

# Australian government vows to deport refugees to Malaysia despite legal challenge

Will Morrow  
10 August 2011

Despite a legal setback to its “Malaysian Solution”, the Australian government has declared that it will proceed as soon as possible with its unprecedented plan to send 800 asylum seekers to Malaysia.

The Labor government is also seeking to suppress all media coverage of the acts of protest, including hunger strikes, that have broken out among the 105 asylum seekers—most of whom have fled war-torn Afghanistan and Pakistan—awaiting deportation. Some 24 children and teenagers, 14 of whom are unaccompanied, are among the detainees being held in limbo on Christmas Island, an offshore Australian territory.

On Monday, High Court Justice Kenneth Hayne placed an injunction on the first batch of deportations until August 22, when the full court will hear a legal challenge by lawyers representing some of the refugees. The seven judges could then take weeks or even months to hand down a ruling—delaying the government’s plans to swiftly remove the asylum seekers in order to send a threatening message to other refugees.

Hayne decided that there was a “sufficiently serious question to be tried” about Immigration Minister Chris Bowen’s power to declare that Malaysia provides “protection for persons seeking asylum” and “meets relevant human rights standards.” The judge doubted that the relevant Migration Act clauses permitted such a declaration because Malaysia—which is not a signatory to the International Refugee Convention—has no domestic or international legal obligations to provide such protections.

While conceding that he was bound by the injunction, Bowen declared that the government was determined to go ahead, and bluntly warned refugees not to rely on the legal challenge. “I’m not going to contemplate losing this case. We believe we’re on very strong

ground ... I repeat my message: people smugglers and asylum seekers should not doubt our resolve to ensure that this arrangement is implemented and implemented in full.”

The High Court, Australia’s supreme court, will also consider whether Bowen is flouting his formal responsibilities as the legal guardian of children in immigration detention, whom the government has insisted will be no exception to the deportation regime. Even though the court must rule on this issue, Bowen insisted it was “untenable” to give children arriving on refugee boats a blanket exemption from deportation. “That would not be a sustainable outcome,” he said.

The aim of the “Malaysian Solution” is to deter refugees from seeking their fundamental democratic right to live in Australia or any other country of their choosing. The scheme is deliberately punitive, using the forced shipment of people to Malaysia, where they will be plunged into poverty and the constant threat of persecution, to intimidate others who are desperately fleeing oppression or war.

The High Court challenge was launched amid signs of growing public revulsion at the government’s plan. On Christmas Island itself, which has a population of only 1,400, about a dozen people organised a protest against the deportations last week. According to a national poll conducted by Essential Media, opposition to the Malaysian agreement has risen to 53 percent—up from 39 percent six weeks ago.

The recently arrived asylum seekers are being held in a separate compound on the island with blacked-out windows. Immigration officials initially denied that any were on hunger strike, only admitting last Friday that some detainees had “missed consecutive meals”.

Guards at Christmas Island told the *Australian* that “many of the group had been banging their heads

against walls as well as refusing food, water and medical attention.” According to other reports, a group—including a 7-year-old Afghan boy—has remained out in the open, in blazing heat and pouring rain, refusing to eat or drink since Thursday. An Afghan girl was rushed to a medical centre after ingesting toxic material, according to refugee advocates.

Union of Christmas Island Workers general secretary Kaye Bernard told the Australian Broadcasting Corporation that detention guards were becoming increasingly traumatised by the inmates’ protests and plight. “They don’t feel comfortable in corralling them up, herding them on to a plane to be sent off,” she said.

In an effort to overcome public disquiet, the government has repeatedly claimed that its agreement with the Malaysian government guarantees that refugees will be treated with “dignity” and “respect.” Those sent to Malaysia, however, will have no access to public education, medical care or housing, and will face constant discrimination and exploitation as sweatshop labour. On Sunday, Bowen hinted at the truth, openly declaring: “Life in Malaysia is not easy for asylum seekers.”

The High Court case arose after an interpreter on Christmas Island contacted lawyers on behalf of Sayed-Navab Shah, an Afghani man slated for deportation. According to the *Australian*, Shah appealed for legal assistance. Pointing to discrimination against Shiite Muslims in Malaysia, he said: “We believe that if we are sent to Malaysia we will be arrested due to our religious beliefs.”

Prime Minister Julia Gillard’s government has made anti-refugee scapegoating a central aspect of its right-wing agenda ever since she was installed in last year’s backroom coup at the behest of big business. Labor is vying with the Liberal Party opposition to vilify refugees and promote xenophobia as a diversion from worsening economic and social conditions.

Every new boat arrival has been met with a ferocious campaign by the media and Liberal opposition, which has demanded that the government “stop the boats” by restoring the previous Howard government’s no less barbaric program of transporting refugees to the remote Pacific island of Nauru.

Gillard is concerned that her government’s ability to push through the Malaysian agreement is seen by the

corporate elite as a test of her political resolve to carry through austerity measures and unpopular economic restructuring. Commenting on the High Court ruling, *Australian Financial Review* political editor Laura Tingle wrote yesterday that the “government needs the uncertainty the [legal] challenge creates like a hole in the head. Coming on top of the renewed global economic uncertainty, the challenge cuts any chance the government has of building on some tiny signs of momentum.”

As the High Court injunction suggests, the Malaysian agreement violates even the narrow framework of international law, which only prohibits governments to expel (“refoule”) refugees to countries where they would face political, religious or ethnic persecution. For the working class, much more is at stake—the basic democratic right of working people to live, work and reside where they choose, with full political and social rights.

As governments around the world take ever more brutal measures to block entry to refugees, and incite nationalist and racist prejudice to split workers along communal lines, the defence of this fundamental right is essential. It is part of the fight to unite the working class internationally in the common struggle to overturn the entire crisis-ridden capitalist order that is responsible for the poverty, wars and oppression that confront hundreds of millions of people.



To contact the WSWWS and the  
Socialist Equality Party visit:

**[wsws.org/contact](http://wsws.org/contact)**