is a leftover from the previous draft we had last year. The draft that was previously prepared last year had certain sections and those sections have been removed unfortunately but this section here still remains. It should have gone out also together with the ones that have been removed. That is the simple explanation.

Clause 21 has been omitted and does not stand part of the Bill.

Mr Chairman: This amendment if passed will effectively omit the whole Clause 21 from the Bill. Is any Member following that explanation by the Attorney General wishes to make any comments?

Hon. Sogavare: Does this means Section 54 of the principal act actually stops at the rejected ballot papers? Is that the case?

Attorney General: If the original version of the Bill was presented to Parliament, all that would be done to Section 54 was deletion of those words in the bracket, in common, which is the counted and rejected ballot papers.

Hon. Sogavare: So Section 54 now after that omission will now read "Upon the conclusion of the counting of the votes, the returning officer shall seal up in separate packets". Is that the case?

Attorney General: If the version I talked about had been presented to Parliament, that would be the first sentence in Section 54.

Clause 21 not being part of the Bill agreed to.

Clause 22

Mr Chairman: Honourable Members, as you can see in the Bill, Clause 22 seeks to repeal the Second Schedule of the Principal Act and to replace it with a new Second Schedule as set out in Clause 18 to 26 of the Bill. There is no amendment proposed to Clause 22, but since it seeks to introduce a long schedule with various forms, I suggest that we discuss the proposed new second schedule of the Principal Act from pages 18 to 26 of the Bill before I put the question on Clause 22.

Attorney General: Did you say the house needs clarification on the Schedule or the numbering?

Mr Chairman: The Speaker's note is that honourable Members will see Clause 22 seeking to repeal the entire Second Schedule of the principal act and to replace it with a new second schedule as set out on pages 18 to 26.

Attorney General: You have only one big schedule, the second schedule. The second schedule will replace the current second schedule. The second schedule is big because you have Form A, Form B, Form C, Form D, Form E, Form E-1. These are the forms in the second schedule.

Form A in brief is the form the registration officer publishes and informs people desiring to be registered to fill in Form B, which is the next form. Persons who want to be registered as voters or electors should fill in Form B. We then have Form C and Form C-1. These are the forms the Commission will use to produce the alphabetical list of electors. Forms C and Form C–1 are then given by the Commission to the registration officer who then publishes Form C and Form C–1. The list of voters that will be put out to public will be on Form C and Form C–1.

A person who has submitted a notice of claim in Form B, who later sees that his or her name does not appear in Form C or Form C1 can fill in Form D on page 22 to resubmit his/her name again.

Form E on page 24 is the form where a person whose name also appears in Form C or Form C1 can fill in to object to any other person on the list. That is

Form E. Form E1 is the form the Commission will use to submit its objection if during preparation of Form C and Form C1 finds that someone's name should not be entered onto that list, the Commission then fills in Form E1, which is the Commission's notice of objection. Those are the forms in the Schedule. Thank you.

Clause 22 agreed to.

Mr Chairman: Honorable Members, there being no preamble or consequential amendment to the long title, this brings us to the conclusion of our deliberation on this particular Bill. This Committee of the whole house is now dissolved and the Honorable Minister will report to Parliament when the House resumes.

Parliament resumed

Hon. Tom: I wish to report that the National Parliament Electoral Provisions (Amendment) Bill 2010 has passed through the Committee of the whole House with amendments.

Bills – Third Reading

The National Parliament Electoral Provisions (Amendment) Bill 2010

Mr Speaker: Honorable Members, before we proceed with third reading, I wish to inform the House that with the omission of Clause 21 from the National Parliament Electoral Provisions Amendment Bill 2010, renumbering is required at various clauses and cross referencing needs to be corrected to reflect the change. I have given my permission for necessary renumbering to be made under Standing Order 58(2), and I now call on the Honorable Minister to formally inform the House of the errors.

Hon. Tom: The renumbering and correction of cross referencing that are made necessary by the omission of Clause 21 are indicated on the table which has been circulated to all Members. I table that table for the records of the House.

Mr Speaker: The corrections are being duly noted by this House and will be corrected before the final version of the Bill is sent to His Excellency the Governor General for assent.

The Bill passed its third reading

MOTIONS

By the Chairman of the Foreign Relations Committee

Mr Speaker: Honorable Members, on Monday 7th December 2009, the Chairman of the Foreign Relations Committee moved that Parliament resolves itself in the Committee of the whole House to consider the report of the Foreign Relations Committee in the inquiry into the Facilitation of International Assistance Notice 2003 and RAMSI Intervention (National Parliament Paper No. 37 of 2009).

The motion was passed on 14th December and that Parliament resolved itself into a committee of the Whole House to consider the report of the Foreign Relations Committee specified in the motion. On Wednesday 31st March 2010, Committee of the Whole House resumed and the proceedings were adjourned. The House will now resolve into the Committee of the Whole House.

Committee Stage

Mr Chairman: Honorable Members, the paper before the Committee is the report of the Foreign Relations Committee on the inquiry into the Facilitation of International Assistance Notice 2003 and RAMSI Intervention. Before we go through the paper, I wish to remind all Honorable Members that discussions may extend over all the details contained in the paper. I have allowed discussions on paragraphs of this paper but not put any questions or allow any amendment in relation to the paper. I propose that we go through the paper page by page.

Page 82

Hon. Sogavare: In fact, page 81 carries forward the discussions on the consistency of RAMSI privileges and immunities with existing local laws, and then the next heading the Committee put in is the question, 'are the FIA Act powers and privileges still necessary in 2009'.

Just in passing, before I come to what I want to raise on page 82, the generality that the Committee came up with to say that the Diplomatic Privileges and Immunities Act, Cap 67 is the existing law that covers anyone that are entitled to immunities and privileges and so it does not make any difference. We have laws already and if our friends apply under that laws, then they are only entitled. I think the only difference here is that there are two components, of which one is the non-military component, which the Committee maybe right in

what it is putting here. The other component is the military and police component, which their powers and privileges is more than the ordinary non-police and military component; like they are empowered to carry guns and things like that, so that is a marked difference. I just want the Committee to take note of that.

On page 82, the Committee in the third paragraph says, and with your indulgence I want to read what it says: :"In view of these observations, the Committee acknowledges the sentiments of provincial witnesses but is not convinced that such sentiments disclose a solid basis for removal or reduction of RAMSI's powers and privileges". Unfortunately there are no convincing sort of evidences placed before the Committee for it to draw some solid conclusions on maybe the views and complaints raised by our people. In fact, I have letters that people have actually written to me complaining that some of these powers maybe abused. I do not want to read those letters here but it would have been better if some arrangements have been made so that evidences like that are produced to the Committee. If you look at the third last paragraph, the Committee acknowledged that by saying, "By contrast, the Committee notes with approval the fact that RAMSI is taking steps to limit the privileges of RAMSI personnel in relation to taxes and immigration fees, and to regulate their conduct in Solomon Islands". That is, RAMSI realizes that the abuse of immunities and privileges is an issue and so they acknowledged it, maybe based on complaints raised by people. Rather than leaving it to the discretion of RAMSI to do that, it would have been much better if we take some steps towards actually legalizing the limitation of these immunities and privileges.

I made that statement because immunities and privileges are what seemed to be advanced in this Report because it is accepted internationally, so it is good for Solomon Islands. I do not buy into this whole idea of 'one size fits all', because all these immunities and privileges are enjoyed in a given context and cultural setting. They come here to help Solomon Islands and, in my view, with that open cheque kind of thing that is vulnerable to abuse when you have such privileges.

The point I want to reiterate again is that because the immunities and privileges are there, they are vulnerable to abuse, and there are letters written to me by some people complaining about their marriages breaking down because of the involvement of some of our friends with. The letters are here, and if later on the Committee wants to see what I have said, I can give you the copies of the letters. I just want to express the view that immunities and privileges to be enjoyed in the context of a setting, and the setting is here in Solomon Islands.

Mr Boyers: During our hearings this was raised considerably in the provinces and we sought evidence for this, but we just have hearsay and also there were no letters tabled to the Committee which made us came up with that conclusion in relation to this issue.

Of course, consistent with the visiting contingent, the privileges in this Act apply not just to RAMSI. There is a broader sense with RAMSI and maybe that is in relation to the fact that it has a military contingent or contingent of forces, which is slightly outside at a more domestic type of privileges and immunities. Obviously, that was scaled down as they phased out. But as far as the Committee is concerned we were very limited in evidence supplied in relation to this.

Mr Agovaka: On the next page is the recommendation by the Committee to make more consultative awareness programme in the provinces. I was reading page 82 and note that people in the provinces are less inclined to make such judgment on RAMSI personnel regarding their powers and privileges. What has the Government done in trying to remedy this perception by the provinces of the powers and privileges of RAMSI because one of the biggest problems we have is understanding what these power and privileges are. Has the Government done anything in this regard?

Hon Sikua: The Government noted the confusion within the communities due to lack of awareness of the powers and privileges of RAMSI under the FIA Act. As a government we have agreed with relevant ministries to meet and provide clarity on these matters and then work with RAMSI on the awareness programs. That is being undertaken by the Permanent Secretary (Special Duties) on RAMSI.

The government intends to take a leading role on this matter, and it is a matter of concern because of the application of the laws of Solomon Islands. We agree that a proactive awareness program must be undertaken by both parties to better inform our communities.

Page 85

Hon Sogavare: I was quoted widely in the report here and so I am going to explain my thinking in regards to this. On the sovereignty of Solomon Islands, maybe this word is sometimes overused and also misunderstood very often.

Chapter 7 is a discussion on the sovereignty of Solomon Islands and the general definition of sovereignty in the political sense is the exclusive right to exercise supreme political, for example, legal, judicial and executive authority

over a geographic region or group of people. That is the general, I guess, definition given to this, and this is where some of us are coming from.

A concern I have is the total inability of the Solomon Islands Government to come up and take strong positions when our laws are seen to be violated unnecessarily. I know the government has a copy of letters submitted by the Catholic Church addressed to the former Special Coordinator of RAMSI and also to the Commander of the Participating Force, and my understanding was that a copy was also given to the Government on what is seen to be violation of our laws. I think we have discussed this matter in terms of whether the GBR or those who are contracted to run the GBR also have immunities and privileges. I think it appears that they are not. Maybe the Chairman and his Committee can clarify to us or maybe later on the government needs to clear that because it would appear to some of us that those that are contracted to render services to RAMSI are not covered, they do not have privileges and immunities as enjoyed by the military component and non military component directly employed by RAMSI.

I am really concerned that there are some actions here which borders on breaching the laws of this country, and we did nothing about them, we did not exercise our sovereign right to stand up and say the laws have been violated. This is a matter that directly relates to the Ministry of Commerce, a long list of what appears to be direct violation of relevant laws: breach of the labor laws, nonpayment of entitlements under the labor law, forcing so called agreements and local agents, causing serious injury, employees got locked up by mistake, not replacing work clothing, discrimination, removing expiry dates from food, done upon the instructions of the catering manager, kitchen manager and kitchen supervisor, providing expired food to diners, abusive language to employees (black swines), abusive language about churches, ridiculing Solomon culture.

When some of us, I guess, are really concerned about the issue of sovereignty, we are concerned about areas like this that we have no backbone to stand up and tell them that you are breaking the law. I think no decision is yet being taken whether the GBR or the people who are contracted to provide services to the GBR have privileges and immunities. That decision is not yet made it; it is not clear yet at this point in time.

I think we raised the point as well that there is a clear violation of taxation law as well. Only the sovereign government has the right to exempt any one, and only a sovereign government has the right to collect taxation. It is our right. The point we are raising when this matter of taxation came earlier, but now it relates to sovereignty here as well, once we establish that those who are contracted to provide services are liable to pay tax, that tax must be backdated to 2003 when they first arrived here. And my understanding is that for two years it amounts to $325million that was given to one sub contractor.

That is a point I want to raise in regards to sovereignty. And while I am still standing, on page 85 on the 1st, 2nd, 3rd, 4th and 5th paragraphs, the Committee observed and it made reference to Chapter 5 where "the Task Force welcomed the decision of SIG at the time not to undertake a review of the RAMSI legal framework and to maintain the existing RAMSI mandate" and it made reference to me arguing that the outcome in 2007 reflected the wishes of the Pacific Islands Forum and in particular that of the Australian Government as a Forum member with strong and direct vested interests in keeping RAMSI in Solomon Islands". That is a fact, and I still hold that view. In fact, RAMSI and Australia were bitterly opposed to any idea of adjusting the framework and even the FIA Act when the process is very clear, we cannot do it for nothing unilaterally. If it has to be done the process is clear, and that is we have to consult members of the Forum countries before any amendments is made. We do not have a free hand to this and we fully appreciate that. But regardless of that, we have a really difficult time sitting down with them to discuss the legal framework of RAMSI, because every draft that goes to them was basically rejected. I just want to make that point because that is why we raised that view as well and so as the fifth paragraph where it would appear, and not only that but there are written documents that also say this and the action of Australia itself in its interest to see that the Pacific region, the safety and security of the Pacific region is theirs. Maybe as member of the regional family, we can see eye to eye on that. In fact, Solomon Islands does not have any real problem in regards to that. We appreciate Australia's strategic, national and commercial interests in this country and we are willing to cooperate. The only problem comes when we are not respected.

I was saying that because when we proposed to get some police trained in a country in Asia, there was big opposition by Australia and there was a big delegation from Australia going to Taiwan telling them not to entertain the request by the Solomon Islands Government. That only demonstrates they have a serious vested interest in that area.

What I am saying is that this is a sovereign country and we have the right to have bilateral relations with any country in the world, and we can go to them to discuss any matters. But because we are part of the regional family we can understand their concerns and we are willing to sit and talk when sensitive matters like that come to us, but we were not given the opportunity, instead it was all bitter opposition to everything that this sovereign country wants. I just want to express this view because those points were raised in this report.

Mr. Boyers: An interesting point was made by the Leader of Opposition in relation to the contractors. Section 4 of the FIA Act mentions and I would like to

read, "A visiting contingent shall consist of (a) members of the police force and armed forces of the assisting country or any other country notified by the assisting country to the ministry responsible for foreign affairs and accepted by the Ministry, and (b) - other individuals notified by the assisting country to the ministry responsible for foreign affairs. I think therein lies the gray area that is probably the responsibility of the government to actually be informed by RAMSI in that partnership as to who is actually exempt from tax in as far as contract is concerned. Do they fall under this section 4(1)(b) as exempt or not, and that is a matter for the government under the Ministry of Foreign Affairs and RAMSI to clarify. That is an interesting point being brought up and that is where those areas come under.

Hon. Lilo: Just on some of the evidences brought up by the Leader of Opposition. I am just wondering whether or not he has taken the privilege to inform the complainants to lodge complaints directly with the relevant authorities of the Government because just by listening to some of those complaints, they seem to be routine complaints that would normally be addressed by relevant authorities, but somehow we have used these to blend them in a way to make arguments against very lucrative concepts like sovereignty. I am just wondering whether the Leader has done that.

Hon. Sogavare: This letter was written on the 1st of September 2008, as I have said already, one on the 6th of September 2008 to Tim George, Special Coordinator of RAMSI and another one on 1st of November 2008 to Mr. Dennis McDermott, and we take it that those copies should find their way to the Government. If Government and RAMSI, as they seem to mention, are having regular consultations then issues like that could have been raised. I do not know but I can only look at the addressees of the letters.

Hon. Sikua: I want to confirm to the House that copies of those letters referred to by the Hon. Leader of Opposition were received by me, but I was hoping that when we come to page 140 then I will just give the Government's response to those letters where Recommendation No. 8 is. I was holding back on responding to that particular issue until we come to page 140 where Recommendation 8 is found.

But going back again to what I said in relation to Recommendation No. 2 on the comment about amendments to the FIA Act, I have said in response to Recommendation No. 2 that the Government considers Parliament as the supreme lawmaking institution in the country and thus has the power to make or amend the FIA Act as it wishes. But what has happened here is our

recognition of the contributions by our Pacific island countries and regional countries and therefore it is important that Government takes into consideration the views of pacific island countries that contribute to RAMSI before the matter is deliberated in Parliament.

The next round of talks with the Forum Countries Standing Committee on RAMSI is this week, and this is the time we will be looking at those issues raised. Our foreign ministers standing committee on RAMSI are arriving this week to discuss the issues we are talking about.

Page 87

Hon. Sogavare: These are discussions that flow on from page 86 on the sub title, "The perceived domination RAMSI by Australia". We understand the reason but just to comment on the arguments posed there, and I quote from the former Forum representative to RAMSI who made this comment, "Might I return to the signing of the treaty by the 16 members of the Forum at that time, 14 of which were heads of states and heads of governments, and only 2 were represented by their high commissions. That, in itself, indicates the seriousness which members of the Forum attach to their being called to assist a neighbor as a member of the regional family Solomon Islands".

Of course, we appreciate the concerns raised, and signing of the treaty is one thing but in practice it is Australia that is really running the show. That is the concern raised everywhere when this particular subject is raised.

What I am saying here is that we can argue till the cows come home, but we will not be able to convince each other on that matter. What Australia says goes, and that is a fact. I just want to register that.

Mr. Boyers: Just a clarification to those comments. Australia's dominance of RAMSI is a simple fact as admitted by the Forum rep on page 88 of the report. It is RAMSI's original initiative and in any original initiative there will always be big players and small ones. Australia is the biggest of them all, and so its dominance of RAMSI is inevitable.

Changing our stand simply because we are no longer in conflict, and a conflict period is probably pointless. Changing our view on the fact that RAMSI cannot continue without the support of Australia and New Zealand is a no. I suppose the perception that RAMSI is dominated by Australia is correct, and that is reflected in the contributing effort of RAMSI. But in the nature of during the investigation that the Pacific Forum is the venue for this to work, so a considerable say is reflected within the other Forum countries in any outcomes.

I acknowledged the comments that the dominance is there and it is basically because of its larger budgeting role in financing. I think it is half a dozen of one and half a dozen of the other. But it is important that the Forum is the balancing process with that partnership in reflection of our role, as legislators to also make sure that we protect our interests.

Mr. Oti: This has always been one of the contentious issues, not so much between those who signed the treaty originally but particularly now those that stay under the payroll of he who pays. So they have taken on that responsibility to advance on behalf of the principle position they thought as what it should be. When in effect it should be a matter of discussion between the original signatories to the treaty where such treaties are premised on equal partnership obligations, unfortunately were probably in an animal farm situation where some are more equal than others. Perhaps for that matter, it is like this, we just accept that he who pays calls the tune. We do not have to labor ourselves arguing about those things; do not defend it, it is a fact.

Page 88

Hon. Wale: In following those reflections, let us not be too depressed about it. I mean it is a reality, but I think it is up to us, this House and the government to really take in our issues upfront and present them if the reality as has been quaintly pointed out is that Australia is the dominant partner in this enterprise and so we need to take our issues as forcefully as, not negatively forcefully but as robustly as we can to them, of course, utilizing the regional mechanisms that have been set up. I think if we see the reality and see our relative, perhaps weakness in the partnership and condemn ourselves to that weakness, perhaps we will find ourselves on the back foot all the time and not advancing the issues that we feel are important to us, even if they do not clearly see it.

I think the ball is in our court in advancing our issues within the mechanisms that we have been a party in setting up to try and ameliorate the domination of the current framework.

Page 89

Hon. Sogavare: I still believe that Solomon Islands is a sovereign country, we do not need to swallow everything that other people tell us, and I think we are capable of doing that.

On this issue of requests by others from outside the Pacific Forum to join RAMSI, I think the broader issue this Parliament and leaders of this country,

political leaders in governments need to look at is the crucial question whether Solomon Islands and the Pacific Island countries should just quietly endorse Australia's military superiority in the region. I think that is the broader and bigger question this is bringing about or exercise our sovereign rights to engage with Asia for specific security and police needs. I think that is what this issue brings out.

I raised this because as I have said earlier on, Australia is bitterly opposed to any engagements with Asian countries when it comes to the issue of security. Australia feels that is its right; this is its patch and it must dominate that sector. I just want to express it like that and others may want to make comment on it. But at some point in time there has to be some serious decision taken on it with some serious understanding by our friend, Australia.

Hon. Sikua: I think it would be wrong to assume. Here we are talking about Australia's leading role in RAMSI and the contribution it is making to RAMSI. It is very true as has already been mentioned by the Chairman. It is wrong for you to tell me that every day Australia is telling the Solomon Islands Government what to do. I can tell the House that Australia is not doing that. This Government is running this country and not Australia.

I am aware of the issue brought up by the Leader of Opposition on the training of our police officers in the Republic of China on Taiwan. The policy advice I received from my staff is to go back to Australia and ask them for any other alternatives if they disallow this training. We are currently exploring the alternatives but these things are ongoing. There are officers from the Royal Solomon Islands Police that have gone out on various trainings, not only in Australia but in other places. We would like to look at people further down the ranks and files of the Police Force on what the alternatives are. Those are the kinds of discussions that are going on for us to make sure our police officers do receive the necessary training they require, not only here Solomon Islands but outside as well.

Hon Sogavare: I mean there are no recommendations made by the Committee here and so we are left in total darkness as to where to move this forward, the request from outside the Pacific Forum to join RAMSI. What would be our position and the position of the Committee on this issue?

Hon. Sikua: As we know, the Solomon Islands Government and RAMSI have a partnership framework in place, and it would be on the basis of this partnership framework that the Government can progress these thoughts outside of this Report.

I am mentioning these things on the basis of the principles of the partnership framework that the SIG with RAMSI have, and these are some of the things we can discuss in our ongoing partnership and cooperation under this partnership framework we have signed with RAMSI.

Mr Boyers: I would like to make a comment in regards to the Committee in relation to the regional nature. On page 89 we mentioned there that the Committee has raised this issue, and notably Japan's interested in RAMSI. I think this is still an ongoing issue.

Considering it was a Forum initiative originally premised on the basis of the government requesting Australia for direct intervention, which led to a more Forum nature-led intervention, it is now obviously based on its success that is attracting interest beyond the region.

This is an ongoing process that needs to be looked at carefully and we were hesitant to actually make any recommendation in relation to the nature of the growing interest outside on this regional assistance.

Page 90

Hon Sogavare: On concerns that RAMSI is acting as a parallel government, I think as appropriately put the heading is straight that it is acting as a parallel government, although people may argue otherwise. In fact, people who may argue against this kind of thinking, we just have to look at the legal frameworks and the powers that they have, and therefore this kind of conclusion is drawn. The question is whether this is still necessary six years out, a question that will probably be around. I think the Committee has expressed its views on that. There is a chapter on this that we have considered already

There is also the view expressed by the Committee in the second last paragraph to say that it initially came from former militants together with their advisors. Just because it came from former militants, it does not mean we should just brush aside such views that people have about the way our friends operate in Solomon Islands.

We note a quotation from the report quoting you, the Chair on page 31, I think, of the submission that is made by the Chairman of the Committee and I take note of the views there. The Chairman of the Committee did express his views on your early involvement with them. If I quote, "please don't come and form another government because the facilitation gives you leeway to do that". I think that observation is correct and the Committee does recognize that in the heading of this section. And quoting once again from their quotation, "But I quite appreciate it at that time it was meant by Parliament for a good reason so

that they will work uninterrupted at a very difficult time, and that difficult time, some of it is still around us". What I am trying to say here is should we now make amendments to acknowledge that most of the issues that warrants the establishment of what looks like an alternative regime are no longer there. I just want to express that on what the Committee puts on page 90 and that same argument also leads to page 91, same discussions.

Mr Boyers: In relation to that, I can only acknowledge those as valid points. Page 99 is where we are talking about the concern that RAMSI is acting as a parallel government. I will just read the last paragraph: "Clearly complaints about RAMSI being a parallel government had some merits in the early years earlier following the RAMSI intervention and were premised on the inadequate counter-parting arrangements within various government ministries and agencies including the RSIPF.

As discussed, the engagement between RAMSI and SIG has since improved considerably through the establishment of the triumvirate group and the FMSC with its own reporting structure and the formation of the new SIG RAMSI Partnership Framework in 2009 which shows for the first time that the SIG is taking initiative in leading the RAMSI process in making it to follow the government's priorities. There is no doubt earlier on that this parallel system was part of the growing pains and was reflected considerably in the provinces between RAMSI and the RSIP personnel logistic support communication where the disparities were obvious. But the process and concern is a reality, but it is up to the SIG to take the initiative in making sure the parallel perception and the parallel process comes in tune as a linear process of one in front of the other. We believe as a Committee that hopefully the partnership framework will result in more clarity in the roles played by the SIG, RAMSI and the Forum in the partnership process.

Mr Oti: I would like to acknowledge the intervention by the Chairman of the Foreign Relations Committee in further explaining and trying to put across what the Committee perceives as the basis for this perception or misconception of RAMSI as a parallel Government.

Perhaps, on the one hand whilst our thinking in relation to the role played by RAMSI in what is suppose to be a joint venture between Solomon Islands and Forum member countries, and the mechanisms have been established, first under the Forum is the Foreign Ministers' Standing Committee where before this review came, it has already undertaken some of those responsibilities. The triumvirate at the administrative level has representatives from RAMSI and from

the Forum and from SIG. That is another mechanism in trying to address this somewhat misconstrued role that RAMSI is playing in Solomon Islands.

Thirdly, as the Prime Minister mentioned, is the framework concluded by Government while this process here was also being undertaken. The framework agreement was not, perhaps, as a direct result of the review by the Foreign Relations Committee, it is independent and now we are trying to find its way into the process and defend its legitimacy for that purpose. It is government itself that came up with that in trying to put it through the parliamentary system so that it becomes merged and have some parliamentary legitimacy on it. Those are the various mechanisms that have been established to elevate this perception. One that we really, and these are all administrative, need to tackle is the legal one, the constitutional one. Last week I asked when we went through this, and from the Chairman's reply, immediately put me on the footing that that is it, that is what it means, it is another constitution because the power exercised by the GG is nowhere else except two; in the case of an emergency and the notice on this one. Obviously, from the legal constitutional standpoint, these two are equal, the Constitution and the FIA Act because those are the only two laws that the GG can directly invoke. But the constitutional one under section 16, after 14 days it must go back to Parliament. With this one, that is not the case; permanently the Governor General is locked into this issue. So we are looking at this from the constitutional standpoint, from a legal view. The ones that have been explained are administrative policy, perhaps which can be taken care of through the mechanisms I have pointed out and which are reflected in these reports. Until we go back to the real legal framework, and we do not need to talk to RAMSI on this, we must go to the members or those that are signatories to the Treaty because as I said in my intervention RAMSI is an instrument of the Forum to implement the intervention here, it is not a party to the Treaty and therefore to be dictating to RAMSI must be those of us that are member countries that are signatory to the Treaty. Unfortunately, we have elevated the role of RAMSI to be on par as a member of the Forum and directly dealing with it, negotiating with it and so on. That is the observation I want us to see, perhaps not as a concern but a realization we have to quickly absorb in order for us to set the direction of where the future of this will go.

When you talk about other countries wanting to become partnership in RAMSI, what has been pointed out here, in the previous page, I think, obviously you cannot or should not by virtue of the original intention of the intervention. If they want to come in, you must first change the shape of RAMSI before you can accommodate anyone outside of the Forum. Otherwise it is a no discussion issue; it is not an option either. A Forum matter is a Forum matter. For what purpose, it is for that particular purpose. You start going outside for what

purpose. You change the objective of the intervention then you can accommodate the others. For the time being it is a no. Thank you.

Hon Lilo: I can only be guided by the report here. I can understand how the members of the Committee and even the Chairman in coming up with this in trying to argue the point that RAMSI is acting like a parallel government.

Reading through the report I could not find any evidence that the head of RAMSI is acting like a prime minister or any evidence to show that there is a mini cabinet in RAMSI, and evidences like that. I could not find such evidence in this report. Otherwise what we are trying to talk about here is just mere perception by some people alleging that RAMSI is acting like that. But there is no clear evidence to show they have conducted their business in a way that resembles the way the government or an elected government or an appointed government is running business in the country.

Hon Sikua: I think because of the concerns that have been aired in this report, the partnership principles that the government of Solomon Islands and RAMSI have is noting that RAMSI is in Solomon Islands at the invitation of the Solomon Islands Government. Under the auspices of the Pacific Islands Forum, it is a partnership between the Solomon Islands Government, the Solomon Islands people and the contributing countries of the Pacific region.

The SIG/RAMSI partnership framework is based on a close alignment of RAMSI's activities with the Solomon Islands Government priorities and objectives within RAMSI's mandate and our partnership now is based on mutual respect and trust. It is also based on accountability, transparency and open dialogue. It is also based on respect of the rule of law and the traditional values of Solomon Islands, the sustainability through continued focus on the building capacity of Solomon Islanders so that Solomon Islanders can independently manage their affairs. It also recognizes the need for us to be working within and strengthening the current constitutional frameworks. It is on those principles that the partnership framework between the Solomon Islands Government and RAMSI is based on.

The notion of RAMSI being a parallel government is actually being addressed on the partnership agreement that we have with RAMSI.

Hon. Sogavare: Maybe that is a way forward to appease anyone who has such thoughts. The point here is that as long as the laws that give them powers remain as they are, there will always be that fear. The bottom line here is the laws that are giving them powers, and not the understanding we are making outside.

As we know there are two components here; one is the military component and the other are the people working in the offices. The police officers, for example, have not taken any oath and so their allegiance is not to the Commissioner and the people of Solomon Islands. The only person that takes the oath is the Commander of the PPF. So it is like a pyramid where on top they sit down and meet whereas down here they really operate separately.

I just want to make that observation, but we appreciate what the Prime Minister has said that that is a way forward in helping people who might have that kind of thought but this is how we want to operate.

Hon. Haomae: The issue of swearing in has been settled by a High Court decision and I think it is a straight forward one.

On the view that RAMSI has been elevated to the point of state level as has been expressed is not the case because if you look at the structure of the organization, RAMSI is only involve on the triumvirate and also the Enhanced Consultative Mechanism, those instruments and the administration of it, but it is not a member of the Foreign Ministers Standing Committee on RAMSI. Based on the formula decided by the Forum are members of that. In that sense, I cannot see the view that it has been elevated to the state level for it to be a party to the treaty holds water.

Page 93

Mr. Agovaka: I am sitting here listening to all of these and I am getting more confused now. Who is RAMSI really answerable to, is it the Forum, the Solomon Islands Government or the Australian Government? Of all that have been said by the Honorable Prime Minister, the Leader of Opposition and the Chairman of the Committee, I am getting a little bit confused here. Who is RAMSI answerable to? This is a general question.

Mr. Boyers: I think the partnership is a three level partnership, and so I suppose it is a consultative process. Answerability, at the end of the day is that RAMSI is answerable to the government as well as the Forum, the government of the day. I think the beneficiary is the Solomon Islands Government and the people. It is more of a consultative process. I do not think it is a position where one should be saying one is answerable to an ultimate power. To say that RAMSI is answerable to Australia, there is answerability in many aspects like in funding, the legitimacy which is at the end of the day, the SIG and the Forum. In the nature of the RAMSI Mission formed by the Forum through the Biketawa Declaration, the answerability comes through the process of that formation

naturally. It is also answerable to the beneficiary, which is the Solomon Islands Government. In that process, I suppose, coming in, in very unclear circumstances, the partnership has grown in the process of respect and trust answerable to the Forum and to the SIG. Of course, each participating country is answerable to the own country as well as the Forum. I think therein lies the nature. I think this is explained in a schematic on page 94 the process of that partnership and the engagement of responsibility to partners in the RAMSI mission or intervention.

Hon. Haomae: RAMSI reports to the Solomon Islands Government and the Solomon Islands Government distributes those reports to the participating countries.

Page 94

Hon. Sogavare: The last bullet point leading on from discussions on page 93. The Committee warmly welcomed the advice of the Australian Government that he had recently decided to extend its commitment to RAMSI for at least another four years to June 2013. Can we reconcile that kind of thought in the position that they always said that it's not time bound but its task bound? Can we reconcile that?

Mr. Boyers: In light of the comment by the Australia, the Foreign Ministers' Standing Committee supports RAMSI for another four years and thus suggests how long RAMSI remains in Solomon Islands depends entirely on Australia.

The answer to that is no. I think the comment Australia referred to four years because of the general understanding that RAMSI's initial tenure is 10 years from 2003. That is not written down anywhere but that is the general understanding. Obviously, any future projection in respect of RAMSI should not be too presumptuous and suggest a period longer than the generally accepted as RAMSI's tenure in Solomon Islands.

Mr. Waipora: Why are all the special coordinators all Australians? Is it because they are giving us big money? The other countries also participate, they joined together, but starting from the beginning all the special coordinators are always Australians. What about New Zealand and the other countries that also make up RAMSI?

Hon. Haomae: That is because in the Treaty, it is stipulated in the Treaty that the special coordinator must always come from Australia in consultation with the Solomon Islands Government.

Pages 95, 96 & 97

Hon. Sogavare: The discussions on page 97 flow on from pages 95, 96 &97 on the concern that PPF is acting as a parallel police force, and I think we have been discussing this issue. I am interested in the quotation on top of page 97 from the Commissioner of Police in terms of the relationship with the Participating Force. The Commissioner was quoted as saying "All I can say is that it is very, very good and very supportive". The Commander of the PFF is actually sworn in as Deputy Commissioner of the Solomon Islands Police Force as well as his PPF Commander role. He is present at all executive meetings. His personnel are aligned to each of the significant areas of the Solomon Islands Police Force". He went on to say "I want to dispel any notion that there is a parallel police force".

I just want to repeat what I have said earlier on that that is what we can say outside of the law, as it stands at this point in time. The question is why only the PFF Commander and not the other officers are sworn in? That is the question I have under. Section 17 of the FIA Act exempts them from taking the oath of allegiance under Section 11 of the Police Act.

We have heard these complaints, and I think this report carried on later on the views expressed by Premiers on the working relationship that our police officers and the Participating Police Force have right at the grassroots level. They have their own lines of command, and how they use their logistics is up to themselves. Although the head of the PFF is sworn in as Deputy Commissioner, he runs the entire show as far as RAMSI is concerned, and that is a fact. The question is why only the PFF Commander and not the other officers are sworn in.

The other point I want to raise is in regards to under the quotation from the Commissioner himself on the middle of the page which says, "If it was not working very well, I would be making it quite clear to Commander Mc Dermott and other senior members with RAMSI that I am not satisfied by this. That is not the case". I am pleased that he made that comment. All that the Commissioner needs to do now is to go down there and see how things are going on in other provinces where boats and things like that are not available to local police officers to run cases. In the case of Choiseul Province, for example, I can speak for that province that when our police officers ask them for logistics, it is not forthcoming and so some of the arrests cannot be made on a case that happened on the other side of the island.

I am pleased that the Commissioner made that point and now he should go down and see how things are actually happening on the ground.

Mr. Oti: Perhaps the Chairman or the Prime Minister answers me. I am very disappointed that the Minister for Police is not present here because some of the important areas here are for him for which he could provide the answers to. Please, the Prime Minister you take note that your Minister of Police is not here to assist Parliament on this particular part of the report.

I just want to ask because of this perception that it is acting as a parallel force that the recently reported filling up of posts down the line, whether that is part of the strategy of removing this perception so we need more RAMSI personnel at the operational level. Is that a strategy to address and remove this misconception? And if so, for which I would like to acknowledge the Deputy Prime Minister who has already raised this in a workshop that he and I attended on sustainability of the programs of RAMSI for which the Deputy Prime Minister has raised. After six years you started filling up those posts down there. This should have come in the first two to three years, but now six years after you start to be moving down when you should be moving out.

Is this part of the strategy of removing the misperception that there are two parallel forces, hence RAMSI officers must take up line positions subordinate to, even before the Deputy Commissioner was sworn in and now we start seeing more officers taking up lower subordinate posts.

I am just asking whether this is part of the process of removing the misconception of two parallel forces.

Hon. Sikua: I think to my understanding the PPF's work with the RSIP is based on about five themes. The first is to build greater community confidence on the Royal Solomon Islands Police Force. The second is on building capacity and leadership; the third is building a broad community crime prevention and problem solving capacity of the RSIPF, infrastructure and logistics, and the fifth one is to do with establishing provincial community based crime prevention committees.

When you look at the capacity building theme on the work of the PPF and the RSIPPF, there is the strategy they are trying to use in building capacity in trying to create a framework of transition in ensuring the Royal Solomon Islands Police Force has that capacity.

My understanding is that RAMSI officers appointed to those positions will not be on long term, but only for a short term up to six months because of the vacuum created there by not having suitable Solomon Islanders to fill those places, and so they are taking up those posts for only six months and once

training and transfer of skills does take place, the person identified will take over and the RAMSI officer moves away. It is not in a long term basis requiring that kind of thing we are talking about here. That is my understanding of this work and the partnership between RAMSI officers and the Royal Solomon Islands Police Force.

Hon. Sogavare: I thank the Prime Minister for his explanations. We will only be comfortable in this House if there is a visible counter-parting arrangement there, and the Minister of Police is not here to confirm this. How long does it take to transfer that knowledge to any local police officers? Let us say if those officers are only here for six months and then they go.

In the absence of the Minister of Police in here, this House should be comforted, and for someone to inform us that there is indeed a visible, workable and achievable counter parting arrangement.

Mr Oti: Just to add on to that observation and thinking the Leader has mentioned. I think part of the problem in terms of sustainability of the programs, not only in the police including police is that if RAMSI personnel are only here for six months to take up those posts or one year for that matter, and as has happened in other sectors because of the counter parting, you have a permanent counterpart in Solomon Islands that has two, three or four different men coming in and out and you expect that Solomon Islander to learn from those five different people is impossible. I hope this is not the defense about the counter parting and the sustainability of making sure that Solomon Islanders are trained. If this is subjected through the same process in other sectors of the public service, I hope we succeed in Police because in others we have not succeeded the way we really wanted.

Hon. Haomae: In terms of counter parting, we have to start somewhere. The ideal situation in terms of counter parting is a short timeline but the objective of also counter parting is that the person counter parting the other is taking all the skills and knowledge before the person doing the counter parting withdraws or departs. It is a matter of us having to start somewhere, and as the Prime Minister indicated today, all these are ongoing because of the new partnership framework between the government and RAMSI now.

We can go on arguing about this back and forth, but we will see the results after the reviews are made after one year or something like that.

Hon Sogavare: It is very interesting that the need for additional staff only becomes apparent only after six years of the presence of RAMSI in here. I would

have thought that if we are serious about training the Police Force with the objective of them taking over and performing the roles effectively. Six years is a very long time indeed.

If we suddenly found out that we need those people for six months after six years then something is really wrong with the way this programme is implemented.

Hon. Haomae: My view is that let us go forward. It is better late than never; something like that. We take note of the point that has been put forward by the Leader of the Opposition, but I think we have to move forward and let us not argue over what has already gone past but let us move forward.

Mr Oti: I thank the Minister for his views. We go by the government's views, not his views. Thank you.

But just a point that it is in the framework because of reasons already mentioned that perhaps the deficiency of the current capacity building arrangement, which some through counter parting, the time frame is too small, I wonder whether options have been explored to send Solomon Islanders, including the Solomon Islands Police Force to go and actually attach in regional police forces or even in Canberra so that this problem of advisors coming and going is gotten rid of so that men down there in Australia, Fiji or Papua New Guinea are permanent there, they stay at their post, and only our people go and come maybe for six months or one month. I am wondering whether that has been explored as an option because the other arrangement is not going to work?

Hon. Sikua: The Royal Solomon Islands Police (RSIP) has a capacity development plan already in place. This is based on the Royal Solomon Islands Police governance framework and the capacity development activities to meet this plan. The strategy they are using is continuation of conducting skills and systems based capability of the Police and development of the Royal Solomon Islands Police targeting the leaders, managers and supervisors of the RSIP.

My understanding of the way the Police is trying to provide capability and capacity building in their workplace is that at this time it is not really based on this kind old type of counter parting mode that we knew about. My understanding of what they are doing is that they are trying to base their capability and experience on a pool of people rather than one RAMSI officer and one Solomon Islands officer. They are trying to create a pool of people they can choose from. That is the target they are working towards rather than the counter parting mode that most of us are familiar with in our work in the Public Service or elsewhere.

But certainly, I have answered part of the Honorable Member for Temotu Nende's question earlier on when I said that discussions are going on, not only with managers, supervisors and leaders of the Police, but the lower ranks of the Police for them to go on attachments for up for six months in Australian cities like Melbourne or Sydney so that they go and experience for themselves how those people are doing their police work as part of modernizing our Police Force.

Certainly, there is a lot of work that needs to be done to bring back the confidence of our Police and their capacity and it takes time. If it has taken us six years to get here, so be it. But it is a lot of work and so we have to be patient in moving ahead. I think progress has been made. It does not matter that it has taken us six years to see the difference but that is what it is, because as we know our Police Force is really in tatters during the tension times and so we need a lot of time to build it to where we are now. I think some of the themes they are working on is beginning to bear fruit.

Page 98

Hon Sogavare: The views expressed by the Committee, and it is right at the end of paragraph 3 on page 98, the observation there is correct: "The real concern appears to be Australia's perceived domination of policy formulation for RAMSI at the Forum and the control of operations in Solomon Islands". I think that observation is right.

In the next paragraph to that; "Although many who addressed the Committee alluded to these concerns, none could explain satisfactorily how and why Australia would seek such dominance". I appreciate that it is not the work of the Committee to research into that and so it did not probe further into that question. But it would be really interesting to Parliament if this Committee has had the resources and time to do its own research into that area. I believe Parliament would have seen some very interesting information.

Hon Fono: We take note.

Page 99

Hon Sogavare: I can understand the heading at the top of page 99, the second paragraph which says; "despite varying views discussed above, the CNURA Government is yet to make an official stand on this". I would like to believe the CNURA Government as an entity is just an entity in this whole review. The Committee is actually answerable to Parliament. I would like to believe that the views expressed by this Parliament which is a body that will continue to last; governments come and go, and so is this entity called the SIG. There is a big

difference from the governing party and the SIG. I would like, may be in references to bodies like that, we refer to bodies that will last and outlived ruling political parties. But I can understand where they are coming from on this because the CNURA as an entity, as a legal entity is yet to express its views on that. I just want express that view.

Hon Sikua: I just want to mention that on the part of government, this matter has been referred to the Forum Leaders and the Forum Leaders are considering request by government to involve other people outside of the Forum to take part in RAMSI. Thank you.

Parliament resumes

Mr Speaker: I understand consideration of this paper at the committee stage does not need to be proceeded with now and it has been suggested that we adjourn for tomorrow.

The House adjourned at 4.29 pm.