

Australia: Bail denial in terrorism case sets dangerous new precedent

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Three Muslim men accused of conspiring to prepare a plot to storm into Sydney's Holsworthy military base were denied bail late last month. As a result, they will remain incarcerated in maximum-security prison cells for at least two years before their cases are heard.

Saney Edow Aweys, Nayef El Sayed and Yacub Khayre were arrested in dawn raids at 19 properties around Melbourne on August 4. Aweys also faces charges of preparing to go to Somalia to engage in fighting against a US-installed regime, and helping another man travel there to train with Al-Shabaab, an Islamist movement fighting the regime. Two other men, Abdirahman Mohamud Ahmed and Wissam Mahmoud Fattal, have been charged over the alleged terrorist conspiracy but have not so far applied for bail.

The reasons given by the magistrate for denying bail highlight the scope for the counter-terrorism laws, which are being strengthened by the federal Labor government, to be used to persecute anyone who is alleged to be an opponent of the current political order.

Melbourne Magistrate Peter Reardon set a potentially far-reaching precedent by denying bail largely because the defendants were allegedly driven by a political doctrine. "These are politically motivated crimes against ... Western society which they think ... is inherently corrupt and anti-Muslim," he said during the hearing. "What faith could you have that conditions of bail would be complied with?"

"These are not ordinary people who commit drug offences or armed robberies who might be lawless in their own way. These are politically motivated crimes against Western society which they think is [against]

Muslims and therefore those regimes and government are not to be respected in any way, shape or form."

By this reasoning, anyone who allegedly opposes the political or legal system, or objects to the US-led occupations of Afghanistan and Iraq, could be denied bail on terrorism charges and kept imprisoned for several years before being able to contest the charges in court.

Under the terrorism laws introduced since 2002, the normal presumption in favour of bail—based on the principle of innocence until proven guilty—was reversed to prohibit bail unless the defendants prove "exceptional circumstances".

Magistrate Reardon refused to accept that oppressive jail conditions constituted "exceptional circumstances". The men are being held in the notorious high-security Acacia Unit in Victoria's Barwon prison, with prisoners convicted of the most serious crimes. They spend up to 18 hours a day locked in their cells.

Reardon admitted that the conditions were "not desirable for men awaiting trial" and "not what ordinary people would expect". He acknowledged that "these men are effectively treated as convicted men by being placed in Acacia Unit". This, however, did not constitute "exceptional circumstances", nor did the two-year wait, which Reardon described as "not unusual" in a complex case.

As part of a new package of measures to toughen the terrorism laws, the Rudd government is moving to make it even more difficult to obtain bail. The Labor government plans to give prosecutors the right to

appeal, potentially all the way to the High Court, Australia's highest court, against any magistrate's decision to grant bail. Prisoners would not be released until the appeal process was exhausted.

Such provisions would have blocked the bail granted by a magistrate in July 2007 to Dr Mohamed Haneef, an Indian-born doctor who was falsely accused of providing support to bombings in London and Glasgow. The former Howard government, which publicly backed Haneef's arrest—hoping to create a security scare campaign in the lead-up to the 2007 election—sought to prevent his release on bail by revoking his visa, thus consigning him to immigration detention. Within days, however, the case collapsed and the government was forced to drop the charges, in a major blow to the credibility of the “war on terrorism”.

During last month's four-day bail hearing, prosecutors conceded that no firearms were found in any of the 19 homes raided and searched. This fact alone throws doubt on the police, government and media claims that the men were ready to drive into the Holsworthy base with automatic weapons and kill as many soldiers as possible.

At one point in the hearing, a question was raised about the possible infiltration of a police agent into the alleged terrorist group. When asked if a covert operative had been planted, federal agent David Kinton hesitated, before replying: “Can I seek legal advice?” After an adjournment, a lawyer representing the Victorian Police Chief Commissioner said the issue could only be discussed in a closed court. Defence lawyer Rob Stary inexplicably withdrew the question.

In several of the terrorism prosecutions since 2002, police provocateurs have been employed to entrap suspects by drawing them into discussions about terrorism. In one case, for example, that of Zeky Mallah, a young unemployed worker, an undercover agent posing as a journalist offered Mallah \$3,000 to make a vague threat to attack a federal building. After hearing this evidence, a jury acquitted Mallah of terrorism charges in 2005.

During the bail hearing, the prosecutors of the three

men conceded that it was not an offence to travel to Somalia, to give money to a Somali or to support Al-Shabaab at the time the men were arrested. On August 20, just before the hearing commenced, the Rudd government proscribed Al-Shabaab, under both the Criminal Code and the so-called terrorism financing laws, thus making it a serious crime to in any way support, receive training from, or help raise money for the organisation.

By outlawing Al-Shabaab, following the lead set by the US last year, the Labor government has sought to facilitate further prosecutions and underscore its commitment to the US-led “war on terror”. Al-Shabaab is an Islamist movement that has won support by fighting a government installed by Ethiopian troops with US backing in December 2006. As in Afghanistan and Iraq, all opponents of the US-backed regime are branded “terrorist”.

The Rudd government's bail changes are just one aspect of its proposals to bolster the police-state “anti-terrorism” laws introduced by the Howard government. The government wants to expand the already sweeping definition of terrorism to include conduct that causes psychological harm, rather than physical harm, and create new offences such as terrorist hoaxes, threats and “inciting violence”.

Displaying the same modus operandi as its predecessor, the government seized upon the August 4 police raids and the accompanying sensationalised media headlines of an “army base terror plot” to unveil its legislative plans.



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