



**PAPUA NEW GUINEA
DEFENCE FORCE BOARD OF INQUIRY
REPORT**

Prepared by

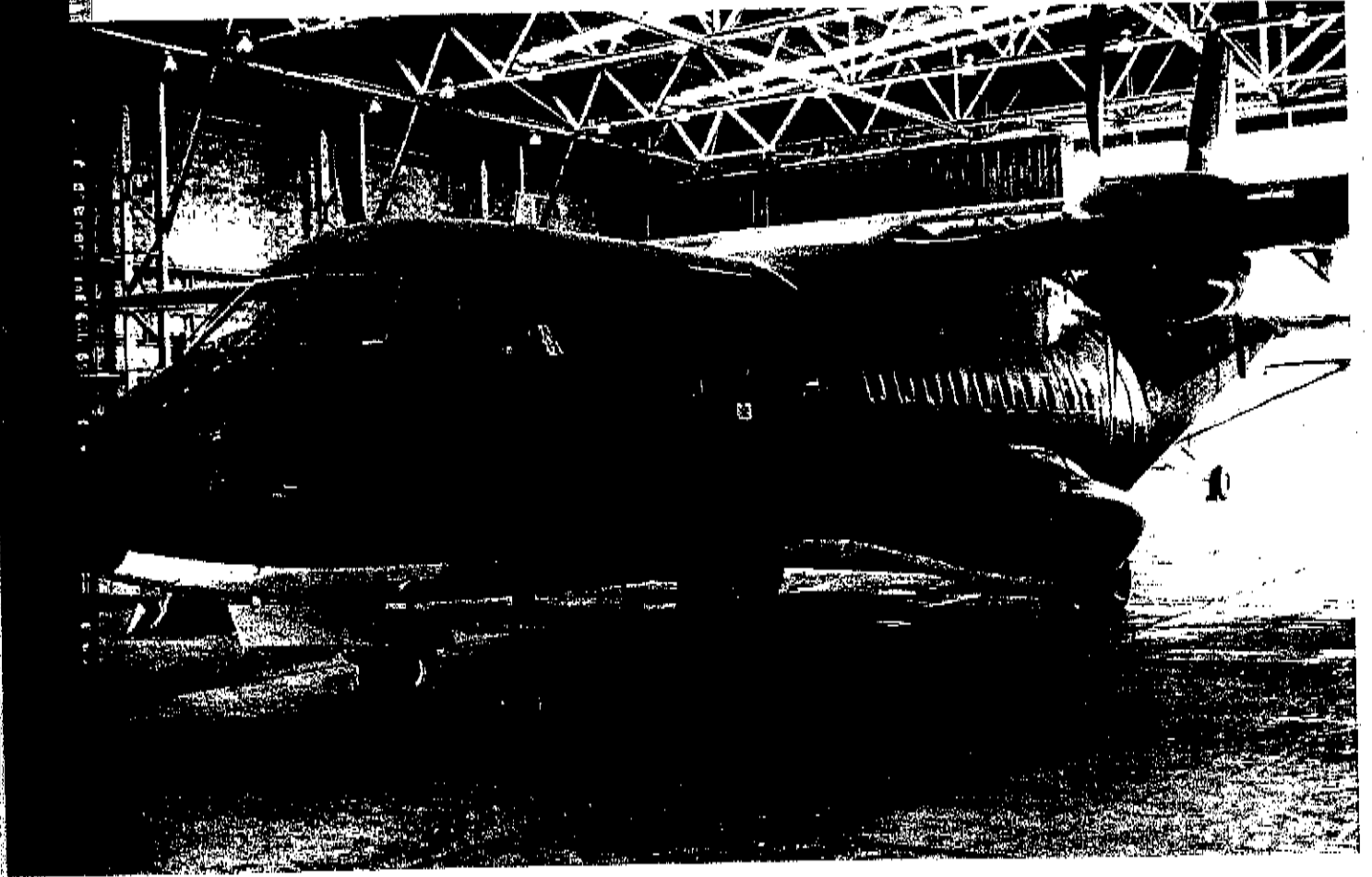
**Chairman and Commissioner
Honourable Justice Gibbs Salika, CSM, OBE
Supreme Court Judge of Papua New Guinea**

**General (retired) Anthony Huai, CBE
Deputy Chairman and Commissioner**

and

**Mr. Daniel Liosi
Commissioner**

13 December 2006 - 16 March 2007





PAPUA NEW GUINEA DEFENCE FORCE BOARD OF INQUIRY

Fax / Phone: 323 2857

C/- Granville Motel
Room 350
Po Box 1246
BOROKO - NCD

Rt. Hon. Grand Chief Sir Michael Somare, GCL, GCMG, CH. CF KStJ
Prime Minister and Minister for Defence
Morauta Haus
Waigani

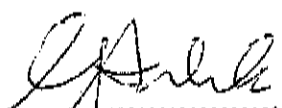
14 March 2007

My Dear Prime Minister

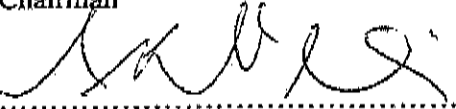
DEFENCE BOARD OF INQUIRY - FINAL REPORT

Pursuant to section 51 of the *Defence Act* we hereby formally present to you as Minister for Defence our Final Report into the circumstances surrounding the arrest, detention and escape of international fugitive and alleged child sex molester Julian Ronald Moti.

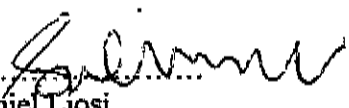
Yours Faithfully


.....
Hon. Justice Gibbs Salika, CSM, OBE
Chairman




.....
Brigadier General (Rtd) Anthony Huai
Deputy Chairman and Commissioner





.....
Daniel Liosi
Commissioner



FOREWARD

There appeared to have been mixed reactions relating to Julian Moti's arrest and escape. Julian Moti, an Australian citizen was appointed Attorney General of the Solomon Islands. He was then in India. He was traveling from India through Singapore and Papua New Guinea when arrested by members of PNG Police. His arrest was controversial and his dramatic escape was even more controversial.

There have been suggestions that the Moti case is a "dead issue". We beg to differ from these suggestions. We maintain that the Moti case is not a dead issue. Issues relating to Separation of Powers of all Three Arms of Government, Good Governance and the Respect for and Maintenance of the Rule of Law are all encompassed in this Report. PNG can learn some valuable lessons from this case. It was the intention of the then Minister for Defence Hon. Martin Aini, MP who convened this Board of Inquiry to investigate and to report to him as to whether any laws both domestic and international were breached. In this regard the Board of Inquiry has made various recommendations with the hope to having those recommendations implemented. It is certainly our hope that the recommendations of this Board will be acted upon.


.....
Hon. Justice Gibbs Salika
Chairman

DEFENCE BOARD OF INQUIRY STAFF

A. INQUIRY PANEL

1. Honourable Justice Gibbs Salika, CSM, OBE
Chairman
2. Brigadier General (Rtd) Anthony Huai
Deputy Chairman and Commissioner
3. Mr Daniel Liosi
Commissioner

B. COUNSELS

1. Mr John Kawi
Senior Counsel Assisting the Inquiry
2. Mr Francis Kuvi
Counsel Assisting the Inquiry
3. Mr Danajo Koeget
Counsel Assisting Servicemen
4. Major Aloysius Kanu
Counsel Advising the Inquiry

C. INVESTIGATOR

1. Dr Beno Bocha

D. STAFF OF JUSTICE SALIKA

1. Brian Oreke - Associate
2. Mrs Iotabu Taudea
Secretary to Justice Salika
3. Mr Tau Helai - Driver to Justice Salika

E. ADMINISTRATION

1. Colonel (Rtd) Emmanuel Gorea
Secretary to the Secretariat
2. Sebulon Tovaira
FAS - Strategic Policy - Department of Defence
3. Kaminiel Kaliop

Accountant – Department of Defence

- 4. Norman Donigi
Administration Officer – Department of Defence
- 5. Mrs Elizabeth Ofoi
Secretary and Administration Assistant

F. DRIVERS

- 1. Pala Rupa
- 2. Patrick Miria,

G. SECURITY PERSONNEL – MILITARY POLICE

- 1. Major Paul Iatau
- 2. Captain Peter Ikau
- 3. Chief Warrant Officer Smith D Yonny
- 4. Sergeant Jack Uradok
- 5. Sergeant Henry Kelly
- 6. Corporal Peter Tumu

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ACKNOWLEDGEMENTS

Members of the Board of Inquiry

The Chairman and the Board Members wish to place on record their appreciation and heartfelt thanks in acknowledging the efforts of all those who assisted in the Board of Inquiry proceedings.

In particular, we acknowledge the following Organizations and personnel.

Right Honourable Grand Chief, Sir Michael Somare GCL, GCMG, CH. CF KStJ, Prime Minister and Minister for Defence

Honourable Martin Aini, MP, the former Minister for Defence

GRANVILLE MOTEL

- The Management and Staff of Granville Motel, for the provision and use of accommodation, Conference facilities and their hospitality.

National Events Council

- The Director General, Mr. Aiwa Olmi and his Transport Management Team.

PNG Defence Force/Department of Defence:

- The Acting Commander then, Colonel Francis Agwi, the Acting Secretary, Department of Defence, Mr Fredrick Punangi and Chief of Staff, Colonel Joseph Fabila for the provision of troops for security and secretariat support staff.

Media

The Media fraternity who covered the proceedings of the Inquiry for the people of PNG from the beginning to the end. A Special word of thanks is extended to these Journalists and reporters who made sure that Moti was never a "dead issue" as alleged from the start:

- Ms Beatrice Bonakoya of EMTV and camera men (Russell Saigomi, Sibona 'Sai' Nou & Roydan Geno)
- Ms Julia Daia Bore – National Newspaper
- Mr. Clifford Faiparik - National Newspaper
- Mr. Alexander Rheeney – Post Courier
- Pearson Kolo - Post Courier
- Gorethy Kenneth – Post Courier
- Ms. Hura Kwarara - FM Central

- Ms Denise Ray and Alice - National Broadcasting Corporation
- Mr. Ivan Bayagau – FM 100
- Ms Nashaya Lurang - FM 100
- Mr. Roland Banada - FM 96
- Mr. Firman Nanol - Australian Broadcasting Corporation
- Mr. Stephen Marshall - Australian Broadcasting Corporation
- Mr. Lloyd Jones – Australian Associated Press.
- John Dau - Sunday Chronicle
- Paul Zuvani - Wantok
- Veronica Hatutasi - Wantok

Witnesses

Witnesses who gave oral evidence before the Board of Inquiry as listed hereunder:

- Mr. Frederick Punangi – Acting Secretary, Department of Defence
- Commodore Peter Ilau – Commander, PNG Defence Force
- ACP Tom Kulunga – Deputy Police Commissioner (Administration)
- ACP Tony Wagambie – Divisional Commander NCD & Southern
- Mr. Joshua Kalinoe – Chief Secretary
- Mr. Leonard Louma – Prime Ministers Chief of Staff
- Mr. Barnabas Rongap – Special Projects Officer - Office of Prime Minister
- Mr. Joseph Assaigo – Director General – Office of National Security Co-Ordination and Assessment (OSCA).
- Captain Peter Ikau – Military Police – PNG Defence Force
- Mr Danago Koeget – Lawyer, Peter Pena & Associates Lawyers
- Mr. Kila Karo – Deputy Secretary (Operations) – Dept. of Foreign Affairs
- Lt. Colonel (Rtd) Charlie Andrews – Pilot – Islands Nationair.
- Capt (N) Alois Tom Ur- suspended Chief of Staff – PNG Defence Force
- Capt (N) Max Aleale – Chief of Operations
- Colonel Vagi Oala – Commander Joint Operations Centre – PNG Defence Force
- Captain Aloxly Manjor – SO2 – Legal – PNG Defence force
- Colonel Joseph Fabila – Chief of Staff – PNG Defence Force
- Lt. Col Ron Hosea – Director, Air Operations
- Lt. Col. Chester Berobero – CO, Air Transport Wing
- Colonel Jeffrey Wiri – Chief of Operations, PNG Defence Force
- Major Joe Ben – Acting Support Commander, Logistics-PNG Defence Force
- Major John Kau – SO2 Coordinator Logistics – PNG Defence Force
- Major Stephen Karuka – Director Technical Services
- Major Kisokau Powesu – Reserve Lawyer, PNG Defence Force
- WO Arua Ikupu – Load Master - ATW
- WO Wais Morap – Engineer - ATW
- Sergeant Busi Waya – Supply Sergeant - ATW

- Chief Warrant Officer Takuru Girapa - Chief Clerk - ATW
- Corporal Kila Vaina Engineer - ATW
- Capt Isidore Tobias – Adjutant to CO - ATW
- Lance Corporal Brian Josiah – Engineer - ATW
- Mr. Joseph Kintau – Acting Chief Executive Officer – Civil Aviation Officer
- Mr. Simon Wild – Chief Executive Officer – Airlines PNG.
- Mr. David Porykali – Acting FAS (Finance) Department of Defence
- Mr. Billy Porykali – Deputy Secretary – Department of Defence
- Mr. Steven Raphael – Acting Director General – OSCA
- Mrs. Hiri Haro – OIC – Treasury – Department of Defence
- Mr. Ako Mirihau – Claims Examiner, Department of Defence
- Mr Camillus Gamo – Chief Internal Auditor – Department of Defence
- Mrs. Dinah Minol – Shell Distribution Manager – Jacksons Airport.
- Chief Superintendent Hodges Ete – Director Legal Services – Royal PNG Constabulary.
- Chief Inspector Godwin Dukaduka – OIC Transnational Crimes Unit
- Detective Const. Michael Liriope – Transnational Crime Unit
- Mr. Baltasar Wally – Driver – Office of Chief Secretary
- Mr. Jerry Fruanga – Political Analyst (OSCA)
- Lt Col Job Kasa (Rtd) – Political Analyst (OSCA)
- Ms Albertina Hasing – Manager Customs (Jacksons International Airport)
- Naime Arua Customs Officer (Jacksons International Airport)
- Ms Kessie Kapus – Manager – Immigration (Jacksons International Airport)
- Mr Jack Pidik – Customer Services Manager – Air Niugini)
- Ms Winnie Kiap – Secretary, National Executive Council
- Ms Margaret Elias – Secretary, Department of Personnel Management
- David Yawingu – Customer Services Officer – Air Niugini
- Alex Rheeney – Post Courier Newspaper
- Julia Daia Bore – National Newspaper
- Clifford Faiparik – National Newspaper

Due to security reasons names of some witnesses remain anonymous.

Witness Who were Summoned to Produce Documents

- Joesph Ealedona – Managing Director – National Broadcasting Corporation
- Don Pandan – Clerk of National Parliament
- General Manager Post PNG
- Roosje Suwae – Legal Officer Telikom PNG Limited
- Manager - ANZ Bank Port Moresby Branch
- Loans Manager - Kina Finance Limited

Witness by Affidavit and Statement.

- Prime Minister Grand Chief Sir Michael Somare, GCL, GCMG, CH, CF KSt.J, MP

Counsels.**Counsel who represented witnesses:**

- Mr. Steven Davies and Mr. Philip Liskia of Stevens Lawyers who represented Mr. Joshua Kalinoe
- Mr. Francis Griffin of Young and Williams who represented Commodore Ilau
- Mr. Alan Baniyamai of Allan's Legal Services who represented Mr. Assaigo;
- Mr. Danajo Koeget - of Peter Pena & Associates – Counsel for Servicemen
- Kerenga Kua – Posman Kua & Aisi Lawyers - Counsel for Prime Minister
- Muriso Pokia – Posman Kua & Aisi Lawyers – Counsel for Attorney General
- Mr. Tom Manjin - Principal Legal Officer – Civil Aviation Authority- Counsel for Mr. Joseph Kintau

Counsel assisting the Board, Messrs John Kawi as the Senior Counsel and Francis Kuvi, Junior counsel assisting the Inquiry.

Department of Foreign Affairs and Immigration

- The Deputy Secretary, Ms. Lucy Bogari and her Pacific Desk Team:
- His Excellency Mr. Parai Tamei, PNG High Commission to Solomon Islands for his initial Coordination with the Government of Solomon Islands,

Department of Treasury

- The Secretary for the Treasury, Mr. Simon Tosali and his FAS Budgets, Mr. Enoch Elpat and his Acting Budgets Officer Ms. Ruth Waep for the facilitation of the Board of Inquiry funds and being on hand for advice in the initial stages.

The Defence Board of Inquiry Secretariat

The Board Secretariat Staff that provided Administrative support to the Inquiry. Without their support the Board would not have functioned effectively as it did. Our special thanks to them and it would be remiss of us not to mention them in person:

- **Commander (Rtd) Emmanuel Gorea – Secretary to the Board**
- **Mr. Sebulon ToVaira – FAS Strategic Policy**
- **Mr. Kaminiel Kallio - Accountant**
- **Mr. Norman Donigi – Administrative Assistant**
- **Mrs. Elizabeth Ofoi – Secretary**
- **Mr. Pala Rupa –Driver**
- **Mr. Patrick Miria - Driver**
- **Mr. Brian Oreke – Associate to Chairman**
- **Mr. Tau Helai – Driver**
- **Mrs. Iotabu Tauedea – Recording and Transcribing Secretary**
- **Major Paul Iatau – Commander, Military Police**
- **Captain Peter Ikau – Military Police**
- **CWO Smith D. Yonny – Military Police**
- **Sgt Jack Uradok – Military Police**
- **Sgt Henry Kelly – Military Police**
- **Cpl Peter Tumul – Military Police**
- **The Security Squad of Goldie River Barracks**

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1. PREAMBLE

A Board of Inquiry was convened by the Minister for Defence under section 51 of the *Defence Act* to inquire into the arrest, detention and escape of one Julian Moti, an Australian citizen and Attorney General designate of the Solomon Islands (SI) who was wanted by Australian Federal Police to answer alleged child sex charges arising in Vanuatu, from Papua New Guinea (PNG) to Solomon Islands using a PNG Defence Force CASA aircraft. The Inquiry was conducted in accordance with the Terms of Reference (TOR) as listed from pages 8 to 10 of this Report.

2. PURPOSE OF THE DEFENCE FORCE BOARD OF INQUIRY

The main purpose of the Board of Inquiry is to investigate and report on the covert operations conducted by elements of the Defence Force in collaboration with government officers to use a CASA aircraft to aid the escape of Mr. Julian Moti, Attorney General designate of the Solomon Islands from Jacksons Airport, Port Moresby to Munda in the Solomon Islands on the 10th October 2006. This came about after the Defence Council and subsequently the National Government rejected two investigation reports into the Moti escape. The first was an internal Defence Force investigation report commissioned by the PNGDF Commander Peter Ilau and carried out by Colonel (rtd) David Josiah. The second was carried out at the direction of the Prime Minister Grand Chief Sir Michael Somare and Chief Secretary, Joshua Kalinoe and headed by Robert Yass and former Attorney General, Michael Gene.

3. THE BOARD OF INQUIRY - ADMINISTRATION

The Board of Inquiry is headed by Supreme Court Judge, Honourable Justice Gibbs Salika and assisted by a former Defence Force Commander Brigadier General (rtd) Anthony Huai and private Lawyer Mr. Daniel Liosi. Counsel assisting are John Kawi and Francis Kuvi while Danajo Koeget has been appointed as the defence counsel. A secretariat was then appointed and headed by Colonel (rtd) Emmanuel Gorea to provide administrative and secretarial assistance to the Board in discharging its functions.

The Board of Inquiry was launched by the Defence Minister on the 13th December 2006 and formally convened on the 14th December 2006. In discharging its functions some 64 witnesses both military and civilian appeared before the Inquiry and all gave sworn oral evidence. The only witness who gave sworn evidence by way of a letter and an Affidavit sworn on the 23rd February, 2007, is the Prime Minister Grand Chief Sir Michael Somare.

4. JURISDICTION OF THE BOARD OF INQUIRY

The Board of Inquiry is established under Section 51 of the *Defence Act*. It empowers the Minister for Defence or a competent authority to convene a Board of Inquiry to investigate and report to him on the matters to be investigated. A Board is to be constituted as prescribed by the Regulations. Regulation 2(1) requires the Minister or the convening authority to convene a Board by written notice. Regulation 2(2) requires the written notice to specify the Chairman and the persons constituting the Board and to specify the Terms of Reference of the Board. In this case the Minister for Defence duly adhered to the requirements under Regulation 2(1) and (2). Regulation 2(3) says that the convening authority may extend the Terms of Reference of the Board. In this case the Minister being the convening authority has extended the Terms of Reference relating to its duration. Terms of Reference mean matters specified under Regulation 2 into which a Board is to inquire. The time given to the Board to complete its investigation was eight weeks from the date of the Terms of Reference being issued to the Board.

We accept that the duration of the Board in this case came within the terms of reference, which is eight weeks or two months. The initial two months would have expired on the 14th of February, 2007. Part of the eight weeks ran through the Christmas and New Year vacation periods and so we do not consider it inappropriate to take two weeks out from that period, from 25th December 2006 to 5th January, 2007. We note the provisions of Sections 9 and 11 of the Regulations that the practice and procedure of the Board are as directed by the Chairman of the Board. Taking into account those above factors, the eight weeks would expire on the 28th February, 2007. This Board completed its investigations on 23rd February, 2007. A report was prepared and was to have been presented to the Prime Minister and Minister for Defence on the 28th February, 2007. On that date the

Prime Minister and Minister for Defence verbally extended the period to complete the report within ten days, starting from the 5th to 15th March, 2007. This was later confirmed in writing by the Prime Minister and Minister for Defence in his letter dated 5th March 2007 addressed to the Chairman.

There has been some controversy regarding the jurisdiction of the Board because the Board is alleged to have run out of its time. For the benefit of the parties, we provide the following sequence of events in chronological order.

- (1) The Board was launched on the 13th December 2006, by the Minister for Defence and started its investigations on the 14th December, 2006 up to the 22nd December 2006. The Board adjourned to the 3rd of January 2007 for a day only, and then adjourned to 8th January, 2007.
- (2) From 8th January, 2007 the Board continued to sit until the 23rd February, 2007.
- (3) On 9th February, 2007 the Board wrote to the Minister for extension up to the end of February 2007.
- (4) The Minister however disbanded the Board of Inquiry on the 23rd of February 2007 by notice in the National Gazette No G26 of 2007 and dated 23rd February 2007. The disbanding of the Inquiry was to be effective on the 26th February 2006.
- (5) On 26th February, 2007 the then Minister by letter dated 26th February, 2007 extended the duration of the Board to 28th February, 2007 for purposes of Section 16 of the Regulations. At the time of writing this letter, the Minister Honourable Martin Aini, MP was not aware that he had been decommissioned as the Minister for Defence. He was also not aware that the Prime Minister had assumed the duties and responsibilities of the Minister for Defence.
- (6) Going by that new dead line of 28th February, 2007 the Board put together a report to present to the Minister for Defence.
- (7) On the 27th February, 2007 the Board made an appointment to see the Prime Minister and Acting Minister for Defence to present its report. On the 28th February, 2007 at 4pm the Board met with the Prime Minister at the Parliament House to present its report.

- (8) At the meeting the Prime Minister and Minister for Defence in the presence of the Board members, its two counsel and Mr Sumasy Singin, further verbally extended the time for the Board to come up with its report within ten days commencing from Monday 5th March through to 15th March, 2007. The verbal extension by the Prime Minister and Minister for Defence was reported in the print media the next day 1st March, 2007.
- (9) On that date as well, the Prime Minister and the Minister for Defence upon being advised of the Board's financial woes, gave a verbal undertaking to make sufficient funds available to complete the inquiry.
- (10) On 5th March, 2007 the Chairman caused a letter to be sent to the Prime Minister to confirm the verbal extension made on the 28th February, 2007.
- (11) At 3.15pm on the 5th March, 2007 the Prime Minister and Defence Minister confirmed the verbal extension of time for the Board of Inquiry from 5th March through to 15 March 2007.

Considering all the above factors, the submissions contained in applications by various parties challenging the jurisdiction of the Board that the duration of eight weeks had expired without any extension is erroneous and misleading.

In relation to arguments on jurisdiction relating to composition and qualifications of the Board members, the Board has made two separate rulings on this matter. The first ruling was made on the 5th January, 2007, and the second on the 23rd February, 2007.

5. THE EVIDENCE IN BRIEF

On the 29th September 2006, international fugitive and alleged child molester, Julian Moti, an Australian national of Fijian/Indian extraction arrived at Jackson's Airport, Port Moresby on an Air Niugini Flight from Singapore enroute to Honiara, in the Solomon Islands where he was set to take up his new post as Attorney General. While he was waiting in the transit lounge at Jackson's International Airport, for his outbound flight to the Solomon Islands, he was arrested by PNG Police from the Transnational Crime Unit and remanded at the Boroko Police Station custody for purposes of extradition proceedings being brought against him on request from the Australian Government.

In the early morning hours of Tuesday the 10th October 2006, a clandestine operation was conducted by members of the PNG Defence Force in which international fugitive, alleged child sex molester and Solomon Islands Attorney General designate, Mr Julian Moti was smuggled out of PNG by PNG Government and military officers to Munda, an undesignated rural airstrip in the Solomon Islands using a PNGDF CASA aircraft.

5.1 Australian Extradition Request

In August 2006, Australia placed a request to Interpol Headquarters in Paris, France requesting Interpol's assistance and its members to assist in the apprehension and detention of Moti. Interpol then issued a Red Alert Notice to all its member countries requesting the arrest and detention of Moti.

A copy of this Red Alert Notice was also forwarded to the Pacific Transnational Crime Co-ordination Centre in Suva, Fiji. On 28th September, 2006 a Request For Provisional Arrest Pending Extradition of Moti was forwarded from Australia to Papua New Guinea. In support of this Request For Provisional Arrest Pending Extradition the Australian Government also presented a Statement containing the following information to PNG Authorities:

- Demonstrated Urgency.
- Description of the offence for which Provisional Arrest is sought.
- Certified copy of the Arrest Warrant.
- Undertaking that the Commonwealth Director of Public Prosecutions will prosecute for the offence if Moti is extradited from Papua New Guinea.
- Relevant offence and penalty provisions.
- Statement as to any limitation on proceedings.
- Summary of acts or omissions alleged in respect of the offence.
- Identity and description of Moti, including photographs, and
- Location of Moti.

This request for Provisional Arrest Pending Extradition was immediately followed by a letter to the Public Prosecutor, Mr Chronox Manek dated 29th September, 2006. This letter was sent by the Commonwealth Attorney Generals Department in which they foreshadowed a formal request for the extradition of Julian Moti from PNG to Australia.

The formal Extradition Request from Australia was then conveyed to the Government of Papua New Guinea in its Diplomatic Note No. 286/06 dated 2nd October, 2006. Upon receiving the Request For Provisional Arrest Pending Extradition, the Public Prosecutor Mr Manek took over this file from Police personnel and formally applied for a Provisional Warrant of Arrest at the Waigani Committal Court on Saturday 30th September, 2006 pursuant to Section 10 of the Extradition Act 2005. It is on the basis of this information that PNG Police acted to have Moti arrested.

5.2 Acting on the Australian Request - PNG Police

PNG Police were formally notified of Moti's travel from Singapore when they received the Red Alert Notice from the Pacific Transnational Crimes Co-ordination Centre in Fiji on the night of Thursday, 28th September, 2006. At the same time, they also received the Request For Provisional Arrest Pending Extradition from Australia. Acting on this information members of the Transnational Crime Unit apprehended Julian Moti on Friday morning, 29th September, 2006, whilst he was in the Transit Lounge at the Jacksons International Airport awaiting his outbound Air Niugini flight to Honiara. Moti was then detained at the Boroko Police Station custody to await formal extradition to Australia. On the same day, Moti's PNG lawyers applied for his release and Moti was released on bail on Friday 29th September, 2006 in the afternoon. Moti was then released to the custody of his PNG lawyers and was booked at the Airways Hotel Room 96.

On Saturday 30th September, 2006 acting on the Request For Provisional Arrest Pending Extradition the Public Prosecutor intervened and took over conduct of the proceedings from the Police and then applied to the Waigani Committal Court for revocation of his bail. Moti was supposed to appear but failed to appear at the Waigani Committal Court. As a result of his non appearance the Waigani Committal Court revoked Moti's original bail and at the same time issued a Provisional Warrant of Arrest under Section 10 of the Extradition Act 2005. The matter was then adjourned to Monday 2nd October, 2006. The Provisional Warrant of Arrest required the arrest and detention of Moti in Police custody to await Extradition Proceedings for his return to Australia to answer alleged child sex offences. On Monday 2nd October, 2006 Moti failed to appear again at the Waigani Committal Court but instead he sought refuge at the Solomon Islands High Commission. He was allegedly still there at the Solomon Islands High Commission when he escaped on

the early morning hours of Tuesday 15 February, 2007. The extradition proceedings had begun and he was supposed to be held in custody. The question of whether Moti was to be extradited to Australia was before the PNG Courts. The Courts of PNG were seized of the matter. That is the status of his case before he fled.

5.3 The Status of Moti's Case in Vanuatu

The status of Moti's case in Vanuatu is as advised by the Registrar of the Vanuatu Supreme Court in his letter dated 20th February, 2007 to the Chairman of the Board of Inquiry which reads:

"We acknowledge receipt of your facsimile message of Friday 16th February, 2007 requesting copies of the Supreme Court of Vanuatu records for purposes of the Defence Board of Inquiry.

While we assure Your Honour our willingness to assist it is our view that it would be improper to divulge the records of the Supreme Court of Vanuatu in this instance as the criminal matter of PP vs Julian Moti is still pending before the Supreme Court of Vanuatu for the hearing and determination of an application in the matter therefore making the matter sub judice.

The pending application before the Supreme Court was filed by the Public Prosecutor of the Republic of Vanuatu on the 8th September, 1999. It is a notice of ex parte application for leave to apply for order of certiorari to remove from the Magistrates' court into the Supreme Court and quash the decision of the Senior Magistrates' Court dated 23rd August, 1999 in dismissing charges against Mr Moti and not committing him for trial upon information. The Notice of Application was accompanied by affidavits in support.

The application is pending because the defendant in the matter had not returned to the Vanuatu jurisdiction and

therefore unavailable to be heard by the Supreme Court of Vanuatu and the Public Prosecutor had not applied for the withdrawal of the application which is therefore pending hearing and determination by the Supreme Court of Vanuatu and therefore sub judice".

It is against this background that the Minister convened the Board of Inquiry to investigate into the circumstances surrounding his escape under Section 51 of the *Defence Act*. The specific Terms of Reference that the Board of Inquiry is to investigate and report on are now answered.

6. TERMS OF REFERENCE (TORs)

The specific terms of reference are set out below.

- 1 *You are hereby appointed by the Defence Minister (as amended by the Minister on Tuesday the 20th February, 2007) to investigate and report on the covert operations conducted by elements of the Defence Force in collaboration with government officers to use a CASA aircraft to aid the escape of international fugitive, Mr. Julian Moti from Jacksons airport to Munda in Solomon Islands on 10th October 2006.*
2. *Without prejudice and limiting your scope of investigation you are specifically to investigate the following:*
 - 2.1 *To establish if NEC and National Security Council approved the evacuation of Mr. Julian Moti. If not how far up the chain of command that the orders to fly Mr. Moti to Solomon Islands was given and by who?*
 - 2.2 *Determine if members of Defence Council were aware of the Moti Operations.*
 - 2.3 *To establish if the Commander PNGDF was directly involved and aware of the Moti operations before he flew to Solomon Islands on 09 Oct 2006.*
 - 2.4 *Which government officers and Defence Force officers were involved in the planning and conduct of the Moti operations? Were the orders in writing?*

- 2.5 *Were the Operations Branch and Joint Operations involved? If so, what was their role?*
- 2.6 *To determine the effectiveness of the Operations Branch and relevant supporting Units to support Operations Branch.*
- 2.7 *Determine the legal and administrative basis for the Joint Task Force Commander to exercise operational control of all PNGDF operations.*
- 2.8 *Was there legal advice to Commander and Chief of Staff on the consequence of the Operations?*
- 2.9 *Who financed the operations and which Operating Account was used?*
- 2.10 *Conduct a preliminary audit on the Air Operating Account and Air Transport Unit Trust Fund Account and other Operating Account.*
- 2.11 *Determine how the funds were disbursed.*
- 2.12 *To establish if there was bribery and inducement offered to the members of the PNGDF involved in the Moti operations.*
- 2.13 *Which sections of Civil Aviation, Immigration and Customs and Quarantine Acts were breached?*
- 2.14 *To establish and identify which offences were committed under International and Domestic laws.*
- 2.15 *Ascertain the extent of involvement of the Australian Defence personnel in the PNGDF in this exercise.*
- 2.16 *Any other relevant information and findings that will assist the Defence Council in perusing the relevant issues for future actions.*
- 2.17 *Ascertain the extent of collaboration between the PNG Defence Force and the Solomon Islands Defence Force, RAMSI and other agencies within the Solomons.*

2.18 *Ascertain which sections of the Code of Military Discipline and the Defence Act were contravened and what offences were committed under Criminal Code?*

2.19 *Given the travel ban of the Prime Minister and the Minister for Defence and subsequently the Heads of State and Ministers, why did the Defence Force Commander travel to Brisbane/Canberra, Australia?*

The duration of the investigation was anticipated to be eight weeks from the date the Terms of Reference were issued by the Minister for Defence on the 13th December, 2006.

7. ANSWERING THE TERMS OF REFERENCE (TORs)

We now answer the TORs based on the evidence before the Inquiry.

7.1 **To establish if NEC and National Security Council approved the evacuation of Mr. Julian Moti. If not how far up the chain of command that the orders to fly Mr. Moti to Solomon Islands was given and by who? (TOR 2.1)**

7.1.1 Summary of Pertinent Evidence

Below is a summary of evidence of key witnesses who we consider pertinent to answering this Term of Reference.

(a) Colonel Alois Tom Ur (PNGDF Chief of Staff)

Colonel Alois Tom Ur has been in the PNGDF (Navy) for the last 31 years. He holds the substantive position of Chief of Staff and was the Acting Commander at the time of Moti's escape. He said that on Monday 9th October, 2006 he had a meeting with Mr Joseph Assaigo, Director General of the Office of Security Co-ordination and Assessment (OSCA) at 11.00 am at the Morauta Haus. Mr Assaigo had called Colonel Ur by phone and asked him to go to his office. When he arrived at Mr Assaigo's office, they sat down and Mr Assaigo told Colonel Ur:

"I wasn't able to discuss with you on Sunday because you left after the meeting but the issue is I got a direction to get rid of the copra bag".

Colonel Ur said he was puzzled and asked him what he meant and Mr Assaigo told him the copra bag was Moti. Colonel Ur then asked Mr Assaigo where the directive was from and Mr Assaigo said it was from the government. Colonel Ur then asked him.

"Is the chairman of the NSAC aware of this?"

Mr Assaigo answered:

"Yes".

Colonel Ur then told Mr Assaigo that he did not know the status of the Defence Force aircrafts and that he needed to consult with his staff. Colonel Ur said after the meeting with Mr Assaigo, he went back to Murray Barracks and called Colonel Oala and Lieutenant Colonel Ron Hosea, the Wing Commander. He asked Lieutenant Colonel Hosea on the status of the aircrafts and Lieutenant Colonel Hosea told him that the CASA had sufficient hours to operate and that the job can be done. Colonel Ur said, as the CASA was available, he issued the orders to 'execute' the directions. After he had established that an aircraft was available to assist, he then called Mr Assaigo and Mr Assaigo came to Murray Barracks. When Mr Assaigo arrived, he told Colonel Ur to leave the details of the coordination to him. Colonel Ur then told Mr Assaigo to ensure that he informed and briefed the Chairmen of NSC and NSAC. He said Mr Assaigo told them to leave that to him and assured them he would do it (i.e. inform and brief NSC and NSAC Chairmen).

Colonel Ur said after this meeting, they dispersed. Colonel Oala went to prepare his plans on the security aspects of the operation while Lieutenant Colonel Hosea went to prepare the aircraft and Mr Assaigo went his way to do his part.

Colonel Ur said he did not check with the Prime Minister as provided for under section 10(2) of the Defence Act to verify the directive nor did he check the directive with the Chief Secretary. He said he left all that with Mr Assaigo. Colonel Ur said after the team went to Munda and came back, he was briefed at about 8.30 am on the 10th October, 2006 and he thanked them for the operation. He then briefed the Defence Council. He said that on the next day he briefed the Prime Minister. The briefing of the Prime Minister Sir

Michael Somare was done in the presence of Minister for Defence Hon. Martin Aini, Acting Defence Secretary Mr Fredrick Punangi, the Chief Secretary Mr Joshua Kalinoe, the Chief of Staff to the Prime Minister Mr Leonard Louma and Security personnel. He said at the briefing the Prime Minister said:

"Okay, I now understand where the direction came from, you leave that to me. It is all political. I will handle it".

Colonel Ur said the Prime Minister told him not to go to the Media and not to make any press statements and leave everything to him.

In relation to the directions given Colonel Ur was asked

"So you are telling us that you got your directions from the Chief Secretary and the Prime Minister which was relayed through a civilian Joe Assaigo?"

His answer was

"He is a credible officer in the position and we respect the position, if he says that high authorities have given me those directions, I carry them out. If I disobey, then it means I have been disloyal to the Government. I can be liable ... it is a mutinous act."

Colonel Ur said he acted on the information given to him by Mr Assaigo believing that the directive was coming from the government. That is the relevant oral evidence from Colonel Ur before the Inquiry.

This position is a slight deviation from the Internal Defence Investigation conducted by Colonel (rtd) David Josiah. In his statement to Colonel Josiah, Colonel Ur justifies why he acted on Mr Assaigo's direction in these terms:

"As Acting Commander I believe that the direction was from the government of PNG and it is my duty to carry them out and not question those directions..... In a high context

culture like PNG, the mention of names of people that we have respect for is good enough for me to act upon their direction."

At this Board hearing he never said the Prime Minister was aware of the operation. However in the Josiah investigation he said:

"I asked if Chief Secretary and the old man (PM) are aware of this and Mr Assaigo said yes. So I told him that I will check the status of the aircrafts with staff and then let him know if we can help. Then he gave me his mobile number (6873105) and I left Mr Assaigo's office in Morauta Haus on the third floor".

(b) Mr Joshua Kalinoe

Mr Joshua Kalinoe is the Chief Secretary to the Government. He gave evidence on Oath. He appeared initially on the 14th December, 2006. In that appearance he requested for assistance of counsel after he was asked by counsel as to who gave orders to let Moti go. His appearance was then adjourned to the 3rd January 2007. When he reappeared, he objected to the jurisdiction of the board on two grounds: First he argued that this was a General Board of Inquiry under Regulation 3 of the Defence Force Board of Inquiry Regulations and as such, the Board members were not qualified for appointment. Second he argued that the investigations of the Board should be restricted to Defence Force personnel only.

His objections was overruled and on the 5th January, 2007, he appeared and gave evidence of his knowledge and involvement in the escape of Moti.

(i) Involvement in Escape of Moti

His evidence in both his appearances on the 5th January, 2007, and on 23rd February, 2007 is that he was in no way involved in the planning or aiding and abetting the escape of Moti. His official position as the Chief Secretary is to respect and allow the judicial process to take its normal course before any decision is taken on the Diplomatic Notes as requested by both Australia and Solomon Islands.

In this regard Mr Kalinoe maintained that he has not deviated in his stand on the Moti matter since the NSAC Resolution on Sunday the 8th October 2006.

We find and do accept his evidence that Mr Kalinoe was not involved in any planning to get rid of Moti.

(ii) Knowledge of Moti's Escape

Did Mr Kalinoe have prior knowledge of Moti's escape? In his initial evidence on the 5th January, 2007 Mr Kalinoe maintained that he had no knowledge of the plans to get rid of Moti out of the country. He said:

"I need to inform the board that actually the first time I was made aware of the Moti escape, was when Mr Joseph Assaigo called me about 3 o'clock in the morningon the day of the escape".

This prompted the Chairman to remark that:

"By that time they were well and truly on the way to Munda."

Mr Kalinoe then continued:

"Of course, I was surprised and expressed my anger and disapproval and I did say that there is going to be a lot of problems, he should not have been allowed to leave....."

Other than this, Mr Kalinoe maintained that he was not aware of the plans and had no idea or knowledge of the plans to get rid of Moti. He said in evidence:

"I had no knowledge of any plans..... I was not aware of this plan. Mr Assaigo did not brief me on any plans to facilitate the escape of Mr Moti, I was surprised like everybody else of what happened. Because I was not aware of the plans to facilitate his escape and I was not involved, whatever consequences, he will be responsible."

In an affidavit statement deposed to by Mr Assaigo on the 7th February, 2007 he implicated and contradicted Mr Kalinoc and said that Mr Kalinoc was aware of the plans to get Moti out of the jurisdiction. In his Reply to the Serious Disciplinary Charges preferred against him by Mr Kalinoc, Mr Assaigo said:

"At about 3.30pm the same day, you would recall that you called me into your conference room where short exchanges took place. Your expressions were that you were concerned of being told either by Louma or the Prime Minister himself about removing Moti. We spoke very briefly and you very generally looked at transport, mobility and other logistical options. In a non committed sense, you remarked on the use of Defence Air Transport. You did not make any specific commitments nor gave any specific instructions and there was no notional attitude that any instructions had been given there."

This Reply was by way of a letter dated 29th December 2006 annexed to his affidavit and is now accepted in evidence before this Board. When Mr Kalinoc was recalled on the 21st February 2007, he then admitted to having a short discussion with Mr Assaigo in the presence of his Executive Officer, Mr Job Kasa at about 3.30 pm in his Conference Room on the 9th October, 2006. He maintained his position that:

"I had no knowledge of any plans to transport Mr Moti in the manner it happened. Having said that let me now come to the statement. As far as my knowledge of the removal of Mr Moti is concerned. I have answered it or any plans to that effect, I have answered it in my earlier appearances. With specific references to me in these two documents, firstly, I want to say categorically that I have not; I did not invite Assaigo to come to my office. As I was walking down the corridor, and I can recall he walked in wanting to talk to me about Moti. And I said, look I am going to Cabinet meeting. There is no scheduled meeting or pre arranged meeting for this purpose. In Job Kasa's presence Mr Assaigo mentioned that what if he was going to remove Mr Moti and if he did, whether we will

consider using Defence Force or Police assets or State assets for that matter. Basically my answer to him was no, you don't do anything, you don't use State assets, including Defence Force or Police resources. So basically I responded to that effect and even asked him not to even contemplate doing that. I then reminded him of the NSAC resolution of 8th October 2006. I said NSAC has made a resolution that everything remained as they are. Allow Mr Moti to complete the court case then we can consider the options as they are".

Despite his outright denial of not being aware of or, not being involved in planning the operation or having any prior knowledge of the plans to get rid of Moti, we find on the strength of this evidence that Mr Kalinoe must have become aware of the plan to get Moti out of Papua New Guinea at about 3.30 pm on 9th October 2006. He may not have been involved in the planning and logistics, but became fully aware of the operation, on or about 3:30 pm on Monday the 9th October 2006, while on his way to the NEC meeting.

His own evidence in his first appearance that he was called by Joseph Assaigo at 3:00 am on the early hours of the day of the escape to inform him of Moti's escape corroborates his knowledge of the plan to help Moti escape.

In this regard we find that Mr Kalinoe lied under Oath when he said that he had no knowledge of the plan to evacuate Moti from PNG to Solomon Islands. We accept Mr Assaigo's evidence on this point and find that Mr Assaigo and Mr Kalinoe discussed the logistics and options that were available to execute the direction.

We accept Mr Assaigo's evidence because at his first appearance Mr Kalinoe never mentioned the meeting. Even Mr Assaigo never mentioned this meeting. They appeared to be trying to protect each other. Mr Assaigo spoke out about the meeting between him and Mr Kalinoe only after he was charged with a Serious Public Service Disciplinary Charge and he had to fight the Charge. We accept Mr Assaigo's evidence also because when one considers objectively what might have happened in all probability Mr Assaigo's evidence has a ring of truth.

After he became aware of the existence of the operation he chose not to do anything about it although he had the authority to stop Mr Assaigo executing the plan. However Mr

Kalinoe knew that his was not Mr Assaigo's own doing and that Mr Assaigo was merely facilitating a direction from the top. If he was to stop Mr Assaigo he would put his job on the line. He therefore chose not to stop him and instead did nothing. He also had the opportunity to inform the Chairman and members of the NEC during that afternoon's NEC Meeting but he chose not to do so.

(c) Mr Job Kasa

Mr Kasa is employed as a political analyst in the OSCA office. He reports to Mr Assaigo as his immediate superior. During the period leading to Moti's escape he was acting as the Executive Officer to the Chief Secretary, Mr Kalinoe. In his first appearance before the Inquiry Mr Kasa denied any knowledge whatsoever of the Moti issue either in his capacity as a political analyst with OSCA or even as the acting Executive Officer to the Chief Secretary.

In his second appearance on the 21st February, 2006 Mr Job Kasa then submitted a written statement and also gave evidence on Oath to corroborate Mr Kalinoe's evidence that he (Kalinoe) had no knowledge of nor was he involved in planning Moti's removal. Mr Kasa's undated statement tendered into evidence on 20th February, 2007 also confirmed that the meeting did take place between Mr Kalinoe and Mr Assaigo and what was discussed at 3:30 pm on the 9th October 2006. In his oral evidence, he confirmed and corroborated Mr Assaigo's evidence that although the meeting was short, Mr Assaigo and Mr Kalinoe briefly looked at logistical options in the event that Moti was to be removed. When questioned by counsel as to when he prepared the undated statement, he said:

"Just yesterday"

This meant 19th February, 2007.

Mr Kasa never mentioned the 3.30 pm meeting of the 9th of October, 2006 between Mr Kalinoe and Mr Assaigo at his first appearance, although he knew. This was an important meeting because in that meeting they discussed briefly transport and other logistical options in relation to Moti's escape. He only mentioned the meeting after Mr Assaigo's affidavit was tendered into evidence.

Again this witness tried to conceal this very important event leading up to the escape of Moti.

Why was Mr Kasa silent on this meeting when he first appeared to give evidence?

It was an important meeting that went to address the question of whether or not Mr Kalinoe was aware of the plans to get rid of Moti. Yet Mr Kasa did not utter a word in relation to that meeting. It appeared that Mr Kasa was hiding the truth from being said. We find that Job Kasa lied under Oath when he said that he had no knowledge of any plans to get rid of Moti. Mr Kasa was indeed aware of the plans to get rid of Moti.

(d) Mr Joseph Assaigo

On the 9th of October, 2006, at about 11.47 am Mr Assaigo said he was called by Leonard Louma, the Chief of Staff to go and see him at his office on the 5th Floor of Morauta Haus.

When Mr Assaigo arrived at Mr Louma's office, Mr Louma requested him in these terms:

"What have you done with Moti" to which Assaigo replied "I have done nothing with Moti, Moti is in court" Mr Louma then said "No, you have to get rid of him".

Mr Assaigo then left to look for the Chief Secretary Joshua Kalinoe but could not find him. Then Mr Louma telephoned him the second time, so Mr Assaigo went to his office.

"This time Mr Louma directed me why don't you go and coordinate with Police or Defence - coordinate is probably not the right word, it is kind of a mandatory directive, go and deal with Defence or Police and get rid of him".

Mr Assaigo then told Mr Louma that seeing that he is giving these directions, if anything goes wrong he should be prepared to:

"Cover his tracks"

to which Mr Louma replied:

"Just go and do it."

Mr Assaigo then left and called Acting Commander Alois Tom Ur to go to his office. When he arrived, Colonel Ur was told of the directives and that he was to look at options to get rid of Moti that night.

In the afternoon of the 9th October, 2006 Mr Assaigo went to Murray Barracks and met Alois Tom Ur who was with his military strategists and planners at the time working out the details of the plans to get rid of Moti. He told them that if they felt that there was going to be problems, they are to abort the mission. He then left and went back to his office.

Around 5pm on the same day, that is 9th October, 2006 Mr Assaigo said that Alois Tom Ur called him and told him to go to Murray Barracks. He said he went over and the plan was relayed to him by Alois Tom Ur and his officers. He then left.

He said the next thing he knew about the matter was when someone called him by phone at 12 midnight. He was told that Julian Moti was taken out from Solomon Islands High Commission in a white car and that they would have problems getting into the Defence Force hanger and required his immediate assistance.

Mr Assaigo said he then drove to the junction leading into the Defence Force hanger just after the end of the airport bridge and met Moti and the others where he picked them up and drove them to the Defence Force Hanger.

He said that at around 12.30 am or 12.45 am the CASA took off and he went back home. He said that the next morning, he received a call from someone to say that the mission was a success and that it had returned to base. He said he did not know who called him, he said he then rang Joshua Kalinoe to tell him about the success of the mission.

Mr Assaigo said that on the 9th of October, 2006 he went to see Mr Louma and told him again that:

"If for some reason things go wrong, he would have to cover his tracks".

He was then told by Mr Louma that:

"He need not worry and that they will sort it out diplomatically and administratively".

Mr Assaigo maintains that:

"My job was to convey instructions or directives and that are exactly what I did, I only facilitate directives that come from NSAC or the NSC or any higher authorities....."

Mr Assaigo also said that he was under extreme political pressure to do what he did from Mr Louma and Barnabas Rongap. In relation to Mr Rongap, he said that on the 8th of October, 2006, prior to talking to Mr Louma, Mr Rongap met him and said:

"Louma has given you and Chief Secretary a direction, you have not carried it out, and he has asked me to find out what is happening".

Note that on the 29th of September, 2006 the Deputy Prime Minister (then Acting Prime Minister) wrote to the Acting Police Commissioner to

"Immediately release Moti within the next hour."

The Prime Minister, on the 4th of October, 2006 said:

"Get rid of Moti."

We do not know when the initial direction to get rid of Moti was given. This is apparent because Mr Rongap and Mr Louma told Mr Assaigo that he and the Chief Secretary were defying the Prime Minister's direction. This implied that the direction to get rid of Moti was given before the 9th October 2006. On the 9th of October 2006, the Chief of Staff Leonard Louma followed up the instruction to get rid of Moti.

This appears to be consistent with the positions taken by the Prime Minister and the Deputy Prime Minister.

On the 8th of February, 2007 Mr Joseph Assaigo filed an affidavit in the National Court. The evidence deposed to confirms the oral evidence he gave before the Board of Inquiry. In fact the affidavit showed more details regarding his evidence.

For instance, at paragraph 8 he stated:

"On the 8th of October 2006, I was instructed by Ambassador Rongap that the Prime Minister had directed the Chief Secretary and I to get rid of Julian Moti..."

Then again on the 9th of October, 2006 the Chief of Staff met him at the lift and told him that he and the Chief Secretary are defying the Prime Minister's directives. At 3.30 pm Mr Assaigo said he met with Chief Secretary Mr Kalinoe in his Conference Room and they discussed logistics as to how to get rid of Moti. Note that this piece of evidence never came to the fore until Mr Assaigo filed his affidavit. When this was put to Mr Kalinoe, he remembered that indeed there was such a meeting. Job Kasa also confirms this meeting but in their initial evidence both men (Kalinoe and Kasa) vehemently denied having discussed this with Mr Assaigo at any stage previously and further denied any knowledge of any plans to get rid of Moti.

The affidavit also states that the Prime Minister through his Chief of Staff had directed that both Assaigo and Kalinoe get rid of Moti. Assaigo was to liaise with either the Police or the Defence Force to effect this purpose.

We find that Mr Assaigo's evidence was not truthful on matters such as who the ninth passenger on the Casa aircraft was and who called him from the Brima bridge. However we find Mr Assaigo's evidence has been consistent right from the start in relation to where the order or direction came from to get rid of Moti.

Furthermore we find that Mr Assaigo could not have acted alone, as Louma, Kalinoe, Rongap, Kasa and the Prime Minister would have liked all of us to believe. We also find that Mr Assaigo was really a facilitator down the line to undertake or carry out any tasks he was directed to do. He had no power to give directions to get rid of Moti or the power to direct the Commander of the Defence Force to fly Moti out in a Defence Force aircraft.

The only body and persons who are "higher up" that could give such directions are the NEC through the Minister for Defence or the NEC itself as provided for under section 204 of the Constitution. Persons higher up in rank to Mr Assaigo are the Prime Minister Sir Michael Somare, Mr Kalinoc, the Chief Secretary and Mr Louma.

(e) Mr Leonard Louma

(1) Mr Leonard Louma First Appearance Evidence

Mr Leonard Louma is employed as the Prime Minister's Chief of Staff. He has been employed as the Chief of Staff for three years now. Previously he worked with the Foreign Affairs Department for twenty two years having worked his way up to the position of Deputy Secretary – Policy when the Prime Minister recruited him as his International Relations Advisor on 7 August, 2003. He said he knew Joseph Assaigo when he was working with Foreign Affairs Department. Joseph Assaigo was then employed in the Immigration Division and held positions in the Pacific Branch having been posted on several occasions. His latest posting was as PNG's High Commissioner to Solomon Islands.

Mr Louma said that as Chief of Staff he reports directly to the Prime Minister. However, in discharging his administrative duties, his line of communication to any Department is through the Departmental Head which is the Chief Secretary Mr Kalinoc. He also said that there are certain office holders that he deals directly with. They are the First Legislative Counsel, the Cabinet Secretary and the Chief Secretary.

He said he has never dealt with Mr Joseph Assaigo as Director General of OSCA. He said he has never dealt with him at any official level during his term as Chief of Staff to the Prime Minister, that he never gave direction to him on any matter nor did Mr Joseph Assaigo report to him on any matter. Mr Steven Raphael who is now Acting Director General of OSCA said in his evidence that it is part of his duty to brief the Chief of Staff to the Prime Minister daily and weekly on matters of National Security. Mr Louma's evidence on that aspect has been contradicted by the current acting Director General of OSCA, Mr Steven Raphael. To this end we find

that Mr Louma was not a truthful witness when he asserts that he does not deal in any way at all with Mr Assaigo. 2

The evidence by Mr Assaigo was that Mr Louma was the person who gave direction to him to get rid of Moti. He has vehemently denied issuing this direction and has maintained that denial all through out his evidence. When it was put to him that he was identified as the person who gave the direction to Mr Assaigo to get rid of Moti, he said:

"My only line of communication with the Department is only through the Chief Secretary to the Government."

Apart from the Chief Secretary the two other persons that he has direct contact with are Ms Winnie Kiap the Cabinet Secretary and Mr Hudson Ramatlap, the First Legislative Counsel. Any communication at all is through these three people. He said that any directions which are initially verbal are always followed up in writing.

In response to questions from a member of the Board as to examples of the above, he gave an example of going to the Cabinet Secretary direct to fast track submissions in respect of appointments. He also gave examples of fast tracking of acting appointment of Ministers by going direct to the First Legislative Counsel and the Cabinet Secretary. In his official capacity as the Chief of Staff to the Prime Minister, he has never dealt with Mr Joseph Assaigo on any matter at all.

We note that Mr Steven Raphael, the current Acting Director General of OSCA briefs Mr Louma on a weekly basis on national security matters and sometimes on a daily basis. When asked by counsel whether he dealt with him in his official capacity, he said yes I dealt with him in my official capacity on several occasions.

Mr Assaigo's evidence was that Mr Louma called him into his office on the 9th October, 2006 on the 5th floor of Morauta Haus at about 11.47 am and directed him verbally to get rid of Moti. In response to this, he maintained that he never gave any verbal direction to Mr Assaigo at any point in time. He maintained that he could not either recall having an appointment or seeing Assaigo at the above time. 3

He said the first time he heard of the Moti escape was through the Media just like everybody else. He further stated that on the 5th or the 6th of October, 2006, he attended a committee meeting at the Foreign Affairs Department. In attendance at the meeting were Veali Vagi, Lucy Bogari, and a representative of the Attorney Generals Department. The committee was established by the Chief Secretary to investigate and to give the government's position on the issue. The meeting agreed that the legal process should be allowed to take its course.

He said that on the 6th, 7th or the 8th October, 2006, Joseph Assaigo came back to his office whilst he was chatting with his staff. He said he just walked in, saw him with his staff and walked out of the office again but further said that he never made an appointment with Joseph Assaigo to come to his office for a direction to be given to him. He said that it is not his line of communication, so how could Mr Assaigo come up with such a notion that he called him in specifically to give him a direction.

He said that on Wednesday 11th October 2006 he accompanied the Prime Minister to Alotau for the Governors Conference and they arrived back in the afternoon the same day. Waiting at the airport was the Acting Defence Commander, Defence Secretary and Chief Secretary to brief the Prime Minister about Moti's escape. He said that was when they formally heard from somebody that Moti had been spirited away on a CASA aircraft. When questioned by counsel why Mr Assaigo would be mentioning his name, he said he would be speculating if he gave any reasons.

When counsel put to Mr Louma that the Prime Minister and the Chief Secretary knew of the Moti operations before hand he vehemently denied that they had any knowledge of the Moti escape before it happened. In respect of Mr Kalinoc, he said he really did not know. How could Mr Louma know for sure that Mr Kalinoc did not know, when Mr Kalinoc in his own evidence admitted Mr Assaigo and him generally discussed logistics, mobility and transport at that 3:30 pm meeting on the 9th of October 2006.

Upon further questions by counsel, he further denied that another Prime Minister's staff Barnabas Rongap also followed up his verbal direction to Joseph Assaigo to get rid of Moti.

In respect to an NEC submission dated 27 October, 2006, that was sponsored and signed by the Prime Minister that Julian Moti case was never a National Security concern and did not pose a security threat to PNG, the Chief Secretary as the Chairman of the NSAC gave instructions for Mr Moti to be transferred to Solomon Island in a clandestine operation, Mr Louma said he had no knowledge of this submission. We noted that the Julian Moti matter was discussed by the NSAC as a security matter on the 8th October, 2006.]

In response to the Chairman's question, whether there are submissions which he does not see or do not come to his attention before they go to the Prime Minister, and he said 'yes'. There are a many submissions that he does not get to see before they get to the Prime Minister, because these are submissions that maybe coming directly from the line agencies.

In respect of the two Solomon Islands envoys Chris Hapa and Robson Tanabose, he said he did not know them and was not sure whether he met them at his office.]

He said that after he came back with the Prime Minister from the Governors Conference in Alotau there was an NSAC meeting at the Government Flying Unit where the Prime Minister was briefed of the escape. At that meeting, was Mr Fred Punangi, Mr Tom Kulunga, Colonel Tom Ur, Minister for Defence Hon. Martin Aini and Chief Secretary Kalinoe. During that meeting, the Prime Minister having being briefed by the Acting Commander said this:

"It's now become very political, leave it with me".

Mr Louma was asked whether he was aware of the Prime Minister uttering such a comment, to which Mr Louma said:

"Yes, I overheard him say that".

The above is basically Mr Louma's evidence in his first appearance.

(2) Leonard Louma's Recalled Evidence

On the 16th February 2007, Mr Louma was recalled to verify certain information that was contained in Mr Assaigo's affidavit filed on February 7, 2007 at the Waigani National Court. In the affidavit, Mr Assaigo states that at about 9:30 am on October 9, 2006 he was on his way to the lift when he met Mr Louma who asked him as to what was happening to Julian Moti. Mr Assaigo replied:

"What's happened to him?"

Mr Louma then told him, the Chief Secretary and Mr Assaigo were defying the directions of the Prime Minister and that I should convey his disappointment to the Chief Secretary. Mr Assaigo then advised Mr Louma to settle down and discuss the matter properly with Chief Secretary instead of reflecting on them in public. Again Mr Louma has vehemently denied this allegation.

On 9th October 2006, Mr Assaigo deposed that:

"Mr Louma called me and requested that I must go and see him after his attempts to meet with the Chief Secretary had failed. I arrived at Mr Louma's office at about 11.07 am on the same day, where Mr Louma said that the Prime Minister was very disappointed in the Chief Secretary and I in failing to facilitate his directions to remove Mr Moti out of PNG jurisdiction. I then requested Mr Louma to engage in dialogue and consult with the Chief Secretary before seeing the Prime Minister on the matter. I then left Mr Louma's office at about 11.40 am".

Again Mr Louma vehemently denied this meeting and discussions with Mr Assaigo.

Mr Assaigo deposed that at 11:57 am:

"Mr Louma rang me to advise that the Prime Minister had given further directions to remove Moti out of PNG and that Mr Louma was now conveying the direction to me".

]

Again Mr Louma vehemently denied that telephone conversation.

Mr Assaigo further deposed that:

"I went back to see Mr Louma and arrived at about 12.04 pm on 9th October, 2006 wherein he advised me to forget about the Chief Secretary and for me to direct the Eye In the Sky (Police Chopper) or the PNGDF Air Squadron Unit to remove Moti out of the jurisdiction of PNG. Because of the risks involved, I then left Mr Louma's office and went to see the Chief Secretary to discuss the matter but the Chief Secretary was not in. I then left for Mr Louma's office where Mr Louma looked agitated, angry and disappointed. I then informed Mr Louma that the Chief Secretary had to be consulted on the matter before the directions can be carried out".

Again Mr Louma vehemently denied the meeting and the conversation.

This is basically the evidence of Mr Louma when he was recalled. He denied all the allegations in Mr Assaigo's affidavit.

(3) Aspects of Mr Leonard Louma Evidence

The following aspects of Mr Louma's evidence must be noted.

When Mr Louma was recalled, he was asked by counsel if he had any differences at all with Mr Assaigo to which he said:

"No".

He was further asked by counsel if they were enemies to which he said:

"No".

He was unable to explain to the Board why Mr Assaigo would be making all these stories up and naming him as the person who gave the order. When Mr Louma was questioned by counsel again as to why Mr Assaigo would be making all these stories up, he said:

"Maybe to try and create an impression that whatever decisions he took were sanctioned by somebody higher in authority".

When questioned by a member of the Board as to recalling and denying of dates he said:

"There were a number of dates including the 9th of October, 2006 which he said he could not recall".

When questioned again that there was a difference between recalling and denying, he said:

"I cannot recall those dates".

The inference here is that if he cannot recall, he could have called Assaigo and the meetings and the conversations could have taken place but he is deliberately lying. That amounts to being vague and evasive.

This is confirmed by the fact that he also lied when he denied calling Mr Assaigo:

"A small boy"

but the transcript showed otherwise.

(f) **Prime Minister, Grand Chief Sir Michael Somare**

Sir Michael was issued and served a summons to appear before the Board of Inquiry. He did not appear in person but filed a statement dated 15th January, 2007 and subsequently an affidavit dated 23rd February, 2007. In both the statement and the affidavit, he denied giving the directions to anyone or any government officer or his

staff including Mr Louma to arrange to have Julian Moti flown out of PNG using the PNGDF Government resources and facilities. The Prime Minister made a statement on the floor of Parliament on the 15th November, 2006 which he made to the people of PNG. The statement and the affidavit were presented to the Board.

In the Radio Karai interview on the 4th October 2006, the Prime Minister made the following statement:

"Solomon AG is not our problem, its Australia's problem. Now if it is Australia's case it should be deal with Australia and Solomon Islands. They came here and we have no law under our Act to hold people in ransom. He came here, he is entitled free passage from us to go to Solomon Islands. However, there is so much delay, everybody is being involved in this issue, Police goes and arrests a man, instead of trying to find out from the proper channels how we should handle the issue. Police goes and does this, who are they listening to, who is commanding them tothe orders. Certainly, it didn't come from the Commissioner of Police. And there are officers who go and do that and where are we punishing these officers. My point is and very clear, he must have extradition understanding between the two countries., MOUs we don't have one at the moment to keep people, he is an Australian passport holder, that Australia deals with the problem. He was only passing through us. And my view the other day was just to make sure that he gets past our system and goes through because when Australia say that he is being implicated, but what offence, in the case of law he is being cleared by court of law on Vanuatu, how come the Australians are saying, they have to hold him up, no I don't see something wrong with the system. The law of Vanuatu is an Act that is elected by Vanuatuans. And when Vanuatu found that you know not enough evidence they dismiss the case. Once they dismiss the case that's it, you don't go retrieve, unless Vanuatu courts does that and Vanuatu Government here but how come Australian Court officers taking great interest in this particular issue".

We noted the denial by the Prime Minister on issuing of specific instructions to government officers and his staff to arrange to have Moti flown out of PNG using government resources and facilities. The Prime Minister has not denied issuing a general direction to 'Get Rid of Moti', or "Let Moti Go". In a Karai Radio Interview on the 4th of October 2006, he made a statement saying:

"Let Moti Go".

He admitted making this statement but said it was an:

"Off the cuff statement".

If it was an off the cuff statement, it was insensitive as the matter was before the Court and therefore sub judice. As Prime Minister of the country, he should not have made the unprepared, unplanned, unintended and impromptu statements especially when the matter was still before the court and as it ultimately turned out Moti was allowed to go without being tried in Court and absconding bail.

7.1.2 Assessment of the Evidence

The question is who gave the direction to get rid of Moti? Evidence is varied on this matter. According to Colonel Tom Ur the direction to get rid of Moti was conveyed to him by Mr Assaigo in Mr Assaigo's office on the third floor of Morauta Haus on the 9th October, 2006 at about 11 o'clock am. Mr Assaigo had informed Colonel Ur that the direction was from the Government. Who in particular was referred to as the "Government" is not clear.

In his evidence on the 5th of January, 2007 Mr Assaigo said the direction to get rid of Moti came from the Prime Minister through Mr Leonard Louma, his Chief of Staff. During his evidence it was put to Mr Assaigo:

"Okay, you tell us the sequence of events from your perspective".

His answers were:

"..There was no intention or there was no to talk on my part to Tom Ur then about Moti. But Commissioners, the issue as to who gave the direction for his removal, is where it becomes a universal thing, em process pinis, I may not be the key witness in this".

Then he was asked:

"Then who is the key witness?"

He replied:

"The key witness will tell you where the action came from and it's from the Chief of Staff Leonard Louma. Leonard Louma gave me that direction".

He was further asked:

"What was the direction to you?"

Mr Assaigo replied:

"The direction was Moti is gving us problem that is not ours, can you get rid of him".

That was on the 9th October, 2006. Then he said:

"About what time on the 9th".

He replied:

"This would be around, I have it on my diary just before 11.47 I think when I was called by him to go and see him at his office".

Mr Assaigo stated that he was under

"Extreme political pressure"

to carry out the direction. Mr Assaigo was recalled and asked to respond to Leonard Louma's evidence on 16th January, 2007 that he did not tell Joseph Assaigo that there was a government directive to get rid of Moti. Mr Assaigo replied:

"If that is his story, I maintain mine".

In his evidence on the 20th February, 2007 an affidavit filed in the National Court in proceedings No OS 58 of 2007 (JR) was tendered into evidence before the Board. In his affidavit he stated the following:

Paragraph 6:

On or about 8 October 2006, I was instructed by Ambassador Rongap that the Prime Ministers Chief of Staff had advised him that the Prime Minister had directed the Chief Secretary and I to get rid of Julian Moti and that we were not complying with the directions.

Paragraph 7:

I responded by saying that there was a court case involved in respect to Julian Moti and any action would more or less pre-empt such process. Ambassador Rongap then said that he was merely saying what Louma had expressed to him.

Paragraph 8:

At 9.30 am on 9th October, 2006, I was met by Mr Louma whilst on my way to the lift and he asked what was happening to Julian Moti. I then replied by saying, "what happened to him," Mr Louma then said that the Chief Secretary and I were defying the directions of Grand Chief Sir Michael Somare and that I should convey his disappointment to the Chief Secretary. I then advised Mr Louma to settle down and discuss the matter properly with the Chief Secretary instead of reflecting on them in public.

Paragraph 9:

At about 3.30 pm I was called by the Chief Secretary into his Conference Room where the Chief Secretary expressed concerns that he was being told by Mr Louma or the Prime Minister to remove Moti out of PNG's jurisdiction. The Chief Secretary and I spoke about the matter and the logistical options available to ask to remove Moti out of the jurisdiction.

Paragraph 10:

On 9th October, 2006, Mr Louma called me and requested that I must go and see him after his attempts to meet with the Chief Secretary had failed. I arrived at Mr Louma's office at 11.07 am on the same day where Mr Louma said that the Prime Minister was very disappointed with the Chief Secretary and I in failing to facilitate his direction to remove Moti out of the jurisdiction. I then requested Mr Louma to engage in dialogue and consult with the Chief Secretary before seeing the Prime Minister on the matter.

Paragraph 11:

At about 11.57 am Mr Louma rang me to advise that the Prime Minister had given further direction to remove Moti out of PNG and that Mr Louma was conveying the direction to me.

Paragraph 12:

I then went to see Mr Louma and arrived at about 12.04 pm on 9th October, 2006, where he advised me to forget about the Chief Secretary and for me to direct the "Eye in the Sky" or the PNGDF Air Squadron Unit to remove Moti out of the jurisdiction of PNG. I then returned to Mr Louma's office where he looked agitated, angry and disappointed.

Paragraph 13:

Mr Louma then directed me to go and facilitate Mr Moti's trip to the Solomon Islands and that the Prime Minister would speak to me about it later. I then sought assurance from Mr Louma, if I was to facilitate such a risk, he and the Prime Minister must protect me if the task failed. Mr Louma, the Chief of Staff then assured me it was the direction of the Prime Minister to transport Mr Moti out of PNG to Solomon Islands and that the Prime Minister would protect me.

lawyer

Mr Leonard Louma's evidence as to who gave the direction to get rid of Moti has been a total denial that he gave the direction to Joseph Assaigo.

So was Joseph Assaigo lying on Oath before the Inquiry when he gave sworn evidence? Was he also lying on Oath when he filed his affidavit in court in proceedings OS 58 of 2007? Joseph Assaigo is a lawyer and is aware of the consequences of lying on Oath. He also knows the severe consequences that flow from deliberately lying in court or misleading the court.

We have carefully considered the entire evidence of Mr Assaigo in view of evidence from key witnesses namely, the Prime Minister, Mr Louma and Barnabas Rongap.

After having heard Mr Assaigo and having carefully assessed his evidence, on the aspect as to who gave the direction, we find Mr Assaigo's evidence to be and accordingly find that the direction to get rid of Moti came from the Prime Minister Sir Michael Somare and conveyed through Mr Leonard Louma who is his Chief of Staff.

We come to that finding for the following reasons:

- (a) Mr Assaigo has consistently maintained that the direction to get rid of Moti came from the Prime Minister through Leonard Louma.
- (b) Mr Assaigo has consistently maintained that position right throughout the proceedings despite his credibility being tested under vigorous cross examination.
- (c) Mr Assaigo was a junior officer in rank compared to Mr Louma and the Chief Secretary Mr Kalinoe.
- (d) The chain of command from the Prime Minister to the Public Servants is through the Chief of Staff and vice versa from the Public Servants through the Chief of Staff to the Prime Minister. (Evidence of Mr Louma).

Mr Assaigo's evidence on critical aspects has been clear and more truthful than that of Mr Louma whose evidence has been vague and evasive. For instance, he was vague and evasive in that when asked whether he met with Mr Assaigo on the 9th October, 2006 at about 11.47 am at his office, he said he could not recall.

Mr Assaigo maintains that he made various telephone calls to Mr Louma on the 9th October, 2006 at about 11.47 am. He then said he went up to Mr Louma's office at about 12.04 pm again to which Mr Louma said that he cannot recall, again being vague and evasive.

When Mr Louma was recalled to give evidence on the 16th February, 2007 it was put to him whether he referred to Mr Assaigo as a small boy in his earlier evidence on 10th January, 2007, he denied ever calling Mr Assaigo a small boy and said it was not in his character to demean a person in that manner. However when the transcript was shown to him that showed his remarks, he said:

"Did I really say that?"

Here he was absolutely evasive but he got caught this time. The transcript did not and does not lie.

Mr Louma's evidence that he gets direct instructions from the Prime Minister gives credence to Mr Assaigo's evidence that the directions to get rid of Moti came from the Prime Minister through Mr Louma.

We have been urged to consider the entire scenario objectively which we do and consider that in the circumstances Mr Rongap who is a Prime Ministerial staffer was aware of the direction from Leonard Louma to Mr Assaigo which he conveyed to Mr Assaigo. This is a more probable happening than not, given all the circumstances.

Mr Assaigo said that he saw the two Solomon Island envoys namely Chris Hapa and Robson Tanabose in Mr Louma's office on the morning of the 9th October, 2006. At his first appearance, Mr Louma completely denied the two men being in his office. At his second appearance when counsel asked him 'whether he met these guys', to which he answered:

"It was the first time that I met them, I've never met them, and I don't know who they are".

Here, Mr Louma is evasive, vague and puzzling.

On the contrary, we find the evidence of Mr Leonard Louma, the Prime Minister and Mr Kalinoe unreliable. We make our findings for the following reasons.

On the floor of Parliament, the Prime Minister was misinformed and subsequently misled the Parliament when he said 'Moti was discharged by a competent court in Vanuatu' when a letter dated 20th February 2007 from the Registrar of the Supreme Court in Vanuatu read:

"While we assure Your Honour our willingness to assist it is our view that it would be improper to divulge the records of the Supreme Court of Vanuatu in this instance as the criminal matter of PP vs Julian Moti is still pending before the Supreme Court of Vanuatu for the hearing and determination of an application in the matter therefore making the matter sub judice.

The pending application before the Supreme Court was filed by the Public Prosecutor of the Republic of Vanuatu on the 8th September, 1999. It is a notice of ex parte application for leave to apply for order of certiorari to remove from the Magistrates' court into the Supreme Court and quash the decision of the Senior Magistrates' Court dated 23rd August, 1999 in dismissing charges against Mr Moti and not committing him for trial upon information. The Notice of Application was accompanied by affidavits in support.

The application is pending because the defendant in the matter had not returned to the Vanuatu jurisdiction and therefore unavailable to be heard by the Supreme Court of Vanuatu and the Public Prosecutor had not applied for the withdrawal of the application which is therefore pending hearing and determination by the Supreme Court of Vanuatu and therefore sub judice".

The Prime Minister is the final person in the Executive Government. Everything stops with him and yet he puts the blame on his subordinate Mr Assaigo.

Mr Kalinoc is the immediate Departmental Head that Mr Assaigo is responsible to, and yet blames his subordinates.

Mr Kalinoc became aware of the plan to get rid of Moti at about 3.30 pm on the 9th October, 2006 but chose to do nothing about it. +

In our view Mr Kalinoc knew the direction to get rid of Moti came from the top and not from Mr Assaigo, therefore, he was not in a position to stop it. If it was from Mr Assaigo, it would have been within Mr Kalinoc's authority to stop him. In this instance, Mr Kalinoc knew the direction came from the top and therefore he had no authority to stop it. Furthermore, Mr Kalinoc failed to raise the matter with the NEC through the Chairman. The fact that he failed to raise the matter to the NEC through the chairman in our view gives credibility and strengthens Mr Assaigo's evidence that the direction to get rid of Moti came from the top and therefore he could do nothing. That was Mr Kalinoc's first and the best opportunity to have and stop the operation to get rid of Moti. But why did he not intervene? If he did, the Prime Minister will be angry and he could be sacked.] NB

When briefed by Colonel Ur on the 12th October, 2006, at 3.30 pm the Prime Minister is reported to have stated the following:

"Now that he knew who was the source from his department, he will take it from there on it's all political so leave the matters to me" .]

Was the Prime Minister accepting responsibility then?

We consider that the decision to get rid of Moti is a decision which a public servant in the position of Mr Assaigo is difficult to make at his own instigation. Objectively looking at the whole matter, the direction most likely came from the Prime Minister through his Chief of Staff and yet the Prime Minister cannot possibly accept the responsibility for issuing those directions.

The above are the reasons we do not accept the evidence of the Prime Minister, the Chief Secretary, the Chief of Staff and Barnabas Rongap.

7.1.3 Findings of Evidence

We find that there is uncontradicted evidence that neither the NEC nor the NSC gave the orders to secretly evacuate Julian Moti out of PNG's jurisdiction. That evidence is given by the Secretary to the NEC, Ms. Winnie Kiap and the Chief Secretary, Mr. Joshua Kalinoe. Even if they did, this understandably would not have been disclosed for obvious reasons. Mr Assaigo in his affidavit sworn on the 7th February 2006 said that the direction may have come from the NEC, however in our view neither the NEC nor the NSC gave any orders to get rid of Moti, because this Inquiry was set up by the Minister for Defence at the instigation of NEC. Any decision by the Government to fly Moti out of PNG would have to come from the National Parliament pursuant to Section 205 of the Constitution.

The next question then is who gave the orders, and how far up the chain of command? The evidence in this respect is circumstantial. We find as a matter of fact that neither the National Parliament, the NEC nor the NSC gave any directions to have Moti secretly flown out of PNG in a PNGDF Casa aircraft. Therefore the National Parliament, the NEC and the NSC were not parties to the decision. The Board has now carefully assessed and considered all the following evidence in order to answer this question:

- a) After Julian Moti was arrested on the 29th September 2006, two Diplomatic Notes were sent to the Government of PNG. The first Diplomatic Note No. 1090/06 and dated 2nd October 2006, was from the Government of Australia requesting that Moti be extradited to Australia to face serious criminal charges in relation to having sex with a child under the age of 16 years.
- b) The second Diplomatic Note No. 39-2006 and dated 4th October 2006 was from the Government of Solomon Islands requesting cooperative intervention by PNG Government to provide Moti safe passage to the Solomon Islands. In this 5 page Note, the Government of the Solomon Islands gave reasons why it wanted PNG to accord safe passage to Moti to travel to Solomon Islands. The Solomon Islands Government appealed to the PNG Government and passionately requested PNG's assistance to accord Moti safe passage in this sentiments:

"As the founding country of the Melanesian Spearhead Group and our region's largest nation that has pioneered the establishment of a capable and independent Melanesian identity, the Solomon Islands Government now seeks to secure your understanding and co-operation in our effort to resolve the existing impasse..."

- c) The SI Government through the same Diplomatic Note also requested the PNG Government to direct the PNG Public Prosecutor to immediately withdraw and discontinue the pending court case against Julian Moti under section 176(3)(b) of the Constitution. Furthermore the Note similarly requested the PNG Government:

- "1. To advise the Head of State to direct the Public Prosecutor to immediately withdraw and discontinue pending proceedings against the Attorney General, pursuant to the provisions of section 176(3)(b) of the PNG Constitution.*
- 2. Alternatively, upon the undertaking of the Solomon Islands Government and the Attorney General which are hereby given, the Attorney General be allowed to travel to Honiara forthwith to assume his official duties on the condition that he will be returned to Papua New Guinea for the purposes of attending future judicial proceeding.*
- 3. To facilitate the continued pursuit of pending proceedings in a manner which is conducive to the preservation of mutual respect for our institutions and sovereign goodwill, the Solomon Islands Government requests to the Papua New Guinea Government to assign a senior legal practitioner from its Public Solicitor's office to handle our Attorney General's legal representation henceforth.*

4. *The Papua New Guinea Government is earnestly requested to exercise its good offices in negotiating with the Public Prosecutor for :*
 - (a) *His official consent for dispensation of the Attorney General's personal attendance in the present proceedings to enable him to travel to Honiara immediately to take up his official duties;*
 - (b) *His agreement not to oppose the Attorney General's application for a stay of execution of any warrants for arrest of the Attorney General; pending the hearing and determination of appellate and judicial review proceedings;*
 - (c) *The immediate release and delivery of the Attorney General's possessions which were impounded by the Transnational Crime Branch of the Papua New Guinea Police Force on September 29, 2006.*

5. *The Attorney General be permitted to pursue his constitutional and statutory rights of appeal and judicial review of the legally-flawed process for his initial arrest and subsequent detention in Papua New Guinea by its police and prosecution officers".*

d) To continue to pursue their request for Moti's safe passage, two senior Government officials, Mr. Robson Tanabose, senior public servant and Mr. Christopher Hapa, a lawyer were dispatched to PNG with a Letter of Introduction dated 3rd October 2006 signed by the Solomon Islands Prime Minister Manasseh Sogavare to his PNG counterpart Grand Chief Sir Michael Somare. The letter stated that:

"My dear Prime Minister,

LETTER OF INTRODUCTION

Messrs Robson Tanabose, the Director General of Policy Implementation and Evaluation in the Prime Minister's Office and Mr Christopher Hapa, the Legal Counsel engaged

by the Solomon Islands Government in Mr Moti's case will deliver this letter personally to you.

I am sending these two gentlemen as representatives of the Solomon Islands Government to provide personal assistance to Mr Moti in the extradition case he is facing with the Australian Government in Port Moresby.

I request your personal assistance in according the two gentlemen all the assistance they need to carry out their assignment.

Yours sincerely,

(Signed)

Manasseh D. Sogavare, MP

PRIME MINISTER

- e) Mr Assaigo's initial evidence is that he saw these two Solomon Islanders in Mr. Leonard Louma's office on the morning of the 9th October 2006. Were they there to deliver the Letter of Introduction and the Diplomatic Note to the Prime Minister or were they there by mere coincidence? In all probability we find that they were there to deliver the letter of Introduction and the Diplomatic Note.
- f) The evidence of Joseph Assaigo is that Leonard Louma, the Chief of Staff of the Prime Minister's Office conveyed the Prime Minister's direction to him and the Chief Secretary, Mr. Kalinoe to find ways to get rid of Moti from PNG. This direction was followed up by another Prime Ministerial staffer Mr. Barnabas Rongap. Both Mr. Louma and Mr. Rongap have vehemently denied this evidence, and have branded Mr Assaigo as a liar. The Prime Minister Sir Michael has also denied giving any directions to Mr. Assaigo, Mr Louma and other staff. He has also branded Mr Assaigo a liar and said he should be charged for perjury. His statements branding Mr. Assaigo a liar were made at various press conferences and this Board of Inquiry.

- g) Colonel Tom Ur, the Defence Force Chief of Staff also gave evidence in which he said that when he asked Mr Assaigo as to whether the Prime Minister and Chief Secretary were aware of the Moti operations, to which Mr Assaigo said "yes". In his affidavit Mr. Assaigo gave details of Chief Secretary Kalinoe's knowledge of the plot to get rid of Moti. He said:

"At about 3:30 pm the same day, you would recall that you called me into your Conference Room where short exchanges took place. Your expressions were that you were concerned of being told either by Louma or the Prime Minister himself about removing Moti. We spoke briefly and you very generally looked at transport, mobility and other logistical options. You did not make any specific commitment nor gave any specific instructions..."

- h) After the receipt of the two Diplomatic Notes from Australia and the Solomon Islands, the PNG Government appeared to have taken two inconsistent positions: The first is a bureaucratic position taken by the Waigani bureaucrats based on the NSAC decision. The bureaucratic position in acknowledgement of the Extradition Requests was to await the outcome of the extradition proceedings against Moti which were pending in court. This is well expressed in PNG's Diplomatic Note No: 109/06 to Australia's requests for extradition. The second position is the political position taken by the Prime Minister and the Deputy Prime Minister of PNG. This position is contained in the letter dated 29th September 2006 from the Deputy Prime Minister Honourable Don Poiye to Tom Kulunga, Acting Police Commissioner. The position by Prime Minister and the Deputy Prime Minister is premised or appears to be premised on the assumption that there were no proper extradition orders for the arrest and extradition of Moti. It appears to be also based on the legal advice given by Peter Pena & Associates Lawyers. On that basis they have maintained that the PNG Police have no legal grounds for detaining and extraditing Moti. It is for those reasons that they have been advocating both publicly and officially for Moti to be immediately released and allowed to go. This political position is consistent with the Melanesian solidarity and brotherhood sentiments expressed by the Solomon Islands Government in its Diplomatic Notes where Mr. Sogovare pleaded for safe passage in the following words:

"As a founding country of the Melanesian Spearhead Group and our region's largest nation that has pioneered the establishment of a capable and independent Melanesian identity...."

It is also consistent with the legal advice given and sent to the Prime Minister by Peter Pena Lawyers in their letter addressed to Mr Bire Kimisopa, Minister for Justice, a copy of which was also sent to the Prime Minister dated 04th October, 2006.

We find this legal advice to be flawed and quite misleading as it did not apply the law as enshrined under the Extradition Act 2005 to the full facts and circumstances of this case. We further find the legal advice from the Acting Attorney General to the Chief Secretary Mr Kalinoe dated 2nd October 2006 to be flawed as well and did not correctly apply the law to the facts and circumstances of this case.

- i) The Board views the sentimental appeal by the Solomon Islands Prime Minister, Manasseh Sogavare to Sir Michael Somare to maintain Melanesian solidarity, identity and unity among members of the Melanesian Spearhead Group nations seriously in determining the issue of who might have given the directions to fly Moti out of PNG. It is an issue that Sir Michael Somare himself has often spoken out on passionately. With the death of former Fijian Prime Minister Ratu Sir Kamisese Mara as the Melanesian region's most senior statesman, the mantle has now passed to Sir Michael Somare. Sir Michael himself alluded to this in his statement on the floor of Parliament on the 15th November 2006 where he said:

"As the house will recall, a few days before the event, I made an off the cuff remark that the Attorney General designate of the Solomon Islands should be assisted with "safe passage" through to the Solomon Islands because I consider this matter to be basically between the Solomon Islands and Australian governments. I made this comment against the backdrop that as a Melanesian Spearhead Group country we have a very closely tied relationship with the Solomon Islanders."

- j) On the evening of the 4th October 2006 the Prime Minister Grand Chief Sir Michael Somare went on air on a Radio Karai interview. During this interview he remarked, "*Let Moti Go*". This was reported in the print media the very next day. Since the Prime Minister's statement to Parliament on the 15th November 2006, he has consistently maintained that this was

"An off the cuff statement".

In light of the prior public statements and the position taken by him and the Deputy Prime Minister, the Board does not consider this to be an off the cuff statement. Rather the statement in its proper context is consistent with the request by the Solomon Islands Government to accord Moti safe passage to travel to the Solomon Islands. It is also consistent with the political position namely that there are no formal extradition orders for arresting Julian Moti and that no grounds existed for detaining and extraditing him. It is also consistent with Prime Minister's erroneous statement that Moti had been cleared by the Vanuatu Courts. The evidence now show that the matter of Moti is before the Supreme Court in Vanuatu. Therefore when the Prime Minister said "*Let Moti Go*" he meant what he said, and that was to give free and safe passage to Moti to the Solomon Islands as requested by its' Prime Minister.

- k) Furthermore we come to that conclusion, because the PNG Prime Minister's statement "*Let Moti Go*" was made after the letter dated 3rd October 2006 from the Solomon Islands Prime Minister Manasseh Sogavare to Sir Michael Somare. In the letter Prime Minister Sogavare requested Prime Minister Sir Michael Somare for his

"Personal assistance in according the two gentlemen all the assistance they need to carry out their assignment".

It was submitted that this famous catch phrase "*Let Moti Go*" cannot and should not be construed as "*An of the cuff statement*". It was further submitted that the Prime Minister's remark "*Let Moti Go*" is consistent with the request by his Solomon Islands counterpart for his personal attendance to assist them and the requests contained in the Solomon Island Diplomatic Note No. 39 – 2006 to accord Moti a

free and safe passage to Honiara. We agree with the submissions advanced by Counsel assisting the Inquiry for the same reasons.

- l) When the plan to evacuate Moti through the charter of an Airlines PNG aircraft was aborted, the Solomon Islands Government resorted to seek assistance from the PNG Government through its Diplomatic Note 39 – 2006. When the request through the Diplomatic Note could not be carried out, the Solomon Islands Prime Minister sought personal assistance from the PNG Prime Minister.
- m) Mr Assaigo gave evidence that the direction to get rid of Moti from PNG came from the top, through the Prime Minister's Chief of Staff Mr Louma. In his affidavit he deposes to the conveying of this direction as follows:

"On or about 8th October, 2006, I was instructed by Ambassador Rongap that the Prime Ministers Chief of Staff had advised him that the Prime Minister had directed the Chief Secretary and I to get rid of Julian Moti and that we were not complying with the directions. At about 9:30 am on the 9th October 2006, I was met by Mr Louma whilst on my way to the lift and asked what was happening to Julian Moti.Mr Louma then said that the Chief Secretary and I were defying the directions of the Grand Chief, Sir Michael Somare, and that I should convey this disappointment to the Chief Secretary. I arrived at Mr Louma's office at about 11:07 on the same day where Mr Louma said that the Prime Minister was very disappointed in the Chief Secretary and I in failing to facilitate his directions to remove Mr Moti out of PNG jurisdiction."

Furthermore on the same day when Louma met Assaigo on the way to the lift he queried him as to what was happening to Mr. Moti. He is quoted by Mr Assaigo as saying:

"The Chief Secretary and you are defying Grand Chief's directions and that you should go and tell the Chief Secretary what I said".

Mr Louma then went further and said:

"You Sepiks, you and the Chief Secretary are gelygelys".

- n) Mr Assaigo's evidence cannot simply be dismissed as hearsay upon hearsay. Having vigorously tested Mr Assaigo's credibility in cross-examination, his evidence on this aspect has not been discredited in any way by the evidence of Prime Minister Sir Michael Somare, his Chief of Staff Mr Louma, Chief Secretary Joshua Kalinoe and Barnabas Rongap who all said Mr Assaigo had lied. But that is all they could say without giving any good reasons why Assaigo lied.

Moreover, under the scheme of the chain of command structure, the Prime Minister gives directions to his Chief of Staff, the Chief of Staff in turn passes those directions to the Chief Secretary and the Chief Secretary issues directions to his line officers to facilitate the directions. Mr Assaigo in this chain can only be a facilitator of those directions. When one considers the scheme of chain of command, the Chief Secretary would be receiving hearsay upon hearsay directions and instructions from the Prime Minister and the Prime Minister would be receiving hearsay upon hearsay responses from the Chief Secretary because the Chief Secretary has to go back to the Prime Minister through the Chief of Staff. For the Prime Minister's counsel to submit that Mr Assaigo's evidence is hearsay upon hearsay cannot be avoided because directions and instructions are always communicated from the Prime Minister to the facilitators in that manner, according to Mr Louma. A written direction in this instance to get rid of Moti would make it more obvious as to where the direction was coming from. Remember this was a covert operation. Mr Assaigo has got no direct access to the Prime Minister. Furthermore strict and technical rules of evidence and procedure do not apply in these proceedings.

- o) The evidence as to who gave the directions to get rid of Moti from PNG is all circumstantial. The closest evidence before the Board is that Mr Assaigo said that the directions to get rid of Moti came from the top. Who then is the top? The top could mean the Chief Secretary, the Chief of Staff, the National Security Council, the National Executive Council or the Prime Minister. There is evidence that the Chief Secretary, the National Security Council, the National Executive Council did not give any directions to get rid of Moti. That leaves the Chief of Staff and the Prime Minister. The Chief of Staff and the Prime Minister have also denied giving

any direction to get rid of Moti. There is nobody left at the top as to who might have given the directions. The evidence of Mr Assaigo that Mr Louma was angry that Mr Assaigo and the Chief Secretary were not carrying out the Prime Minister's directions also goes to assist this inquiry as to where the direction may have originated from. This Board has to consider all the evidence that is before it to come to any conclusion as to who might have been responsible for giving those directions. We have carefully assessed all the evidence that is before the Board and have come to the following conclusions on the issue of who gave the direction to get rid of Moti from PNG.

The evidence of the diplomatic notes from the Solomon Islands, the letter of introduction from the Prime Minister of Solomon Islands dated 03rd October 2006, the personal attendance of the Solomon Islands Prime Ministers envoys, Chris Hapa and Robson Tanabose, the Solomon Islands Governments official stand to deny the Boards proposed trip to Honiara to speak to its Government officials, the acting Prime Minister's letter to the acting Police Commissioner, the various media statements and the abrupt and forceful termination of this Board of Inquiry by the Prime Minister himself all point to one direction, and that direction is to the Prime Minister of PNG Sir Michael Somare. It is on the strength of the evidence referred to above that has enabled this Board to draw inferences from all that evidence. There was a very high level of collaboration and collusion between the Prime Minister of PNG Sir Michael Somare and the Prime Minister of Solomon Islands Mr Manasseh Sogavare to effect the get away of Moti. Moreover there is no evidence before this Board that the Government of Solomon Islands had sent a protest note against the illegal entry, intrusion and invasion of the territorial boundaries and the air space of the Solomon Islands by members of the PNG Defence Force. Where there has been an obvious breach, invasion and intrusion of a sovereign nation's territorial boundaries and the air space as was in this case, one would expect a diplomatic protest in the strongest terms possible against that invasion and intrusion. In this case there is no evidence of such a diplomatic protest. This Board is at a loss as to why there has not been such a protest. Has there been collaboration between the two Prime Ministers to effect Moti's escape? As we have said earlier, all the evidence points to the Prime Minister Sir Michael Somare and in the circumstances of the Solomon Islands government involvement the evidence also points to its Prime Minister Mr Manasseh Sogavare. In the circumstances the direction to get rid of

Moti came from the Prime Minister of PNG Sir Michael Somare with collaboration from the Solomon Islands Prime Minister Mr Mansseh Sogavare.

The collaboration included the Letter of Introduction where Sir Michael was specifically requested to personally attend to this, as well as the Diplomatic Notes. The direction to get rid of Moti came from Prime Minister Somare. Such directions are indicated by the use of simple statements such as:

"Let Moti Go", Get Rid of Moti" or "He is entitled to a free passage from us to the Solomon Islands".

In relation to the question of who gave the direction to fly Moti in a PNG Defence Force Casa aircraft there is abundant evidence that such a direction was given by Colonel Tom Ur after a request and consultation with Mr Assaigo. Colonel Ur admitted giving the verbal orders to use the Casa aircraft after consultation and advice from Lt. Colonels Hosea and Berobero.

The evidence is that at the time of Moti's escape Colonel Alois Tom Ur was Acting as the Commander of the PNG Defence Force in absence of Commodore Ilau, who was away in the Solomon Islands.

The appointment of an Acting Defence Commander is made by the Head of State acting with and in accordance with the advice of the National Executive Council under Constitution Section 193.

The evidence of Margaret Elias, Secretary for the Department of Personnel Management and Winnie Kiap, Secretary to the National Executive Council confirm that Colonel Tom Ur's appointment as Acting Commander was not effected by the Head of State pursuant to s.193 of the Constitution.

In the circumstances, we find that Colonel Tom Ur was illegally occupying the position of Acting Commander of the PNG Defence Force at the time of Moti's escape.

- p) **Who is Mr Assaigo?** In Mr. Assaigo's affidavit he said that he was directed by Mr. Leonard Louma who in turn was conveying Prime Minister Somare's direction to get rid of Moti. There is no evidence of the Prime Minister's directions uttered to Mr Assaigo. However in our view there is abundant circumstantial evidence that the direction to get rid of Moti came from the Prime Minister Sir Michael Somare. The evidence suggested that the Prime Minister acted as an individual when he gave the directions to get rid of Moti. On the strength of that evidence the direction may have been a simple statement such as *"Get Rid of Moti"* or *"Let Moti Go"*. The Prime Minister in his individual capacity has no power or authority to issue such directions. That direction was conveyed to Mr Assaigo who facilitated the escape. Mr Assaigo is simply the facilitator. He is the man who did the dirty job. He knew the job was dirty. That is why he asked for cover and protection from the Prime Minister and Mr Louma, the Chief of Staff, who assured him he would be protected. But as it turned out he was never protected and he has to fend for himself now that he is facing Serious Disciplinary Charges.

All the individuals involved in this matter other than Defence Force personnel work within the same building and within close proximity of each other making it more easier for them to communicate and plan the operation to get rid of Moti.

**7.2 Determine if members of Defence Council were aware of the Moti Operations.
(TOR 2.2)**

Under the Defence Act, the Defence Council is comprised of the Minister for Defence who is the Chairman, the Secretary for Defence Department, and the Commander of the Defence Force. Evidence clearly shows that the Defence Council was not aware of the Moti operations. It only became aware after the escape when the whole story was reported by the media.

7.3 To establish if the Commander PNGDF was directly involved and was aware of the Moti operations before he flew to Solomon Islands on 09 Oct 2006. (TOR 2.3)

The evidence is that the Commander of the PNG Defence Force Commodore Peter Ilau was not directly involved in the Moti Operations. Was he aware of it? Again

the evidence shows that he may not have been aware of the operations. However it is worth noting that Commodore Ilau departed for the Solomon Islands on Monday the 9th October 2006. The plan to get rid of Moti was hatched either on or about Sunday the 8th October 2006 or even before that. He was in the Solomons when the CASA landed in Munda. The evidence of Margaret Elias is that Commodore Ilau did advise the Department of Personnel Management of his intention to travel overseas on the 22nd of October 2006 and not on the 9th October 2006. Commodore Ilau never informed the Department of Personnel Management of his intention to leave PNG for the Solomon Islands on the 9th of October 2006.

Commodore Ilau's presence in the Solomon Islands on these critical dates in our view is no mere coincidence. The logical inference to be drawn is that while he may not have been directly involved in the plot to smuggle Moti out of PNG, he may have been aware of this operation before his departure for the Solomon Islands on the 9th October 2006. There however is no conclusive evidence of this.

7.4 Which Government officers and Defence Force officers were involved in the planning and conduct of the Moti operations? Were the orders in writing? (TOR 2.4)

The evidence is that government officials directly involved in planning and conduct of the Moti operations is the Director General of the Office of Security Co-ordination and Assessment (OSCA), Mr Joseph Assaigo. He was a critical figure in this whole operation. Mr Assaigo admitted being the facilitator of the directions he had received from the Chief of Staff to the Prime Minister. Evidence also reveals that the Chief Secretary Mr Joshua Kalinoe was also aware of this operation and discussed briefly with Mr Assaigo issues of transport and logistics to effect the plan to get rid of Moti. Mr Kalinoe denied being aware of the operation at the first instance. On his second appearance, he admitted he talked to Mr Assaigo briefly about the Prime Ministers directions to get rid of Moti in his conference room in the presence of his Executive Officer, Lt. Colonel (rtd) Job Kasa. In their earlier evidence both Mr Kalinoe and Mr Kasa denied having any knowledge of the Prime Ministers directions to get rid of Moti. They lied in that respect. In the light of Mr Assaigo's evidence relating to discussing the Prime Ministers direction with Mr Kalinoe and in the light of the admission by Mr Kalinoe and Mr Kasa that they had

briefly discussed the Prime Ministers directions we find that Mr Kalinoc and Mr Kasa were aware of the directions given by the Prime Minister to get rid of Moti. Mr Kalinoc could not take part in effecting the Prime Ministers directions because his stand was that Moti should go through the Court process to be dealt with, a stand consistent with the decision of the NSAC and the bureaucratic committee headed by Mr Kila Karo, Deputy Secretary Foreign Affairs.

The Inquiry is also asked to find that Mr Jerry Fruanga, an officer of the OSCA and a relative of Mr Assaigo was heavily involved in the plans to assist Moti escape. In that regard, the Inquiry is asked to find that Jerry Fruanga picked up Moti from the Solomon Islands Chancery in Waigani and took him to his Hostel Room 204B at Waigani Hostel on the night of the 9th October 2006 where they were together. The Board is unable to come to the finding that Mr Fruanga picked up Moti from the Solomon Islands Chancery and kept him at his hostel room number 204B at Waigani Hostel. There is no conclusive evidence to support this assertion. The Board is also asked to find that another relative of Jerry Fruanga, namely Balthazar Wali, who is also employed by the Chief Secretary's office as Mr Kalinoc's driver then picked Julian Moti and Mr Fruanga and drove to the Defence Hangar at Jackson's Airport. Again the Board is not able to come to that finding because there is no conclusive evidence to support this claim.

The Inquiry is also asked to find that Mr Leonard Louma, Chief of Staff to the Prime Minister was the officer who relayed the Prime Minister's direction to Mr Asaigo. We have found that the Prime Minister issued the directions to get rid of Moti from PNG. Consistent with Mr Louma's own evidence that communications from the Prime Minister come through him, we find that the Prime Ministers direction to get rid of Moti from PNG came through Mr Louma. Mr Louma in turn conveyed the same direction from the Prime Minister to Mr Asaigo. We come to this finding because firstly, we have found that the Prime Minister issued directions to get rid of Moti. Those directions must come through the Chief of Staff who is Mr Louma. Mr Louma has vehemently denied the Prime Minister issued the directions and that he has accepted the directions and in turn conveyed those directions to Mr Asaigo or anybody else. Mr Louma has in his denials when asked whether the Prime Minister had given directions to get rid of Moti had replied:

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to have branded Mr Asaigo a "small boy". In his second appearance, a number of matters were put to him regarding what Mr Asaigo had said or done. It was put to him that what Mr Asaigo had said or done were not said and done because Mr Asaigo was a "small boy". Mr Louma said he had never called or branded Mr Asaigo a "small boy" and that it was out of his character to demean another person in that way. Again he vehemently denied calling Mr Asaigo a "small boy". The transcript of what he had said earlier was shown to him. This time he could not deny what he had said. The point is made that the transcripts do not lie and are not vague. Mr Louma's credibility as a witness of truth was destroyed by that single blunder. On that basis we find that he lied under oath. We further find that he is an unreliable and untruthful witness, convincing and confident he may have sounded.

There is no direct evidence that Mr Louma also conveyed the Prime Minister's direction to Mr Kalinoc. Could he have? It is highly likely given the chain of communication that Mr Louma also informed Mr Kalinoc of the direction. The Board can only speculate.

The military officers who were involved in planning and conducting this whole operation were the Chief of Staff, Captain (Navy) Tom Ur as the acting Defence Commander, Colonel Vagi Oala, the Joint Operations Commander, Lt. Colonel Ron Hosea, Director Air Operations, Lt. Colonel Chester Berobero, Co ATW, Warrant Officer Ikupu Arua, who was the loadmaster, Warrant Officer Wais Morap who was the Engineer.

Neither the direction from the Prime Minister nor the Operation Orders to smuggle Moti out of PNG were in writing. Standard Operating Procedures (SOPs) from the PNGDF requires that all operations whether it be covert or public must be in writing.

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In this case responsible commanders Tom Ur, Vagi Oala, Ron Hosea and Chester Berobero failed to comply with the requirements of the SOPs and in that regard they have breached the Code of Military Discipline.

7.5 Were the Operations Branch and Joint Operations involved? If so, what was their role? (TOR 2.5)

The evidence is that the Operations Branch was never aware and therefore was not involved in any way in the planning and the execution of the Moti operations. The evidence however shows that the Joint Operations Centre through its commander Col. Vagi Oala was directly involved. In fact Colonel Oala was a key planner and strategist in this whole operation. He was involved in the execution of the plan and was on the flight to Munda which smuggled Moti out of PNG. We find that the Joint Operations Centre played a key and a critical role in this whole operation through their commander Colonel Vagi Oala.

7.6 To determine the effectiveness of the Operations Branch and relevant supporting Units to support Operations Branch (TOR 2.6)

There was no evidence of the involvement of the Operations Branch in the whole Moti saga. No evidence was adduced to determine their effectiveness as well as that of other supporting Units. In the circumstances the Board is not able to determine the effectiveness or otherwise of the Operations branch together with its support units.

7.7 Determine the legal and administrative basis for the Joint Task Force Commander to exercise operational control of all PNGDF operations (TOR 2.7)

The evidence before the Board is that Colonel Vagi Oala occupies the position of Joint Operations Commander under a proposed new establishment to be known as the Joint Operation Centre (JOC). The JOC requires a major legal and administrative re-structure of the whole Defence Force, including amendments to the *Defence Act* to provide a legal basis for the establishment of the JOC.

- The evidence in this case, particularly that of Margaret Elias, Secretary for the Department of Personnel Management and Winnie Kiap, Secretary to the NEC and

Commodore Peter Ilau Commander PNGDF shows that the proposal to amend the Defence Act has not gone before the NEC for its deliberations as yet. Furthermore Margaret Elias's evidence shows that the proposed administrative re-structure based on the JOC was rejected by the Department of Personnel Management and has been referred back to the Defence Force for further clarification and submission.

In the circumstances there is no administrative and legal basis for the existence of the JOC as yet. We find that officers such as Col. Vagi Oala and other support staff who are already occupying proposed positions and getting salary and allowances against those positions are doing so illegally. Therefore we find that the JOC Commander has no legal and administrative powers to exercise control and command over all PNGDF operations.

The Board recommends that the proposed administrative restructure of the Joint Operations Command be reviewed to legally formalise its existence. The Board further recommends that pending the proposed administrative restructure of Joint Operations Command, Colonel Oala be posted on the Unallotted List (UL) for further posting.

The Board further recommends that the Commander of the Papua New Guinea Defence Force, Commodore Peter Ilau and the Acting Secretary for Defence, Mr Fredrick Punangi be disciplined for knowingly allowing this anomaly to continue.

7.8 Was there legal advise to Commander and Chief of Staff on the consequences of the Operations? (TOR 2.8)

There was no legal advise sought and rendered to the Commander and the Chief of Staff on the consequences of the operations. Evidence from the acting SO2 Legal Captain Aloxie Manjor is that no advice was sought from her nor did she gave any advice on the Moti operation. She was not aware if any outside legal advice had been sought by the acting Commander Colonel Tom Ur.

It is apparent from evidence before this Board that the Legal Services Branch of the Defence Force is rarely utilised by the High Command because Director Legal Services Branch (SO2 Legal) holds the rank of a Major. The Board is of the view

that the position of Director Legal Services is very important at this stage of our country's development, for reasons that there are many changes and challenges that require high degree of legal advice.

The Board recommends that the Legal Services Branch be restructured and the position of its head be upgraded to the rank of Colonel.

The Board further recommends that the High Command fully utilise the services offered by the Legal Services Branch at first instance.

The Board also recommends that the Reserve Legal Officers be not put on the Defence Force payroll and that they be paid as and when they are called up for active duties. In that regard the current Reserve Legal Officers who are on the Department of Defence's payroll as well as drawing fortnightly salaries from their current employment outside of the Defence Force, namely Majors Kisokau Powesen, Danajo Koeget, Powes Parkop and Joe Kesan be removed from the payroll forthwith as this is considered double dipping for doing virtually nothing.

The Board recommends that the Acting Secretary for Defence and the Commander be reprimanded and disciplined for allowing this practice to occur and continue.

The Board also recommends that the Officers in the Branch be given rotational attachment to the State's Legal Offices with a view to gaining more experience and exposure.

7.9 Ascertain which sections of the Code of Military Discipline and the Defence Act were contravened and what offences were committed under Criminal Code? (TOR 2.9)

The offences allegedly committed under the Criminal Code are canvassed separately. Here we restrict ourselves to the Code of Military Discipline. The applicable Code is C 4 which creates various service offences and then deals with breaches of service discipline.

(1) **Captain (N) Alois Tom Ur- PNGDF Chief of Staff**

C4 (2)(i). From the various findings of this Board relating to the actions of the then Acting Commander, Captain (N) Alois Tom Ur we are of the view that he be charged with breaches of service discipline under C4 (2)(i) in that he was inefficient within one's own control, in that he on Monday 9th October 2006 failed to seek the approval of the National Parliament and the National Executive Council under Constitution Sections 204, 205 and the Defence Council to commit and use a State asset, namely the CASA aircraft in a sensitive, dangerous and illegal military operation thus putting the lives of PNGDF personnel and other civilian personnel on board at great risk.

C4 (2)(i) to be inefficient due to causes within one's own control in that on Monday 9th October 2006, he failed to issue written and signed Operation Orders to legitimise the Moti operation.

C4 (2)(i) to be inefficient due to causes within one's own control in that he on Monday 9th October 2006 failed to respect the official NSAC position on one Julian Moti namely that the matter be left until the outcome of the court hearing and instead he went ahead knowingly to execute a plan to assist the international fugitive, one Julian Moti to escape PNG jurisdiction to the Solomon Islands using a PNGDF CASA aircraft.

C4(2)(i) to be inefficient due to causes within one's own control in that he allowed himself to be directed by a civilian one Joseph Assaigo to use a PNGDF CASA aircraft to fly an international fugitive, one Julian Moti.

C4(2)(i) to be inefficient within one's own control in that he failed to properly verify the Prime Minister's alleged direction to get rid of Moti, by direct communication with the Prime Minister under section 10 (2) of the *Defence Act*.

(2) Colonel Vagi Oala – Commander – Joint Operations Centre

- a) C4(2)(i) to be inefficient due to causes within one's own control, in that he on Monday 9th October 2006, failed to remind the Acting Commander Captain (N) Alois Tom Ur to issue written Operation Orders to safeguard this operation against potential liability suits.
- b) C4(2)(i) to be inefficient due to causes within one's own control in that as operations commander on the CASA flight failed to issue proper written Operation Orders as required by the PNGDF's Standard Operating Procedures (SOP).

(3) Lt. Colonel Chester Berobero – Chief Pilot – CO Air Transport Wing

- a) C4(2)(i) to be inefficient due to causes within one's own control in that as the Chief Pilot he on Tuesday 10th October failed to organize a manifest for civilian passengers on board and the PNGDF personnel, including the Flight crew thereby creating a potential liability.
- b) C4(2)(i) to be inefficient due to one's own control in that he on Tuesday 10th October 2006, failed to organize indemnity forms to safeguard against any potential liability.
- c) C4(2)(i) to be inefficient due to one's own control in that on Tuesday 10th October 2006 he allowed an unauthorized civilian passenger to board and travel to the Solomon Islands on CASA Flight Eagle 502 to drop off Julian Moti, Robson Tanabose and Chris Hapa and then travel back to PNG on the same day.

(4) Lt. Col Ron Hosea – Co-Pilot – Director Air Operations

We find that Lt Col. Ron Hosea has committed the same breach of service discipline as Chief Pilot Chester Berobero and should therefore be charged accordingly under the same Code of Military Discipline, C4(2)(i).

8. ANSWERING OTHER TERMS OF REFERENCE (TORs)

In this section we answer other Terms of Reference and determine how the funds were disbursed.

8.1 Conduct a preliminary audit on the Air Operating Account and Air Transport Unit Trust Fund Account and other Operating Account. (TOR 2.10)

8.1.1 Air Operation Account

This account referred to in TOR 2.10 is known as the Directorate of Air Operations PNGDF Account. This account was opened with the ANZ Bank, Boroko Branch in May of 2005 and bears the Account Number 1211771.

The purpose of the account was to expedite payment of urgent expenditure items as required by the Air Transport Wing due to the nature of their operations. For instance, aircraft maintenance, travel allowance and accommodation. It is evidenced from several witnesses including Colonels Ron Hosea, Chester Berobero, Tom Ur, Commodore Peter Ilau and the Audit Report by the Chief Internal Auditor Camillus Gamo, that request for funding through the normal procurement processes takes ages to process, thus an impediment to the operations of the Air Transport Wing (ATW).

The account, though necessary for the ATW operations, we find that it is illegal in that it was established without the formal approval by the Secretary for Finance as required under the Public Finance Management Act, 1984. Consequently there is no Trust Instrument to provide instructions as to the nature of its operations. This is similarly so for other units Trust Accounts. The then Chief of Operations, Captain (Navy) Max Aleale, tried to correct the situation by writing to the Secretary for Defence, Mr Fredrick Punangi to facilitate this through the Secretary for Finance on the 23rd of February 2005, but to no avail. This was prior to this particular account being opened in May of that year. Mr Punangi in his evidence suggested that he had indeed

requested the Finance Secretary to give legal status to the account and other units accounts but he said nothing has happened. He provided no evidence to the Board in this regard. Therefore this and other units accounts remain illegal.

Be that as it may, evidence has been led which say that this particular account has received and expended substantial amounts of money from the Government and other sources through the chartering of aircrafts and helicopters for civic and other commercial operations, most notably the Green Revolution program.

Evidence suggests that large amounts of money have not been properly accounted for, due to lack of accounting knowledge procedures. This is clearly evidenced in the Audit Report presented by Mr Camillus Gamo which audit report covers only months of May to December of 2005. The Report revealed many anomalies, including invalid expenses, missing paid vouchers, non acquittals, etc.

Evidence produced in this Board suggests also that monies from this account may have been misapplied for purposes other than those for which the account was purposely set up for. Former Commanding Officer for the ATW and former Director Charlie Andrews gave evidence that monies from this account may have been used to fund a Defence Council meeting in Cairns, Australia and also used for maintenance of ATW houses. The account was not set up for these purposes, thus the funds being misapplied.

It was recommended by the Audit Report that stringent financial guidelines should be employed in the operation of Directorate of Air Operations PNGDF Account to avoid abuse and misappropriation of funds.

Such recommendations include:

Recommend that this account be legitimised or abolished forthwith.

Recommend that the Trust Instrument clearly outline the purposes for which monies are to be disbursed from the account.

Recommend that the account is operated as an Imprest Account whereby proceeds from commercial activities are paid into the Commercial Support Program trust Account with a monthly transfer to the Air Operating Account to support urgent requests, subject to acquittals being done.

Recommend that the Directorate of Air Operations provide monthly bank reconciliations and copies of paid vouchers to accounts prior to the account being replenished.

Recommend that more ATW officers are trained as accounting officers for the unit, etc.

It is recommended that the concept of this account is good in that it assists very much in expediting urgent operational needs of the ATW. Proper procedures need to be put in place to serve the unit. As we heard from Colonel Ron Hosea, Director Air Transport Wing, the normal budgetary allocation to that unit is insufficient for aircraft maintenance and other operational needs.

The above recommendations and many more that are contained in the Audit Report are necessary in order for proper accountability and transparency purposes in the use of monies generated by this account through commercial involvements.

8.1.2 Air Transport Unit Trust Fund Account

There is no evidence that such an account exists. It could very well be the same account as the Air Operating Account. None of the witnesses called especially the Secretary, the Commander, the Director, the Commanding Officer, and the Chief of Staff, ever made mention of such an account. The Audit Report makes no mention of it. It follows therefore that such an account may not exist.

It is clear that all units within the Defence Force operate Regimental Trust Accounts for their own convenience. Such an account does not come under the

Public Finance Management Act, 1995. The ATW does operate its own Regimental Trust Account. The funds in that account are disbursed as and when the need arises for their use at the discretion of the Commanding Officer.

8.1.3 Other Operating Accounts

There are other operating accounts operated by various units of the PNG Defence Force. The two main ones revealed in evidence are the Commercial Support Program Trust Account and the Paymasters Imprest Account.

The Commercial Support Trust Account did not reveal much criticism but the Paymasters Imprest Account has drawn a lot of criticism from servicemen who gave evidence. It was revealed in evidence that this account has been abused quite extensively by those in authority.

Evidence before the Inquiry suggests both the Secretary for Defence, Defence Force Commander, the Deputy Secretary, and First Assistant Secretary (Finance) have all abused this account.

Evidence is that every time these Officers go out on official trips, they pay themselves cash advances on top of their normal traveling allowances. For instance, every time the Commander travels overseas on his official business trips, he receives between K12,000.00 to K20,000.00 cash advance on top of his traveling allowance. The same goes for the Secretary and his deputy. This goes for both domestic and international travels.

Evidence suggests that cash advances are given to people who would later repay them either through pay deductions from normal salaries, or by way of cash repayment. Commodore Peter Ilau confirmed receiving those allowances but said he received them to host parties or dinners. The Board considers this explanation absurd because the host nation usually provides for those and he is not obliged to reciprocate. The Board considers such hefty cash advances to be a means of unjust enrichment.

Evidence before the Board has revealed that the Deputy Secretary, Billy Porykali approved a K.1 million payment to Intex International of Cairns, Australia, to purchase blank ammunitions in 2003. The cheque was drawn and paid to that company, but to date the Defence Force has not received the blank ammunitions. The Secretary for Defence and the Deputy Secretary for Defence, Billy Porykali have done nothing to recover the money or the ammunition.

The Board recommends that Billy Porykali and others be further investigated by the Police Fraud Squad and the Public Accounts Committee.

The Secretary, Fredrick Punangi, his deputy, Billy Porykali, the FAS, David Porykali, the cashier at the cash office, the Assistant Secretary Accounts and two Budget Officers in the finance section of the Department of Defence are all from one province and are quite closely related. These officers may have been appointed on their own merits, but the public perception could be that the Department of Defence is run by relatives from a certain province.

The Inquiry has heard evidence from army personnel that it is extremely difficult for them to access funds from the finance section, but rather easy for those working in the Finance section.

In relation to cash advances, evidence adduced during the inquiry shows these funds are never acquitted. According to Secretary Punangi, cash advances are given for unforeseen contingencies such as when they run out of money or to do shopping. The Board considers this to be a poor excuse as it is contrary to the Public Finance Management Act.

The Board recommends that a bigger inquiry with wider terms of reference be conducted into the main accounts of the Department of Defence.

8.2 Determine how the funds were disbursed. (TOR 2.11)

- a) The Air Operating Account has never been sanctioned by the Secretary for -Finance, therefore, it has no legitimate status. The evidence before the Board relating to funds in that account is that the funds are used for operational,

maintenance and administrative costs incurred by the ATW. While the purpose for which the funds in this account are being used appear to be legitimate, the account itself is illegally operated.

- b) At the present time and since the account was opened, requests for funding are done through letters or minutes, as revealed in the Audit Report. No FF3 or FF4 (Finance Forms) are used. No proper records are kept for purposes of accounting. There is therefore potential for abuse of monies from that account.
- c) There can be no doubt that it is less cumbersome to operate this account, the way it was set up and for its intended purpose. But to ensure proper accountability, the only way to go is to legitimize the account by having it sanctioned by the Secretary for the Department of Finance.
- d) The Board recommends that the Secretary for Defence make every effort to have this account and other accounts properly sanctioned within a given period of time in accordance with the provisions of the *Public Finance Management Act, 1995*.
- c) Failing that the Board recommends that the Defence Secretary be disciplined.

8.3 To establish if there was bribery and inducement offered to the members of the PNGDF involved in the Moti operations? (TOR 2.12)

Was there bribery and inducement offered to members of the PNGDF and others involved in the Moti Operations?

- a) There is no direct evidence to suggest that money was paid to anyone in particular. However, one wonders why senior Government officials and senior Defence Force officers went out of their way to effect the clandestine escape of Moti from Papua New Guinea to Solomon Islands. Why would these senior officers risk their highly paid jobs and positions to engage in an illegal and dangerous operation to assist an alleged child sex offender from escaping PNG jurisdiction given the NSAC resolution just the day before?

- b) There is evidence before the Board of Inquiry that a week prior to the escape of one Julian Moti, attempts were made to fly Moti out of PNG using an Airlines PNG aircraft. The aircraft charter was to cost about K60,000.00 to K70,000.00 according to the evidence of the CEO of Airlines PNG, Mr. Simon Wild.
- c) All Defence personnel on the CASA Flight Eagle 502 denied receiving any form of bribery or inducement in the form of cash.

8.4 Ascertain the extent of involvement of the Australian Defence personnel in the PNGDF in his exercise (TOR 2.15)

Was there any involvement of Australian Defence personnel into the PNGDF in this exercise?

- a) There is no evidence to suggest that Australian Defence personnel in the PNGDF were involved in this exercise. However, it is rather surprising that when the PNG CASA arrived in Munda, Solomon Islands, at about 4.00 am the RAMSI Police were waiting for them at the airport, who subsequently arrested Moti and his two counterparts.
- b) The RAMSI Police in the Solomon Islands knew that Moti was arriving at the remote Munda airstrip. How did they know? There is no evidence as to who may have informed RAMSI from PNG.

8.5 Ascertain the extent of collaboration between the PNG Defence Force and the Solomon Islands Defence Force, RAMSI and other agencies within the Solomons (TOR 2.17)

What is the extent of collaboration between the PNG Defence Force and the Solomon Islands Defence Force, RAMSI, other agencies in the Solomon Islands in aiding the escape?

- a) There is no direct evidence to suggest that there had been any collaboration between PNG Defence Force and the Solomon Islands Defence Force, nor is

there direct evidence implicating RAMSI and other agencies within the Solomon Islands.

8.6 Given the travel ban of the Prime Minister and the Minister for Defence and subsequently the Heads of State and Ministers, why did the Defence Force Commander travel to Brisbane/Canberra, Australia? (TOR 2.19)

- a) When Commander Peter Ilau gave evidence he said that this trip was taken at the invitation of the Australian Government to attend the Australia Chief of Army Exercise 2006, and to follow on with the Land Warfare Conference. He left Papua New Guinea on the 22nd of October, 2006, just a week after the Australian Government black listed the Prime Minister and the Defence Minister from taking any trips to Australia as a direct result of Julian Moti escaping from PNG.
- b) There is no direct evidence before the inquiry to suggest that Commodore Peter Ilau was coerced or influenced by anyone to take the trip. In fact he denies that he had taken this trip in defiance of the Government of PNG. There is evidence from Peter Ilau that he had mentioned this trip to the Chief Secretary prior to his departure from Papua New Guinea, and that the Chief Secretary had intimated that he should take it, as there was no ban on travel of Departmental heads at the time. He had not produced any evidence to support this proposition.
- c) Evidence also suggests that this particular trip was endorsed by the PNG Defence Council in its 8th Meeting on the 9th of October 2006. This meeting was convened to approve the appointment of Captain (Navy) Max Aleale, to act as the Commander of the Defence Force in Ilau's absence. There was no actual approval of his trip.
- d) The trip taken by Commodore Peter Ilau a week after the Moti escape is one which caused one of the greatest embarrassment to the Government of Papua New Guinea. It is most disrespectful, discourteous and insensitive to the Government and the people of Papua New Guinea. It appears that the Commander did not give due diligence to the Australian Government black

listing of the Prime Minister, the Defence Minister from and other ministers of PNG from visiting Australia.

- e) Out of respect for the Government the Commander should have declined the invitation from the Australian Government.
- f) It appeared that the current PNGDF Commander was taking overseas trips at short notice thus giving NEC insufficient time for consideration and approval of acting appointments of Commander.
- g) The Board recommends that the PNGDF Commander schedules his overseas travel well in advance to give sufficient notice to the NEC to make acting appointment.

9. LEGAL IMPLICATIONS ARISING OUT OF THE JULIAN MOTI SAGA.

9.1 International Law Implications

The Julian Moti affair raises many important legal issues relating to the arrest and detention of one Julian Moti, a foreign national on transit in PNG and his subsequent escape to the Solomon Islands, aided and abetted by PNG Government officials in a clandestine military operation that is found to have been ordered by the Prime Minister of PNG.

9.1.1 Unauthorized use of the PNG CASA aircraft

The evidence is that the CASA was used to smuggle Julian Moti, and two other civilian Solomon Islanders. Under Constitution section 204 it is stated that:

"The Defence Force or part of a Defence Force may be called out to perform functions under section 202 (c)(ii) (functions of the Defence Force) only by the Head of State, acting with, and in accordance with, the advice of the National Executive Council".

The Supreme Court has made it clear that deployment of a PNGDF armed personnel and aircrafts as well as boats on active military service outside of PNG, such as the engagement of the Kumul Force to Vanuatu in the 1980s require Parliamentary approval. (*Constitution section 205*).

The uncontradicted evidence is that neither the NEC nor the NSC approved and authorized the use of the CASA aircraft. Furthermore the necessary internal administrative and operational procedures required to be followed were never complied with.

In such circumstances we find that the CASA was hijacked by military officers illegally authorised by Captain (N) Alois Tom Ur. In the end result this Board finds the entire operation illegal and amounts to a breach of the National Constitution.

9.1.2 Unauthorized CASA Flight to the Solomon Islands

There is uncontroverted evidence that there was no clearance obtained from the Solomon Islands Civil Aviation Authorities for the PNGDF CASA aircraft to enter Solomon Islands territorial airspace let alone permission to land at the Munda airstrip. Further evidence from PNG Civil Aviation Authority confirms that no clearance was obtained for the flight. Before its departure the pilots of the CASA failed to submit any Flight Plans to the Air Traffic Control Office. Flight Plans to the Air Traffic Control were never submitted thirty minutes before departure. All mandatory requirements under **Rule 91.407** of the *Civil Aviation Act* were never complied with. This rule directs that a pilot in command of an aircraft is under a mandatory duty to submit a flight plan at least 30 minutes prior to the beginning of the flight. The Flight Plan shall include the following information:

- i. Aircraft call sign to be used;
- ii. Type of aircraft;
- iii. Radio communication equipment in the aircraft to be used;
- iv. Navigational aid equipment;
- v. Departure aerodrome and time of departure;

- vi. Cruising speed, altitude and route;
- vii. The aerodrome of destination, total elapsed time and any other alternate aerodrome;
- viii. Fuel endurance;
- ix. Total number of persons carried in the aircraft; and
- x. Emergency and survival equipment carried in the aircraft.

All the evidence clearly shows that there was non compliance with the mandatory requirement to submit a Flight Plan. The entire flight was undertaken without any lights and communication and to avoid detection by Australian radar, hence the CASA was flown at a height of 17,000 feet.

9.1.3 Air Worthiness of the PNGDF CASA Aircraft

Evidence before the Board of Inquiry clearly shows that the CASA was not airworthy and has been so since 2002. Orders to have it grounded since 2002 have never been obeyed. The CASA has since then and now is due for a major service.

The air worthiness of the entire fleet of aircrafts both rotary and fixed wing is the responsibility of the senior engineering officer (SENGO) at ATW and his counterpart at the Head Quarters of PNGDF is SO2 (TS) Air. The High Command has no authority to abuse and veto the directions by two technical officers as happened in this case with the Casa aircraft. The High Command is obliged to respect the advise given by the technical officers.

The evidence before the inquiry is that the Casa was not airworthy to fly since 2002 and required a lot of maintenance to be airworthy. The evidence on airworthiness of the Casa aircraft is by Senior Engineering Officer Major Karuka and former Director of Air Operations, Lieutenant Colonel Charlie Andrews. The advice by Major Karuka was vetoed by the Operations Commander, Captain (N) Max Aleale on the 04th April, 2005. The Board finds that the Casa aircraft was not airworthy to fly on the 10th of October, 2006, but because of the decision of the High Command it was flown.

The Board recommends that the airworthiness of all PNGDF aircraft including the Casa aircraft is the sole responsibility of the Technical Officers, and as such the High Command is obliged to respect and adhere to the advice.

9.1.4 International Law Principles Applicable

Under the rules of customary International Law PNG has a duty "*to respect the territorial integrity and political independence*" of its neighbour, the Solomon Islands. Like all other Independent Nations, Solomon Islands enjoys complete and exclusive sovereignty over its territory and airspace above its land territory. This general principle of International Law has now been codified under the *Chicago Convention on Civil Aviation, signed in Chicago in 1944 (Civil Aviation Convention)*. The principle of territorial sovereignty and of airspace is now so widely accepted that it has now acquired the status of customary international law.

Article 1 of the *Civil Aviation Convention* states that "*every State has complete and exclusive sovereignty over the airspace above its territory*". Within its airspace a State has exclusive jurisdiction to regulate and control air traffic, including international air traffic traversing through its air space. In respect of international civil aviation, Article 6 of the *Civil Aviation Convention* provides that "*No scheduled international air services may be operated over or into the territory of a contracting State, except with Special permission or other authorization of the State, and in accordance with the terms of such permission or authorization*". Article 6 goes on to provide for all Contracting Parties "*to designate the route to be followed within its territory by any international air service and the airport which such service may use*".

The Civil Aviation Convention applies only to international civil aviation and does not apply to "*State aircrafts*". Article 3 (a) and (b) define State aircrafts as aircrafts used for military or police purposes. In relation to State aircrafts, Article 3 (c) of the Civil Aviation Convention provides that "*No State aircraft of a contracting State shall fly over the territory of another State or land thereon without the authorization by special arrangement or otherwise and in accordance with the terms thereon*". Article 3 (d) of the Civil Aviation Convention Contracting States provides: "*when issuing regulations for their State aircraft, that they will have due regard for the safety of navigators of civil aircraft*".

PNG and Solomon Islands are both contracting States to this international Civil Aviation Convention and other Treaties dealing with international civil aviation are therefore bound by the principles, terms and conditions of that convention. As a Contracting State, PNG has a legal obligation arising from the customary international law principle of "*Pacta sunt servanda*" to act in good faith to honour the principles, terms and conditions of that multilateral treaty in its bilateral civil aviation relations with its neighbour, the Solomon Islands as well as other States.

Presently PNG and Solomon Islands have a bilateral Air Services Arrangement which is of less than a full Treaty status which was signed in the early eighties. This provides a framework for the scheduled weekly Air Niugini flights to Honiara. This bilateral Air Services Arrangement accords well with the International Law Principles outlined above by providing "*Permission*" or approval for the PNG Flag carrier Air Niugini to fly into Solomon Islands territory and drop off and pick up passengers and cargo. This PNG/Solomon Islands air services arrangement is only applicable for the international civil aviation traffic between the two countries. PNG State aircrafts, including aircrafts such as all our military aircrafts, viz, the CASAs, Aravas and even the government owned Kumul, are not covered by this bilateral commercial Air Services Arrangement and therefore require special permission or approval from the Solomon Islands Government, if such an aircraft were to fly over Solomon Islands airspace or land in its territory.

Furthermore PNG and Solomon Islands do not currently have any special arrangements, such as for instance a Defence Co-operation Treaty or a Visiting Forces Agreement, providing the framework for any PNG Defence Force or other PNG State aircrafts that may be flown into or even land in the Solomon Islands.

The usual State practice, in the absence of any specific agreement is for a State through formal diplomatic channels to request for and secure "*special permission*" from the host country for its State aircraft to navigate through the airspace and land in the host country's territory. This would have required the PNG Government, either through its High Commission in Honiara or the Solomon Island High Commission in Port Moresby, to formally convey a request from the PNG Government for permission for its PNGDF CASA aircraft to fly into and land and

discharge its passengers in the Solomon Islands port of Munda at the expected time and date. The requests would then contain all necessary information including the intended purpose of the flight, number and names of the crew and the passengers and the aerodrome of landing, expected time of arrival and departure. Approval from the Solomon Islands Government should have been obtained prior to the PNGDF CASA Flight Eagle 502 into the Solomon Islands on the early morning of 10th October 2006.

9.1.5 Breach of PNG's International Obligation to Respect Solomon Islands Territorial Integrity

By conducting an illegal and unauthorised flight into the territory of the Solomon Islands, PNG through its Defence Force has breached its international law obligation to respect the territorial integrity and political independence of the Solomon Islands. The duty to respect the territorial integrity and political independence of another State is one of the fundamental principles enshrined in the **Charter of the United Nations**. Article 2 requires all States to act in good faith in their international obligations, while Article 4 places a duty upon member States to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State". These Principles have been further elaborated under the **Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance With the United Nations Charter**.

The actions of PNG military officials in conducting the unauthorised secret flight to Munda without authorization and approval from the Solomon Islands Government constitutes a blatant breach of the Solomon Islands air space and Civil Aviation Rules. These actions also constituted a violation of Solomon Islands territorial integrity and political independence.

9.1.6 Domestic Law Implications - Application of Civil Aviation Convention Principles in PNG

PNG has adopted the international law principles enshrined in the *Chicago Convention of Civil Aviation of 1944* and has given these principles the force of domestic law, through its enactment of domestic Civil Aviation laws, in this case the

Civil Aviation Act 2000 and the *Civil Aviation Regulations* adopted under the Act. Through this legislation, PNG has confirmed its claim of sovereignty over its airspace or what it termed as the "Air Zone", which is defined in schedule 1 to mean "The Papua New Guinea Air Zone is the area defined by reference to the following co-ordinates - Equator 14100 E, Equator 16000 E, 0450 S 16000 E, 0450 S 15900 E, along the Papua New Guinea territorial border 0800 S 15400 E, 0800 S 15500 E, 1200 S 15500 E, 1200 S 14400 E along the Papua New Guinea territorial border to 0937 S then along the territorial border to the Equator 14100 E".

(a) **The Civil Aviation Act and the Civil Aviation Rules**

Section 4(2) of the *Civil Aviation Act 2000* exempts the PNG Defence Force from complying with any provision in the Act or any of its Rules or Regulations unless express provision is provided herein.

Detailed provisions are contained in the *Civil Aviation Rules 2(1)* of the Act provides for the regulation of:

- i. Air navigation in Papua New Guinea;
- ii. Air navigation to and from PNG territory;
- iii. Air navigation in which a Government aircraft is engaged;

Part 91 of the *Civil Aviation Rules* prescribes the general and flight rules for the operation of civil aircraft in PNG. Part 91.1(b) shall also apply to members of the PNGDF and any aircraft operated by the PNGDF operating in PNG territorial limits.

Rule 91.225 prescribes that each pilot operating in the vicinity of an aerodrome with an aerodrome control service (Port Moresby has this service) in operation shall:

1. Unless authorised by the ATC, maintain two way radio communications with that service on the prescribed frequency; and
2. Obtain a clearance from that service prior to;
 - i. taxiing on any portion of the manoeuvring area; or

ii. landing at or taking - off from any runway at that aerodrome

Rule 91.245 states that operations in classified and designated airspace shall, unless otherwise authorised by the ATC, maintain two-way radio communications with ATC on the prescribed frequency.

Rule 91.407 of the *Civil Aviation Act*. This rule directs that a pilot in command of an aircraft is under a mandatory duty to submit a flight plan at least 30 minutes prior to the beginning of the flight. The Flight Plan shall include the following information:

- a) Aircraft call sign to be used;
- b) Type of aircraft;
- c) Radio communication equipment in the aircraft to be used;
- d) Navigational aid equipment;
- e) Departure aerodrome and time of departure;
- f) Cruising speed, altitude and route;
- g) The aerodrome of destination, total elapsed time and any other alternate aerodrome;
- h) Fuel endurance;
- i) Total number of persons carried in the aircraft;
- j) Emergency and survival equipment carried in the aircraft; and
- k) Any other information necessary for ATS purposes.

Rule 91.409 states that when a Flight Information Region Flight plan has been submitted it must be adhered to, unless prior change has been advised to ATC.

Rule 91.411 states ATS must be advised in the event of an inadvertent departure from the current flight plan.

Rule 91.435 states that each pilot in command of an aircraft operating under FIR shall unless authorised by ATC to:

- 1) Maintain a continuous listening watch on the appropriate frequency; and
- 2) Report as soon as possible to an appropriate ATS unit.

Rule 91.1(c) states that Part 91 rules shall not apply to any member of the PNGDF or any aircraft operated by the PNGDF acting in connection with:

- 1) Any war or other emergency; or
- 2) The defence of PNG and other interests; or
- 3) Aid to the civil power in time of emergency; or
- 4) The provision of any public service; or
- 5) Any operation performed within a restricted, danger, or military prohibited area designated under Part 73 for military purposes;

Part 91.1(b) specifies certain rules relating to training of PNGDF personnel.

The evidence in this case is that the Port Moresby ATS operates on a 24 hour basis. This means that all aircraft movement in Port Moresby are required to notify the ATS of their movement to the Port Moresby Flight Information Region (FIR). When the CASA flight took off at 1.00 am on the 10th of October 2006, no Flight Plan was submitted to the ATS in accordance with Rules. There was total communication black out at the time of the flight.

The CASA flight codenamed Eagle 502 operated without authorisation and its operation was in total contravention of all the Civil Aviation Rules and Regulations particularly the requirements of Civil Aviation Rule Part 91- General Operations and Flight Rules as highlighted above. In particular there was a breach of Rule 91.407 relating to the submission of a Flight Plan outlining the information and details required in that Rule.

The evidence shows further that there is no separate military airspace or even separate military aerodrome in PNG and therefore all operations of PNGDF aircrafts must comply with the civilian requirements. The exemptions listed under Part 91.1(c)(1) relating to specific uses of military aircrafts does not relieve members of the Defence Force.

There has been a serious breach of rules and procedures for public safety. For this reason it is our further submission that the CASA flight on the early hours of 10th October 2006 may have breached sections 277, 278 and 290 (1)(b) and (2) of the *Civil Aviation Act*.

We strongly recommend that the Department of Transport and the Civil Aviation Authority investigate these breaches and have all Defence Force personnel namely Colonels Alois Tom Ur and Vagi Oala, Lieutenant Colonels Ron Hosea and Chester Berobero, Warrant Officers Arua Ikupu and Wais Morap involved in this illegal operation charged and prosecuted for breaches of the Civil Aviation Act and the Civil Aviation Rules.

9.1.7 Other Domestic Law Violations

Evidence clearly shows that the actions of all those involved in this illegal operation to get rid of Moti to the Solomon Islands amounted to a breach of various domestic laws apart from the Civil Aviation Act and Rules.

(a) CONSTITUTION

204. Call-out in aid to the civil power

Section 204 of the Constitution sets out the procedures and the requirements for the Call-Out of the Defence Force or part of the Defence Force and that has been determined by the Court.

Section 204 reads:

- "(1) The Defence Force or a part of the Defence Force may be called out to perform functions under Section 202(c)(ii) (functions of the Defence Force) only by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.*
- (2) When called out in accordance with Subsection (1), the Defence Force or a part of the Defence Force—*
- (a) does not have, and shall not be given, any power or protection that would not be possessed by the Police Force or the members of the Police Force in similar circumstances;*
- and*

- (b) *shall support the Police Force for so long and so far as is necessary to enable the Police Force to restore public order and security; and*
- (c) *in so doing shall act only on, and to the extent specified in, a request by the appropriate civilian authority in accordance with an Act of the Parliament; and*
- (d) *shall cease to act in support of the Police Force when directed to do so by the Head of State, acting with, and in accordance with, the advice of the National Executive Council".*

The Supreme Court has determined the question of a Call-Out of the Defence Force or part of the Defence Force to assist a neighbouring Pacific Nation. The Government of The Republic of Vanuatu requested assistance of PNG for the use of our troops for peace-keeping purposes.

The matter was brought to Supreme Court for determination and is cited below:

SUPREME COURT REFERENCE NO. 4 OF 1980 (NO. 2) IN THE MATTER OF THE CONSTITUTION OF PAPUA NEW GUINEA AND IN THE MATTER OF A PETITION BY THE RIGHT HONOURABLE MICHAEL THOMAS SOMARE, UNDER S. 18(1) OF THE CONSTITUTION. [1982] PNGLR 65.

"In proceedings by way of petition the petitioner ultimately, in effect, sought the following rulings in relation to a resolution by the National Parliament on 6th August, 1980, made under s. 205(2)(b) of the Constitution, authorizing and approving the committal of troops forthwith to Vanuatu for peace-keeping purposes:

- (a) *That s. 205(2) of the Constitution merely declares the procedure to be followed if and when the National Executive Council finds it necessary to commit troops abroad;*
- (b) *That s. 202 of the Constitution exhaustively specifies the functions of the defence force, and leaves no room for the committal of troops to execute functions other than those so specified;*

- (c) *That the term "international obligations" in s. 202(b) of the Constitution means international obligations recognized by international law;*

and accordingly

- (d) *That, because no relevant international obligation existed as required by s. 202(b) of the Constitution the authorization and approval by the National Parliament on 6th August, 1980, for the committal of troops to Vanuatu was unconstitutional, null and void.*

The petitioner ultimately in effect also sought the following rulings in relation to the Defence Force (Presence Abroad) Act 1980:

- (e) *That the Act envisaged by s. 206(1) of the Constitution should outline and establish the legal basis of the matters which should be negotiated into an agreement between Papua New Guinea and any other country; and as the Defence Force (Presence Abroad) Act 1980 fails to do so, it is unconstitutional, null and void;*
- (f) *That s. 1 of the Defence Force (Presence Abroad) Act 1980 gives the National Executive Council authority to commit troops outside the country for purposes other than those specified in s. 202 of the Constitution and, in doing so, establishes functions of the defence force additional to those exhaustively specified in s. 202 of the Constitution and is therefore unconstitutional, null and void".*

203 Application of general law

In relation to application of protection of the Defence Force officers and troops, the Constitution section 203 reads:

"Since it is necessary that the Defence Force and the members of the Defence Force have no special position under the law except to such extent as is required by the nature of the Force as a disciplined force and

its peculiar functions, duties and responsibilities, it is hereby declared that, except as is specifically provided by a Constitutional Law or an Act of the Parliament, the Defence Force and the members of the Defence Force are subject to all laws in the same way as other bodies and persons".

The above provision does not offer any protection to Colonels Tom Ur, Vagi Oala, Ron Hosea, Chester Berobero, Warrant Officers Wais Morap and Arua Ikupu, because the circumstance in this matter is not a Call-Out for war, and therefore they may be dealt with under the Criminal Code, Civil Aviation laws and Migration and Customs laws.

205 Active service

Evidence before the Board of Inquiry is that PNG was not at war with the Solomon Islands or any of its neighbours and therefore there was no necessity for engagement of PNG troops to attack or to defend. Section 205 of the Constitution reads:

"(1) Except for the purposes of defence against attack, the Defence Force or a part of the Defence Force—

(a) may be ordered on active service only by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and

(b) may be sent out of the country only by the authority of and on conditions imposed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

(2) The Defence Force or a part of the Defence Force may not be ordered on, or committed to—

(a) active service; or

- (b) *an international peace-keeping or relief operation, outside the country without the prior approval of the Parliament.*
- (3) *If practicable before, and in any event as soon as practicable after, action is taken under Subsection (1) or the Defence Force becomes engaged in war or warlike operations, or in defence against attack, the Parliament shall be advised of the action taken, or likely to be taken, and of the reasons for it, and shall be given an opportunity to debate the matter.*
- (4) *Subsection (1)(b) does not prevent—*
- (a) *the Defence Force or a part of the Defence Force being sent out of the country for normal administrative or training purposes;*
or
- (b) *any action that is required or permitted by an Act of the Parliament for the purposes of enforcing a law”.*

This instance did not give rise for the engagement of our troops for international peace-keeping or relief operations nor was there an occasion for committing of PNG troops for normal external administrative or training purpose. The engagement of our troops and aircraft in the Moti operation does not fit into this category. Therefore Colonels Alois Tom Ur, Vagi Oala, Lt. Colonels Ron Hosea, Chester Berobero and Warrant Officers Arua Ikupu and Wais Morap were in our view illegally engaged in this operation.

22. Enforcement of the Constitution

The Call-out of PNG troops to serve abroad is subject to ss.203, 204 and 205 of the Constitution and as determined by the Supreme Court in the Vanuatu case. In this case the procedures as provided for in the above said provisions were not followed in the engagement of PNG troops and its aircraft for service to Solomon Islands.

We are aware that PNG troops are engaged in the RAMSI operations, but the clandestine operation undertaken by PNGDF ATW squadron is not part of the RAMSI operations. Therefore the clandestine operation to get rid of Moti out of PNG was unconstitutional. Persons involved in giving direction to get rid of Moti and flying him out of PNG breached the Constitution. There are no sanctions provided by ss.203, 204 and 205 if there is a breach of those provisions. Because there are no sanctions provided by those provisions Sections 22 and 23 must now be invoked.

Constitution Section 22 reads:

"The provisions of this Constitution that recognize rights of individuals (including corporations and associations) as well as those that confer powers or impose duties on public authorities, shall not be left without effect because of the lack of supporting, machinery or procedural laws, but the lack shall, as far as practicable, be supplied by the National Court in the light of the National Goals and Directive Principles, and by way of analogy from other laws, general principles of justice and generally-accepted doctrine".

We have accepted the evidence that the Prime Minister, Sir Michael Somare issued the direction to get rid of Moti. The direction was issued to Mr Leonard Louma, Chief of Staff and Mr Louma in turn passed the direction to Mr Joseph Assaigo to effect the direction. Mr Assaigo did, with the assistance from Colonel Alois Tom Ur. The Chief Secretary, Mr Joshua Kalinoe was informed of the operation, but did nothing to prevent the operation. In doing so, the Prime Minister, the Chief of Staff, Mr Assaigo and Colonel Alois Tom Ur breached Sections 203, 204 and 205 of the Constitution. As Sections 203, 204, 205 provide no specific sanctions the Board recommends that they be charged for violating the Constitution under Section 23.

23. Sanctions

Constitution Section 23 reads:

- "(1) Where any provision of a Constitutional Law prohibits or restricts an act, or imposes a duty, then unless a Constitutional Law or an Act of the Parliament provides for the enforcement of that provision the National Court may—*
- (a) impose a sentence of imprisonment for a period not exceeding 10 years or a fine not exceeding K10 000.00; or*
 - (b) in the absence of any other equally effective remedy under the laws of Papua New Guinea, order the making of compensation by a person (including a governmental body) who is in default,*
- or both, for a breach of the prohibition, restriction or duty, and may make such further order in the circumstances as it thinks proper.*
- (2) Where a provision of a Constitutional Law prohibits or restricts an act or imposes a duty, the National Court may, if it thinks it proper to do so, make any order that it thinks proper for preventing or remedying a breach of the prohibition, restriction or duty, and Subsection (1) applies to a failure to comply with the order as if it were a breach of a provision of this Constitution.*
- (3) Where the National Court considers it proper to do so, it may include in an order under Subsection (2) an anticipatory order under Subsection (1)".*

The uncontradicted evidence is that neither the National Parliament, NEC nor the NSC approved and authorized the use of the PNGDF CASA aircraft.

The Prime Minister Sir Michael Somare, Mr Leonard Lourma Prime Minister's Chief of Staff, Mr Joshua Kalinoe, Chief Secretary to the Government, Mr Joseph Assaigo Director General of the Office of Security Co-ordination and Assessment (OSCA), members of the Defence Force particularly the then Acting Commander, Captain (N) Tom Ur and other key players who were involved in the planning and removal of Julian Moti out of PNG should be charged for violating the

Constitution under section 22 and be punished under section 23 of the Constitution.

The reason for having the Prime Minister and his Chief of staff, Mr Louma charged for violating the Constitution is that the Prime Minister issued the initial direction to get rid of Moti through Mr Louma who then conveyed the direction to Mr Assaigo. Had the Prime Minister not issued this initial direction there would not have been any plan and action taken. Mr Assaigo requested assistance from Colonel Tom Ur for the use of Defence Force aircraft. Colonel Ur committed upon request the use of Casa aircraft therefore Mr Assaigo and Colonel Ur should be charged as well. Mr Kalinoe was informed of the operation in time for him to have intervened to stop the entire operation. He also failed to inform the National Executive Council through the Chairman and therefore he too should be charged under Section 23 of the Constitution.

(b) Organic Law On the Duties and Responsibilities of Leadership

The Prime Minister, the Chief of Staff to the Prime Minister and the Chief Secretary to the Government are all leaders under Section 26 of the Constitution and as such are subject to the provisions of Section 27 of the Constitution. They may be investigated by the Ombudsman Commission separately and charges may be laid under the Organic Law on the Duties and Responsibilities of Leadership for breach of the Leadership Code. We accordingly recommend that the Prime Minister, his Chief of Staff and the Chief Secretary be charged under the Organic Law on the Duties and Responsibilities of Leadership.

(c) Criminal Code

The evidence before the Inquiry clearly shows that the Julian Moti issue was still in the courts of PNG when he was assisted by PNG government and military officials to escape by using the PNG Defence Force CASA aircraft. The NSAC did acknowledge this and its official position was to allow the courts and the normal process of law to deal with the issue first before any firm decision was to be taken in response to the Diplomatic Notes from Australia and the Solomon Islands. In light of this we recommend that further investigation be made with a view to laying criminal charges against all those who either played a role or assisted directly or aided and abetted the

escape of this international fugitive and alleged child sex molester Julian Moti. The following criminal offences may have been committed.

(i) Perverting the Course of Justice

Under section 136 of the *Criminal Code* it is an offence to obstruct, prevent, pervert or defeat the course of justice. As we submitted Moti was facing the courts of PNG when he escaped. One of the main legal issues to be determined by our Courts was whether the alleged child sex offences for which he was facing extradition to Australia were extraditable offences. The second is that while his case was still before our Courts, PNG Government officials and military officers invented a plan to aid and abet his escape to the Solomon Islands using our military aircraft. This was eventually without the Court ever hearing his case. All persons who were involved in Moti's escape obstructed or prevented the normal course of justice taking its course. These persons must be investigated and charged under section 136 of the Criminal Code for perverting or obstructing, or preventing the normal course of justice from taking its course. Persons whose conduct should be investigated here are: Joseph Assaigo - Director General of the OSCA, Leonard Louma, - Chief of Staff, Joshua Kalinoc, - Chief Secretary Colonel Vagi Oala, Assistant Commissioner of Police Tony Wagambie, Barnabas Rongap, Colonel Tom Ur and Job Kasa, Warrant Officer Arua Ikupu and Warrant Officer Wais Morap. Finally the Prime Minister Grand Chief Sir Michael Somare should also be investigated for his role in directing the evacuation of Moti while his court case was still pending.

(ii) Conspiring to Defeat Justice and Conspiracy to effect an Unlawful Purpose

Under section 128 of the *Criminal Code* it is an offence to conspire with another person to obstruct, pervert or defeat the course of justice. Further more under section 517 of the Criminal Code, it is a criminal offence if a person who conspires with another to prevent or defeat the execution or enforcement of any law.

The evidence shows that while Moti's matter was in court, he escaped jurisdiction with the direct involvement and assistance of key government and military officers. Senior government officials are now blaming each other as to who gave the orders to have Moti taken out of PNG. None of them had accepted the blame as to who gave the

orders, but the Board has made certain findings against some of the officers and the roles they played. There may well have been a conspiracy to cover the truth by all the key personnel involved in the Moti affair.

Joseph Assaigo, a key government officer who played a leading role in the whole Moti affair, said in his affidavit sworn on the 7th February 2007 that on or about the 8th October 2006 he was instructed by Barney Rongap of the Prime Minister's office that the Prime Minister had instructed him and the Chief Secretary through the office of Chief of Staff to get rid of Moti. Then on the 9th October 2006 Mr Leonard Louma conveyed the Prime Minister Sir Michael Somare's disappointment to him and the Chief Secretary for not carrying out the Prime Minister's direction to get rid of Moti.

Prime Minister Sir Michael Somare filed an affidavit maintaining his position that he never gave any direction to evacuate Moti. Mr Leonard Louma and Mr Barney Rongap have both given evidence on oath and deny relaying any directives from the Prime Minister to Mr Assaigo. Whilst these officers continue to blame one and other as to who is telling the truth, Mr Assaigo remains adamant that he was directed by the Prime Minister through his Chief of Staff Mr Louma to get rid of Moti. This was done whilst Mr Moti's court case was pending.

For that reason we recommend that key government and military strategists and planners involved in this whole unlawful exercise be investigated and charged with conspiring to defeat the course of justice or to effect an unlawful purpose namely to assist and aid and abet the escape of international fugitive and alleged child molester, Julian Moti. There is conspiracy to defeat the course of justice and to effect an unlawful purpose. The unlawful purpose was eventually effected when Moti was flown out in a PNGDF CASA aircraft in the early morning of the 10th October 2006 to the Solomon Islands to undesignated port of Munda.

We recommend the following persons be investigated and charged for conspiracy: Prime Minister Sir Michael Somare, Chief Secretary Joshua Kalinoe, Chief of Staff Leonard Louma, Director General of the OSCA, Joseph Assaigo, Defence Force Chief of Staff and then Acting Commander, Colonel Tom Ur, Barney Rongap, Colonel Vagi Oala, Joint Operations Commander, Lt Colonel Chester Berobero, Lt Col Ron Hosea, Mr Job Kasa Executive Officer to Mr Kalinoe.

(iii) Contempt of Court

The evidence is very clear in that the Moti case was still in court when he absconded bail and escaped to the Solomon Islands on a PNGDF CASA aircraft. The official government position on Moti is as determined by the NSAC and the report of the Committee of Departmental heads headed by the then Acting Secretary, Mr. Karo Kila, Department of Foreign Affairs. This is that the legal process must be allowed to be completed first, before any decision is made on the Diplomatic requests by Australia to extradite him and Solomon Islands to accord him safe passage. All key players knew of this position but yet decided in their wisdom to collaborate and collude in assisting Moti escape. We recommend that all those involved must be investigated and charged with Contempt of Court and if found guilty to be punished accordingly. The persons are: Director General of OSCA Joseph Assaigo, Chief of Staff Leonard Louma, Barney Rongap, Colonel Tom Ur, Colonel Vagi Oala, Lt Col Chester Berobero, and Lt Col Ron Hosea.

(iv) Perjury

Perjury is a criminal offence under both section 121 of the *Criminal Code* and the *Commission of Inquiry Act*. The offences under both legislations attract a penalty of up to 14 years jail sentence. This Inquiry has seen and heard witness giving evidence on oath. Many of these witnesses lied under Oath.

For these reasons recommend that persons who have lied under Oath be investigated and charged with perjury. This include all the Defence Force officers who lied under Oath that there were only eight passengers onboard the CASA on the flight to Munda and back when in actual fact there were nine (9) passengers, comprising 3 soldiers and 2 pilots, Moti and 2 Solomon Islanders and another unidentified invaluable person. Those who lied in this regard are Captain (N) Tom Ur, Col.Vagi Oala, Lt. Colonel Chester Berobero, Warrant Officer Arua Ikupu and Warrant Officer Wais Morap.

The only civilian who should be investigated in relation to this aspect of the evidence is Joseph Assaigo whose evidence touching on this aspect was totally unreliable. Joseph Assaigo played a critical role in the evacuation of Moti to Munda including liaising with Mr Moti when he sought refuge at the Solomon Islands chancery.

Other senior Government officials who lied under Oath in relation to their knowledge of the plan to evacuate Moti back to the Solomon Islands, but who denied any knowledge of being aware of the planned escape include the Prime Minister Sir Michael Somare, the Chief Secretary Joshua Kalinoc, Leonard Louma the Prime Ministers Chief of Staff and Barney Rongap. These officials were well aware of the plan to evacuate Moti yet they vehemently denied any knowledge of these plans. For instance in his first appearance before the Board, the Chief Secretary Mr Kalinoc completely denied any prior knowledge of the plans to evacuate Moti. He said that he became aware of the escape only through media reports.

In his second appearance following the affidavit evidence of Mr Assaigo, Mr Kalinoc then confirmed that he had a meeting with Mr Assaigo in his Conference Room discussing logistics and transport and how Moti would get away. This meeting was confirmed by Mr Job Kasa the Executive Officer to Mr Kalinoc who witnessed the meeting. Mr Job Kasa himself should be charged with perjury for lying under Oath in that in his first evidence he said that he had no knowledge of the plans to evacuate Moti other than learning it through the media. In the second appearance with his boss Mr Kalinoc he submitted a written statement that he was in fact privy to the meeting between Assaigo and Kalinoc.

We find that Leonard Louma and Barney Rongap also lied under Oath to cover up the fact that they both conveyed the Prime Minister's directions to Mr Assaigo on two occasions when they appeared to give evidence in relation to conveying the Prime Ministers direction to get rid of Moti to Solomon Islands.

(d) Migration Act – Customs Act

Migration Act procedures dealing with passenger departure, and arrival were all breached by the CASA crew and the pilots including Moti, Robson Tanabose, and Chris Hapa. All passengers did not possess proper travel documents. Further upon arrival passengers did not go through the normal customs and quarantine procedures prescribed under the *Customs Act*. The evidence shows that everyone on board the CASA breached all migration procedures when the planned escape to fly Moti out of PNG jurisdiction took place on board the CASA. All persons who were involved in the escape namely Colonel Vagi Oala, Lieutenant Colonels Ron Hosea and Chester

Berobero and Warrant Officers Arua Ikupu and Wais Morap should be investigated and charged for committing migration offences under the *Migration Act* as well as for breaching quarantine and custom procedures under the *Customs Act*. We find that the exceptions provided for under the *Civil Aviation Rules 91.1(c)* will not relieve those on board the CASA Flight from complying with those mandatory procedures.

(e) Lawyers Act

One of the key players in this whole operation is Joseph Assaigo, the Director General of the Office of Security Co-ordination and Assessment. Mr Assaigo is a lawyer. His conduct in planning and assisting Moti to escape while the matter was still in Court calls into question his professional integrity and standing as a lawyer. Mr Assaigo's conduct in this whole affair is very unprofessional and should therefore be referred to the Lawyers Statutory Committee for engaging in unprofessional and unethical conduct.

(f) Defence Act -- Code of Military Discipline

(1) Captain (N) Alois Tom Ur- PNGDF Chief of Staff

C4 (2)(i). From the various findings of this Board relating to the actions of the then Acting Commander, Captain (N) Alois Tom Ur we are of the view that he be charged with breaches of service discipline under C4 (2)(i) in that he was inefficient within one's own control, in that he on Monday 9th October 2006 failed to seek the approval of the National Parliament and the National Executive Council under Constitution Sections 204, 205 and the Defence Council to commit and use a State asset, namely the CASA aircraft in a sensitive, dangerous and illegal military operation thus putting the lives of PNGDF personnel and other civilian personnel on board at great risk.

C4 (2)(i) to be inefficient due to causes within one's own control in that on Monday 9th October 2006, he failed to issue written and signed Operation Orders to legitimise the Moti operation.

C4 (2)(i) to be inefficient due to causes within one's own control in that he on Monday 9th October 2006 failed to respect the official NSAC position on one Julian Moti namely that the matter be left until the outcome of the court

hearing and instead he went ahead knowingly to execute a plan to assist the international fugitive, one Julian Moti to escape PNG jurisdiction to the Solomon Islands using a PNGDF CASA aircraft.

C4(2)(i) to be inefficient due to causes within one's own control in that he allowed himself to be directed by a civilian one Joseph Assaigo to use a PNGDF CASA aircraft to fly an international fugitive, one Julian Moti.

C4(2)(i) to be inefficient within one's own control in that he failed to properly verify the Prime Minister's alleged direction to get rid of Moti, by direct communication with the Prime Minister under section 10 (2) of the *Defence Act*.

(2) Colonel Vagi Oala – Commander – Joint Operations Centre

- a) C4(2)(i) to be inefficient due to causes within one's own control, in that he on Monday 9th October 2006, failed to remind the Acting Commander Captain (N) Alois Tom Ur to issue written Operation Orders to safeguard this operation against potential liability suits.
- b) C4(2)(i) to be inefficient due to causes within one's own control in that as operations commander on the CASA flight failed to issue proper written Operation Orders as required by the PNGDF's Standard Operating Procedures (SOP).

(3) Lt. Colonel Chester Berobero – Chief Pilot – CO Air Transport Wing

- a) C4(2)(i) to be inefficient due to causes within one's own control in that as the Chief Pilot he on Tuesday 10th October failed to organize a manifest for civilian passengers on board and the PNGDF personnel, including the Flight crew thereby creating a potential liability.
- b) C4(2)(i) to be inefficient due to one's own control in that he on Tuesday 10th October 2006, failed to organize indemnity forms to safeguard against any potential liability.

- c) **C4(2)(i)** to be inefficient due to one's own control in that on Tuesday 10th October 2006 he allowed an unauthorized civilian passenger to board and travel to the Solomon Islands on CASA Flight Eagle 502 to drop off Julian Moti, Robson Tanabose and Chris Hapa and then travel back to PNG on the same day.

(4) Lt. Col Ron Hosea – Co-Pilot – Director Air Operations

We find that Lt Col. Ron Hosea has committed the same breach of service discipline as Chief Pilot Chester Berobero and should therefore be charged accordingly under the same Code of Military Discipline, **C4(2)(i)**.

10. RECOMMENDATIONS

10.1 Air Operations Account [Refer 8.1.1]

- (a) It was recommended by the Audit Report that stringent financial guidelines should be employed in the operation of 'Directorate of Air Operations PNGDF Account' to avoid abuse and misappropriation of funds.
- (b) Recommend that this account be legitimised or abolished forthwith.
- (c) Recommend that Trust Instrument be put in place to clearly outline the purposes for which monies are to be disbursed from the account.
- (d) Recommend that the account is operated as an Imprest Account whereby proceeds from commercial activities are paid into the Commercial Support Program trust Account with a monthly transfer to the Air Operating Account to support urgent requests, subject to acquittals being done.
- (e) Recommend that the Directorate of Air Operations provide monthly bank reconciliations and copies of paid vouchers to Accounts prior to the account being replenished.

- (f) Recommend that more ATW officers are trained as accounting officers for the unit, etc.
- (g) It is recommended that the concept of this account is good in that it assists very much in expediting urgent operational needs of the ATW. Proper procedures need to be put in place to serve the unit. As we heard from Colonel Ron Hosea, Director Air Transport Wing, the normal budgetary allocation to that unit is insufficient for aircraft maintenance and other operational needs.

10.2 Other Operating Account [Refer 8.1.3]

- (a) The Board recommends that Billy Porykali and others be further investigated by the Police Fraud Squad and the Public Accounts Committee.
- (b) The Board recommends that a bigger inquiry with wider terms of reference be conducted into all accounts of the Department of Defence by the Auditor General.

10.3 Determine how the funds were disbursed [Refer 8.2]

- (a) The Board recommends that the Secretary for Defence make every effort to have this account and other accounts properly sanctioned within a given period of time in accordance with the provisions of the *Public Finance Management Act, 1995*.
- (b) The Board recommends that the Acting Defence Secretary Mr Fredrick Punangi be disciplined for allowing the accounts to operate without complying with the *Public Finance Management Act*.

10.4 Determine the legal and administrative basis for the Joint Task Force Commander to exercise operational control of all PNGDF operations [Refer 7.7]

- (a) The Board recommends that the proposed administrative restructure of the Joint Operations Command be reviewed to legally formalise its existence.

- (b) The Board further recommends that pending the proposed administrative restructure of Joint Operations Command, Colonel Oala be posted on the Unallotted List (UL) for further posting.
- (c) The Board recommends that the Commander of the Papua New Guinea Defence Force, Commodore Peter Ilau and the Acting Secretary for Defence, Mr Fredrick Punangi be disciplined for creating this anomaly.

10.5 Was there legal advise to Commander and Chief of Staff on the consequences of the Operations? [Refer 7.8]

- (a) The Board recommends that the Legal Services Branch be restructured and the position of its head be upgraded to the Rank of Colonel.
- (b) The Board further recommends that the High Command fully utilise the services offered by the Legal Services Branch at first instance.
- (c) The Board also recommends that the Reserve Legal Officers namely Majors Kisokau Poweseu, Danajo Koeget, Powes Parkop, Joe Kesan and others are terminated from the Defence Force payroll forthwith and that they be paid only as and when they are called up for active services as current practice is considered to be double dipping.
- (d) The Board recommends that the Acting Secretary for Defence and the Commander be reprimanded for allowing this practice to occur and to continue to occur.
- (e) The Board also recommends that the Officers in the Branch be given rotational attachment to the State's Legal Offices with a view to gain experience and exposure.

10.6 Given the travel ban of the Prime Minister and the Minister for Defence and subsequently the Heads of State and Ministers, why did the Defence Force Commander travel to Brisbane/Canberra, Australia? [Refer 8.6]

- (a) The Board recommends that the PNGDF Commander schedules his overseas travel well in advance to give sufficient notice to the NEC to make any acting appointments.

10.7 Air Worthiness of the PNGDF CASA Aircraft [Refer 9.1.3]

- (a) The Board recommends that the airworthiness of all PNGDF aircraft including the Casa aircraft is the sole responsibility of the Technical Officers, and as such the High Command is obliged to respect and adhere to the advice.
- (b) The Board further recommends that the Operations Commander Captain (N) Max Aleale be reprimanded for the veto of the advice given by Major Karuka the Technical Officer at that time.

10.8 Breach of PNG's International Obligation to Respect Solomon Islands Territorial Integrity [Refer 9.1.5]. Domestic Law Implications - Application of Civil Aviation Convention Principles in PNG [Refer 9.1.6]

- (a) We strongly recommend that the Department of Transport and the Civil Aviation Authority investigate these breaches and have all Defence Force personnel namely Colonels Alois Tom Ur and Vagi Oala, Lieutenant Colonels Ron Hosea and Chester Berobero, Warrant Officers Arua Ikupu and Wais Morap involved in this illegal operation charged and prosecuted for breaches of the Civil Aviation Act and the Civil Aviation Rules.

10.9 Ascertain which sections of the Code of Military Discipline and the Defence Act were contravened and what offences were committed under Criminal Code? [Refer 7.9]

(1) Captain (N) Alois Tom Ur- PNGDF Chief of Staff

C4 (2)(i). From the various findings of this Board relating to the actions of the then Acting Commander, Captain (N) Alois Tom Ur we are of the view that he be charged with breaches of service discipline under C4 (2)(i) in that he was inefficient within one's own control, in that he on Monday 9th

October 2006 failed to seek the approval of the National Parliament and the National Executive Council under Constitution Sections 204, 205 and the Defence Council to commit and use a State asset, namely the CASA aircraft in a sensitive, dangerous and illegal military operation thus putting the lives of PNGDF personnel and other civilian personnel on board at great risk.

C4 (2)(i) to be inefficient due to causes within one's own control in that on Monday 9th October 2006, he failed to issue written and signed Operation Orders to legitimise the Moti operation.

C4 (2)(i) to be inefficient due to causes within one's own control in that he on Monday 9th October 2006 failed to respect the official NSAC position on one Julian Moti namely that the matter be left until the outcome of the court hearing and instead he went ahead knowingly to execute a plan to assist the international fugitive, one Julian Moti to escape PNG jurisdiction to the Solomon Islands using a PNGDF CASA aircraft.

C4(2)(i) to be inefficient due to causes within one's own control in that he allowed himself to be directed by a civilian one Joseph Assaigo to use a PNGDF CASA aircraft to fly an international fugitive, one Julian Moti.

C4(2)(i) to be inefficient within one's own control in that he failed to properly verify the Prime Minister's alleged direction to get rid of Moti, by direct communication with the Prime Minister under section 10 (2) of the *Defence Act*.

(2) Colonel Vagi Oala – Commander – Joint Operations Centre

- a) C4(2)(i) to be inefficient due to causes within one's own control, in that he on Monday 9th October 2006, failed to remind the Acting Commander Captain (N) Alois Tom Ur to issue written Operation Orders to safeguard this operation against potential liability suits.

- b) C4(2)(i) to be inefficient due to causes within one's own control in that as operations commander on the CASA flight failed to issue proper written Operation Orders as required by the PNGDF's Standard Operating Procedures (SOP).

(3) Lt. Colonel Chester Berobero – Chief Pilot – CO Air Transport Wing

- a) C4(2)(i) to be inefficient due to causes within one's own control in that as the Chief Pilot he on Tuesday 10th October failed to organize a manifest for civilian passengers on board and the PNGDF personnel, including the Flight crew thereby creating a potential liability.
- b) C4(2)(i) to be inefficient due to one's own control in that he on Tuesday 10th October 2006, failed to organize indemnity forms to safeguard against any potential liability.
- c) C4(2)(i) to be inefficient due to one's own control in that on Tuesday 10th October 2006 he allowed an unauthorized civilian passenger to board and travel to the Solomon Islands on CASA Flight Eagle 502 to drop off Julian Moti, Robson Tanabose and Chris Hapa and then travel back to PNG on the same day.

(4) Lt. Col Ron Hosea – Co-Pilot – Director Air Operations

We find that Lt Col. Ron Hosea has committed the same breach of service discipline as Chief Pilot Chester Berobero and should therefore be charged accordingly under the same Code of Military Discipline, C4(2)(i).

11. ANNEXURES

- 11.1 The Letter from Defence Minister Honourable Martin Aini, MP to Chief Justice, Sir Mari Kapi, Kt, GCL, CBE, CSI to establish: Board of Inquiry – PNG Defence Force (dated: 20th November 2006)

- 11.2 The Letter from Chief Justice Chief Justice, Sir Mari Kapi, Kt, GCL, CBE, CSI to Defence Minister Honourable Martin Aini, MP to release Justice Gibbs Salika as Chairman of Board of Inquiry – PNG Defence Force (dated; 7th December 2006)
- 11.3 National Gazette No. G223, 7th December 2006 for the Appointment of Members of the Defence Board of Inquiry & No. G228, 15th December 2006 for Amendment of Appointment of Members of the Defence Force Board of Inquiry.
- 11.4 Letter from Secretary of NEC, Winnie Kiap to Hon. Martin Aini, MP Minister for Defence conveying Decisions of NEC dated 14th November 2006.
National Executive Council Decision No: 263/2006 in Special Meeting No: 48/2006 for Suspension of the Commander of the PNG Defence Force and Investigation into Security Breaches and Related Issues Affecting the Defence Force. Re: Endorsement of setting up of a Board of Inquiry... Terms of Reference PNG Defence Force Board of Inquiry into the Involvement of the Role of the PNGDF in aiding A. Mr. Julian Moti.
- 11.5 Terms of Reference of the Defence Board of Inquiry
- 11.6 Direction as to Mode of Hearing
- 11.7 Letter date 20th February, 2007 to Justice Gibbs Salika enclosing Ammended Terms of Reference.
- 11.8 Red Alert Notice from Interpol Headquarters, Paris, France issued to all member countries dated 27th September, 2006.
- 11.9 Email from Pacific Transnational Crime Co-ordination Centre, Suva, Fiji dated 31st August, 2006 to PNG Transnational Crime Unit and other members of the South Pacific Countries.

- 11.10 Request For Provisional Arrest Pending Extradition of Julian Moti by Australia Federal Police dated 28 September, 2006.
- 11.11 Diplomatic Note No 286 / 2006 from Australia dated 2nd October, 2006 with the following annexures:
- (a) Letter to Mr Chronox Manek, Public Prosecutor, PNG from Dianne Heriot, Attorney Generals Department, Canberra dated 29 September, 2006.
 - (b) Request for the Extradition to Australia from the Independent State of PNG of Julian Ronald Moti dated 28th September, 2006 by Christopher Martin Ellison, Acting Attorney General and Minister for Justice and Customs.
 - (c) Certificate certifying documents relating to extradition by Andrew Kenneth Walter as the Acting Assistant Secretary, International Crime Cooperation Branch, Attorney Generals Dept.
 - (d) Affidavit of Prosecutor, Wendy Anne Barbar dated 30th December, 2006.
 - (e) Warrant In The First Instance To Apprehend a Person Charged With an Indictable Offence or a Simple Offence by G B Pitt, Magistrate, dated 11 August, 2006
 - (f) Warrant In The First Instance To Apprehend a Person Charged With an Indictable Offence or a Simple Offence by John Christopher Parker, Magistrate, dated 29th September, 2006.
 - (g) Affidavit of Investigator, Federal Agent, Sally Anne McDonald dated 30th September, 2006.
- 11.12 Email from Napoleon Padabela of Solair to Gus Kraus of Airlines PNG dated 30th September, 2006 confirming plans to assist Moti's travel to Solomon Islands on a Airlines PNG Dash 8 aircraft. The travel cost was to be met by the Solomon Islands Government.
- 11.13 Diplomatic Note No 1090 / 06 from PNG Government to Australian Government dated 06th October, 2006.

- 11.14 Diplomatic Note No 39 - 2006 from Solomon Islands Government to PNG Government dated 04th October, 2006.
- 11.15 Letter of Introduction from Solomon Islands Prime Minister, Manasseh Songavare to Prime Minister Sir Michael Somare dated 3rd October, 2006.
- 11.16 Diplomatic Note No 1089 / 06 from PNG Government to Solomon Islands Government dated 06th October, 2006.
- 11.17 Transcripts of Waigani Committal Court proceedings NCC No 945 of 2006 between Michael Liriope vs Julian Ronald Moti.
- 11.18 Bail Certificate from Waigani Committal Court dated 29th September, 2006.
- 11.19 Warrant of Arrest for Julian Moti from Waigani Committal Court dated 29th September, 2006.
- 11.20 Submissions by Peter Pena Lawyers dated 09th October, 2005.
- 11.21 Notice of Appeal by Peter Pena Lawyers dated 03rd October, 2006 against orders made by the District Court on 29th September, 2006 for Moti's Warrant of Arrest to be set aside.
- 11.22 Notice of Motion in Waigani National Court proceedings OS 715 of 2006 dated 06th October, 2006 to stay orders of the Waigani Committal Court pending hearing of the appeal.
- 11.23 Legal Advice from Acting Secretary and Attorney General, Mr Fred Tomo to Chief Secretary, Mr Joshua Kalinoe on Extradition of Moti dated 02nd October, 2006.
- 11.24 Advice by Peter Pena and Associates to Honourable Bire Kimisopa, MP, Minister for Justice on Extradition Proceedings dated 04th October, 2006.

- 11.25 Grand Chief Sir Michael Somare's Karai Radio Interview dated 04th October, 2006.
- 11.26 Diplomatic Note No 34 / 06 from Solomon Islands Government dated 05th October, 2006 enclosing Undertakings to the Registrar of the Waigani National Court by:
- (a) Prime Minister Manasseh Songavare
 - (b) Julian Moti.
- 11.27 Letter from Honourable Don Polye, MP, as Acting Prime Minister to Acting Police Commissioner Tom Kulunga dated 29th September, 2006.
- 11.28 Memorandum from Mr Kila Karo, Acting Secretary for Foreign Affairs to Prime Minister Sir Michael Somare dated 05th October, 2006 enclosing the following documents:
- (a) All Media statements by Prime Minister, Sir Michael Somare and Mr Don Polye as Acting Prime Minister.
 - (b) Advice from Mr Fred Tomo, Acting Attorney General to Mr Joshua Kalinoe.
 - (c) Letter of Introduction from Prime Minister Songavare to Prime Minister Somare.
 - (d) Solomon Islands Diplomatic Note 39 / 2006.
 - (e) Letter from Don Polye, Deputy Prime Minister to Tom Kulunga, Acting Police Commissioner dated 29th September, 2006.
 - (f) Request for Provisional Arrest Pending Extradition of Julian Moti.
- 11.29 Decision of National Security Advisory Committee(NSAC) meeting dated 8th October, 2006.
- 11.30 Statement from Mr Joe Kintau, Acting Chief Executive Officer of Civil Aviation Authority confirming the flight of PNGDF Casa aircraft.
- 11.31 Notice of Ceasing To Act by Peter Pena and Associates dated 10th October, -2006.

- 11.32 Letter from Mr John Kawi, Counsel Assisting the Inquiry to Prime Minister Sir Michael Somare inviting him to appear before the Defence Force Board of Inquiry dated 12th January, 2007.
- 11.33 Letter from the Prime Minister Sir Michael Somare to Mr John Kawi, Counsel Assisting the Inquiry dated 15th January, 2007 enclosing Prime Minister's edited statement to Parliament on the 15th November, 2006.
- 11.34 Letter from Clerk of Parliament, Mr Don Pandan to Chairman, Defence Force Board of Inquiry, Justice Gibbs Salika enclosing Hansard dated 17th October, 2006 and 15th November, 2006.
- 11.35 Affidavit of Mr Joseph Assaigo sworn 07th February, 2007 in National Court proceedings OS 58 of 2007 (IR).
- 11.36 Affidavit of Prime Minister, Grand Chief Sir Michael Somare dated 23rd February, 2007.
- 11.37 Letter from Counsel Assisting the Inquiry John Kawi dated 6th February 2007 to Mr Davis Lewis, First Secretary of the Australian High Commission requesting assistance of Federal Agent Garry O'Neil.
- 11.38 Letter from the Australian High Commissioner to PNG, His Excellency Mr Chris Moraitis, dated 12th February responding to requests by Counsel Assisting Mr John Kawi.
- 11.39 Defence Council Orders dated 19th October, 2006 authorising an Internal Investigation into the Julian Moti escape.
- 11.40 Internal Defence Investigation Report into the Moti escape by Colonel David Josiah (Rtd) dated 01st November, 2006.
- 11.41 Diplomatic Note No 06 / 2007 from the Government of Solomon Islands dated 29th January, 2007 refusing to allow the Defence Board of Inquiry to travel to the Solomon Islands to interview witnesses in the Solomon Islands.

- 11.42 Letter from the Defence Board of Inquiry dated 09th February, 2007 to the Defence Minister, Honourable Martin Aini requesting an extension of time to complete the Board's Investigations.
- 11.43 Gazettal Notice No G26 dated 23rd February, 2007 disbanding the Board Of Inquiry.
- 11.44 Letter from the Minister for Defence, Honourable Martin Aini, MP, to the Chairman of Defence Board of Inquiry, Justice Gibbs Salika dated 26th February, 2007 extending the date for submission of the Board of Inquiry Report from Monday 26th February to Wednesday 28th February, 2007.
- 11.45 Letter from Chairman of Defence Board of Inquiry, Justice Gibbs Salika to Acting Minister for Defence, Sir Michael Somare dated 05th March, 2007 requesting the Defence Minister to confirm his verbal advise that the inquiry has been 10 days extension.
- 11.46 Letter from the Prime Minister and Acting Defence Minister Sir Michael Somare dated 05th March to Chairman Defence Board of Inquiry giving a 10 days extension to the 15th of March, 2007.
- 11.47 Rulings by the Board of Inquiry dated:
(a) 05th January, 2007
(b) 19th February, 2007
(c) 20th February, 2007
- 11.48 Letter from John Obed Alilee, Acting Registrar of the Supreme Court of Vanuatu to Chairman, Board of Inquiry Justice Gibbs Salika dated 20th February, 2007 confirming that the Moti case is still pending in the Supreme Court of Vanuatu.
- 11.49 Various Newspaper Reports.
(a) "Solomons AG flees from PNG Police" – National Newspaper, Monday 02 October, 2006.

- (b) "Solomons AG goes into hiding" – Post Courier, Monday 02nd October, 2006.
- (c) "PNG objects to SI Attorney's arrest" – Post Courier, Tuesday 03rd October, 2006.
- (d) "Moti hiding at SI government Office" – National Newspaper, Wednesday October 04, 2006.
- (e) "Solomons refuse to hand over Moti" – Post Courier, Wednesday October 04th, 2006.
- (f) "Let Moti go" – Post Courier, Thursday 05th, 2006.
- (g) "Not PNG problem: Sir Michael" – National Newspaper, Thursday 05th October, 2006.
- (h) "Leave Moti to Courts" – Post Courier, Monday October 9, 2006.
- (i) "Moti kept at SI High Commission" – National Newspaper, Tuesday October 10th, 2006
- (j) "Moti flees PNG in secret flight" – National Newspaper, Wednesday 11th October, 2006.
- (k) "Escape probe" – Post Courier, Thursday October 12th, 2006.
- (l) "Moti escapes but runs into Australian Police" – Post Courier, Wednesday 11th October 2006.
- (m) "Army axe falls on top officers" – Post Courier, Monday October 23, 2006.
- (n) "CAA: Moti flight not authorised" – Post Courier, Tuesday 24th October, 2006
- (o) "Lawyer cries foul over fugitive Moti saga" – Post Courier October 23, 2006
- (p) "Lawyer cries foul over fugitive Moti saga" – National Newspaper, Tuesday October 24th 2006
- (q) "PNGDF pursues answers, New inquiry specific on who's who in Moti saga" – National Newspaper, Wednesday December 13th, 2006.
- (r) "Note to Polye" – Post Courier, Thursday 29th December, 2006.
- (s) "Assaigo, Kalinoe question Inquiry" – National Newspaper, Thursday January, 04 January, 2007
- (t) "Jurisdiction queried" – Post Courier, Thursday January 04, 2007.
- (u) "Moti 'not cleared' by courts – National Newspaper, February 13, 2007