

Australian governments illegally sailed refugee boats to distant reef

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A court ruling this month shed further light on the lengths to which Australian governments have gone to violate the basic legal and democratic rights of asylum seekers, setting precedents now being used against millions of desperate refugees trying to find protection in Europe and North America.

Successive Liberal-National Coalition and Labor governments deliberately sailed refugee boats, intercepted by the Australian navy, to an uninhabited offshore reef so that their passengers could be imprisoned indefinitely on remote Pacific islands.

By sailing the detainees through Ashmore Reef, about 320 kilometres off Australia's northwest coast, they could be declared "offshore arrivals." They then had no right to apply for an Australian protection visa, and could be transported to one of Australia's "offshore processing" facilities, either on Papua New Guinea's Manus Island or the small island nation of Nauru.

This month a court ruled that the excision of the territory of Ashmore and Cartier islands from Australia's domestic migration zone was invalid. This meant that up to 1,600 asylum seekers could potentially challenge their detention and denial of protection visas.

A Bangladeshi refugee brought the case before the Federal Circuit Court. He arrived in Australia by boat in October 2012, under the last Labor government, and had his application for a protection visa denied by the current Coalition government in September 2016. His lawyers argued that he first arrived in Darwin, the capital of Australia's Northern Territory, not in an excised area.

In January 2002, then Immigration Minister Philip Ruddock declared Ashmore Reef to be a "port" so the Howard Coalition government could excise the territory from the Migration Zone. However, the court ruled that because there is no infrastructure at the reef,

or anything resembling a port, the area could not be legally excised.

Justice Justin Smith said the "facts clearly establish that the relevant area was not a 'port.' The area was an area of water within a reef." He added: "It was, it seems, navigable, but it was not disputed that the area was not, and could not be, used for the transfer of goods or passengers from vessels unless that transfer was to another vessel."

From 2002 to 2013, numerous refugee vessels were captured by the Australian navy and taken to the reef. One example was the *Lambeth*, referred to as a Suspected Irregular Entry Vessel, whose passengers were seized by the navy. They were first taken to Darwin, where a number who needed medical treatment were offloaded. The remainder were sailed westward for two days to Ashmore Reef in order to be declared "offshore" entrants.

This dangerous and inhuman practice, which denied refugees their rights to seek asylum under international law, had its origins in the "Pacific Solution." Unveiled by the Howard government in September 2001, this policy redefined Australia's territory, excising hundreds of islands from its Migration Zone and consigning thousands of refugees to Manus or Nauru.

This regime was enforced by "Operation Relex," with the military constantly monitoring the seas north of Australia. The Australian Federal Police (AFP) and Australian Secret Intelligence Service (ASIS) also fed the navy intelligence to assist the interception of refugee boats and stop them reaching the Australian mainland.

In 2013, the current Liberal-National government went further. It excised the entire Australian mainland from the Migration Zone and launched Operation Sovereign Borders, a fully-militarised offensive to turn

back all refugee boats.

The government's response to this month's court verdict has been to try to legalise the pre-2013 flouting of the law by introducing legislation that retroactively makes the Ashmore and Cartier Islands a legally excisable zone.

Introduced in the House of Representatives on June 20, the Migration (Validation of Port Appointment) Bill 2018 seeks to make the islands a "properly proclaimed port" and declare that all decisions "which relied directly or indirectly on the terms of the appointment are valid and effective."

Daniel Estrin, a lawyer who took the case to the Federal Circuit Court, said the legislation is an attack on the rule of law. "It is a cheap Band-Aid approach to a flawed policy and undermines our rule of law," he said. "When you deny people their rights and detain them without proper basis, you don't get to fix it retrospectively."

This is not the first time an Australian government has retrospectively legalised the criminal treatment of asylum seekers. In 2011, the minority Gillard Labor Government, which was kept in office by the Greens, joined forces with the Coalition opposition to rush through the Detering People Smuggling Bill 2011.

Under the pretext of combatting "people smuggling" the bill retroactively inserted so-called people smuggling offences into the Migration Act. These expunged any legal defence by people, such as Indonesian fishermen, who helped refugees to seek protection from persecution.

Likewise, in 2015, Labor Party parliamentarians joined hands with the Abbott Coalition government to ram a bill through both houses of parliament within 24 hours, giving the government carte blanche "statutory authority" to indefinitely detain refugees on Nauru and Manus Island.

The Migration Amendment (Regional Processing Arrangements) Bill 2015 blocked a High Court challenge then underway by asylum seekers to the legality and funding of the offshore detention regime. The explicit purpose of the bill was to strip detainees of any legal right to challenge their brutal treatment.

In parliament, Labor opposition leader Bill Shorten pledged to then Prime Minister Tony Abbott that the Labor Party would "be there" to pass laws whenever the government needed it "in the national interest."

This record demonstrates the contempt of Australian governments for both domestic and international law when it comes to overturning fundamental legal and democratic rights, which also have virtually no protection under the reactionary Australian constitution.

Vulnerable refugees have been among the first victims, but the latest bill is another warning of methods that will be used against the working class more broadly as opposition grows to the corporate elite and its parliamentary servants.



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