

# Australian High Court sanctions deportations of Sri Lankan refugees

By Mike Head  
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Australia's supreme court last week approved the forced removal of asylum seekers to Sri Lanka, even though it was proven they face appalling conditions of imprisonment, including "torture, maltreatment and violence."

In last week's case, by a four-to-one majority, the judges rejected appeals by two Sri Lankan refugees to being deported back to the country they had fled because of ongoing repression by President Maithripala Sirisena's government.

The ruling is an indictment of the last Greens-backed Australian Labor government. Labor launched a vicious program, in violation of international refugee law, to forcibly transport more than 650 Sri Lankans to Colombo, denying them the right to apply for asylum, knowing they would be punished and persecuted for trying to escape the country.

One of the majority judges, James Edelman noted that since November 2012 all "returnees" had been "arrested after their return," held on remand and charged with an offence under Sri Lanka's *Immigrants and Emigrants Act 1945*.

Edelman said Australia's Refugee Review Tribunal, whose decision the court endorsed, referred to official "country information" which indicated that prison conditions in Sri Lanka did not meet international standards.

There were documented concerns of "overcrowding, poor sanitary facilities, limited access to food, the absence of basic assistance mechanisms, a lack of reform initiatives and instances of torture, maltreatment and violence."

A former UN Special Rapporteur on Torture reported on "severe overcrowding and antiquated infrastructure" in Sri Lankan prisons. And a press report quoted "returnees" who said they "slept on the floor in line"

with their "bodies pressed up against each other," that they "could not roll over" and that some nights they had to take turns sleeping due to lack of space.

Despite this officially-acknowledged brutality, Edelman and his fellow judges concluded that the abuse and maltreatment was not "intentionally inflicted" and therefore did not entitle the refugees to protection from being deported. Engaging in legal sophistries, the judges insisted that the Sri Lankan authorities did not "directly intend" the harm, even if it resulted necessarily from the appalling prison regime.

The judges rejected the obvious reality that Sri Lankan officials knew of the "shocking conditions in custody" and therefore intended that the detainees be subjected to those conditions. According to the judges, it could not be assumed that the officials "could be said to intend to inflict severe pain or suffering or to intend to cause extreme humiliation."

Instead, the court insisted that the prison conditions were the result of a lack of resources, which the Sri Lankan government acknowledged and was taking steps to improve, "rather than an intention to inflict cruel or inhuman treatment."

None of the judgments considered what happened to the detainees after their initial period of imprisonment, which the judges said lasted "possibly two weeks." There is ample evidence that the Sirisena government has continued the systemic police frame-ups and brutality, as well as the military occupation of the island's north and east, that was instigated under Sirisena's predecessor, Mahinda Rajapakse.

This violence is particularly directed against the Tamil and Muslim minorities, but also has increasingly targeted workers, rural labourers and students fighting against attacks on their jobs, wages, conditions and basic rights. Last month, for example, shortly after the

Sri Lankan army was mobilised to crush oil workers' strikes, security forces set up roadblocks and checkpoints and arrested about 100 people across the Tamil-majority Jaffna peninsula, sowing fear and terror among the population.

Successive Australian governments have been complicit in this repression. In a documented case in May 2016, the Liberal-National Coalition government handed over 12 Sri Lankan asylum seekers to the notorious police Criminal Investigation Department (CID), which immediately imprisoned them. The CID has a documented record of psychological, physical and sexual torture of government opponents.

Last week's High Court ruling applied provisions that the Gillard Labor government introduced into the Migration Act in 2012, with the Coalition's support, to help fast-track the deportation of refugees.

The Labor government did so on the pretext of incorporating into one process all applications for protection visas, whether they be under the provisions of the 1951 Refugees Convention, which covers "persecution," the 1984 UN Convention against Torture (CAT) or the 1966 International Covenant on Civil and Political Rights (ICCPR).

In reality, Labor's "complementary protection regime" undermined these global treaties by giving the immigration minister the power to refuse visas unless he or she had "substantial grounds for believing" that "the non-citizen will suffer significant harm" by being deported.

This "significant harm"—whether via "torture," "cruel or inhuman treatment or punishment" or "degrading treatment or punishment"—had to be "intentionally inflicted" and "intended to cause" cruel or inhuman treatment. The CAT and ICCPR do not expressly require any such direct intention.

Australia's removals of Sri Lankan asylum seekers are continuing with ever-more brazen contempt for international law. On June 26, the Turnbull government forcibly deported six Sri Lankans to Colombo on a chartered plane from the Indian Ocean outpost of Christmas Island, where their refugee boat had arrived.

Prime Minister Malcolm Turnbull seized on the event to boast of the ruthlessness of Australia's anti-refugee regime. He told the *Australian*: "Our message is very clear—if you try and come to Australia on a boat you will not be allowed in."

The High Court has a long record of rubber-stamping the tearing up of the fundamental legal and democratic rights of refugees by successive Labor and Liberal-National governments. Just last month, a full bench of seven judges unanimously dismissed a challenge to Australia's prolonged detention of refugees on Papua New Guinea's (PNG) impoverished Manus Island in defiance of a PNG Supreme Court ruling that the incarceration violated the country's constitution.

While displaying particular contempt for the law of PNG, a former Australian colony, that High Court ruling effectively gave a green light to Australian governments to flout the law of any other country, as well as international law, in their escalating measures to prevent refugees from seeking protection in Australia.

Australia's militarised "border protection" regime involves repelling asylum seekers or incarcerating them on remote Pacific islands. It has set reactionary precedents that other governments, including that of Donald Trump in the United States, are using to scapegoat immigrant workers and incite poisonous nationalism as the global refugee crisis worsens.

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