

Australian refugee lawyer condemns deportations to Sri Lanka

Mike Head

21 December 2012

Since September, the Australian Labor government has forcibly returned more than 650 asylum seekers to Sri Lanka. Alongside members of the persecuted Tamil minority, they include poor Sinhala fishermen from western Sri Lanka.

These refugees have been deported from Australia in large groups, after being arbitrarily “screened out” of the refugee visa application process. They have been denied the right to apply for asylum, blocked from access to legal advice, then bundled onto planes, sometimes within 48 hours.

This procedure is a clear violation of the 1951 international Refugee Convention, as well as Australian domestic law. In order to avoid court rulings, the government has postponed deportations in cases where the refugees had managed to contact lawyers and instigate legal challenges.

Michaela Byers, a refugee lawyer involved in 16 of these cases, spoke to the WSWs about the circumstances of her clients, the conditions they face in Sri Lanka, and the unlawful character of the deportations being implemented by Prime Minister Julia Gillard’s government.

Byers began by explaining that she had just received a phone call, telling her that another eight Sri Lankans were about to be removed, and that the government had begun rounding up asylum seekers previously permitted to live in “community detention” within Australia.

Those being deported included refugees from Vietnam, Egypt and Albania, but the biggest numbers were from Sri Lanka. “There are two groups, Sinhala and Tamil,” Byers said. “Both have valid asylum claims. Many of the Sinhala people come from fishing areas, especially Chilaw, where they can’t afford the government’s fuel price hikes. The police and the

military have been shooting, killing and assaulting them for voicing their opinions over the cost of living. They are dubbed ‘economic migrants’ but they are fleeing because they can’t survive at a subsistence level.”

Byers turned to the situation confronting the Tamils. “They face severe discrimination. To get jobs, loans, health care, they need government ID cards, but those who previously lived in LTTE (Liberation Tigers of Tamil Eelam) areas don’t have ID cards. They have to turn themselves into a police station in order to apply for one. That kicks off a process—it’s like walking into persecution. They are interrogated about their alleged LTTE connections. People have disappeared and ended up in detention camps.

“There seems to be a deliberate action to clear Tamils out of whole areas, so people are too afraid to legalise their status. People all across the north of Sri Lanka are being treated in a cruel and inhumane manner. The region remains under military occupation. The landscape is being altered, with villages being removed to make way for military bases, which have detention facilities attached to them. The army and the police CID (Criminal Investigation Division) work closely together in this.”

The lawyer denounced the Gillard government for “bragging” that it had forcibly removed more than 600 Sri Lankans in two months. “There is no way these people could have been individually assessed. They are being processed by the boatload, and sent back to face harm.”

Byers said refugees were being “screened out” because they did not know what they needed to demonstrate in order to pass the complicated and restrictive test of refugee status. “How can they know what the test requires?” she asked, “especially in the

face of a scary official”. Byers added: “Previously, refugee applications from Sri Lanka had a 68 percent success rate, so those being deported almost certainly include people who are in danger.”

Last month, Byers issued a press release in which she condemned the Labor government’s “excision” of the entire Australian mainland from the migration zone, thus stripping refugees of their legal right, under the international Refugee Convention and the Australian Migration Act, not to be deported without the opportunity to make a claim for asylum. In that release, Byers described the unlawful procedure by which asylum seekers were being “screened out”.

“At the entry interview, which is conducted by a Commonwealth officer, the non-citizen is not provided with any advice about the purpose of the interview or, most importantly, not advised that they have the right to access independent legal advice,” Byers stated. “Screened-out non-citizens are then put on a pathway for removal from Australia. This decision is not recorded nor are reasons given in writing for the decision ... It is extremely concerning that ‘faceless’ officers in Canberra make ‘life and death’ decisions based on written interview summaries made by others, and that these same procedural rules are also applied to unaccompanied children.”

Byers said the procedure violated the 1951 Refugee Convention, which forbids the return (refoulement) of asylum seekers to face the danger of persecution, as well as Australian law. “The entire process is conducted by word of mouth and is in flagrant breach of Australia’s international non-refoulement obligation and the natural justice and procedural fairness protections enshrined in the section 75(v) of the Australian Constitution 1901.”

Byers told the WSWS she had received “no response” from the government to her media release, and “little reaction” in the media, despite her specific allegations that the government was acting unlawfully.

Asked to comment on the implications of the government’s evasion of legal scrutiny by postponing deportations when challenged, Byers said: “The government fears the scrutiny of judges and the publicity that any legal case would generate. It would be embarrassing for the government. We could use discovery to get our hands on the documents, which we can’t do at the moment.”

The lawyer said the process, and the numbers of people being deported, made the Labor government’s record much worse than that of the previous Liberal Party government of John Howard. Byers also noted that the “screening out” procedure had been pioneered in 1994 by Gerry Hand, the immigration minister in the Keating Labor government, when that government was extending the system of detaining all asylum seekers, which it had first introduced two years earlier. “This is Labor’s creation,” she commented, “a discretionary and arbitrary system”.

Byers said that by sending Foreign Minister Bob Carr to Sri Lanka for talks with President Mahinda Rajapakse and his ministers this week on how to stop refugee boats, the Gillard government was trying to reach an agreement that would mean that no Sri Lankan refugees would be processed in Australia.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact