

Solomon Islands: Julian Moti challenges Australian government's "politically-motivated" prosecution

Patrick O'Connor
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International constitutional lawyer and former Solomon Islands attorney general Julian Moti is challenging statutory rape charges now being heard in the Australian judicial system as trumped-up and politically motivated. Moti has applied for a permanent stay of proceedings—that is, to have the charges dismissed prior to trial—on the grounds that his indictment is an abuse of judicial process. In documents tendered to the Queensland Supreme Court, Moti's counsel has explained that the charges were driven by the Australian government's "policy objectives in Solomon Islands and the region generally".

The origins of the case lie in the former Howard government's military-police intervention into the Solomons in 2003, which has been continued by the Rudd Labor government since it came to office in November 2007. The Regional Assistance Mission to Solomon Islands (RAMSI) was conceived as an indefinite occupation of the impoverished Pacific country, with the Australian government taking effective control over the state apparatus, including the courts, police, prisons, finance department, and public sector. RAMSI's purpose was to advance Canberra's strategic and economic interests in the Solomons and the South Pacific by shutting out rival powers amid intensifying rivalries, largely driven by China's growing presence. The operation was regarded as a potential forerunner for subsequent interventions in neighbouring countries, including the resource-rich former Australian colony of Papua New Guinea.

By mid-2006 the Australian government had identified the recently elected Solomons' government led by Prime Minister Manasseh Sogavare as a threat to RAMSI's operation. Sogavare had attempted to regain governmental control over the country's public finances and had called for a long-term RAMSI "exit strategy". These moves were bitterly resisted by Australian officials in Honiara and Canberra.

Even more ominously for Canberra, Sogavare had also initiated an official investigation into the two days of rioting in Honiara in April 2006. The inquiry threatened to expose a number of unwelcome details regarding RAMSI's operations—including whether Australian police and soldiers had been deliberately stood

down during the rioting in order to trigger a crisis, which would provide the pretext for Canberra to dispatch additional Australian forces and for RAMSI's authority to be extended. After Sogavare announced the formation of the Commission of Inquiry in July 2006, the Howard government launched a regime change campaign, featuring a series of reckless and unlawful provocations. It had the unconditional support of the Labor opposition.

It was in this period that the operation against Julian Moti began. The Sogavare government nominated Moti as attorney general in June 2006. By this time, Canberra had already identified him as an opponent of its neo-colonial agenda. In mid-2006 Moti was centrally involved in establishing the Commission of Inquiry into the Honiara riots, having drafted the terms of reference and recommended former Australian Federal Court Justice Marcus Einfeld to head the investigation. Einfeld was immediately targeted, ostensibly over his efforts to evade paying a speeding fine (see "The political issues behind the jailing of former Federal Court judge Marcus Einfeld").

In Moti's case, statutory rape charges that had been thrown out of a Vanuatu court in 1998 were suddenly resurrected. The allegations were deemed by the court to be false and baseless, with no evidence produced to back them up. The 13-year-old alleged victim's purported testimony was marked by a series of contradictions and fallacious assertions. A magistrate dismissed the charges after reviewing the prosecution's case; he described the attempted prosecution as "unjust and oppressive" and ordered the state to pay Moti's legal costs.

In August 2007, a document issued by the Solomon Islands government to the Australian Director of Public Prosecutions provided evidence indicating that the sexual assault charges were concocted by the alleged victim's father, Ariipaea Salmon, in collaboration with Moti's enemies in Vanuatu's political and legal establishment. Moti later took Salmon to court alleging blackmail; a judge ruled that there was a prima facie case of extortion but returned a not guilty verdict due to lack of supporting evidence.

In the years after the rape charges against him were thrown out

of court, Moti lived and worked without incident in Australia, as well as in India and the South Pacific, entering and departing Australia repeatedly. Only six years later, in early 2005, did the Australian Federal Police (AFP) initiate an investigation into the charges. This followed a proposal by then Solomons' Prime Minister Alan Kemakeza to appoint Moti attorney-general. In the end Kemakeza selected a different candidate—no doubt after behind-the-scenes pressure from RAMSI officials—and Moti accepted an academic post in India. The AFP investigation then effectively ceased.

The first statement from the alleged victim was not taken until June 2006—just as Moti was once again becoming involved in political developments in the Solomon Islands. No Australian police or government official has ever explained the timing of the AFP's interest in Moti between 1998 and 2006. At every stage, the investigation has proceeded in lockstep with Canberra's ruthless pursuit of its strategic interests in the tiny Pacific nation.

Documents submitted to the Queensland Supreme Court by Moti's lawyer Ken Averre refer to many of these issues.

In support of the charge that the “investigation and prosecution of the alleged offences was motivated and/or influenced by political factors”, the stay of proceedings application lists, for example: “A belief within the Australian Government that the Applicant and his political associates were hostile to the continued operation of the Regional Assistance Mission to Solomon Islands”, “A desire by the Australian Government to limit or conclude the Applicant's involvement in the Solomon Islands political and legal system”, and “The proposed Commission of Inquiry into the April civil unrest and riots and the Applicant's role in relation to it”.

The tendered document also details “prosecution misconduct” on the grounds that three separate arrest warrants were “procured and/or issued without jurisdiction and, therefore, [are] invalid”.

The alleged “misconduct” includes Moti's arrest in Papua New Guinea in September 2006 as he was en route to the Solomons to take up the attorney-general post. The AFP-dominated Transnational Crime Unit arrested Moti, aiming to extradite him to Australia. In order to do so, it used child sex tourism legislation which is intended to allow the prosecution of paedophiles who travel overseas to commit their crimes and then evade arrest by returning to Australia. The legislation—which specifically bars double jeopardy prosecutions—was not designed to target Australian citizens who lived and worked in a foreign country where they had faced and defeated statutory rape charges. Moreover, the documents declare that the AFP's extradition order was unlawful as it did not satisfy PNG's extradition requirements. There was also no arrest warrant issued at the time Moti was detained. As a result, his counsel has told the Queensland Supreme Court, “the arrest breached the common law, the underlying law, the Arrest Act and the Constitution of Papua New Guinea”.

In December 2007, with the Rudd Labor government now in office in Canberra, Moti was expelled from the Solomon Islands, following the ousting of the Sogavare government. His lawyer contends that Moti's expulsion was also unlawful in that it violated Solomons' deportation laws, a court order specifically restraining Moti's deportation, and the Sogavare government's awarding of asylum to its attorney general. The court document stated: “The Applicant contends that the Commonwealth of Australia was complicit in that unlawful expulsion through the direct actions of Commonwealth officers and agencies”.

The stay of proceedings application also accuses Australian police and prosecutors of bringing “the administration of justice into disrepute”. The reasons include: “The manipulation of witnesses' statements for the purpose of creating a new prima facie case thereby avoiding the previous court ruling in Vanuatu that there was no prima facie case against the Applicant”, and “The action of the Commonwealth through the Australian Federal Police and other agencies in the making of excessive, unwarranted and unjustifiable payments of money and goods and/or the provisions of services to prosecution witnesses”. The Salmon family has been given more than \$100,000 by Australian authorities.

The stay of proceedings application cites these extraordinary payments as one reason why it is impossible for Moti to secure a fair trial. Other factors cited are “publicity prejudice”—with senior Australian government and police figures publicly issuing slanderous child sex allegations in 2006 and 2007—and “undue delay”, referring to the authorities' failure to investigate and prosecute the case in a timely manner constituting an “abuse of process”. Since December 2007, Moti has been unable to practice his profession and, as part of his bail requirements, is required to regularly report to local police while living in western Sydney with his parents.

The next stage of Moti's application for a permanent stay of proceedings will involve his attempt to secure documents relating to his case that are being held by Australian authorities. His lawyer has issued subpoenas to the Australian Federal Police, Department of Foreign Affairs, AusAid, and the Australian Secret Intelligence Service. State prosecutors have indicated that they are likely to challenge these subpoenas, potentially dragging out court proceedings for many more months.



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