

Australian government frame-up of Julian Moti collapses as court throws out charges

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In an important victory for democratic rights, former Solomon Islands attorney general Julian Moti has succeeded in halting the Australian government's attempt to frame him on statutory rape charges. The Queensland Supreme Court ruled on Wednesday in favour of Moti's application for a permanent stay of proceedings, on the grounds that his prosecution amounted to an abuse of judicial process. The ruling marks an end to Canberra's five-year political vendetta, aimed at destroying Moti's professional standing as a constitutional lawyer in the Solomon Islands and wider Pacific region because he was regarded as a threat to the operations of Australian imperialism.

Queensland Supreme Court Justice Debra Mullins approved the permanent stay of proceedings after ruling that the staggering amounts of money paid to the so-called victim and her family by the Australian Federal Police (AFP) brought "the administration of justice into disrepute".

Moti was accused of sexually assaulting a 13-year-old girl in Vanuatu in 1997; the charges had been dismissed by that country's court system in 1998-1999 after a magistrate found there was no case to be answered, given the absence of evidence and the glaring contradictions in the alleged victim's statements. The AFP revived the allegations in late 2004, on the basis of Australia's extra-territorial child sex tourism laws, after the Australian High Commissioner to Solomon Islands at the time, Patrick Cole, demanded an investigation be opened to assist his efforts to prevent Moti's pending appointment as Solomon Islands attorney general. The alleged victim was not the complainant in the case—the AFP only located her and took a statement in 2006. From this point onwards, however, she and her family began receiving staggering amounts of money from the police. On numerous occasions they threatened to withdraw their cooperation unless the payments were further increased.

While the Commonwealth has still not provided a full account of the precise total sums handed over from 2006 to 2009, the Queensland Supreme Court received documents indicating an amount of at least \$150,000. This covered the family's various living expenses, including rental, medical, childcare, education, and transport costs, as well as for their domestic servant, restaurant visits, and business ventures.

The AFP's payments, Justice Mullins concluded, "raises questions about the integrity of the administration of the Australian justice system". She declared: "The conduct of the AFP in taking over the financial support of those witnesses who live in Vanuatu is an affront to the public conscience."

Justice Mullins said that while the court had to take into account the seriousness of the child sex allegations and the public interest in allowing a trial, "the balancing of the various policy considerations favours the

applicant over the prosecution", because "the seriousness of the abuse of process would not be acknowledged appropriately by any other order".

The court heard that the minimum wage in Vanuatu was just \$240 a month, or \$2,880 a year. Justice Mullins said there was "no justification" for the AFP's claim that its payments were "subsistence" living expenses. She noted instead that "the AFP has assumed the role of providing full financial support to sustain the lifestyle and activities of the complainant's family in Vanuatu". The judge continued that she found it "surprising" that "it was difficult to ascertain from the documents that were produced [provided by the AFP and prosecutors] the exact quantum of the payments made to the witnesses and that there is limited material on how the expense items included in the witness payments to the complainant's family in Vanuatu were originally calculated".

In his first statement to the media since the verdict, Julian Moti told the *World Socialist Web Site*: "I was cleared by the courts in Vanuatu in 1999. That decision still stands. The AFP's attempt to dredge up these unfounded allegations through massive witness bribery has been recognised as an outrageous abuse of process. The question not fully answered by the court is why the AFP resorted to these scandalous tactics. The answer, I would suggest, on the basis of all the material which the Commonwealth possesses but has not disclosed, lies in the political motive behind my prosecution. This was instigated by the Australian High Commission and the Department of Foreign Affairs and Trade for vigorous pursuit by the AFP in service of Australia's geo-strategic political objectives. I have asked my lawyers to refer the AFP's conduct to the Commonwealth Ombudsman, the Australian Commission for Law Enforcement Integrity, and the Commonwealth Auditor General. I await the investigation of this matter."

Moti praised the WSWs for its coverage. "Your site was the only media outlet to fulfil its professional and ethical obligations," he said. "If the mainstream media had done so, my case would not have gone as far as it did—with the accompanying expense, inconvenience, and suffering—as what is now finally being brought to light would have been more widely exposed much earlier."

While the Australian legal fraternity and various civil libertarian organisations remained silent throughout the government's protracted campaign against Moti, they found their voice in the wake of the Queensland Supreme Court decision. Australian Council for Civil Liberties President Terry O'Gorman told the *Sydney Morning Herald* that the Australian Commission for Law Enforcement Integrity (ACLEI) ought to investigate the AFP. "The payment of money, particularly this quantum of money, is extremely concerning," he said. "What the ACLEI have to look at is whether this is a one-off—or are payments being made more frequently, and courts or the defence are not being told of it?"

Barrister Greg Barnes, from the Australian Lawyers Alliance, compared the Moti affair with the 2007 “terrorist” witch-hunt of Dr Mohamed Haneef. “The link with Haneef is a valid one because you’ve got police hell-bent on securing a conviction and you’ve got the DPP rubber-stamping their actions,” Barnes said.

The former head of the National Crime Authority, Peter Faris QC, told the ABC that the AFP’s witness payments “smack of a bribe” and added that he could not see any legally proper basis for the charges to have been brought against Moti in the first place. “It wasn’t a criminal offence that occurred in Australia. It was investigated in Vanuatu, he was charged and the charges were dismissed... It’s a very strange process and one has to ask, was there a political element? But remember we’ve had a Labor government for what, now, two years? They still pursued this. I would have thought that any sensible Labor attorney-general would have reviewed it and pulled the plug. It’s a shocking waste of money, time, and effort.”

The media, which played a critical role in the Moti witch-hunt, has generally responded to the court decision by attempting to portray the question of the AFP’s massive payments to the so-called witnesses as a legal technicality, and by emphasising the judge’s rejection of the other grounds listed by Moti’s counsel for a permanent stay of proceedings.

The Melbourne *Age* today published an especially foul editorial. It admitted that the AFP “has some explaining to do” for its “baffling” conduct. However—despite no journalist from the *Age* or any other Fairfax Media outlet being present at any of the hearings—the editorial goes on to label Moti a “tough customer” who had “demonstrated contempt for the criminal justice system in jumping bail”. This was a reference to October 2006, when Moti accepted an offer of political asylum from the Solomon Islands after he had been unlawfully arrested in Papua New Guinea at the instigation of the AFP. Contrary to the *Age*’s slander, the “contempt for the criminal justice system” was on the side of the Australian authorities, whose carefully prepared provocation had no basis in either Australian, Papua New Guinean, or international law.

The political calculations behind the Moti affair

Justice Debra Mullins’ 30-page judgement was marked by a series of glaring contradictions and inconsistencies. While recognising that she had little choice but to junk Moti’s attempted prosecution, given the circumstances of the case, she rejected the central tenet of Moti’s permanent stay application—that the abuse of process was politically motivated.

Mullins acknowledged that the AFP investigation began not because a complaint was received from the alleged victim, but because of the political calculations of Australia’s High Commissioner in Solomon Islands, Patrick Cole. In an October 2004 memo, Cole wrote to Canberra that Moti had an “anti-Australian and anti-RAMSI perspective”, and that his appointment as attorney general 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”.

In an extraordinary finding, however, Justice Mullins declared: “There is no evidence of any impropriety associated with the AFP’s approach to the investigation of the conduct of the applicant [i.e., Moti] that is the subject of the charges. This makes the motivation for the original referral of the allegations against the applicant to the AFP irrelevant to the continuation of the prosecution.”

Thus, on the one hand the judge decided that a grievous abuse of judicial process had occurred because the AFP’s witness payments were an “affront to the public conscience”, but on the other hand, she claimed that there was “no evidence of any impropriety associated with the AFP’s approach”!

Justice Mullins appeared to be attempting to erect a Chinese wall between the AFP’s conduct during the initial investigation into the Vanuatu allegations (carried out between early 2005 and July-August 2006) and the AFP’s subsequent actions after arrest warrants for Moti were issued and the CDPP prepared its prosecution brief. In similar manner, she presented an absolute demarcation between Patrick Cole’s political agenda and the AFP investigation, declaring the former to be entirely irrelevant to the latter.

Both manoeuvres are absurd. Justice Mullins did not attempt to answer the obvious question that arises from her narrative—why, if there were no political calculations involved, did the AFP and CDPP act in the manner they did? Why did they make such unprecedented and extraordinary payments to so-called witnesses? The only conceivable reason was because they had no genuine evidence—the case had been discharged a decade earlier in Vanuatu, and the alleged victim had already admitted issuing false testimony. Without the payments, the case would have folded.

Contrary to Justice Mullins’ ruling, there was an essential and unbroken continuity between Cole’s political concerns in late 2004, the AFP’s initiation of a criminal investigation, and the AFP and CDPP’s conduct from mid-2006 onwards. All of them were motivated by the same agenda: to remove Moti, a known opponent of Australian operations in the region, from the legal and political scene in the South Pacific, amid mounting great power rivalries and serious concerns for the stability of the Australian government’s flagship intervention project, the Regional Assistance Mission to Solomon Islands (RAMSI). The attack on Moti is entirely inexplicable apart from this context.

First deployed in July 2003, RAMSI involved Australian police and officials effectively taking control of the Solomons’ state apparatus as part of an open-ended de facto occupation. Moti opposed RAMSI’s dubious legal underpinnings, and from mid-2006 onwards was targeted as part of Canberra’s provocative regime change campaign against the elected government of Prime Minister Manasseh Sogavare. While the bourgeois nationalist Sogavare government was regarded as being oriented to rival powers in Asia, the Australian government feared that Moti’s legal expertise could be used to strip RAMSI personnel of their immunity from Solomons’ law, thereby threatening the operation’s collapse. Moti was also centrally involved in establishing a Committee of Inquiry into riots which erupted in Honiara in April 2006, which Canberra and RAMSI bitterly opposed.

The November 2007 change in government in Australia made no difference to these strategic calculations—or to the pursuit of Moti. The Labor Party has been fully complicit from the outset in the entire sordid affair. In October 2006 when Moti was first arrested on AFP orders, then Labor leader Kim Beazley rushed to the government’s defence, declaring:

“The Howard government is politically motivated in about 99.9 percent of what it does. This is the 0.1 where it isn’t, the 0.1 where it isn’t.” Once in office, Prime Minister Kevin Rudd and his colleagues backed the attempted prosecution to the hilt.

None of the central political issues was canvassed by Justice Mullins in her decision. Moreover, she ruled that Moti’s deportation to Australia from the Solomons on December 27, 2007 was legally valid and did not constitute a “disguised extradition” as argued by Moti’s counsel. Under established common law precedent, courts ought to refuse to allow a trial to commence if the defendant has been improperly extracted from a foreign country with the collusion or connivance of the authorities of the country to which the defendant is to be prosecuted.

Most of the hearings on Moti’s permanent stay application focussed on the role played by Australian police and diplomatic officials in Honiara before and during Moti’s deportation. Substantial evidence and testimony emerged indicating that Canberra preferred deportation to the more legally cumbersome extradition process and actively collaborated in Moti’s extraction.

Justice Mullins nevertheless cleared the Australian personnel involved of any wrongdoing, insisting that the deportation decision was entirely independent of Australia and was made by the “sovereign” Solomon Islands’ government. “The existence of RAMSI and Australia’s role in it does not alter the sovereignty of Solomon Islands as a nation,” she declared. “The communications between representatives of the Australian government and representatives of the Solomon Islands government about the removal of the applicant from Solomon Islands must be analysed as dealings between sovereign nations... There was no act or involvement of the Australian government in the deportation which fixes it with the consequences of any denial of rights to the applicant that may arguably have occurred in the Solomon Islands.”

This flies in the face of the evidence. Moti was only extracted from Honiara after the Australian government finally succeeded in ousting the “sovereign” Sogavare government; within days of being installed in power, the cravenly pro-Australian administration of Prime Minister Derek Sikua delivered its side of its tacit bargain with Canberra and deported Moti. The notion that Solomon Islands is a sovereign country, and its diplomatic and legal relations with Australia are on a par with those of other countries such as the US, China, Britain, and others is widely understood in Honiara as a ludicrous legal fiction, promoted by the Australian government as part of RAMSI’s “cooperative” and “humanitarian” facade.

The reality of the neo-colonial character of the Australian government’s relations with the Solomons and other impoverished South Pacific countries was revealed in the various aspects of Moti’s victimisation from 2004 to 2009. These relations, however, remain a great unmentionable in official Australian politics. That is why the media ignored, and continues to ignore, the evidence that emerged from the Supreme Court hearings, and why Justice Mullins insisted, despite the mountain of evidence to the contrary, that the AFP-CDPP pursuit of Moti was not driven by political considerations.



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