

SOLOMON ISLANDS

The human rights situation in the Solomon Islands deteriorated significantly following the eruption of ethnic conflict in 1998. After the 5 June 2000 coup, the Townsville Peace Agreement was signed. The accord was intended to end the conflict between the Malaitan and Guadalcanalese ethnic groups. The courts have confronted difficulties in carrying out their functions, as many police officers have sided with armed groups and the government seems unable or unwilling to prosecute perpetrators of human rights violations. The 20 December 2000 Amnesty Law has contributed to an atmosphere of impunity.

BACKGROUND

The Solomon Islands, a twin chain of islands located in the South Pacific Ocean, became a British Protectorate in the late 1880s and an independent member of the British Commonwealth in 1978. This tropical archipelago with a population of 408,000 ranks amongst the poorest and least developed nations, according to United Nations statistics.

The present form of government is parliamentary democracy, with the British monarch serving as Head of State. Legislative power is vested in a single chamber National Parliament composed of 50 members elected by popular vote for a four-year period. The Cabinet, led by the Prime Minister, effectively holds executive authority.

Since independence in July 1978, the country's parliamentary democracy has been weakened by traditional loyalties of politicians to their home islands and by unresolved social and legal differences, particularly those concerning customary and other forms of land use and ownership. The last democratic elections were held in August 1997.

The island's communities are grouped into nine provinces, including the main island of Guadalcanal, location of the national capital Honiara, and Malaita, the most populous island. The country is composed of over 27 islands, with approximately 70 languages groups. Each community maintains its own ethical and cultural values, history and identity. More than half the population live in Guadalcanal and the neighbouring Malaitan islands.

Following the Second World War, thousands of Malaitans migrated to Guadalcanal, finding work in the development of Honiara from a former US military base. Malaitan dominated Honiara has enjoyed special political status as the national capital, separated from the Guadalcanal provincial government, and has an elected provincial assembly with limited powers representing the interests of the rural population at the national level.

Ethnic conflict

In October 1998, tensions between two of the main ethnic groups in the country, the Malaitans and the Guadalcanalese, resulted in violence. Fighting broke out when an armed group of unemployed youths in Guadalcanal, identifying themselves as the Isatabu Freedom Movement (IFM), from the

Gwale majority, took up arms and resorted to intimidation and assault. The IFM were angry about perceived governmental inaction in addressing their grievances and resorted to arms, atrocities and intimidation. The Gwale majority has long complained that migrants from elsewhere in the Solomon Islands have been acquiring local jobs and lands. The situation worsened in January 1999, when Ezekiel Alebua, Premier of Guadalcanal, asked the government to provide funds to his province for hosting the capital, Honiara, and suggested that people from outside the province should not be allowed to own land there. Throughout 1999, Guadalcanalese militants forced an estimated 25,000 persons in Malaita and other provinces to flee their homes and/or return to their provinces. On 28 June 1999, the Honiara Peace Accord was signed, but violence continued to escalate. In January 2000, Malaitan militant forces, under the name of Malaitan Eagles Forces (MEF), stole police weapons and actively began to combat the Guadalcanalese. On 5 June 2000, armed Malaitan militants reportedly assisted by paramilitary police officers, took over Honiara, the capital and forced the Prime Minister Ulufa'alu to resign. The Parliament chose a new Prime Minister, Manasseh Sogavare, under duress. A new government, known as the Coalition for National Unity, Reconciliation and Peace was formed.

On 15 October 2000, representatives of the central government, the opposing armed groups MEF and IFM, Australia and New Zealand signed the Townsville Peace Agreement. The signing of the Agreement ended the state of emergency that had been declared on 24 June 2000. According to the Agreement, all weapons and ammunition possessed by the armed groups were to be surrendered in return for granting of amnesty. Furthermore, the Townsville Peace Agreement provides that more autonomy will be given to the Malaita and Guadalcanal Provinces by devolution or by constitutional amendment in order to allow the respective people to look after their own affairs. The Solomon Islands government undertook to establish a Constitutional Council to rewrite the Constitution providing for more autonomy to the provinces. Since November, in accordance with the Agreement, a team of international observers has been in the country to verify the relinquishing of weapons and to monitor implementation of the peace. By year's end, a stable peace had not been secured, as hundreds of weapons had not been relinquished. Apparently, guns are still in the hands of Malaitan militants and their allies in the police, and there have been reported raids on Guadalcanal villages. Rebel Guadalcanalese leaders who did not sign the Townsville Peace Agreement refuse to surrender their arms. In June 2001, the International Peace Monitoring Council reported a serious outbreak of armed violence in West Guadalcanal, and there have been shooting attempts against peace monitors.

Structure of the Government

The 1978 Constitution established a modified Westminster form of government with the British Monarch as Head of State. The Head of State is represented by a Governor-General whose discretionary power is deliberately kept to a minimum. The Governor-General is a Solomon Islands citizen appointed on the recommendation of the National Parliament. He formally appoints a Prime Minister who has been elected by Parliament and can only dismiss him after a successful vote of no confidence by the latter. The governor general's term is five years, with the possibility of re-appointment for another five years.

Effective executive power is exercised by a cabinet consisting of the Prime Minister, elected by and from the members of the National Parliament, and seventeen other Ministers, appointed from among the members of the National Parliament on the advice of the Prime Minister. The cabinet is collectively responsible to the National Parliament (Chapter V, Sections 30-45).

The unicameral national Parliament is directly elected for a four-year term from single member constituencies on the basis of universal suffrage (Chapter VI, Part I and II, Sections 46-74). Citizens have the right to change their government through periodic free and fair elections. Since independence in 1978, there have been five parliamentary elections, most recently in August 1997, and several elections for provincial and local councils. In the 6 August 1997 elections, Bartholomew Ulufa'alu, a former labour leader who headed the Alliance for Change and its dominant Solomon Islands Liberal Party, pledged to implement public service and finance reforms to end government corruption and mismanagement. The restructuring program attracted critical support from foreign banks and aid donors and the party won 24 seats in an expanded 50-seat parliament. On 27 August, the parliament elected Ulufa'alu prime minister. Following the 5 June 2000 armed take-over of the capital by the MEF, Ulufa'alu was forced to resign and the Parliament chose Manasseh Sogavare as the new Prime Minister. On 19 June 2001, Mr. Ulufa'alu launched a constitutional challenge in the High Court, requesting a declaratory judgment that the election of Mr. Sogavare was invalid and that the applicant was entitled to continue as care-taker Prime Minister. The High Court dismissed the case and awarded costs against him.

The Parliament was dissolved on 28 August 2001, and the Sogavare government sought to extend its life through a constitutional amendment designed to add one year onto the four-year Parliamentary term. Resisting this effort, the general population and international aid donors voiced their opposition, while the Electoral Commission continued with election preparations. The Sogavare government regrouped and again attempted to push through a constitutional amendment to extend Parliament's life. A public outcry culminated in the threat of the Solomon Island National Union of Workers to call a general strike. In response, Mr. Sogavare's government withdrew the proposed amendment and a general election was scheduled to proceed on 5 December 2001.

Government efforts in May-June 2001 focussed on developing a governance system that would best suit the country. Three of the country's nine provinces have already expressed their intention to break away from the Solomon Islands. Therefore, the country is moving towards a major constitutional change by which a federation of states will be established. Under the proposed federal system, state governments will determine their own development activities and taxation level.

HUMAN RIGHTS BACKGROUND

The Solomon Islands is a state party to the International Covenant on Economic, Social and Cultural Rights, the UN Convention on the Elimination of All Forms of Racial Discrimination, and the UN Convention on the Rights of the Child. As a state party to these conventions, the state is required to submit periodic reports to monitoring bodies. However, since the Solomon Islands ratified the International Covenant on Economic, Social and Cultural Rights in 1982 it has not submitted any reports to the Committee.

Until the eruption of armed conflict between Guadalcanalese and Malaitan militants, human rights were generally respected by the authorities, and were defended by an independent judiciary. However, the ethnic conflict has led to a serious deterioration of the human rights situation.

In July 2001, the United Nations Office for Human Rights approved a project to address the post-conflict needs of the Solomon Islands. The project will focus on building the human rights capacity of the civil society, including assessment of the situation of internally displaced persons.

The police and human rights

The Solomon Islands has no army. Most police officers are ethnic Malaitans, and many of them joined MEF forces, especially after the June 2000 coup. Police officers seem to be involved in a number of paramilitary activities including human rights violations. Therefore, civilians have been left without protection against human rights abuses, internal displacement or ordinary crimes. The Malaitan-dominated police has failed to stop revenge killings between the two groups. In February 2000, governor-general Sir John Lapl formally outlawed both the IFM and the MEF. Amnesty International reports that since June 2000, the MEF has continued the so-called Operation Eagle Storm against IFM-controlled territories. Following the coup, more than 100 police officers who joined the MEF have reportedly been reinstated in the police service, although there was no prior investigation concerning allegations that many of them had committed human rights abuses. Since then, many officers have been given accelerated promotions. Many more former members of the MEF were taken on as “special constables”.

In June 2000, prisons were closed and prisoners were set free by the MEF. The prisons have since re-opened, but conditions inside the prisons are said to be extremely poor and the Government has not made funds available to improve conditions.

According to common Article 3 of the Geneva Conventions, all armed political groups like the IFM and the MEF are obligated to respect a minimum of humane standards, including refraining from torture. However, both the IFM and the MEF have been involved in torture, mainly as a form of retribution. There have also been reported cases of arbitrary and deliberate killings by both armed groups.

Internally displaced persons

The ethnic conflict has resulted in an estimated 25,000-35,000 internally displaced persons. According to UN reports there are considerable difficulties in assessing the full extent of displacement. It is estimated that during 1999, 15,000-20,000 Malaitan people living on Guadalcanal fled to Malaita and that up to 12,000 Guadalcanal people have fled their homes.

Impunity

Both the Ulufa'alu and the Sogavare governments have failed to investigate and address human rights abuses, thus contributing to impunity among police officers and armed political groups. It has been reported that since the signing of the Townsville Peace Agreement, the police force has recruited more than 1,100 former ethnic militias as special constables, without holding such officials accountable for human rights violations committed during the ethnic conflict. The governmental plan is to turn militias recruited as police auxiliaries into a Solomon Islands military force.

Immediately upon taking office on 30 June 2000, Prime Minister Sogavare promised to consider an amnesty for members of armed political groups involved in the conflict, as an incentive to negotiate a cease-fire. The amnesty law was approved in the Parliament on 19 December 2000, implementing the most controversial clause in the Townsville Peace Agreement. This blanket amnesty law for virtually all crimes and human rights abuses committed during the two-year ethnic conflict has served to undermine the rule of law, as it provides for immunity for all members of armed political

groups and their civilian advisors. On 6 April 2001, the Parliament passed a second Amnesty law, the Constitution Amendment Bill, which grants amnesty to the leaders and other civilian advisers associated with the Malaita Eagle Force, Isatabu Freedom Movement and the Marau Eagle Force militant groups. The legislation also covers officers of the Royal Solomon Islands Police Force and the Prison Services. It provides for immunity from criminal prosecution for certain acts committed from 1 January 1998 to 15 October 2000, or on 7 February 2001, in connection with conflicts on Guadalcanal or Marau. A second Bill seeking to revise the powers of the Director of Public Prosecutions is now before Parliament.

Against this background of lawlessness, it is difficult for the courts to carry out their functions properly, as there are no organised police or even prison authorities to ensure implementation of court orders. The government seems unable to investigate and prosecute those responsible for human rights abuses and several judges have been threatened or abducted. According to the Solomon Islands Chief Justice, prosecution of offenders has come to a virtual halt. The Director of Public Prosecutions abandoned his office in July 2000 due to threats against his life. He only returned to office in June 2001.

THE JUDICIARY

Court structure

The court system is composed of the Court of Appeal, the High Court, Magistrates Courts, Local Courts and the Customary Land Appeal Court.

The Court of Appeal, established under Chapter VII, Part IIb of the 1978 Constitution, has jurisdiction to hear and determine appeals in civil and criminal matters as conferred on it by the Constitution and Parliament. Every Judge of the High Court is also a member of the Court of Appeal. The Court also consists of six overseas Judges.

The High Court, established under Chapter VII, Part IIa of the 1978 Constitution, has unlimited original civil and criminal jurisdiction. The High Court also hears appeals from the Customary Land Appeal Court on questions of law, other than customary law, or where there is failure to comply with a procedural requirement. The decision of the High Court is final. There are presently three High Court judges.

Magistrates' courts have civil jurisdiction as well as jurisdiction to hear appeals from decisions of the local courts. Local courts have civil and criminal jurisdiction over cases and matters in which all parties are islander residents or which are within the area of the jurisdiction of the Court. There are five principal magistrates, four senior magistrates and three second class magistrates.

The Customary Land Appeal Court operates as a separate appeal court which has been established to deal with customary land appeals. It applies customary law and hears appeals from the Local Courts relating to land issues. Its decisions are subject to appeal to the High Court on points of law only.

Appointment and security of tenure

According to Section 78(1), Part II, Chapter VII of the Constitution, the Chief Justice and the puisne judges of the High Court are appointed by the governor-general, acting in accordance with the advice of the Judicial and Legal Service Commission. The same procedure is followed for the appointment of judges of the Court of Appeal. Judges of the High Court and of the Court of Appeal hold office until they attain the age of sixty. Judges may be removed from office by the Governor-General if the question of removal has been referred to a tribunal, consisting of a Chairman and not less than two other members, selected by the Governor General. The tribunal must advise the Governor-General that the judge ought to be removed from office for inability or for misbehaviour. If the Governor-General considers that the question of removing a judge ought to be investigated, he can appoint a tribunal composed of persons who hold or have held high judicial office in some part of the Commonwealth, in order to inquire into the facts.

The Judicial and Legal Service Commission (JLSC), established under Section 117, Chapter XII of the Constitution, is composed of the Chief Justice, the Attorney General, the Chairman of the Public Service Commission, the President of the Solomon Islands Bar Association and one other member. The JLSC appoints and promotes all Magistrates and other “designated” judicial officers.

The Constitution, in Section 92, Part IIb, Chapter VII provides for a Public Solicitor, who is charged with providing legal aid, advice and assistance to persons in need in such circumstances and subject to such conditions as prescribed by the Constitution and by the Parliament. However, in 1999, the Public Solicitor reported that due to lack of resources his office could accept only those cases in which persons faced serious charges or those involving the protection of children.

Ombudsman

There is a constitutional provision for the establishment of the office of the Ombudsman. The Ombudsman is appointed by the Governor-General, acting in accordance with the advice of a committee consisting of the Speaker, the Chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission. The Ombudsman is charged with investigating claims of unfair treatment by the authorities, but the office’s effectiveness is limited in practice by a lack of resources. The Ombudsman office in 2000 failed to report any incidents.

State of the independence of the judiciary

The Constitution provides implicitly for the separation of powers and the independence of the judiciary, and procedural guarantees are adequate. However, courts are hampered by a lack of resources and threats against the lives of judges and prosecutors.

Both the Magistrates and the High Court judges continued to carry out their functions after the 5 June 2000 coup that ousted the democratically elected government, even without the necessary back-up from the police. The majority of police officers, from Malaita, had joined the Malaitan militants forces. Thus, there have arisen substantial problems in enforcing the orders of the Courts and many judges in the Solomon Islands have characterised the judiciary as powerless.

There have been numerous threats made to the safety of judicial officials in the country. In August 2000, the Central Magistrates Court in Honiara was stoned by a group of Malaitan youths, said to be members of the MEF protesting that they had not been paid for security services they had rendered to the Government immediately following the coup. In another instance, a Local Court sitting in North Malaita was about to give its judgement in regard to a land dispute when a group of

men armed with bush knives, spears and clubs rushed into the courthouse. They threatened the Local Court Justices, stole papers and made it impossible for the Court to continue. The Courthouse is located less than five meters from the local police station, which was fully manned at the time, but the police declined to restore order or assist the Justices.

The Judicial Retreat Solomon Islands meeting

The Pacific Judicial Education Programme organised the Judicial Retreat Solomon Islands meeting from 15 to 17 November 2000 in the Yandina Plantation Resort, with the aim of allowing members of the judiciary to get away from the stress and pressures of Honiara and the ethnic crisis and to define strategies to deal with the worsening situation. During the two-day meeting, the participants were informed about international conventions, declarations and principles on the independence of the judiciary, and considered the Townsville Peace Agreement and its immunity provisions. The Chief Justice advised magistrates to refer cases involving immunity implications to the High Court.

Participants also discussed the impact of the January-October 2000 events on themselves and their families. Themes that were repeated illustrate the situation in the country: a total absence of law and order and law enforcement machinery, i.e., courts were operating in a vacuum; fear, for personal, family, and professional safety; restrictions on personal movements, communications blackouts and subsequent isolation; inability or loss of the right to work. The participating judges also referred to the use of custom as a means of extortion by individuals. Moreover, MEF militants were enforcing unjust customary settlements, e.g. payment of US\$ 100 and a pig within one day.

The most valuable outcome of the meeting was that judicial officers could share their experiences during a crisis situation. Participants agreed that they were emerging from the crisis and drafted the Yandina Statement on the Principles of the Independence of the Judiciary in the Solomon Islands.

Lawyers

It should be noted that the leader of the MEF is Andrew Nori, a lawyer in private practice and a member of the Solomon Islands Bar Association (SIBA). His legal expertise was reportedly pivotal in drafting the legalistic documents concerning the MEF's preconditions for any peace talks. He is the MEF spokesman. Another lawyer, Leslie Kwaiga, is member of the SIBA and also involved in the MEF.

CASES

David Chetwyn {Registrar of the High Court}: While exercising his magisterial jurisdiction, Mr. Chetwyn was refused entry into the prison by the MEF personnel controlling the premises. He was thus unable to gain access to detainees awaiting trial. Shortly thereafter, all prisoners were set free by the MEF.

Thomas Kama and Denis McGuire {lawyers}: Mr. Kama is a Solomon Islander from Guadalcanal. He was approached by the IFM/GRA in 1999 with the that he provide legal representation to them. He refused on the grounds that the organisation was illegal. In August 2001, Mr. Kama and one of his Australian partners, Dennis McGuire, were dining at a restaurant in a

local hotel. Joseph Sangu, an IFM/GRA leader approached the two lawyers and became abusive. He accused Mr. Kama of abandoning his own people and then hit him on the head with a bottle. The lawyers managed to escape and reported the assault to the police. The police refused to take any action, although they were aware that there is an outstanding warrant of arrest against Sangu.

Frank Kalea {Magistrate}: In May 2000, Magistrate Kalea was abducted on his way home from work by persons in a MEF car. The MEF members took him to his home, but then dragged him 20 meters back to the car. He was driven blind-folded to the central MEF camp and questioned by members of the MEF, as he was mistakenly identified as a lawyer or associate of Ulufa'alu. He was later identified as a magistrate and was released. The MEF officer who had made the mistaken identification was beaten by the group. Mr. Kalea has not returned to work since the incident for fear of further persecution.

Timothy Kwaimani {Sheriff of the High Court}: Timothy Kwaimani was pulled over by MEF armed members who demanded that he surrender his vehicle. The Sheriff managed to ward off his attackers.

Nelson Laurere {Magistrate}: This judge allegedly was severely assaulted in 1999 and did not return to work for a prolonged period. Mr. Laurere was arranging to move his family out of Honiara, he and his wife being from Guadalcanal. While he was returning to Honiara on a bus, a truck with MEF personnel chased down the bus. Mr. Laurere was picked out as a Guadalcanal man and identified as a magistrate by somebody who had been convicted by him. He was thereupon severely beaten. He would not go to the hospital, as this was the location where some injured combatants were murdered by the opposing fraction. In November 2000, he returned to work but was "visited" by a group of men, who demanded compensation for some unspecified act. In May 2001, the Magistrate started to work again, but felt unsafe living in Honiara and so moved some 20 kilometres to the west of the capital. He was forced to stop work again, when his vehicle was seized by Keke's men to be used for the "benefit of the Gwale people". Eventually, a message was received from Keke that the vehicle was being returned. In fact, Keke simply turned it over to another group of former Gwale militants to the east of Honiara. When the vehicle was finally recovered, it had been badly damaged,

John Muria {Chief Justice of the High Court}: On 10 June 2000, at 7:00 a.m., armed MEF members demanded entry into the Chief Justice's residence. When the MEF members entered the residence, they demanded the keys to the Chief Justice's official car and to another vehicle used by his family. They allegedly took both vehicles and left. In the afternoon, the same group came to the residence and removed a third car parked on the Chief Justice's premises. After contacts with the relevant authorities, the official car was returned in the evening of the same day. The two other vehicles were not returned until the evening of the day after.

Patrick Lavery {Public Solicitor}: Mr. Lavery has been threatened several times. On one occasion, while he was driving down the main road in Honiara, a car pulled alongside him and a passenger in the car pointed what appeared to be a pistol at him. More recently, the lawyer received threats for representing Mr. Ulufa'alu in his upcoming case.