

PNG court rules Australian police presence unconstitutional

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Australia's \$1 billion intervention in its former colony of Papua New Guinea (PNG) has suffered a serious setback after the PNG Supreme Court ruled that the deployment of Australian police was unconstitutional.

The court found that the Enhanced Co-operation Program (ECP) breached fundamental rights by protecting Australian police from legal action. The ECP Act passed by the PNG Parliament last July gave an ad hoc Joint Steering Committee, comprising PNG and Australian officials, power over the Public Prosecutor and the PNG police in dealing with any offences committed by Australian Assisting Police (AAP).

From the outset, Canberra insisted that AAP officers had to be immune from prosecution within PNG. Along with immunity to criminal prosecution in PNG, the ECP Act prevented any PNG citizen from seeking legal redress for wrongs committed by Australian police. The Supreme Court upheld six of the seven objections to the law.

The unanimous decision by the five judges handed down on May 13 meant that Canberra was forced to immediately stand down the 115-strong Australian police contingent, which flew home on May 17.

Australian Prime Minister John Howard argued that Australian police had to have immunity from legal action in PNG to protect them from vexatious claims. But as a number of commentators have noted, the argument is wrought with hypocrisy. Under the terms of the ECP, Australian police were being sent to PNG to uphold a legal code that they would not be held accountable under.

Howard's insistence on legal immunity underscores the neo-colonial character of the entire operation. Far from helping the PNG people, Canberra pressed the ECP package on PNG government to secure Australian

economic and strategic interests. Under the far-reaching arrangement, Australian officials and police are being installed to oversee the functioning of the PNG state apparatus. Even after the police withdrawal, 40 Australian public servants remain in top positions in the country's administration.

The intervention in PNG is part of a strategic shift by Australia imperialism to assert more direct control in the South Pacific. Having secured the support of the Bush administration by supporting the illegal US-led invasion of Iraq, the Howard government proceeded with its own aggressive plans. On the pretext that the "failed state" posed a threat to Australia, Canberra bullied the Solomon Islands into accepting an Australian-led intervention force of troops, police and officials in July 2003 that took over key government functions.

Two months later, the Howard government blackmailed the PNG government into accepting the ECP by threatening to cut off aid. PNG Prime Minister Michael Somare initially reacted angrily, declaring that PNG was a sovereign country and threatened to formulate an "Australian Aid Exit Strategy". But PNG has been heavily dependent on Australian aid ever since formal independence in 1975. Somare eventually capitulated and, after protracted wrangling, finally pushed through the ECP Act.

Continuing resentment in PNG erupted to the surface over an incident in March when security officials at the Brisbane airport humiliated Somare by forcing him to remove his shoes. The Australian government inflamed the situation by refusing to make any form of apology. While the issue was minor, it highlighted Canberra's contemptuous attitude toward the people of PNG and other Pacific Island countries.

In response to the Brisbane incident, Port Moresby

threatened to abandon the ECP but rapidly fell into line after credit-rating agency Standard & Poors stepped into the fray. A spokesman directly warned Somare that “any serious move to cancel this program is likely to affect Papua New Guinea’s rating”. Any lowering of PNG’s credit rating would spell disaster for the small Pacific Island state, which desperately needs foreign investment.

At the height of the diplomatic row, Luther Wenge, governor of Morobe Province, organised anti-Australian protests to urge the PNG government to break all trade and relations with Australia. Thousands took part, indicating significant hostility in PNG to the Howard government’s actions. Wenge was also behind the Supreme Court challenge to the ECP.

Following the court decision, Wenge rapidly dropped his political posturing and signalled his willingness to work with Canberra. “It’s wrong to say I’m anti-Australian, they are our good friends,” he declared. Calling for the drawing up of an “ECP Mark II,” he said: “The fact that those senior ECP officers now have an understanding of PNG and police operations will greatly assist them to design and introduce a new program for the police.”

Wenge’s manoeuvring highlights the precarious position of PNG’s small privileged elite, who have little choice but to accept the Howard government’s dictates yet confront growing hostility over deteriorating living standards and Canberra’s actions.

In the wake of the court decision, Howard insisted that the ECP had to be resumed as quickly as possible. Without consulting the PNG government, he arrogantly declared: “It may well be that the only solution to the problem is an amendment to the PNG Constitution.” For his part, Australian Foreign Minister Alexander Downer immediately blamed the PNG government, saying: “We weren’t involved with the actual legislation. That was a matter for the PNG government.”

PNG Foreign Affairs Minister Rabbie Namaliu pointed out that Australian officials had been deeply involved in writing the legislation. “Now this statement [by Downer] was both unfortunate and incorrect. The drafting of the ECP treaty and the legislation enacted by the Parliament was a joint effort. There was substantial input into the process by Australian government legal representatives and officials. It was

the view of both our lawyers as well as Australian lawyers, at that time, that the legislation was constitutionally valid.”

The PNG government is under considerable pressure to facilitate the return of Australian police. Australian aid is worth \$A330 million annually and amounts to 20 percent of government revenue. Standard & Poors and the ANZ bank are already making economic predictions that are contingent upon PNG accepting a revised ECP.

Nonetheless, negotiations are likely to be protracted and acrimonious. Namaliu ruled out changing the PNG constitution, saying: “Well they have to try and appreciate our position, that it is very difficult to amend the constitution. Particularly in the present environment it’s not going to be that easy.”

Namaliu stated that PNG wants to review not only the legal issue of immunity, but substantial sections of the agreement. “It shouldn’t be a one-way street, they shouldn’t be expecting us only to be accommodative in this situation. After all it’s supposed to be a bilateral arrangement that is adhered to by both countries,” he said. Australian High Commissioner Michael Potts immediately declared that such calls were “misplaced”.

Even avid supporters of the ECP such as PNG Police Minister Bire Kimisopa have complained that Canberra’s bullying is placing them in an untenable situation. “It has to be clearly understood by the Australian government we’ve bent backwards. We are committed to this program. We’ve done everything under the sun to get this program up and running, and I think the Australians ought to realise that you can’t... we can’t be seen as being towed around”.

The Howard government has no intention of backing down or making any concessions, however. Its demands for fundamental legal changes to allow for what amounts to an abrogation of national sovereignty is certain to fuel further tensions within the PNG ruling elite as well as wider popular resentment and opposition.



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