

Truth and Reconciliation Commission Act 2008

SOLOMON ISLANDS

THE TRUTH AND RECONCILIATION COMMISSION ACT 2008

(NO. 5 OF 2008)

Passed by the National Parliament this twenty-eighth day of August 2008.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

.....
Taeasi Sanga (Mrs)
Clerk to National Parliament

Assented to in Her Majesty's name and on Her Majesty's behalf this fourth day of September 2008.

.....
Nathaniel Rahumaea Waena
Governor-General

Date of commencement: See Section 1

AN ACT TO MAKE PROVISIONS FOR THE ESTABLISHMENT OF A TRUTH AND RECONCILIATION COMMISSION:

NOW THEREFORE BE IT ENACTED by the National Parliament of Solomon Islands as follows:

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SCHEDULE 2

WHEREAS in or around 1998, an armed conflict erupted on Guadalcanal between the Guadalcanal militant groups, Isatabu Freedom Movement (IFM), Guadalcanal Revolutionary Army (GRA) and Guadalcanal Liberation Front (GLF) and the Malaita Eagle force (MEF) and the Marau Eagle Force (MEF) of East Guadalcanal consisting of South Malaitan Settlers:

AND WHEREAS in the course of conflict persons were mistreated, abducted, killed, women raped, property damaged or destroyed, and many displaced or evicted from their settlements which resulted in certain instances of gross violation of human rights and the commission of heinous crimes against human rights or international humanitarian laws and standards:

AND WHEREAS following the clashes between the MEF and IFM, there was all increase in armed robberies and other criminal activities, which included armed raids and taking control of police armouries:

AND WHEREAS in recognizing the need to restore peace and harmony in Solomon Islands, the National Parliament in the years 2000 and 2001 enacted two Acts of Parliament granting amnesty to persons who may have otherwise been liable to criminal prosecution:

AND WHEREAS since the end of the conflict numerous informal traditional and church reconciliation ceremonies have been held at different levels:

AND WHEREAS the overwhelming desire and aspirations of the people is for the customary reconciliation process to be supplemented by establishing a forum in which, both the victims and the perpetrators of human rights violations could share their experiences so as to get a Clearer understanding of the past in order to facilitate healing and true reconciliation within the communities:

PART I PRELIMINARY

Short title and commencement

1. This Act may be cited as the [Truth and Reconciliation Commission Act 2008](#) and shall come into force on such date the Minister may appoint by notice published in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires -

"Amnesty" has the same meaning assigned thereto in the Amnesty Act 2000;

"Chairman" means the Chairman of the Commission appointed under paragraph 1(3) of Schedule 2;

"Commission" means the Truth and Reconciliation Commission established under section 3;

"Minister" means the Minister for the time being charged with responsibility for national unity, reconciliation and peace;

"National Selection Committee" means the Committee referred to in Schedule 1.

Schedule 1

PART II ESTABLISHMENT OF COMMISSION

Establishment of the Commission

Cap. 85

3. (1) There is hereby established a body to be known as the Truth and Reconciliation Commission which shall be a body corporate to which the provisions of Part VII of the [Interpretation and General Provisions Act](#) shall apply.

Schedule 2

(2) The provisions of Schedule 2 shall have effect as to the Constitution of the Commission and otherwise in relation thereto.

(3) The Commission shall consist of five members, three of whom shall be nationals of Solomon Islands and the other two non-nationals, who shall be -

(a) persons of integrity and credibility who would be impartial in the performance of their functions under the Act and who would enjoy the confidence generally of the people of Solomon Islands; and

(b) persons with high standing or competence from the legal profession, medical profession, clergy, social sciences or other professions or disciplines which may be relevant to the functions of the Commission,

appointed pursuant to the provisions of Schedule 2.

Duration of Commission

4. (1) The Commission shall commence operations within fourteen days of the appointment of its members and shall, subject to the provisions of subsection (2), operate for one year, provided that for good cause shown, the Prime Minister may by Order published in the Gazette, extend the term of the Commission for a further period, not exceeding one year.

(2) Before the commencement of the period of one year specified in subsection (1), the Commission shall have a preparatory period of three months during which it may undertake all tasks necessary to ensure that it is able to work effectively from the commencement of its operations.

(3) The tasks to be undertaken during the preparatory period shall include procuring

of office space, preparing a budget, securing funds for the Commission, hiring staff, discussing questions of methodology, designing and undertaking a public education campaign on the purposes and procedures of the Commission, designing and putting in place a database, undertaking preliminary background research, collecting supporting materials for its investigations and prioritizing its work.

(4) Both during the preparatory period and after it commences operations, the Commission shall endeavour to inform the public of its existence and the purposes of its work, and, where appropriate, shall invite all interested parties who may wish to do so, to make statements or submit information to the Commission.

PART III FUNCTIONS OF THE COMMISSION

Objects and functions of the Commission

5. (1) The objects and function of the Commission shall be to promote national unity and reconciliation by -

- (a) engaging all stakeholders in the reconciliation process;
- (b) examining the nature, antecedents, root causes, accountability or responsibility for and the extent of the impact on human rights violations or abuses which occurred between 1st January 1998 and 23rd July 2003, including the destruction of property, deprivation of rights to own property and the right to settle and make a living;
- (c) considering sectoral impacts on health, education, legal and other sectors, without diluting the emphasis on individual victims; and
- (d) devising policy options or measures that may prevent similar situations or a repetition of such events in the future.

(2) Without prejudice to the generality of subsection (1), it shall be the function of the Commission –

- (a) to investigate and report on the causes, nature and extent of the violations and abuses referred to in subsection (1) to the fullest degree possible, including their antecedents, the context in which the violations and abuses occurred, the question of, whether those violations and abuses were the result of deliberate planning, policy or authorization by any government, group or individual, and the role of both internal and external factors in the conflict;
- (b) to inquire into and report on the facts and circumstances surrounding the raid of police armouries and the destruction or damage caused to public property for the purposes of reconciliation;
- (c) to work to help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of the violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which

fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict; and

(d) to do all such things as may contribute to the fulfilment of the objects of the Commission.

(3) In this section "human rights violations" includes -

(a) killings, abductions, enforced disappearances, torture , rape, sexual abuse, persecution of any identifiable group, forced displacements, deprivation of liberty, serious ill-treatment of any person;

(b) the violation of other fundamental rights and freedom which are guaranteed under Chapter II of the Constitution;

(c) any attempt, conspiracy, incitement, instigation, command or procurement to commit such violations; or

(d) destruction of any property including personal or public property.

Mode of operation

6. (1) The Commission shall, subject to this Act, solely determine its operation procedures and mode of work with regard to its functions which shall include the following -

(a) undertaking investigation and research into key events, causes, patterns of abuse or violation and the parties responsible;

(b) holding public sessions, to hear from the victims and perpetrators or other interested persons of any abuses or violations, so however, that the Commission may in special circumstances hold closed hearings;

(c) taking individual statements and gathering additional information with regard to the matters referred to in paragraphs (a) or (b); and

(d) where it deems necessary, in agreement with the Director of Public Prosecutions and other relevant authorities or persons cause to be conducted or supervise the exhumation of bodies.

(2) The Commission may seek assistance from traditional and religious leaders including community and political leaders, to facilitate its public sessions.

(3) At the discretion of the Commission, any person shall be permitted to provide information to the Commission on a confidential basis and the Commission shall not be compelled to disclose any information given to it in confidence.

(4) The Commission shall take into account the interests of victims and witnesses when inviting them to give statements, including the security and other concerns of those who may not wish to recount their stories in public and the Commission may

also implement special procedures to address the needs of such particular victims as children or those who have suffered sexual abuses, as well as in working with child perpetrators of abuses or violations.

(5) Decisions of the Commission shall, as far as possible, be taken by consensus and in the absence of consensus, by the majority vote of members of the Commission and the Chairman shall cast the deciding vote where there is a tie.

Protection of Witnesses

7. (1) No statement written or oral made by any person before the Commission shall be admissible against the person in any action, suit or proceeding.

(2) No witness shall be compelled to incriminate him or herself.

(3) Every person who is invited or required to come before the Commission shall be informed of this right, and if at any stage, it appears to the Commission, that a question asked of a witness is likely to elicit a response that may incriminate the witness, the Commission is required to re-advise the witness of his or her right not to answer the question.

(4) No witness shall be compelled to incriminate his or her spouse, parents or children.

Powers of the Commission

8. (1) The Commission shall have power generally to organise its work and shall, in its operations, have power -

(a) to gather, by means it deems appropriate, any information it considers relevant, including the ability to request reports, records, documents or any information from any source, including governmental authorities, and provincial governments and to compel the production of such documents on information as and when necessary;

(b) to visit any establishment or place after having given prior notice, and to enter upon any land or premises at all reasonable times for any purpose which is material to the fulfilment of the Commission's mandate and in particular, for the purpose of obtaining information or inspecting any property or taking copies of any documents which may be of assistance to the Commission, and for safeguarding any such property or document;

(c) to interview any individual, group or members of organisations or institutions and at the Commission's discretion, to conduct such interview, in private;

(d) subject to adequate provision being made to meet expenses for the purpose, to call upon any person to meet with the Commission or its staff, or to attend a session or hearing of the Commission, and to compel the attendance of any person who fails to respond to a request of the Commission to appear and to answer questions relevant to the subject matter of the session or hearing;

(e) to require that statements be given under oath or affirmation and to administer such oath or affirmation;

- (f) to issue summonses and subpoenas as it deems necessary in fulfilment of its mandate; and
- (g) to request and receive police assistance as needed in the enforcement of its powers.

(2) Failure to respond to a summons or subpoena issued by the Commission, failure to truly or faithfully answer questions of the Commission after responding to a summons or subpoena, or intentionally providing misleading or false information to the Commission shall be deemed equivalent to contempt of court and may, at the discretion of the Commission, be referred to the High Court for trial and punishment.

(3.) In exercising its powers under this section, the Commission shall have the powers of the High Court.

Further powers

9. (1) All persons, including members and officers of the Government and Provincial Governments, shall cooperate with and provide unrestricted access to the Commission and its staff for any purposes necessary in the fulfilment of the Commission's mandate under this Act, as determined by the Commission.

(2) Any person who wilfully obstructs or otherwise interferes with or fails to comply with any direction of the Commission or any of its members or officers in the discharge of the Commission's functions under this Act, commits an offence and shall be liable on conviction to a fine not exceeding one thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

PART IV ADMINISTRATIVE PROVISIONS

Staff of Commission

10. (1) The Commission shall have such offices and may employ such staff, as it may consider necessary for the efficient performance of its functions.

(2) Public Officers may be seconded or otherwise render assistance to the Commission.

(3) The staff of the Commission shall be employed on such terms as the Commission may determine.

(4) For the purposes of this Act, the Commissioners and persons not seconded from the public service, shall not be treated as holding public office for the purposes of Chapter XIII of the Constitution.

Committees

11. (1) To assist in the performance of its functions, the Commission may appoint such committees as it considers necessary.

(2) A Committee established under this section may include persons who are not members of the Commission, but who are appointed taking into account gender representation in the work of the Commission.

(3) A member of a Committee who is not a member of the Commission shall be paid such allowances as the Commission may determine.

Independence of the Commission

12. (1) Subject to this Act, the Commission shall not in the performance of its functions be subject to the direction or control of any person authority.

(2) Each member of the Commission and or any member of the staff of the Commission shall serve in his or her individual capacity, independent of any government, provincial government or other organisational interests, and shall avoid taking any action which may create an appearance of partiality or otherwise harm the credibility or integrity of the Commission.

(3) No member of the Commission or member of the staff of the Commission shall make private use of or profit from any confidential information gained as a result of the work in the Commission or divulge such information to any other person except in the course of his or her duties as a member of staff of the Commission and any contravention of this provision may result in dismissal from the Commission.

Protection of Commissioners

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13. (1) A Commissioner shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done in good faith as such Commissioner and, without prejudice to the generality of the foregoing, a Commissioner shall have the like protection as that enjoyed by a Magistrate under section 70 of the Magistrates' Courts Act.

(2) No Commissioner shall be liable to arrest under civil process while going to, presiding in or returning from the place where an investigation under this Act is being held by him or her.

PART V FINANCIAL PROVISIONS

Funds of the Commission

14. (1) The funds of the Commission shall consist of -

- (a) monies appropriated for the purpose of the Commission by Parliament; and
- (b) any other money from any source.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by such other persons on such terms and conditions as the Auditor General may impose.

Accounts to be laid before Parliament

15. (1) As soon as practicable after the end of every audit, the Commission shall transmit to the Minister -

- (a) a copy of its statement of audited accounts; and
- (b) a copy of the report made thereon by the Auditor General or such other person as may be appointed under the provisions of section 14.

(2) The Minister shall cause a copy of the accounts and report of the Commission to be laid before Parliament.

PART VI REPORTS AND RECOMMENDATIONS

Reports and Recommendations

16. (1) The Commission shall submit a report of its work to the Prime Minister at the end of its operation.

(2) The report shall state the findings of the Commission and shall make recommendations concerning the reforms and other measures, whether legal, political, administrative or otherwise, needed to achieve the object of the Commission; namely the object of providing an impartial historical record, preventing the repetition of the violations or abuses suffered, addressing impunity, responding to the needs of victims and promoting healing and reconciliation.

Release and Implementation of Recommendations

17. (1) The Prime Minister on receiving the report of the Commission, shall cause it to be laid before Parliament and the report be made available to the public.

(2) The Government shall as far as practicable implement the recommendations of the report.

(3) The Government shall, upon the release of the report of the Commission appoint a person or a body to monitor the implementation of the recommendations of the Commission and provide necessary resources to facilitate its implementation.

(4) The person or body appointed pursuant to subsection (3), shall submit quarterly reports to the Cabinet summarizing the steps that have been taken towards implementation of the recommendations of the Commission.

Protection of Publication of Statements

18. No person shall be liable to any action, suit, indictment or proceedings by reason of his publishing a true account of any report of the Commission made public in pursuance of the powers conferred by this Act.

Dissolution of Commission

19. (1) The Prime Minister shall, not later than three months after the submission of the report of the Commission, dissolve the Commission by notice published in the Gazette.

(2) Before it is dissolved, the members of the Commission shall, amongst the final administrative activities of the Commission -

(a) organize its archives and records, as appropriate, for possible future reference, giving special consideration to -

(i) what materials or information might be made available to the public either immediately or when conditions and resources allow;

(ii) what measures may be necessary to protect confidential information; and

(b) organise the disposal of the property of the Commission in accordance with the provisions of the Public Finance and Audit Act.

Cap. 120

Avoidance of doubt

20. For the avoidance of doubt, it is hereby declared that any facts or information disclosed or statements made pursuant to this Act, or the findings or recommendations of the Commission shall not in any manner be construed as –

(a) qualifying or entitling any person to receive any compensation from the government, provincial government or any other body or person;

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(b) qualifying or entitling my person to any amnesty or further amnesty except amnesty or immunity granted in terms of the Amnesty Acts 2000 or 2001;

(c) affecting in any way any conviction passed in accordance with criminal law by a court of competent jurisdiction;

- (d) affecting any amnesty or immunity from criminal prosecution, disciplinary proceedings or a nolle prosequi entered under the provisions of the Amnesty Acts of 2000 or 2001;
- (e) affecting any criminal proceedings to be instituted or pending before a court of competent jurisdiction; or
- (f) admissible evidence in any proceeding before a court of law.

Regulations

21. The Minister may make regulations for the better carrying out the provisions and purposes of the Act.

SCHEDULE 1

(Section 2)

National Selection Committee

Establishment of committee

1. A National Selection Committee is hereby established for the purpose of recommending persons to be appointed as members of the Commission,

Composition of Committee

2. (1) The Committee shall consist of the Chief Justice, who shall be the National Selection Chairman, and one member each nominated by the Minister to represent the –

- (a) Solomon Islands Government;
- (b) Official Opposition;
- (c) Solomon Islands Churches;
- (d) Ministry of Provincial Government;
- (e) Solomon Islands Christian Association Federation of Women; and
- (f) Traditional Leaders.

(2) The names of persons nominated pursuant to sub paragraph (1) shall be published in the Gazette.

Nominations

3. (1) the Committee shall by public notice call upon members of the public to nominate persons who in their opinion are fit and proper persons to be Commissioners.

(2) The persons nominated as non-national Commissioners shall be selected from a list provided to the Committee by the United Nations High Commission for Human Rights.

4. The nominations referred to in sub paragraph 3(1) should reach the Committee within one month after the date of publication of the notice.

Lists

5. (1) The Committee shall within fourteen days of the close of nominations submit its list of persons to be appointed as Commissioners to the Prime Minister.

(2) The Committee shall also recommend to the Prime Minister the appointment of a Chairman and Deputy Chairman.

Commissioners

6. The Prime Minister on receipt of the list pursuant to paragraph 5 shall within seven days appoint such persons as Commissioners.

Decisions

7. The Committee shall make its decision by consensus, and in the absence of consensus, by a majority vote of the Committee.

SCHEDULE 2 (Section 3)

Truth and Reconciliation Commission

Composition of the Commission

1. (1) The Commission shall consist of five members appointed by the Prime Minister on the recommendation of the National Selection Committee and in accordance with paragraph 6 of Schedule 1.

(2) The Terms and Conditions of their appointments shall be as prescribed by the Minister by regulation.

(3) The Commission shall have a Chairman and a Deputy Chairman, both of whom shall be appointed by the Prime Minister on the recommendation of the National Selection Committee.

(4) The names of those appointed as Commissioners shall be published in the Gazette.

(5) A Commissioner shall, before taking his or her office, take an oath of office and secrecy specified in the First Schedule to the Official Oaths Act, with necessary modification.

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Vacancies

2. When a vacancy occurs in the membership of the Commission because of the death, disability, resignation or dismissal of a member, a replacement shall be made in accordance with the original list.

Resignation

3. A member of the Commission may resign his Office by written notice to the Prime Minister and may be removed from office but only for inability to perform the function of his office whether arising from infirmity of body or mind or for misconduct under this Act.

Duties

4. Members of the Commission shall work full time.

Proceedings and quorum

5. (1) The Commission may act notwithstanding a vacancy among its members and the validity of any proceedings of the Commission shall not be affected by any defect in the appointment of a member.

(2) The quorum of the Commission shall be three members personally present, of which one shall be a non-national appointed pursuant to paragraph 3(2) of schedule 1.

Procedure

6. Subject to the provisions of this Act, the Commission may regulate its own procedure and mode of work.

Attendance of meetings by public officers

7. Any public officer appointed under the provisions of this Act to assist the Commission shall be entitled to attend any meeting, if requested to do so by the Commission.

