In blow to Australian government:

High Court agrees to hear Julian Moti appeal

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Former Solomon Islands' Attorney General Julian Moti won an important victory yesterday in his ongoing battle against the Australian government's efforts to open a politically motivated criminal trial, based on trumped up statutory rape allegations. The High Court approved Moti's request for special leave to appeal a Queensland court ruling that allowed the prosecution to proceed. The decision means that the country's highest court will, later this year, issue a determination on alleged grossly illegal conduct by the Australian government and Australian Federal Police (AFP).

In 1999, a Vanuatu court threw out allegations that Moti had sexually abused a 13-year-old girl. But the case was dredged up in 2004 by Australian diplomatic officials as a means of preventing Moti from becoming attorney general of the Solomons. The international and constitutional lawyer had been identified as an opponent of Canberra's agenda in the Pacific, including the neo-colonial intervention force—the Regional Assistance Mission to Solomon Islands (RAMSI). The subsequent AFP investigation became the vehicle for Moti's removal from the Solomon Islands, in December 2007, and his arrest as soon as his flight landed in Queensland.

In December 2009, the Queensland Supreme Court issued a permanent stay of proceedings, barring Moti's prosecution, on the grounds that extraordinary payments made by the AFP to the family of the alleged victim had brought "the administration of justice into disrepute" and were "an affront to the public conscience." This decision was overturned by the Queensland Supreme Court of Appeal last July. Moti has now won the right to appeal to the High Court to overturn the earlier appeal. His application was approved despite the High Court generally agreeing to hear just one out of every twenty such applications.

John Agius, for the Commonwealth Director of Public Prosecutions (CDPP), argued that the Queensland Supreme Court of Appeal ruling be allowed to stand. But the three High Court justices in the court yesterday—Chief Justice Robert French and Justices William Gummow and Susan Crennan—approved the application submitted by Moti's counsel, on two grounds.

The first was on the issue of the so-called witness payments; the second related to what Moti's counsel alleges was his unlawful rendition from Solomon Islands to Australia in December 2007. Under established common law precedent, courts should 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 he or she is being prosecuted.

Moti was nominally deported by the former Solomon Islands government of Prime Minister Derek Sikua—installed after a protracted Australian regime change operation against the previous administration of Manasseh Sogavare. But there is substantial evidence indicating the incident amounted to a "disguised extradition," or rendition. The "deportation" violated Moti's legal rights under the Solomon Islands' Deportation Act, and directly violated a magistrate's order. AFP agents and Australian diplomatic staff were, Moti's counsel argued, deeply involved in the allegedly illegal conduct.

Significantly, most of the discussion yesterday between the three High Court justices, Moti's counsel, Ian Barker QC, and John Agius, centred on the alleged rendition as a possible ground for an abuse of process finding. In the initial ruling issued in the Queensland Supreme Court, Justice Debra Mullins denied that Australian authorities had colluded or connived with Moti's extraction from the

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Solomons. Then, in the Queensland Supreme Court of Appeal, as Chief Justice French observed, there had been an "avoidance of this question."

Ian Barker argued that Justice Mullins had made a wrong assessment of the evidence on Australian government connivance. He also argued that she was wrong in ruling that the question of alleged unlawful conduct on the part of the Solomon Islands government was not justiciable, i.e., not a matter upon which an Australian court could rule. Barker explained that it was not possible to rule on collusion and connivance without first determining the legality of the actions that were allegedly being colluded or connived with.

The barrister continued that the evidence demonstrated that Australian authorities wanted to get Moti into the Australian courts by any means, and had participated in unlawful activities to achieve their objective.

The CDPP's John Agius was on the defensive throughout the proceedings. He said that the initial Queensland court ruling—that there had been no Australian collusion in Moti's removal from the Solomons—was correct and ought to be upheld. He also maintained that Australian courts did not have the authority to rule on the lawfulness of Moti's "deportation" under Solomon Islands' law. At different points, Agius was challenged by all three High Court justices, who asked about the evidence that had been tendered on the activities of Australian police and diplomats at the time of Moti's removal from the Solomons.

There were several exchanges on the role of AFP agent Peter Bond, who was highly active in Honiara, the Solomons' capital, in the period leading up to and during Moti's extraction. The High Court justices heard that Bond participated in several meetings with Solomons' government and immigration officials, who were coordinating the so-called deportation. Bond also attended a meeting with Solomon Islands Chief Justice Albert Palmer. Shortly before Moti was removed from the Solomons, the court heard yesterday, Bond instructed a Solomons' police officer to "do it quickly because the plane will be waiting"—further evidence contradicting the CDPP's argument that Bond was a mere observer to the "deportation" proceedings.

John Agius finally declared that the CDPP would file a notice of contention, challenging the constitutional validity of the High Court reviewing the legality of the Australian government's actions in the Solomon Islands, during the "deportation" proceedings against Moti. In other words, the public prosecutor will argue that what happened in Honiara in December 2007 falls into the category of "non-reviewable executive action," or executive action carried out internationally that, under the Australian constitution, cannot be assessed by the judiciary.

Such a position amounts to a rearguard effort by Canberra to block any examination of its alleged collusion with a foreign power in an unlawful rendition of an Australian citizen.

Moti's High Court case therefore raises profound issues concerning the Australian government's ability to engage in unlawful activity internationally, and the legal and democratic rights of any Australian citizens who find themselves the targets of such unlawful activity. The final decision will prove a legal landmark.

Despite this, the Australian media have maintained their conscious blackout of the Moti case. Not a single outlet has reported on yesterday's legal proceedings. This comes after the ongoing refusal to report on the deathbed confession made by the father of the alleged rape victim, in which he apologised to Moti and Moti's family, and admitted that the allegations were concocted and exploited by the Australian government to maintain its control over the Solomon Islands. (See: "Extraordinary deathbed confession exposes Julian Moti frame-up")

The entire Moti affair demonstrates the media's function as a filthy accomplice of Australian neo-colonialism in the South Pacific. When the case involved salacious sexual allegations against a known opponent of Canberra's agenda in the region, it was front-page news. Now, however, as the Australian High Court considers evidence of rampant Australian government illegality in the Solomons, there is unanimous and deafening silence.

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