

Australian government defies UN call to release refugee detainees

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Australia's Labor Party opposition has joined hands with the Liberal-National government in its defiance of two UN agencies over the indefinite detention of more than 50 refugees denied security clearances by the Australian Security Intelligence Organisation (ASIO).

The Abbott government, following the lead of the previous Labor government, last month brushed aside a UN Human Rights Committee deadline for the release of the detainees, who face ongoing incarceration, potentially for life, despite being officially recognised as refugees fleeing persecution.

With Labor's support, the government is also pushing legislation through parliament to strengthen the government's powers to use ASIO "adverse security assessments" to refuse protection visas, despite condemnation of the bill by the UN High Commissioner for Refugees (UNHCR).

Both moves demonstrate the utter contempt for fundamental legal and democratic rights within the Australian ruling elite. In addition to the thousands of asylum seekers detained in Australia's onshore and offshore camps, ASIO has unchecked power to have refugees locked away, without charge or trial, on unspecified accusations of presenting a risk to "security."

For its assessments, ASIO relies upon information supplied by the very governments that the refugees have fled—such as Sri Lanka—itself a violation of the 1951 international Refugee Convention that enshrines a right to seek protection.

The detainees have no right to know what precisely is alleged against them, or see the supposed evidence, because ASIO and the government insist that this would itself threaten "security." This Catch-22 makes it virtually impossible for them to legally challenge their imprisonment. They are trapped in a legal and

administrative black hole.

Last August, the Geneva-based Human Rights Committee ruled that the detention of 46 refugees on security grounds amounted to cruel, inhuman and degrading treatment. The 18-member panel of human rights experts gave Australia 180 days to release the refugees, who have been held for up to five years, and offer them compensation and rehabilitation.

The refugees—42 Tamils from Sri Lanka, three Rohingya from Myanmar and a Kuwaiti—took their cases to the committee because they were unable to challenge the legality of their detention in the Australian courts. The panel found that their detention violated Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which states that no one shall be subjected to arbitrary arrest or detention.

"The combination of the arbitrary character of (their) detention, its protracted and/or indefinite duration, the refusal to provide information and procedural rights to (them) and the difficult conditions of detention are cumulatively inflicting serious psychological harm upon them," the committee declared. This also breached Article 7 of the ICCPR, under which "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Altogether, the committee said Australia had committed more than 150 violations of international law. But the then Labor government thumbed its nose at the verdict, which is not legally binding. Attorney-General Mark Dreyfus's spokesperson simply said the government would consider the committee's views and respond within the six months permitted.

George Brandis, the Abbott government's attorney-general, followed suit. On the expiry of the 180-day deadline, he declared on February 27: "The Australian government is considering its response to the UN

Human Rights Committee’s views... ASIO’s priority and responsibility is to ensure that Australia’s security is not compromised.”

Since last August, more refugees have been detained on ASIO’s orders, taking the total above 50.

With Labor’s backing, legislation to bolster ASIO’s powers passed through the House of Representatives last month, and is now in the Senate, where the two parties together also hold a majority. The bill effectively overturns a High Court ruling in 2012 that automatic reliance on ASIO rulings was unlawful because it breached the government’s own Migration Act.

The court ruling was an extremely limited one. It simply required the government to consider the visa applications again, without solely relying on ASIO’s assessments, and did not order the release of a single detainee.

Last December, the court explicitly declared that those still denied visas remained lawfully detained. This was in line with a series of reactionary rulings by the court in 2004 authorising indefinite detention, under the so-called “aliens” power of the Australian Constitution. (See “Australia’s highest court sanctions indefinite detention”)

Nevertheless, Immigration Minister Scott Morrison said the amendments were necessary because the 2012 High Court judgment created a “problematic” situation for his department. Under the changes, adverse ASIO security verdicts will automatically trigger visa refusals.

The amendments also stipulate that the Refugee Review and Administrative Appeals Tribunals have no power to review ASIO security decisions. This means that detainees can only possibly appeal to a court, where they must prove that ASIO made a “legal error”—which they cannot do without knowing exactly what is alleged against them.

In criticising the bill, the UNHCR issued a typically cautious statement, not meant to challenge the government in any way. It said it had a “number of concerns” about the amendments’ compatibility with international law, including “the confidential nature of the procedure by which ASIO assesses a person to be a risk to security.” The UNHCR merely suggested that “some adjustment to the procedures in such cases should be considered.”

A report last month by the government’s Inspector General of Intelligence Services, Vivienne Thom, shed further light on the abrogation of core legal rights. Responding to complaints by lawyers, she reported that ASIO was illegally “discouraging the attendance of lawyers at interviews” where refugees are interrogated as part of their security assessments.

The Greens opposed the new bill and criticised aspects of the assessment process, but agree entirely with the underlying nationalist principle of “border protection”—complete with ASIO security screening. Spokesperson Senator Sarah Hanson-Young urged the government to “improve our process for dealing with these cases,” as suggested by the UN.

The Greens policy calls for refugees to “be given reasons for such assessment and the opportunity to challenge this in the appropriate forum.” Detainees would get vague statements of reasons that would still keep them in the dark. During their three-year de facto coalition with the previous Labor government, the Greens supported a token review process by a former judge, which only served to window dress the entire regime.

These developments are a warning of the police state-style measures being prepared, not just against refugees, but the working class as a whole, as economic and social conditions deteriorate, producing deepening popular disaffection. As part of the fight to defend their own fundamental rights, working people have to champion the essential democratic right of asylum seekers and immigrants to live and work anywhere on the planet, with full civil and political rights.



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