

# Solomon Islands: parliamentary report rubberstamps Australian-led RAMSI intervention force

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A Solomon Islands' parliamentary report on the legal underpinnings of the Australian-dominated Regional Assistance Mission to Solomon Islands (RAMSI) is nothing but a rubberstamp for the ongoing operations of the intervention force. The report, released by the parliamentary Foreign Relations Committee last Thursday, brushes aside many serious questions regarding the compatibility of the legislation with the Solomons' constitution and international law—including the highly contentious issue of the legal immunity enjoyed by RAMSI personnel.

Australian officials no doubt played a major behind-the-scenes role, while the pro-Australian Solomons' government of Prime Minister Derek Sikua dutifully ensured that those government members most closely aligned with RAMSI were responsible for issuing the report. Peter Boyers, who headed the inquiry as chairman of the Foreign Relations Committee, was identified as Australia's preferred Solomons finance minister in an April 2006 internal email authored by a RAMSI advisor; the email noted that Boyers represented RAMSI's "effective voice in cabinet", guiding "economic and fiscal policy".

A parliamentary review into RAMSI's legality was first proposed by the previous government of Prime Minister Manasseh Sogavare in mid-2007, amid a provocative "regime change" campaign waged by Canberra. Shortly after coming to power in May 2006, Sogavare was identified as a threat to RAMSI and subjected to a series of Canberra-inspired attacks. Before his government could initiate the official inquiry, the Australian campaign had culminated in a December 2007 parliamentary no-confidence motion that brought Sikua to power.

The Sikua government evidently felt unable to junk the pending parliamentary inquiry into RAMSI; it did everything possible to ensure, however, that mounting disquiet and opposition towards the intervention force found no reflection in the findings of the Foreign Relations Committee.

The inquiry's terms of reference centred on the status of RAMSI's domestic and international legal arrangements. The key domestic legislative instrument is the Facilitation of International Assistance Act (FIAA). This was drafted in Canberra and then rammed through the Solomons' parliament in July 2003. In place of a UN-endorsed mechanism, RAMSI's compatibility with international law was supposedly ensured via a multilateral treaty (known as the Townsville or RAMSI treaty) between Solomon Islands and Australia and the other Pacific states contributing to RAMSI.

As the *World Socialist Web Site* has noted: "The Facilitation Act and the

international treaty are extraordinary legal documents. RAMSI personnel enjoy immunity from Solomons' criminal and civil law, including customs and immigration controls; are exempt from the country's taxation system; and have the right to use any road, bridge, port or airfield, and water, electricity and other public facilities free of charge. RAMSI headquarters and camps are 'inviolable' and 'subject to the exclusive control and authority' of the intervention force; no Solomon Islander, including police or other authorities, may enter the premises without RAMSI's permission. RAMSI personnel have the right to confiscate all firearms from Solomon Islanders—including those legally purchased and maintained—without compensation. RAMSI soldiers and police also have the right to 'use such force as is reasonably necessary', including lethal force, to maintain 'law and order in Solomon Islands'."

The 275-page Foreign Relations Committee report nevertheless concluded: "While these documents were of necessity drafted and in some cases passed into law as a matter of urgency prior to the RAMSI intervention in 2003, on the whole they continue to serve RAMSI and the Solomon Islands well ... there is no case for wholesale review or reform of the legal framework. The legal framework is appropriate and effective, and has been found to be constitutional by the High Court."

The reference to the High Court relates to a constitutional challenge brought against RAMSI by Honiara lawyer Andrew Nori that was dismissed in April 2006. Nori's challenge, however, centred on the RAMSI police component, which he argued created an unlawful parallel force independent of the Solomons' police. RAMSI's legal immunity was only raised in this context, rather than being directly contested, as was the case in Papua New Guinea. Later in 2006, PNG's highest court struck down equivalent legislation, resulting in the withdrawal of more than one hundred Australian Federal Police officers. The Solomons' parliamentary report nevertheless frequently referred to the Nori case in order to bolster its argument that the RAMSI arrangements were constitutionally valid.

The report similarly dismissed all concerns over RAMSI's immunity from Solomon Islands' taxation and immigration regulations, by insisting that such measures "are still appropriate and necessary in 2009 and should not be removed or limited".

In an extraordinary omission, the parliamentary inquiry simply ignored the final report of the Commission of Inquiry into the April 2006 riots, which the Sikua government released in censored form, after a twelve-month delay, last April. The official investigation into the riots was initiated under the Sogavare government despite a provocative campaign waged by RAMSI and the Australian government. The Commission of

Inquiry concluded: “[T]he issue of liability, immunity, and accountability of any visiting contingent is fundamental in a democratic society, and should be re-examined in any review.... Immunity of policing is not an option in a democracy. The rule of law cannot have armed police who are unaccountable to the courts.”

When these findings were released, the Sikua government referred its response to the Foreign Relations Committee inquiry into the FIAA. It is now clear that this was simply a means for complying with Canberra’s demand that the Commission of Inquiry be buried. Australian authorities feared that the inquiry could shed light on significant evidence that RAMSI police and Australian soldiers were deliberately stood down during the riots. They were also concerned that it could lead to moves to revoke RAMSI’s legal immunity.

Sogavare’s convening of the Commission of Inquiry was an important factor in the Australian government’s decision to oust him from office and to target those centrally responsible for establishing it. Sogavare’s attorney general of choice, Julian Moti, drew up the terms of reference and recommended former Australian Federal Court Judge Marcus Einfeld to head the investigation. Einfeld was subsequently witch-hunted and imprisoned in Australia for his efforts to evade an unpaid speeding fine, while Moti was charged for alleged sexual offences that were discharged by a Vanuatu magistrate a decade ago; he was then unlawfully deported to Australia and is now contesting the attempted prosecution in the Queensland Supreme Court, on the grounds that it represents a politically motivated abuse of judicial process.

The parliamentary report on the FIAA insisted that RAMSI’s privileges “are consistent with similar arrangements in both international and domestic law”. The reference was to arrangements for so-called peacekeeping forces in African countries, the Balkans, and other areas where UN and foreign forces are typically granted legal immunity while carrying out their work.

The legitimacy of such arrangements is itself highly questionable. To compare RAMSI, however, to these operations is absurd. The Solomon Islands’ population and police have been disarmed, the low-level civil conflict involving rival Guadalcanal and Malaitan militias has been over for more than six years, and RAMSI’s work has nothing to do with “peacekeeping”. Instead, in an internationally unique operation, through the auspices of the intervention force Canberra has taken effective control over the Solomons’ state apparatus, with Australian “advisors” inserted in key positions in the central bank and treasury, police and prisons, courts, government and public service. The Australian government’s agenda is to maintain its grip over the impoverished country as part of its efforts to strengthen its domination across the South Pacific in the face of intensifying great power rivalries. Canberra insists on RAMSI’s legal immunity in order that its personnel retain a free hand to take whatever measures are deemed necessary to advance Australian interests.

The Sikua government’s report into RAMSI went out of its way to defend Canberra’s motives in the Solomons: “The Committee does not accept that Australia’s motives for involvement in RAMSI are purely selfish, and that Australia, as a regional neighbour, does not also have the interests of Solomon Islands in mind supporting the RAMSI intervention.” It rejected calls by the leader of the opposition, Manasseh Sogavare, for Asian countries to be allowed to participate in RAMSI: “Allowing powerful and influential Asian powers on board would obviously upset the balance of power that has been the status quo in the region for many decades.”

The parliamentary inquiry report acknowledged “the widespread perception in the provinces that the powers and privileges of RAMSI personnel are inappropriate”, but blamed this on a lack of proper “understanding”. It concluded: “While there is public concern about the powers and privileges held by RAMSI personnel, this reflects the lack of public understanding of those powers and privileges, rather than their inappropriateness.”

The parliamentary committee dismissed specific legal criticisms of the RAMSI framework raised by a number of legal experts by reiterating the positions advanced by RAMSI and Australian government officials:

\* In a memorandum of advice to the former Sogavare government in August 2007, then serving attorney general Julian Moti advised that neither RAMSI nor the Pacific Islands Forum was named in the Facilitation of International Assistance Act or the bilateral treaty governing the intervention. This criticism was also raised by the former Solomons’ governor general Nathaniel Waena—in a submission to the parliamentary inquiry he said that RAMSI was an “illegal entity”. The parliamentary inquiry simply dismissed Waena’s claims, arguing that “there is no legal or constitutional reason” to include RAMSI in the FIAA. It warned that an attempt to do so “would require the opening up of the RAMSI Treaty for renegotiation”.

\* Moti’s memorandum condemned as an unconstitutional restriction on the parliament’s legislative authority section 24 of the FIAA, which prohibits parliament from passing legislation amending, altering, or repealing the FIAA. RAMSI claimed that this was a misunderstanding, and that the section was only meant to prevent inadvertent and unintentional amendments to the FIAA. The parliamentary report recommended a minor change in wording to the relevant section of the FIAA to make clear that parliament could pass laws affecting the RAMSI legislation, but only when it expressly intended to have these laws affect the FIAA.

\* Frank Ofagioro Kabui, chairman of the Law Reform Commission, raised in his submission to the inquiry that the FIAA was unconstitutional because it referred to the governor general’s authority to publish a notice inviting the intervention force, independently of his constitutional obligation to only issue legal notices on the advice of cabinet. “Section 3 of the Facilitation of International Assistance Act, 2003 is the king-pin of the validity of the whole operation of RAMSI in Solomon Islands,” he explained. “Once this king-pin is removed, the whole RAMSI operation would collapse with its consequences.” The parliamentary report evaded this issue by insisting that the governor general’s constitutional obligations “applies automatically” and could therefore be taken as implied in the FIAA.

The parliamentary report also attempted to answer criticisms that RAMSI functioned as a “parallel government” in the Solomons and violated the country’s sovereignty. While rejecting both positions, the report’s authors made a number of concessions, which serve to expose the official line that RAMSI is an assistance force to a “sovereign” partner government.

After acknowledging “there is no dispute that RAMSI is indeed dominated by Australia”, the report stated: “Clearly, complaints about RAMSI being a parallel government had some merits in the early years following the RAMSI intervention and were premised on the inadequate counter-parting arrangements within various government ministries and agencies (including the RSIPF [police]).”

As well, the report cited testimony provided by the Solomons' first post-independence prime minister, and current speaker in parliament, Peter Kenilorea: "People talk about parallel and alternative government created by the Facilitation Act, I can quite understand that. And when RAMSI came in, I was the first one who was jumping up saying 'Please don't come and form another government because the Facilitation Act gives you some leeway to do that.' ... The Facilitation Act gave control, independent control, to the visiting contingent. The Facilitation Act provides for the kind of situation which, if not properly interpreted, could be seen as taking the government out of our hand."

Such evidence is directly relevant to Julian Moti's current challenge to his attempted prosecution by the Australian government.

One of the principal grounds for Moti's contention that the case represents a politically motivated abuse of judicial process is the allegedly unlawful role played by Australian police and diplomatic officials in his "disguised extradition" from the Solomons in December 2007, shortly after the Sikua government came to power. The Commonwealth Director of Public Prosecutions has argued that deportation was a decision of the "sovereign" Solomons' government, and that the preparation by Australian diplomatic officials of travel documents for Moti did not constitute complicity with an illegal deportation, but rather a respectful acknowledgement of the Solomons' sovereign right to decide on deportation.

Evidence provided to the parliamentary inquiry points to the reality behind the Moti prosecution's portrayal of the Solomon Islands government as sovereign. Everyone in Honiara is well aware that RAMSI calls the shots, and that if the national government infringes on any key Australian interests it will quickly find itself the target of an Australia-RAMSI campaign similar to that which brought down Sogavare.

*The author recommends:*

Julian Moti defence closing submission outlines "oppressive and unfair" prosecution  
[10 November 2009]

Solomon Islands report demands legal immunity of RAMSI occupation force be revoked  
[1 May 2009]

The political issues behind the jailing of former Federal Court judge Marcus Einfeld  
[27 March 2009]

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