

Australian government prosecutors appeal Julian Moti verdict

Patrick O'Connor
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Australian government prosecutors have issued a notice of appeal against a ruling by the Queensland Supreme Court last December that threw out statutory rape charges levelled against former Solomon Islands' attorney general Julian Moti. Canberra's attempt to revive, yet again, the politically motivated allegations marks a further stage in its vendetta against the international and constitutional lawyer. There appears to be a definite element of recklessness in the decision to pursue the attack on Moti, reflecting mounting concerns over the stability of the Australian military-police operation in the Solomons.

The child sex allegations were initially raised against Moti in Vanuatu in 1997, then dismissed by that country's court system. The Australian Federal Police (AFP) opened its investigation in 2004 on the urging of Patrick Cole, the Australian High Commissioner to the Solomon Islands, who indicated, in memos and documents presented to the Supreme Court, that he wanted to prevent Moti from becoming the Solomons' attorney general. Because of his Melanesian nationalist political stance, opposition to aspects of the Australian presence in the region, and his expertise in international and constitutional law, Moti was regarded as a serious threat to Canberra's flagship neo-colonial operation in the Pacific, the Regional Assistance Mission to Solomon Islands (RAMSI).

From mid-2006, when Moti was proposed as the country's attorney general, to December 2007, when he was extracted from the Solomons in what the Fijian-born Australian citizen has alleged was an illegal "disguised extradition", he was subject to a ferocious witch-hunt. Upon arrival on Australian soil he was arrested on the dubious legal basis of Australia's extra-territorial child sex tourism legislation. Moti then challenged the attempted prosecution as a politically motivated abuse of judicial process, and won an important victory on December 15 last year when Justice Debra Mullins issued a permanent stay of proceedings.

The judge concluded that the staggering amounts of money paid to the alleged victim and her family in Vanuatu had brought "the administration of justice into disrepute" and constituted "an affront to the public conscience". At the same time, however, Justice Mullins' judgment dismissed the many other grounds listed as part of Moti's stay application and insisted, against the weight of evidence, that there were no political calculations

driving the attempted prosecution.

Rather than allow the matter to rest, the Australian Commonwealth Director of Public Prosecutions (CDPP) has asked the Queensland Supreme Court's Court of Appeal to consider its argument that "the learned judge erred in finding that payments by the AFP to witnesses bring the administration of justice into disrepute to such an extent as to amount to an abuse of judicial process".

It is highly unlikely that the decision to appeal would have been made without support from the Rudd government at the highest levels. At every stage Labor has backed the pursuit of Moti. While in opposition it endorsed the former Howard government's provocations in the Solomons. Shortly after Labor took office in November 2007, Rudd declared that the position of his government was "absolutely clear cut", stating "we intend to prosecute that [the Moti charges] to the full".

The appeal application is undoubtedly driven by an attempt to undo some of the highly damaging publicity which came in the wake of the Queensland Supreme Court decision.

Several senior barristers spoke out against the attempted prosecution after the charges were thrown out. For example, the former head of the National Crime Authority, Peter Faris QC, said that he had not seen a legally proper basis for the charges to have ever been brought against Moti. "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."

Newspapers in Solomon Islands, Papua New Guinea, Fiji and other Pacific countries have published numerous articles by political and legal commentators pointing to the failed prosecution of Moti as an example of Australian government and AFP bullying and improper conduct in the region.

Moti's legal victory proved damaging to Australian interests on

a number of fronts.

One factor underlying the appeal decision is the need to retain Australia's child sex tourism legislation as a potential means of targeting anyone whose work in the Asia-Pacific region cuts across Canberra's interests. If the CDDP appeal is successful and the Moti prosecution is revived, it will effectively mean that Australian police can seek the extradition and arrest of anyone alleged to have committed statutory rape offences overseas—regardless of how old the allegations are, whether the courts in the country where the crimes are alleged to have occurred initially considered the case or not, and no matter how weak or non-existent the evidence is. A definite precedent will have been set. There will be no impediment to the AFP paying tens and even hundreds of thousands of dollars to the family members of alleged victims—in turn establishing a clear incentive for impoverished and desperate families in the Pacific to level false accusations against known opponents of the Australian government.

The Moti verdict as it currently stands threatens to render the extra-territorial child sex tourism legislation a dead letter, especially coming after the overturning of the wrongful imprisonment of Queensland pilot Frederick Martens on trumped-up child sex allegations in Papua New Guinea. (See: "Australian court condemns police and prosecutors over child sex case")

Martens is now suing the Australian government for \$45 million in compensation. A comparable sum may be involved in the event that the permanent stay of Moti's attempted prosecution is upheld and the constitutional lawyer chooses to seek damages.

Australian officials in Canberra and Honiara are also conscious of the benefits of forcing Moti to spend the next period preoccupied with countering the appeal application.

Next month, the Solomon Islands parliament will resume debate on a report by the Foreign Relations Committee (FRC) on the domestic legislation underpinning RAMSI's operations, the Facilitation of International Assistance Act (FIAA), including the awarding of legal immunity to intervention force personnel. FRC chairman Peter Boyers and Prime Minister Derek Sikua had hoped to simply rubber stamp the existing set up and renew the legally dubious FIAA with minimal discussion. RAMSI officials and their parliamentary allies are acutely aware of the danger that an extended debate among MPs could trigger a wider discussion among ordinary Solomon Islanders and provide a focal point for escalating opposition.

One indication of the highly sensitive state of relations was Boyers' lengthy denunciation in parliament last December of the *World Socialist Web Site* for its exposure of his whitewash of RAMSI and the Facilitation Act. (See: "Solomon Islands' parliamentarian denounces WWSW during debate on Australian intervention force")

A national parliamentary election is also scheduled to be held

later this year, only the second to be held on RAMSI's watch. The previous ballot, held in April 2006, proved disastrous for Canberra. The pro-RAMSI administration of Prime Minister Allan Kemakeza was routed in the poll. When the few remaining ministers attempted to retain their positions in a disparate coalition government, riots erupted in protest against the allegedly corrupt outcome. Highlighting mounting opposition to RAMSI's presence, demonstrators targeted Australian police and other personnel. A new government was subsequently formed, led by Prime Minister Manasseh Sogavare. After Sogavare attempted to lessen RAMSI's control over the country's public finances and called for the development of a long-term RAMSI "exit strategy," he was subjected to a regime-change campaign involving a series of provocations, including the attempts to have Moti arrested. The protracted diplomatic standoff, which culminated in Sogavare's ousting in December 2007, proved damaging to Canberra's reputation in the Solomons and the South Pacific.

If the 2010 election is followed by political upheavals comparable to those that emerged in the wake of the 2006 ballot, it would seriously undermine RAMSI's continued presence. If RAMSI collapsed, it would mark a major blow to the Australian ruling elite's geo-strategic standing in the region, amid heightened great power rivalries fuelled by Beijing's growing influence. Australian officials are undoubtedly preparing to do everything possible to ensure their favoured candidates are in a position to form the next government after April's election.

Ensuring that Moti is kept out of the picture is one aspect of this. Challenging the CDDP's appeal will consume both his time and financial resources.

Replying to the appeal notice, Moti's defence lawyers issued a notice of contention to the Queensland Court of Appeal earlier this month. It insisted that the Supreme Court decision "should be affirmed on grounds in addition to the grounds [initially] relied on". The notice listed four grounds of contention. Firstly, that Moti's extraction from the Solomons in December 2007, with the connivance of Australian authorities, was a disguised extradition and in breach of both the Solomons' Deportation Act and a court order. Secondly, the investigation "was politically motivated and undertaken a considerable time after the dismissal of the charges in Vanuatu". Thirdly, the attempted prosecution "offends the principle of double jeopardy" that no one can be convicted of an offence for which they have been previously acquitted. And finally, the prosecutor's "incomplete and belated disclosure" of relevant documents "had an adverse effect on the hearing of the stay application and was oppressive".



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