

Australian Labor government repudiates international law on refugees

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The Labor government's proposed amendments to the Migration Act and Immigration (Guardianship of Children) Act represent an unprecedented repudiation of all international and domestic legal norms governing the treatment of refugees.

Prime Minister Julia Gillard and Immigration Minister Chris Bowen unveiled the amendments, which will soon be put before parliament, last Friday. The legislation's immediate purpose is to circumvent a High Court ruling issued on August 31 that struck down the government's plan to deport hundreds of asylum seekers to Malaysia. The court ruled that it was unlawful for refugees to be deported from Australia to countries that have no legal safeguards ensuring their safety.

Now the government is moving to effectively overturn any remaining reference in the Australian legal code concerning refugees' rights and protections. The immigration minister is to enjoy unchecked and arbitrary power over the fate of anyone seeking asylum in Australia.

The draft legislation explicitly states that the immigration minister has the power to designate any country in the world an "offshore processing country." The "only condition for the exercise of the power ... is that the minister thinks that it is in the national interest to designate the country to be an offshore processing country." Moreover, "the designation of a country to be an offshore processing country need not be determined by reference to the international obligations or domestic law of that country."

This all flies in the face of the 1951 Refugee Convention, which established the basic principle of "non-refoulement," i.e., that asylum seekers may not be returned to where they face persecution. This precept was established in international law after World War II, following widespread outrage over the refusal of many governments to grant asylum to Jewish Germans fleeing the Nazi regime.

In an attempt to cover its tracks, the government announced today a cosmetic modification to the proposed amendments. In determining the "national interest," the immigration minister "must have regard" to whether Australia has been given "any assurances" by the third country that the asylum seekers will have

their refugee claim processed there and whether they face the danger of being expelled to their country of origin. This is nothing but a fig-leaf—the proposed laws specifically state that any such assurances "need not be legally binding."

There will be no legal obstacle to the Australian government deporting asylum seekers to a third country, whose government then immediately deports them back to where they were fleeing persecution. The legislation even leaves open the ability of the Australian government to directly deport asylum seekers to their country of origin, in direct violation of the Refugee Convention.

Various clauses in the Gillard government's legislative amendments are aimed at shutting the door on any legal oversight of its activities.

The proposed law states that "the rules of natural justice do not apply to the exercise of the [immigration minister's] power." This provision seeks to block any possibility of asylum seekers challenging their treatment through the judicial system. The amendments also state that the immigration minister's power to designate a country as an "offshore processing country" is not a "legislative instrument," i.e., it cannot be vetoed by any parliamentary vote.

The government wants to authorise officials to "use such force as is necessary and reasonable" to deport refugees. Underscoring the threat to democratic rights this poses, the legislation allows the military to exercise this "force."

Children are to be made subject to the government's lawless new refugee regime. Proposed amendments to the Immigration (Guardianship of Children) Act explicitly state that all of the immigration minister's guardianship obligations for unaccompanied refugee children are superseded by the untrammelled "right" of the government to deport the children.

Attorney-General Robert McClelland brazenly defended stripping refugees of their basic legal rights. He told ABC Radio: "The fundamental right people ignore is the most fundamental right of all, that is the right to life... If we let these people smugglers control the agenda then you're seeing about four in every hundred people who get on a boat drown."

The government's expressions of concern for asylum seekers are a sham. It has consciously made it as difficult and dangerous as possible to reach Australian territory in a bid to deter anyone from trying. This "border protection" policy only underlines Labor's contempt for the fate of those fleeing, often for their lives, from persecution.

Gillard has similarly attempted to present her policies in pseudo-humanitarian garb, claiming they are aimed at deterring "people smugglers." In reality, ever since she was installed as prime minister in the June 2010 coup against Kevin Rudd, Gillard has attempted to scapegoat refugees as a means of diverting mounting public hostility toward her government.

The prime minister has appealed for bipartisan support for the Migration Act amendments. In a letter to Opposition leader Tony Abbott, she declared: "It is in the national interest for the parliament to swiftly demonstrate to people smugglers and their prospective clients its resolve in putting this issue beyond doubt and ensuring the proper protection of our borders."

Abbott has indicated that he may instruct his Liberal-National coalition to vote against the amendments in parliament, almost certainly ensuring the proposed law would be defeated. "It is not the job of the opposition to rescue a failed and failing government," he said.

Labor's lurch to the extreme right on refugee policy has resulted in the bizarre spectacle of the Opposition posturing as champions of asylum seekers' rights. Abbott declared: "The problem with the legislation is it strips out the human rights protections which the Howard government thought were necessary. If we say 'no' to this legislation, it will be because we are saying 'yes' to basic standards of human rights."

However, the opposition is under enormous pressure from key sections of the ruling elite to line up with the Gillard government.

The *Australian's* editorial today, "Delicate balance between politics and good policy," declared: "While Mr Abbott is more intent on grinding Labor into the dust, he could also be setting himself up for future problems if he refuses to back the government's amendments to the Migration Act to allow the executive, not the judiciary, to determine how asylum-seekers come to Australia ... sooner or later he will need to start spending political capital in policies that work for the nation as well as in the polls."

The latest edition of the right-wing "Spectator Australia" magazine similarly complained that "Abbott is missing a golden opportunity to be seen as concerned about the construction and implementation of good policy, and not just winning government."

Recent developments have again exposed the role played by the so-called Labor "left" and the Greens. Concerned over mounting

public opposition to Gillard's refugee policies, these forces are posturing as opponents of the Migration Act amendments.

Labor's Left faction convenor Senator Doug Cameron has declared that the proposed legislation "breaches our international obligation and party platform" and has said he will raise the issue in tomorrow's Labor parliamentary caucus meeting. This is nothing but pathetic posturing. Everyone understands that the caucus will again vote overwhelmingly in favour of Gillard's proposal, and the "lefts" will again declare their respect for the majority decision and pledge to cast their parliamentary vote for the anti-democratic laws.

The Greens have said they will vote against the amendments—but have stressed that their support for the Gillard government will be unaffected. After last year's election delivered a hung parliament, the Greens signed a formal agreement backing a minority Labor government and issuing a blanket pledge to vote for its annual budgets. This includes voting for the funding provisions for the deportation of asylum seekers overseas and for the maintenance of detention centres in Australia. Greens leader Bob Brown declared last Saturday that "the Greens are the stable and stabilising factor in politics in Australia in 2011."

The Greens' refugee spokesperson, Senator Sarah Hanson-Young declared that the government's Migration Act amendments would "throw away 60 years of proud history we have at offering support to vulnerable people." What a fraud! The Australian ruling class has a brutal record of mistreating refugees. Today, so-called onshore processing, advanced by the Greens as a "simpler, humane and cost-effective option," involves the mandatory detention of men, women, and children in detention centres that is often more violent and damaging to the well-being of asylum seekers than equivalent facilities in Malaysia and other countries in Asia and the South Pacific.

The Greens agree with the basic framework of the official "border protection" debate—that the state ought to have the authority to deny ordinary people the basic democratic right to live and work in a country of their choosing.



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