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Australia: Refugees in Indefinite Detention, Endless Incarceration

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"Australia is holding more than 30 people in indefinite detention for undisclosed reasons. These people are recognised refugees who cannot return home due to the dangers they face there." Remedy Australia, Petition

Daniel Flitton, senior correspondent for *The Age*, sees the lack of interest in Australia's novel approach to indefinite detention for refugees as unfathomable. Concerns about metadata retention, and the elasticity of surveillance powers, may have been registered on the Australian pulse, but "People don't much care that in Australia a confidential judgment by ASIO has condemned more than 30 people to endless incarceration."[1]

Earlier this year, the same paper reported that, "without fanfare or public notice, 10 men slipped recently into the Australian community. They are now tasting a freedom denied to some of them for up to five years" (*The Age*, Jan 10). According to sources, "ASIO had assessed the men, most of whom were Tamil, to be a threat to national security, but in the past few weeks this decision has been reversed." Such is the arbitrariness of bureaucratic judgment.

More importantly, this is Australia's contribution to legal purgatory, its healthy bite size offer in the revisions of refugee rights. It is a view that finds non-citizens as subjects of indefinite detention not by any genuine legal standard, but in accordance with the shoddy, often ill-informed speculations of the domestic intelligence service, ASIO.

ASIO, in other words, maintains a judicial foothold it should scant have. International conventions do not factor in such assessments – the primacy of sovereignty, the hoarse, over-stated voice of national security, counts above all else. By the same token, the agency does not have the powers of detention the Minister for Immigration has.

A security assessment, for its presence or lack of quality, is to be fed into what should amount to a range of factors. Immigration ministers are, however, notoriously fickle on the subject, deferring to the espionage service as a reflex. ASIO's position is always that such individuals are assessed on "knowledge and information available at the time and in the context of the security environment."

The result of such determinations is a twilight zone of control and monitoring. As a refugee assessment to the Commonwealth Ombudsman went, the detainees in question with an adverse security assessment are being accommodated in a low security facility and are able to participate in excursions to the movies, the temple, the market and other public places; but are told that they cannot live in the community because they are a threat to Australia" (*The Age*, Mar 28).

Australia has, like its bosom ally of note, the United States, been attempting to come up with a range of legal exotica in this regard. The rather crabbed view of the Abbott government to the institutional disease we call indefinite detention was to simply justify it on other grounds. The UN Human Rights Committee in 2013 took the government to task in the indefinite detention cases of *FKAG et al* and *MMM et al*. The response from Canberra in both cases has been crass and predictable.

In *FKAG et al v Australia* (HRC, 2013), the Committee found violations in articles 7 (inhuman and degrading treatment, and 9(1) (arbitrary detention) and 9(4) (habeas corpus) of the International Covenant on Civil and Political Rights for the 37 authors of the complaint, 36 of whom were Sri Lankan Tamils including three children, and one a Burmese man of Rohingya ethnic minority.[2] The Committee recommended that the applicants be released "under individually appropriate conditions" and provided full "rehabilitation and appropriate compensation." Finally, Australia was encouraged to comply with the prohibitions on inhuman and degrading treatment and arbitrary treatment outlined in the Covenant.

The response to the Committee recommendations was cool. A mild admission that the Covenant had some relevance to Australia's legal obligations was noted, along with the injunction against arbitration and indefinite detention. But ASIO's "assessment on whether it would be consistent with the requirements of security" to take certain "administrative action" was admitted as gospel. "It is Australia's policy that unlawful non-citizens who are the subject of adverse security assessments from ASIO will remain in held immigration detention, pending the resolution of their cases."[3]

Then came the ticking off. The Committee had not "given adequate weight to various processes and policy developments outlined in Australia's submissions." The Australian government submission reads like an apologetic justification for abuse. Besides, Australian officials were being generous. There were regular reviews of an "independent" sort. And it wasn't all that bad. "As at 27 November 2014, a total of 12 adult authors have been released from immigration detention following new security assessments by ASIO."

The recent interest in this self-contrived legal vacuum was only sparked by such organizations as Remedy Australia, a body that has persistently argued that detention of such a nature is unwarranted and patently unjust.[4] On top of that, they have argued that any such individuals should be compensated on release. They have as their allies in such figures as Harvard law professor Gerald Neuman, who served on the HRC when it decided the relevant cases. The jurist found the response from Canberra striking. "You have to give people notice of the reasons why they are being held."[5]

The point to be made is that the main parties, those clumsy political players who simply swap government positions like picnic chairs, agree with such extra-judicial treatment. "Neither Labor or the Coalition," explained *The Age* (Jan 10) editorial, "can take credit for anything but callous subservience to political expediency."

The altar of national security requires its perverse sacrifices, none of which actually hold any content of truth or value. The state is mere hologram and fiction, a nonsensical compact held together by assumption and fantasy about its security. That such fantasy should wander into the world where desk bound agents, rather than the judges, don the wig of authority and the gown of wisdom, is something that Australia, and other countries, have become complicit in.

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Notes

[1] http://www.theage.com.au/comment/detainees-their-living-nightmare-20150327-1m95nh.html

[2] http://remedy.org.au/cases/13/

[3] http://remedy.org.au/correspondence/1412_Austn_response_to_FKAG&MMM.pdf

[4] http://remedy.org.au/action/fkag.php

[5] http://www.theage.com.au/federal-politics/political-news/australia-urged-to-allow-refugees-to-appeal-asio-ruling-20150316-1m06k6.html

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