A cynical twist in Australia's mandatory refugee detention regime

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4 April 2005

In another callous twist to its refugee policy, the Australian government last month announced that it would permit a select handful of long-term detainees to live, under strict surveillance, outside the country's notorious detention camps until they can be deported.

The media generally portrayed the move as a tentative softening of the Howard government's mandatory detention regime, which was first instituted by the previous Labor administration in 1992. But the creation of a minor loophole only highlights the inhumanity and anti-democratic character of the entire system, and the government's determination to retain it.

Hundreds of men, women and children will remain behind razor wire, mostly in remote desert concentration camps, despite having been convicted of no crime. They will continue to be incarcerated simply for fleeing persecution and seeking refuge without official permission. All that will change is that Immigration Minister Amanda Vanstone will have the power to release a few of those who have been stuck in a legal no-man's land for years because no other country will allow them entry.

Vanstone emphasised that the decision would affect only "a small number" of the rejected refugee applicants, about 115 of whom have remained imprisoned for over three years. The longest-serving prisoner, Peter Qasim, a Kashmiri who has been locked up for over six years, would not qualify, she declared, because he had displayed a "lack of cooperation" with immigration officials.

Vanstone's remarks point to the arbitrary nature of the new powers she will exercise. To qualify for temporary release, detainees must cease all legal action against the government's rejection of their asylum applications, effectively renouncing their claims to refugee status and abandoning any prospect of gaining permanent residency or citizenship in Australia. Alternatively, they must have exhausted all avenues of tribunal and legal appeal, a process that can take years.

Those released will be granted only an insecure bridging visa, to be called a Removal Pending Protection Visa, which Vanstone may revoke at any time. They must sign contracts agreeing to cooperate in their removal from Australia when deported, and to report weekly or monthly to immigration authorities. They will have no rights to be reunited with their families or leave the country temporarily for purposes such as funerals.

They will have access to a limited range of welfare, medical and education programs, in return for which they will be subjected to "mutual obligation" requirements to find work. This will most likely mean working in insecure, cheap labour sweatshop conditions, because employers are unlikely to give decent, well-paying jobs to workers who can be whisked out of the country at any moment.

In many cases, the detainees have been denied refugee status on the spurious ground that they can avoid persecution in their home country by living in a "safe" third country. Efforts to deport them have been unsuccessful, however, precisely because the governments of these allegedly safe states have refused them entry. Qasim, for example, has been trapped in this Catch-22 legal black hole because the government of India, which Canberra insists could offer Qasim a safe haven, has refused to accept him.

The new visa will not cover the 54 Afghani and Iraqi detainees still stranded on the remote Pacific island of Nauru, where they were transported by Australian naval ships in 2001 after being intercepted in the seas between Indonesia and Australia. They remain imprisoned at the behest of the Howard government but have been denied access to any appeal process, in complete violation of international refugee law.

By introducing the new visa category by regulations, without amending the Migration Act, the government has deliberately retained the full scope of the virtually unlimited power of executive detention that the Australian High Court recognised in three landmark decisions handed down last August.

In the lead-up to last year's federal election, the government spent millions of dollars going all the way to the High Court to overrule lower court findings that it was unconstitutional to detain asylum seekers indefinitely, perhaps for life, when there were no realistic prospects that they could be deported. In a highly political judgment, by a 4 to 3 majority, the supreme court upheld the government's appeal, overriding previous decisions that offered some protection against arbitrary detention.

In effect, the new bridging visas will constitute a minor safety valve for the continued exercise of the government's

extraordinary power of detention without trial. In media interviews, Prime Minister John Howard emphasised that the modification had been made possible by the "success" of the system in preventing or deterring the arrival of refugee boats since late 2001.

That "success" was achieved by erecting a naval blockade around Australia's northern shores and transporting intercepted refugees to Nauru or Papua New Guinea's Manus Island. Refugee arrivals ceased soon after the sinking of a refugee boat known as SIEV X, with the loss of 353 lives in October 2001. Many unanswered questions remain about the government's possible complicity in the tragedy, which occurred in waters being patrolled continuously by Australian military planes and ships. Led by former immigration minister, Philip Ruddock, the government immediately seized upon the calamity to declare that it would help deter future voyages.

One aspect of last month's announcement that was downplayed in the media was the involvement of right-wing Christian fundamentalists. Two days before unveiling the new visa category, the government revealed that it was reviewing the cases of about 30 Iraqi and Iranian detainees who had converted to Christianity while in detention. The timing of the two announcements suggests that these detainees will either be reclassified as refugees or granted one of the new bridging visas.

Questioned on Australian Broadcasting Corporation radio, Howard denied that the government was discriminating in favour of Christians. "There's no Christianity specific clause. There's no denominational religious specific clause in the administrative of our immigration policy," he said.

To overtly single out Christians for favourable visa decisions would violate the principle of separation of church and state and possibly breach the Australian constitution, which prohibits federal government interference with religious freedom.

There is no doubt, however, that the government is responding to definite demands from the Christian right. In particular, the Family First party, which won its first Senate seat in last October's federal election, has been agitating for a policy shift. In a little-reported media release last December, Family First chairman Peter Harris emphasised that while his party supported "tight border security", it wanted more "consideration" given to the possible religious persecution of deportees. He said the party had been in contact with the government and would not "let up until change occurs".

Like Howard, Family First has attempted to disguise the religious basis of its push for greater protection for Christian converts. Harris said the party's senator-elect Steve Fielding would introduce a private member's bill to parliament when he took his seat in July if the government failed to make the refugee assessment process more "compassionate".

Since it came to office in 1996, the Howard government has sought to inflame and exploit fears and insecurities to divert attention away from the deteriorating social conditions caused by its free market program. Together with the "war on terrorism", anti-refugee scare-mongering has been a key aspect of its political platform. For attempting to escape political and economic oppression, asylum seekers have been demonised as "queue jumpers", falsely accused of throwing children into the sea and depicted as possible terrorists.

The government has fiercely clung to this orientation despite opposition within those business and media circles that favour greater immigration to provide new sources of readily exploitable labour. Howard and his ministers have also defied mounting public opposition to mandatory detention, rekindled by the recent case of Cornelia Rau, an Australian woman who was wrongfully detained for 10 months as a suspected "unlawful non-citizen".

Increasingly, echoing the tactics of the Bush administration and the Republican right in the United States, the government has encouraged and relied upon right-wing Christian fundamentalists to provide a support base built on appeals to emotive "moral" and "faith-based" issues such as censorship and bans on abortion, same-sex marriages and stem cell research.

Howard has worked closely with Family First, which is aligned with the Pentecostal Assemblies of God, and which gained its Senate seat largely as a result of preference vote-swapping deals with the Liberal Party, as well as Labor and the Australian Democrats. As part of his pre-election agreement with the Christian party, Howard agreed to establish "family impact" investigations into all future legislation.

Far from pointing to any softening of the refugee detention regime, the latest cynical twist in policy perpetuates an inhuman system while, at the same time, pointing to the growing influence of the Christian right on the Howard government and official policy.