

Unprecedented sentences in Australian terrorism trial

Mike Head
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In a judgment that highlights the draconian character of the anti-terrorism laws, a Sydney judge last week sentenced five Islamic men to maximum terms ranging from 23 to 28 years—by far the longest imprisonments imposed in an Australian terrorist trial.

There is no evidence that the men had planned any specific terrorist attack—instead they were convicted last October of “conspiring to commit acts in preparation for a terrorist act”. Nevertheless, their sentences were more severe than for many murder cases.

Non-parole periods were set at between 17 and 21 years—nearly double those imposed on Melbourne men in similar circumstances a year ago. The prisoners will have a “AA” prison classification, ensuring they are kept in what the judge called “onerous” conditions in “super-max” jails. Defence lawyers have indicated that their clients are likely to appeal.

Under the terrorism laws, the men were convicted and sentenced for their alleged thoughts, intentions and political beliefs, rather than what they had actually done. In 2005, with the backing of Labor and the Greens, the Howard government invoked an “imminent terrorist threat” to amend the legislation, just before the men were arrested. The change specified that no proof of any concrete terrorist act or even plan was necessary; just an intention to carry out “a” terrorist action.

The conspiracy charge effectively widened the scope of the already broad terrorism laws. It allowed the men to be convicted on wholly circumstantial evidence for doing things that are legal in themselves—such as expressing opposition to the invasions of Afghanistan and Iraq, viewing jihadist videos and buying various commonly-used chemicals.

Last October, a jury took 23 days—one of the longest

recorded deliberations—to convict the men, suggesting that jurors had doubts about finding them guilty on such a basis.

Even after state and federal police and the Australian Security Intelligence Organisation (ASIO) tapped the phones, bugged the homes and tailed the movements of the men for 16 months, the judge conceded there was no evidence that the men actually intended to kill anyone.

Sentencing them in the New South Wales Supreme Court, Justice Anthony Whealy said: “While I cannot be satisfied beyond reasonable doubt that any of the offenders intended directly to kill or take human life, it is clear beyond argument that the fanaticism and extremist position taken by each offender countenanced the possibility of the loss of life, if that were to occur.”

The judgment on February 15 was televised—a rare occurrence in Australia. The judge declared that “an intolerant and inflexible fundamentalist religious conviction” was “the most startling and intransigent feature of the crime. It sets it apart from other criminal enterprises, motivated by financial gain, by passion, by anger or revenge.”

Justice Whealy said some of the video material found in the men’s homes showed the execution of hostages or prisoners by mujahideen. “It is impossible to imagine that any civilised person could watch these videos,” he said. The judge also found it objectionable that the images “appear designed to create anger and hatred against the United States and its allies”.

The judge said the men had intended to carry out an action or issue a threat of action “so as to coerce or influence by intimidation the Australian government to alter or abandon its policies of support for the United States and other western powers in Middle Eastern and other areas involving Muslims”.

By that standard, protestors against the US-led aggression in Afghanistan, Pakistan and Iraq could be found guilty of conspiring to prepare terrorist-related activity. This outcome underscores the far-reaching character of the legislation, which defines terrorism as intimidating or coercive activity conducted “with the intention of advancing a political, religious or ideological cause”.

Moreover, one of the reasons that Justice Whealy gave for the severity of the sentences was that the men had refused to abandon their beliefs. He said none had shown remorse or stepped back from their “extremist” views.

None of the men had prior criminal records—the judge even referred to some leading “blameless lives”. However, he ruled that long jail terms were needed for “punishment, deterrence, denunciation and incapacitation”.

The Rudd government immediately voiced approval of the outcome. In a media statement, Attorney-General Robert McClelland “acknowledged” the sentences, thanked all those involved in the trial and commended the security, intelligence and law enforcement agencies for “their cooperation and dedicated work over a number of years”. He said the case demonstrated how these agencies were working “effectively to enforce Australia’s counter-terrorism laws”.

A significant factor in Labor’s election in 2007 was popular opposition to the laws and their use by the previous Howard government to stage terrorism scare campaigns in which the police and intelligence agencies persecuted innocent men like Mohamed Haneef, David Hicks, Mamdouh Habib, Jack Thomas and Izhar ul-Haque. Since taking office, however, the Rudd government has not only retained the laws, but moved to strengthen them (see: “Australia: Rudd government toughens anti-terror laws”).

The severe sentences have caused outrage among family members and within the Islamic community. Outside the court, the sister of one of the men, who was sentenced to 23 years in jail, protested: “That is half of his life. This is not fair. This is not fair to our community nor to our religion. My brother is innocent. Yes I am saying that he is innocent.” She said the only “extremists” were “people like ASIO”.

Last weekend, Muslim religious and community leaders issued a statement of condemnation, saying: “Until we see the real evidence, we believe that the reason for the arrests and convictions is that these young men expressed or hold opinions that contradict Australia’s foreign policy towards

majority Muslim countries. No civilised society can pretend to know the intention of people. It is a travesty of justice to penalise people on suspected intention.”

By contrast, there has been no criticism in the media or by civil libertarians. Legal academics have largely fallen in behind the Rudd government. Nicola McGarrity from the University of New South Wales law school said the case indicated that “the terrorism offences are effective in taking people off the streets who were going to engage in terrorist acts”. Her only reservation was a tactical one, saying that the laws can be “counter-productive” because “already alienated communities within Australia often regard these terrorism laws as targeting them rather than being applied neutrally across the community”.

The truth is that, no less than the Howard government before it, the Labor government is deliberately exploiting the “war on terrorism” for both foreign policy and domestic purposes. In return for US support for Australian capitalism’s own neo-colonial interventions in East Timor, Solomon Islands and other Asia-Pacific locations, Rudd is participating in Washington’s wars in the Middle East, which are entirely driven by the quest for control over the region’s vast energy resources and strategic location.

Like Howard, Rudd is also seeking to offset flagging public support by whipping up fears of terrorism and Islamic “extremism” and to use the scare campaigns to help establish reactionary legal precedents that can be used more broadly against opponents of the US-led militarism and other pro-business government policies.



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