

Australia: ASIO assessments condemn refugees to indefinite detention

By Robert Morgan
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Over 50 refugees currently being held by the Australian Labor government face the prospect of indefinite detention, potentially for life, due to secret and effectively unchallengeable “adverse security assessments” issued by the Australian Security Intelligence Organisation (ASIO).

Under the “mandatory detention” regime introduced by the Labor government in 1992, all non-citizens entering Australia without a valid visa are compulsorily detained, pending assessment by the Department of Immigration and Citizenship (DIAC). As a result, thousands of men, women and children seeking asylum in Australia—from some of the world’s most impoverished and war-torn countries—are essentially imprisoned. As many refugee advocates and legal experts have explained, Australia’s mandatory detention regime openly violates international law.

According to a recent DIAC report, as at 30 April 2012, 4,329 people were being held in immigration detention centres and “alternative places of detention.” Of the detainees, “around 40 percent were Afghan nationals, 14 percent were Iranian nationals and 8 percent were Sri Lankan nationals.” Over 10 percent of the detainees were children—numbering 463—who are held in “Immigration Residential Housing” and “Immigration Transit Accommodation.”

Even if it determines that a detainee *is* a refugee, and is therefore entitled to protection in Australia under international law—which is the case with the majority of arrivals—DIAC still has the power to refer the refugee to ASIO for a security assessment. ASIO is not required by legislation to perform this assessment within a specified time. If ASIO eventually issues an “adverse security assessment”, DIAC will not grant the refugee an Australian visa.

Those subject to an “adverse security assessment” are cast into an administrative and legal black hole. As a signatory to the 1951 *Refugee Convention*, Australia cannot return (“*refoule*”) refugees who are unable or unwilling to return to their country of origin owing to a well-founded fear of persecution. At the same time, an adverse ASIO assessment

means that refugees cannot be released into the community or sent to third countries. Instead, they remain trapped in indefinite detention.

According to a report published 12 April 2012 by the federal parliament’s Joint Select Committee on Australia’s Immigration Detention Network, ASIO applies the sweeping definition of “security” contained in the *ASIO Act 1979* when making threat assessments. It includes espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia’s defence system, “acts of foreign interference” and, even more broadly, “the carrying out of Australia’s responsibilities to any foreign country” in relation to any of these matters.

Australian law ensures that refugees are effectively unable to challenge ASIO’s security assessments, and thereby the basis of their indefinite detention. Refugees are not allowed to see the secret evidence and specific reasons underpinning ASIO’s assessments, or even the criteria on which such assessments are based. As non-citizens applying for visas, refugees have no right under Australian law to contest the merits of ASIO’s decisions in the Administrative Appeals Tribunal (AAT). While refugees can ask federal courts to perform a judicial review, this is limited to a review for errors of law underpinning ASIO’s decision, rather than the substance of the decision itself.

Comments by ASIO Director-General David Irvine to the Parliamentary Committee highlight the authoritarian logic of ASIO’s secretive assessment regime. Asked why detainees are not even allowed to know the criteria for ASIO’s adverse assessments, Irvine commented, “once the criteria for making assessments are known, then you will find very quickly that all the applicants will have methods of evading or avoiding demonstrating those characteristics.” In other words, as Irvine tacitly admits, if refugees and refugees’ advocates knew the basis for the assessments they would be better able to challenge them. So the criteria remain secret.

Recent media reports have illustrated the devastating consequences of indefinite detention. An article published in the *Sydney Morning Herald* on May 16 described how two

Tamils—both given adverse ASIO assessments—attempted to kill themselves in a Melbourne immigration detention centre. On May 21, the Australian Broadcasting Corporation’s “7:30 Report” highlighted the plight of a Sri Lankan Tamil refugee—nicknamed “Bonus.” He reported hearing noises in his ear for the past two months, and more recently hearing voices and having hallucinations. Due to an adverse security assessment, Bonus has been detained for three years.

The Parliamentary Committee report found that symptoms of mental ill health, including “forgetfulness and confusion, frustration, anger, loss of appetite, anxiety, poor hygiene, insomnia, self harm, as well as thoughts of, and attempts at, suicide” were “commonplace” among long-term detainees. The Committee noted that “particular distress” was observed among detainees awaiting ASIO security assessments.

The Labor government’s harsh refugee detention regime, coupled with ASIO’s secretive assessment process, serves definite political purposes. Amid the continuing global economic breakdown, its championing of “border protection” against refugees—characterised as “boat people” and “unlawful” entrants to Australia—is aimed at promoting divisive, xenophobic sentiment. By demonising refugees, the Gillard government seeks to divert attention from the impact of its austerity measures on living standards.

In the case of Tamil refugees, the Labor government supported the Sri Lankan regime’s war against the Liberation Tigers of Tamil Eelam, remained silent about its war human rights abuses and collaborates closely with Colombo in blocking political refugees from leaving the island. The overrepresentation of Sri Lankans among those given an “adverse security assessment” by ASIO suggests that it relies on dubious information from Sri Lankan intelligence services that are notorious for their anti-Tamil chauvinism.

According to the ABC’s “7:30 Report”, most of the 57 refugees currently held in indefinite detention following adverse ASIO assessments are Sri Lankan. In the case of a Sri Lankan Tamil woman named Ranjini—who is now in the Villawood detention centre with her two children after living for more than a year in the community—the *Sydney Morning Herald* reported on May 16 that “it is believed” ASIO had “found her former husband was a driver for Tamil Tiger separatists.” If that was the basis for the adverse finding, the information undoubtedly came from the Sri Lankan government.

Using the pretext of “security” and the “war on terror”, the Gillard government is bolstering an unaccountable security apparatus that violates the most elementary democratic and legal rights, such as freedom from detention

without trial, the right to know the nature of any charges and procedural fairness. Such powers will be inevitably utilised more broadly against any movement of the working class as the economic crisis deepens.

While criticising aspects of the ASIO security assessment process, the Australian Greens agree entirely with the nationalist principle of “border protection”, security screening of refugees, and special court procedures due to “national security” considerations. The Greens were to introduce a private members bill into parliament on May 22 to grant non-citizens applying for visas a right of an AAT review, entitle them to a statement of reasons for the ASIO assessment and an ASIO review every six months.

Greens immigration spokeswoman Senator Sarah Hanson-Young told the “7:30 Report” on May 23 that “where it is a sensitive issue of national security” ASIO and the government could argue in the tribunal that they want a “special advocate.” This advocate would be given “security clearance” to see the claims against the refugee “and test them without them having to be totally disclosed.” Again the refugee would be in the dark.

The Labor Government and ASIO are being challenged in the High Court of Australia—the country’s supreme court—over the principle of indefinite detention following an adverse security assessment by ASIO. The applicant is a Sri Lankan refugee detained for more than three years.

According to the “7:30 Report” on May 23, the proceedings will challenge two aspects of immigration law on the grounds that ASIO’s assessment process is a denial of natural justice and that indefinite detention is unlawful. The indefinite detention of asylum seekers was unsuccessfully challenged in the *Al-Kateb* case of 2004. In that instance, a 4-3 majority of the High Court ruled that the indefinite detention of a stateless refugee was lawful because it was not for a “punitive” purpose.

Whatever the outcome of the High Court challenge, the Australian working class should reject the entire nationalist framework of “border protection” and government assessment of refugees, by secret intelligence agencies or otherwise defended by the Labor government and the Greens. Working people should have the right to live and work in safety in whichever country they choose, with full legal and democratic rights.

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