Australian High Court sanctions illegal detention of refugees in Papua New Guinea

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Australia's highest court last week brushed aside a challenge to the Australian government's prolonged detention of refugees on Papua New Guinea's (PNG) impoverished Manus Island in defiance of PNG law.

In a dismissive and unanimous judgment, the full bench of seven judges rejected a law suit by Benham Satah, an Iranian asylum seeker, against his continued incarceration on Manus Island despite the PNG Supreme Court last year ruling that the detention regime was an unconstitutional deprivation of liberty.

The High Court has not only rubber-stamped the continued confinement of refugees in appalling conditions on Manus. Its ruling has far wider implications. It effectively gives a constitutional green light to Australian governments to flout both international law and the law of any other country.

In 2013, the previous Australian Labor government pressured the government of PNG, a former Australian colony, into allowing Australia to set up the Manus detention camp, under the guise of a "regional resettlement arrangement." Like the Labor government and its Liberal-National successors, the High Court displayed neo-colonial contempt for PNG and its law.

Last year's PNG Supreme Court decision, known as the Namah case, ordered the Australian and PNG governments to close the Australian-funded and operated detention centre on Manus, a remote island near the equator. After months of defying the ruling, the two governments ultimately ordered the closure of the camp by October 31, but with the more than 800 men detained there being coerced into an insecure "transit" centre near Lorangau, the island's main town.

Unlike in Australia, where the constitution contains no bill of rights or other protection of key legal and democratic rights, PNG has constitutional human rights provisions. These forbid the deprivation of personal liberty in most cases where a person has not committed a crime.

The PNG Supreme Court found it was unconstitutional for Australia and PNG to bring in and detain asylum seekers on Manus. Satah's lawyers therefore argued that Australia was exercising its powers for an illegal purpose. They said the Australian Constitution prevented the Australian government from undertaking business with another country that was unlawful in that country.

In dismissing the claim, the High Court declared it to be a "novel and sweeping proposition" that had no basis in law. The judges also ordered the plaintiff, the Iranian refugee, to pay the court costs, which will run into many thousands of dollars.

The judges insisted there was nothing in "the text or structure" of the Australian Constitution to support the plaintiff's case. Citing previous High Court rulings, they declared: "The course of authority in this court leaves no room for doubt that neither the legislative nor the executive power of the Commonwealth is constitutionally limited by any need to conform to international law.

"Equally there should be no doubt that neither the legislative nor the executive power of the Commonwealth is constitutionally limited by any need to conform to the domestic law of another country."

This ruling underscores the readiness of the Australian ruling establishment, including the courts, to trample over the law of any other country as well as international law, including the 1951 Refugees Convention, which recognises a right to flee persecution and seek protection.

Through its military and political might the Australian government can legally coerce, through various arrangements, smaller and impoverished

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countries to carry out actions that are contrary to their laws and constitution. This sets a precedent by which the Australian government could also set up torture or rendition centres in other countries.

Moreover, numerous reports have shown that detention on Manus subjects detainees to psychological and physical trauma. It has already led to five preventable deaths, including that of Hamid Shamshiripour, another Iranian refugee, who died this month under suspicious circumstances.

Satah, the High Court plaintiff, has been languishing on Manus Island since August 2013 after being detained by the Australian Navy on board a refugee boat. In February 2014, he witnessed the murder of 23-year-old Reza Barati, a fellow detainee, who suffered a severe brain injury during a protest by prisoners at the Manus Island camp.

That incident had all the characteristics of a calculated provocation orchestrated by the Australian government. Security and police personnel were reinforced before an announcement was made to all the detainees that they would never be settled in Australia, triggering outrage.

Satah was later compelled to give evidence against two of the local men charged over Barati's murder. The Australian government prevented the return of expatriate officers to stand trial, effectively covering up the Australian government's responsibility for his death.

Fearing reprisal over the testimony he gave in court, which named local police, Satah refused to participate in the PNG's assessment of his refugee claim. This resulted in his claim being rejected last December. As Iran does not accept the involuntary return of its citizens, Satah remains in custody indefinitely.

The High Court ruling directly affects all the 803 men imprisoned on Manus Island, underscoring the refusal of successive governments to allow them into Australia. The Australian government is currently shutting down the detention centre around them, threatening police violence if they do not move to a transit centre designed to house only 280 people.

In February last year, by a six-to-one majority, the High Court also upheld the indefinite detention of men, women and children on the tiny Pacific island nation of Nauru. In that case the judges largely relied on the fiction that Nauru, another impoverished former Australian colony, is the sovereign power detaining the refugees, not the Australian government, which orchestrates, finances and polices the detention centre.

Now the court has given constitutional carte blanche for the Australian government to conduct such illegal activities. This is a warning. A precedent has been set that goes beyond refugees, validating powers that can and will be used against the working class more broadly as the economic, social and political situation worsens.

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