Australian terrorist trials face lengthy delays

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It is now more than two months since the largest joint federal-state police raids in Australian history resulted in the arrest of 20 Islamic men in Sydney and Melbourne. The heavily-publicised arrests were followed by lurid claims by government leaders, police chiefs and the media that the raids had prevented an imminent and "catastrophic" terrorist attack.

The November 8 operation bore all the hallmarks of a politically-motivated campaign to whip up new fears of terrorism and justify the introduction of police-state measures. These were contained in anti-terrorism bills that were being pushed through federal and state parliaments on a bipartisan basis by Prime Minister John Howard's Liberal-National Coalition government and the state and territory Labor governments.

The raids were launched less than a week after Howard had declared a terrorist "alert" and convened an emergency session of the Senate to pass the first instalment of the new legislation, which allowed the police to arrest anyone on terrorist charges without having to prove that any specific terrorist act was being prepared.

The dramatic arrests came amid mounting public scepticism and opposition to the central provisions of the anti-terrorism bills, which proposed sweeping powers of detention without any charge or trial at all, including house arrests for up to a year at a time. They also outlawed "advocacy" of terrorism and expanded sedition to include voicing political support for groups resisting Australian military interventions.

Following the arrests, the WSWS pointed out that the extremely vague and unsubstantiated charges laid against the men raised immediate doubts about the claims that they had been on the brink of carrying out a major terrorist attack. The 10 defendants arraigned in Melbourne were not charged with planning any attack, but instead with being members of an unnamed terrorist organisation, which appeared to consist only of themselves. Those in Sydney were charged with conspiracy to prepare a terrorist act, but it was also not specified. Conspiracy is a notoriously imprecise catch-all charge, designed to justify arrests where there is no evidence of any criminal act.

Two months on, after a series of preliminary court hearings in December, the unanswered questions surrounding the arrests remain. The police have still produced no evidence of any planned terrorist acts in Australia. In fact, the trials face lengthy delays because the police in Melbourne have asked for the postponement of a deadline to provide defence lawyers with a brief of evidence.

As a result, the arrested men face many months, if not years, of imprisonment—mostly in solitary confinement—before the police and prosecutors are ready to proceed. In effect, they have been subjected to prolonged detention without trial, even without the government invoking the new anti-terrorism legislation.

Far from having evidence of an imminent plot to blow up major targets in the two cities, it is increasingly obvious that the police carried out the raids as political "fishing expeditions". They are currently trawling through seized documents, computer files and telephone intercept records looking for material to implicate the accused and hence justify the new powers.

In Melbourne on December 12, a magistrates court gave the police until the end of February to supply a brief of evidence—a two-month extension on the original deadline of December 20—for the charges against the 10 men arrested there. Police argued that they needed the time to sift through hundreds of documents that had been stored on the defendants' seized computers.

Australian Federal Police agent Noel Scobell told the court there were still 42 hours of conversations recorded by listening devices to be transcribed, plus 220 telephone-intercept calls. Scobell said material seized by the Australian Security Intelligence Organisation (ASIO) during earlier raids in June still had to be analysed, including 13 computer hard-drives and 1,000 floppy discs and CD-ROMs.

Apart from underscoring the lack of any hard police evidence, his reference to the June raids highlighted the fact that ASIO and the police had maintained surveillance over the men for many months before suddenly arresting them in November. The apparent delay in assessing the material seized in June also contradicts the official claims of an urgent threat.

Magistrate Lisa Hannan remanded the defendants to appear for a committal mention on April 11, instead of the initial date of January 31. This means that the men will have been in custody for at least five months, unable to challenge the police and media allegations against them, before they even next appear in court.

When two of the men then applied for bail on December 21, prosecutors announced that seven of the accused faced new, equally unspecified charges, of financing an unnamed terrorist group. The belated charges also indicate that the prosecution is making up the cases as they proceed.

In arguing against the bail applications, the police did not allege any planned terrorist acts. Prosecutor Nick Robinson said that although there was no evidence to suggest that either of the men seeking bail was planning an attack in Australia, a trip by one of them, Shane Kent, to a "training camp" in Afghanistan in June 2001 had indicated a "preparedness" to fight, while the other applicant, Amer Haddara, had admitted to police that he would consider becoming a martyr for "jihad" overseas.

In an attempt to bolster their argument, the police claimed that Kent had pledged allegiance to Osama bin Laden in Afghanistan in

2001, some months before the September 11 terrorist attacks in the United States. Peta Murphy, a defence lawyer, countered that Kent was not the only person to have met the Al Qaeda leader without making any such vow. “You might be aware that [US Defence Secretary] Donald Rumsfeld has met Osama bin Laden,” she told the court.

Even though one of the men’s father offered his home, worth up to $450,000 as surety, bail was denied. Under the counter-terrorism laws, defendants must demonstrate “exceptional circumstances” for being released while awaiting trial. This not only reverses the burden of proof, from the prosecution to the accused, but also overturns the presumption of innocence.

In arguing for bail, defence lawyer Rob Stary said there were “gaping holes in the Crown’s case” and “this is something akin to the weapons of mass destruction debate and there is an absolute paucity of evidence”.

Speaking to the media, Stary predicted that the trials would not commence for two years. He said the delays had reinforced his previously-expressed concerns that the publicity surrounding the police raids made it impossible for his clients to receive fair trials. No evidence had been presented to justify the official claims that an “imminent terrorist threat” had been thwarted.

Stary also condemned Attorney-General Philip Ruddock’s invocation of the National Security Information Act 2004, which requires lawyers to obtain security clearances before representing defendants and allows courts to hear secret evidence in the absence of jurors and defence lawyers.

The legislation will have the double effect of preventing the accused from challenging some of the evidence cited against them, and of barring media coverage of crucial aspects of the case.

Another defence lawyer, Brian Walters SC, commented: “It allows the Attorney-General to certify that particular questions cannot be answered by certain witnesses. This enables a politician to effectively reshape the case against accused persons and I think it is a very serious in-road into the justice system and I think is contrary to the rule of law and, in fact, to our whole democratic system of government.”

Similar issues emerged in a brief hearing in Sydney on December 5. The court ordered the 10 Sydney defendants detained until at least January 17, while a brief of evidence is prepared. In allegations that were echoed throughout the media, police have accused the men of stockpiling chemicals to make explosives. But all the police produced in court was an unsubstantiated fact sheet.

Solicitor Adam Houda said the police had failed to provide any evidence of the case against his clients. “It was a matter that was subject to an 18-month investigation. It comes before the court and there’s not a single document other than a fact sheet produced.” He said the situation was “totally unsatisfactory”.

Despite the lack of evidence produced against them, the prisoners are being held in isolation cells in maximum-security jails. Even though they have not been convicted of any crime, the prison authorities have given them a special “AA” classification, which means they are subjected to more draconian conditions that any convicted prisoners.

Most are still being held in Guantánamo Bay-style solitary confinement, shackled and dressed in orange, and barred from any physical contact during visits from their families. They can only speak to their loved ones through glass barriers.

The Melbourne prisoners began a hunger strike inside Barwon Prison’s Acacia Unit on January 9 to protest against their conditions, particularly lack of food and denial of requests to be allowed to pray together. Marian Raad read a message from her husband, Ahmed Raad, one of the prisoners. “We are being locked up and treated like animals and we haven’t even been proven to be guilty of anything,” he said. “We are innocent Muslims who just liked to express our political points of view. I thought people had a right to an opinion in this country.”

Although six of the men, including Raad, are allowed out of their cells from 9 a.m. to 2 p.m. in pairs, the other four remain in solitary confinement. Stary said his clients had a legitimate grievance. Unlike other remand prisoners, who had the right to worship congregationally, they were being “discriminated against because they are Muslim”.

In Sydney, defence lawyer Houda told the court on December 5 that his clients had been subjected to conditions that amounted to “a form of torture”. Houda later told reporters that prison authorities “put on air conditioning when it’s very cold and turn it off when it’s very hot” and were subjected to loud noises. “These people are going to go mad before they get to trial.”

The lawyer said he had been unable to speak to his clients without being monitored, breaching the principle of lawyer-client confidentiality. The prisoners were locked in small isolation cells 23 hours a day, and deprived of basic rights, including access to television, newspapers and reading material.

These conditions are setting far-reaching precedents. They show that anyone can be detained, with or without being charged, under the anti-terrorism laws and held in isolation for months, deprived of the most basic legal, democratic and political rights.