

Former Solomon Islands attorney general challenges Australian government

Evidence backs Julian Moti's allegation of "politically-motivated" charges

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International and constitutional law expert and former attorney general of the Solomon Islands Julian Moti is applying for statutory rape charges brought by the Australian government to be thrown out of court on the basis that the case is groundless and represents an abuse of judicial process. The Queensland Supreme Court is scheduled to hear Moti's application for a permanent stay of proceedings on September 15.

A pre-hearing statement to the court submitted by Moti's counsel Jim Kennan SC stated: "It is submitted that for the Crown to seek to proceed with this prosecution constitutes an abuse of process, and that the proceedings should be permanently stayed. The prosecution is oppressive. It undermines confidence in the Court, and brings the administration of justice into disrepute."

A number of Australian Federal Police and Australian High Commission documents, including internal memos, voluntarily disclosed to Moti's legal team by the Australian Government Solicitor and the Commonwealth Director of Public Prosecutions (who earlier resisted their production under subpoenas), have added substantial weight to its central charge that the entire affair was politically motivated.

The origins of Moti's case lie in the Australian government's military-police intervention into the Solomons in 2003. The Regional Assistance Mission to Solomon Islands (RAMSI) marked a turning point in Canberra's approach in the Pacific, with the former Howard government—fully backed by Labor and the other parliamentary parties—utilising direct military-police force to shut out rival powers and ensure Canberra's continued regional hegemony. Howard's strategy has been further developed under the Labor government of Prime Minister Kevin Rudd. After six years, RAMSI remains an indefinite occupation force, with Australian police and officials exerting direct or de facto control over the impoverished country's state apparatus.

Moti was targeted after the Howard government identified him as an opponent of its neo-colonial agenda. The constitutional lawyer was first publicly vilified as a paedophile in the Australian media in September 2006 after Australian Federal Police, working through the Pacific Transnational Crime Unit, orchestrated his unlawful arrest in Papua New Guinea while he was en route from Singapore to the Solomons.

Moti was about to be appointed Solomon Islands' attorney general. His first duty was to be to provide legal advice to the government of Prime Minister Manasseh Sogavare on an Australian-instigated parliamentary no-

confidence motion. Canberra was attempting to oust the Sogavare government, which came to office in May 2006, after it became identified as a threat to RAMSI. Sogavare had attempted to regain governmental control over the country's public finances and had called for a long-term RAMSI "exit strategy"—limited moves that were nevertheless fiercely opposed by Australian officials in both Honiara and Canberra.

The Australian government regarded Moti as the Sogavare government's key legal adviser. He was, for example, centrally involved in establishing a Commission of Inquiry into the riots that had destroyed much of Honiara in April 2006—an initiative opposed and denounced by senior Australian government and RAMSI figures. The investigation threatened to expose RAMSI's responsibility for its still unexplained failure to take basic security measures that could have prevented the violence—a lapse which, at the very least, constituted potential criminal negligence but which also raised the question as to whether Australian security personnel had been deliberately stood down in order to provide the pretext for Canberra to dispatch additional Australian forces and for RAMSI's authority to be extended. The Commission of Inquiry also threatened the revocation of the immunity of RAMSI staff from the Solomon Islands' legal system—a feature of the RAMSI operation regarded by Canberra as sacrosanct.

Moti's proposed head of the Commission of Inquiry, former Federal Court Justice Marcus Einfeld, was forced to withdraw after being viciously scapegoated in the Australian media, ostensibly over his attempts to evade a speeding fine. The campaign culminated in March this year when Einfeld was sentenced to three years imprisonment, becoming the first judge in Australian history to be sent to jail. (See: "The political issues behind the jailing of former Federal Court judge Marcus Einfeld")

Moti was targeted on the basis of charges relating to statutory rape allegations that had been thrown out of a Vanuatu court in 1998.

At the time, the charges were deemed to be false and baseless. With no independent evidence, the 13-year-old alleged victim's purported testimony featured many contradictions and assertions that later proved to be false. On this basis, a magistrate decided there were insufficient grounds for a trial, described the attempted prosecution as "unjust and oppressive", and ordered the state to pay Moti's legal costs.

Well before the Vanuatu charges were publicly revived by the Australian authorities in late 2006, Moti had been regarded as an opponent

of Canberra's agenda in the South Pacific. In a lengthy affidavit submitted to the Queensland Supreme Court, Moti has outlined his close and long-standing relations with a section of the Solomon Islands ruling elite that has long sought to counter-balance Canberra's influence by currying favour with rival powers, including in Asia, and by advocating economic policies favouring local, village-based agricultural producers, contrary to the "free market" program advocated by the Australian government and international financial institutions.

During a number of contentious political and constitutional crises in the 1990s, Moti provided legal advice to several senior Solomons' politicians—including the country's leading post-independence bourgeois nationalist figure, Solomon Mamaloni, who was prime minister from 1981-84, 1989-93, and 1994-97. While in office, Mamaloni repeatedly clashed with Australian government policy in the South Pacific.

The Australian Federal Police investigation into Moti began in late 2004 after Patrick Cole, Australia's High Commissioner in Solomon Islands, demanded that Moti's 1998 Vanuatu statutory rape charges be re-examined. There was no extant complaint from the alleged victim or from any people associated with her. Cole sought the sex crime allegations to be resuscitated in order to derail Moti's pending appointment as attorney general by then Solomons Prime Minister Alan Kemakeza.

Several memoranda written by Cole at this time (partially redacted) make clear his concerns. One note, dated October 14, 2004, read: "Moti consistently ingratiates himself with Solomon Islanders (especially those likely to need extensive legal defence in coming months) by adopting an anti-Australian (and now anti-RAMSI) perspective. We assess he would likely be a very difficult proposition for us in steering SI [Solomon Islands] and bilateral matters (especially RAMSI issues, including questions of legal amnesties and pardons) through government and the Cabinet."

Cole concluded by noting his message had been drafted "in consultation with RAMSI, following discussion with AFP LO".

The memo underscores RAMSI's neo-colonial character—Cole took it for granted that Australian personnel had the right to "steer" the agenda of the nominally sovereign Solomon Islands government. It also demonstrates how seriously Australian officials regarded the prospect of Moti becoming attorney general. Cole's note was sent to five senior Department of Foreign Affairs and Trade (DFAT) officials and cc'd to 65 other officials, including those in the AFP, AusAid, several government ministries including the Defence Department and the Department of the Prime Minister and Cabinet, and the intelligence agencies Defence Intelligence Organisation and Office of National Assessments.

Other memos were circulated in a similar manner, including to the Australian Security Intelligence Organisation (ASIO). Cole's messages revealed that he was having discussions with Solomon Islands' figures—no doubt including Prime Minister Kemakeza, though the relevant names have been redacted—urging that Moti's proposed appointment be withdrawn.

In one memo, dated December 1, 2004, Cole wrote that "early progress in our own AFP investigations would clearly help" to make a case against Moti. Another note, sent on December 21, 2004, added: "efforts to prevent the appointment would be enormously strengthened if [redacted] were able to refer to specific investigative or prosecutorial action being taken against Moti in Vanuatu or other jurisdictions."

The AFP was in no doubt about Cole's interest in the 1998 Vanuatu charges. An internal police memo dated November 18, 2004, stated: "Mr Cole has further concerns regarding this matter due mainly to the fact that Mr Julian Moti has been mentioned as a possible nomination for the position of Attorney General to the Solomon Islands Government."

A case note dated January 14, 2005 added: "The Head of Mission (HOM) [Patrick Cole] wanted to be able to use these allegations as the premis [sic] for preventing Moti becoming the new Attorney General within the Solomon Islands Government. Such was the pressure that an Inter Departmental Committee meeting was held at DFAT on 10 December 2004 between representatives of AFP Pacific Desk, AFP Legal, AFP TSETT [Transnational Sexual Exploitation and Trafficking Team], AGDs [attorney general's department] and Solomon Islands Desk DFAT."

The documents substantiate one of the central grounds submitted by Moti's lawyers for a permanent stay of proceedings: "It may be said that had the defendant not been involved in the political and legal affairs of Solomon Islands at any time after 2000 he would never have been charged with the offences. To crystallise the point in this way is to demonstrate the fact that this is a vexatious and oppressive prosecution and constitutes an abuse of the processes of the court."

The January 14, 2005 AFP case note included reference to a cable that was to be sent to High Commissioner Cole advising him that the investigation into Moti—codenamed "Operation Rouge"—was confidential, and that "such allegations could not be used to influence political appointments". Another case note, however, dated February 10, 2005, observed that this cable had not been sent, as had been decided, and complained: "It appears HOM [Cole] may still be trying to manipulate the situation for political purposes."

Shortly after, Kemakeza withdrew Moti as his nominee for attorney general; Moti later accepted an academic post in India.

In a statutory declaration submitted to the Queensland Supreme Court, Kemakeza said that in early 2005 Cole told him that Moti was being investigated for sex offences in Vanuatu. "I informed him that we all knew that Moti had been discharged in that case many years before and had obtained documentary proof of that from Moti," the former prime minister states. "Cole expressed his government's disapproval of Moti in terms that required me to retract the paperwork for his appointment without further debate."

In his signed affidavit, Moti said that Kemakeza "told me that he was pressured by the Australian High Commissioner to retract my appointment because I was considered 'too independent for their liking'."

After this, the AFP investigation appeared to be put on hold—no interviews were conducted with anyone centrally involved in the case, including the alleged victim. Until, that is, in mid-2006 when the Kemakeza government was routed in a national election and politicians regarded as close to Moti were in a position to form the new government.

Cole had forewarned the AFP of this possibility. An internal police "overseas liaison communication" sent on November 14, 2005 stated: "MOTI was not successful in his attempt to become the Solomon Islands Attorney General in 2005. However, the HOM, Mr Patrick Cole has indicated his concerns to the SLO [senior liaison officer] that MOTI may seek this position again in the future should there be a change of Government in 2006. MOTI continues to have strong relationships with

key SI politicians.”

Moti’s counsel has submitted to the Queensland Supreme Court: “The delay in investigating the case is clearly related to the political motives which prompted the investigation. It is otherwise unexplained. In these circumstances, the delay in the prosecution of the defendant is vexatious.”

Moti’s statement of particulars of grounds for the stay application also lists the payments made to the alleged victim and her family. More than \$180,000 has been paid to or spent on witnesses in the last two years. “The existence of these payments is a breach of the rule of law,” Defence counsel argues. “This is so because in a system which purports to implement and abide by the rule of law, criminal prosecutions cannot be bought on the basis of evidence procured as a result of payments made by the prosecuting authority in response to demands from witnesses.”

The statement continued: “It is clear from the material now disclosed that had the Commonwealth not been making payments to the alleged victim and her family there would be no prosecution.”

Moti’s counsel cites an SMS mobile phone message sent from the alleged victim to an AFP officer in January last year which referred to certain conditions being met. The SMS then continued: “pressuring me and negotiating [sic] otherwise will only encourage me to denounce that I may have been used as a tool by the Australian Government for political and neo colonial reasons [...] The aim of all this was to put in the Government of your choice in the Solomons”.

Moti’s counsel lists several additional grounds for the permanent stay of application appeal. These include that the further prosecution “traverses earlier proceedings” of Vanuatu’s legal system; and that the prosecution amounts to a misuse of Australia’s Child Sex Tourism legislation, given that when the bill went through parliament in 1994, the justice minister stated that the new law aimed at ensuring that “crimes committed outside Australia which are not prosecuted in the country in which they were committed can be prosecuted effectively in Australia”.

Moti’s lawyers also argue that his extraction from the Solomon Islands in December 2007 was illegal and conducted “with the knowledge and complicity of the Commonwealth”. They further state that the warrant permitting Moti’s arrest in Brisbane “had not been lawfully issued” on the grounds that the warrant was issued by a Queensland magistrate when Moti was not present in the state or in Australia, raising constitutional issues in relation to the state courts’ extra-territorial jurisdictional competence.

If Moti’s application for a permanent stay of proceedings is rejected, a trial is expected to commence in November.



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