

Republic of Nauru  
18<sup>th</sup> Parliament

Report  
of the Select Committee  
on Inspector Corey Caleb

16 June 2009

## TABLE OF CONTENTS

|  |    |
|--|----|
| Composition of the Committee and Secretariat .....                               | 3  |
| Members of the Committee.....  | 3  |
| Committee Secretariat .....  | 3  |
| Introduction.....  | 4  |
| Part 1 - Background.....   | 6  |
| A. Matters referred to the Committee.....  | 6  |
| i. Events in Parliament.....   | 6  |
| ii. Terms of Reference .....   | 6  |
| B. Legal advice on laws applicable to the matters referred to the Committee..... | 8  |
| i. Question at issue .....   | 8  |
| ii. General duties and obligations of police officers.....                       | 8  |
| iii. Powers of police in Parliament.....   | 9  |
| a) Officers of Parliament .....  | 9  |
| b) Removal of Suspended Members .....  | 9  |
| c) Removal of Members or Strangers.....  | 9  |
| iv. Parliament's powers, privileges and immunities .....                         | 10 |
| v. Conclusion .....  | 12 |
| vi. Supplementary legal advice.....  | 15 |
| Part 2 - Deliberations of the Committee.....                                     | 17 |
| A. Meetings of the Committee.....  | 17 |
| B. Evidence and information presented to the Committee.....                      | 18 |
| Part 3 - Findings and Recommendations .....                                      | 50 |
| A. Findings of Fact.....   | 50 |
| B. Recommendations .....   | 58 |

## Composition of the Committee and Secretariat

### *Members of the Committee*

Hon Ludwig Scotty MP, Chairman<sup>1</sup> (to 2.2.09)  
Hon Dominic Tabuna MP, Chairman (from 4.3.09), Deputy Chairman (to 4.3.09)  
Hon Aloysius Amwano MP, Deputy Chairman (from 4.3.09)  
Hon Landon Deireragea MP  
Hon Ryke Solomon MP  
Hon Roland Kun MP (from 10.3.09)

### *Committee Secretariat*

Katy Le Roy, Secretary and Advisor  
Jennie Reiyetsi, Executive Secretary  
Sukie Adeang, Executive Secretary  
Raynes Stephen, Assisting Clerk

---

<sup>1</sup> Hon Ludwig Scotty resigned as Chairman and as a member of the Committee on 2 February 2009; the vacancy created by this resignation was filled at the Parliament sitting on 10 March, by the election of Hon Roland Kun as a member of the Committee.

## Introduction

The Select Committee on Inspector Corey Caleb was appointed by Parliament in October 2008 and immediately commenced work on its task of inquiring into the incident that occurred in Parliament on 28<sup>th</sup> March, and in particular the conduct of Inspector Corey Caleb on that day, in accordance with the motion that established the Committee and the terms of the Committee's inquiry under that motion.

The Committee sought to conclude its inquiry as expeditiously as possible, in order that the uncertainty regarding the status of Inspector Caleb, and his continuance as a police officer or his dismissal from the police force, could be resolved one way or the other. The Committee first submitted its Report to Parliament on 18 December 2008. Some members of Parliament, upon reading the Report, expressed concern that the Committee did not appear to have gathered all relevant evidence, and that this may have affected the Committee's findings. Therefore, instead of considering the adoption of the Report by Parliament, the following motion was moved by His Excellency Hon Marcus Stephen MP and passed by the House on 5 February 2009:

*That this House refer the Report of the Select Committee on Inspector Corey Caleb back to the Committee in order to enable the Committee to consider providing in its Report more detailed explanation of the extent of the authority of Nauru's head of state, more detailed explanation of the special circumstances of the matter that was referred to the Committee, and additional recommendations in relation to dealing with situations in which the Speaker issues unlawful instructions, and that the Committee report back to Parliament on or before 20 March 2009.*

The date by which the Committee had to report back to Parliament was subsequently extended by resolutions of Parliament passed on 10<sup>th</sup> March 2009 (extending the date to 30 April 2009) and 16 June 2009 (extending the date to 16 June 2009).

Prior to the Committee reconvening in order to reconsider the Report, the Chairman of the Committee Hon Ludwig Scotty, resigned as Chairman and as member of the Committee. The Committee elected the Deputy Chairman, Hon Dominic Tabuna, to assume the position of Chairman, and elected Ali Amwano to be the new Deputy Chairman. The vacancy on the Committee was filled by the election of Hon Roland Kun to membership of the Committee.

This is a revised version of the Report that was first tabled in Parliament on 18 December 2008. This revised Report was unanimously adopted by all members of the Committee on 16 June. Part 2 of this Report sets out the manner in which the Committee proceeded with its deliberations following the recommittal of the Report back to the Committee, the additional evidence that was sought and gathered, and the effect that these further deliberations had on the revision of the Report.

This Report contains the background to the inquiry, including the matters referred to the Committee and an overview of the laws applicable to those matters; an account of the deliberations of the Committee and the evidence presented to the Committee; and the findings and recommendations of the Committee.

On behalf of the Committee I wish to thank all those who so willingly cooperated with the Committee's requests for written information and who appeared before the Committee. I also express my thanks to those who generously provided *pro bono* advice to the Committee: Mr Ian Harris, Clerk of the Australian House of Representatives; Associate Professor Anne Twomey of the University of Sydney, and Professor Don Paterson of the University of the South Pacific.

The Committee is grateful for the hard work of the Committee Secretariat, Katy Le Roy, Jennie Reiyetsi, Sukie Adeang and Raynes Stephen, all of whom have worked long hours, including weekends, in order to enable the Committee to complete its report.

Finally, I wish to gratefully acknowledge the good work of the former Chairman, Hon Ludwig Scotty, and to thank the Members of the Committee for the manner in which they applied themselves to the task of the Committee's inquiry and for their work in completing the Committee's Report.

*Hon Dominic Tabuna MP*  
**Chairman of the Select Committee on Corey Caleb**

**16 June 2009**

## **Part 1 - Background**

### ***A. Matters referred to the Committee***

#### *i. Events in Parliament*

On 28<sup>th</sup> March 2008, a sitting of Parliament that had commenced on 22 March and that been suspended until the ringing of the bells, was resumed by the ringing of the bells. The Speaker made a statement to Parliament referring to business that had been transacted earlier in the sitting on 22 March, namely the passage of an amendment to the Standing Orders and the passage of an amendment to the Citizenship Act, the effect of which amendments was to prohibit a Member of Parliament who holds the citizenship of one or more countries other than Nauru from sitting in the Parliamentary Chamber. Although the sitting of 22<sup>nd</sup> March 2008 and all business purported to have been transacted at that sitting was later declared to be invalid and void by decision of the Supreme Court of Nauru in *Constitutional Reference No.1 of 2008* (decision dated 7<sup>th</sup> April 2008), at the time at which the sitting was resumed on 28 March 2008 there was no official decision as to the lawfulness or otherwise of what had taken place on 22 March 2008.

At the conclusion of his statement to Parliament at the beginning of the resumption of the sitting on 28 March 2008, the Speaker ordered Hon Dr Kieren Keke and Hon Freddie Pitcher to withdraw from the Chamber as they were by virtue of the recently amended Standing Orders and Citizenship Act "strangers" to the House. The Speaker instructed the Clerk and the Deputy Clerk to remove the two Members from the House. As the Members refused to withdraw when approached by the Clerk and the Deputy Clerk, the Speaker instructed the Clerk to obtain the police to effect the removal of the two Members. Inspector Corey Caleb entered the Chamber and attempted to approach the two Members, but was stopped by His Excellency the President. The President ordered the Inspector to leave the Chamber. Inspector Caleb did not follow the President's instruction. A short time later, Superintendent Iven Notte entered the Chamber and ordered the Inspector to withdraw from the Chamber, which order he initially ignored, but then complied with after a short lapse of time.

On 7<sup>th</sup> April 2008, Cabinet effected the immediate suspension of Inspector Corey Caleb pursuant to section 9 of the Nauru Police Force Act 1972, which provides Cabinet with the power to terminate the service of a police officer in the public interest, subject to first suspending the officer and giving notice to Parliament of the proposed termination.

#### **ii. Terms of Reference**

On 9<sup>th</sup> October 2008 Parliament was given notice of Cabinet's proposed termination of Inspector Corey Caleb, and motion to establish a Select Committee to inquire into

the events described above was passed by Parliament. The relevant motion, moved by His Excellency the President and seconded by Hon Dr Keke, read as follows:

*Whereas on 27<sup>th</sup> March 2008 actions taken by Inspector Corey Caleb in this House were found by Cabinet undesirable in the public interest;  
And whereas the said officer was, as a consequence, suspended from duty by Cabinet pursuant to the provisions of section 9(1) of the Nauru Police Force Act 1972;  
Therefore in accordance with the provisions of the Nauru Police Force Act 1972, Section 9(1), (2) and (3) I hereby give notice to Parliament of such suspension and I move that a Committee be appointed to:-*

- 1. Review the actions of Inspector Corey Caleb in the House on 27<sup>th</sup> March 2008 in particular his disregard for the authority of Nauru's Head of State; and*
- 2. Review the current status and future of Inspector Corey Caleb; and*
- 3. Report its findings to the House and to make recommendations thereon as it deems fit;*

*That the Committee shall be named the 'Select Committee on Inspector Corey Caleb';*

*And as mover of the motion, Mr. Speaker, normally I would be part of the Committee but to avoid conflict of interest as I am involved in the matter concerned, I wish to disqualify myself as a Member of the Committee;*

*Therefore the Committee shall consist of five Members, namely –*

*Hon Rykers Solomon,  
Hon Dominic Tabuna,  
Hon Ludwig Scotty,  
Hon Aloysius Amwano, and  
Hon Landon Deireragea.*

*That the quorum of the Committee be three;*

*That the Committee shall elect one of the Members of the Committee to be the Chairman and that in the event of an equality of voting the Chairman has a casting vote;*

*That the Committee be provided with all necessary staff, facilities and resources to achieve its objectives;*

*That the Committee shall have the power to send for and examine persons, papers and records;*

*That the Committee may present progressive reports and recommendation(s) to Parliament as it deems fit;*

*That the Committee shall present its report and recommendation(s) to Parliament at the first opportunity on completion of its investigation;*

*That the foregoing provisions of this motion insofar as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.*

It should be noted that whilst the motion to establish the Committee refers to the relevant events having taken place in the House on 27<sup>th</sup> March 2008, the Committee discovered in the course of its inquiry that the relevant events actually took place on 28<sup>th</sup> March, and that Parliament did not sit on 27<sup>th</sup> March. The Committee therefore resolved to conduct its inquiry in accordance with the intention of the motion, and to inquire into the relevant events, notwithstanding this minor flaw in the motion.

Following the passage of this motion, in October 2008 the Committee commenced work on the matters referred to it. The Committee's deliberations are outlined in Part 2 of this Report.

It is relevant to note the provisions of section 9 of the Nauru Police Force Act, under which Inspector Corey Caleb was suspended by Cabinet and under which this Committee was created. The relevant parts of Section 9 provide:

9. (1) *The service of any officer of the Force may be terminated by the Cabinet on the ground that having regard to the conditions of the Force, the usefulness of the officer thereto and all other circumstances of the case, such termination is desirable in the public interest:*  
*Provided that, where the service of any officer is to be terminated under the provisions of this section, he shall first be suspended from his office and the Minister shall forthwith give notice to Parliament of such suspension and Parliament, if it thinks fit, may –*
- (a) within fourteen days of receiving such notice appoint a committee of its members to review such termination; and*
  - (b) if the committee considers that the officer's service should not have been terminated, direct that his suspension shall cease to have effect.*
- (2) Where Parliament has directed under the last preceding subsection that a suspension is to cease to have effect, the termination of the officer's services shall be void.*

## **B. Laws applicable to the matters referred to the Committee**

### **i. General duties and obligations of police officers**

Under the Nauru Police Force Act 1972-1987, every police officer is required to 'obey every lawful order of a superior officer whether given verbally or in writing and shall obey and conform to Police Regulations and to Orders made or issued' under the Act (section 17).

The relevant aspects of the duties of the Force for present purposes include: taking lawful measures for '(a) preserving the public peace; ... (d) apprehending all persons whom it is lawful to apprehend; ... (f) preserving order in public places and places of public resort, at public meetings and in assemblies for public amusements, for which purpose any police officer on duty shall have free admission to all such places and



meetings and assemblies while open to the public; ... and (p) executing such other duties as are from time to time by law imposed on police officers' (section 23(1)).

The relevant part of subsection (1) of section 23 of the Nauru Police Force Act provides: 'The Director shall, subject to the lawful directions, if any, of the Cabinet, have the command, superintendence and direction of the Force and of the Reserve' (emphasis added).

## **ii. Powers of police in Parliament**

### *a) Officers of Parliament*

The Parliamentary Powers, Privileges and Immunities Act 1976 defines 'officer of Parliament' and 'officer' as meaning: the Clerk, a public officer authorised in writing by the Speaker to be or to act as an officer of the Parliament, a person doing within the precincts of the Parliament under the order of the Speaker any act which an officer of the Parliament is or may be required to do by or under the provisions of the Act, and any police officer on duty within the precincts of the Parliament.

### *b) Removal of Suspended Members*

The Act clearly vests power in any police officer on duty within the precincts of Parliament (or any other officer including the Clerk) to forcibly remove a member who has been suspended by the Speaker from the precincts of Parliament:

'section 9 - A member who has been suspended by the Speaker from the service of the Parliament shall not enter or remain within the precincts of Parliament while that suspension remains in force and, if any such member is found within the precincts of Parliament in contravention of this section, he may be forcibly removed therefrom by any officer.'

On the day in question, the Members had not been suspended, and therefore the actions of Inspector Caleb do not fall within power lawfully exercised under section 9.

### *c) Removal of Members or Strangers*

The Parliamentary, Powers Privileges and Immunities Act, the Nauru Police Force Act and the Parliamentary Standing Orders are silent on the question of whether a police officer has the power to forcibly remove a member who is not under suspension.

The Parliamentary Powers, Privileges and Immunities Act (as well as the Standing Orders) provide that the Speaker may order a stranger to withdraw from the precincts of Parliament (section 8(1); S.O. 192). There is no express provision authorising the forcible removal of strangers from the chamber, however as the

failure to withdraw from the precincts of Parliament when ordered to do so by the Speaker constitutes an offence under section 18(b) of the Parliamentary Powers, Privileges and Immunities Act, it would be open to any officer of Parliament (including a police officer) to arrest and detain such a stranger.

On the day in question, the Speaker had erroneously and unlawfully declared the two Members to be strangers to the House, and had ordered their removal on those grounds. He had not declared that the Members were no longer Members of Parliament, but had invalidly certified an Act purported to be passed at an inquorate sitting of Parliament which provided that 'the powers, privileges and immunities of a Member of Parliament holding the citizenship of one or more countries other than Nauru shall be as determined by the Standing Orders of the Parliament of Nauru'; and had invalidly allowed the purported passage of a new Standing Order at the same inquorate meeting of Parliament which provided that 'No Member holding the citizenship of one or more country, other than Nauru, shall be permitted to sit in the Chamber, unless the Speaker is satisfied that such other citizenship(s) has been revoked or otherwise foregone'.

Both the purported amendment to the Citizenship Act and the purported amendment to the Standing Orders were later declared by the Supreme Court to be invalid (*Constitutional Reference No.1 of 2008*, 7 April 2008) but even during the period in which they purported to subsist, they were apparently inconsistent with section 2 of the Parliamentary Powers, Privileges and Immunities Act which defines 'stranger' as 'any person other than a member or an officer of the Parliament'. The Standing Orders do not have the force of legislation, and cannot have the effect of amending or overriding the definition of 'stranger' in the Parliamentary Powers, Privileges and Immunities Act. Thus, Inspector Caleb cannot derive authority for his actions from the claim that he was lawfully attempting to eject strangers (the members whom the Speaker had erroneously deemed to be strangers by virtue of their dual citizenship).

### **iii. Parliament's powers, privileges and immunities**

Article 37 of the Constitution of Nauru provides: 'The powers, privileges and immunities of Parliament and of its members and committees are such as are declared by Parliament'. Subsection (1) of Article 38 of the Constitution provides:

- (1) Parliament may make, amend or repeal rules and orders with respect to -
  - (a) the mode in which its powers, privileges and immunities may be exercised and upheld; and
  - (b) the conduct of its business and proceedings.

The Parliamentary Powers, Privileges and Immunities Act 1976 and the Standing Orders contain numerous provisions vesting in the Speaker the authority and control over Parliamentary proceedings and the Parliamentary precincts. The question is whether this authority or jurisdiction of the Speaker extends so far as to

give him the exclusive command of police officers who are on duty in the Parliamentary precincts and who are therefore 'officers of Parliament'.

It would appear prima facie that section 23(1) of the Nauru Police Force Act 1972-1987 vesting the command and direction of the police force in the Director of Police (subject to Cabinet) contradicts the assertion that the Speaker has the exclusive power to issue directions to police officers within the parliamentary precincts. It must also be noted that in addition to whatever powers, privileges and immunities are vested in Parliament by law, the ordinary laws of the land still apply to Parliament and apply within the Parliamentary precincts.

The situation in Australia and in the United Kingdom is much clearer for a number of reasons. Firstly, the parliaments of both countries have a Serjeant-at-Arms, who is responsible for carrying out the Speaker's instructions in relation to escorting or removing people (whether they be Members or strangers) from the House and the general preservation of order. In the House of Commons, any police on duty within the House are under the direction of the Serjeant-at-Arms. Thus, it is unlikely that a police officer would ever be invited or instructed to enter the chamber and remove a Member. It should be noted that the Clerk of Parliament in Nauru can effectively perform the same role in relation to enforcing the orders of the Speaker, as he is deemed by section 2 of the Parliamentary Powers, Privileges and Immunities Act 1976 to be an 'officer' (and for example, suspended Members 'may be forcibly removed... by any officer'; 59), and it is therefore unnecessary for the Speaker to call police into the chamber for this purpose.

Secondly, in Australia the Parliamentary Precincts Act 1988 makes very clear provision for the authority of the Speaker and the role of the police. Subsection 6(1) of the Act provides: 'The precincts are under the control and management of the Presiding Officers' (the Speaker of the House and the President of the Senate). Subsection 6(2) states: 'The Presiding Officers may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.' Section 8 of the Act contemplates the making of 'general arrangements agreed between the Presiding Officers and the Minister administering the Australian Federal Police Act 1979', and that any arrests made by the AFP within the Parliamentary precincts under an order of either House shall be made in accordance with such agreed arrangements. Pursuant to this provision, there exists a Memorandum of Understanding in Australia between the Presiding Officers and the Special Minister of State about the way in which the Australian Federal Police operate within the precincts. In Australia therefore, as a result of the aforementioned explicit legislative provisions and the different officers of Parliament, a police officer who received conflicting instructions from the Speaker and from the executive (in which position an Australian police officer is extremely unlikely to find himself in for the reasons set out above) would be required to act on the instructions of the Speaker, whether those instructions were valid and reasonable or not (and notwithstanding contrary instructions from the Minister).

However, in the context of Nauru and in the absence of such agreement between the Speaker and the relevant Minister, the situation is less clear cut. The legal situation in Nauru would be made much clearer if Nauru had similar arrangements in place whereby the Speaker and the Minister for Police were required to come to a written agreement regarding the role and powers of the police within the Parliamentary precincts, or if there was a clear legislative provision on who has the command of the police within the parliamentary precincts.

The Parliamentary Powers, Privileges and Immunities Act 1976 (Nauru) does not go as far as the Australian Parliamentary Precincts Act 1988 (Cth) in vesting general control of the parliamentary precincts in the Speaker, and neither it nor any other Act makes express provision for the chain of command for police officers on duty within the Parliament. Whether Inspector Caleb was lawfully obliged to follow the direction of the Speaker or of the President, who is also his Minister, in the circumstances of this case depends in part upon how the court would view the relationship between subsection 23(1) of the Nauru Police Force Act (Director of Police / Cabinet have general command of police force) and section 21 of the Parliamentary Powers, Privileges and Immunities Act (Parliament has all the powers, privileges and immunities of the House of Commons except any of such powers as are inconsistent with or repugnant to the Constitution or the express provisions of the Act). In the House of Commons, the Speaker's authority would effectively 'trump' the authority of the relevant Minister if the events occurred within the House. The question then is whether s23(1) of the NPF Act is to be read subject to the Parliamentary Powers Privileges and Immunities Act. The most likely answer is that yes, it should be. However it is impossible to be certain what view a court would take of this difficult legal question. If the court were to turn to the common law on the ground that no legislative provision expressly applies to the present situation, then it would find that, at common law, the police officer ordered into the Chamber by the Speaker and asked to carry out the instructions of the Speaker is subject to the authority of the Speaker.

#### **iv. Authority of Nauru's Head of State**

The motion that established this Select Committee provided that one of the tasks of this Committee was to 'review the actions of Inspector Corey Caleb in the House... in particular his disregard for the authority of Nauru's Head of State' (emphasis added).

Based on the findings of fact outlined in Part 3A of this Report, it certainly appears that Inspector Caleb acted in a manner that was at the very least disrespectful to the President. But it must also be noted that the 'authority' of Nauru's head of state is not amorphous or boundless. He is the President of a democratic republic, not an absolute monarch. Nauru's head of state has certain powers and authority that are conferred on him by law, and that are also limited by law. The power and authority specifically conferred on the President by the Constitution includes: the power to appoint Ministers to Cabinet and to preside at meetings of Cabinet, to assign Ministers responsibility for government business, to appoint judges, to advise the Speaker on the dissolution and prorogation of Parliament and the sitting of sessions

of Parliament, to declare and revoke a state of emergency and to issue emergency orders, and to exercise the prerogative of mercy by granting pardons and the like. Other powers are conferred on the President by ordinary Acts of Parliament, and he arguably also has certain common law prerogatives to the extent that they are not inconsistent with the Constitution or legislation. He does not have a free-ranging authority to issue to public officers and other persons instructions that must be obeyed.

The motion seems to imply that the offending conduct is the fact that when the President stood and faced Inspector Caleb inside the parliamentary Chamber and asked him to withdraw, Inspector Caleb failed to comply. One question that arises in this scenario is, in what capacity did the President make that request for the Inspector to withdraw? Did he do so in his capacity as the Minister responsible for Police, as the head of Cabinet seeking to prevent his Cabinet colleagues from being unlawfully removed from the Chamber, as the Chairman of the Cabinet that had already issued instructions to the Director of Police, or as the Head of State? It is difficult to answer this question and as it happens, the answer is immaterial because the Committee has reached the conclusion that Inspector Caleb's conduct can be impugned even *before* the point at which he behaved disrespectfully towards the President inside the parliamentary Chamber. But it is most unlikely that the President rose in his capacity as the Head of State to request Inspector Caleb to leave the Chamber. It is a peculiar feature of Nauru's system of government, a feature shared by very few other parliamentary democracies in the world, that the head of government and the head of state are one and the same person, and that this person sits in Parliament. From a legal perspective, the actions of Inspector Caleb in his interaction with the President are not rendered even *more* serious or improper by virtue of the fact that the member of Parliament and of Cabinet with whom he was interacting happened also to be the head of state, even though from a social and cultural perspective Inspector Caleb's actions may be seen as being far more serious because of this fact than they otherwise would be.

In the situation that was referred to the Committee, what is most relevant in terms of assessing Inspector Caleb's conduct on the day, is not that the President is the head of state. It is that Cabinet, which has the authority to issue directions to the Director of Police, had in the preceding days already issued clear directions to the Director ('Commissioner') as to how police should respond in the event of being unlawfully ordered by the Speaker to remove Cabinet members from the Chamber. Therefore, when the President instructed Inspector Caleb to leave the Chamber, he was effectively reiterating on behalf of Cabinet an order that had already been issued by Cabinet.

#### **v. Preliminary Legal Conclusion**

The preliminary legal question that the Committee asked itself during the earlier part of its deliberations was whether a police officer who is on duty in the parliamentary precincts is legally obliged to follow the instructions of the Speaker of Parliament or the instructions of the President, who is also Minister for Police, if

instructions from the two should happen to be in conflict. The Committee accordingly sought legal advice on this question from its Secretary/Advisor, and later sought supplementary opinions from two Professors of public law.

The Secretary/Advisor noted in her advice that the question as to whether a police officer on duty within the parliamentary precincts is obliged to follow the instructions of the Speaker or of his Minister where those instructions conflict is a most unusual one. It is difficult to seek direction from other jurisdictions because such incidents are unlikely to occur in other Parliaments. It is highly unusual for a Speaker to unlawfully declare Members of Parliament to be strangers and to order that they be removed. It is highly unusual for a Speaker to order police officers into the Chamber to forcibly remove Members, especially when such removal can be and ordinarily is effected by the Clerk. Cases of removal of Members in most other Parliaments would only occur in cases where a Member had been suspended, which was not the case in the incident before the Committee. In cases where Members are suspended, in most Parliaments on most occasions they leave the chamber peacefully and forcible removal, whether by a Serjeant-at-Arms or any other officer, is not necessary.

Based on the advice of the Secretary/Advisor on the preliminary legal question that was put by the Committee, in the hypothetical situation where conflicting instructions were received and no previous orders had been given by Cabinet, where the officer had no idea that the Speaker's orders were unlawful, where the officer had not anticipated the situation occurring and could not be reasonably expected to have anticipated the situation, and where the order to leave the Chamber was issued by the President either in his capacity as President or as Minister for Police (but not on behalf of Cabinet), then the legal position would appear to be that the officer should act on the instructions of the Speaker. In the incident before the Committee, the Speaker's actions were invalid. However in the aforementioned hypothetical situation, the onus could not be upon the officer to make an instantaneous assessment of the legal validity of the instructions given to him and on that basis to opt whether or not to comply with the orders. In this situation the officer is both an officer of Parliament and an officer of the Nauru Police Force. In the hypothetical situation outlined, it is likely that both the interpretation of the relevant legislation and the application of the common law would dictate that lawfully the officer should follow the instructions of the Speaker.

However, the evidence received by the Committee, in particular the evidence received since the Committee's Report was recommitted for further consideration, suggests that in view of the events that had taken place before the day of the sitting in question, it ought to have been clear to Inspector Caleb that he was not to enter the Chamber, and so he should not have found himself in the position of being inside the Chamber, trying to get his way past the President, and receiving conflicting orders from the President and the Speaker. The relevant events that took place before the 28<sup>th</sup> of March are detailed in Part 3A of this Report. On the basis that orders had already been given by Cabinet, and that the Director of Police believed the Speaker's subsequent and conflicting orders to be unlawful, Inspector

Caleb should not have entered the Chamber in the first place. Once inside the Chamber, he should have followed the Cabinet order expressed by the President and the order issued by his superior officer Superintendent Notte, without hesitation. The further application of the relevant laws to the Committee's findings of fact, and the recommendations flowing therefrom, are set out in Part 3 of this Report.

#### vi. Supplementary legal advice

In view of the advice received by the Secretary/Advisor that the legal answer to the preliminary question at issue is not clear cut, but that on balance it seems likely that the correct position is that an officer on duty in the parliamentary precincts who receives conflicting instructions from the Speaker and from his Minister (the President) ought lawfully to follow the instructions of the Speaker, the Committee wrote to two esteemed Professors of public law to seek supplementary advice from them on whether they agreed with the assessment made by the Secretary/Advisor.

Associate Professor Anne Twomey of the Law School at the University of Sydney agreed that under the relevant laws and Standing Orders, even those that were purportedly amended at the sitting on 22<sup>nd</sup> March, the two Members whom the Speaker sought to eject from the House on 28<sup>th</sup> March were still Members and could not be regarded as 'strangers'. In her correspondence with the Secretary/Advisor, Professor Twomey wrote "As for whether the police officer was subject to the orders of the Speaker or the Minister/Police Force, I agree that upon the material you have presented, this remains unclear... Clearly it is important that appropriate laws and procedures be put in place to avoid this happening in the future". Professor Twomey qualified her advice by stating that as she had not had time to go into the matter in detail, it was difficult for her to provide an opinion on it, and that the factual and legal situation was so foreign and peculiar that those difficulties were compounded.

Professor Don Paterson, Emeritus Professor of Law at the University of the South Pacific Law School, also provided the Committee with supplementary legal advice. In his Memorandum of Advice sent to the Secretary/Advisor he wrote:

- 1. I agree with your conclusion that the police inspector when in the Parliament Chamber was required to act in accordance with the directions of the Speaker.*
- 2. I would add that in my view the Minister responsible for the Police has no legal authority to give specific commands of an operational nature to any police officer. Section 23 states that "the Director shall, subject to the lawful directions of Cabinet, have the command, superintendence and direction of the Force". It is the Director, not the Minister, who is stated by the Act to have the command, superintendence and direction of the Force. Cabinet, not the Minister, can give lawful directions to the Director. In my view, in order to be lawful, those directions would have to be general directions of policy as to how the Force should be commanded, superintended and directed,*

*but would not usurp the exercise of those functions of the Director. The decisions of Korovulavula v Public Service Commission JR4/1988, Vermuelen v Attorney-General [1980 -1993] WSLR 105 and Social Security Commission v Macfarlane [1979] 2 NZLR 34 show clearly the strict way in which courts have interpreted powers of ministerial oversight of agencies of the executive government, as not extending to authorise an exercise of those functions themselves.*

*There is no indication that Cabinet delegated to the Minister its power of giving lawful directions to the Director. But even if such delegation could be proved or implied, the directions that could be given to the Director could, in my view, for the reasons and on the authorities cited above, not be of a specific operational kind, but only of a general or policy nature.*



## Part 2 - Deliberations of the Committee

### A. Meetings of the Committee

The Committee held the following seven meetings:

|                      |   |
|----------------------|---|
| First Meeting -      | Wednesday 15 <sup>th</sup> October 2008 |
| Second Meeting -     | Wednesday 22 <sup>nd</sup> October 2008 |
| Third Meeting -      | Friday 31 <sup>st</sup> October 2008    |
| Fourth Meeting -     | Tuesday 9 <sup>th</sup> December 2008   |
| Fifth Meeting -      | Saturday 13 <sup>th</sup> December 2008 |
| Sixth Meeting -      | Monday 15 <sup>th</sup> December 2008   |
| Seventh Meeting -    | Thursday 18 <sup>th</sup> December 2008 |
| Eighth Meeting -     | Wednesday 4 <sup>th</sup> March 2009    |
| Ninth Meeting -      | Friday 13 <sup>th</sup> March 2009      |
| Tenth Meeting -      | Wednesday 29 <sup>th</sup> April 2009   |
| Eleventh Meeting -   | Friday 1 <sup>st</sup> May 2009         |
| Twelfth Meeting -    | Friday 8 <sup>th</sup> May 2009         |
| Thirteenth Meeting - | Tuesday 16 <sup>th</sup> June 2009      |

At its first meeting on 15<sup>th</sup> October, the Committee elected Hon Ludwig Scotty to serve as Chairman of the Committee, and Hon Dominic Tabuna to serve as Deputy Chairman. The Committee further resolved to appoint Ms Katy Le Roy as Secretary and Advisor to the Committee.

At its first meeting the Committee considered its terms of reference, and the relevant provisions of the Nauru Police Force Act 1972. The Committee noted that the facts that it should seek to determine through the evidence of witnesses might include matters such as whether Inspector Caleb was on duty at the time of the incident and whether he had been assigned to patrol Parliament; what instructions had been given by the Commissioner to the police force generally and to Inspector Caleb in particular in relation to policing the Parliament building; whether Inspector Caleb acted contrary to the instructions of his superiors; whether Inspector Caleb has been continuously suspended since the incident; the attitude of Inspector Caleb to the incident and to his employment; his record as a police officer and his value to the police force.

At its second meeting on 22<sup>nd</sup> October 2008, the Committee considered the response from Acting Commissioner of Police Brian Thomson to the Committee's earlier request for some preliminary information.

At its second meeting the Committee also resolved to call a number of witnesses. The subsequent meetings of the Committee principally involved the examination of witnesses. The evidence received by the Committee is set out in Section B of this Part of the Report.

The Committee also received and considered legal advice from the Secretary and Advisor to the Committee, and from two Professors of Law, which advice is reflected in Section B of Part 1 of this Report.

The Committee adopted its initial report at its seventh meeting on 18<sup>th</sup> December 2008. As set out in the introduction to this Report, the Report of the Committee dated 18 December was not debated or adopted by Parliament, but rather was the subject of a motion moved by His Excellency the President and passed by the House on 5<sup>th</sup> February 2009, that the Report be referred back to the Committee –  
*in order to enable the Committee to consider providing in its Report more detailed explanation of the extent of the authority of Nauru's head of state, more detailed explanation of the special circumstances of the matter that was referred to the Committee, and additional recommendations in relation to dealing with situations in which the Speaker issues unlawful instructions.*

Subsequent to the recommittal of the Report to the Committee on 5<sup>th</sup> February, the Committee held a further six meetings, during which it heard further evidence and reconsidered its findings and recommendations. The additional evidence resulted in some changes to the Committee's findings of fact. The Committee resolved, as a result of the new findings of fact, to change the recommendations it had made in the earlier version of the Report. The Committee unanimously adopted this report at its 13<sup>th</sup> meeting on 16<sup>th</sup> June 2009.

## ***B. Evidence and information presented to the Committee***

The Committee requested and received written information and heard oral evidence from a number of witnesses, who were invited to provide information to the Committee because of their involvement in or presence during the relevant incident, or because they were thought to possess other knowledge or information relevant to the Committee's inquiry. Witnesses were invited to appear rather than being formally summoned, in accordance with the usual practice adopted in parliamentary committees in the Parliament of Nauru.

All witnesses who were invited to appear before the Committee, except the Clerk of Parliament Mr Frederick Cain, were provided with a copy of the motion by which the Committee was established, and all witnesses except Senior Constable Terry Deidenang (who was invited to provide further evidence in relation to his written information) were also provided in advance with a list of the questions that the Committee wished to put to them in oral examination. Witnesses were advised of their entitlement to seek legal counsel, and to the fact that any evidence given by them would be protected by parliamentary privilege.

All oral evidence presented to the Committee was given by the witnesses under oath. The proceedings of the Committee at which oral evidence was heard were recorded, and verbatim transcripts of such evidence were prepared and referred to in the preparation of the Committee's Report.

The information and evidence received and heard by the Committee is set out in the following table on the following page of this Report.

| Witness                          | Correspondence from Committee   | Response received / oral evidence presented                                       |
|----------------------------------|---|---|
| Mr Brian Thomson                 | <u>15 October 2008</u><br>request for preliminary background facts              | <u>16 October 2008</u><br>written information                                     |
|                                  | <u>30 October 2008</u><br>invitation to appear                                  | <u>31 October 2008</u><br>oral evidence   |
|                                  | none  | <u>5 November 2008</u><br>additional written information                          |
| Superintendent Iven Notte        | <u>30 October 2008</u><br>invitation to appear                                  | <u>31 October 2008</u><br>oral evidence   |
|                                  | none  | <u>5 November 2008</u><br>written correction of one answer given in oral evidence |
|                                  | <u>6 May 2009</u><br>Invitation to respond to further questions                 | <u>6 May 2009</u><br>Further evidence by affidavit sworn before Secretary         |
| Commissioner Robert Lehmann      | <u>10 December 2008</u><br>invitation to appear                                 | <u>13 December 2008</u><br>oral evidence  |
|                                  | <u>30 April 2009</u><br>invitation to appear                                    | <u>1 May 2009</u><br>further oral evidence  |
| Mr Frederick Cain                | <u>10 December 2008</u><br>invitation to appear                                 | <u>13 December 2008</u><br>oral evidence  |
| Senior Constable Terry Deidenang | <u>11 December 2008</u><br>request for written information                      | <u>12 December 2008</u><br>written information                                    |
|                                  | <u>13 December 2008</u><br>invitation to appear                                 | <u>15 December 2008</u><br>oral evidence  |
| Inspector Marcus Tom             | <u>13 December 2008</u><br>invitation to appear                                 | <u>15 December 2008</u><br>oral evidence  |
| Inspector Corey Caleb            | <u>10 December 2008</u><br>invitation to appear<br>(13 Dec revised list of qus) | <u>15 December 2008</u><br>oral evidence  |
|                                  | <u>6 May 2009</u><br>Invitation to respond to further questions                 | <u>6 May 2009</u><br>Further evidence by affidavit sworn before Secretary         |

| <b>Witness</b>         | <b>Correspondence from Committee</b>         | <b>Response received / oral evidence presented</b> |
|------------------------|--|--|
| Hon Dr Kieren Keke, MP | <u>12 March 2009</u><br>invitation to appear | <u>13 March 2009</u><br>oral evidence              |
| Hon Mathew Batsiua, MP | <u>27 April 2009</u><br>invitation to appear | <u>29 April 2009</u><br>oral evidence              |

The following is an overview of the information and evidence presented to the Committee by those who wrote to and appeared before the Committee. Items contained within square brackets are a paraphrase or clarification of statements by witnesses.

### **Mr Brian Thomson**

In his capacity as Acting Commissioner of Police, Mr Brian Thomson provided written information to the Committee on 16 October 2008. The Acting Commissioner informed the Committee that Inspector Caleb was still under suspension, as the police force had received no correspondence from Cabinet revoking the initial suspension that was effected by Cabinet's approval of Cabinet Submission 102/2008. The police force received notice of the Cabinet decision on 8 April 2008 and served a notice of suspension on Inspector Caleb on 9 April 2008. The Inspector was suspended without pay. The Acting Commissioner further advised that the police force had not conducted and was not conducting any form of internal inquiry into the conduct of Inspector Caleb, and that as far as he was aware Inspector Caleb has made no attempt to invoke the jurisdiction of the Police Service Board in relation to this matter.

Mr Thomson appeared before the Committee to present oral evidence on 31 October 2008. During the course of that evidence he stated that he had been in the service of the Nauru Police Force for twelve months, and had known Inspector Corey Caleb for the same period, of which they worked together for the first five months, and Inspector Caleb was under suspension for the latter seven months of that period.

In response to a question as to whether any general instructions had been issued to police in relation to patrolling Parliament during the relevant period, Mr Thomson stated in evidence that on the morning of 27<sup>th</sup> March 2008 he had attended a Nauru Police Operations meeting held with Superintendent Notte at which the issue of the Nauru Police Force response to the Parliament situation was discussed. Mr Thomson stated:

*In general the discussions centred around ensuring that members of the Police Force were available, that there was the possibility that a State of Emergency may be called at the time, that the police were to ensure that public order gear is ready should there be a need to be deployed, that no police officer was to be deputised, that it was a very highly volatile situation that may result in possible civil disorder, that the police needed to display strong command and to be in attendance, that we were to have two teams of ten officers and an officer safety team close to the Parliament precinct. That information was from notes that I took at that meeting.*

Mr Thomson was unable to answer questions specifically relating to the incident that occurred in Parliament on the relevant day, as he stated that he was not present in Parliament on that day and did not witness what took place. He stated

that he was not aware of any specific instructions given to Inspector Caleb at the relevant time. Mr Thomson stated that the Superintendent-Operations in charge on the day in question was Superintendent Iven Notte.

In response to questions about Inspector Caleb's competence as a police officer, Mr Thomson stated:

*In the time I knew Inspector Caleb he successfully completed the commissioned officers qualifying course and was tested as competent on that training. He was required to apply for and undertake a selection process amongst a number of other applicants and successfully won the position of Inspector. I have always found Inspector Caleb to be a dedicated officer who followed the orders of his superiors and is willing to report to work and take on additional duties if called upon. He always approaches his work... methodically and he is an officer, if time permits, who will think through an issue before acting.*

In response to questions about Inspector Caleb's attitude towards his role and responsibility as a police officer, Mr Thomson stated in evidence:

*I would say Inspector Caleb had a positive attitude towards the Nauru Police Force, his position and his superiors within the Nauru Police Force and also towards the capacity building project.*

In response to questions as to the effect that Inspector Caleb's suspension had had upon the Nauru Police Force and as to Inspector Caleb's value to the Police Force, Mr Thomson stated:

*The loss of any police officer, especially a trained police officer, always has a negative effect on the police. Inspector Caleb's [suspension] along with a number of other disciplinary dismissals that have occurred has put an additional burden on the Nauru Police Force in providing a safe community here on Nauru...*

*We shift our officers around and ultimately somewhere along the line end up with a less experienced officer having to act in a more senior position, which can also cause serious consequences to the Police Force and its operations as well...*

*Every serving officer is valuable to the Police Force, particularly a police officer with many years of service and experience. While you can replace any officer with a new recruit, it takes years to develop the skills and the experience to go along with that knowledge, so the loss of anybody with quite a few years service does have an impact operationally.*

In response to a question about the manner in which police are expected to respond to situations, Mr Thomson stated in evidence:

*Police officers are trained to make assessments in response to incidents as they occur, therefore they are virtually their own counsel, and that is why at the*

*moment we are very much focussing on training the Nauru Police Force to give them the legislative background so that if they do come across a situation they would be in a position to respond immediately rather than having to seek advice and guidance from the chain of command.*

### **Superintendent Iven Notte**

Superintendent Iven Notte gave oral evidence to the Committee on 31 October 2008, in which he stated that he has been a member of the Nauru Police Force for ten years and has known Inspector Caleb for the same period of time. He is at present Inspector Caleb's superior officer. Superintendent Notte informed the Committee that Inspector Caleb was on duty on the relevant day.

The Committee asked Superintendent Notte whether the Director of Police (Commissioner) had given any general instructions to the police force prior to the incident on 28<sup>th</sup> March 2008 in relation to patrolling Parliament. Superintendent Notte gave evidence that the Commissioner had not issued general instructions to the police force at large, but that the Commissioner had issued specific verbal instructions to him and to Inspector Caleb prior to the incident in Parliament. Superintendent Notte explained the brief that he and Inspector Caleb had received from the Commissioner:

*The instruction was that Corey had to maintain law and order at the Parliament House, there will be no member of the public to enter the Chamber, no MPs to be removed from the Chamber, and no police officer is to enter the Chamber.*

Superintendent Notte also gave evidence that prior to the incident in Parliament, the Commissioner had been called to see the President, and that Notte had accompanied him to this meeting. He did not have a record or recollection of precisely when the meeting had taken place. Superintendent Notte indicated that at this meeting, the President instructed the Commissioner that police should not remove Members from the Chamber, and that the police were under the direction of the executive branch of government. Superintendent Notte informed the Committee that prior to the incident in Parliament, the Commissioner had formed the view (or been advised or instructed) that the Speaker did not have the authority to order the removal of members because the Act and Standing Order that he was claiming to rely on were invalid, due to lack of quorum at the sitting on 22 March at which they had purportedly been passed.

Superintendent Notte gave evidence that he was not in the area at the time that Inspector Caleb entered the Chamber, but that Inspector Caleb had contacted him by his radio call sign just before Caleb entered the Chamber, and that they had the following exchange (translated from Nauruan to English):

*Caleb: 'Come down here, there's something [happening] here. Things down here are bad'.*



Notte: *[What is it? What is happening down there?]*

Caleb: *'I'm calling you because I'm about to go in'.*

Notte: *'Don't go in! Wait for me and the Commissioner to get there'.*

He gave further evidence that he was not aware whether Inspector Caleb had received instructions from the Speaker to enter the Chamber. He stated that some time after Inspector Caleb had entered the Chamber to attempt to remove the two Members of Parliament whom the Speaker had ordered to withdraw, he himself (having in the meantime arrived at Parliament with the Commissioner) entered the Chamber and ordered Inspector Caleb to leave the Chamber. According to Superintendent Notte:

*[Inspector Caleb] stood up when he heard my request for him to withdraw from the Chamber. For a few seconds probably he was lost, or I don't know what, but he was standing. I think he was a bit shocked. But I won't call that resisting. I think he was a bit lost. But he did proceed out when I told him to...*

*Inspector Corey was confused when I told him to retreat from the Chamber. He stalled a few seconds, then he removed himself. I think he was confused because he did not really know what was happening...*

*I think he intended to obey the order of the Speaker...*

*I think his only insubordination was when he did not listen when I told him [prior to the incident] not to enter Parliament.*

In response to a question as to whether Superintendent Notte had requested an explanation from Inspector Caleb immediately after the incident in Parliament, Superintendent Notte stated:

*Inspector Corey was with the Commissioner of Police after we retreated from the Parliament. The Commissioner of Police then sent him back home after trying to talk to him. Inspector Corey could not even talk, I think he was very confused. The Commissioner was trying to control him to talk with him, but couldn't, so he sent him home to rest for a while and the Commissioner will handle any other matters that might arise after that incident...*

*After we left the Parliament we went upstairs to the Commissioner's office and stood outside discussing why he entered the Chamber. He said that he was called in by the Speaker to remove the Members.*

When asked by a member of the Committee what would be the normal response when a police officer was instructed by the Speaker to enter the Chamber and remove members, Superintendent Notte said:

*We have not been given any training or been informed by other departments about the separation of powers like the executive and the Parliament when they need the force at the same time. We would like to know where we would stand at that particular instance. I think we would just have to apply common sense and refer back to our Commissioner for advice in this area, whether it is proper to enter the Chamber or not. So we would have to go back to our Commissioner for advice.*

Hon Tabuna then asked: 'Were you aware if Inspector Caleb did what you suggested just then? Did he consult either you or the Commissioner?'

To which Superintendent Notte replied: 'As I said he did contact me, and I said not to enter the Chamber. We have to contact our Commissioner first.'

In response to questions about Inspector Caleb's general attitude towards his role and responsibility as a police officer prior to his suspension, Superintendent Notte stated:

*As to my observations, Inspector Corey, who is one of the senior members of NPF, in doing his duties as a senior police officer he had shown leadership and driving force and was a highly disciplined member of the force, which he had always shown to junior officers...*

*He had always been fair and honest in his duties as a police officer.*

In response to questions as to whether Inspector Caleb had ever allowed political views or allegiances to interfere with the objective performance of his duties as a police officer, Superintendent Notte stated that he could not recall any occasion on which Inspector Caleb had expressed any political views during his duties.

In response to a question about the effect upon the police force of Inspector Caleb's suspension, Superintendent Notte stated:

*We have lost one of our senior members who had been dedicated to his duties, and that has affected our human resources in our organisation. At this time there is no one to replace Corey in his position and we have lost one of our most senior officers and our most dedicated officers in the NPF...*

*Some members will be carrying more weight when they do their job which Corey would have had to carry if he was still on duty.*

In order to provide him with the opportunity to respond to assertions made by Inspector Marcus Tom in his evidence that was given after Superintendent Notte's evidence, Superintendent Notte was invited to give further evidence by means of affidavit. In his affidavit of evidence dated 6 May 2009, Superintendent Notte refutes Inspector Tom's claim that Tom walked with Notte and Caleb back to the Commissioner's office after the incident in Parliament, and that Notte apologised to

Caleb. Superintendent Notte swore in his affidavit of evidence that immediately after the incident in Parliament, he walked with Inspector Caleb and the Commissioner back to the Commissioner's office, and Inspector Tom was not with them. He further stated in evidence that he made no apology to Inspector Caleb for anything on 28<sup>th</sup> March nor on any day since then.

### **Commissioner Robert Lehmann**

Mr Robert Lehmann, Commissioner of Police, appeared before the Committee and gave oral evidence on 13<sup>th</sup> December 2008. Commissioner Lehmann stated that he was not initially present in Parliament when the relevant incident commenced, but arrived at Parliament some time after Inspector Caleb had entered the Chamber and while Inspector Caleb was still in the Chamber.

In response to a question as to whether he had provided any general instructions to the Police Force in relation to policing within Parliament, he answered "not specifically", and went on to add:

*The reason there is no general instruction is that maintaining the requirements of Parliament is part of mainstream policing business; the responsibilities are well known to my superintendents and inspectors and they perform this duty with regularity. I am not aware of any role description that the Parliament had provided to the Commissioner of Police also in relation to this matter...*

*The general requirements that we apply to the protection of Parliament during parliamentary sessions are protection of Members of Parliament and parliamentary staff, protection of the building, patrolling the parliamentary precincts to identify and prevent incidents that are likely to impact on the business of the Parliament sessions, maintain peace and good order in the public gallery, ensure good conduct and standards are applied in the public gallery and that behaviour is contained, maintain police guard at entry points to prevent unlawful access, maintain protection for the Speaker of Parliament and parliamentary staff by having police, depending on the circumstances, usually one positioned in the parliament and usually stationed somewhere near the door of the Speaker's office, responding to requests of the Parliamentary Speaker through the Commissioner's office and performing normal ceremonial duties associated with the opening and closing of Parliament.*

Commissioner Lehmann informed the Committee that he had held a meeting at 4:15pm on 28<sup>th</sup> March 2008, prior to the incident in Parliament which occurred later that day, to discuss what provision would be made for policing Parliament for the remainder of that day. The Commissioner referred to his notes of that meeting and stated:

*My notes are in brief form and in the main we discussed the operational response required given the serious nature of the situation that had occurred in recent*

*weeks of March and that the potential for further unrest and also any requirements of the Speaker would need to be catered for and also to maintain the security of all concerned...*

*Superintendent Notte was to be the forward commander and Inspector Caleb was to be the officer in charge of the parliamentary team...*

*[the list of officers and vehicles that were stationed or on stand-by indicates that] we had taken the situation as serious and we were prepared to eventualities that may occur.*

*The meeting concluded at 4:23pm and Inspector Corey was to be in command at Parliament House with instructions to provide regular feedback to myself...*

*I was satisfied at the time that those arrangements were adequate...*

*At that particular briefing I did not specify a specific instruction to Inspector Caleb in relation to any activity or any request from the Speaker, having known and informed the officer, according to my notes from the briefing, that any request from the House would come to the Commissioner to be advised.*

In response to a question as to whether, at any other time prior to the incident that occurred in Parliament, the Commissioner had issued any specific instruction to Inspector Caleb as to what he should do if he was ordered by the Speaker to remove Members from the parliamentary Chamber, he stated:

*At that time I had not communicated my instructions to Inspector Caleb. I was still going through the pros and cons of a response should the Speaker make a request to the police to enter the Parliament. In an ironic manner, I was about to form my position which was the same as I had in the past and I was just about to leave my office to inform the Inspector that we would not be entering the Parliament if requested by the Speaker.*

When asked for his professional view on what is the correct response of a police officer in a situation where he receives conflicting instructions from the Speaker of Parliament and from the Minister for Police in relation to his duty within Parliament, the Commissioner stated:

*This is a most difficult situation for the police and I am sure you and your colleagues would agree. In essence the police have the highest respect for the President and Police Minister and also for the position of the Speaker of the House and for the police to be put in that position where it is going to be conflict of interest from both the Speaker and the Minister for Police is a very untenable position for a police officer to be in...*

*[The] business of the day was very quick. Parliament resumed and it went straight to this matter, there was not a general of what I might surmise as a*

*general parliamentary process, the start of parliamentary business. It moved straight to the issue, in that sense the police were caught off-guard and as I said my intention was to have the Inspector [informed] as to my intentions, which was not to enter the Parliament and that can be debated on the rights and wrongs of it, but my position was not to enter the Parliament for various reasons...*

*[Inspector Caleb] was then placed in a position, in a most public area in a most important venue of this country to do something, and the officer determined, as best as I can assess the activity, that the Speaker of the Parliament is in charge of the Parliament Chamber when it is sitting...*

*I don't know what that officer did, I don't know what the nature of the complaint is other than the officer performed disrespectfully, so I can't analyse or make any comment in relation to this conduct on that issue...*

*[I was not there at the time when Inspector Caleb initially had to make that decisions as to how to respond], I was probably on my way there in the company of Inspector Notte... but my officer acted appropriately in the circumstances at the time and as I said I have no details of the actual incident at the time to which this is being referred. But in terms of his actions, he acted appropriately in my view.*

In response to a question as to why, notwithstanding his belief that the Speaker has control of the Parliamentary precincts, the Commissioner had been proposing to instruct Inspector Caleb not to enter the Chamber of Parliament, the Commissioner stated:

*Mr. Chairman, I made the decision that the direction of the Speaker at the time was unlawful in my view and that we would not be co-operating with the Speaker on that occasion.*

In the course of examining the Commissioner on what transpired in Parliament on 28<sup>th</sup> March 2008, the Chairman put the question:

*I understand that through all the commotion at the time Inspector Caleb did enter the Parliament at the instructions of the Speaker through the Clerk of Parliament... Inspector Notte [later] entered the Chamber and instructed Inspector Caleb to retreat. May I ask where did Inspector Notte get instructions from, for him to enter the Chamber and order Inspector Caleb to retreat from the Parliamentary Chamber?*

To which the Commissioner responded: "Superintendent Notte got his instructions from me".

When asked in what way he believed the actions of the Speaker to be unlawful, the Commissioner stated:

*I had met with the Speaker on a number of occasions on police position and through the discussions with the Speaker I gained the impression that he had the intent to remove the 2 Members from the House and I formed the view, going back to the Constitution and Article 36 the main area that I relied on that the continuance of the activity to remove people would not be in the best interest of Nauru.*

In response to questions as to the competence, attitude and value of Inspector Caleb, the Commissioner stated:

*The police officer in question has a very solid reputation. When I joined the Nauru Police Force in 2007, at that time he was Commander, Commander Caleb was IC and had occupied that position for probably the last 12 months. He has always been a truly committed and professional officer to the Police Force, has never caused me any concern of his integrity. His commitment to work is exemplary and he has been a very good and strong supporter of the reform program to the extent that I appointed him as my staff officer after he had completed his police training. I had no reason to doubt his competence or professionalism or his integrity...*

*Inspector Caleb was very valuable, he was a strong supporter of the current direction of the police force, he has shown it by demonstrating and leading from the front and taking control of disciplinary matters prior to this. He is and would continue to be a very valuable member.*

The Commissioner further stated that he had never observed Inspector Caleb exhibiting any politically motivated behaviour that interfered with his ability to perform his duties as a police officer in an objective and lawful manner.

In light of Parliament's referral of the Committee's Report back to the Committee for further consideration and explanation of certain points, the Committee invited the Commissioner of Police to appear before the Committee to give further evidence on 1 May 2009. At this meeting, the Chairman posed the question to the Commissioner:

*can you recall having any discussions with individual Ministers or with Cabinet before the incident involving Inspector Caleb on 28<sup>th</sup> March 2008 about the likelihood that the Speaker would ask the police to enter the parliamentary chamber to remove Members from the House?*

To which the Commissioner replied:

*Yes, there were conversations with Ministers and with Cabinet before the incident... I have had some discussions with His Excellency as early as the 22<sup>nd</sup> of March. This was the day of the sitting of Parliament and this led to further*

*contact with Mr. President and I believe other Members of Parliament on the 26<sup>th</sup> of March.*

*During our discussions, I believe Mr. Keke was there and Mr. Kun and I think other Members as well if my memory serves me correctly. I believe, but I am not sure, that meeting took place in the Office of the President.*

*During that meeting, I was advised that the Speaker may attempt to remove Members of Parliament from the Chamber. There was also discussion in relation to the executive direction of the Minister and that the police came under that executive direction.*

When asked whether Cabinet had instructed or advised him as to what ought to be done if police were instructed by the Speaker to remove Members from the Chamber, the Commissioner responded:

*Throughout the conversation with the Ministers, it was an informative information exchange, I did not take the view that at any time there was a direction to me to do certain things. I formed the view that the Cabinet was endeavouring to provide me with a full picture of the current circumstances that were evolving and clearly did so to which I was grateful.*

This answer was followed by the following exchange:

**Chairman:** *So basically there was no order by Cabinet given to you as Commissioner not to allow members of the police force to enter the Chamber.*

**Commissioner:** *This meeting I was referring to was on the 26<sup>th</sup> of March, I had not recollection of an order to do certain things at that time but the events were likely to occur were articulated to me.*

**Chairman:** *Were there any other meetings with Cabinet after this meeting relating to this incident and were there any instructions given then?*

**Commissioner:** *Yes, I recall a further meeting on the 27<sup>th</sup> of March at 11.50 a.m., I believe, but I am not able to tell you whether the full Cabinet was there or whether it was only a number of the Ministers.*

*In relation to that meeting, obviously there was further discussion on the issue. There were discussions in relation to whether the Speaker had the power to appoint an officer of the Parliament. I believe this was discussed in some length as there was some concern at the time that alternative action may take place should the police not comply with any direction of the Speaker...*

*I had also in the intervening period met with the Speaker on a number of occasions and discussed those issues with him. I had made it clear to the Speaker that it was not my intention to enter Parliament and remove sitting Members.*

Hon Deireragea then asked the Commissioner whether he had passed this information on to his subordinates, to which the Commissioner replied:

*This would be what I would term a critical decision. At what stage I did pass it on I am not exactly sure? I cannot recall the names at the time but Superintendent Notte was my IC and the intention not to enter the Parliament would have been conveyed I am sure.*

He later added:

*I have no direct recollection of when I passed the message but there was clearly an understanding by Superintendent Notte of our intent there not to enter Parliament on the day in question and at the time in question.*

Having stated that he had reached the 'critical decision' prior to the incident in Parliament and that he had passed this on to Superintendent Notte, the Commissioner's answers to later questions on the same point were less clear, and referred to the evidence of other witnesses as quoted in the first version of this Committee's Report, rather than to his own recollection. Hon Kun asked the Commissioner, 'You mentioned that you had recorded in your notes that at your meetings with the Speaker on the 28<sup>th</sup>, you told the Speaker of your intention that the police would not enter Parliament?'

**Commissioner:** *I have that record in front of me.*

**Mr. Kun:** *That you indicated to the Speaker that the police would not enter Parliament?*

**Commissioner:** *I can read the notation.*

*11.40 a.m. approximately, spoke to Speaker of Parliament re my decision not to provide a Sergeant-at-Arms for Parliament duties on the basis that the police would respond to the needs of the Parliament in respect of the preservation of peace and good order...*

**Mr. Kun:** *It would be important to the Committee whether you can confirm whether that means your decision as indicated to the Speaker was actually passed on to the police force, in advance of the actual sitting itself. This is a critical point for us...*

**Commissioner:** *...Mr. Chairman, I don't have a written record of that of my own, but I believe the matter was canvassed in a previous hearing and there is a reference to that issue there in relation to matters of evidence of Superintendent Notte...*

*To put it in perspective for the Committee, these matters are dealt with in terms of a chain of command where I roster officers who brief their officers in terms of the requirements. There was no general briefing by me to the police who*



*attended Parliament on that day, my discussions and briefings were through Superintendent Notte and in my notes, Inspector Corey Caleb...*

**Mr. Kun:** *... You said that, and this is in regard to the timing of instructions to police and the critical decision, did you say that it had been covered by the Committee before, because I am a new member to the Committee?*

**Commissioner:** *Yes Sir, and I believe you will find this in the evidence of Superintendent Notte.*

**Mr. Kun:** *I am assuming that you are referring to the report itself where it quotes extracts from Iven Notte's evidence and I would take your response to mean you are in agreement with Iven Notte's evidence, specifically in that regard. Iven Notte's evidence is consistent with your recollections of the briefing?*

**Commissioner:** *Yes it is, it is consistent with my approach throughout the dealings with this matter.*

After further examination, Mr Kun said to the Commissioner 'Because we have been referred to Iven's evidence, Iven's evidence is saying that Corey was present where the critical decision was put. I am seeking confirmation whether you are in agreement with Iven.

**Commissioner:** *It is quite probable or possible that the incident that Mr. Notte was referring to has been the secondary meeting between the Superintendent and his team and in this case Corey would have been an instrumental part of that team and that is a likely place where this transfer of information occurred.*

**Mr. Deireragea:** *It seems that you are saying that these instructions that Iven gave as a witness were never given by you because the briefing as you said was just tactical and where did Iven get his instructions, at another separate briefing or what?...*

**Mr Kun:** *... What happened in between the critical decision being made and to the sitting itself in terms of briefings to police officers?*

**Commissioner:** *Look, I have exhausted my opportunity on this, there is nothing more that I put other than what I think the Committee has got.*

**Chairman:** *Commissioner, having already made the critical decision that the police were not to enter Parliament, even if you cannot specifically recall issuing such orders to Notte or Caleb or precisely when such order may have been issued, do you think it is likely that you would have issued such order before the sitting of the 28<sup>th</sup>? And would you therefore have expected Notte to brief his team that the police were not to enter Parliament?*

**Commissioner:** *In the lead up to the Parliament and the request my expectation on the day was that if there was a request from the Speaker it be relayed to me as the Commissioner and in this instance that clearly did not happen and by the time I became aware of it events had already commenced.*

Hon Kun sought further clarification of this point from the witness, and asked the Commissioner:

*...it is a significant part of the critical decision, and what I am trying to establish is whether it is likely that the 28<sup>th</sup> sitting went ahead without [police being made aware] of the critical decision... whether it was likely that the force was not informed?*

Which was followed by the following exchange:

**Commissioner:** *It is possible.*

**Mr. Kun:** *It is possible that the police were not informed?*

**Commissioner:** *The reference to the briefing by Mr. Notte gives me reason to believe that the instruction was given and Mr. Notte was aware of and was present at some previous meetings, one in relation to the Parliamentary Counsel where this issue had been discussed, but Mr. Caleb in this statement here, without going through it I don't know but does not make any reference to being told, as I understand, that he was not to enter the Parliament.*

*He also said he did not take any notes of the meetings with the C.O.P. and with Mr. Notte, whether he was there at the time I don't know, but it is possible.*

The Commissioner agreed to the Committee's request to provide copies of:

- correspondence between himself and the Speaker relating to the Speaker's request for a police officer to be deputised to Parliament to serve as Serjeant-at-Arms, which request was refused by the Commissioner (correspondence dated 27 and 28 March 2008),
- copies of email correspondence from the President and the Minister for Finance relating to the unlawfulness of the position that was being taken by the Speaker around the time of the incident in Parliament (emails dated 26 and 28 March and 8 and 9 April 2008), and
- a copy of an extract from the Commissioner's notes book for 28 March 2008 which includes
  - a note: 'not satisfied that the recent amendment of 22 March to the Nauru Citizenship Act was law... As a matter of responsibility as Commissioner I must be satisfied that the law to be applied was in fact lawful. At this point that is not the case... The request to provide a Serjeant-at-Arms has therefore not been approved';

- a note that: 'Brian Thomson advised radio has been fixed and that Corey and Iven have prepared members for a response to Parliament'; and
- a note of a briefing meeting at 4:15pm re operations at Parliament.

### Mr Frederick Cain

The Clerk of Parliament, Mr Frederick Cain, presented oral evidence to the Committee on 13<sup>th</sup> December 2008, in which he informed the Committee that he did not receive any advance instructions from the Speaker prior to the sitting on 28<sup>th</sup> March 2008, and that the Speaker did not inform him prior to the sitting that he proposed to eject the two Ministers from the sitting.

When asked whether, during the sitting of 28<sup>th</sup> March 2008, the Speaker had instructed him to provide any assistance in effecting the removal of the two Ministers from the House, the Clerk stated:

*He did, after initially asking me and the Deputy Clerk to approach both Ministers. I believe the Deputy Clerk approached Minister Pitcher and I approached Minister Keke, as instructed by Hon. Speaker, to ask them to withdraw from the Chamber, to which they did not. So I went back and advised the Speaker and the two Members had no intention of withdrawing from the Chamber. Thereafter, he instructed me to get the police.*

When asked to elaborate on the manner in which he sought assistance from the police, the Clerk stated:

*When the Speaker asked me to get assistance from the police force to remove the Ministers, I left the Chamber and in the lobby area I saw some police officers, in fact I was looking for Inspector Iven Notte but I saw the most senior police officer there, Inspector Corey Caleb, and as the Speaker said get the police to remove them I asked Inspector Corey Caleb if he was the most senior and he said he is. I then said the Speaker needs your assistance, police assistance that is, to go into the Chamber and ask or whatever the Speaker's instruction was, remove - physically, if need be - the two Ministers concerned at the time.*

The Clerk also confirmed that there was no instruction from the Speaker to get the assistance of any particular individual police officer, merely a general instruction to obtain assistance from the police.

In response to a question as to whether the Speaker had requested or the Clerk had provided any advice in relation to the lawfulness or procedural correctness of the removal of the Ministers from the Chamber, the Clerk replied:

*No, there was never any advice from either myself or the Parliamentary Counsel at the time because I believe the situation at the time was that the Speaker was*

*quite adamant at removing the two Ministers, so Counsel and I did not offer any advice of any kind at the time.*

In his evidence before the Committee the Clerk estimated the Inspector Caleb was inside the Parliamentary Chamber for five to ten minutes, and no longer than ten minutes, during the incident on 28<sup>th</sup> March 2008.

### **Senior Constable Terry Deidenang**

The Committee wrote to Senior Constable Terry Deidenang on 11<sup>th</sup> December 2008 requesting information in relation to events that were alleged to have taken place prior to the incident in Parliament, whereby Inspector Caleb was alleged to have made statements which indicated that Inspector Caleb may have formed the political intention to get involved in the removal of Members from Parliament even prior to receiving any such instruction from the Speaker. Senior Constable Deidenang, in his written response on 12<sup>th</sup> December 2008, informed the Committee that on the day in question he had accompanied Inspector Marcus Tom to pick up Inspector Caleb on their way to the police station. Senior Constable Deidenang stated that when they picked Inspector Caleb up he was very agitated and was cursing and making abusive remarks about the government, and said that the government was playing politics and wasting people's time. He further alleged that Inspector Caleb on that day, prior to the incident in Parliament, had encouraged other police officers not to hesitate in taking actions to eject members of the Government from Parliament and not to be fearful as it is part of their job, and that Inspector Caleb had been waving a document around saying that this document was proof of their power to eject members of the Government.

The Committee invited Mr Deidenang to appear before the Committee to further examine him on the aforementioned allegations, and he gave oral evidence before the Committee on 13<sup>th</sup> December. In his oral evidence he stated that comments made by Inspector Caleb during the car journey on 28<sup>th</sup> March indicated that he was agitated because he was being recalled from leave because of the requirement for extra police to be on duty as a result of the volatile situation in Parliament. The situation at the time was a "code red" which meant that the police were on high alert. The witness stated that on that day during the car journey Inspector Caleb was very angry and said that the government was a waste of time and was making the police's job difficult. It is somewhat unclear from the evidence whether the alleged remarks were directed at the Government in the sense of the executive arm of government, or at government in the broader sense meaning the entire governmental system and all of its branches.

Senior Constable Deidenang informed the Committee that he had been with the Nauru Police Force for six years and had known Inspector Caleb throughout that period. In response to a question as to whether, in his opinion, Inspector Caleb was a competent police officer, the witness replied that Inspector Caleb is a good police officer, but can be short tempered. The witness further stated that this behaviour

was not typical of Inspector Caleb, but that it was an unusual outburst made under unusual and highly stressful circumstances at the time.

### **Inspector Marcus Tom**

Inspector Marcus Tom was invited to appear before the Committee primarily in order to be examined in relation to the conversations that were alleged to have taken place in the car on 28<sup>th</sup> March prior to the incident in Parliament. According to the evidence of Terry Deidenang, on the relevant day Inspector Marcus Tom had been the driver of the vehicle that had picked up Inspector Caleb to drive to work, and Terry Deidenang had also been present in the car.

Inspector Tom informed the Committee that he could not recall whether or not he had been in the car with Inspector Caleb and Senior Constable Deidenang on 28<sup>th</sup> March, because it was a long time ago, he did not have notes, and he had been very busy and working long hours around that time. He stated that he did recall the sitting of Parliament and the incident in Parliament, although he did not recall the date of the relevant sitting. The witness confirmed for the Committee that he does normally drive a police car and pick up other officers, but that he cannot recall on the specific day in question whether he picked up Inspector Caleb and whether he was at any time on that day in the car with Inspector Caleb and Senior Constable Deidenang. He stated: "I might've picked him up but I don't recall picking him up".

When asked whether, to the best of his knowledge, Inspector Caleb was ordered by the Speaker to enter the Chamber to remove the Members in question, Inspector Tom stated that he does not know.

Inspector Tom stated in evidence that on the relevant day he had been tasked with investigating an incident at the power station, but that he later attended Parliament when he heard about the incident on the police radio. In response to a question as to whether he could recall having any conversation at all with Inspector Caleb on the relevant day, he stated:

*I don't recall seeing Corey on that day. He was tasked to provide security service at the parliament. Before he went in he was assigned for that task, I haven't met him. But after, later he was called out by Superintendent Iven, I came to the parliament area as there was confusion there. So that is why I came to see the incident that happened.*

Hon Amwano then asked Inspector Tom:

*You cannot recall any other time before the incident that you conversed with Inspector Caleb? But do you recall, you just said that you do recall that after the incident you did meet with Inspector Caleb after the incident at the Parliament. Now, can you recall any conversation after the incident having spoken with Inspector Caleb? Any conversation regarding the incident? Can you recall any of that, after the incident?*

To which Inspector Tom replied:

*I did meet up with Corey while he was being called out by Iven from the House and he was escorted out from the door from the Parliament House. I was outside Parliament when they exited. We then went towards the Court House together with Iven. And I recall that Iven was telling Corey that he didn't not brief him of an order from the President that police should not engage themselves if they were required in the Parliament House by the Speaker. Superintendent Iven kept repeating how sorry he was for not informing him of the order from the President that the police were not to engage into the Parliament if they were required. That is all.*

When asked whether, on the 28<sup>th</sup> March 2008 after the incident in Parliament had occurred, Inspector Caleb had made any comment to him about the incident, the witness responded: "No. I saw that Corey was speechless, a bit confused and didn't say anything."

In response to a question as to his opinion of Inspector Caleb's competence as a police officer, Inspector Tom stated:

*To my understanding Corey is a dedicated officer all around GD's, investigations, and other police duties. But pretty much, yes I am happy for his effort for his service with the NPF and he is a very good officer.*

### **Inspector Corey Caleb**

The Committee wrote to Inspector Corey Caleb on 10<sup>th</sup> December, inviting him to appear before the Committee to present oral evidence on 15<sup>th</sup> December, and enclosing a draft list of questions that the Committee was proposing to put to him. The Committee again wrote to Inspector Caleb on 13<sup>th</sup> December providing him with an amended list of questions. Inspector Caleb appeared before the Committee on 15<sup>th</sup> December 2008. The evidence of Inspector Caleb quoted below was given in Nauruan, and translated by Parliament staff into English.

Inspector Caleb informed the Committee that he became a police officer on 6<sup>th</sup> March 1989, and has been a police officer for 19 years. He attained the rank of Inspector on 14<sup>th</sup> December 2007.

In response to a question as to whether he had ever received any general briefing or general instructions from the Police Commissioner or any other senior officer in relation to the duties of police within Parliament, Inspector Caleb stated:

*I recall one briefing by the Commissioner, during the chairmanship of Speaker Akua, which dealt specifically with the removal of Members. I advised the Commissioner at the time that these requests will often surface, and the advice he gave then was that if this should happen all I need to do was to approach the*

*Member. If the Speaker makes the request, all I had to do was ask the Member to remove himself from the Chamber, I think this was the only instruction he gave. The Commissioner and I discussed this issue at length, with none of the other senior officers present. I think the date was 18<sup>th</sup> March 2008, when Speaker Akua was in the Chair.*

When asked whether he had followed Superintendent Notte out of the Chamber because he was a superior officer who had resolved a situation that Inspector Caleb had never been faced with before, Inspector Caleb stated:

*Let us say that it is better for me to leave the situation which was very tense. I was just standing there, wary of both sides of the House, and thought it might be better for me to withdraw since I will not achieve anything. One was telling me no, while the other in the Chair was saying yes so I thought it would be better for me to withdraw. That was my decision because nothing was moving forward, I hope I have answered your question.*

Inspector Caleb was then asked by Hon Amwano:

*Is that what you are saying, that you followed his instructions because that would have to be an instruction from your immediate superior, is this correct? That was your best judgement at the time, is it not?*

To which Inspector Caleb replied:

*That would be proper and also in order. I cannot stay in there with the conflict going on and being pulled both ways. I have to stay in the middle, so it is better to remove myself from the scene. It is hopeless for me to stay there without accomplishing anything...*

*To explain further, when I entered the Chamber I had to prepare myself, I could not just face up to the two Members who were to be removed and demand them to leave. I had to stand there and wait for further instructions from the person in the Chair, but it so happens that I met H.E. in there and we spoke. Then another Member stood up and verbally abused me, things were tense in there, it was an experience which no other officer had to face, I think, only me.*

When asked to elaborate on the verbal abuse, Inspector Caleb stated:

*I just mentioned that in passing because someone stood up and called me a hero. What does he mean by hero, who is the hero? Is that what he sees, a hero? I was in great difficulty, and he stood up and called me a hero. I told the Member that I was not a hero, I did not come in to be a hero. That is his opinion, but that is not how I see myself. I did not enter to be a hero, I find this objectionable because that was not my approach when I entered. People in the House are respected, and that was not my approach, I was not a hero.*

The question was put to Inspector Caleb: "Can you please tell the Committee whether you received any general briefing or instructions from the Police Commissioner or any other superior officer in relation to police responsibilities for patrolling Parliament on the 28<sup>th</sup> March? If so, what was the nature of the briefing or instructions?" Inspector Caleb stated in response to this question:

*There was a short briefing on the day, present were the Superintendent and the Commissioner of Police. I apologise for the fact that I did not make any notes of the briefing; I just wrote briefing with COP. This paper I have with me make notes of everything that happened that day, names of officers on duty that day, my duties. The main things I noted down were where officers were stationed and my assigned tasks for the day. I had noted the briefing by COP and SP, but I did not mention the points discussed at the briefing...*

*But my understanding at the time was, I did not raise the issue of the removal of Members because we had discussed this sometime earlier with the Commissioner of Police, but the issue at the time was the question of numbers. The number of officers on duty, how many have arrived, how many officers there, and so forth. These were the main areas of concern, as far as I can recall at the time.*

*The numbers I am referring to is what might be needed should there be a demand to handle disorders and the like. This team had been trained in handling unlawful gatherings and unruly crowds, etc. I was also given the responsibility as senior officer to oversee this team, and at the same time, if I recall correctly I was also in charge of the Parliament.*

The Committee asked Inspector Caleb to clarify whether he was recalled from leave on the 28<sup>th</sup> of March or some other time and why he was recalled from leave. Inspector Caleb informed the Committee:

*During the month of March, I went on leave on the 6<sup>th</sup> for fear of losing my leave credits. On the 7<sup>th</sup> when the police station was burnt, I was on leave, I heard that the police station had burnt down. I went home, put on my uniform came down to the station and saw that it had been burnt. At the time every police officer was down here, me included. I think I was the last officer to leave the station because I was really saddened by the incident and those things. It was here also that I recalled myself back to duty. I made the decision to return to work because I felt it was only common sense since a lot of unpleasant things are happening, so I cancelled my leave and resumed duty to offer assistance to my fellow officers because I knew that most of the officers there were all juniors. I felt I had to be there to help them. This was the incident that made me decide to return back to work.*

The Committee asked Inspector Caleb to describe what happened when he arrived at Parliament on 28<sup>th</sup> March 2008. Inspector Caleb stated:



*I left the station and came here as Parliament was about to start after the briefing with the Superintendent. I was met on arrival by the Clerk who advised me that the Speaker had instructed the police, that is myself and my officers stationed at Parliament, that we have to remove two Members. I stopped the Clerk and asked him to repeat his instructions. He said that I was to enter the Chamber with my officers to remove two Members. I asked who the Members were and he named them, Freddie and Kieren. I also asked where the request came from and he said from the Speaker.*

The Committee asked Inspector Caleb whether he had allowed his political views or allegiances to affect his behaviour in any way whilst on duty within the parliamentary precincts on 28<sup>th</sup> March 2008. Inspector Caleb replied:

*I never allow politics to interfere in the carrying of my police duties. I will truly say that I have no interest in politics. I am a police officer whose chief duty is to enforce the law and order, I have no interest and neither do I play politics.*

The Committee put the allegations of abusive remarks about government being made by him in car on the 28<sup>th</sup> March on the way to work, and Inspector Caleb denied that the allegations were true. He stated that he had said no such thing, and that he had not been agitated on that day.

When asked by the Committee whether he believed that he had prior to his suspension discharged his duties as a police officer fairly, objectively and impartially, Inspector Caleb replied:

*I submit that whenever I carry out my duties, I do so lawfully. Lawfully carry out the orders; not fairly and not objectively that I should remove the Members in question. My only submission is everything I did was done lawfully; I did not put it upon myself that I should enter the Parliament in uniform. I did not put it upon myself to bypass everything and do what I please. I put it to you that everything I did was right, that is my view. But after I was suspended, now for 9 months, I started to believe that what I did then must have been probably wrong. Perhaps that was how it was seen, I was in the wrong.*

The Committee asked Inspector Caleb whether there was any other information that he wished to present to the Committee which he believed may be relevant to the Committee's inquiry. Inspector Caleb stated, inter alia, that:

*There should be guidelines laid down for the police to form part of their training. Guidelines telling them what they should or should not do, Mr. Chairman. I think this is the most important because if this happens again in the future the police officers would know how to handle themselves in such situations.*

In order to have the opportunity to respond to statements made by other witnesses that had not been put to him during his examination before the Committee, the Committee invited Inspector Caleb to provide further evidence to the Committee by

way of affidavit sworn before the Secretary to the Committee. Inspector Caleb provided further evidence by way of affidavit in 6 May 2009, in which he swore the following:

1. *The statement made by Superintendent Iven Notte, that I radioed him before I entered the Chamber on 28<sup>th</sup> March and that he instructed me by radio not to enter but to wait for him and the Commissioner, is false.*
2. *I had no radio contact with Iven Notte nor with anyone else between the time when I received the instruction from the Speaker via the Clerk to enter the Chamber, and the time of actually entering the Chamber, which was a period of less than two minutes.*
3. *I was not instructed by the Commissioner nor by Inspector Notte either by radio nor by any other means before I entered the Chamber on 28<sup>th</sup> March 2008, that I should not enter the chamber.*
4. *At the time I received the instruction from the Speaker to enter the Chamber on 28<sup>th</sup> March, I had not received any orders from any superior police officer that, if asked by the Speaker to enter the Chamber I should not enter.*
5. *I confirm that, as earlier stated in my evidence, I was acting on the basis of a brief provided by the Commissioner some time before the 28<sup>th</sup> March, when Hon Akua was Speaker, that if police are requested to enter the chamber to remove members of Parliament, they should enter and approach the member and politely request that they leave.*
6. *When I entered the Chamber on 28<sup>th</sup> March 2008, I was not aware of any relevant legal difference between that instance and previous instances where police had been requested to assist in the removal of suspended members from the Chamber.*
7. *I received a written Cabinet Order, given to me by Superintendent Iven Notte, on 29<sup>th</sup> March 2008 which, to the best of my recollection, stated that police should not enter the chamber to remove members of Parliament, and which was dated 29<sup>th</sup> March 2008.*

Inspector Caleb provided the Committee with a copy of the written Cabinet Order referred to in paragraph 7 of his affidavit. The written Cabinet Order is titled "Cabinet Order No.1/2008" and bears a sub-heading "Police Force Act 1972 (Section 22). The Order states:

"Cabinet hereby make the following orders pursuant to section 22 of the Nauru Police Force Act 1972 and direct the Commissioner of Police as Director in charge of the Nauru Police Force as follows: -

- The Commissioner of Police shall take instructions only from the President as Chairman of Cabinet and Minister responsible for the Nauru Police Force.
- All members of the Nauru Police Force shall take instructions only from the Commissioner of Police.
- Any person who is not a member of Parliament including Parliamentary staff, with the exception of Clerk of Parliament, Deputy Clerk and Parliamentary Counsel, shall be prevented from entering the Chambers of the House whilst the meeting is in progress.
- All Officers of the Nauru Police Force shall take measures to protect all Members of Parliament from any physical harm and forceful ejection from the House, and will enter the Parliamentary Chamber if required to enforce this order.

Given under my hand this 29<sup>th</sup> day of March 2008

Hon Marcus Stephen MP, President and Chairman of Cabinet"

#### **Hon Dr Kieren Keke**

In light of the referral by Parliament of the Committee's Report back to the Committee for reconsideration in February 2009, the Committee resolved to call additional witnesses and seek further evidence, including evidence from members of Cabinet as to whether Cabinet issued any orders or instructions to the Commissioner prior to the incident in Parliament. The Committee invited the Minister for Finance and Foreign Affairs to appear before the Committee. Hon Dr Keke gave oral evidence to the Committee on 13 March 2009.

During the Committee's examination of Dr Keke, the Chairman asked whether he could recall Cabinet issuing any instructions to the Director of Police (Commissioner) prior to the sitting on 28 March 2008 in relation to the manner in which police should respond if requested by the Speaker to remove members from the Parliamentary Chamber. In his detailed answer, Dr Keke stated:

*Mr. Chairman, this event took place some time ago and a lot was happening at that time and a lot had happened since, so in preparing for today's Committee hearing I spent some hours going through some correspondence which was by e-mail around that time to ensure as best as possible if my recollection is accurate.*

*Mr. Chairman, I would just like to give a little brief and then will respond specifically to the question.*

*The Committee knows that there was a sitting of Parliament held on the 20<sup>th</sup> of March, which was a Thursday and that sitting was initially chaired*

by the Deputy Speaker as there was no Speaker at the time, with the former Speaker, Hon. Riddell Akua, having resigned prior to that sitting.

Mr. Adeang was nominated unopposed and assumed the Chair as Speaker of Parliament. He immediately suspended that sitting and that was on Thursday, 20<sup>th</sup> March. He suspended the sitting until the bells rang and I was amongst members of government and other Members of Parliament who waited all night that day until midnight, I recall, for the meeting to resume, which it didn't.

The next day was Good Friday, and myself and I believe, two other Cabinet Ministers had commitments in Australia and we travelled to Australia that day. Whilst we were in Australia we heard that the Speaker resumed that sitting on the 22<sup>nd</sup> of March which was Easter Saturday and purported to transact business which included a purported amendment to the Citizenship Act and purported amendments to the Standing orders. That sitting was again suspended.

I returned to Nauru with this having occurred, also noting that earlier that month there had been incidents at the power station and the burning of the police station. I give all these just to set the scene of the level of attention that Cabinet was giving to the political situation in Parliament, and which was also involving the police and there was a number of meetings with the Commissioner of Police during this whole period. Earlier on the unrest at the power station and the burning of the police station all the measures that were needed to be undertaken as a consequence which included the shifting of the police from where they operated from, the recruitment of a 100 reserves and all these activities that were going on in the setting of political instability in the Parliament.

So the police were on high alert and there were frequent meetings between the President and the Commissioner, the Minister for Justice and the Commissioner, and between Cabinet and the Commissioner.

That week, prior to the sitting in question on 28<sup>th</sup> of March, there was a lot of discussion in Cabinet about the situation that was evolving in Parliament. Essentially we had a sitting which was in suspension from Thursday, 20<sup>th</sup> March remains suspended with no advice given to Cabinet of when the sitting would resume, but with lots of rumours about when it would resume and also on the 24<sup>th</sup> of March the President wrote to the Speaker requesting that he reconvene a sitting on the 25<sup>th</sup> of March, there was no reply to that request and Parliament did not meet.

During that week also, Cabinet obtained legal advice from a number of sources and prepared a constitutional reference to the Supreme Court which was submitted to the Supreme Court on the 27<sup>th</sup> of March. The development of that reference obviously included a lot of discussions amongst Ministers and with legal advice. During those days before the 28<sup>th</sup> of March sitting, there were rumours, even from the likes of the Australian Consul General, that Speaker Adeang had clear intentions of trying to physically remove myself and Mr. Pitcher from Parliament. It was not something that when it occurred on the 28<sup>th</sup> that no-one was aware that this was likely to happen. There was a lot of discussion during the week before that. Speaker Adeang was intending to

*physically have myself and Mr. Pitcher removed from the Chamber on the basis of the amendments that they purported to make on the 22<sup>nd</sup> March sitting.*

*There were also rumours that if the police did not comply with the Speaker's instructions to physically remove us that Speaker Adeang had intentions of appointing a person from outside to effect that. So there was a lot of understanding, prior to that sitting, of what was likely to happen or what was being talked about of what would possibly be happening.*

*I give this information so that the Committee understands that Cabinet knew of the intentions well in advance and had discussed how to manage these events and this did include several meetings with the Commissioner of Police, Mr. Robert Lehmann. Some were by the President and Commissioner alone, but at a number of those I was present at the discussions and there was also, at least one, if not more, with other members of Cabinet at the meetings with the Commissioner of Police.*

*On the morning of the 27<sup>th</sup> of March, I had e-mails between Ministers and the Commissioner of Police discussing the issue of the rumour of Speaker Adeang's intent to appoint firstly, a police officer as Sergeant-at-Arms to effect the physical removal of Ministers and clear instructions from the President to the Commissioner that the Commissioner is not to allow any police officer to be appointed as Sergeant-at-Arms and they were certainly not to follow those orders.*

*There was also e-mail discussion about the possibility of Speaker Adeang appointing somebody else who was not a police officer as Sergeant-at-Arms and under what authority and what legal basis that could have been done.*

*On the morning of the day before, on the 27<sup>th</sup> I sent an e-mail to the Commissioner of Police, upon instructions from the President, to summarise Cabinet's position on the situation and that also included some of the legal advice that Cabinet had been receiving about the situation in Parliament at the time particularly in relation to the legality or the unlawfulness of the proposed amendments to the Standing Orders and the Citizenship Act, and I will just summarise briefly what my message to the Commissioner of Police was, actually this was sent on the Wednesday, the 26<sup>th</sup> of March. It stated to the Commissioner that 'the situation in Parliament was not a normal parliamentary situation, that the situation was where we had an opposition minority who were not able to remove legitimately elected executive and were thus resorting to abuse of Parliament to try, specifically, to disrupt the executive.'*

*At the time Committee members may recall that appropriation limits in critical areas were coming up in terms of salaries in a number of departments as well as requirements for fuel to provide electricity and a couple of other areas and government had a publicly known intent of tabling a supplementary appropriation to Parliament to enable government to continue its business, in particular to continue paying salaries and electricity and it was in that setting that the minority opposition were deliberately disrupting Parliament to prevent government from passing the supplementary appropriation.*

*I made it clear to the Commissioner that the Speaker had no intention to enable Parliament to function normally, and therefore the request for police*

*assistance from the Speaker was not based on the principle of the Speaker acting to protect the dignity and functions of Parliament, but rather the opposite, he was very much intent to disrupt the functions of Parliament. I referred the Commissioner to the Nauru Police Force Act 1972 highlighting that the force is required to advance lawful orders and Cabinet's view that the orders from the Speaker were not lawful and therefore should not be complied with. I highlighted to the Commissioner Section 22 of the Nauru Police Force Act 1972 that specifies that the Director, in this case, the Commissioner, shall have the command of the force subject to lawful directives of the Cabinet, and therefore Cabinet was giving him directives in terms of how to command the force in regard to the situation in Parliament and I said that Cabinet's reading of those words in the Act made it clear that the Commissioner and force report to and take directions from the Cabinet above any other authority in the Republic and that was Cabinet's position at the time and that is how we put it to the Commissioner.*

*I went on further to say that there was nothing listed in the powers and duties in the Police Force Act that states that the police force is under the authority of the Speaker, but of course that would not detract from the general principles of maintaining law and order in relation to Parliament. I said that in the absence of explicit provisions in the Police Force Act that they take directions from the Speaker, along with the explicit statement of Cabinet's authority over the force so it made it very clear from whom the police are to take directions should be there any uncertainty.*

*So we were already pre-empting that there may be a situation arising from whom the police should be taking directions and Cabinet laid this before the Commissioner two days beforehand and it was our view that in accordance with their governing Act they were to take directions from the Cabinet above any other.*

*And went on 'and as we had discussed..', indicating that we had had earlier discussions on this, 'the legal advice that Cabinet had received to date indicated that the business transacted by the House on the 22<sup>nd</sup> of March was conducted in the absence of quorum and was therefore ultra vires to the Constitution and was null and void, and our view that the amendments to the Citizenship Act and the Standing orders were also null and void and that we had referred this to the Supreme Court for determination.' I also put to the Commissioner that 'even if the amendments were determined to be valid, the Constitution does not confer any authority on the Speaker to make the final determination about the right of a person to be or remain a Member and at best the Speaker may raise a question as to that right and that question must be referred to the Supreme Court as the court is the only authority that can make a determination on a person's right to be a Member and that until the Supreme Court had made a ruling the Speaker had no authority to order a Member from the Chamber on the basis that the Speaker himself determines that person to be no longer a Member.'*

*So in essence, the Cabinet had given the Commissioner of Police a couple of days before that sitting clear direction on its position that in summary Cabinet viewed the directions or the orders from the Speaker to be unlawful*

*and therefore in accordance with the Police Force Act on that basis alone the police should not take directions from the Speaker and we further held the position that the force and Commissioner are under the direction of Cabinet and therefore we would direct the force accordingly.*

*The Commissioner of Police acknowledged the receipt of that e-mail the following morning, the 27<sup>th</sup> and I recall a meeting held in the President's office sometime later in the day of the 27<sup>th</sup> that involved a number of Ministers if not all of us, and the Commissioner of Police, Mr. Lehmann, where the Cabinet reinforced the advice that I had given him in the e-mail and explicitly advised that the police were not to follow the instructions of the Speaker and were not to enter the Chamber and were not to remove Ministers from the Chamber.*

*I do recall that the Commissioner was very uneasy, he stood stiff and upright throughout the whole meeting, was very uncomfortable about the situation. We acknowledge that this was not the reason why the Australian Federal Police were provided to give assistance to Nauru, to deal with these political situations, but unfortunately he was in the situation and he has command of the force and he has to deal with it.*

*So, Mr. Chairman, in response to the first question, my recollection is clear that Cabinet did issue specific directions to the Director of Police, as I had been calling him the Commissioner prior to the sitting of the 28<sup>th</sup> of March and that those instructions were clear in that the police force were not to take instructions from the Speaker, were not to enter the Chamber upon those instructions and were not to remove Ministers upon the instruction of the Speaker.*

When asked by the Chairman to clarify whether Cabinet expressly issued instructions to the Commissioner not to allow police to enter the Chamber to remove members of Parliament, Hon Dr Keke replied:

*Mr. Chairman, my recollection is that we discussed the very likely scenario that the Speaker would request police to enter the Chamber and remove Ministers and although I cannot remember the exact words but the clear picture of our message was that the police were not to comply with that instruction on the basis that we believed it to be unlawful.*

When asked to recall the events that took place in the Chamber on 28 March 2008, Hon Dr Keke stated:

*...the Speaker took the Chair, read a statement advising the House of the purported amendments to the Citizenship Bill and the Standing Orders and immediately proceeded to order that myself and Mr. Pitcher leave the Chamber. Neither of us moved, as I recall we both remained seated and did not respond and did not leave. I recall the Speaker talking to the Clerk and the Clerk and Deputy Clerk approached both of us conveying the message that the Speaker had asked us to remove ourselves from the Chamber. I recall advising the Clerk that I will not be removing myself from the Chamber or words to that effect and the Clerk conveyed that back to the Speaker.*

*I recall the Clerk and Speaker whispering, I am not sure what was said but the Clerk left the Chamber and then the next person that entered the Chamber as I recall was Inspector Corey Caleb who began approaching where myself and Mr. Pitcher were seated. I recall the President standing up and standing in the path of Corey Caleb and telling him to leave the Chamber and to go and talk to the Commissioner. I assume he was telling him to talk to the Commissioner, knowing that we had given the Commissioner clear instructions.*

*I recall Corey Caleb physically grabbing the President's arm and pushing him aside and I recall the President repeatedly saying to him, leave the Chamber to talk to the Commissioner. I recall Minister Batsiua then getting up and also supporting the President and trying to tell Corey Caleb to leave the Chamber. Then Iven Notte opened the door to the Chamber and called to Corey Caleb, telling him to leave the Chamber. At first he did not remove himself immediately, he continued to try and push past both the President and the Minister and then upon insistence from Iven Notte he did leave the Chamber.*

*The President and Minister resumed their seats and as I recall, the Speaker suspended the sitting.*

#### **Hon Mathew Batsiua**

In accordance with the Committee's resolution, following the recommittal of its Report in February 2009, to call further witnesses, the Committee invited the Minister for Justice, Health and Sport, Hon Mathew Batsiua, to give evidence before the Committee. Hon Batsiua appeared before the Committee and gave oral evidence on 29 April 2009.

The Minister was asked by the Chairman:

*Can you recall whether Cabinet issued any instructions to the Director of Police, or any other member of the Police Force prior to the meeting of Parliament, 28<sup>th</sup> March 2008, in relation to the manner in which police should respond if request by the Speaker to remove members from the parliamentary Chamber?*

To which the Minister responded:

*Mr. Chairman, in my own recollection is a bit scratchy but I can say that there were a lot of political turmoil at that particular time. And there were a lot of things that were happening, for Nauru in general because of the situation in parliament and overall. So the overall atmosphere was one that was very tense. So, police naturally was on alert, on high alert to respond to any situation. That is my clear recollection of the event around that time. What I'm not totally clear on is the sequence of events in terms of speaking with the Commissioner whether the Cabinet spoke to the Commissioner before the incident that occurred in the Chamber or after. That is what I'm not actually clear on, the actual sequence of events.*



*So without being too clear, I'm uncomfortable to categorically say to the Committee that yes the Cabinet did speak to the Commissioner prior and yes we did give the Commission clear instructions on how to react if the police were called by the Speaker to go into the Chamber. I cannot say 100% for sure that that did occur because my recollection of that event was scratchy. But things were tense around that time and the police were certainly on alert because of the political situation that was happening at that time.*

When asked to describe for the Committee the events that took place in the Chamber on 28 March 2008, during the period when Inspector Caleb was in the Chamber, the Minister replied in his evidence:

*...[when Inspector Caleb entered the Chamber] immediately the President rose from his chair and stood in their way, and asked Corey Caleb what he was doing and Corey Caleb told the President to move aside. And the President said 'why, what are you doing?' and Corey Caleb insisted that the President step aside. I don't think he explained what he was going to do, but then again I was a bit far away, but I know that he was trying to get the President to step aside but he couldn't, so he could do what he was asked to do. And then President told him to leave the Chamber but he refused. He kept insisting the President to step aside. I then stood up, went and stood next to the President to lend him support. I asked Corey Caleb what's he doing and he didn't respond. I then told him that he should not be a hero and that he has a boss and he should seek clarification of further orders from his superiors and not to take matters into his own hands.*

*I noticed in the Select Committee's Report that the Select Committee noted my 'hero' comment. I would like to explain that they were not intended to degrade him or mock him. Things were a bit tense, tempers were a bit hot. My intention was to make him aware that he should seek guidance from his superiors and not to take matters into his own hands, hence be a hero, in that regard. And again, I was disappointed that the Committee wrote my comment in their First Report and did not seek my evidence. I thought it was a bit of a slur, on myself, even though I was not named. We then kept insisting, I remember telling him specifically to seek advice from the Commissioner and I repeated it several times which he ignored...*

*... It was only until Superintendent Iven Notte came in and asked Corey to withdraw that he withdrew but I wish to add that he hesitated. And I believe, and I noted in the Select Committee's Report that he was confused, that is the why of his hesitation. I beg to differ. I think he was initially going to refuse the order from Superintendent Iven Notte. It was only until the President pointed that the Commissioner was also outside the door that he decided to leave. I could see that he was going to disregard Superintendent Notte's direction. It was only until the President said 'look, even the Commissioner is out there, go and talk to the Commissioner', that he decided to leave.*

## Part 3 - Findings and Recommendations

### ***A. Findings of Fact***

#### *i. Orders or instructions prior to the incident*

There are some discrepancies in the accounts of what took place on 28<sup>th</sup> March 2008, in particular discrepancies in accounts of discussions that took place before the relevant police officers arrived at Parliament, and in accounts of what specific orders had been given or not been given prior to the incident. The facts surrounding what orders or instructions were given prior to the incident and by whom are particularly relevant to the Committee's inquiry, because they would clarify whether Inspector Caleb was acting contrary to instructions from his superior officers, or whether he was compelled without preparation to decide how to react in the face of conflicting directives from the Speaker and the President.

#### *Superintendent Notte's evidence*

Superintendent Notte gave evidence that, in a verbal briefing prior to the incident in Parliament on 28<sup>th</sup> March, the Commissioner of Police had issued instructions to him and to Inspector Caleb that no police were to enter the Parliamentary Chamber and no members of Parliament were to be removed from the Chamber. Superintendent Notte was of the understanding that these instructions were issued because the Commissioner believed that the Speaker was acting unlawfully, and that the police were under the direction of the executive branch of government. This had been conveyed to the Commissioner at a meeting with the President, at which Superintendent Notte was also present. Superintendent Notte also gave evidence that immediately prior to the incident in Parliament, Inspector Caleb had contacted him by radio and said that there was a bad situation in Parliament and that he was about to go in. Superintendent Notte had instructed Inspector Caleb by radio not to enter the Chamber, but to wait for him and the Commissioner to arrive. Superintendent Notte gave clear answers before the Committee, did not have difficulty recollecting the relevant events (except for the exact time of the meeting with the President), and in the Committee's view is a credible witness.

#### *Commissioner Lehmann's evidence*

Commissioner Robert Lehmann appeared before the Committee to give oral evidence on two occasions: 13 December 2008, and 1 May 2009. The Commissioner initially gave evidence that he had formed the view, because he believed the Speaker was acting unlawfully, that no police should enter the Chamber to remove Members of Parliament even if instructed to do so by the Speaker, but that at the time the incident occurred he had not yet had time to convey this order to his subordinate officers.

In the first issue of its Report on 18 December 2008, the Committee noted that there were discrepancies between the evidence of Superintendent Notte (who said the Commissioner had instructed him and Corey that police were not to enter the Chamber) and the Commissioner (who said he had not issued those instructions prior to the incident), and the Committee concluded, based on the fact that the Commissioner had referred to his notes and on a presumption in favour of the credibility and reliability of the head of the police force, that the Commissioner's recollection was probably more accurate. In light of evidence subsequently obtained, the Committee has changed its view in this regard.

When the Report of the Committee was recommitted back to the Committee for further consideration, and the Committee obtained evidence that Cabinet had issued clear instructions to the Commissioner prior to the incident, the Committee resolved to call the Commissioner to give further evidence. In its second examination of the Commissioner on 1 May 2009, the Commissioner gave evidence that contradicted his earlier evidence, and generally appeared to the Committee to be evasive in his answers to the Committee's questions. Some of the Commissioner's evidence on this second occasion appeared to be based not on his recollection of what occurred, but on what he had read in the accounts of other witnesses (namely, Superintendent Notte and Inspector Caleb) in the first issue of the Committee's Report, and on an attempt to protect both officers by concurring with them (even though their evidence differed).

On 13 December 2008 in relation to Inspector Caleb's conduct, the Commissioner stated in evidence "my officer acted appropriately in the circumstances at the time... in terms of his actions, he acted appropriately in my view." On 1 May 2009 the Commissioner stated in evidence: "my expectation on the day was that if there was a request from the Speaker it be relayed to me as the Commissioner, and in this instance that clearly did not happen, and by the time I became aware of it, events had already commenced."

On 13 December 2008 in relation to whether, prior to the incident, he had issued specific instructions about what to do if ordered by the Speaker to remove members, the Commissioner stated in evidence:

*At that time I had not communicated my instructions to Inspector Caleb. I was still going through the pros and cons of a response should the Speaker make a request to the police to enter the Parliament. In an ironic manner, I was about to form my position which was the same as I had in the past and I was just about to leave my office to inform the Inspector that we would not be entering the Parliament if requested by the Speaker, [when the incident occurred].*

On 1 May 2009, the Commissioner gave evidence that prior to the incident he had met with the President and with Cabinet on several occasions, and that likely scenarios in Parliament had been discussed, and that he had also met with the Speaker on a number of occasions. He stated: "I had made it clear to the Speaker that it was not my intention to enter Parliament and remove sitting members". The

Commissioner on 1 May 2009 also provided the Committee with an extract from his notes which shows that on 28<sup>th</sup> March in a meeting with the Speaker which concluded at 2:10pm, the Commissioner informed the Speaker that he was not satisfied that the purported amendments to the law on 22 March were lawful, and that he would not provide the Speaker with a police officer to serve as Serjeant at Arms. At 4:15pm (prior to the commencement of the sitting), the Commissioner held a briefing with Superintendent Notte and Inspector Caleb re the Parliament sitting. On 1 May 2009 the Commissioner also gave evidence that his decision (which had been reached prior to the incident in Parliament) that police should not enter the chamber "would be what I would term a critical decision. At what stage did I pass it on I am not exactly sure. I cannot recall the names at the time but Superintendent Notte was my IC and the intention not to enter the Parliament would have been conveyed I am sure."

The Commissioner later added:

*I have no direct recollection of when I passed the message but there was clearly an understanding by Superintendent Notte of our intent there not to enter Parliament on the day in question and at the time in question.*

When asked on 1 May 2009 to clarify whether his critical decision had been passed on to other officers in the police force, the Commissioner said in his evidence: "...there was no general briefing by me to the police who attended Parliament on that day. My discussions and briefings were through Superintendent Notte and in my notes, Inspector Corey Caleb..."

**Mr. Kun:** ...You said that, and this is in regard to the timing of instructions to police and the critical decision, did you say that it had been covered by the Committee before, because I am a new member to the Committee?

**Commissioner:** Yes Sir, and I believe you will find this in the evidence of Superintendent Notte.

**Mr. Kun:** I am assuming that you are referring to the report itself where it quotes extracts from Iven Notte's evidence and I would take your response to mean you are in agreement with Iven Notte's evidence, specifically in that regard. Iven Notte's evidence is consistent with your recollections of the briefing?

**Commissioner:** Yes it is, it is consistent with my approach throughout the dealings with this matter.

A short time later, in the examination of the Commissioner on 1 May 2009, the following exchange took place:

**Mr Kun:** ... What happened in between the critical decision being made and to the sitting itself in terms of briefings to police officers?

**Commissioner:** *Look, I have exhausted my opportunity on this, there is nothing more that I put other than what I think the Committee has got.*

Hon Kun sought further clarification of this point from the witness, and asked the Commissioner:

*...it is a significant part of the critical decision, and what I am trying to establish is whether it is likely that the 28<sup>th</sup> sitting went ahead without [police being made aware] of the critical decision... whether it was likely that the force was not informed?*

Which was followed by the following exchange:

**Commissioner:** *It is possible.*

**Mr. Kun:** *It is possible that the police were not informed?*

**Commissioner:** *The reference to the briefing by Mr. Notte gives me reason to believe that the instruction was given and Mr. Notte was aware of and was present at some previous meetings, one in relation to the Parliamentary Counsel where this issue had been discussed, but Mr. Caleb in this statement here, without going through it I don't know but does not make any reference to being told, as I understand, that he was not to enter the Parliament.*

#### *Inspector Corey Caleb's evidence*

Inspector Caleb gave evidence that in relation the sitting on 28<sup>th</sup> March he had received no specific instruction as to what he was to do should he be ordered by the Speaker to enter Parliament and remove Members, but that he recalled on an earlier occasion and under a different Speaker, he had been instructed by the Commissioner that if ordered to remove Members, all he had to do was enter the Chamber and approach the relevant Member and ask him to leave.

#### *Committee's finding on the question of orders and instructions*

The Committee, having received further evidence since its Report was recommitted for further consideration, is of the view that Superintendent Notte's evidence is probably the most accurate in this respect: both Notte and Caleb had been briefed by the Commissioner prior to the incident that police were not to enter the Chamber, and were not to remove members of Parliament. The Commissioner initially said he had not issued such order, then said that he probably had, then said that he cannot recall and that it is possible that he didn't.

The Committee accepts the very clear evidence from Hon Dr Keke that Cabinet issued clear instructions to the Commissioner, prior to the incident in Parliament, that the Speaker was acting unlawfully, that the police are only obliged to follow

lawful instructions, that the police are in any case subject to the authority of the executive, and that Cabinet directed that the police should not assist the Speaker in carrying out his unlawful and unconstitutional intention to remove members from the Chamber. The Committee notes that Dr Keke was able to support his oral evidence with copies of relevant email communications from the days preceding the incident.

In this regard the Committee has concluded that the Commissioner of Police Mr Robert Lehmann is principally responsible for the incident that occurred in the Chamber on 28<sup>th</sup> March 2008. Either he failed to pass on to his senior officers in charge of Parliament the instructions that he had received from Cabinet (or his own 'critical decision'), or he passed them on to a limited extent but failed to ensure they were disseminated properly. Given the tense political situation at the time, the fact that the incident that occurred had been anticipated, and that Cabinet had made its expectations very clear, the Commissioner must bear the ultimate responsibility for the fact that Cabinet's instructions were not followed.

Whilst conflicting evidence means that the Committee cannot be certain about its finding that the evidence of Superintendent Notte is probably the most accurate, the Committee has also reached the view that in this instance it is not necessary to prove with certainty whether or not Inspector Caleb received a specific instruction not to enter the Chamber. According to his own evidence, Inspector Caleb was aware that Cabinet and the Speaker were in dispute over the entitlement of certain government members to sit in the Chamber, and that there was an argument about whether the Speaker's actions were lawful. He says that there was a briefing about the police responsibility for Parliament, but that, although he was assigned to be in charge, he had not received any instruction about what to do if the Speaker asked him to remove members from the Chamber, and he didn't think to ask the question. He also says in his evidence that in a situation where an officer in charge is unsure of what is the right thing to do, he should contact his superior.

Whether he had received a clear instruction (which the Committee thinks is probable) or not, Inspector Caleb made a decision to enter the Chamber and to attempt to get past the President to carry out the Speaker's order to remove two Ministers from the Chamber. He did so either without seeking instructions or clarification from his superiors, or in contradiction of what his superior officer had instructed him by radio. If it was the former, the Committee thinks it is reasonable to expect a high ranking officer such as Inspector Caleb to seek clear directives from the Commissioner or his superintendent before acting. If it was the latter, it is gross insubordination.

The Committee reached the conclusion that Inspector Caleb has to take responsibility for his actions regardless of whether he received direct instructions not to enter the Chamber. He is a senior police officer with almost 20 years' experience, and this means there is a certain level of competence expected of an officer in his position. He is an officer who should be expected to know how to respond appropriately in difficult situations. He did not respond appropriately in the

situation. He should have refrained from entering the Chamber, and should have contacted either the Commissioner or Superintendent Notte to seek instructions and/or assistance (if he did contact Notte, then he should have obeyed the instructions he received).

*ii. issue of politically motivated behaviour*

The Committee is unable to form a definite view as to whether the comments which Senior Constable Terry Deidenang alleges were made by Inspector Caleb in the vehicle on the way to work on 28<sup>th</sup> March were made or not. The Committee generally found Senior Constable Deidenang to be a reliable witness, however the Committee was unable to corroborate the allegations as Inspector Marcus Tom said that he was unable to recall whether he was in the car on that day and what if any conversation may have taken place in the car on that day. The allegations were put to Inspector Caleb, and he denied them. The Committee is satisfied that even if such conversation did take place, it is not in itself serious enough to warrant termination of the police officer concerned. If such conversation did take place, it was a conversation between peers and not a case of direct insubordination. The conversation would be relevant if it could be shown that the attitudes expressed in the conversation had interfered with Inspector Caleb's performance of his duties, but there is not sufficient evidence that this is the case.

*iii. summary of findings of fact*

On the basis of the evidence presented to the Committee, the Committee is satisfied that the following facts have been credibly established:

- a) On 26<sup>th</sup> March and 27<sup>th</sup> March, the Commissioner of Police attended meetings with Cabinet at which he was instructed that the Speaker's actions and further anticipated actions were unlawful, that the police are subject to the authority of the executive, and that the police should therefore refuse to enter the chamber or to remove members from the Chamber on the orders of the Speaker. These instructions were confirmed in an email from Hon Dr. Keke to the Commissioner on 26 March 2008, and the Commissioner acknowledged receipt of that email.
- b) On 28<sup>th</sup> March the police were on high alert ("code red") as a result of the volatile political situation and the potential for civil or political unrest. The police had stationed extra teams of police officers both at and near Parliament House.
- c) In relation to the sitting of Parliament on 28<sup>th</sup> March 2008, Inspector Caleb had been assigned by his superior officers to be the officer in charge of the parliamentary team.
- d) At 4:15pm on 28<sup>th</sup> March, Inspector Caleb had attended a briefing prior to the sitting, with Commissioner Lehmann and Superintendent Notte, at

which the operational requirements of police presence at Parliament were discussed. Either at this briefing or at an earlier briefing, it is probable that the Commissioner issued verbal instructions to Notte and Caleb that at the next sitting of Parliament, police were not to enter the Chamber and were not to remove any member of Parliament from the Chamber.

- e) When Parliament commenced on 28<sup>th</sup> March 2008, the Speaker moved straight to the matter of the removal of Minister Keke and Minister Pitcher from the House, and instructed the Clerk to remove the Members from the Chamber.
- f) The Members refused to withdraw, and the Clerk informed the Speaker of their refusal to withdraw. The Speaker then instructed the Clerk to obtain the assistance of police to remove the members, by force if necessary.
- g) The Clerk left the Chamber to obtain the assistance of police, and established that Inspector Caleb was in charge of police within the Parliamentary precincts. He informed Inspector Caleb of the Speaker's instructions, and requested that he enter the Chamber to remove the Members.
- h) It is probable that Inspector Caleb then contacted Superintendent Notte by radio, advising him of the situation in Parliament and the fact that he was about to enter the Chamber, and that Superintendent Notte instructed him not to enter the Chamber, and to wait for him and the Commissioner to arrive at Parliament.
- i) Inspector Caleb entered the Chamber and attempted to approach the Members in question. The President stood up from his place and instructed Inspector Caleb to withdraw from the Chamber.
- j) Inspector Caleb disregarded the instruction of the President, and continued to attempt to get past the President so as to carry out the instructions of the Speaker.
- k) Police were notified on the police radio of the events taking place in Parliament, and Commissioner Robert Lehmann and Superintendent Notte attended Parliament House. Commissioner Lehmann instructed Superintendent Notte to enter the Chamber and order Inspector Caleb to withdraw.
- l) Superintendent Notte entered the Chamber and ordered Inspector Caleb to withdraw. After a brief hesitation, Inspector Caleb complied with the order and withdrew from the Chamber.



- m) On 29<sup>th</sup> March 2008, Cabinet put its previous order to the Commissioner in writing, to make its previous order crystal clear and avoid a repetition of the incident that had occurred contrary to Cabinet orders on 28<sup>th</sup> March 2008.
  
- n) On 7 April 2008 Cabinet suspended Inspector Caleb from service on the grounds that he had disregarded the authority of the President of the Republic. This decision was conveyed to the Police on 8 April, and a notice of suspension was issued to Inspector Caleb on 9<sup>th</sup> April 2008.
  
- o) Inspector Caleb has been suspended without pay since 9<sup>th</sup> April 2008.
  
- p) Inspector Caleb is highly regarded as a competent and diligent police officer by his superior officers and his peers. He has served in the Nauru Police Force for 19 years.
  
- q) Inspector Caleb's suspension has had a negative effect on the police force, as the services of a senior and experienced officer have been removed for the past nine months, placing a greater burden on the remaining senior police officers, and necessitating the delegation of some senior police work to less qualified and experienced officers.

## **B. Recommendations**

The Committee formed the view that the position in which Inspector Caleb was placed on 28<sup>th</sup> March 2008, whereby he received conflicting instructions from the Speaker of Parliament and from the President, in addition to instructions received from his superior officers, was an unfortunate and extremely difficult position.

However, the Committee also believes it is highly probable that Inspector Caleb had, prior to the incident, received instructions from the Commissioner and from Superintendent Notte that he was not to enter the Parliamentary Chamber (including an explanation that the foreshadowed actions of the Speaker would be unlawful), which instructions he ignored. Even if he did not receive direct instructions, an experienced officer of high rank such as Inspector Caleb should have handled the situation differently, and should at the very least have contacted his superiors for instructions and assistance.

Based on the advice of the Secretary/Advisor to the preliminary legal question that was put by the Committee, in the hypothetical situation where conflicting instructions were received and no previous orders had been given by Cabinet, where the officer had no idea that the Speaker's orders were unlawful, where the officer had not anticipated the situation occurring and could not be reasonably expected to have anticipated the situation, and where the order to leave the Chamber was issued by the President either in his capacity as President or as Minister for Police (but not on behalf of Cabinet), then the legal position would appear to be that the officer should act on the instructions of the Speaker, who has authority over the police within Parliament House. However in the case before the Committee, previous orders *had* been given by Cabinet to the Commissioner which instructions had probably been conveyed to Superintendent Notte and Inspector Caleb, the police *were aware* of the likelihood that the Speaker's actions and orders were unlawful, and the police (including Inspector Caleb) *had* anticipated the events that occurred and should have been prepared for them. In this particular case therefore, the police should have ignored the unlawful instructions of the Speaker (notwithstanding that ordinarily the Speaker has the direction of police within the parliamentary precincts), should have obeyed the instructions from Cabinet that police were not to enter the Chamber and were not to remove members of Parliament, and Inspector Caleb should have contacted his superiors for assistance when he received the unlawful order from the Speaker.

In accordance with its terms of reference, the Committee considered what was termed in the motion to establish the Committee, Inspector Caleb's "disregard for the authority of Nauru's Head of State", and found that Inspector Caleb acted in a manner that was at the very least disrespectful to the President. It also found however, that from a legal perspective, the actions of Inspector Caleb in his interaction with the President are not rendered even *more* serious or improper by virtue of the fact that the member of Parliament and of Cabinet with whom he was

interacting happened also to be the head of state, even though from a social and cultural perspective Inspector Caleb's actions may be seen as being far more serious because of this fact than they otherwise would be.

In the situation that was referred to the Committee, what is most relevant in terms of assessing Inspector Caleb's conduct on the day, is not that the President is the head of state. It is that Cabinet, which has the authority to issue directions to the Director of Police, had in the preceding days already issued clear directions to the Police as to how they should respond in the event of being unlawfully ordered by the Speaker to remove Cabinet members from the Chamber. Therefore, when the President instructed Inspector Caleb to leave the Chamber, he was effectively reiterating on behalf of Cabinet a directive that had already been issued by Cabinet.

On the basis that instructions had already been given by Cabinet, and that the Director of Police believed the Speaker's subsequent and conflicting orders to be unlawful, Inspector Caleb should not have entered the Chamber in the first place. Once inside the Chamber, he should have followed the Cabinet order expressed by the President and the order issued by his superior officer Superintendent Notte, without hesitation.

The Committee also took note of the evidence received from several witnesses that Inspector Caleb has always been a competent and dedicated police officer, and that he is a respected and valuable member of the Nauru Police Force. This is relevant to the Committee's inquiry because section 9 of the Nauru Police Force Act under which Inspector Caleb was suspended provides for suspension and potential termination "on the ground that having regard to the conditions of the force, the usefulness of the officer thereto and all other circumstances of the case, such termination is in the public interest".

As a result of his inappropriate and disrespectful conduct on 28<sup>th</sup> March 2008, it is appropriate the severe disciplinary action be taken against Inspector Caleb. It should also be noted that the Committee found that ultimate responsibility for the incident that occurred on 28<sup>th</sup> March 2008 should be borne by the Commissioner of Police. Taking into account the burden of responsibility on the Commissioner for better handling of the situation, and the evidence that, with the exception of this incident, Inspector Caleb has consistently been a competent and dedicated police officer, the Committee resolved that a lengthy suspension without pay would be the most appropriate form of disciplinary action to impose upon Inspector Caleb in respect of his conduct on 28<sup>th</sup> March 2008. Whether, when he resumes his service at the conclusion of his suspension, Inspector Caleb resumes his position as Inspector or assumes some other rank or position, is a matter best determined by the Police Force. The Committee, based on the evidence presented to it, resolved that the termination of Inspector Caleb would not be in the public interest.

The Committee therefore resolved to recommend, pursuant to section 9(1)(b) of the Nauru Police Force Act 1972:

- 1. That the appropriate disciplinary action against Inspector Caleb for his actions on 28 March 2008 is suspension from the Police Force without pay for a period of 15 months. The suspension of Inspector Corey Caleb shall therefore end on 8 July 2009, and the Inspector shall resume his normal duties within the Nauru Police Force on 9 July 2009;**

The Committee also noted the lack of clarity as to how police ought to respond to such difficult situations, and the desirability of clarifying such matters so that such incidents may be better handled should they arise again in future. The Committee also considered in this regard the provisions made in other jurisdictions to regulate the relationship between Parliament and the police, and to provide for the authority of the Speaker in relation to Parliament. The Committee therefore resolved to further recommend:

- 2. That a memorandum of understanding be entered into between Parliament and the Nauru Police Force, governing the manner in which police operations are to be conducted within the Parliamentary precincts and the powers and duties of police within the Parliamentary precincts (including emphasis on the fact that the police will follow only lawful directions from the Speaker, and clarifying what will occur when the police have good cause to believe that a directive is unlawful);**
- 3. That police officers be thoroughly trained in the separation of powers, the provisions of the Police Force Act and the executive direction of the police force, and the powers and duties of police within the Parliamentary precincts in accordance with such memorandum of understanding as recommended above; and**
- 4. That the Parliamentary Powers, Privileges and Immunities Act be amended to make more explicit provision for the authority of the Speaker over order and policing within the Parliamentary precincts (or alternatively, such provision as to the limit of the authority of the Speaker and the extent of the authority of the executive as Parliament sees fit).**