Australian government rushes to circumvent High Court refugee ruling

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Prime Minister Julia Gillard yesterday announced that she would introduce legislation into parliament next week aimed at circumventing a High Court ruling that struck down the proposed deportation of hundreds of asylum seekers to Malaysia.

The minority Labor government's move underscores its brazen contempt for basic legal norms and democratic rights. The court found that a section of the Migration Act effectively entailed that refugees could not be deported to another country that has no legal safeguards ensuring their safety. Gillard is now proposing to alter the Migration Act and the Immigration (Guardianship of Children) Act to give the government free rein to deport asylum seekers—including unaccompanied children, for whom the immigration minister is the legal guardian—to any country, regardless of how they will be treated there.

The political establishment in Australia is united in its rejection of even the minimal requirements of the 1951 Refugee Convention, which prohibits signatory states from deporting refugees back to face political persecution, and from penalising people for seeking protection. Malaysia is not a signatory to the Convention and therefore could send the asylum seekers back to their country of origin.

Gillard has urged opposition leader Tony Abbott to back the government's amendments. The Liberal-National coalition agrees with all the essential aspects of Labor's brutal "border protection" regime, but wants refugees deported to the Pacific Island state of Nauru, rather than Malaysia. Abbott is yet to say whether he will support the government's legislation in parliament.

"We're talking about bipartisanship," Gillard declared. "I am not asking Mr Abbott to agree with us on Malaysia... Mr Abbott may choose to say to the Australian people that if he is ever prime minister [then] he will put a centre in Nauru. I am not asking Tony Abbott to give me any more power as prime minister than he would seek for himself if he were ever prime minister. This is about government having the power to act. The question for Mr Abbott here is ... does he believe executive government should have the power to implement its policy on asylum-seekers and refugees, full stop. Yes or no?"

Gillard's appeal for "bipartisanship," put more plainly, is that both major parties ought to have the opportunity in government to breach the basic rights of refugees, without even the limited legal protection under current Australian legislation as interpreted by the High Court.

The prime minister has been hailed in the media for her stance. The *Australian*'s editorial today declared that Gillard had "won back momentum on an issue that has threatened to destroy her authority and leadership" after she "moved decisively to reverse the effect of the High Court ruling against Malaysia and deftly challenged the opposition leader to become part of the solution."

The Murdoch newspaper's editor-at-large Paul Kelly castigated Abbott for not immediately backing the government. "It is incredible that the Liberal Party is so fixated on playing politics that it threatens to kill offshore processing outside the phoney solution of Nauru," he declared. "Abbott is now attacking Gillard from the Left. This will hopelessly compromise his boatpeople message."

Drawing on the reactionary White Australia traditions upon which the Labor Party was founded, Gillard and her colleagues are denouncing refugees in terms that were not long ago the preserve of the extreme-right One Nation party. The prime minister told parliament yesterday that "turning boats around is effective deterrence" to other refugees thinking about fleeing to Australia. She continued: "I have worked with the minister for immigration to create a circumstance where, in effect, we are turning boats around—that is, people come here and they end up on a plane

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[to Malaysia]. It is the same process. They believe they are coming to Australia but they end up somewhere else. It is a virtual turnaround of boats."

Senator Doug Cameron, the convenor of Labor's so-called "left" faction, moved a token motion inside Labor's parliamentary caucus calling for the "onshore processing" of refugees instead of reviving the Malaysia scheme. In reality, this "humanitarian option," which involves the mandatory, indefinite detention of refugees, is just as draconian as Gillard's alternative. The motion reportedly received a mere handful of votes.

Every Labor parliamentarian understood the meaning of this political diversion, amid deep concern among ordinary people about what the Gillard government is doing. An opinion poll conducted by Fairfax Media yesterday exposed the lie that Gillard and Abbott's policies are representative of widespread public hostility to refugees. A clear majority of people reported that they wanted asylum seekers to have their refugee status assessed in Australia, while just 25 percent supported "offshore processing."

The media breathlessly anticipated a Labor left "revolt" prior to yesterday's caucus meeting, though afterward the ABC's parliamentary reporter acknowledged that the discussion had been "constructive" and "not heated." Cameron immediately declared his agreement with the caucus decision to back the Malaysia plan, and confirmed that he would vote in parliament for the amendments. "I'm used to in the Labor Party being on the wrong side of the numbers and the wrong side of decisions," he explained. "But that's how it is."

The Greens are playing no less a hypocritical and cynical role. They have criticised Gillard for proposing amendments to get around the court ruling, and have said they will vote against the legislation in parliament. But this is nothing but empty posturing—the Greens' de facto ruling coalition with the Labor Party remains entirely unaffected. Under the agreement signed by Gillard and Greens' leader Senator Bob Brown after last year's election, the Greens have pledged to prop up the minority government and vote for its budgets. This includes backing those budget provisions that fund the detention camps and other repressive instruments of the "border protection" regime.

The Greens, like the Labor "left," nominally oppose the deportation of refugees while covering up the reality that asylum seekers are frequently treated worse in Australia than they are in Malaysia. Brown declared yesterday: "We want onshore processing because it's just, it's legal, it's humane, and subsidiary to that, it saves taxpayers billions of dollars."

This is an outrageous fraud. So-called onshore processing currently involves the detention of asylum seekers in often isolated centres for protracted periods of time. Men, women and children are imprisoned in harsh conditions, denied contact with Australian people, including journalists, and subjected to various indignities by guards at the privately-operated detention centres. Incidents of suicide, "self-harm" and mental health breakdowns are commonplace.

What has developed in the aftermath of the High Court decision on the Malaysia proposal is an indictment of the entire political establishment. Confronted with a court verdict that upheld the narrow rights afforded to asylum seekers under the international Refugee Convention, the government, with the likely support of the opposition, is rushing to overturn the ruling.

The Gillard government's stance is in line with the racist traditions of the Labor Party, which has time and again sought to make scapegoats out of refugees and immigrants to deflect attention from the impact of its own policies on jobs and living standards. Working people should have the basic right to live and work with full citizenship rights in any country of their choosing. The decision to annul the court ruling again underscores the absence of any constituency within the ruling elite for the defence of established legal norms and democratic rights more broadly.

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