Australian High Court prepares to hear Julian Moti appeal

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The High Court will next week hear the appeal of former Solomon Islands attorney general Julian Moti, who has waged a five year battle against the Australian government's attempt to prosecute him on what he alleges are "politically motivated" statutory rape allegations.

More than a decade ago, a Vanuatu court threw out sexual assault allegations against the Australian citizen. The case was only revived by Australian diplomatic officials in 2004, as part of a campaign to prevent Moti from becoming attorney general of the Solomons. The international and constitutional lawyer was regarded 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 Australian charges laid against Moti, based on sex tourism legislation, were used to remove him from the Solomons in December 2007, after a protracted regime change drive by Canberra resulted in Prime Minister Manasseh Sogavare losing office.

Moti was immediately arrested upon his forcible removal to Australia. For the last three and a half years he has lived without any source of income, and has been forced to comply with stringent bail conditions. He has challenged the Australian government's prosecution on the grounds that the entire case is a politically motivated and improper abuse of the judicial system, based on illegal conduct on the part of the Australian government and Australian Federal Police (AFP).

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." The Commonwealth Director of Public Prosecutions (CDPP) subsequently appealed, and the decision was overturned by the Queensland Supreme Court of Appeal in July last year. Moti is now presenting the matter to the High Court for final deliberation.

Last April, the High Court agreed to hear the case on two grounds—the so-called witness payments and the legality of Moti's removal from the Solomons in December 2007 ("In blow to Australian government: High Court agrees to hear Julian Moti appeal").

Moti's counsel has always maintained that the former attorney general's extraction to Australia was an illegal rendition or kidnapping—not, as it was formally presented, a deportation legally ordered and organised by the Solomon Islands' government—and that the Australian judiciary was obligated to refuse to put him on trial because of this. Under established legal precedent, courts must permanently bar a prosecution if the accused has been unlawfully transported from a foreign country. This includes cases where an ostensible deportation is actually a "disguised extradition".

Moti argues that Australian diplomatic officials and AFP agents colluded and connived in the extraction, despite "knowing full well of the blatant illegality of what was proposed".

This question was summarily dismissed by both the Queensland Supreme Court and Queensland Supreme Court of Appeal, but the High Court has made clear its interest in considering the matter. The final decision by the seven High Court judges is likely to prove a major legal landmark.

The Commonwealth Director of Public Prosecutions maintains that the Australian courts cannot adjudicate whether Moti's removal from the Solomons in December 2007 broke that country's laws. The matter, they argue, is "not justiciable' in the Australian legal system.

In written submissions to the High Court, Moti's counsel, Ian Barker QC, challenged this argument. "It is obvious that the conduct of the Solomon Islands Government must be examined in order to determine whether Australia connived at it," he explained. Barker added that the principle of non-justiciability did not extend to conduct by a state that breaches international law, and that Moti's human rights had been violated in contravention of international law.

The defence argues that the so-called deportation was illegal, as it was enforced in violation of a statutory right of appeal and also breached a magistrates' court order specifically prohibiting Moti's deportation. Moreover, the deportation "amounted to a disguised extradition, in the sense that it was clearly for the improper

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purpose of ensuring the appellant [Moti] faced charges in Australia, and involved the deliberate circumvention of extradition procedures".

The events surrounding Moti's removal from the Solomons are a microcosm of the political and judicial state of affairs under RAMSI. Canberra dispatched the intervention force in 2003 as a means of bolstering its domination of the country, and the region, against rival powers, particularly China. Ever since, Australian officials have maintained control of the Solomons' state apparatus—including its police, prisons, courts, and finance and other key government departments—while maintaining the legal fiction that the country and its government retain full sovereignty.

With Moti's extraction, the CDPP insists that the Solomon Islands' government decided on deportation and the Australian government did nothing other than respect this sovereign decision. According to Moti's counsel, however, "Australian officials encouraged and assisted the appellant's unlawful rendition to Australia".

As early as October 2006, Australian officials had expressed their hope that Moti would be deported from the Solomons rather than face extradition proceedings, which would likely have involved Moti making lengthy appeals. In December 2007, immediately after the installation of a new pro-Australian government in Honiara, Canberra did everything it could to facilitate the so-called deportation. On December 17, ten days before Moti was forced out of the Solomons, Australia's senior diplomat in the country Peter Hooton told a colleague that he hoped "we can avoid making a fuss ... we all want him gone after all and it would be a shame to risk an early misunderstanding with the new government".

AFP liaison officer in Honiara, Peter Bond, played a particularly noteworthy role. He fast tracked travel visas into Australia that he issued to the Solomons police and immigration officials who accompanied Moti on the plane to Australia. Australian officials also issued Moti with Australian travel documents, without his authorisation or consent. Bond attended numerous meetings held to discuss Moti's removal, which were attended by Solomons Island government members, immigration officials, and police. On the morning of the deportation, Moti's counsel explained in the High Court submission, Bond "passed on to the Deputy Chief Commissioner of the Solomon Islands police force, Mr Peter Marshall, 'legal advice' to the effect that the planned deportation was lawful, when he knew full well that it was not". Finally, according to a witness, Bond told a Solomons' immigration officer to "do it quickly because the plane would be waiting". He then ensured that AFP officers in Australia were waiting to arrest Moti as soon as his plane landed.

Moti has asked the High Court to carefully scrutinise Bond's role in December 2007, as well as his testimony given to the Queensland Supreme Court. The defence has highlighted the contradiction between Bond's statement in court that he was never interested in Moti's deportation, only his extradition, and an email he sent in October 2006. This warned another AFP officer that "the removal of Moti from the Solomon Islands to Australia via deportation is now in danger of not becoming an option", and stated that if Moti became attorney general, "the consequences will be disastrous for Australians, Australian interests, and RAMSI".

The defence submission declared: "The conclusion to draw from FA [Federal agent] Bond's evidence was that, where necessary, he was willing to lie rather than concede matters which may have put the prosecution of the appellant at risk."

Moti's counsel concluded that the Australian government's complicity in Moti's unlawful removal from the Solomons went beyond acquiescence—though that itself would be enough to warrant the charges being thrown out—and was equivalent to "aiding and abetting".

On the issue of the so-called witness payments, the defence submission answered the Queensland Supreme Court of Appeal finding that they did not warrant a permanent stay of proceedings because they were not illegal and also because the cash was provided after the alleged victim and her family had given statements to the AFP.

Moti's counsel noted that "it is far from clear that the witness payments were legal". Moreover, an abuse of judicial process under established legal precedent may be determined on the basis of gross impropriety without necessarily also involving illegality. On the question of the timing of the payments, the defence submission stated: "It cannot be said that payments which induce initial cooperation are improper, while payments which secure ongoing cooperation, whatever the circumstances and whatever the price, are not... The right-thinking person would correctly perceive a link between the political genesis of the prosecution, the delay, the means by which the appellant was brought to the jurisdiction, and the extraordinary payments being made to keep the prosecution on foot."

Last March, just three days before he died, the alleged victim's father stated that the initial allegations made against Moti had been bogus, and apologised to the former attorney general. He also accused AFP officers of intimidating his family into cooperating with the investigation, and of coaching their testimony ("Extraordinary deathbed confession exposes Julian Moti frame-up ").

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