

# ATTACKS ON JUSTICE – SOLOMON ISLANDS

## *Highlights*

Throughout 2002 and the first half of 2003, the judicial system barely functioned as ethnic conflict continued in the Solomon Islands. Threats were made against the lives of judges and prosecutors and little was done to investigate or prosecute persons responsible for killings and other abuses. Since the restoration of peace, the Regional Assistance Mission for Solomon Islands (RAMSI) has made the strengthening of the judicial system a priority. However, insufficient resources have continued to hamper its effective functioning.

## BACKGROUND

Following ethnic conflict between the Guadalcanal-based Istabu Freedom Movement (IFM) and the Malaitan Eagles Forces (MEF), representatives of the central government, the opposing armed groups, Australia and New Zealand signed the Townsville Peace Agreement in October 2000 (see *Attacks on Justice, eleventh* edition), ending a state of emergency that had been declared earlier in the year. However, the agreement failed to secure a stable peace. The country continued to suffer from widespread lawlessness, leading to a serious deterioration in the overall human rights situation, with numerous abuses being committed by the police and by militant groups on both sides.

Following elections held in December 2001, Sir Allan Kemakeza was elected Prime Minister. The elections were peaceful and widely regarded as fair (see [http://www.dfat.gov.au/geo/solomon\\_islands/solomon\\_islands\\_brief.html](http://www.dfat.gov.au/geo/solomon_islands/solomon_islands_brief.html) - [political overview](#)). The Kemakeza government, in partnership with donors such as UNDP and AusAID (the Australian government aid agency), made early attempts to address the law and order problem. There remained, however, frequent outbreaks of lawlessness, as well as widespread corruption, extortion and intimidation by criminal groups, groups of disaffected police officers and “Special Constables”, paramilitary police officers linked to the MEF.

The security situation deteriorated during the first half of 2003. Armed violence, including killings and rapes continued, with at least 19 people killed by the GLF (Guadalcanal Liberation Front) – (<http://web.amnesty.org/library/index/engasa430012004>). In April 2003, a peace delegate sent by the (Anglican Church) Melanesian Brotherhood was killed by the GLF, and seven members of a brotherhood delegation who went to investigate, including experienced and respected human rights defenders, were taken hostage by the GLF and also killed. With the government failing to establish any kind of investigation into human rights abuses that occurred during the conflict, a climate of impunity continued.

In response to the deteriorating situation and at the Government's invitation, in April 2003 Australia initiated and organized RAMSI (the Regional Assistance Mission for the Solomon Islands). On 24 June 2003, around 1700 military, 300 police and 80 civilian personnel arrived from Australia, New Zealand, Fiji, Samoa, Vanuatu, Tonga, Kiribati, Cook Islands and Nauru. By the year's end, however, the security situation had stabilized and most of these forces had been withdrawn. The restoration of law and order in the capital and elsewhere in the country began to facilitate the restoration of basic public services, including the courts, and enabled international donors and NGOs to consider resuming assistance programmes stalled by the conflict.

Some 200 new police recruits have been trained, and there is a new emphasis on increasing the proportion of women police officers in the force: currently there are over 100 women officers in the Royal Solomon Islands Police (RSIP) and prison services.

Under the *Solomon Islands Facilitation of International Assistance Act 2003*, RAMSI officers were given the same powers of investigation and arrest as officers of the RSIP. On 13 August 2003 GLF leader Harold Keke surrendered to the custody of the police, where he has remained ever since. The government declared a general arms amnesty and police posts were established throughout the nine provinces. The Australian Department of Foreign Affairs reported that, as of 3 December 2004, 4,681 people had been arrested on 6,878 charges, including high-ranking police officers and militants from both sides of the conflict. Of these, 611 were charged with crimes considered "very serious". In the circumstances, fears have been expressed that the legal system lacks the resources to adequately handle the number of criminal trials anticipated – especially since the courts must also handle other civil and criminal cases, as well as address the backlog of cases that could not be finalized during to the conflict. In addition, little has been done to date to address the land problem and the root causes of the conflict.

There are now some 100 civilian advisers in finance ministry and law and justice sector institutions, including courts and prisons. In addition, 21 lawyers and legal advisors have been placed in positions that include Solicitor General, Deputy Legal Drafter, and Public Solicitor.

## JUDICIARY

Prior to mid-2003, there was a serious breakdown in the administration of justice at all levels. Although the Solomon Islands *Constitution* provided implicitly for the independence of the judiciary, and the government generally respected this provision, the background of lawlessness made it difficult for the courts to carry out their functions effectively. There were no organized police or prison authorities to ensure implementation of court orders; the government appeared unable to investigate and prosecute those responsible for human rights abuses; and several judges and prosecutors were threatened or abducted.

Since mid-2003, there have been no further reports of threats against the lives of judges or prosecutors and the government has continued to respect the independence of the judiciary. Following RAMSI's intervention, over 1,000 special constables –

mostly former rebels – have been demobilized under a UNDP-assisted scheme and 400 police officers (around one-third of the force) have stood down, retired or been dismissed. Over 100 RSIP officers and prison officers have been arrested and charged with crimes relating to corruption, murder, assault, intimidation, as well as other crimes such as sexual assault. RAMSI has set up or reopened police posts and prisons and started a capacity-building programme for prosecution, court and prison services.

However, a lack of judicial resources remains problematic. The courts have struggled to cope with a rapidly increasing caseload, and the arrest of a significant number of police officers and former rebels on suspicion of having committed serious criminal offences during the conflict has put a strain on the legal system that even current levels of international assistance appear unable to meet. It is feared that without further major help, these trials will overwhelm the capacity of the legal system to process them (see “Supporting Justice and Good Governance: Report of A Mission to Solomon Islands”, Australian Legal Resources International (ALRI), p.26).

The Court of Appeal sits infrequently, and has not sat at all since September 2003. There seem to be substantial delays in the handing down of judgments as well as in the length of time between the filing of an appeal and its hearing.

The construction of a second courtroom in the High Court building has recently been completed, enabling the court to run two cases concurrently. Despite this, it is feared that there are still insufficient basic resources to cope with such a vast number of cases. Some cases are estimated to last months, and one is reported to involve up to 90 witnesses. There are no facilities for recording evidence: judges take notes in longhand. The court library is poorly resourced and the Solomon Islands Law Reports only cover the period 1980–90, although selected High Court and Court of Appeal decisions are published by the University of the South Pacific’s Pacific Islands Legal Information Institute (Paclii) database (<http://www.paclii.org/databases.html#SB>).

The present composition of the High Court may be problematic as parties may seek to have a judge disqualified from hearing cases arising from the conflict because of his/her ethnic origin or, in the case of the newly-appointed judge Francis Mwanesaula, because of his position as the previous Director of Public Prosecutions. While in that position, his office led the prosecutions of many of those currently charged.

The High Court does not have its own budget, its costs being met from consolidated revenue.

Since July 2003, funding provided by donors has enabled magistrates’ courts to start clearing their backlog of cases and to conduct trials of some of the people involved in the conflict. Nevertheless, problems remain. Regular travel by principal magistrates to the provinces was disrupted during the conflict, resulting in the breakdown of the administration of justice in many areas. Magistrates are again travelling on circuit, but are reportedly continuing to encounter problems, particularly in reaching remoter areas. There have been a number of instances where magistrates have had to dismiss charges because a DPP officer has not attended court. Difficulties also exist with the enforcement of judgments, with police officers often unable to access remote areas because they lack fuel for their boats.

Local courts headed by non-legally trained customary leaders, such as village chiefs, ceased to function during the conflict, and were still dormant in mid-2004.

The Law Reform Commission has not met since Justice Kabui, its first President, was appointed to the High Court. Steps have been taken, however, to restore the Office of the Auditor-General, which ceased to function effectively during the conflict, and the Ombudsman's Office, which has held several training seminars in 2003 and 2004.

## **LEGAL PROFESSION**

The Public Solicitor provides legal representation for persons charged with criminal offences, and provides legal aid in civil matters. There are currently seven donor-funded "mentoring lawyers" working with the Public Solicitor, but it has been reported that only the Public Solicitor himself is adequately qualified to defend murder charges or conduct other major criminal trials (see "Supporting Justice and Good Governance: Report of A Mission to Solomon Islands", Australian Legal Resources International (ALRI), p. 24). The Public Solicitor himself has interviewed many of the persons who have been arrested, which potentially places him in a situation of conflict where two or more co-accused are to be tried jointly and where one may implicate another.

According to the President of the Solomon Islands Bar Association, there is generally no effective means of professional supervision and discipline in the practice of law in the Solomon Islands, and no proper disciplinary code for lawyers.

In July 2004 the Solomon Islands government announced its intention to set up a commission to look into the conditions of services for lawyers in the public sector.

### *Cases*

Lawyer Leslie Kwaiga, the former MEF Deputy Chief Negotiator, was arrested on charges linked to the abduction and murder of Selwyn Saki, the Isatabu Freedom Movement (IFM) Supreme Commander for Eastern Guadalcanal, in September 2001. On 10 August 2004 he was granted bail by the High Court, allegedly after complaining about the lack of progress on his cases.

Lawyer Andrew Nori acted as legal adviser and spokesman for the MEF during the conflict. Questions have been raised about the level of his involvement in the militia group and he remains a controversial figure.

## **PROSECUTORS**

The Director of Public Prosecutions (DPP) holds public office under the Constitution and exercises the powers of instituting and undertaking criminal and other proceedings. The DPP's office is staffed by the director, six local lawyers and four expatriate lawyers. As currently resourced, the office is capable of conducting two simultaneous prosecutions.

## ACCESS TO JUSTICE

To date, no official audit either of the disposition of cases or of those awaiting hearing at the High Court has been held, and estimates as to the precise figure vary wildly. Amnesty International estimated that up to 30 'high profile' cases against suspected perpetrators of human rights abuses were pending in the High Court as of May 2004, along with a reported 37 appeals from the magistrates court (<http://web.amnesty.org/library/index/engasa430012004>). Between January 2004 and June 2004 the High Court heard only three criminal trials, none of which involved prosecutions arising as a result of the armed conflict.

Construction work has been carried out at the Central Prison in Rove, Honiara, and on other prisons in order to help the system cope with the increase in prisoner numbers since the RAMSI intervention, as well as to improve poor prison conditions. The position of Controller of Prisons was created, and 30 advisers have been appointed to look at improving the management and security of the Central Prison. Some 35 new prison warders have been recruited, including a number of women.

### *Prison*

The Solomon Islands' main prison at Rove, Honiara, has been substantially renovated since the restoration of stability, and has been reported by the ICRC to generally meet accepted international standards. Despite this, in August 2004 inmates rioted in protest at conditions in the prison. The prisoners presented a petition to the government and on the following day the High Court ordered that the decision to segregate prisoners classified as High Security Risk, and to confine them either by themselves or with others in conditions similar to a punishment regime, was unlawful and unreasonable. It also made orders to improve the prison diet.

On 14 August 2004, the Police Commissioner acknowledged that some prisoners have been held in remand for longer periods than desirable. There are currently around 200 prisoners in Rove Prison, some of whom have been there for 12 months or more.

### *Reconciliation*

The High Court ruled on 20 August 2004 that people whose property had been damaged or destroyed during the unrest did not have a right to claim compensation.

In September 2004 the government drew up terms of inquiry for a commission to look into possible ways to resolve the land issue. However, at the same time, lawyer Andrew Nori (see above, under Legal Profession) made statements to the media to the effect that Malaitans who acquired land on Guadalcanal before the crisis had the right to resettle on that land. He was criticized by the government for 'providing incorrect legal advice', with the Minister for Lands telling the public that the Commission of Inquiry should be allowed to do its job.

Some support was expressed for the creation of a Justice/Peace and Reconciliation Commission, which would hold public hearings where, in exchange for full disclosure of crimes in the presence of living victims, perpetrators would be offered immunity from prosecution. However, there was also substantial opposition to such a

commission, as many felt that public vindication would best be served by bringing those charged to trial. In any case, as noted above, trials have already begun for some of those charged with crimes committed during the conflict.

### **Women**

Gender-based violence was an entrenched feature of the civil war, although there are no accurate statistics to date of how many women were affected. Amnesty International reports that few of the many incidents of rape of women have resulted in prosecution, as witnesses and victims seldom lodged complaints due to the lack of opportunity to do so or the fear of retaliation (<http://web.amnesty.org/library/index/engasa430012004>).

Women are poorly represented in the police, law and politics, although there are moves to increase gender equality in these institutions. The police service, for example, has made violence against women and a more gender-balanced police service key priority areas. It also is planning to set up a specialized unit to address violence against women.

In 2003, the government announced plans for the establishment of three counselling centres for torture and trauma victims, including victims of rape. These have not been established to date. Plans to formulate a National Policy on Violence against Women were also announced during 2004.

The Solomon Islands ratified the *Convention on the Elimination of Discrimination Against Women* on 6 May 2002.