

PNG asylum seeker judgment doesn't bind Australia: Dutton

Written by The Conversation USA

The Australian government has said it will not allow any asylum seekers on Manus Island to come here, after Papua New Guinea's Supreme Court ruled it was illegal to detain them there.

In the decision, which casts uncertainty over a key site of Australia's offshore processing regime, the court told both the Australian and PNG governments to "forthwith take all steps necessary to cease and prevent the continued unconstitutional and illegal detention of the asylum seekers" and the continued breach of their constitutional and human rights.

But the initial reaction by the Australian government has been that the ball is in PNG's court. About 900 men are on Manus; more than half have been found to be refugees. Unlike on Nauru, there are no women and children.

The court found detention of the asylum seekers was contrary to their right of personal liberty guaranteed by the PNG constitution. It also struck out a constitutional amendment by the PNG government that had attempted to bring the arrangement within the law.

Immigration Minister Peter Dutton said Australia was not a party to the case and the finding did not alter its border protection policies. He threw the weight onto PNG. "We'll wait and see the PNG response," he said, adding that the judgment did not bind the Australian government.

"No-one who attempts to travel to Australia illegally by boat will settle in Australia," he said.

He said those in the Manus Island processing centre found to be refugees were able to resettle in PNG, while men whose claims had been rejected should return to their countries of origin.

Sources said the options open to PNG could include making the centre an "open" one, with people able to move in and out of it, as in Nauru; attempting another constitutional change; ignoring the judgment; or seeking third countries that would settle the men.

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Dutton said whether the processing centre became an open facility was a matter for the PNG government.

He said before Christmas the Australian government had been strategising around various court cases, but he would not be drawn on contingency plans.

The judgment said the power to detain and deprive a person's liberty was available only when people had entered and remained in the country without a valid entry permit or an exemption.

"Any deprivation of a person's liberty outside what is provided for will undoubtedly be unconstitutional and illegal.

"In the present case, the undisputed facts clearly reveal that the asylum seekers had no intention of entering and remaining in PNG. Their destination was and continues to be Australia. They did not enter PNG and do not remain in PNG on their own accord."

This was confirmed by the fact of their forceful transfer and continued detention on Manus by the PNG and Australian governments. It was the joint efforts of these governments that had seen the asylum seekers brought into the country and kept at the Manus centre against their will, the judgment said.

Labor spokesman Richard Marles said Dutton should immediately go to PNG to sort the matter out, although Marles continued to support offshore detention.

The second Rudd government negotiated the agreement with PNG in 2013, just before the election. Marles said: "We negotiated a 12-month agreement with PNG with an expectation that the vast bulk of people would be processed and resettled in that period of time."

Greens leader Richard Di Natale said this was an opportunity "to reset this toxic and divisive debate" – by resettling those "innocent people" who had refugee status in Australia.

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David Manne, executive director of Refugee Legal, said while PNG domestic law may not bind Australia, the consequences of the court decision “go to the very heart of the bilateral deal to detain asylum seekers that Australia forced to PNG”.

The Australian government could not ignore the implications that ran deep for both countries in legal, moral, financial and practical terms, Manne said.

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