Judge temporarily halts Australian terrorist trial over mistreatment of prisoners

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In an unprecedented decision, an Australian judge temporarily halted a major terrorist trial in Melbourne last month, because the prolonged detention of the defendants in "intolerable" conditions endangered their mental health and made it impossible for them to receive a fair trial.

On March 20, Justice Bernard Bongiorno of the Victorian Supreme Court handed down a ruling in which he threatened to indefinitely postpone the six-week-old trial unless the state's prison authorities met a March 31 deadline to change the high-security prison regime for 12 Islamic men charged with being members of an unnamed terrorist organisation.

Most of the accused, and 10 others held on related charges in Sydney, have been incarcerated for more than two years in inhuman conditions, including prolonged isolation. Most were arrested in police raids in November 2005, just after then Prime Minister John Howard declared a serious terrorist "alert" and recalled parliament to rush through draconian new anti-terrorism laws.

All 22 men have been denied bail under the anti-terrorism legislation, which permits bail to be granted only if a prisoner proves "exceptional circumstances". The laws overturn the centuries-old presumption in favour of granting bail so that defendants can properly prepare their defence. In his judgment, Bongiorno said he would also hear fresh bail applications from the men if he further halted the trial.

On March 31, the judge gave the go ahead for the trial to resume after receiving affidavits from state government and prison authorities promising that the changes he specified "have been or would be effected immediately". However, talks are continuing between defence lawyers and prison authorities over various problems, including "the lack of air in the new cells".

Soon after the trial commenced on February 13, lawyers for the men applied for a stay of proceedings, arguing that their imprisonment, daily transportation and repeated strip-searching during the trial were so onerous that they could not conduct their defence and were at risk of aggravated mental illness. Bongiorno agreed, noting that the trial could last beyond the end of 2008 and that seven of the men were already on daily medication for psychiatric reasons.

At the end of his March 20 judgment, Bongiorno revealed that two of the prisoners had just been declared unfit to attend court because of a psychiatric condition. Both had been placed under psychiatric observation and sent to the prison Acute Assessment Unit. Doctors had also expressed concern about the health of several other defendants.

In his ruling, the judge said that for the first year of their detention inside the maximum security Acacia Unit, about 60 kilometres from Melbourne, the defendants had been kept locked in individual cells for up to 23 hours a day, with severe restrictions on receiving visitors and consulting with lawyers. From March 2007, prison authorities eased these conditions, marginally, in order to head off an initial legal application to halt the trial.

Throughout the trial, the men were being woken at 6am and offered breakfast (which some of the prisoners refused for fear of motion sickness) before being strip-searched, handcuffed, shackled and loaded into small box-like steel compartments inside a totally enclosed van for the long drive—80 minutes or more—to the court. The return journey each night was similar, complete with another strip-search.

During the long hours of the trial each day, the men were obliged to closely follow the proceedings and read the transcripts of police telephone intercepts and listening devices, contained in seven lever arch folders. A number of expert doctors gave evidence that the defendants were likely to become depressed, irritable, anxious and fatigued.

Bongiorno summed up the testimony of Dr Douglas Bell, a government forensic psychiatrist, as follows: "Dr Bell considered that in the circumstances of the applicants it is more likely than not that an ordinary person would experience significant psychological and emotional difficulties. These difficulties are likely to have a significant effect on the applicants' ability to concentrate or to remember things from day to day or week to week with respect to their case. He considered that the burden of these difficulties would be cumulative and would be likely to impact to a significant extent on the cognitive mental functions that would be required to appropriately attend to the trial process, particularly because of its protracted length and its complexity. He thought that there was a risk that they, or some of them, may develop major depressive illness. This was particularly so having regard to the fact that they have already been in custody, in what he described as 'austere' circumstances, for two years or more."

The judge required the authorities to carry out a list of alterations in the incarceration. These included transfer to a nearby Melbourne city prison, with conditions no more onerous than those for ordinary remand prisoners awaiting trial, an end to daily shackling and strip-searching, and 10 out-of-cell hours per day

when not attending court.

Bongiorno rejected an extraordinary suggestion by the federal prosecutors that the prisoners be kept in the remote Acacia Unit, with their participation in their own trial restricted to a video-link. Such an arrangement would violate one of the most basic legal rights—to be present at one's trial to fully contest the charges and evidence. The judge noted: "None of the accused have, on any occasion, behaved other than impeccably in the courtroom and no other legitimate reason has been advanced as to why they should not be permitted to remain."

There has been no previous case in Australia in which the conditions of detention were so oppressive and damaging to mental health that a judge felt compelled to shut down the proceedings. Bongiorno cited numerous judicial authorities for halting unfair trials, but none related to the detention regime imposed on the accused.

His ruling amounts to an indictment of the Victorian and New South Wales Labor governments, which have kept all 22 defendants in their prison systems' most punitive "supermax" facilities, reserved for convicted prisoners classified as highly-dangerous. The judge declared that neither the prison authorities nor the prosecution had "ever placed any evidence before this court in any form to justify either the accused's classification or their treatment which is, in terms of the fairness of this trial, intolerable".

The Rudd government is also responsible for the conduct of the Melbourne trial, which is a federal prosecution. Like the Howard government before it, the Rudd government is pursuing the Melbourne and Sydney trials as proving grounds for securing convictions under the draconian anti-terrorism laws introduced since 2002.

In allowing the trial to resume, the judge accepted the evidence of a forensic psychiatrist that the two defendants who had suffered psychiatric conditions were now fit for trial.

A number of the Melbourne defendants had serious mental health problems before they were arrested, which made them likely to suffer extreme difficulties in prison. In April 2006, it was revealed that medical reports given to Victorian police showed that at least four were mentally ill. Two had suffered from schizophrenia for at least two years and one had been in and out of psychiatric institutions suffering from, among other things, psychosis, delusions and hallucinations (see "Use of police infiltrators raises fresh questions about "terrorist" raids in Australia").

As the WSWS has previously reported, the cases against the 22 defendants are dubious and full of contradictions. From the police evidence, it is clear that the men, some of whom were highly unstable, were entrapped by at least one undercover police provocateur. The allegations against them primarily relate to the making of loose statements and expressions of support for Islamic extremism, with no indication of any concrete terrorist plot (see "Lengthy terrorist trials underway in Australia").

Bongiorno's March 20 decision is another indication of disquiet in the judiciary and legal profession, as well as wider public concerns, over the use of the "war on terror" to trample over basic legal and democratic rights. Over the past 18 months several judicial rulings have exposed serious abuses, including torture and coercion, in terrorist cases.

In August 2006, the Victorian Court of Appeal—court president Chris Maxwell and justices Frank Vincent and Peter Buchanan—ruled that Australian Federal Police statements obtained from Muslim convert Jack Thomas should never have been allowed as evidence, because of the coercion, violence and "emotional manipulation" inflicted on him. Thomas's conviction and five-year sentence on terrorism-related charges were quashed, although he still faces a retrial.

Last July, Bongiorno himself warned about the dangers of sacrificing the presumption of innocence for "political expediency". He granted bail to two accused members of the separatist Liberation Tigers of Tamil Eelam (LTTE) and expressed doubt that they would be convicted under the anti-terrorism laws for fund-raising for the LTTE, because the organisation was not listed in Australia or Sri Lanka as a terrorist organisation. Following that ruling, a magistrate granted bail to another Tamil man who had been extradited from Sydney on similar charges.

The following month, Federal Court judge Jeffrey Spender ruled that the Howard government had unlawfully cancelled the visa of Indian Muslim doctor Mohamed Haneef, in an attempt to detain him indefinitely after a magistrate granted him bail on a charge of supporting terrorism. Spender said Immigration Minister Kevin Andrews had applied a "guilt by association" test that many people, from Galileo Galilei to Mahatma Gandhi and Nelson Mandela, would have failed. By the time that Spender delivered his judgment, Haneef's charge had been dropped after it was revealed that police evidence against him was false.

Last November, NSW Supreme Court judge Michael Adams threw out an alleged confession of terrorism training by Izhar ul-Haque, a Sydney medical student. Adams accused AFP and Australian Security Intelligence Organisation (ASIO) officers of committing the crimes of "false imprisonment and kidnap at common law" in an unsuccessful effort to coerce the young man into becoming an undercover agent.

The Howard government publicly backed all these prosecutions as part of its efforts to whip up fears of terrorism to justify the invasions of Afghanistan and Iraq, introduce police-state measures and divert attention from mounting social inequality.

Despite the increasingly discredited character of the "war on terror", Rudd has repeatedly stated his "hard line" determination to retain the anti-terrorism provisions. The treatment of the men on trial in Melbourne makes clear that this is inseparable from the ongoing destruction of fundamental legal rights and civil liberties.