

Australian High Court leaves Sri Lankan refugees detained on high seas

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As the result of an Australian High Court hearing yesterday, 153 Sri Lankan asylum seekers, including 37 children, will remain incarcerated onboard an overcrowded Australian Customs boat—effectively a prison ship—somewhere in the Indian Ocean. Proceedings were adjourned until Friday, but the presiding judge said it would be up to three weeks before the case could be heard by the full court.

Despite the flagrantly illegal character of the refugees' arbitrary detention at sea, and their threatened transfer to the Sri Lankan regime whose violence they are fleeing, the court case leaves them in great danger. They are being denied fundamental democratic rights, in direct violation of international law, which prohibits deportation, or refoulement, to face persecution.

In the court, Prime Minister Tony Abbott's government admitted for the first time that it had intercepted and imprisoned the refugees. It provided an undertaking only to give the court 72 hours' notice before handing them over to the Sri Lankan navy, a fate already inflicted on another boatload of 41 people this week.

The 153 men, women and children could be detained at sea in an unknown location for three weeks or more until Australia's highest court convenes. According to media reports, they are imprisoned on the Ocean Protector, a Customs boat that has been equipped to bunk about 150 people in cramped living conditions. Or else, the government could forcibly transport them to its detention facility on Australia's Christmas Island outpost, or direct to the crude camps it controls on Nauru and Papua New Guinea's Manus Island.

Even if the refugees were to win their case, Abbott has declared it will make no difference to his government's drive to "stop the boats"—that is, prevent

all asylum seekers from entering Australia. Before the court commenced its hearing, Abbott denounced the lawyers conducting the case, accusing them of being political "activists" trying to disrupt the government's policy.

Abbott's open contempt for the court proceedings typifies the Australian political establishment's increasingly blatant disregard for legality, both domestic and international. Like the previous Labor government, which suffered two High Court defeats on its anti-refugee measures, the Liberal-National Coalition government will override any court ruling by devising alternative schemes to persecute asylum seekers.

In Labor's case, it responded to High Court rejections of its unlawful visa refusal process on Christmas Island and its plan to dump refugees in Malaysia by instituting indefinite incarceration on Nauru and Manus Island, where detainees have been told they will never be permitted to live in Australia.

The present litigation specifically does not challenge that system. Ron Merkel, the barrister representing the refugees, told the court that their case did not take issue with a sovereign state's power to expel an "alien" and was not necessarily trying to get the asylum seekers into Australia, saying they could be sent "offshore" for processing.

Merkel said the case disputed any claim to an "executive" power to expel asylum seekers outside the provisions of Australia's Migration Act. He argued that the so-called "enhanced screening" of the detainees on board the Australian Customs vessel denied them procedural fairness, which is required under the legislation.

Appearing for the government, Solicitor-General Justin Gleeson insisted that the refugees "have no rights

under the Migration Act,” because their boat was allegedly intercepted outside Australia’s “migration zone,” and they had since been moved to the high seas.

After yesterday’s proceedings, George Newhouse, the solicitor who brought the case, praised the government’s 72-hour undertaking. “What the government’s decision today means is that a group of vulnerable men, women and children will not be sent back to their persecutors in Sri Lanka and I want to take a moment to thank the minister and the prime minister for showing some compassion to these people,” he said.

The truth is that the undertaking provides no protection for the refugees. In the notorious Tampa case of 2001, the Howard Coalition government gave the courts a similar promise. It said it would bring back to Australia 433 Afghan asylum seekers it was militarily transporting to Nauru, if it lost a High Court challenge to their removal.

When that case got to the High Court, however, the judges washed their hands of the people who had been originally rescued by the Tampa, a Norwegian container ship. The court ruled that it could not hear the case because the passengers had been already taken out of Australia’s jurisdiction.

Howard’s government, just like today’s Abbott government, insisted that it had “executive” power to expel non-citizens (“aliens”), regardless of any formal restrictions in the Migration Act, and that the refugees were no longer in the High Court’s jurisdiction. By rubberstamping the Howard government’s breach of its own undertakings, the High Court helped pave the way for an escalating assault on the civil and political rights of asylum seekers by successive governments.

As the High Court sat yesterday, the 41 asylum seekers already placed back in the arms of the Sri Lankan government and locked in Galle’s notorious high-security Boossa prison, were being arraigned in a magistrates court, facing up to five years’ jail on charges that include illegally leaving the country. Although nine children were released and 27 adults granted bail, there is a documented history of abuse, harassment and discrimination against the more than 1,000 Sri Lankan asylum seekers previously deported by this government and its Labor predecessor.

If the 153 refugees involved in the High Court case avoid that fate for now, their plight will be no better. The horrific conditions in Australia’s own detention

camps were also highlighted yesterday by reports that at least 10 mothers locked up at Christmas Island had attempted to commit suicide after being told they would be sent to Nauru or Manus Island, in a bid to ensure that their children would be admitted to Australia.

Abbott immediately declared that his government would not succumb to “moral blackmail” by people threatening to kill themselves—recalling similar inhuman declarations by the Howard and Labor governments in the face of repeated protests, hunger strikes and suicide bids by detainees.

This bipartisan front was underscored by the comments of Labor’s shadow immigration minister, Richard Marles. He criticised the Abbott government for not taking the more “efficient” and “thorough” route—pioneered by the Gillard Labor government—of deporting Sri Lankan refugees via Christmas Island, Nauru or Manus. That, he said, would have prevented Australia’s international reputation being “trashed.”

The Greens, who were de facto partners in the last Labor government as it shredded every basic right of refugees, have voiced similar concerns for Australia’s image. The party’s immigration spokesperson, Senator Sarah Hanson-Young, vowed that the government’s belief that it can “act above the law” would be “tested in the parliament when the new Senate votes on a motion condemning their actions out on the high seas.”

No token parliamentary vote is going to defend the refugees. The historical record, including that of the Greens’ support for the Labor government, demonstrates that the whole establishment, including the courts, is complicit in the mounting crimes being committed against asylum seekers. The Socialist Equality Parties in Australia and Sri Lanka call on the working class to come to the defence of the refugees. (See: “Oppose Australia’s handover of refugees to Sri Lankan navy”).



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