

Papua New Guinea report highlights illegality of Moti arrest

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The Papua New Guinean parliament has released a report by the Ombudsman Commission into the events of September–October 2006, beginning with the arrest of the then pending Solomon Islands’ attorney general, Julian Moti, at the behest of Australian Federal Police (AFP). The ombudsman concluded that the “initial arrest and detention of Moti was unlawful and in breach of the Extradition Act”. The finding is further confirmation of the illegal and provocative character of the protracted witch-hunt waged by the Australian government against the international and constitutional lawyer.

The 70-page Ombudsman Commission report has sparked a furore in PNG over its recommendation that Prime Minister Michael Somare be investigated and potentially charged with criminal offences relating to Moti’s flight from the country to the Solomons eleven days after he was arrested. In response, Somare and his fellow ministers passed a parliamentary resolution last Wednesday formally rejecting the ombudsman’s report. The prime minister denied any wrongdoing, accused Chief Ombudsman Chronox Manek of having “ulterior motives”, and insisted that the events of September–October 2006 saw PNG “unwittingly drawn into the Moti issue by agents of another government trying to carry out a political plan contrived by their government to discredit Moti”.

On September 29, 2006, the lawyer was arrested—on the orders of AFP agents in the Pacific-wide Transnational Crime Unit—while he was in a PNG airport transit lounge, en route to the Solomon Islands to take up the post of attorney general. Canberra sought Moti’s extradition on the highly dubious basis of Australia’s extra-territorial child sex tourism laws. The AFP revived statutory rape allegations that were levelled against Moti in 1997–1998 but dismissed by a Vanuatu court after Australia’s High Commissioner in Honiara, Patrick Cole, encouraged an Australian investigation. Internal documents released last year demonstrate that Cole hoped that this would bolster his

efforts to prevent Moti being appointed the Solomons’ attorney general. Australian diplomatic officials regarded him as a serious threat to the Australian-led intervention force, the Regional Assistance Mission to Solomon Islands (RAMSI), which took over key aspects of the country’s administration in 2003.

Moti was initially arrested without a warrant; moreover, efforts to extradite him proceeded on the basis of expired legislation. After being granted bail by a Port Moresby court, Moti accepted an offer of political asylum from the Solomon Islands. On October 10, he was flown in a PNG military plane to the Solomons, sparking a diplomatic clash that lasted more than a year. Solomon Islands Prime Minister Manasseh Sogavare was subjected to a sustained regime change campaign by Canberra. Moti was finally extracted from the Solomons and arrested in Australia in December 2007, after Sogavare was ousted. Last December the Queensland Supreme Court finally threw out the charges after finding that the attempted prosecution was an abuse of judicial process. (See “Australian government frame-up of Julian Moti collapses as court throws out charges”)

The actions of Australian police and diplomatic officials in the initial events in PNG were not scrutinised during the Queensland court hearings. The Ombudsman Commission report, however, underscores the fact that Canberra’s pursuit of Moti was marked by illegalities from the very outset.

According to the *Sunday Chronicle* newspaper, Moti’s PNG lawyers have written to the country’s solicitor general seeking a meeting to negotiate a damages settlement. “The state breached our client’s common law rights which include false imprisonment, intentional infliction of nervous shock, intentional infliction of mental distress, malicious prosecution, abuse of process, conspiracy to pervert the course of justice, defamation, and interference with trade or business by unlawful means,” Peter Pena, Moti’s chief

lawyer, said.

Canberra targeted Prime Minister Michael Somare in 2006–2007 for allegedly assisting Moti’s exit from PNG. The Australian government of then Prime Minister John Howard imposed travel bans on Somare and his ministers entering Australia in retaliation for their refusal to support Moti’s extradition. Intense Australian pressure led to the formation of a PNG defence department Board of Inquiry into the Moti military flight; the subsequent report was leaked to the Murdoch press in Australia in July 2007, just as PNG national election results were being finalised. Australian “advisors” working in the military and defence department were most likely responsible for what amounted to an extraordinary intervention into the PNG election. The leaked report purportedly called for Somare to be charged with a series of serious offences, alleging that he had orchestrated Moti’s exit from PNG. The Howard government then publicly demanded that the “rule of law” be maintained—a stance that was widely understood as support for the PNG prime minister’s arrest.

The standoff was only resolved after the change of government in Australia in November 2007. Labor’s Prime Minister Kevin Rudd quickly made a tactical shift. Having previously accused the Howard government of undermining Australian interests in the Pacific by a needlessly aggressive approach, Rudd sought to cut a deal with Somare. For all the PNG prime minister’s rhetoric over national sovereignty in his clashes with the Howard government, he was always eager to reach an accommodation with Canberra. In return for the Australian government tacitly dropping the issue of potential criminal charges relating to the Moti flight and lifting all diplomatic sanctions, Somare agreed to improve relations with Australia, which was the colonial power in the resource-rich territory until 1975.

While Rudd publicly embraced Somare, he maintained pressure on Sogavare until the Solomons’ prime minister left office. The Labor government has also pursued the vendetta against Moti—Commonwealth prosecutors have recently appealed the Queensland Supreme Court decision barring the attempted prosecution.

The resurfaced allegations against Somare appear to be bound up with political infighting in Port Moresby. The chief ombudsman who is responsible for the report, Chronox Manek, was previously PNG’s leading public prosecutor. In October 2006 Manek defended Moti’s arrest and argued in court for his extradition to Australia. The legal official has been outspoken on the issue of Moti’s flight to the

Solomons; in December last year he gave the ombudsman report to the parliamentary speaker and then publicly demanded that it be quickly tabled in parliament. According to ABC Radio, Manek threatened that if this was not done, “the [Ombudsman] Commission will get a court order to compel the speaker to act”.

Somare told parliament that the report’s contents “speak very poorly of the integrity and objectivity of the Ombudsman Commission”. He insisted there was no factual evidence presented to justify the recommendation that he be investigated for alleged breaches of the law in October 2006. Somare further noted that while the ombudsman admitted that Moti’s arrest had been illegal, “no recommendations have been made to prosecute those involved in breaking our own laws”. Without naming Manek, the prime minister condemned the public prosecutor at the time for being “negligent in his duties”, which “precipitated a series of unlawful actions to take place”. Somare insisted that “if our police authorities had done their job properly, and not allowed themselves to be dictated to by outside agents, this incident would not have happened”. He concluded by urging people to familiarise themselves with the documents tendered and the judgement issued in the Queensland Supreme Court case that saw Moti’s case quashed.

Opposition leader Mekere Morauta was reportedly the only MP to defend the Ombudsman Commission report during the parliamentary debate. He accused Somare of sending a “veiled threat” to the police commissioner to ignore the recommendation for a criminal investigation.

The Rudd government has remained publicly silent on the allegations against Somare—for the time being at least. As the Moti case demonstrates, criminal allegations against individuals can be readily seized upon by the Australian government and media, long after the event, if such a campaign serves Canberra’s needs.



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