

Australian High Court sanctions indefinite offshore detention of refugees

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Australia's High Court, the country's supreme court, yesterday upheld the indefinite detention of asylum seekers on remote Pacific islands. By sanctifying the legality of Australia's offshore camps on Nauru and Papua New Guinea's Manus Island, the judges set a new global benchmark for the incarceration of men, women and children in conditions that medical professionals have condemned as amounting to torture.

After months of deliberation, the judges rejected a challenge by a then pregnant Bangladeshi woman who was transferred from Nauru to Australia for medical treatment in 2014. As an immediate result of the ruling, 267 refugees in similar situations—suffering serious trauma and health problems or having given birth to babies—face being transported back to Nauru, including a five-year-old boy who was allegedly raped there.

But the implications of the decision are broader, clearing the way for the rendering of refugees, and potentially others, to be detained indefinitely, without trial, by overseas governments at Canberra's behest. Once again, the legal and political establishment in Australia, which was the first country to detain all asylum seekers indefinitely, has established a precedent for the ever-harsher treatment of refugees by governments internationally, in violation of fundamental legal and democratic rights.

For months, doctors, nurses, aid workers and other former detention camp personnel have denounced the inhuman regimes on Nauru and Manus Island, documenting the catastrophic impact of indefinite detention on the mental health of detainees. They have done so in defiance of laws introduced by the Liberal-National government, with the Labor Party's full support, threatening them with up to two years' jail for exposing the brutal treatment of the refugees.

Nevertheless, by six votes to one, the judges

sanctioned this system of "offshore processing," which was reimposed by Australia's previous Labor government in 2012. The majority also rubberstamped legislation pushed through parliament last June by the Liberal-National government, also with Labor's backing, to retrospectively legalise the detention arrangements after the High Court challenge was already underway.

Speaking in parliament, Prime Minister Malcolm Turnbull immediately welcomed the ruling as validating, legally and constitutionally, the government's entire "border protection" framework of repelling refugee boats and rendering for offshore detention any asylum seeker who managed to reach Australia's shores. "Our borders are secure. The line has to be drawn somewhere and it is drawn at our border," he declared, underscoring his commitment to maintain the full anti-refugee regime adopted by the predecessor he ousted, Tony Abbott.

Conscious of the hostility, not only among health professionals but broad layers of the population, to the cruel treatment of refugees, Immigration Minister Peter Dutton claimed he would take a "compassionate" approach to the ruling and not send children "into harm's way." Regardless of whether the government exempts some of the most obviously traumatised and vulnerable detainees from being removed back to Nauru, hundreds of people, including children, will remain in the hellish conditions on Nauru and Manus.

More fundamentally, the green light has been given for Australian governments to maintain such detention camps outside the country, financed, controlled and staffed by Australian employees while theoretically under the jurisdiction of an overseas government. The High Court judges refused to even consider whether the indefinite detention, under lucrative contractual

agreements with Australia, infringed Nauru's constitution.

With only one dissenter, the judges based their decisions on last June's bipartisan retrospective amendment to the Migration Act, the explicit purpose of which was to strip detainees of any legal right to challenge their inhuman treatment. Backdated to 2012, the amendment, now enshrined as section 198AHA of the Act, gave the government sweeping powers "to take, or cause to be taken, any action in relation to ... regional processing."

In parliament last June, speakers emphasised that these powers included "restraint over the liberty" of detainees, regardless of whether the imprisonment was legal in the country hosting the detention facility. Labor leader Bill Shorten not only endorsed this quashing of refugees' legal rights. He declared that Labor's support, at then-Prime Minister Abbott's specific request, would mark a "new turning point" in parliament based on a common commitment to the security of this country."

Given this record, Labor's response to yesterday's ruling was obviously duplicitous. Deputy party leader Tanya Plibersek insisted that a Labor government would treat Nauru's detainees better. This only underlined Labor's continued backing for the offshore camps that it reopened in 2012—with the deliberate intention of making the fate of detainees as harsh as possible.

When Julia Gillard, then prime minister, announced the recommencement of the "Pacific solution" in mid-2012, she emphasised that those consigned to Nauru and Manus Island would languish there for many years, precisely in order to deter any refugees from seeking to land in Australia.

Labor's shadow immigration minister Richard Marles yesterday criticised the government for not securing "third-country resettlement options" for the Nauru and Manus detainees. He decried the failure of the government's efforts to strike "viable" detention deals with Cambodia, the Philippines and Kyrgyzstan. In office, Labor sought to dump refugees in equally impoverished countries, notably East Timor and Malaysia.

The Greens were no less hypocritical. Party leader Richard Di Natale called on Turnbull "as a test of his prime ministership" to halt further deportations to

Nauru. Turnbull had made clear that his prime ministership rested on maintaining the "border protection" regime, which the Greens also fundamentally support. It was the Greens who gave the last Labor government the parliamentary numbers to remain in office as it reopened the Nauru and Manus camps.

In their judgments, members of the High Court's majority went beyond the 2012 Migration Act amendment. They indicated that offshore detention could be constitutionally valid under the vague "executive power" of the government, without specific legislation, based on the legal fiction that the imprisonment was undertaken by a foreign government.

Australia's constitution has no bill of rights, but the High Court has previously ruled that "punitive" detention would be illegal, unless ordered by a court. Over the past decade, the court has rubberstamped indefinite detention within Australia, as long as it was "reasonable necessary" for "processing" asylum applications or deporting rejected applicants. But the majority judges said these constraints may not apply to offshore detention, paving the way for wider use of overseas incarceration.

Today's editorial in Murdoch's *Australian* provided an insight into the ruthless logic, and global implications, of the High Court ruling. The newspaper hailed the verdict as "welcome and reassuring" because it underpinned the "border protection regime." According to the newspaper, "Europe is showing us the alternative path—a social, economic and humanitarian disaster."

In other words, the doors of the nation-state system should be shut completely to the millions of refugees fleeing the disastrous conditions created by endless wars by the US and its allies, notably Australia, in the Middle East. The victims of war and destitution should be universally detained and deported, regardless of their essential democratic right to seek asylum.



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