

LEGAL DUTY, NO, MORAL DUTY, YES

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After eight years of detention in Guantanamo Bay, six ethnic Uighurs from China's remote Xinjiang region – a Turkic-speaking Muslim minority – arrived in Palau this month. The temporary re-settlement of the men on the tiny Pacific island nation is part of US President Barack Obama's drive to close the controversial detention centre on the American naval base in Cuba.

The six men were among 22 Uighurs living at a self-contained camp in Afghanistan when the US-led invasion of the country began in October 2001. Available evidence suggests that they had simply fled to Afghanistan to escape persecution in China. Shortly after the military invasion they were caught by bounty hunters who were responding to American posters promising big money for captured Taliban. They were then sold to US forces for an alleged US\$ 5,000 a head. While in custody in a notorious detention facility in Afghanistan, they were reportedly mistreated. One of the men suffered a serious infection to his shin which required amputation of his left leg upon arrival in Guantanamo Bay.

Last year, the Pentagon officially cleared the men of all terrorism charges. However, they have since been stuck in legal limbo as several countries including Australia refused US requests to resettle them. Palau eventually agreed to temporarily accommodate up to 17 Uighur detainees earlier this year. According to Palau President Johnson Toribiong, the agreement was a "humanitarian gesture", which had nothing to do with the review of the Compact of Free Association under which the US gives large sums to Palau.

This week, the six innocent men renewed their plea to be allowed to settle in Australia. The reason for this request is simple. Australia has a 2000-strong Uighur community which would provide the necessary social support structures for the men to be able to rebuild their lives after almost a decade of pain and misery.

In Canberra, however, the request has so far fallen on deaf ears. Some observers speculate that the Rudd government's refusal to grant asylum is closely related to fears of jeopardising relations with China. Indeed, the Australian Department of Foreign Affairs and Trade has confirmed that China has made representations to the Government on the matter. And the Chinese embassy in Canberra has issued a statement declaring that "those people are members of a terrorist group" and that they "should be sent to China to be handled according to law."

However, a return to China is not a viable option in light of recent reports that nine Uighurs were executed for their alleged involvement in riots that took place in north-western China earlier this year. In fact, under international law it is prohibited to render, transfer, send or return a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or other forms of mistreatment. This includes cases where a deportee would be likely to receive an unfair trial or face the death sentence.

Nonetheless, while there are strong grounds for refusing to deport the men to China, the legal case for resettling them in Australia is weak. International law recognises that people at risk of persecution have a right to flee their country and seek refuge elsewhere. The six Uighurs would undoubtedly meet the United Nations definition of a refugee, as provided in the 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees. However, these legal instruments do not give refugees a right to enter a country of which they are not a national. Nor do refugees have a right to choose their preferred country of protection.

In spite of the weak legal arguments, there is a strong moral case to be made for allowing the Uighurs to rebuild their shattered lives here. The Australian government has been a staunch supporter of shady US practices in the War on Terror. From the outset, it flagged its support for the Bush administration which had its own credibility resting on getting some results out of the flawed and controversial military commissions system in Guantanamo Bay.

Although Prime Minister Rudd can hardly be held responsible for the ill-conceived policies of the Howard government, his government carries a moral duty to assist the Obama administration in cleaning up the Guantanamo Bay mess. Allowing the Uighurs to settle in Australia would be a worthwhile contribution, and the right one, too.

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