



PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT COMMITTEE

NATIONAL PARLIAMENT OF
SOLOMON ISLANDS

OFFICIAL HANDSARD TRANSCRIPT OF COMMITTEE HEARING

His Excellency, Sir Nathaniel R Waena ,GCMG, KStJ CSI

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Third Hearing
Fourth Sitting

His Excellency, Sir Nathaniel Waena, Governor General of Solomon Islands: Mr. Chairman, I count this privilege as rather rare but of such importance in the sense that we are talking about developing our democracy. The art of developing a democracy is in the process of time, allowing things to mature, seeing things from an operational and practical point of view. I think we have now arrived at a point, more so at the threshold of the 21st century that a country known as Solomon Islands in its efforts and through experiences gained must obviously determine its own course of constitutional development process so that we can actually see the relevancy of our phase of change in development in our context rather than otherwise. And so I see your assignment as fairly pertinent in as far as the development of parliamentary democracy is concerned. When some of us were there we do not know how far we can talk and what we are not allowed to say. And so this is an opportunity for you to seriously consider the perimeter within which parliamentarians as legislators can actually maneuver in their participation in debate and in comments on issues and matters of importance to nation building as quite important. Outside the corridors of parliamentary chambers are lawyers who can say what they like about what you say on the floor of parliament. Now we are protected as it were or you as legislature are somewhat protected with the adoption of the British set of rules. The question here is we are already independent but why do we have to go back to England for rules that protected their leaders to be used to protect our leaders here. Those are the kind of thought that comes to my layman's mind. And so this is an opportunity which allows you leaders of this country, and legislators to think about how to protect yourself within the realms of law. That is my humble layman's perception of what you're doing. You devise their measure of protection for purposes of your deliberation on importance constitutional matters and upon the premise of the principles of democracy, as you go about your work on the floor of parliament.

So I am very happy Honorable Chairman that you come with the Committee to be able to listen to my layman's opinion, which I do not think would be anything near what you are expecting and I thank you for finding time to come. I think I will stop here and allow you to take us from here. I am available for any comments or something like that. I thank you very much indeed for coming. Thank you very much.

Hon Oti: Thank you your Excellency. Thank you for the opportunity affording this Committee to have an audience with you as one of the witnesses we have lined up to give evidence and testify to the Committee on your views and knowledge on this area of parliamentary immunities, powers and privileges under which our Constitution prescribed that Parliament can establish legislation to govern the specific area of our Parliament. Others have been invoked, the provisions of the Standing Order, the parliamentary entitlements commission, all the entitlements of the constitution and after 30 or so years this is one proviso that although provision is there, perhaps we did not see the urgency to bring about our own legislative framework as we have done to other provisions.

Your Excellency, we noted that on May this year you made a written submission that is also before the Committee as part of the evidence that has been gathered from important contributors like yourself and others from the legal fraternity and academic institutions. We have had privilege of getting the views of a former Clerk to the New South Wales Legislative Council. In essence we will be putting together a Report based on these submissions and experiences coming from inputs that we have received. Of course this information will be crucial to framing the parliamentary privileges, immunities and powers of our parliament when we come to legislate for them in the not too distant future, we hope.

Our proceedings have been to this far, Your Excellency, you would be the last one we will interview and will put together the final report, as the motion required of the special committee to put before Parliament a Report in November. Thereon, it would be really the parliament and the executive government to further look at, especially in terms of developing the legal and legislative framework which will ultimately take us to parliament and thereon, perhaps we would stand on our own legislation governing privilege, immunities and powers because currently we depend on the one the House of Common is using, which we prescribed last year as part of our law but we will be departing from that once ours is completed.

Basically as way of introduction Your Excellency, I think this is why we have come and the way forward we think as from here on, of course you will constantly be put in the picture with the progress of this development, but it is important that apart from those written submissions we also will hear from you and perhaps to refresh the thinking of some of us committee members because sometimes we read them but we do not really get a grasp on what is inside the written submissions.

In a way, I think that is a short introduction from me and the members are here, unfortunately the Member of Parliament for South Choisuel is tired up in another meeting, the Member of Parliament for Malaita Outer Islands also has prior engagement and the Member of Parliament for Central Makira has also given his apology for not being able to be part of the hearing today.

Unless any other Members would like to say anything before I hand it to His Excellency to perhaps follow through with us more on the submission he has put to the committee. I take it that there is none but we will be sharing some of your views as we go along. So I will now give you the opportunity, your Excellency.

Governor General: Thank you Chairman of the Special Select Committee, Honourable Oti maybe before we go on, I would like to have as a backdrop the matter of why a very developed democracy as Britain in the House of Commons has these rules. We are only 30 years but Britain is the mother of democratic governance, if at all that is the right sort of claim that you could lay at their feet. Why would they see fit to have their own rules? That I think should be the backdrop. And if indeed our Constitution has been prefaced upon the

practices of the House of Commons and the British way of doing things in terms of democracy then it means we too need prescribes rules so that there is no room for doubt of how to protect our legislators, if that can be seen as the backdrop.

As a layperson trying to understand this issue of complicity that you are assigned to develop something out of and for. I tried to describe this in the paper I gave to you. I wanted to begin by asking where this power starts. Where is the domain of authority and power? Well we must now go to the constitution and attempted to because that is the basis of the source of authority and power lies. It is with the people that govern or the electors. Our constitution very clearly shows that all powers in Solomon Islands belongs to its people and is exercised by given authorities on their behalf. Very, very carefully our founding fathers as clearly prescribed within the pages of the constitution that the powers are divided into three (3) specific areas of responsibility - the legislature which you are inside, the executive which involves this office and that of the Cabinet and the judiciary. I attempted to try, if at all crystallize that understanding by merely borrowing the division of authority and power between the three arms established by the Constitution - the Legislature, the Executive and the Judiciary. Now your very important work is to enact legislations, to amend them or to repeal them as required. That can be done by the Executive as we all know proposing new legislations whether there can be amendment to bills or bills to repeal the whole laws or acts, and that sort of thing or by ordinary Members of Parliament. I have cited two cases in point. One, the amendment to law which talks about basic rate payments which Sethuel Kelly when he was a member enacted it, and it is one of the laws inside our laws. The other one was by Mr. Nori, and this is amending of the Local Courts Act. That really is to highlight the two sources of enactments either from the Executive or private members of Parliament. Those are the two sources of possible introduction of legislations whether it is an amendment of the existing legislation or introduction of new ones.

The National Parliament enjoys its existence by virtue of section 59 of the Constitution, which gives powers to make laws, and I think it also draws a distinction too that those laws must be for the peace, order and good governance. That is very well defined. If a law is there that does not make peace then it is not a good law, or if the law does not make any order in the communities and societies then it is also a bad law, or if the law is not a law to make good governance then it is also not a good law. So really it guides legislators to ensure that when enacting legislations it must be prefaced on the cornerstones for peace, order and good governance.

And there's the Executive. The Executive is established also by the Constitution under section 30 thereof which empowers the Prime Minister and Ministers. And you see that Sections 30 to 40 of the Constitution, very clearly defined. What the Executive government does is clearly stated in the Constitution as well as within the various legislations that the power of Ministers assigned with constitutional responsibility by virtue of allocation of port folio subjects as assigned to them by

the Prime Minister who is the leader of the government business and the Executive government.

Then we come to the judiciary. Judiciary, as I read it as a lay person is meant to be absolutely independent from any connection with the Legislature and the Executive for political reasons I suppose, so that it is clear from any political interference.

If you look at those three arms they have their distinct roles to discharge of and to administer. One is to make laws and after that it's not its business to implement the laws. Its only role is to make laws. Once the laws are passed its work is done. It now becomes the executive's work to execute the laws. It is the executive government that administers the laws enacted by parliament, the legislature.

Now the executive government cannot make laws within its own powers, no, other than regulations which even the laws that Parliament make must prescribe the regulations too. The Legislature told the Minister to put any regulations to a law. Without that the Minister cannot make regulations. It defines the distinct boundaries that allow the machinery of government to function within those perimeters, not outside of that. Even though the Executive has powers it must also work with responsible attitudes towards peace, order and good governance. These two arms, it is not their responsibility to tell anyone that this is what the law says because they may be bias in as far as their involvement in the legislation process because when laws are enacted, it is true that Parliament enacts laws but the Executive is also involve in the process of making the laws. The Enactment is done by Parliament which contains non ministers and ministers alike and therefore they cannot be neutral as it was. As a lay person that is how I see it. They are not neutral to be able to interpret the laws that they enact because they are involved in the process of making that law and so the constitution established the judiciary, a very independent body, and why? It is to interpret the laws. So, all of us are affected by the interpretation of judges. They have the privilege and they enjoy the privilege of interpreting what the law says. Like it or not by legislators or ministers of the cabinet but their work is already finished because now it is the lawyers turn to tell us what is the right thinking inside the law, and so they are made to understand the law as produced by the legislature and implemented by the Executive.

Provided in my paper is the note on the general discussion on aspects of things. What I tried to explain is Section 59 of the Constitution which makes laws based on peace, order and good governance. Then I tried to illustrate the supreme powers of Parliament, and that is, even with the Governor General, he is elected by Parliament. He cannot just stand up and say he is the Governor General. It is this Parliament that must elect him. That shows the supremacy of Parliament that it chooses whoever it chooses to be appointed under the virtue of the Parliament of Her Majesty, our Head of State. This clearly shows the supremacy of parliament. It even shows the supremacy of Parliament when it comes to election of the Prime Minister to head the Executive Government. It displays the

supremacy of Parliament. No elected Member of Parliament can't just stand up and say he is Prime Minister. No, that is the power of the legislature. Then the head of the Legislature, and we normally speak of the Speaker of Parliament as the head of Legislature. Even the Speaker too is elected by the Parliament. That is another demonstration of the Supremacy of Parliament.

Now we go to the very important aspect of answerability or accountability. Who accounts to whom? That is an important issue in Parliamentary democracy. Who accounts to whom? And here on my paper based on what is written in our Constitution, the Executive accounts to Parliament. That establishes the preface of accountability because Ministers as when they do their work they must answer to somebody. They obviously cannot answer to the Prime Minister in terms of accountability to the elector because they are working to the elector, not to the Prime Minister. The elector gave them the mandate to govern and that makes the whole process of all elected members into Parliament after the general elections, they then give their peoples' mandate to the individual who becomes the Prime Minister who then within the pages of the Constitution, sections 30 to 40, use that power given to him through elected representatives to identify who of the elected members to become his colleagues in cabinet so that you can establish that collective decision making process within the principles of democracy. They as a group as well as individuals are given powers within the Constitution can give account to a higher authority, and that higher authority appears to be the legislature as one reach into things. I also think that the essence of accountability is a very important ingredient of democracy. It must compel or it must make the individuals who exercise power over the affairs of the people to account to Parliament as the people's legislature. How do they account, we know how and that is from answering questions in Parliament, from deliberations on policy issues in their participation on the floor of Parliament. Ministers comment on how they are performing their duties as ministers in delivering services which the ordinary voter is entitled to be given by virtue of the provisions of services of government as an institution.

On page 3 of my paper I tried to build the argument that leads on to why we need to prescribe the Privileges, Immunities and Powers of Parliament. I think section 69 of the Constitution provides for this. In my submission I hold that the matter is both crucial and pertinent in the development process of parliamentary democracy and in the act of governing the nation.

This whole matter of parliamentary supremacy and judicial independence is the concern of everybody in the Commonwealth, and as I tried to explain in subsequent comments, it led to the necessity for a colloquium to be held in the United Kingdom on 19th June 1998 at which people in the different areas of interest go to that particular colloquium to see their level parliamentarians including some ministers, judges, legal practitioners and legal academics. That opportunity made all these people to come together to discuss matters of concern in parliamentary democracy - the principles and practices. They concluded the conference with the production of guidelines which become the operational manual of good practice, which they think it is important to

implement in every Commonwealth jurisdictions. The guidelines receive support by members of the Commonwealth Lawyers Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates and Judges Association and the Commonwealth Parliamentary Association (CPA), which parliamentarians and members of the CPA attended. All these quite important bodies think together that there is need to carefully look at all these things.

My other point to share before I stop is on page 3, last paragraph if I may quote "mankind seriously is being beseeched by the cravings of individuals and the human tendency to abuse power and to get advantage." That I think is the bottom-line. These rules that we are talking about really addresses the cravings of individuals and the human tendencies within individuals to abuse power and to get advantage over others. Unless we prescribe these roles, there is open scope for manipulation by individuals with power in affairs of mankind. So I think I will stop this way Mr. Chairman because that would be the prima facie of all those things, the roles that you are looking at, is I think, to address corruptive practices that encroach upon the nobility of doing things in an orderly fashion to protect and to promote the interest of the government or the electors. Thank you very much.

Hon Oti: Thank you Excellency, Minister Steve Abana, is ready to leave us but the rest of us will be here with you. Thank you for your very eloquent presentation and particularly you painted the background and the relationship between the three arms of government and ultimately what we are talking about here is the Legislature and its powers which is not interfered with by the other two arms or where the lines can be drawn between where the responsibilities of one ends and where the other arm picks up and so forth. So in essence to what we are really talking about is Power, Privilege of Parliament, its Immunity, talking about Immunity perhaps we are immune to any suit brought to it because of what members say on the floor of Parliament or during the proceedings of Parliament because they ultimately represent the people who vote for them. Actually, your Excellency, it is about how to protect the institution of the people from governing appropriately without interference and I made reference to perhaps the other two arms of government, more so, those other elements who are encroaching into the workings of Parliament, might make Parliament not to perform the role which is elected to perform. So basically, I think what you have covered is put as on the prefaced where Parliament under Standing Orders, all these scenarios and then of course taking it on from there and making people to understand that your member individually as well as collectively as a member of Legislature, is free to say what he has to say on the floor of Parliament, reflecting your interest the voter and this is where you need to know freedom of speech as to whether you are protected inside or if you say the same things outside, would you be covered by any immunity for anything sued against you or for any defamation. So it is actually separating what you say within the floor of Parliament. I think we all agree what the importance of this prescription, Parliament prescribing this legislative mechanism to look after itself, to protect itself and to guard against, you know because this is thirty years, we do not know what the next thirty years will bring about as our people come up so that the call for transparency come

about. Doesn't remove the fact that accountability still remains intact, it does not go and practice as public figures we are bound by those rules so I think this is where we are working towards the ultimate objective of making the prescription, Parliament prescribing the rules to govern those three areas. So Excellency, I think we agree with you, we fully understand the perspective you were coming from not only as representing the Head of State but perhaps more so as an experienced politician and with those years of experience but also more so as a public officer in your own carrier. All these are part of the whole process. So we would like to thank you for the presentation, I will give the floor to other members of the committee to make a few comments on your presentation.

Thank you

Hon Abana: During the last thirty years and with the experiences that you have come through as the Chairman has already alluded to, you might had one or two of those experiences which are some statements which have been said in Parliament or during parliament proceedings where we the Committee are actually looking at those areas of defining and probably outlining the basis of assurance to Members of Parliament as they take on their responsibilities of representing their people and as much as possible these members can have confidence. Your Excellency, I thank you but I have to leave the country and I thank you for meeting with you today.

Hon Tozaka: With your background information on the Constitution which the chairman has said you have a lot of experience yourself and as a Member of Parliament. I think what you rightly said and we have supported, as the chairman has said too is about this the protection as the purpose of this Legislature and its members like us to carry out our purpose and functions. You know sir, that this time, I for one, when the chair make this or move this motion, I did not understand it well basically because as we have done all the time, we take things for granted about our mother country. So the question here really is that what does the Speaker knows about this privileges and powers and immunities prescribed in the 1960 or 1600s that we have adopted from UK. At the moment, in section 25 of the Standing Order, what are they. What I only know is that I can speak; I can say whatever I want to say in Parliament but am I protected? So I feel safe that way but other than that I wouldn't know more. And you could remember sir too that I always raise questions about the vote of no confidence. At first, there is some inconsistency where we have carried out there so we are at the mercy of the Speaker too. What the Speaker says, that is what we follow, at the moment, but this time if we prescribe our privileges and powers inside, I think we will know now, that our Legislature will be more effective. So I am happy with what you said your Excellency that we can legislate it, we put something in it. I am also worry about the courts say but thank you that you gave these attachments which shows the challenges about the courts in UK about the Member of Parliament so I think in our deliberations we can take into account those things. So I think that for us to do that, to legislate it and define our boundaries is very important, not only to us but also to our voters and the public so that they will be able to know where the boundaries are so through awareness with them and we can understand each other very well.

Hon Oti: Thank you Minister of Public Service, other colleagues, Deputy Speaker would you have any comments?

Hon Kengava: Thank you chairman, Yes your Excellency, I think clearly what is really needed here is stated in your presentation and you have fully clarify the importance of the separation of powers and the same time the accountability of all those within those separation of powers. Accountability of the Legislators like the Members of Parliament, the accountability of the Executive government and also the Judiciary and I think the fact that Members of Parliament are elected, the Speaker of Parliament is elected, even the Prime Minister is elected, all point to one point, that we must be accountable in our position.

When I heard all that you presented your Excellency I think it raises the very important point of the missing bit. Now we are accountable but most of the time we feel as elected Members of Parliament that we are the boss of ourselves, we tend to forget and we thought that we can say anything we like and or what to do or like when performing our duties in Parliament I think we depend, I myself depend on the Speaker to make ruling if I go off the track and we are not really aware of our privileges, immunities and powers. So I think it is right timing as you said, your Excellency. It is timely now that we have after thirty years of Independence to look at ourselves and make it much clearer for our present leaders and for future leaders, in the next thirty years, our future leaders will know exactly the powers, privileges and the immunities of the Parliament so that all of us will be accountable to each other. All of us will be accountable to our electors and this brings me to the question that if we prescribe privileges, powers and immunities of Parliament, we must encompass this need to provide accountability whilst at the same time maintain the obligation of Members of Parliament to represent people in Parliament, free without interference from public. Now the question is, how do we do that? I think this Committee is given the particular task to do that. I think your presentation has clearly identified the separation of powers of the three bodies, the importance of accountability and from there then we can devise legislation. It has to be a written legislation that we can refer to rather than just a very minor working that the Speaker or we can understand or something from England. The question now is to come up with a legislation spelling out properly what we want to have, keeping in mind what you raised as important on the separation of powers and at the same time accountability. Within the legislation we can use it as guidelines to come up with such legislation.

I think it appears now your Excellency that for the next 30 years and for our Parliament to progress in democracy, I think we need to have a written legislation, and I am very happy that your paper is giving us something more in more detail to look at, including such a paper when it comes with recommendations made through Parliament. I think when we have such legislation that would allow Members of Parliament to be accountable as well as the Executive government to be accountable as well.

We also know that the Judiciary knows exactly what to do. I think right now it is using the common laws. I think that is the brief comment I'd like to make. Thank you very much for your very comprehensive and detailed presentation. Thank you very much.

Hon Waipora: To make it very simple, we must be guided by these very simple laws. The last time Derek Sikua mentioned something in Parliament, people asked for compensation. This kind of action or attitude ensure that we must define where the privileges of Members and how far it will be extended and so everything we do must be answerability and accountability. Today I said to my deputy Prime Minister to stop and listen while I was speaking? So we must be guided by a handbook. At this time we only have Standing Orders and so we need a simple hand book so that new Member of Parliament can reads about the powers and privileges immunity of Parliament. For maybe Member of Parliaments can draw a map but how and to what extent. For example, Ulufa'alu and Kinika. The atmosphere makes it good for story telling as when the white man presents I was not happy because I was confused. So with this meeting I just want to make it better for us to extend or like judiciary has limited jurisdiction. So us Members of Parliament we must be guided as it is the right time for us to look inside of this one to put the campus straight inline with the legislation with the regulations prescribed in handbook.

Hon Oti: Thank you Member of Parliament for West Makira. Those are some of the thinking for some of us who have been going around gathering information as we continue to hear different presentation so basically I think we have taken your view on board and also understanding the perspectives but our views and evidences will form the bases that will be presented back to Parliament and contribute ultimately to the debate before the legislation is brought about when it comes so in a way your Excellency, from us the Committee we thank you.

His Excellency: Can I say something. When you write to me I want to take some opportunity to share such views, when we talk about Supremacy of Parliament we must see that it is a real Supreme. It must have power to call for Parliament to meet. Powers that establish inside the office is to call Parliament to elect a Prime Minister. But Speaker must be a part to summon Parliament so that it elevates this status of the Legislature to the point where accountability is entrenched. It must summon the Executive, now the Executive says we are now ready Legislature. So how you will address that matter needs to be addressed. Who calls the tune, really the Executive calls a tune since independence it says, Legislature you we will meet on such a date, so if the Executive is not telling a meeting we will just sit down. There must a provision somewhere so that it for accountability.

Hon Waipora: Yes, I quite agree if anybody in my house asks what time will Parliament adjourn its meeting? My answer would be, I do not know, the Speaker and Prime Minister will know now but if the speaker has power to call for Parliament because he knows that the Prime Minister and his staff has enough

issues for Parliament to discuss then he must call a meeting and when he finished maybe, of course with consultation gives us the upper hand.

His Excellency: You must look at him.

Hon Oti: It has been looked at by this Parliamentary House Committee and the report was presented to Parliament last week. They call it the meeting calendar, Parliament to have a meeting calendar that prescribe somewhere or something must be done for Parliament to meet on those dates but what we are saying is going to really putting it inside.

His Excellency: It must be entrenched so that it is that is solved. Parliament Supremacy should be that. That is why it calls Executive for account.

Hon Oti: So we will see how we can factor that inside this particularly for Secretary to see the Report from the Housing Committee and see where to fit in inside on this framework of the privileges, immunities and powers of Parliament. Especially, the power to summon Parliament to meet, power to summon other institutions to account before Parliament. It will be a bit different when we go through the different jurisdictions, we don't know whether there is an existence among in the Commonwealth for the start for the Parliament to have the power to summon and to have its own Programme and Executive basically to live by that one because it will come to practice again. What is the practice within the Commonwealth? We need to investigate these?

His Excellency: In that area Honourable Member, maybe you see from the involvement and participation of the Standing Select Committee of Parliament. What power do they have to summon individual Ministers for accountability purposes outside of Parliament meetings because this standing select committee report to Parliament on how to entrench accountability to the Committees for example, in terms of Appropriation Bills, Public Accounts Committee, so these are the things that maybe with this opportunity would allow you to look around for those things too, the scope of requirements for purposes of improvement.

The final point which I would like to share Mr. Chairman is last time one motion the late Kinika moved was about the autonomy of Parliament and it was debated quite extensively. I wonder whether you have time to have a look at it regarding the proceedings in Parliament. The Supremacy of Parliament also entails Parliament for finances of Parliament are still subject to Executive. I mean given that room of neutral discussion the directive to compel the executive to legislate in order or what perspective do you want to see.

Hon Oti: So Secretariat take note of that particular one. I think because Commons is not part of the House of Commons. They have their own Appropriation Act. It leads to coming up to autonomy.

Hon Waipora: Mi time motion blo Peter Shanel hem defeated mi barava say how now bae because answer blo Minister hem say very sensitive so mi fala

cannot deal wetem but the mover of the motion hem say hem sensitive that is why Parliament hem lo dea fo, fo talk about that person but because hem frait during that very time. mi fala everyone fright nogud mi fala talk about now so that there hem very important for you mi to sort out this kind ia, supremacy of Parliament hem defeated that time although the sensible issues Minister just cut them out should sorted out by Prime Minister and Cabinet nomoa.

Hon Oti: Fear might prevent Parliament to exercise its powers and prevent it to deal with those issues or reports.

Hon Waipora: That is the answer by the Minister of Lands. He said they do not want to deal with very sensitive issues on what the mover said but it is brought into Parliament because of its sensitiveness and Parliament to deal with it. That sort of thing.

Hon Oti: That is fear. I mean Parliament cannot be subject to or should not be subject to fear or intimidation that prevents Parliament from exercising its powers.

His Excellency: That is very true. I suppose those are experiences that further require you to work along with what you prescribe as powers, privileges and immunities of committee.

Chairman: Okay, Your Excellency, thank you very much for the audience this afternoon.

His Excellency: Thank you very much Chairman and Members.

Hon Oti: If you go to the normal channels you will always have access to the outcomes and results.

Your Excellency: Fine, but I hope you will eventually have one product for our government but these good things to take on board. Thank you so much.

Evidence Concluded