Australian court condemns police and prosecutors over child sex case

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The Queensland Court of Appeal, the state's highest court, has severely criticised the Australian federal police and prosecution services for denying the existence of crucial documents that eventually led to the acquittal of an Australian pilot who wrongly spent more than two years in prison under child sex tourism laws.

On November 13, a three-judge panel delivered its reasons for setting aside the conviction against 60-year-old Frederic Martens, who was sentenced to five-and-a-half years' jail in October 2006 for allegedly raping a 14-year-old Papua New Guinea girl in 2001. He had been convicted under section 50BA of the federal Crimes Act, which sets a punishment of up to 17 years' imprisonment for Australian residents who engage in sexual intercourse overseas with someone under the age of 16.

Justice Richard Chesterman condemned the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (DPP) for not producing official flight records that proved Martens was 1,000 kilometres away from Port Moresby, the PNG capital, on the night he was accused of raping the girl there.

Justice Chesterman said Martens had consistently requested the documents since 2004, when he was arrested, but the AFP had claimed that no such records existed at the PNG civil aviation authority. Martens' wife later travelled to Port Moresby where she was able to obtain the records over the counter at the civil aviation office.

Chesterman said that after Martens was arrested, his bail conditions prevented him from travelling to PNG, so he had to rely on the federal authorities to find the records. "They undertook the task and informed the petitioner that the records did not exist," the judge stated.

Even at the hearing of Martens's appeal, the DPP insisted that the records should be disregarded, arguing that they were not fresh evidence and that Martens could have produced them at his original trial.

The judge declared: "The records have always existed and have now been produced. It is a poor reflection upon the two organisations that one [the AFP] should have failed to find them, and denied their existence, and the other [the DPP] object to their use in the [appeal] on the ground that [Martens] should have obtained them earlier."

Other new evidence that emerged in the appeal revealed that the girl had told one of her cousins in 2003 that she had made up the rape story "in order to get some money from him [Martens]".

Martens's barrister, Michael Sumner-Potts, told the media his client was considering suing the AFP and DPP, and called for an inquiry into the handling of the case. "His life has been wrecked, financially, emotionally, psychologically," he said.

AFP and DPP officials have refused to comment on the case. They have also failed to provide any public explanation about the methods they used against Martens, which flouted long-standing legal requirements that police and prosecutors conduct proper investigations and produce all relevant documents to the defendant and the court.

Martens's exoneration came after an extraordinary legal and political saga, which itself raises many unanswered questions, not least about the use of Australia's child sex tourism laws, which were introduced by the Keating Labor government in 1994.

Although the rape was alleged to have occurred in September 2001, the girl was first interviewed by a PNG police officer in December 2003. Five months later, an AFP officer travelled to her remote village, near the West Irian border, to take another statement.

Despite the dubious evidence against him, Martens was arrested in 2004 and convicted in the Queensland Supreme Court in October 2006. Six months later, in April 2007, the Court of Appeal dismissed his first appeal against his conviction and sentence.

After finally locating the PNG civil aviation records, in March 2008 Martens petitioned Home Affairs Minister Bob Debus, who was, at the time, the Rudd government's relevant legal officer. Martens and his solicitors prepared a document that alleged a "corrupt prosecution". It accused the AFP of giving misleading information about the pilot's travel movements, suppressing other exonerating evidence and conspiring to fabricate allegations against him.

After discussions involving the Australian Attorney-General's Department, the AFP, DPP and Martens's solicitors, the document was modified to constitute a formal application to Debus to either order a pardon or refer the case back to the Queensland Court of Appeal.

In September 2008, six months after Martens issued his plea to be released, Debus rejected the application. The minister defended the AFP and the PNG police, flatly declaring that they had "no reason to question the advice from the PNGCAA [civil aviation authority] that there were no available records". He further claimed that the flight records were not "fresh and compelling evidence" and asserted, without elaborating, that there was no evidence of a conspiracy to frame-up Martens.

Martens then challenged Debus's decision in the Federal Court, where finally, six months later, in March 2009, Justice John Logan overturned it. Logan ruled that Debus had "applied an overly rigorous test" in refusing the application and "improperly exercised" his power by failing to take

into account the new evidence. The judge ordered the minister to reconsider his decision "according to law," urging him to do that "as soon as reasonably possible," because Martens remained in custody.

After a further month's delay, Attorney-General Robert McClelland eventually referred the case to the Court of Appeal, conceding that "evidence has been presented that might raise a significant possibility that Mr Martens would be acquitted by a jury acting reasonably."

If not for the persistence of Martens, his family and his lawyers, he would still be languishing behind bars for a crime he did not commit. Speaking to the WSWS, Martens's solicitor Chris Rose commented: "Why did the home affairs minister refuse to intervene? It took months and months, and a Federal Court order, to make the attorney-general intervene. Everyone wanted us to shut up and go away."

Rose said he believed the AFP had gone "hell for leather" in pursuing his client because they were looking to prove the value of the sex tourism laws. He pointed out that at the time his client was accused, the AFP was facing being forced to leave PNG and may have regarded the Martens case as a means of strengthening Canberra's case for the AFP to remain.

In September 2003, the Australian Howard government had coerced Sir Michael Somare's PNG government into accepting an Enhanced Co-operation Program that included a 115-strong AFP deployment. Under threat of Canberra cutting off aid to its former colony, the PNG parliament controversially passed enabling legislation giving AFP officers immunity from criminal prosecution and civil liability. Amid ongoing domestic hostility to the immunity law, however, in mid-2005 the PNG Supreme Court ruled that it was unconstitutional.

The PNG intervention was part of a shift by Australian imperialism to re-assert its control in the South Pacific, including by bullying the Solomon Islands government into accepting the Australian-led Regional Assistance Mission to Solomon Islands (RAMSI), an intervention force of troops, police and officials to take over key government functions, in July 2003.

The persecution of Martens has a number of striking parallels to that of former Solomon Islands' attorney general Julian Moti, who is facing trial under the Australian child sex tourism laws on charges of sexual assault that were discharged in Vanuatu a decade ago. In both cases, the AFP and DPP have violated basic legal procedures by withholding vital documents in their prosecutions of the two men. In both cases, the timing coincides with significant Australian foreign policy interests in the region.

Moti has contended that his prosecution amounts to a politically motivated abuse of judicial process. The Australian government had sought to prevent Moti from becoming Solomon Islands attorney general, because of his well-known opposition to the legal mechanisms of the RAMSI takeover, and his role in assisting the successful challenge to the RAMSI-modelled PNG Enhanced Co-operation Program. Eventually, in 2006, he was ousted as attorney general and allegedly unlawfully removed to Australia to face charges under the child sex tourism laws in December 2007. This was just one week after an Australian-backed government took office in Honiara, following 18 months of political manoeuvring and manipulation by Canberra.

During last month's hearing of Moti's permanent stay application in the Queensland Supreme Court, his defence counsel pointed out that the AFO had been aware of the Vanuatu allegations by at least 2001, yet no action was taken until late 2004, when Australia's then High Commissioner in the Solomons, Patrick Cole, requested an investigation as part of efforts to prevent Moti's appointment as attorney general (see "Australia: Julian Moti defence closing submission outlines 'oppressive and unfair' prosecution").

Moti's barrister also condemned the late disclosure of documents by the DPP and AFP, which had produced the "extraordinary situation" that the defence was forced to make its final submissions in the stay application without a number of subpoenaed documents that had yet to be made available.

Moreover, AFP documents showed that the Australian police had paid Moti's alleged victim and her family supposed witness payments totalling more than $100,000, with the family continuing to receive a monthly payment between 27 and 33 times greater than the average monthly wage in Vanuatu. This was an "amazing precedent for the future," defence counsel, Jim Kennan SC warned.

In reply, the DPP tried to argue that the circumstances of the Moti case were unique, or as rare as a "dodo". But as the Martens case demonstrates, the alleged victims of those prosecuted under Australia's extra-territorial child sex laws are likely to be residents of impoverished countries, giving them obvious financial incentives to make false accusations against Australian nationals in the hope of receiving substantial cash, either by way of compensation or via AFP witness payments.

A further link between the cases lies in their timing. Both were initiated by the AFP in 2004, a considerable time after the alleged crime (six years in Moti's case, three in Martens's) and after the accusations were first brought to the AFP's attention (at least three years in Moti's case; five months in Martens's).

Both cases were initially pursued by the Howard government, only to be continued, and defended, by the Rudd Labor government. Since coming to office, the Rudd government has followed its predecessor in ruthlessly pursuing Australia's neo-colonial interventions throughout the Southwest Pacific, including through RAMSI and the ongoing expansion of the regional role of the AFP and its para-military force, the International Deployment Group.