

Australian court criticises Labor's refugee deportations

By Mike Head
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A decision by a full five-judge panel of Australia's Federal Court late last month highlighted the Australian Labor government's growing contempt for core legal and democratic rights, particularly those of asylum seekers.

Accompanied by unusually blunt criticism of the government's "disturbing" conduct, the country's second-highest court issued an injunction effectively preventing the government from proceeding with planned mass deportations to Afghanistan—involving up to 120 refugees—until it had considered their cases "according to law."

The ruling shed light on the lawless methods to which the government is resorting, behind the scenes. In the lead-up to the scheduled September 14 general election, the government and Liberal-National Party opposition are vying to take the harshest measures to stop people seeking asylum in Australia, in violation of international law, which permits people to flee persecution.

The judges condemned the government's "arbitrary" processes, denials of "fundamental rights of individuals" and refusal to abide by "international obligations." Far from generating an outcry against the government's lawlessness, however, the decision was almost completely buried by the media—it rated only a brief mention in the *Sydney Morning Herald*.

The man who challenged his deportation—a 34-year-old Hazara currently employed as a tiler—said that if he were returned to Afghanistan, the Taliban would kill him. Nevertheless, the court's ruling does not guarantee that he, or any of the thousands of refugees detained in Australian facilities, is free from the threat of being deported to face persecution. It simply requires the immigration minister to abide by "procedural fairness" before refusing to grant a refugee

protection visa.

Members of the court expressed concern at the explicit manner in which the government had declared that the Afghani man's application for a visa would not be considered, even if he were entitled to protection under the 1951 Refugee Convention, the International Covenant on Civil and Political Rights, and the Convention Against Torture.

Knowing that the man, identified only as SZQRB, was to be deported two days later, Immigration Minister Chris Bowen had issued a written statement that he would not exercise his "personal non-compellable public interest powers" under the Migration Act to consider granting SZQRB a visa, even if it meant violating Australia's international obligations.

Bowen declared that his decision stood, "irrespective of" any legal or factual error made by the so-called Independent Merits Reviewer, or the officials who conducted the "International Treaties Obligation Assessment or the Pre-removal clearance" or "any other circumstance."

Justices Bruce Lander and Michelle Gordon commented in their joint judgment: "In other words, the minister threatens to remove SZQRB from Australia even if SZQRB is a person to whom Australia owes protection obligations and in contravention of Australia's international obligations."

Justice Geoffrey Flick described as "stark" and "truly disturbing" Bowen's "proposition that his decision not to exercise his power... is not one for which he may be held accountable by the parliament or a superior court."

Justice Flick pointed to "disturbing undercurrents" in the government's submission to the court defending Bowen's actions. "Irrespective of the facts and circumstances prevailing in a particular country and

even in the face of accepted torture and/or persecution, the minister (it was submitted) could decide never to exercise the power in respect to persons from such a country,” he commented.

The judge “respectfully concluded” that the minister’s decision to deny a visa “irrespective of SZQRB’s known personal circumstances” was “arbitrary”.

The minister had also denied SZQRB procedural fairness “in the most fundamental way.” SZQRB was never given any opportunity to comment on the latest “country information” that the officials had used to claim that it was safe for him to return to Afghanistan, or on the Memorandum of Understanding that the government had signed with the Afghan regime to allow forced returns.

Justice Flick added that the process was even more thoroughly flawed, because the minister had declared that he would refuse to grant a visa, regardless of any findings that had been reached.

The government had essentially flouted a previous decision by the High Court. In 2010, Australia’s supreme court specifically ruled that the minister’s “personal, non-compellable powers” could not be used to deny visas to detainees on Christmas Island via the same “offshore processing” regime.

None of the Federal Court judges directly accused the government of thumbing its nose at the High Court. Instead, they commented it was “not necessary to repeat” what the High Court had said about the government’s offshore visa-denial system. That process employs private contractors to conduct supposed independent reviews of immigration department visa refusals. Refugees arriving by boat are denied any access to even the government’s own Refugee Review Tribunal.

Bowen, who was immigration minister for more than two years, recently quit cabinet after a failed attempt by Kevin Rudd to challenge Prime Minister Julia Gillard as leader. But clearly both camps in the now fractured government agree with extinguishing refugee rights.

The Gillard government has given no indication whether it will implement the ruling or appeal to the High Court. Immigration Minister Brendan O’Connor’s spokeswoman said government lawyers were “reviewing” the judgments. The government could try to thwart the ruling by going through the

motions of giving due process to those refugees targeted for deportation.

With the complicity of the Greens, who continue to prop up the minority government, the Labor Party is going far further than the previous Howard Coalition government in stripping refugees of every basic right.

The government’s claim to have the power to disregard legal procedures and fundamental rights has implications that extend well beyond refugees—one of the most vulnerable layers of the working class. It is another warning of a broader shift to abrogate basic democratic rights and create the framework for more authoritarian forms of rule.

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