

M47

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British scholar Rabbi Jonathan Magonet once said: ‘We are defined as a society by how we treat the ones that don’t belong to us.’ (Gordon, 2012). When I think about the refugee crisis in Australia I can’t help asking, is the ‘land of the fair go’ really fair to all?

At present there are 57 genuine refugees being held in indefinite detention by the Australian Security Intelligence Organisation (ASIO). These refugees have been deemed threats to the national security of Australia. They have been given no explanation for their imprisonment by ASIO, and as they are not Australian citizens they have no opportunity to appeal their assessments. Among these men, women and children is a 36-year-old Sri Lankan Tamil refugee known only as M47, who has been held in detention for more than three years. During this time ASIO has approached seven other nations to take him. All have refused. In addition, the United Nations has declared that it will not assist ASIO in his relocation (Bainbridge, 2012).

M47 and his team of lawyers have now faced the High Court of Australia in the hope of overturning the 2004 landmark *al-Kateb* ruling which permits the Australian government to hold refugees in indefinite immigration detention if they cannot be removed to another country. The plaintiff’s representatives, including human rights lawyers David Manne and Richard Niall, argue that ASIO’s assessment

process is a denial of natural justice. The refugees who have been detained do not have the right to a fair hearing as they and their lawyers, and the judges they face, do not know the charges that have been laid against them and consequently they are not given a fair and independent process of review. Manne described his frustration when he said: 'I mean, it's like a secret trial. We don't know the process, we don't know the rules' (High Court of Australia, 2012).

The second argument challenging the government's position is that the indefinite detention of a genuine refugee is unlawful. The lawyers for M47 argue the Migration Act does not give the government the power to remove people judged to be genuine refugees, and even if the government did have the power to remove M47 there was no 'realistic prospect' that a third country would agree to take him in (Flitton & Gordon, 2012).



The official website for the Department of Foreign Affairs and Trade provides detailed information about Australia's legal system. Indeed, it proudly proclaims the values underpinning our legal system:

The Australian legal system is based on a fundamental belief in the rule of law, justice and the independence of the judiciary. All people—Australians and non-Australians alike—are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials. (Department of Foreign Affairs and Trade, 2012)

However, when this description of Australia's legal principles is compared with the treatment of M47 and the numerous other refugees behind the barbed-wire fences of detention facilities, it becomes inescapably clear that refugees are not currently recognised as equals under the law.

Fifty-seven people have been placed indefinitely in immigration detention facilities across the country. Each one has come to Australia in the hope of a new beginning, but now they live much like they did in the countries they risked their lives to escape — with freedom a dream and fear a reality. The Australian legal system is said to be founded on the egalitarian values of procedural fairness and the rule of law. However, in practice these values are not applied to all, as we are led to believe, but rather they are only enjoyed by certain members of our society. Refugees with adverse security assessments are faced with the prospect of life imprisonment for reasons they do not know. In addition, they do not have the right to appeal the charges made against them by a government body whose actions are not subjected to independent review (Gartrell, 2012).



While the plight of refugee M47 has been quietly tolerated for approximately three years, the arrest of one who ‘belongs’ to us has received considerable media attention. The Libyan government held Australian lawyer Melinda Taylor in detention for approximately three weeks. This was a cause for widespread concern both in Australia and internationally. Greg Barns, President of the Australian Lawyers Alliance stated: ‘We, in this country, support the upholding of the rule of law and we have to be giving a signal to the Libyan government that it’s unacceptable ...’ (ABC News, 2012).

On the wall of a city street somewhere in Australia, a single line stands out against the wash of graffiti, proclaiming to passersby: ‘There is no justice. There is just us.’

In light of this statement, one must ask why is it that in a society founded on democratic ideals, the value of an individual’s right to freedom differs so significantly between two people. Melinda Taylor and M47 are both 36 years of age and

were both held in detention under the pretence of being threats to national security. While it has become public knowledge that Melinda Taylor has lived in the Netherlands for the past nine years, is married to a fellow ICC lawyer and has a nNo information can be found on Sri Lankan refugee, M47 — not even a first name (Kyriacou, 2012).

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Tess McPhail wrote this in 2011 when she was in Year 12 at St Mary's College in Tasmania