

Australian lawyer condemns lack of legal rights in the Solomon Islands

Will Marshall
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Last July the Australian government dispatched 2,000 troops and police to the Solomon Islands, claiming the small Pacific island country was “a failed state” that threatened to become a breeding ground for terrorism and international crime. Canberra bullied the Solomon Islands government into passing legislation allowing Australian administrators to take over key functions—including police and finance.

Far from helping the people of the Solomon Islands, Operation Helpim Fren was aimed at securing Australian economic and strategic interests. After painting an initial glowing picture of the Regional Assistance Mission to Solomon Islands (RAMSI) being welcomed into the country, the media—when it has reported at all—now provides little news at all. Nevertheless, there have been signs of growing unease among Solomon Islanders over Australia’s trampling on democratic rights and its failure to address the country’s deep-seated social problems.

Will Marshall recently interviewed Brisbane-based lawyer Gary Scott, from KPS Lawyers, who last year spoke out over the treatment of prisoners in the Solomon Islands. His comments provide an insight into the day-to-day operations of the Australian-led intervention force and its flouting of legal norms in particular. Scott is currently representing Solomons Malaitan Eagle Force leader Jimmy Rasta Lusibaea, who has been charged over the murder of two police constables. Rasta is one of 700 people who have been arrested since Australian-led security forces landed in the country.

Will Marshall: You said there were vast differences in the legal rights afforded to Australian citizens and the manner in which Solomon Islands people are being treated. Can you elaborate on this?

Gary Scott: Lots of things that would never happen in Australia are happening here. The Australian Federal Police [AFP] have denied defence lawyers access to prosecution witnesses and denied suspects access to

lawyers.

I’ve been restricted from speaking to people within the prison. I have to get written permission from the public solicitor before I can speak to people—even if they want to speak to me. This is not what happens in Australia.

I’m acting for Jimmy Rasta Lusibaea in respect of two murder charges. These charges arise from allegations that my client ordered the deaths of two special constables. I recorded my interview with Jimmy Rasta within the confines of a prison interview room on a machine that not only records, but also takes a video. On the second interview I started to speak to other potential defence witnesses, including Harold Keke.

After this, the tape was confiscated from me. I still haven’t received the tape back. The material details various matters relevant to my client’s defence, including political factors leading up to my client’s arrest.

One particularly blatant legal violation is that Rasta had confiscated from him something like \$SI58,693. Yet, he has had only \$26,198 of this returned. 145 cartons of alcohol and refreshments were also confiscated from my client’s bottle shop stores. The AFP has only declared that they confiscated 45 cartons. They remain in the possession of the 45 cartons for no apparent lawful reason. But the AFP has immunity voted for by the Solomon Islands parliament. I intend to follow up things like this in a civil action in the Australian courts, where no such immunity exists.

Rasta’s committal hearing is on February 20. Given the limitations that have been imposed on me, I believe that the preparation of his case has been badly affected. I raised this with the Chief Magistrate. I can no longer video record interviews as I have in the past. I can’t speak to prisoners without getting consent from the public solicitor. The lack of technology, such as the lack of a fax machine in many government legal agencies and the AFP office in Honiara, further delays the possibility of

preparing a proper case. The magistrate invited me to make a declaration against the prison in the High Court, where it would be dealt with.

I tried to interview a prosecution witness who is being held in Rove prison as well. This fellow was quite willing to see me. The AFP told him not to see me, that in fact he had no right to see me. I have seen him since and he claims that he was intimidated into performing a reenactment of a crime that he never witnessed. This is a matter that is being dealt with through the AFP Internal Investigations Office in Australia.

Jimmy Rasta's wife, Vika Koto, was held for about a day and a half with no charges being laid. She was basically refused access to a lawyer, while she was asked all sorts of irrelevant questions about Rasta's personal situation.

The AFP took two workers who work for Rasta for questioning. These two men specifically asked to see Crystal Lawyers, a law firm that I used as agents in the Solomon Islands. However, the AFP told them that they had no right to legal representation at that time.

WM: What was the outcome of your letters to the Australian Federal Police?

GS: Overall, I have written numerous letters to the AFP about the lack of legal rights for those accused of crimes.

In a letter at the end of November I wrote: "You would no doubt understand that many of these prisoners are used to spending their lives working in the sun and deprivation of sunlight has a serious impact upon them emotionally and spiritually. The placement of prisoners in solitary confinement is in breach of the United Nations Basic Principles for the Treatment of Prisoners of 14 December, 1990. Many of the prisoners are complaining that the effect of solitary confinement is causing them distress, resentment and depression".

In reply, Deputy Police Commissioner Ben McDevitt wrote, "While we may offer advice, the Prisons Controller is under no obligation to accept it."

But this is blatantly incorrect because they are telling them what to do and unfortunately the prison authorities here are somewhat intimidated by the RAMSI authorities and they're basically allowing RAMSI to do what they want. I have spoken with both the commandant and the controller of the prison. They have both indicated in various ways that RAMSI is intimidating them and the other officials there.

The outcome of the letters I have written, which were often quoted in the *Solomon Star*, was quite interesting. The fact that the letters got published made a difference.

They replaced the mesh doors on the interview rooms with proper solid doors. Prior to this, prison officials could hear everything we were saying. I also complained about the solitary confinement. The officials felt compelled to say that the prisoners weren't being held in solitary confinement, that they had iron mesh doors and could talk to each other. It was only after one of my letters of complaint that the prison cells which had solid steel doors were replaced with open mesh doors, which at least allow prisoners to see and communicate with inmates opposite them.

They also provided a desk in the interview room so that we could actually operate in a proper environment.

WM: What are the general conditions of the population at large?

GS: There is enormous poverty in the Solomon Islands. It is particularly apparent in the transport system. Honiara, the capital, has roads that were sealed perhaps 50 years ago. These roads have not been maintained since and are full of what can only be described more as craters than potholes. It is quite a decrepit system that people have to endure. The people in RAMSI for instance often stay at places that are owned by expatriates and so avoid the worst of the facilities that the population has to endure.

WM: What is your opinion on how the Australian media has portrayed the situation in the SI?

GS: RAMSI has stopped the fighting among the criminals. But as far as the SI [Solomon Islands] becoming a haven for terrorists, this just isn't the case. The Solomon Islanders are by and large beautiful people. When RAMSI initially came into the SI they made a big showing that they were almost under attack as soon as they entered the country. The reality was that when the first troops landed some of them began to take combat action, yet there was a band waiting to play for them to welcome them into the country.

The majority of media reports in Australia adopt a pro-RAMSI slant, courtesy of the RAMSI media department press releases and other pro-RAMSI journalists.



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