

Australian government's refugee policy: An assault on legal and democratic rights

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The Labor government's unprecedented policy of barring access to all asylum seekers arriving in Australia by boat, and expelling them to primitive conditions on small, impoverished Pacific islands, is a flagrant violation of fundamental legal and democratic rights.

Thousands of men, women and children will be detained indefinitely under deliberately punitive regimes, housed in military-style tents amid tropical heat on Manus Island in Papua New Guinea (PNG) or on Nauru. Even if ultimately accepted by the PNG or Nauruan governments as refugees—via as yet unspecified procedures—they are likely to remain trapped in PNG or Nauru, effectively denied access to basic rights enshrined in the 1951 Refugee Convention, such as adequate health care, education, employment opportunities, housing and welfare support. None will be accepted into Australia as refugees.

By consigning refugees to these conditions, potentially for life, Prime Minister Kevin Rudd's government has gone further than any of its predecessors in breaching the 1951 Convention and other international law relating to asylum seekers. No previous government has shut Australia's borders, in this manner, for all time.

The international Refugee Convention was adopted after the horrors of World War II, during which major powers, including the United States, closed their doors to Jews and others fleeing fascism. Its provisions are limited, and narrowly define refugees as those with a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion." Nevertheless, the Convention provides some elementary protections for those seeking refuge.

First and foremost, the Convention recognises the right to flee persecution, and forbids any penalties against refugees who arrive allegedly "illegally" (the Convention's language) in a country—that is, without official permission, "from a territory where their life or freedom was threatened" (Article 31). This provision acknowledges that many asylum seekers have no choice, in order to flee repressive regimes, but to risk their lives via unauthorised voyages. By punishing asylum seekers who arrive on boats, the Labor government is directly attacking that right.

Likewise, Article 32 insists that "The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order" and "The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law." The refugees being transported to Manus and Nauru have committed no crime. They are being arbitrarily expelled from Australia and detained en masse without any trial or judicial process.

Under Article 33, "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened." On Manus and Nauru, refugees, even if ultimately released from detention, will be under intense pressure to return home, despite the dangers they face. In PNG and Nauru, they have no real freedom and their lives will be endangered by disease, poverty, mental health breakdown and possible communal tensions.

The convention states that refugees must have certain rights, such as free access to the courts of law (Article 16), to engage in wage-earning employment (17) and to housing as favourable as possible (21). They are entitled to the same treatment as national citizens with respect to elementary education, and to access to other education (22), plus the same treatment as nationals with respect to public relief and assistance (23).

Refugees must be covered by social security schemes, including legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and other contingencies (24), and have the right to choose their place of residence and to move freely within the country (26).

None of these rights is mentioned, let alone legally guaranteed, in the agreements signed between Rudd and the PNG and Nauruan governments. Moreover, PNG and Nauru have no systems of social security benefits. Both are signatories to the Refugee Convention, but that is far from any binding obligation to uphold these rights.

International human rights law also enshrines other elementary protections, such as against torture, arbitrary detention and violation of the rights of children, none of which is ensured in the Manus and Nauru operations.

For now, the Labor government has backed away from

Rudd's suggestion last month that the Refugee Convention should be completely reconsidered. It claims that the "Regional Resettlement Arrangements" with PNG and Nauru will be administered in line with Australia's obligations under the Convention. But Attorney-General Mark Dreyfus has refused to release the legal advice underpinning that claim.

In a July 26 university speech, cynically titled, "Australia, Human Rights and the International Rule of Law," Dreyfus sought to justify Labor's "firm policy position" by invoking humanitarian concern about refugee lives being lost at sea, as well as a "moral imperative" to uphold the "international frameworks" enforced by the UN High Commissioner for Refugees (UNHCR).

The truth is that successive governments over the past two decades, and their counterparts around the world, have increasingly blocked entry to asylum seekers. This is directly responsible for growing numbers of desperate refugees resorting to dangerous sea voyages, from the Mediterranean to the Indian Ocean.

These anti-refugee measures are part of the "international frameworks" policed by the UNHCR, which leave millions of people languishing for years in massive camps in devastated locations such as Afghanistan, Iraq, Iran, Pakistan, Syria and eastern Africa.

Dreyfus also insisted that Labor's PNG plan was legal under domestic law because PNG is a Convention signatory, unlike Malaysia, where the Labor government sought to dump several thousand refugees two years ago. The attorney-general falsely claimed the Australian High Court, which outlawed the "Malaysian solution" in 2011, did so because Malaysia was not a contracting party to the Convention.

In fact, the court ruled that the Malaysian arrangement, and Malaysian law, contained no binding guarantees of any human rights protections for refugees, and the same applies to the PNG and Nauru agreements. Global refugee law expert Professor James Hathaway commented: "The word 'rights' doesn't even appear in the agreement that the Prime Minister of Australia signed with the Prime Minister of PNG. That's what makes it illegal."

What Dreyfus omitted to mention was that the Labor government quickly moved to scuttle the High Court ruling by pushing through changes to the Migration Act, deleting requirements for any country where Australia offloads refugees to have "relevant human rights standards" and "effective procedures for assessing [asylum seekers'] need for protection."

Now, the immigration minister can approve, by decree, the transfer of asylum seekers to another country if he "thinks that it is in the national interest." This is a sweeping discretionary power, notoriously open to political manipulation, and difficult to challenge legally.

Labor's amendments underscore its contempt for core legal and human rights. It is only able to proceed in this manner

because the High Court has previously ruled that domestic legislation can specifically override international human rights laws, and because the UNHCR has consistently refused to condemn the ever more open flouting of the Refugee Convention by successive Australian governments.

In 1992, a previous Labor government—that of Paul Keating—first introduced the mandatory detention of refugees arriving by boat, blatantly punishing them for fleeing persecution without official permission. A decade later, John Howard's Liberal-National government adopted the "Pacific Solution" of forcibly removing thousands of asylum seekers to Manus or Nauru, while eventually allowing some to settle in Australia.

Now, for the first time, Rudd's regime consigns its victims to live indefinitely in PNG or Nauru without legal rights, proper services or decent living conditions. No other Western government has gone so far to shut its borders to asylum seekers, and expel them permanently to economically backward and socially deprived countries.

Labor's lawless treatment of people fleeing oppression and war—one of the most vulnerable layers of the international working class—is also a warning of the police-state methods being prepared domestically to deal with social and political opposition to the underlying program of austerity and militarism.

The Socialist Equality Party opposes the entire nation-state framework of immigration controls and "border protection"—the very logic of which means inevitably resorting to brutal methods to repel and expel destitute people. Together with our sister parties internationally, we fight for the basic democratic right of all people to live and work in whatever part of the world they choose, with full legal and civil rights. This is an essential component of the struggle to unify the world working class to overturn the capitalist profit system, the root cause of the wars and social misery that are driving millions of people to flee their homelands.

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