

PNG court declares Australian refugee detention camp illegal

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In what amounts to an indictment of the Australian political establishment, the Papua New Guinea (PNG) Supreme Court on Tuesday ruled that the imprisonment of refugees in an Australian-controlled detention facility on PNG's remote Manus Island was unconstitutional.

The unanimous decision by five judges of PNG's highest court demonstrates that the detention at Manus not only violates international law, which recognises the right to seek asylum, but also flagrantly breaches the country's constitution, which bans the unlawful deprivation of personal liberty.

Immediately, the verdict affects nearly 1,000 male detainees, including 482 UN-recognised refugees. Many have been imprisoned indefinitely since 2012 in the camp, which is located inside a World War II-era PNG naval base. More broadly, the ruling effectively exposes the illegal character of the bipartisan Australian policy of incarcerating asylum seekers on islands in the Pacific and Indian Oceans—on Manus, Nauru and the Australian outpost of Christmas Island.

The court noted the poor conditions in which the detainees are held, behind “razor wire” and guarded by security officers, after being forcibly transported there by Australian Federal Police officers. The judges cited a 2013 UN High Commissioner for Human Rights report on Manus that detailed the lack of “basic conditions and standards required” by the international Refugees Convention.

At least two refugees have been killed or died due to lack of adequate medical facilities at Manus. Many more have committed acts of self-harm, either in protest at their imprisonment or due to the psychological trauma of indefinite detention. The inhumanity of the detention was underscored on Tuesday, when a 23-year-old Iranian man, known as

Omid, set himself on fire inside the Nauru facility. He remains in a critical condition.

This so-called “Pacific Solution”—now being emulated by the European Union's drive to force back to Turkey thousands of refugees fleeing the US-led wars in the Middle East—has been pursued by successive Liberal-National Coalition and Labor governments in Australia since 2001. The Manus camp was first opened in that year by the Howard Coalition government. It fell into disuse in 2004, but was then reopened by the Gillard Labor government in 2012.

The Supreme Court ordered both the Australian and PNG governments to “forthwith take all necessary steps to cease and prevent the continued unconstitutional and illegal detention of the asylum seekers or transferees at the relocation centre on Manus Island.”

However, both the Coalition government and the Labor opposition immediately defended the Manus facility and declared there would be no change to their common policy of using “offshore processing” centres to bar entry to Australia to all asylum seekers arriving by boat.

Prime Minister Malcolm Turnbull today vowed that despite the ruling, “none of the detainees there will come to Australia” and warned people not to become “misty-eyed” about the plight of the Manus detainees. “We must have secure borders,” he declared, “and they will remain so, as long as I am the prime minister of this country.”

Immigration Minister Peter Dutton said the government would seek talks with PNG “to resolve these matters.” Dutton also raised the possibility of removing the Manus detainees to Nauru. Likewise, Labor's immigration spokesman Richard Marles said the offshore system must remain. A Labor government

would seek discussions with PNG “about how this facility can continue.”

PNG Prime Minister Peter O’Neill called on Australia to immediately make “alternative arrangements” for the detainees. But there was no move to shut down the illegal facility. Instead, O’Neill signaled the readiness of his cash-strapped government, which is currently applying for a World Bank bailout, to seek a new monetary deal with Canberra on the refugees.

Australia’s current agreement with PNG, formalised by Labor Prime Minister Kevin Rudd before the 2013 federal election, required spending by Australia of at least \$1.1 billion on detention facilities over four years, plus \$420 million in funding for PNG road projects.

In their ruling, the PNG judges said the detention regime at Manus, firstly, violates the right of personal liberty guaranteed by section 42 of the PNG Constitution. Secondly, “the way in which the asylum seekers are treated” breaches “other constitutional rights and freedoms,” including the right to communicate with a lawyer of their choice. Thirdly, a purported constitutional amendment rushed through the national parliament in 2014—a bid to shut down the court case—is “invalid with no force and effect,” as are administrative measures proclaimed by the government under the country’s Migration Act to try to legalise the detention.

The court also condemned the protracted efforts of the PNG government to delay, sabotage or thwart the legal challenge, which was commenced by PNG opposition leader Belden Namah in August 2013—nearly three years ago. These efforts included failing to comply with previous orders and directions by the court. It was obvious, the judgment said, that the government and its lawyers “failed for no good reason to discharge their obligation to ... avoid unnecessary delays in an expedited prosecution and disposal of this case.”

The defiant reaction by the Australian government and Labor opposition to the court ruling signals a united front behind the anti-refugee policy in the lead-up to the “double dissolution” election of all members of both houses of parliament, likely to be called for July 2.

Labor’s response to the court’s verdict was plainly dishonest. Marles, the shadow immigration minister,

claimed that when the Labor government reopened the Manus and Nauru camps in 2012 it did not intend to detain people indefinitely, but find other countries to resettle them. This contradicts the explicit statements by Labor’s then ministers, led by Prime Minister Julia Gillard, that asylum seekers would be locked away for many years, precisely to deter refugees from trying to reach Australia.

The Greens—the third party of the Australian political establishment—welcomed the PNG court ruling and called on Prime Minister Turnbull to close the Manus facility and bring the detainees to Australia to have their refugee claims assessed. Aware of the widespread public opposition to the inhuman anti-refugee policy, the Greens are seeking to position themselves to capture votes on that basis.

The Greens, however, bear direct political responsibility for the Labor government’s reopening of the offshore camps. While opposing the facilities in words, the Greens kept the minority Labor government in office from 2010 to 2013, helping to supply the parliamentary numbers it needed to cling to power.

More fundamentally, the Greens are committed to maintaining the underlying “border protection” framework that denies refugees the right to seek protection and the right of all working people to live and work where they choose. That nation-state framework is inevitably enforced by military means.



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