

# Australian government flouts international law to eject Kurdish refugees

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During the past two weeks, the Australian government has stooped to new lows in its violation of international law and its assault on the basic democratic and legal rights of refugees. Its latest act has been to deny a boatload of Kurdish refugees the right to apply for asylum and instead force them back to Indonesia.

On November 3, 14 Turkish Kurds moored their 12-metre fishing boat, the *Minasa Bone*, on Australia's Melville Island, approximately 80 kilometres north of the mainland city of Darwin. Six of the men then walked along the beach and asked local residents whether they were in Australia.

As soon as the residents reported the incident, the government mobilised the military to force them back onto their small, crippled boat and then ordered three naval vessels—*HMAS Geelong*, *HMAS Warrnambool* and *HMAS Launceston*—to tow and escort the boat back to Indonesian waters. The purpose of the operation was to prevent the men from exercising their legal right under the Migration Act to apply for protection visas.

Despite the dangers facing the refugees—one of their boat's engines was not functioning—they were compelled to sail to the Indonesian island of Yamdena, where they were arrested. They were later flown to Jakarta and placed in detention by the Indonesian government, which has refused to rule out sending them back to Turkey.

As Kurds who had fled Turkish rule, it was immediately obvious that the men were seeking asylum under the 1951 Refugee Convention. Not only did the government flout their right to do so, but within hours of their landing in Australia, Immigration Minister Amanda Vanstone instructed the Governor-General to sign regulations to retrospectively excise Melville Island, and more than 3,000 other islands, from Australia's migration zone. The government backdated the regulations to midnight the previous night, flouting the traditional rule against retroactively abolishing legal rights. The Senate, where the government lacks a majority, is likely to disallow the regulations when it convenes next week.

The operation marks an escalation of the Howard government's vicious campaign against asylum seekers. Previously it has used the military to repel refugee boats, allowed them to sink or transported their hapless passengers to remote Pacific Island detention camps. But this is the first time the government has removed refugees from Australian soil in order to block their asylum applications. It sets a precedent for excising any part of the country from the migration zone in response to the arrival of refugees.

Despite claiming strong public support for its policy, the government immediately moved to block all media, legal and public access to the refugees, lying repeatedly about whether they had sought asylum. Customs authorities declared a 3,000-metre exclusion zone over the island's skies and closed the local airport to prevent reporters from landing. Immigration officers told islanders not to speak to the media.

For five days, the government refused to provide any information on the whereabouts or plight of the refugees. Finally, Vanstone and Foreign Minister Alexander Downer announced that the boat had returned to Indonesia after being escorted back to international waters near that country. "The passengers of the *Minasa Bone* did not claim asylum in Australia," their joint media statement declared.

This lie began to unravel once journalists were able to speak to the refugees in Jakarta. Not only had they asked for asylum, Australian authorities had intimidated and assaulted them. The refugees told reporters that men in khaki, whom they described as soldiers, forced them into their boat and pushed them out to sea after five hours on Melville Island.

"The Australian people may be good, but the army and system, no good," 30-year-old Asim Bali said. Bali said that both on the island and while detained on the boat the men had yelled, "refugee, refugee, refugee". In reply the military yelled, "be quiet, sit down, don't speak!" and "Go Indonesia".

The other men reported similar incidents and said the authorities only fed them twice in five days. Behan, 27, said he did not know where the military was taking him. "I feel like I'm an animal ... just being taken wherever. I feel like a kangaroo, but I think kangaroos are treated better than me by the Australian troops."

Asked whether they had expressed a desire for asylum to Australian officials, Abuzer Goles replied: "Thousands of times, thousands. I begged them, I pleaded down on my knees. They sent a Turkish interpreter and I pleaded with him saying I'll do anything not to be sent back. We spent four days on the water, 10 days without sleep, it nearly killed us. I'm human, I'm a human being. I'm a refugee." He then broke down, crying.

Defence records provided to the government's People Smuggling Task Force later confirmed the refugees' remarks. The men had told defence personnel that they wanted to go to Australia and said Turkey "was no good". One of the men had pointed to the word "refugee" in an English/Turkish dictionary.

The government released a letter from Task Force chairman Ed

Killesteyn, admitting that, during interviews on November 6—three days before Vanstone and Downer released their statement—some of those on the boat expressed the wish to become Australian citizens and spoke of the difficulties facing them as Kurds in Turkey.

This is not the first time that the government has lied about refugees. During the 2001 election campaign, Howard and senior ministers falsely accused asylum seekers of throwing their children overboard in order to force Australian authorities to rescue them.

Its current falsifications raise the obvious question: If blocking refugees from reaching Australia has such overwhelming public support, why go to such lengths to cover it up?

Once its lies became exposed, the government began pushing the line that it made no difference anyway. At a press conference in Melbourne, which was disrupted by angry students, Vanstone said the revelation that “some people did say things referring to human rights and mentioned refugee” was irrelevant. “The key point is these people were not in the Australian migration zone.”

Asked in London about the government’s deception, Howard was equally dismissive. “It’s quite irrelevant. I mean, it doesn’t really matter.”

Again, the question arises: if it made no difference whether the refugees claimed asylum or not, why lie in the first place? Part of the answer lies in the fact that several aspects of the government’s operation were not only inhumane, but also illegal—or, at the very least, legally dubious.

In the Northern Territory Supreme Court in Darwin, the territory’s Legal Aid Commission sought a habeas corpus writ, demanding that the government return the refugees to Australia to allow the court to test the legality of their detention and removal.

Legal Aid Commission director Susan Cox told the WSWS that she issued the writ in an attempt to give the Kurdish refugees the opportunity of obtaining legal advice. She had attempted to discuss the matter with the immigration department, but her phone calls were not returned.

Commonwealth Solicitor-General David Bennett, acting for the government, told the court that the men had not applied for asylum, nor did the government detain them, because, apart from Australia, they could go anywhere in the world. It is now clear that the opposite was the case: the men did seek refugee protection and they were unlawfully detained before being forced into Indonesian waters.

The fact that the men sought asylum throws further legal doubt over the retroactive excision of Melville Island. Eric Vadarlis, a refugee lawyer, told the WSWS that it was a basic legal principle that a law could not be changed retrospectively if it would adversely affect an individual’s rights.

In an article in the *Australian Financial Review*, Mary Crock, a Sydney University law lecturer, said the retrospective regulations could be unlawful “because they were made for an improper purpose. This is because the regulations were made to deny individuals rights they had accrued under the Migration Act (to apply for and have any rights to a visa determined).”

International law was also flouted. The Refugee Convention bars governments from returning refugees, directly or indirectly, to a country in which they may face persecution (the non-refoulement

principle). The Howard government has sent the refugees to Indonesia, a country that has not signed the Refugee Convention and which has indicated it may force the refugees back to Turkey.

The UN High Commissioner for Refugees representative in Australia, Michel Gabaudan, declared that excising Australian territory from the migration zone had “no bearing” on the government’s obligations under the Refugee Convention.

“We consider that Australia has shirked its responsibility not only by refusing to hear the claim of the persons when they were at Melville Island, but also by transferring responsibility for these asylum seekers to a country which has not signed the Refugee Convention,” Gabaudan told the Australian Broadcasting Corporation. “So we do consider that this action clearly puts Australia in breach of its obligations under the Refugee Convention.”

Indonesia is an impoverished country that already holds hundreds of refugees in poor conditions. A spokesperson for the Indonesian Immigration Department, Ade Dachlan, said it would investigate the Australian government’s treatment of the refugees and asked: “What do they think Indonesia is, a trash bin for these people?”

Dachlan’s statement served to expose yet another fraud. Vanstone and Downer portrayed the boat’s return as evidence of the success of the government’s “regional co-operation model” with Indonesia. In fact, the Australian government simply informed Indonesia it would dump the refugees.

The only response of the Labor Party opposition has been to attack the government from the right, accusing it of failing to secure Australia’s borders by allowing the refugee boat to reach Melville Island in the first place.

Leader Simon Crean refused to answer questions about whether a Labor government would have allowed the Kurdish refugees to apply for asylum. Instead, he accused the government of failing to detect the boat because it had cut its deployment of warships and planes for so-called “border protection” by 40 percent this year. He reiterated Labor’s previous election call for the formation of a coast guard to stop all refugee boats.

Whatever tactical differences Labor may have with the government, it is equally intent on overturning basic democratic rights in order to block and deter refugees. It is this bipartisan support, rather than any public enthusiasm, that has allowed the government to proceed with its criminal policy.



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