

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

Report  
of the Select Committee  
on Inspector Corey Caleb

18 December 2008

## TABLE OF CONTENTS

Composition of the Committee and Secretariat .....	3
Members of the Committee.....	3
Committee Secretariat .....	3
Introduction.....	4
Part 1 - Background.....	5
A. Matters referred to the Committee.....	5
i. Events in Parliament.....	5
ii. Terms of Reference .....	5
B. Legal advice on laws applicable to the matters referred to the Committee.....	7
i. Question at issue .....	7
ii. General duties and obligations of police officers.....	8
iii. Powers of police in Parliament.....	8
a) Officers of Parliament .....	8
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.....	12
Part 2 - Deliberations of the Committee.....	14
A. Meetings of the Committee.....	14
B. Evidence and information presented to the Committee.....	15
Part 3 - Findings and Recommendations .....	31
A. Findings of Fact.....	31
B. Recommendations .....	34

## Composition of the Committee and Secretariat

### ***Members of the Committee***

Hon Ludwig Scotty MP, Chairman  
Hon Dominic Tabuna MP, Deputy Chairman  
Hon Landon Deireragea MP  
Hon Ryke Solomon MP  
Hon Aloysius Amwano MP

### ***Committee Secretariat***

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

## 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 has 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.

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, Jennie Reiyetsi, Sukie Adeang and Raynes Stephen, all of whom in recent weeks have worked long hours, including weekends, in order to enable the Committee to complete its report. The Committee has found its Secretary and Advisor Katy Le Roy to be very efficient and helpful, and on behalf of the Committee I wish to thank her for her good work. The Committee has completed its inquiry in a very speedy fashion, and without the Secretary's able assistance, this would not have been possible.

Finally, I wish 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 Ludwig Scotty MP*

**Chairman of the Select Committee on Corey Caleb**

**18 December 2008**

## **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. Legal advice on laws applicable to the matters referred to the Committee**

### **i. Question at issue**

Prior to seeking legal advice in relation to the matters referred to it, the Committee resolved that the principal legal question that needed to be answered to the satisfaction of the Committee before the Committee could make any findings or recommendations as to whether the dismissal of Inspector Corey Caleb from the Nauru Police Force on the grounds of public interest is warranted, is 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 his Minister if instructions from the two should happen to be in conflict. The Committee accordingly sought legal advice from its Secretary/Advisor, and later sought

supplementary legal opinions from two Professors of public law. The detailed advice provided by the Secretary/Advisor is outlined below.

## **ii. 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'.

## **iii. 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 (emphasis added).

This definition of officer is relevant for the purposes of the Act in relation to the following sections:

- s5 – no process to be issued through an officer;
- s9 – a suspended member may be forcibly removed by any officer;
- s11 – a summons to give evidence before Parliament or a committee may be served by any officer;
- s16 – an officer is not to disclose evidence;
- s17 – offence to obstruct etc an officer;
- s26 – officer not subject to jurisdiction of any court re lawful exercise of any power conferred under the Act;
- s27 – every officer has all the powers and privileges of a police officer.



*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).

#### **iv. 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, the answer to the present question would be that a police officer in the position of Corey Caleb (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 present situation before the Select Committee 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.

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 to 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 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 Inspector Caleb should have acted upon the instructions of the Speaker. 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.

#### **v. Conclusion**

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 the particular facts involved in this incident 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.

In the incident before the Committee, the Speaker's actions were invalid. However the onus cannot be upon Inspector Caleb 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. Inspector Caleb was at the time in question assigned to Parliament and on duty, and he was placed in a difficult position, having to decide how to respond in the face of conflicting instructions from the Speaker who has the general direction and control of the Parliamentary precincts, and the President and Minister for Police, as a representative of Cabinet which has the general direction and control of the Nauru Police Force. In this situation Inspector Caleb was both an officer of Parliament and an officer of the Nauru Police Force. In this highly unusual situation of turmoil and confusion in the House, it is likely that both the interpretation of the relevant legislation and the application of the common law would dictate that lawfully Inspector Caleb follow the instructions of the Speaker.

#### **vi. Supplementary legal advice**

In view of the advice received by the Secretary/Advisor that the legal answer to the principal question at issue is not clear cut, but that on balance it seems likely that the correct position is that Inspector Caleb ought lawfully to have followed the instructions of the Speaker (which he did, until ordered by a superior office to withdraw), 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

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 this report at its seventh meeting on 18<sup>th</sup> December 2008.

## ***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> request for preliminary background facts	<u>16 October 2008</u> written information
	<u>30 October 2008</u> invitation to appear	<u>31 October 2008</u> oral evidence
	none	<u>5 November 2008</u> additional written information
Superintendent Iven Notte	<u>30 October 2008</u> invitation to appear	<u>31 October 2008</u> oral evidence
	none	<u>5 November 2008</u> written correction of one answer given in oral evidence
Commissioner Robert Lehmann	<u>10 December 2008</u> invitation to appear	<u>13 December 2008</u> oral evidence
Mr Frederick Cain	<u>10 December 2008</u> invitation to appear	<u>13 December 2008</u> oral evidence
Senior Constable Terry Deidenang	<u>11 December 2008</u> request for written information	<u>12 December 2008</u> written information
	<u>13 December 2008</u> invitation to appear	<u>15 December 2008</u> oral evidence
Inspector Marcus Tom	<u>13 December 2008</u> invitation to appear	<u>15 December 2008</u> oral evidence
Inspector Corey Caleb	<u>10 December 2008</u> invitation to appear (followed by letter 13 December enclosing revised list of questions)	<u>15 December 2008</u> 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.

Superintendent Notte gave evidence that he had issued instructions to Inspector Caleb prior to the incident in Parliament, that Inspector Caleb was to maintain law and order at Parliament, that no members of the public were to enter the Chamber, no Members of Parliament were to be removed from the Chamber, and no officers were to enter the Chamber.

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.*

Superintendent Notte gave evidence that he was not in the area at the time that Inspector Caleb entered the Chamber, but that he had earlier given instructions that police were not to enter the Chamber. 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 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.*

Superintendent Notte also gave evidence to the Committee that at around the time of the incident in Parliament, the Police Commissioner had been called in to see the President and that he had accompanied the Commissioner to that meeting, although he could not recall the precise date. At that meeting the President had instructed that the police were under the direction of the executive branch of government. Inspector Caleb had not been present at that meeting.

## 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 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 parliamentary 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] we had taken the situation as serious and we were prepared to eventualities that may occur...*

*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.*

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.*

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.

#### **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 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 care 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.*

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.*

## Part 3 - Findings and Recommendations

### *A. Findings of Fact*

Notwithstanding 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 Committee found all of the witnesses that appeared before it to be credible. The Committee believes that such discrepancies may be accounted for by the fact that nine months have passed since the incident occurred, that some of the officers who gave evidence did not have notes but were relying solely upon their memory, and that the situation around the time of 28<sup>th</sup> March was so volatile and police so overstretched, that this is likely to compound the difficulty of precisely recalling what occurred at the time.

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 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 no evidence that this is the case.

Superintendent Notte gave evidence that he had, prior to the incident in Parliament on 28<sup>th</sup> March, issued instructions to Inspector Caleb that no police were to enter the Parliamentary Chamber. Commissioner Robert Lehmann 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. 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. Whilst the Committee generally found Inspector Notte to be giving evidence to the best of his ability, the Committee is satisfied that the evidence of the Commissioner, which he gave with reference to

detailed notes that he taken at the relevant time, is likely to be more accurate with regard to what specific orders had been given or not given, and therefore that Inspector Caleb was probably not acting contrary to direct orders of his superiors when he entered the Chamber.

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

- a) 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.
- b) 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.
- c) 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, but Inspector Caleb did not receive any specific instruction as to what he was to do if ordered by the Speaker to enter the Chamber to remove Members, nor as to how he should handle a situation where he may receive conflicting instructions from the Speaker and from the President.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) Inspector Caleb spent some time standing in the Chamber unsure of how to respond to the conflicting instructions he had received.



- i) 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.
- j) 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.
- k) Whilst the law surrounding the authority over police within Parliament is not entirely clear-cut, it appears that Inspector Caleb acted lawfully in following the instructions of the Speaker.
- l) 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.
- m) Inspector Caleb has been suspended without pay since 9<sup>th</sup> April 2008.
- n) 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.
- o) 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.

On the basis of the legal advice received by the Committee, the correct legal position in this difficult situation is that the officer ought to comply with the instructions of the Speaker, who has authority over the police within Parliament House. It would therefore be wrong for Inspector Caleb to be dismissed from the Police Force for having done that which was legally correct.

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 had not intended to show any disrespect to or disregard for the authority of the President, but that he had been placed in an unfortunate and extremely difficult situation, and that he had acted lawfully in that situation.

In addition to the fact that the Inspector acted in accordance with the law, 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". 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 suspension of Inspector Corey Caleb shall cease to have effect and the Inspector shall resume his normal duties within the Nauru Police Force;**
- 2. That Inspector Corey Caleb shall receive retrospective payment of the salary to which he would have been entitled had he not been suspended; and**
- 3. That the findings of this Committee that the Inspector acted lawfully should be recorded on the police personnel file of Inspector Caleb and that**

***the period of his suspension should be counted as a period of service for the purposes of calculating total period of service within the police force;***

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 further noted that only some but not all of the police officers who gave evidence before the Committee had notes relating to the relevant incidents, and that those who did not have notes were less able to provide complete and accurate evidence to the Committee about what transpired on the relevant day, 28<sup>th</sup> March 2008. The Committee therefore resolved to further recommend:

- 4. 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;***
- 5. That police officers be thoroughly trained in the powers and duties of police within the Parliamentary precincts in accordance with such memorandum of understanding as recommended above;***
- 6. 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; and***
- 7. That the Nauru Police Force take measures to require all police officers to take notes of their policing activities and of all instructions given or received and of all incidents that occur in the course of such activities, in order to better enable the police to provide evidence to the Court or to Parliament when required.***