

Australian High Court blocks frame-up charges against Moti

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The Australian government suffered a significant blow yesterday, with a High Court ruling in favour of former Solomon Islands' Attorney General Julian Moti. In a 6-to-1 majority decision, the court permanently barred any criminal prosecution of Moti on trumped-up statutory rape charges. It found that further prosecution of the charges would amount to an abuse of judicial process, because the Australian government had consciously colluded in Moti's illegal removal from the Solomons in December 2007.

The judgement marks the collapse of Canberra's protracted legal vendetta against Moti. Successive Liberal and Labor governments—working with the Australian Federal Police and the Australian diplomatic corps in the South Pacific—attempted to destroy Moti's professional standing and political influence in the region and have him imprisoned for years because he was regarded as an impediment to the interests of Australian imperialism. From a Melanesian nationalist standpoint, Moti, an expert in international and constitutional law, had worked to uphold the national sovereignty and international legal rights of the small South Pacific states. This came into conflict with Canberra's aggressive drive, backed by the US, to maintain its regional hegemony amid China's rising influence.

In 2004, Australian authorities dredged up fabricated sexual assault allegations against Moti that had already been dismissed by Vanuatu courts. The Australian government's interest in the charges was politically motivated from the very beginning. Internal memos, diplomatic cables, and emails—only made public because of Moti's subsequent fight in the Australian courts—revealed that the then Australian High Commissioner to Solomon Islands, Patrick Cole, demanded an Australian Federal Police (AFP) investigation to assist his efforts to prevent Moti's appointment as the Solomons' attorney general. Cole was desperate to prevent any challenge to Australia's neo-colonial intervention force, the Regional Assistance Mission to Solomon Islands (RAMSI).

The initial allegations were levelled against Moti in 1997 in Vanuatu. Charges were quickly thrown out of court in the pre-trial stage, due to the contradictory and demonstrably false evidence presented by the alleged victim and her family. Last March, the father of the alleged victim confessed, just three days before he died of a heart attack, that the allegations were false and maliciously motivated. He accused the AFP of intimidating his family and offering financial inducements. These allegations have never been investigated. The Australian media has maintained a blackout on the confession—with the exception of SBS Radio, not a single outlet has referred to the father's statement.

The AFP's investigation into Moti, named "Operation Rouge", became the vehicle for his removal from the Solomon Islands in December 2007, after Prime Minister Manasseh Sogavare was finally removed from office following a protracted destabilisation campaign mounted by the

Australian government. Moti has always maintained that his extraction from the Solomons was illegal—amounting to a kidnapping or rendition—and that the Australian judicial system was therefore bound, in accordance with established precepts of international and common law, to refuse to permit the further prosecution of the charges.

The High Court has now agreed. It noted that the so-called deportation was executed in violation of Moti's right to appeal the order within seven days of its issuance and also in defiance of a specific order issued by a Solomons' magistrate prohibiting Moti's detention and removal from the country. Australian authorities knew this, but nevertheless issued Moti with the necessary travel documentation, without his knowledge or permission.

The High Court explained: "First, Australian officials (both in Honiara and in Canberra) knew that the senior representative of Australia in Honiara at the time (the Acting High Commissioner) was of opinion that the appellant's [Moti's] deportation was not lawful. Second, the Acting High Commissioner's opinion was obviously right. Third, despite the expression of this opinion, and its obviously being right, Australian officials facilitated the unlawful deportation of the appellant by supplying a travel document relating to him (and travel documents for those who would accompany him) at a time when it was known that the documents would be used to effect the unlawful deportation."

On this basis, the court concluded that the maintenance of proceedings against Moti would constitute an "abuse of process of the court" and therefore had to be permanently quashed.

Justice Dyson Heydon issued a minority opinion, arguing against the established legal principle that courts ought to refuse to prosecute someone who has been kidnapped or illegally removed from a foreign jurisdiction by government authorities. Heydon insisted that prosecutions ought to be permitted regardless of how the defendant is brought before the court. The chilling opinion effectively sought to sanction rendition. It pointed to the deeply anti-democratic conceptions that are widely held in the legal and political elite and promoted under the banner of the so-called war on terror.

The majority High Court decision overturned the previous judgements of the lower courts that adjudicated on the Moti case.

In December 2009, the Queensland Supreme Court issued a permanent bar on the attempted prosecution, on the basis of the extraordinary AFP payments to the alleged victim and her family. Between February 2008 and November 2009 about \$150,000 was paid—a sum far in excess of regular subsistence witness payments. Payments were repeatedly escalated as the alleged victim threatened to withdraw from the case and go to the

media to expose how she was being used to advance the Australian government's political interests. The Queensland Supreme Court said these payments had brought "the administration of justice into disrepute"—but at the same time insisted that it could not adjudicate on the legality of Moti's removal from the Solomons' because this was a foreign jurisdiction.

In July 2010, the Queensland Supreme Court of Appeal reinstated the charges against Moti, dismissing concerns over both the AFP payments and the legality of the lawyer's removal from the Solomons.

The High Court has now insisted that the so-called witness payments were not illegal and had not been used to procure evidence from prosecution witnesses. It added that any improprieties could be raised in the course of a trial to challenge the credibility of witness testimony, but did not warrant a stay of proceedings. This finding appears to establish a dangerous precedent. Permitting a trial even when enormous sums of money are provided by the AFP to procure testimony, if not evidence, creates a potential incentive for individuals to fabricate allegations against Australian citizens visiting or living in the region, especially those identified as opponents of the government.

The High Court ruling on the illegality of the Australian government's actions in December 2007 is nevertheless very significant. Canberra's unlawful targeting of the Solomons' attorney general points to the fraudulent basis for the entire RAMSI intervention. In 2003, the Australian government deployed soldiers, police, and government and legal officials as part of an indefinite takeover of the Solomons' state apparatus. This was promoted as a "humanitarian" mission, centrally aimed at re-establishing the rule of law in the country, following years of low-level communal conflict. Yet the Australian government has repeatedly demonstrated contempt for the law in the Solomon Islands and across the South Pacific.

The High Court made no attempt to answer the obvious question raised by its assessment of what happened in December 2007: Why did the Australian government so blatantly break the law in order to get Moti out of the Solomons?

The illegal extraction was the culmination of a 20-month campaign waged by Canberra against the Sogavare government and its attorney general, Julian Moti. By December 2007, the Australian government was desperate to get Moti out of the Solomons, using whatever means at its disposal. After becoming prime minister in May 2006, Sogavare attempted to lessen RAMSI's control over the country's public finances, and he also called on the intervention force to outline its "exit strategy" from the country. Both moves were furiously denounced by the then Howard government, and the destabilisation campaign began.

Moti's close relations with Sogavare were another factor in Canberra's drive to force "regime change" in Honiara. The Australian government feared that Moti would use his legal experience and expertise to mount a challenge in the Solomons' and international courts to RAMSI, exposing its highly dubious legal underpinnings. Moti was also an important participant in the Solomons government's efforts to convene an official Commission of Inquiry into rioting that destroyed much of Honiara in April 2006, just before Sogavare became prime minister. There is substantial evidence indicating that the violence was instigated by RAMSI forces, which were then deliberately stood down in order to allow the destruction to unfold. Canberra denounced the proposed investigation and witch hunted everyone involved in it. Former Australian Federal Court Justice Marcus Einfeld had been appointed chairman of the Commission

of Inquiry—but was forced to resign after becoming subject to a well-timed government and media vilification campaign over a perjury incident related to an unpaid speeding fine.

Unsurprisingly, none of these issues was canvassed in the High Court's judgement. Even in its focus on the illegal facilitation of Moti's extraction from the Solomons in December 2007, the court dealt only with the issuing of travel documents. The High Court insisted that it was "not necessary" to examine the activities of AFP agent Peter Bond. The police officer played an extraordinary role in Honiara immediately prior to Moti's expulsion to Australia. Bond, according to the evidence presented by Moti's counsel, participated in high level Solomons' government meetings convened to organise the so-called deportation, personally fast tracked visas and travel documents for everyone involved in the Moti flight, assured the Solomons' police commissioner that the lawyer's removal was legal, directed a Solomons' immigration officer to "do it quickly because the plane would be waiting", and finally made sure that AFP officers would be waiting to arrest Moti in Australia the moment his plane landed.

In a statement to the *World Socialist Web Site* after the High Court judgement, Moti said: "The rule of law has finally prevailed over Australian executive lawlessness. The sole objective of the Australian government and its prosecuting authorities was to discredit, demonise and humiliate me. It was in Australia's 'national interest' that I be removed from my official post—and continuing influence in the Pacific region—at any cost. 'Operation Rouge' was the codename devised for the Australian government's mission to criminally accuse, capture, kidnap, remove, eliminate and silence a dissident Australian who dared to challenge Australian imperialism in the South Seas."

The High Court ruling is an important vindication of Moti's determined struggle against the Australian government's vendetta. Enormous pressure has been brought to bear on him and his family. For the last four years he has been unable to work or claim any form of income support. He has lived without a passport or driver's licence, and been forced to comply with unnecessary and onerous bail conditions, including regularly reporting to the local police station. He has nevertheless waged an expensive and protracted legal battle to expose the unlawful acts committed by the Australian government against him. In doing so, he has brought to light important documentation exposing the filthy operations of RAMSI and the Australian government in the Solomons that would otherwise never have been made public.

Moti is now reportedly considering his options in pressing for compensation from the Australian and Solomon Islands' governments. He is also, according to barrister Roger de Robillard, considering calling for an official inquiry similar to those into the illegal deportation of Australian national Vivian Alvarez Solon to the Philippines in 2003 and the unlawful detention of Cornelia Rau in a refugee detention centre in 2004-05.



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