

PARLIAMENT OF NAURU

18th Parliament

Committee of Privileges

First Report
On the Matter of
Alleged Breaches of Privilege and
Contempt of Parliament
By Hon David Adeang, MP

16th December 2008

Parliament Secretariat
Parliament of Nauru

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Composition of the Committee

Hon Godfrey Thoma MP, Chairman

Hon Landon Deireragea MP, Deputy Chairman

Hon Sprent Dabwido MP

Hon Dominic Tabuna MP

Hon Shadlog Bernicke MP

Committee Secretariat

Mr Sanjeev Sharma, Advisor-cum-Secretary (to August 2008)

Ms Katy Le Roy, Secretary/Advisor (from October 2008)

Mr Frederick Cain, co-Secretary (to October 2008)

Ms Magra Garoa, co-Secretary (from December 2008)

Mrs Jennie Reiyetsi, Executive Secretary

INTRODUCTION

I, the Chairman of the Committee of Privileges, as authorised by the Committee, present on its behalf this First Report of the Committee of Privileges of the Eighteenth Parliament of Nauru.

The Committee held fourteen meetings for the examination of the subject.

The draft report was considered and adopted by the Committee at its fourteenth meeting held on 12 December 2008.

The Committee was faced with the onerous task of examining the conduct of a sitting Member of Parliament. It is a very grave matter for a sitting Member to be alleged to have committed breaches of privilege and contempt of Parliament, and the Committee has taken its task very seriously, endeavouring to satisfy itself of the facts surrounding the matters that were referred to it, to gather all relevant information, to conduct its inquiry in a fair manner, and to reach objective conclusions and recommendations. The Committee sought external opinions from officers of the British House of Commons and the Australian House of Representatives in the examination of this subject. The Committee also sought a number of legal opinions. The Committee wish to express its thanks to all concerned who responded to the queries of the Committee and provided material and information for its use.

There were unfortunately some delays in preparing and submitting this Report to Parliament, due to the difficulty of obtaining adequate advice in the early phase of the Committee's work. The recent changes in the Parliamentary Secretariat have resulted in improvements to the services available to committees and have enabled this Committee to progress its inquiry to conclusion. I express my gratitude to the members of the Committee for their valuable contributions and the time given by them to finalise the report.

Hon Godfrey Thoma MP
Chairman, Committee of Privileges

Nauru
16 December 2008

PART I - Background to the Inquiry

A. Matters referred to the Committee

On 15 July 2008 a motion was passed by the House to demand apologies for perceived misconduct from the Member for Ubenide, Hon David Adeang MP. As no apologies were forthcoming, later in the same sitting a motion to suspend the member was moved by Hon Mathew Batsiua and seconded by Hon Sprent Dabwido. The motion was passed by the House. The motion read in part as follows:

[That] the Member for Ubenide, Hon David Adeang MP, be suspended immediately for an indefinite period, until he tenders three separate unconditional apologies in writing to the Speaker, to the House and to the Minister for Health and that all apologies tendered must be to the satisfaction of the aggrieved parties.

Following the passage of the motion to suspend the Member and the order for him to withdraw from the Chamber, the Member refused to withdraw, necessitating the suspension of the sitting and the entry into the Chamber by police to escort the suspended Member out.

On the same day, following the resumption of the sitting, Hon David Adeang forced his way into the Parliamentary Chamber by entering through the door from the Speaker's office. The Speaker suspended the sitting and asked the police to escort Hon Adeang from the Chamber.

The first meeting of the Committee of Privileges of the 18th Parliament was held on 16th July 2008. On the same day, the Committee was referred a subject for inquiry which resulted from the abovementioned actions of the suspended member, Hon David Adeang MP. During the sitting of Parliament on 16th July the Hon Speaker of Parliament made the following statement:

Honourable Members, I must express my deepest disappointment towards the action by the Hon Member for Ubenide, namely Mr. David Adeang, during yesterday's sitting dated 15 July 2008. Firstly he disobeyed a resolution of the House, suspension that disallowed him entry to all entrances of Parliament House precincts.

Secondly, the grave disorderly conduct whereby being unable to enter the Chamber through the main doors he then forcibly entered the Speaker's private chamber in order to make his way into the Members' Chamber.

This disorderly conduct warrants an investigation by the Committee of Privileges. It also warrants an investigation by the Clerk of Parliament if there is any criminal conduct caused by the Member for Ubenide under the Parliamentary Act. Thank you.

Immediately following the Speaker's statement, His Excellency the President Marcus Stephen moved a motion to refer the matter to the Committee of Privileges, which was seconded by Hon Dr Kieren Keke and duly passed.

On 17th July 2008 the suspended member, Hon David Adeang, again entered the Parliamentary Chamber, during Parliament's deliberation on the Appropriation Bill 2008-2009. A motion referring this matter to the Committee of Privileges was again proposed by His Excellency the President and seconded by Hon Dr. Kieren Keke, MP. The motion read as follows:

Mr. Speaker, keeping in view the entry of the suspended Member for Ubenide, Hon David Adeang, today, I wish to move that this matter be also referred to the Committee of Privileges and the first inquiry be made as an open-ended inquiry to cover all the matters concerning this case.

This matter also was referred by the Hon Speaker to the Committee of Privileges under the provisions of Standing Order 84.

B. Law applicable to the matters before the Committee

General Authority of Parliament to regulate Privilege

Article 37 of the Constitution of Nauru reads as follows:

37. *The powers, privileges and immunities of Parliament and of its members and committees are such as are declared by Parliament.'*

Article 38(1) of the Constitution provides that:

38. *(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.*

Parliament has exercised its general authority to regulate matters of privilege through the passage of the *Parliamentary Powers, Privileges and Immunities Act 1976*. Section 21 of the Act makes provision regarding powers, privileges and immunities not expressly provided for in the Act:

'In addition to the powers, privileges and immunities expressly provided for in this Act, the Parliament and Members shall have all the powers, privileges and immunities which the House of Commons of the Parliament of the United Kingdom and its Members have for the time being except for any such powers, privileges and immunities as are inconsistent with or repugnant to the Constitution or the express provisions of this Act.'

Privilege and contempt

Parliamentary privilege is defined by Erskine May as ‘the sum of the peculiar rights enjoyed by each House collectively... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies and individuals’ (21st ed. 1989, p 69).

The Committee also notes that according to the modern application of the privilege law in the House of Commons, the House exercises its jurisdiction to punish Members for breach of privilege or contempt as sparingly as possible and only when satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its officers from improper obstruction or attempt at or threat of obstruction causing or likely to cause substantial interference with the performance of their respective functions. The Committee further notes that Parliament normally takes notice of serious or repeated contempts and breaches of privileges from the same source.

According to the *House of Representatives Practice* (4th edition, 2001): ‘contempt’ and ‘breach of privilege’ are not synonymous terms although they are often used as such (p 687). The *House of Representatives Practice* cites Erskine May on this question:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.

The *House of Representatives Practice* further explains:

It has been said that ‘All breaches of privilege amount to contempt; contempt does not necessarily amount to a breach of privilege.’ In other words a breach of privilege (an infringement of one of the special rights or immunities of a House or a Member) is by its very nature a contempt (an act or omission which obstructs or impedes a House, a Member or an officer, or threatens or has a tendency to do so), but an action can constitute a contempt without breaching any particular right or immunity.

Erskine May provides examples of actions that constitute contempt of Parliament, and explains that Parliament has the power to punish contempts, such as “actions which, whilst not breaches of any specific privilege, obstruct or impede [Parliament] in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers.” Refusing to comply with a resolution of the House or with an order of the Speaker are clear examples of contempt.

In view of the foregoing, the Committee has taken the view that it is unnecessary to decide whether the instances of alleged contempt in this matter were of the particular subset of contempts which also constitute breaches of privilege, by virtue of the fact that a contempt

is punishable by the Parliament in the same manner irrespective of whether it is a breach of privilege that constitutes a contempt or some other species of contempt.

In determining a Member's guilt or innocence in matters of alleged contempt, the criterion to be applied is whether the allegation is proved on the balance of probabilities (advice from House of Commons, 31 July 2008).

Punishments for breach of privilege and contempt

The powers of the Parliament of Nauru to punish members for contempt of Parliament are not as extensive as those of the British House of Commons or the Australian House of Representatives. Whilst section 21 of the *Parliamentary Powers, Privileges and Immunities Act* provides that in addition to the powers, privileges and immunities expressly provided for in the Act, the Parliament of Nauru and its members shall have all the powers, privileges and immunities that the House of Commons of the Parliament of the United Kingdom and its members have for the time being, this is subject to the caveat: '*except any of such powers, privileges or immunities as are inconsistent with or repugnant to the Constitution or the express provisions of this Act.*'

This is likely to mean therefore that the Parliament of Nauru does not have the power to impose fines or to commit people to prison (as this may be regarded as usurping judicial power under the Constitution), and it clearly means that the Parliament of Nauru does not have the power to expel a member (as this would contradict Articles 32 and 36 of the Constitution). This interpretation is confirmed by the fact that offences under the *Parliamentary Powers, Privileges and Immunities Act* are contemplated as offences that are to be prosecuted in the normal manner by the Director of Public Prosecutions (see section 29) and not matters to be tried and determined by Parliament itself.

Whilst the House of Commons has the power to imprison, it has not done so since 1880. The power of the House of Commons to impose fines has not been exercised since 1666 and has effectively lapsed (advice from House of Commons staff, 31 July 2008). The last occasion on which a member was expelled by the House of Commons was 1947. In Australia, the power of expulsion was used on only one occasion (1920), and since the enactment of the *Parliamentary Privileges Act 1987* neither House of the Australian Parliament has had the power to expel a member from its membership. Whilst the same argument about usurpation of judicial power could apply to the Australian Parliament in relation to exercising the old Westminster powers to imprison or fine people, the Australian *Parliamentary Privileges Act 1987* expressly confers on Parliament the power to impose imprisonment for up to six months and the power to impose fines. There is no similar legislative provision conferring such powers on the Parliament of Nauru.

The British Joint Committee on Parliamentary Privilege has recommended that Parliament ought no longer to have the power to imprison: 'As regards imprisonment of Members, we believe this extreme form of punishment is no longer needed or appropriate in either House' (Session 1998-99, HL Paper 43/HC 214). The Report further notes that 'the House of Commons punishes Members found guilty of a serious contempt by suspension or admonishment or both.'

Punishments for contempt of Parliament (by a member) that are open to the Parliament of Nauru include suspension of a Member and reprimand or admonishment of a member. If a Member is to be reprimanded he is generally called to the bar and reprimanded by the Speaker, which reprimand is entered in the votes and proceedings. This is considered a grave punishment because of the embarrassment caused to the member and the harm that such public reprimand may do to his reputation and possibly to his political career.

Criminal Offences

The *Parliamentary Powers, Privileges and Immunities Act 1976* provides:

‘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 the 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.’

This section gives the police the power to forcibly remove a suspended member, but does not in itself make the presence of a suspended member in contravention of the section a criminal offence, and accordingly does not prescribe any penalty for such conduct.

In section 2 of the Act, ‘officer of the Parliament’ and ‘officer’ are defined as including: 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 this Act; and any police officer on duty within the precincts of the Parliament.’

Part IV of the Act deals with offences and penalties. Section 18 relates to offences committed by strangers, including entering the precincts of Parliament in contravention of any order of the Speaker, and failing or refusing to withdraw from the precincts of Parliament when ordered to do so by the Speaker.

In section 2, ‘stranger’ is defined as ‘any person other than a member or an officer of the Parliament’. A suspended member is still a member, and therefore cannot be a stranger for the purposes of section 18. This means that even though the type of conduct covered by section 18 is precisely the type of conduct that was in question before the Committee, the suspended member cannot be charged with having committed an offence under section 18 because of the fact that he is a member of Parliament and not a stranger.

Section 19 however deals with offences committed by ‘any person’, whether a member or a stranger. The section contains eight separate types of offence, most of which relate to falsification or destruction of documents or evidence, and hindering or tampering with witnesses before Parliament or a Committee. The only offence that is potentially relevant to the facts that were before the Committee of Privileges for its consideration is:

'19. Any person who –

(a) assaults, molests, insults, resists or obstructs any officer in the execution of his duty or while proceeding to or from Parliament, knowing or having reasonable grounds for believing him to be an officer; ...

Is guilty of a cognisable offence and is liable to imprisonment for two years.'

The suspended member clearly knew that the police officers who entered the chamber as well as all the members of Parliament present on the relevant days were 'officers' within the meaning of the Act, so the question then is whether the suspended member *assaulted, molested, insulted, resisted or obstructed any officer in the execution of his duty*. This question is addressed in Part III of the Report.

It should also be noted that under section 29 of the *Parliamentary Powers, Privileges and Immunities Act*, 'a prosecution for an offence under the Act shall not be instituted except on the written authority of the Director of Public Prosecutions and the written consent of the Speaker.'

In addition to the criminal offences and penalties under the *Parliamentary Powers, Privileges and Immunities Act*, other offences in relation to Parliament are contained in the *Criminal Code*. Section 55 of the *Criminal Code* makes it an offence to interfere with the legislature:

'55. Any person who advisedly, by force or fraud, interferes or attempts to interfere with the free exercise by ... Parliament of [its] authority, or with the free exercise by any member... of his duties or authority as such member, or as a member of a Committee... is guilty of misdemeanour, and is liable to punishment for three years.'

Section 56 makes it an offence to disturb the legislature:

'56. Any person who advisedly –

- (1) Disturbs [the] House of Parliament while in session; or
- (2) Commits any disorderly conduct in the immediate view and presence of [the] House of Parliament while in session, tending to interrupt its proceedings or to impair the respect due to its authority;

is guilty of a misdemeanour, and is liable to imprisonment for three years.'

These sections still apply in Nauru notwithstanding the fact that in the jurisdiction from which the *Criminal Code* originated, Section 55 has been amended and section 56 has been repealed (see *Criminal Code Amendment Act 2006* (Qld)).

The standard of proof to be applied in relation to any of these offences would be that the matter be proved beyond reasonable doubt.

Part II - Deliberations of the Committee

A. Meetings of the Committee

The Committee held the following meetings:

First meeting -	16 th July 2008
Second meeting -	18 th July 2008
Third meeting -	25 th July 2008
Fourth meeting -	1 st August 2008
Fifth meeting -	14 th August 2008
Sixth meeting -	15 th August 2008
Seventh meeting -	5 th September 2008
Eighth meeting -	28 th October 2008
Ninth meeting -	6 th November 2008
Tenth meeting -	12 th November 2008
Eleventh meeting -	14 th November 2008
Twelfth meeting -	3 rd December 2008
Thirteenth meeting -	5 th December 2008
Fourteenth meeting -	12 th December 2008

The Committee titled its inquiry '*Alleged Breach of Privileges and Contempt of the Parliament by Hon David Adeang, MP*'. The Committee resolved that it would investigate and report upon the events of 15th July and 17th July concurrently.

Early in its deliberations the Committee obtained and considered the Votes and Proceedings of the relevant parliamentary sittings of 15th, 16th and 17th July 2008. The Committee also sought to obtain video footage of the relevant proceedings showing the forced entry of the suspended member on 15 July, however the Committee was advised by the Director of Media that this particular segment of the Parliament sitting was not recorded on tape (three cameras were filming but the Speaker's door was out of shot).

The Committee resolved to inquire into the police response to the incidents that occurred in Parliament, and to obtain accounts from the Clerk and from the relevant police officers as to what transpired in Parliament on 15th and 17th July. A table of correspondence to and from relevant witnesses is set out in Section B of this Part of the Report. The Committee also called Superintendent Iven Notte to give oral evidence before the Committee to elaborate upon the written statements he had already provided to the Committee. The Clerk of Parliament also gave oral evidence before the Committee.

The Committee resolved to write to Hon David Adeang to ask questions about his conduct in Parliament on 15th and 17th July, and to provide him with the opportunity to present his version of the facts. The Committee later resolved to invite Hon Adeang to appear before

the Committee to have his case heard, but Hon Adeang declined to appear. The Committee's correspondence with Hon David Adeang is detailed in section B of this Part.

The Committee instructed the Secretary to correspond with the House of Commons in relation to definitions of privilege and contempt, and any relevant precedents. The staff of the House of Commons obliged with the provision of helpful information. The Secretary also corresponded with the Australian House of Representatives in relation to the question of prosecution of offences for disturbing the legislature, and the jurisdiction of the courts to hear matters concerning incidents that occurred within Parliament.

The Committee also resolved to forward all material relating to the inquiry to the Director of Public Prosecutions to seek his opinion as to whether the suspended Member's conduct in Parliament on 15th and 17th July constituted an offence under the Parliamentary Powers, Privileges and Immunities Act 1976 and/or the Criminal Code of Queensland 1899. The advice received from the DPP is further referred to on page 25 of this Report. Upon the commencement of the new Secretary/Advisor to the Committee in October 2008, the Committee sought further legal advice from the Secretary.

The Committee considered and adopted its report at its 14th meeting on 12 December 2008.

B. Evidence/Opinions tendered before the Committee

The Committee wrote to a number of witnesses who were present in Parliament on 15th and 17th July and who were directly involved in attempts to remove the suspended Member from the Parliamentary Chamber, as well as others whom the Committee believed may have been able to provide relevant information. The following table sets out the Committee's correspondence with relevant witnesses, and oral evidence given before the Committee:

Witness	Request for info sent	Response received
Commissioner Robert Lehmann	21 July 2008	24 July 2008
	25 July 2008	31 July (two responses)
	15 August 2008	19 August 2008
Superintendent Iven Notte	21 July 2008	22 July 2008
	25 July 2008 (2 different letters)	30 July 2008 31 July 2008
	11 November 2008 (invitation to appear before Committee)	Oral evidence given 12 November 2008
	3 December 2008 (invitation to appear before Committee)	Oral evidence given 5 December 2008

Witness	Request for info sent	Response received
Serjeant Dinamo Appin	21 July 2008	22 July 2008
Clerk, Frederick Cain	21 July 2008	c. 22 July 2008 (undated)
	25 July 2008	31 July 2008
	14 November 2008	c. 17 November 2008 (undated)
	3 December 2008	Oral evidence given 5 December 2008
Constable Gregor Garoa	21 July 2008	22 July 2008
	25 July 2008	None
	3 December 2008	4 December 2008
Inspector Krent Dabwido	None	Unsolicited c. 22 July 2008 (undated)
	28 July 2008	None
Hon David Adeang MP	21 July 2008	24 July 2008
	28 July 2008	31 July 2008
	1 August 2008	None
	11 November 2008 (invitation to appear before Committee)	None
	13 November 2008 (invitation to appear before Committee)	None
Hon Baron Waqa MP	3 December 2008	9 December 2008

The following is an overview of some of the information and evidence presented to the Committee by those who wrote to or appeared before the Committee:

Frederick Cain, Clerk of Parliament

The Committee sought information from the Clerk of Parliament in order to have a first hand account of the incidents which took place on 15th and 17th July 2008. In his reply of 31 July 2008 the Clerk stated that on 15th July, when the motion to suspend the Member was carried, Mr Adeang “refused to withdraw from the Chamber of the House even after being told so by the Speaker. The Speaker then suspended the sitting until the bell rings.” The Clerk was then instructed by the Speaker to get the police to remove the suspended Member from the Chamber. Iven Notte attended Parliament and asked the Clerk to accompany him into the Chamber so that the Clerk could give the suspended Member one more opportunity to withdraw before the police proceeded to remove him. The Clerk entered the Chamber together with Superintendent Iven Notte and other police officers. He saw that Hon Adeang and some other Members were in the smoking room, and approached Hon Adeang and “informed him that if he refuses to withdraw from the Chamber, the Police will then physically remove him as instructed by the Speaker”. The Clerk further stated: “Hon Baron Waqa then intervened and told me and the Police to give them a few minutes as they were still talking to Mr Adeang but did not elaborate further... After a few minutes Mr Waqa then told us that Mr Adeang will leave the Chamber voluntarily which he did.” The Clerk was then instructed by the Speaker to position some police officers at the main door to the Chamber so as to prevent Mr Adeang from re-entering the Chamber. He states “this I did, informing the two Police Officers of the Speaker’s instructions.”

In the same letter, and in his oral evidence before the Committee, the Clerk informed the Committee that a short time later on the same day (15th July) when Parliament had resumed its business, the suspended Member entered the Chamber through the Speaker’s door. He states “I heard the slamming of the door behind me and [saw] Mr Adeang proceeding to his seat. The House was again suspended and the Police were again recalled to remove Mr Adeang from the Chamber but eventually he withdrew from the Chamber without further commotions”.

Further the Clerk informed the Committee that at the sitting held two days later, on 17th July 2008, the suspended Member again entered the Chamber during the closing of the second reading debate by Hon Minister for Finance on the Appropriation Bill. The Clerk, under the instructions of Hon Speaker, was again instructed to get the Police and tell them to forcibly remove Mr Adeang from the Chamber. The Clerk states that after some coaxing from his colleagues he eventually withdrew. The Clerk confirmed in his oral evidence that on this occasion there was a significant disruption of Parliament, as it took quite some time for the police to remove the suspended Member from the Chamber.

In his letter of c.17 November 2008, the Clerk stated “in a nutshell, the Police had to enter the Chamber to remove the suspended Member on two occasions on the 15th and on one occasion on the 17th”.

In his oral evidence before the Committee, in relation to the fact that on the 17th of July when the police finally succeeded in removing the suspended Member from the Chamber he then proceeded to the Committee Room and again refused to leave, the Clerk stated:

The normal practice is that if a Member is suspended, he has to leave the precincts altogether. He has to leave Parliament House and its precincts, he has to go out. They cannot linger anywhere around the precincts or in the Members' Room or in a car in the car-park or outside, they have to totally remove themselves from the boundaries of the precincts of Parliament, and mostly they go home. If they don't, or if they come back, then the police are asked to remove them or take them home.

In the opinion of the Clerk the actions of Hon Adeang were contemptuous.

Commissioner of Police Robert Lehmann

In his replies to the Committee's letters, Commissioner Robert Lehmann stated that on the evening of 14 July during a briefing with government Ministers in the President's office he was informed at the sitting of Parliament scheduled for the following day the government may place a motion before Parliament relating to Hon David Adeang. The Commissioner stated "I took this matter on notice as part of the Parliament security preparations."

The Commissioner informed the Committee that on 15 July in the afternoon he was informed by one of his staff that the Speaker had requested his presence at Parliament House. He stated "there had been an incident earlier that day when the police were initially requested to remove the Honourable David Adeang MP from the Chamber on the Order of the Speaker. That action was completed without incident once the police had entered the Chamber." On arriving he attended the office of Parliamentary Counsel and was briefed on the (second) incident whereby the suspended Member had entered the Chamber through the Speaker's office. Present were the Commissioner, the Clerk, Parliamentary Counsel and the DPP. After discussing the powers of the police under the Parliamentary Powers, Privileges and Immunities Act to enter the chamber and forcibly remove the suspended Member, this group of persons briefed the Speaker in his office that the police would enter the chamber and remove the suspended Member. Superintendent Notte was given full responsibility to carry out the action. The Commissioner did not enter the Chamber and did not see or hear what transpired between the police officers and the suspended Member inside the Chamber.

The Commissioner provided further information in relation to the incident that occurred on 17th July, stating that he received notification that he was required at Parliament House, and upon arrival was advised by Parliamentary Counsel that the suspended member had again entered the chamber and was to be removed. Superintendent Notte was briefed on the latest incident and was given instructions to arrange for the removal of the Member. The Commissioner did not enter the Chamber. He remained near the entrance to the Chamber, and observed that approximately 15-20 minutes after Superintendent Notte and others had entered the Chamber for the purpose of removing the Member, they finally exited the Chamber with the suspended Member. The Commissioner stated that on leaving the Chamber the suspended Member walked straight to the Committee Room and that there was another lapse of time before the Member left the Committee Room.

Superintendent Iven Notte

The Committee also sought written information and oral evidence from Superintendent Iven Notte who headed the police operations regarding the removal of the suspended Member on 15th and 17th July 2008. The Committee directed him to furnish detailed accounts of the incidents. In his reply dated 22nd July 2008, Superintendent Notte stated that on 15th July he was called by the Clerk of Parliament conveying the instructions of Hon Speaker to remove the suspended Member from the Chamber. Certain other officers also attended Parliament, namely A/Sergeant Brocky Olsson, Police Officers Dexter Brechterfeld, David Canon and Gregor Garoa. Superintendent Notte stated that he saw the suspended Member in the smoking room with three other members. The Member was informed that he has been ordered to leave the Chamber. The suspended Member talked to his colleagues for a short while and then left the Chamber with his belongings.

In his letter of 30 July Superintendent Notte stated that a short time later he was instructed by the Clerk (on the basis of the Clerk's instructions from the Speaker) that when the House resumes, police must ensure that the suspended Member does not enter the Chamber. As the bell rang, he and PC Gregor Garoa took their post in front of the main door to the Chamber. Superintendent Notte informed the Committee that whilst he and PC Garoa were guarding the main doors of the Chamber, four opposition members walked towards the door and one of them was the suspended Member. Superintendent Notte informed the suspended Member that he was not allowed to enter the Chamber.

Subsequently when the officer was busy talking to two of the opposition members he was alerted by a member of parliamentary staff pointing towards the suspended Member entering the Speaker's office. When Superintendent Notte rushed towards the Speaker's Office he found that Hon Adeang had entered the Chamber through the Office of the Speaker and he waited for further instructions from the Speaker of Parliament. He was subsequently ordered to enter the Chamber to remove the Member. He found the Member seated in his chair, and instructed him to leave. The suspended Member withdrew without incident.

In his response dated 31 July 2008, Superintendent Notte stated that on 17th July 2008 he received a call from the President's Aide-de-Camp Jansen Agir requesting his presence at Parliament. Upon arrival the Clerk informed him that the suspended Member had entered the Chamber and should be removed by police. After receiving the same instruction directly from the Speaker, the Superintendent gathered his officers for a briefing. Upon entering the Chamber with other officers he saw the suspended Member was seated in the Chamber and writing. The Superintendent informed the Member that he was carrying out the instructions of the Speaker to remove him from the Chamber. The suspended Member continued writing. Discussion ensued between Hon Shadlog Bernicke, who was also present, and Superintendent Notte. After some time, Superintendent Notte again advised Hon Adeang that he was to be removed from the Chamber:

but the Hon David Adeang said that he is not going away, he will stay in the Chamber. From there I grabbed the right hand of the Hon David Adeang and with the help from the other police officers, we stood him up from his chair and walked him out from the

Chamber (escorted) he was still resisting but we controlled his movement until he voluntarily follow us out from the Chamber. As we exited the Chamber the Hon David Adeang walked straight to the Committee Room and sat on the Chair demanding his letter to be delivered to the Speaker of Parliament. From there we used reasonable force against him as I noticed that he will not leave the Committee Room.

Sergeant Dinamo Appin

The written response of Sergeant Dinamo Appin dated 22 July 2008 states that on 17th July he was called to attend Parliament, and was brief by Superintendent Notte. Sergeant Appin was posted outside the door to the Parliamentary Chamber whilst Superintendent Notte and other police officers entered the Chamber to remove the suspended Member. Sergeant Appin states that after a period of about 20 minutes had elapsed, the Police Commissioner instructed him to enter the Chamber and notify Superintendent Notte that we was to remove the suspended Member as best he can. Superintendent Notte and other police officers then succeeded in removing the Member from the Chamber, whereupon he entered into another office [the Committee Room] and despite being asked to leave by Superintendent Notte, the suspended Member “just sat there refusing to leave but stating that he would like to speak to the Speaker of Parliament”. The Superintendent issued the suspended Member with a last and final warning and as he still refused to leave it was necessary to use reasonable force: “I went towards them and grabbed the Honourable by his belt and lifted him up but he grabbed hold on to his chair... Then later he let go off his chair and we then escorted him out of the parliament house”.

Inspector Krent Dabwido

The unsolicited and undated written information provided by Inspector Dabwido states that on the morning of 17th July 2008 he posted two officers, Senior Constable Jesse Canon and Constable Dacor Ratabwiy at Parliament and briefed them. The Inspector states:

I recall telling them that one should be within the public gallery and one should be in the lobby area. I did not brief them about the suspended Member of Parliament bearing in mind that he had been removed from the chamber the day before and would not be expecting him on that day. Later on in the day I heard over the radio Superintendent Notte requesting my presence at Parliament House. Upon arrival I was met and briefed by the Superintendent that the suspended Member of Parliament had entered the Parliament chamber without authority. I then asked Constable Ratabwiy if he was aware that the mentioned member of Parliament was suspended and not to enter the Parliament building at any time, he replied that he wasn't aware and allowed the suspended Member to enter.

Constable Gregor Garoa

Constable Gregor Garoa informed the Committee in his letters of 22 July and 4 December 2008 that he was asked to attend Parliament on one occasion on 15th July and one occasion on 17th July, on both occasions to assist in the removal of the suspended Member from the parliamentary Chamber.

Constable Garoa stated that on 15th July, after some discussion between Members and the police, the suspended Member eventually withdrew from the Chamber.

He further stated that on 17th July, when he and other police officers entered the Chamber to inform the suspended Member that he had been ordered to leave, the suspended Member ignored the police officers. "Superintendent Notte again advised MP David Adeang that if he does not cooperate with their instructions that he will be forcibly removed. MP again did ignore the officers." According to Constable Garoa, some police officers grabbed the suspended Member by the arm and lifted him to his feet. The suspended Member was then escorted by the police out of the Chamber, and then proceeded to the "oppositions lounge" (Committee Room). "We were instructed by the Commissioner of Police that MP David Adeang is to be permanently removed from the Parliament Building. Hon Adeang was instructed by police to remove himself from the premises, and refused to cooperate. "MP David Adeang resisted the officer then was forcibly removed by Officer Dinamo Appin and Officer Simpson Deidenang."

Hon Baron Waqa MP

Information provided to the Committee by Hon Baron Waqa in response to questions as to what transpired on 15th July only, refers to only one instance of police entering the Chamber to remove the suspended Member. Hon Waqa recalls that when the sitting had been suspended as a result of Hon Adeang entering the Chamber through the Speaker's door and refusing to withdraw, the Clerk approached the suspended Member, and Hon Waqa noticed that police were also in the Chamber. He states that:

Superintendent Notte explained to me that Hon Adeang MP must withdraw from the Chamber as per the instruction of the Speaker. I then said that he will withdraw of his own accord if you allow him. I said to Superintendent Notte that it has been a frustrating day, for everyone, and that the honourable Member will need to calm down first before he can willingly depart and that forcing him should not be an option as this only aggravates the situation more. It was agreed that I and others talk to him as we all know that he did not unreasonable.

After a brief discussion with Hon, David Adeang, MP, it was agreed that he would leave the Chamber immediately to allow the sitting to continue. He then willingly and peacefully withdrew himself from the Chamber.

In response to a general invitation to provide any other information which the Hon Waqa believed may be relevant to the Committee's inquiry, Hon Waqa noted his concern at the manner in which the motion to suspend the Member was fashioned:

Standing Orders 47 clearly outlines the duration of suspensions which the original motion for suspending the honourable Member was not followed, instead he was given an indefinite suspension. It is not to say that offences should be disregarded, they just need to be properly and appropriately addressed as per our Standing Orders.

Hon Waqa's written information to the Committee seems to suggest that the manner in which the motion to suspend him was fashioned caused Hon Adeang such distress that it ought to be taken into account as a mitigating factor in relation to the incidents that occurred in Parliament on 15th July.

Hon David Adeang MP

The Chairman wrote to Hon David Adeang MP on 21st July 2008, informing him of the referral of matters relating to his conduct to the Committee of Privileges, and seeking written information from him in relation to the Committee's inquiry, in particular: why he had entered the chamber in spite of his suspension; what transpired between him and the police officers who were asked to remove him and how much time he took to leave the chamber on each occasion; and any other information that he would like to place before the Committee for its consideration. Hon Adeang replied on 24 July 2008: "Due to the anticipated serious implications of this inquiry, particularly toward my continued tenure as Member for Ubenide, I think it only fair and just that I seek the Committee's kind consideration to grant me 30 days in which to seek and receive legal representation/advice, before I can reply in substance to the letter of the 21st inst."

The Chairman replied by letter of 28th July advising that the Committee had considered the Member's request for an extension of time but that "keeping in view the parliamentary conventions in this regard, the Committee is very keen to complete its inquiry at the earliest and hence it has not acceded to grant an extension of 30 days on the Committee's request of 21 July 2008. Instead the Committee has agreed to give you an extension until 3:00pm on Thursday, 31st July 2008, which will constitute a period of 10 days since the first letter was sent to you." On 31st July Hon David Adeang wrote to the Committee:

I regret I am unable to reply in substance to the Committee's queries by today as required by the Committee, for the same reasons that earlier prompted me to request 30 days in which to compose a substantive reply. I stand by those reasons and again request the Committee's forbearance for 30 days as earlier requested.

On 1st August 2008 the Chairman wrote to Hon David Adeang:

Your request was placed before the Committee at its meeting held today in the afternoon. You may be aware that keeping in view the parliamentary conventions the issues pertaining to privileges and contempt are to be disposed of expeditiously. The Committee is very keen to complete its examination of the subject. Nevertheless your input is deemed to be very essential for the inquiry. The Committee has therefore agreed to give you an extension of time until 11th August 2008 for furnishing your response and it may please be noted that no further extension will be granted and any such request will hamper the work of the Committee which we intend to complete soon and report back to the House.

No further correspondence was received by the Committee from Hon David Adeang in response to the Chairman's letter of 1st August.

At its 9th meeting on 6th November 2008 the Committee resolved that although the Committee had not received a written response from the suspended Member to the questions posed by the Committee, it was important that the suspended Member's account of events be heard and considered, and that he should therefore be invited to appear before the Committee. The Committee wrote to Hon David Adeang on 11th November inviting him to appear before the Committee on 13th November. The Member did not appear. The Acting Chairman wrote to Hon David Adeang on 13th November, inviting him to appear before the Committee on 14th November and noting that notwithstanding his current suspension from Parliament, it is permissible for the Member to enter the Parliament Building for the purpose of appearing before the Committee. The Member did not attend.

At its 11th meeting on 14th November 2008, the Committee resolved that Hon David Adeang had been given enough opportunities to put his case to the Committee, and that as the Committee needs to conclude its inquiry and report to the House, he would not be further invited to appear. The Committee also resolved that if the suspended Member were to submit any correspondence or any form of written submission to the Committee before the finalisation of the Committee's Report, such material would be duly considered. No such correspondence was received prior to the preparation of this report.

The Committee regrets that it has not been possible to obtain any input, whether by way of information or arguments as to mitigation, from the suspended Member whose conduct forms the subject of this inquiry. It is clearly desirable in the interests of natural justice that the suspended Member should be entitled to put his case before the Committee. However the Committee has provided ample opportunities to the suspended Member, including reminding him of his entitlement to legal counsel if he appears before the Committee, and reminding him of the fact that anything he may present to the Committee would be protected by parliamentary privilege. As these opportunities have not been taken up and as the matter has been before the Committee for a period approaching six months, the Committee has reluctantly decided to make its findings and recommendations in the absence of any input from the suspended Member.

Part III – Findings and Recommendations

A. Findings of Fact

The Committee notes that in the course of gathering information and evidence, there were some minor discrepancies in accounts given to the Committee of what occurred on 15th July and 17th July, and in particular, apparent confusion on the part of some of the people who witnessed or were involved in those events as to what took place on which day. The Committee was therefore careful to clarify the accounts of what took place, and called two of the principal witnesses to give oral evidence before the Committee. The Committee notes that it is now six months since the events in question took place, and that the lapse of time may account for some of the minor discrepancies in recollections. The Committee is satisfied that the evidence provided by the Clerk and by Superintendent Notte is reliable, as these witnesses were closely involved in the events and were in positions of responsibility, in terms of carrying out the instructions of the Speaker, and are therefore likely to recall events more clearly than those whose involvement was somewhat more peripheral.

Having satisfied itself of the following facts, based on the information and evidence provided to it, the Committee has made note in the following summary of facts of each instance on which it is satisfied on the balance of probabilities that the suspended Member, Hon David Adeang MP, committed a contempt of Parliament:

13 June 2008

- During adjournment debate Hon Adeang made comments which the Speaker ruled were casting reflection on the Minister for Health, and refused to withdraw the remarks; he refused to comply with the resolution of the House pursuant to Standing Order 46 that he be suspended for the remainder of the day's sitting, by refusing to leave the House; and he disregarded and disobeyed the directives of the Speaker (first contempt).

14 July 2008

- The Commissioner of Police was briefed by government that at the sitting scheduled for 15 July there may be a motion to suspend the Member for Ubenide, and that extra security may therefore be required at Parliament.

15 July 2008

- The Police Commissioner briefed Superintendent Notte that there may be a motion to suspend the Member for Ubenide, and that police may be required to assist the Clerk if the Speaker should order the removal of a member from the Chamber.

- Superintendent Notte made his way to Parliament and met with the Clerk and Parliamentary Counsel to discuss the police role and responsibility. He was informed that if the House resolves to suspend a member and the Speaker orders the member to withdraw, police may be required to assist if the member does not leave when ordered. He returned to police headquarters.
- The sitting commenced at 10:00am. Early in the sitting, a motion was passed requiring apologies from Hon Adeang in respect of his conduct on 13 June 2008.
- Hon Adeang refused to tender apologies (second contempt).
- Later in the sitting a motion was passed ‘that the Member for Ubenide, Hon David Adeang MP, be suspended immediately for an indefinite period, until he tenders three separate unconditional apologies in writing to the Speaker, to the House and to the Minister for Health and that all apologies tendered must be to the satisfaction of the aggrieved parties.’
- The suspended member did not leave (third contempt). The Chair suspended the sitting after the passage of the motion.
- During the suspension of the sitting, the Speaker instructed the Clerk to obtain the assistance of the police in removing the suspended Member from the Chamber. Superintendent Notte and other officers attended Parliament and entered the Chamber together with the Clerk.
- The suspended Member was found in the smoking room inside the Chamber with some of his parliamentary colleagues. The Clerk instructed him that he was to leave the Chamber, and that if he refuses to withdraw the police will physically remove him. Hon Baron Waqa asked that the suspended Member be given a few minutes, and that he would then withdraw voluntarily. After a few minutes, the suspended Member withdrew from the Chamber, together with the Clerk and police.
- During the suspension of the sitting, at the direction of the Speaker the Clerk instructed the police to position officers at the main door to the Chamber and to ensure that the suspended member did not re-enter Parliament when the sitting resumes.
- Before the sitting resumed, (as the bell rang) Superintendent Notte and Constable Gregor Garoa positioned themselves at the door to the chamber.
- Four members approached the door, including the suspended member, Hon David Adeang (together with Hon Bernicke, Hon Scotty and Hon Dowiyogo). The suspended member attempted to enter the chamber and was denied entry by Superintendent Notte. They exchanged words. The suspended member walked away.
- Whilst Superintendent Notte was speaking to two other members, he was advised by Eden Agege that the suspended member had gone into the Speaker’s office. The

suspended member entered the chamber through the Speaker's door (fourth contempt). The Chair suspended the sitting again.

- The Speaker requested the attendance of the Police Commissioner at Parliament. The Police Commissioner attended the office of Parliamentary Counsel, and conferred with Counsel and the Clerk. They were later joined by the DPP. The Clerk, Parliamentary Counsel, Police Commissioner and DPP then briefed the Speaker in his office that the police would enter the Chamber and remove the suspended member (noting section 9 of the Parliamentary Powers, Privileges and Immunities Act which entitles any officer to forcibly remove a suspended member).
- Superintendent Notte was given full responsibility to carry out the action.
- Superintendent Notte briefed a number of police officers, and then Superintendent Notte and Constable Dexter Brechterfield entered the chamber. The suspended member was seated in his chair, and he was asked to leave. The suspended member voluntarily and willingly left the chamber, escorted by the police.

17 July 2008

- The suspended member entered the chamber during the third reading debate on the Appropriation Bill (fifth contempt). Chair suspended the sitting to resume when the bell rings.
- Constable Ratabwiy had been manning the door. He had not been briefed that Hon Adeang was suspended, and had therefore allowed him to enter.
- Superintendent Notte received a call from Jansen Agir requesting his presence at Parliament House. He attended, and spoke with the Clerk and Parliamentary Counsel. The Commissioner of Police had also received a message requesting his attendance and he also attended the meeting with the Clerk and Parliamentary Counsel.
- Superintendent Notte briefed police officers on the actions required. At this stage there were approximately 15 police officers in the Parliament Building.
- Superintendent Notte entered the Chamber and found the suspended member seated and writing. He was informed that the police officers were there to remove him on the instruction of the Speaker. Hon Bernicke said he was busy writing letters. The police again asked him to leave but he continued writing. When he had finished writing, the police again asked him to leave but he said he was staying (sixth contempt).
- Superintendent Notte took the suspended member by the right arm and lifted him from his seat, with the assistance of Sergeant Dinamo Appin and other police officers. They escorted him out of the Chamber, which required some force as the suspended member was resisting.

- It is estimated that it took 15-20 minutes to remove the member, from the time the police entered the chamber until the time they exited with the member.
- When they exited the chamber the suspended member walked straight into the Committee Room, and sat down demanding that his letter be delivered to the Speaker. Again it was necessary for the police to use force to remove the member. They forcibly escorted him from his seat and out the front door of the Parliament building. The suspended member was taken away by a friend or family member.

Application of relevant law to the facts

It is noted in the summary of facts outlined above that, based on the definition of and standard of proof for contempt as outlined in Section B of Part I of this Report, the suspended Member committed contempt of Parliament on six separate occasions.

As detailed further below, the conduct of the suspended Member appears to constitute contempt of Parliament at the same time as constituting the commission of criminal offences. The Committee therefore considered whether it would be more appropriate to recommend punishment of contempt by Parliament, or to recommend criminal prosecution of the suspended Member. As outlined in Section B of Part I, the punishments that are available to be imposed by Parliament for contempt by one of its Members are suspension and/or reprimand. In the present case, the Member was already under suspension at the time the impugned conduct took place and is still under suspension, and so suspension does not appear to be a punishment that can feasibly be imposed at the present time. If however the member at some future date within the term of the 18th Parliament tenders the apologies demanded by the resolution of the House and thereby brings his suspension to an end, the further suspension of the Member for a defined period as punishment for contempt may be warranted and practicable.

In relation to the application of the Parliamentary Powers, Privileges and Immunities Act and the Criminal Code to the facts before the Committee, it appears that:

- (a) When the member was suspended on 15 July he refused to leave the Chamber in accordance with the order of the Speaker, thereby necessitating the temporary suspension of the sitting and the assistance of police in effecting his removal;
- (b) When the sitting of 15 July had resumed the suspended member entered the Chamber through the Speaker's office, necessitating the further suspension of the sitting;
- (c) Thereafter the police were called to remove the member from the Chamber, and the member eventually left (according to the Clerk – 'without further commotion');
- (d) On 17 July the suspended member entered the chamber during the final debate on the Appropriation Bill, and, as he refused to withdraw when ordered to do so by the Speaker, this again necessitated the suspension of the sitting;
- (e) The police again entered the Chamber on the order of the Speaker to remove the suspended member and he refused to cooperate. Police spent approximately 20 minutes trying to reason with the member before resorting to the use of reasonable force to remove him from the chamber;

- (f) Once the member had been removed from the chamber, he refused to leave the Parliamentary precincts and instead retired to the Committee room; the member refused to cooperate with police instructions that he leave the premises, and it was necessary for police officers to use reasonable force to escort the suspended member from the parliamentary precincts.

Based on this summary of the Committee's findings of fact it appears that:

- i. The facts listed at (a), (b) and (d) constitute obstruction of officers (members of Parliament) in the performance of their duty (sitting and deliberation) and therefore involve the commission of offences under s19(a) of the *Parliamentary Powers, Privileges and Immunities Act*; and
- ii. The facts listed at (a), (b) and (d) also constitute disturbance of the legislature and conduct impairing the respect due to the authority of Parliament, and thereby involve the commission of offences under section 56 of the *Criminal Code*, as the conduct of the suspended member so disturbed the proceedings of the House that the sitting had to be suspended on several occasions; and
- iii. The facts listed at (e) and (f) almost certainly constitute resistance and obstruction of officers (police officers on duty within Parliament) in the performance of their duty (carrying out the order of the Speaker to remove the member from the precincts) and thereby involve the commission of a further offence under s19(a) of the *Parliamentary Powers, Privileges and Immunities Act*.

In other words, on the three occasions on which the suspended member interrupted the sitting of Parliament (twice on 15 July and once on 17 July) he may have committed three counts of an offence against section 19(a) of the *Parliamentary Powers, Privileges and Immunities Act* and three counts of an offence against 56 of the *Criminal Code* (although he could only be charged under one Act and not both in respect of that particular conduct, see below). And on the occasion on 17 July when it was necessary for police to use reasonable force to remove the suspended member from the Parliamentary precincts, the suspended member almost certainly committed an offence against section 19(a) of the *Parliamentary Powers, Privileges and Immunities Act*.

When a person is punishable under the provisions of the *Criminal Code* and also under the provisions of some other law, he may be prosecuted and convicted either under the Code or under the other law but not both, so that he is not twice punished for the same offence (section 6 of the *Criminal Code Act*). In this case the offences under section 19(a) of the *Parliamentary Powers, Privileges and Immunities Act* relate to obstructing members of Parliament and obstructing police officers in the exercise of their duty, and each offence is punishable by 2 years imprisonment. Under s 56 of the *Criminal Code*, the offence relates to disturbing the proceedings of Parliament and is punishable by three years imprisonment. It is arguable that if criminal prosecution against the suspended member was to be pursued, that the most appropriate charges would be one count of resisting and obstructing a police officer in the exercise of his duty under s19(a) of the *Parliamentary Powers, Privileges and Immunities Act* (see paragraph iii, above), and three counts of disturbing the legislature under s56 of the *Criminal Code* (see paragraph ii, above, and note that such charges would be in lieu of those mentioned under para i), and it is arguable that the suspended member

could be charged and prosecuted for both notwithstanding the provisions of section 7 of the *Criminal Code Act*, as the offences relate to different aspects of the conduct: the conduct (being in Parliament unlawfully and refusing to leave) which disturbed Parliament, and the conduct (resisting the police officers) which obstructed the police officers in exercise of their duty.

When the committee became aware that the incidents that had been referred to it for consideration may have constituted the commission of criminal offences, the Chairman wrote to the Director of Public Prosecutions on 15th August 2008 seeking his advice on whether the incidents did constitute offences under the relevant laws. The Committee received a brief response from the DPP dated 24 October 2008, in which the DPP recommended that no criminal charges be laid against Hon David Adeang in relation to events that occurred at Parliament House on 15th and 17th July 2008, and further recommended that the internal parliamentary disciplinary process be used to deal with this type of disorderly behaviour by Members of Parliament. The Committee noted in its meeting immediately subsequent to the receipt of this advice that the advice from the DPP was somewhat vague, and that he had not directly answered the question put to him as to whether or not the conduct of the suspended member involved the commission of criminal offences under the two relevant Acts. The Committee subsequently sought advice from Parliamentary Counsel and Secretary to the Committee, who advised that the conduct of the suspended Member did appear to involve the commission of criminal offences, but that for a number of reasons she recommended against pursuing prosecution. The Committee carefully considered the recommendations of the DPP and Parliamentary Counsel that no criminal prosecution should be pursued, but for the reasons set out in the following section of the Report, the Committee ultimately felt that there was no feasible alternative but to recommend criminal prosecution.

B. Recommendations

The Committee makes the following recommendations to the House:

i. Punishment of the suspended Member, Hon David Adeang MP

As set out in Section B of Part I of this Report, “contempt” includes actions which obstruct or impede Parliament in the performance of its functions, “or are offences against its authority or dignity, such as disobedience to its legitimate commands”. The Committee found on the balance of probabilities that the suspended Member committed a contempt of Parliament on six separate occasions on the 15th and 17th of July 2008.

The Committee gave due consideration to the fact that the incidents referred to the Committee for consideration involve not one isolated instance of contempt, but repeated instances of contempt. The Committee formed the view that the incidents referred to it for consideration were of a very serious nature, particularly in light of the fact that the conduct of the suspended Member necessitated the repeated suspension of the sittings of the House, and that on one of these occasions the conduct of the suspended Member

interrupted Parliament's consideration of the Appropriation Bill. The suspended Member demonstrated a complete disregard for the authority of the Speaker and the House, and impaired the respect due to the authority of Parliament.

The Committee received advice which recommended that the suspended Member should be punished for contempt by Parliament. The Committee considered this advice and resolved that the punishments available to Parliament are inadequate and impractical in the present situation, as the suspended Member cannot be reprimanded or suspended by way of punishment for contempt unless and until he brings his current suspension to an end and resumes his place in Parliament.

The Committee also received advice that the conduct of the suspended Member on 15th July and 17th July 2008, whilst amounting to contempt of Parliament, also simultaneously constituted the commission of offences under the criminal law. The nature of the offences believed to have been committed are outlined in Section A of this Part of the Report. The offences under the Parliamentary Powers, Privileges and Immunities Act can only be prosecuted on the written authority of the Director of Public Prosecutions and with the written consent of the Speaker (section 29). Offences under the Criminal Code can be prosecuted by the DPP without the consent of the Speaker.

The Committee took into account a number of competing considerations in coming to its recommendation as to punishment of the suspended Member, including the traditional or conventional view that the dignity of Parliament is enhanced if it provides Members with the opportunity to correct their actions, and the usual reluctance of Parliaments to invite courts to inquire into matters relating to the intramural proceedings of Parliament. The Committee also considered the necessity for the law to be applied equally to all persons regardless of status (no person is above the law), and for the suspended Member to be held to account for his unlawful conduct. In view of the unfeasibility of Parliament imposing a suitable punishment for contempt for the reason stated above, the Committee also considered the desirability of having an outside body (the court) deal with this matter objectively. The Committee considered the gravity of referring the matters for criminal prosecution, and noted the fact that if the suspended Member was to be convicted of any of the criminal offences referred to above, he would lose his seat in Parliament by virtue of Article 32(1)(b) and 31(c) of the Constitution of Nauru, as each of the relevant offences is punishable by more than 12 months imprisonment. The Committee notes that if the matters are referred to the Director of Public Prosecutions, the Director is empowered to exercise his own discretion as to whether, in view of the evidence available and any other relevant considerations, prosecution is warranted in his opinion. In view of all of these considerations, the Committee resolved to recommend:

- 1. That the conduct of the suspended Member, Hon David Adeang MP, on 15th and 17th July 2008, whereby he disturbed the Parliament and also obstructed officers in the performance of their duty, should be referred to the Director of Public Prosecutions for criminal prosecution of offences committed against the Parliamentary Powers, Privileges and Immunities Act and against the Criminal Code; and***

2. That the Speaker should consent to prosecution for offences against the Parliamentary Powers, Privileges and Immunities Act.

ii. Preventive measures to deal with such issues in future

The Committee thought it necessary to direct its attention not only to the specific instances of contempt and criminal conduct that were referred to it, but also to consider whether it may be possible for Parliament to take preventive measures to prevent this kind of conduct from recurring in future, and/or measures to enable Parliament to better deal with such conduct in future.

In this regard the Committee considered whether it may be necessary or desirable, and feasible, to vest the Parliament with additional means of punishment of Members for contempt, in addition to the punishments of suspension or reprimand that are already available. The Committee noted the view of the Joint Committee on Parliamentary Privilege of the British Parliament that it is no longer appropriate for Parliament to have the power to imprison Members, but that it recommended that the British Parliament should revive or retain its power to impose fines on Members. The Committee also noted that the Australian Parliament has the power to imprison and to impose fines, by virtue of the Parliamentary Privileges Act 1987. The Committee further noted that the British Parliament has the power to expel Members but has not exercised this power for over 50 years, and that the Australian Parliament, like the Parliament of Nauru, does not have the power to expel Members from membership of Parliament. The Committee resolved that it would be undesirable to vest the Parliament of Nauru with the power to imprison or fine people, or with the power to expel Members from membership of the House, as such powers would be susceptible to abuse.

The Committee noted that Parliament's power to suspend Members is already clearly provided for in the Standing Orders, and further noted that the motion to suspend Hon David Adeang that was passed by the House on 15th July 2008 was not drafted in accordance with the Standing Orders, but went beyond the provisions in the standing orders by suspending the Member for an indefinite period, pending apologies. Whilst the House is not legally compelled to adhere to the Standing Orders, which do not have the force of legislation, and the House is empowered to pass the motion in the form in which it was passed, the Committee – whilst not intending this remark to cast any reflection upon the mover of the motion or upon the decision of the House – notes that it is somewhat regrettable that the House did not comply with the Standing Orders in this occasion. If the Member had been suspended in accordance with the provisions of Standing Order 47, it would now be possible to punish the Member for contempt by suspension and reprimand.

The Committee also noted that whilst Parliament has the power to reprimand Members by way of punishment, no express mention of this is made in the Standing Orders, and that it may be desirable to amend the Standing Orders to make such provision.

The Committee noted that Standing Order 49 (“When a Member has been suspended, he shall not be permitted to enter the Chamber and galleries during the period of his suspension”) is not consistent with section 9 of the Parliamentary Powers, Privileges and

Immunities Act (“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 whilst that suspension remains in force...”), and that it should be amended accordingly.

In view of the foregoing considerations, the Committee resolved to recommend:

- 3. That Standing Order 49 should be amended by the House so that it is consistent with section 9 of the Parliamentary Powers, Privileges and Immunities Act, and that such amendment should be worded as follows: “Standing Order 49 is amended by deleting the words “the Chamber and Galleries during the period of his suspension” and inserting in their place the words “or remain within the precincts of the Parliament while that suspension remains in force and, if any such Member is found within the precincts of the Parliament in contravention of this Standing Order, he may be forcibly removed therefrom by any officer of the Parliament”.**
- 4. That when any issue arises in relation to offences in the House, and potential suspension of a Member for such offence/s, the Speaker and Members of Parliament should adhere to the procedures set out in the Standing Orders; and**
- 5. That the House should charge the appropriate Committee with the task of reviewing the Standing Orders, the Parliamentary Powers, Privileges and Immunities Act and any other relevant legislation for the purpose of identifying and introducing any amendments that would assist in preventing contempt of Parliament in future and/or which would enable Parliament and the police to more effectively deal with such issues in future; and that such review should include but not be limited to consideration of:**
 - a) whether it is necessary or desirable to amend Standing Order 45 to make further provision for other forms of conduct that may constitute contempt of Parliament, in addition to the forms of proscribed conduct already contained in that Standing Order;**
 - b) whether any amendment or addition should be made to the Standing Orders to make express provision for Parliament’s power to punish Members by reprimand, and the procedure for executing such punishment;**
 - c) whether reference should be made in the Standing Orders to the procedures to be followed when a Member refuses to withdraw when ordered to do so, including the order of forcible removal in accordance with section 9 of the Parliamentary Powers, Privileges and Immunities Act.**

From the information and evidence provided to the Committee in the course of its enquiry, it became apparent that there was a lack of clear understanding on the part of some police officers as to their powers under the Parliamentary Powers, Privileges and Immunities Act, and as to the fact that suspended Members are not permitted within the Parliamentary precincts and what the definition of parliamentary precincts is. In order that such incidents

can be more swiftly dealt with in future, without the necessity of briefings as to the applicable rules, the Committee resolved to recommend:

6. ***That a memorandum of understanding between the Speaker and the Nauru Police Force be concluded which governs the powers of the police within the Parliamentary precincts and which provides for matters such as training of all police officers in the relevant provisions of the Parliamentary Powers, Privileges and Immunities Act, the provision of extra police officers in the Parliamentary precincts whenever a member is under suspension, and for the clear briefing of such officers as to their power to use reasonable force to prevent such members from entering the parliamentary precincts (to ensure that a suspended member does not get through the front or back door of Parliament House, and certainly not through any entrance to the chamber).***