Australian government scraps refugees' rights to legal aid

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Over the past two weeks, the Australian government has moved to block asylum seekers from exercising their fundamental democratic and legal rights to challenge decisions to deny them refugee status.

Last month, the Liberal-National Coalition government stripped asylum seekers of access to legal aid. This is an obvious move to prevent them from obtaining legal advice and help to fight dismissals of protection visa applications. The limited assistance provided under the previous Labor government will be scrapped completely.

"Australian's protection obligations do not extend to providing free immigration advice and assistance to those who arrived in Australia illegally," Immigration Minister Scott Morrison declared in a statement on March 31. His statement contained two brazen lies.

Firstly, it is not "illegal" to flee prosecution. In fact, it is a right upheld by international law. Article 31 of the Refugee Convention states that refugees have a lawful right to seek asylum, regardless of how they arrive, and makes clear that those seeking refuge must not be treated as "illegal." The Convention recognises that it is often impossible for asylum seekers to apply through official channels, or obtain passport or exit visas, because their lives are at risk.

Secondly, legal aid is also a basic right enshrined in the Convention. Article 16 recognises the right to have access to courts, legal assistance, and exemption from requirements to give security for costs in court proceedings.

According to the United Nations High Commissioner for Refugees (UNHCR), access to legal aid is critical for refugees. "Asylum seekers are often unable to articulate the elements relevant to an asylum claim without the assistance of a qualified counsellor because they are not familiar with the precise grounds for the recognition of refugee status and the legal system of a foreign country," the UNHCR states.

Morrison claimed that his Department of Immigration and Border Protection would assist asylum seekers to obtain legal advice on a pro bono basis, that is, via lawyers acting as unpaid volunteers. According to Rachel Ball, director of advocacy and campaigns at the Human Rights Law Centre in Melbourne, however, the department refused an offer by the Centre to provide asylum seekers with a list of free legal services.

The denial of access to legal aid escalates the government's drive to stop all refugees reaching Australia by boat, and to coerce those already in the country, or in offshore detention camps, to abandon their refugee applications. The government is forcing asylum seekers back to the countries they fled, knowing full well that they could face death, imprisonment or other forms of retaliation and repression.

Labor's immigration spokesman, Richard Marles, described the cuts as "mean-spirited" and "ripping away assistance for people who have been through traumatic experiences and are often vulnerable." Marles declared: "This is an unfair and harsh announcement from a government with twisted priorities."

What a fraud! It was the previous Labor government that laid the foundations for the current government's policies. Labor also sought to prevent asylum seekers from getting legal advice, instructed officials not to inform people arriving on boats of their right to apply for protection visas, and began the practice of deporting refugees (especially to Sri Lanka) without lodging protection claims.

And it was an earlier Labor government, that of former Prime Minister Paul Keating, that introduced the system of mandatory detention of asylum

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seekers—that is, detention without trial—in 1992.

Likewise, the Greens criticised the scrapping of legal aid as “dangerous and short-sighted,” but they support the entire framework of national-based immigration controls and the reactionary “border protection” regime erected by successive governments. From 2010 to 2013, the Greens were in de facto coalition with Labor, keeping that government in office as it ramped up the maltreatment of refugees.

In a second flagrant move to abrogate basic legal rights, Prime Minister Tony Abbott’s government this month forcibly transferred refugee detainees from Sydney’s Villawood detention centre to a remote camp at Curtin, on Australia’s northwest coast, in order to obstruct a legal case that the detainees had launched against the leaking of their personal details on the Internet.

In February, highly sensitive private details, including names, dates of birth, nationalities and places of detention, of around 10,000 asylum seekers were inexplicably published by the Department of Immigration and Border Protection on its web site.

A number of Villawood detainees initiated court applications on March 19, demanding permanent protection, because the privacy breach had put them and their relatives in their home countries, at even greater risk of persecution. The government’s first response was to try to coerce them into dropping their case.

In a signed letter, 50 asylum seekers from Villawood reported that Immigration and Border Protection staff attempted to intimidate them. After meeting some of these detainees, Dr John Sweeney, the head of research at the Edmund Rice Centre, confirmed that they were asked to sign a form clearing the department of any liability for the release of their personal data, including for harm they suffered after being deported to their native countries.

Sweeney commented: “They are effectively being asked to sign away a fundamental human right. These rights are inalienable and so even if a form has been signed, it is an illegal document.”

Then, in a punitive move to cut the detainees off from their lawyers, and remove them from the public eye, the government transferred 45 asylum seekers to Curtin, thousands of kilometres away, to an area where there is no mobile phone coverage.

Michaela Byers, the lawyer representing some of the detainees, said: “We can’t get instructions if the clients are on the other side of the continent with no telephone interpreters. There is only one landline in the centre manager’s phone. It’s outrageous—they are interfering with the judicial process and my clients’ rights. I find it so disturbing.”

Immigration and Border Protection officials claimed that the decision was necessary because of a refurbishment of the Villawood facility. But Sweeney asked: “Why couldn’t they just move them over the road into new refurbished accommodation?”

Lawyers applied for an injunction in the Federal Circuit Court to stop the transfers, yet a judge dismissed the application, saying there was no reason to interfere with the Department’s administrative arrangements.

The Curtin detention centre, which is surrounded by desert, is one of the most isolated places in Australia and close to the Curtin Air Base. Former Howard government Immigration Minister Philip Ruddock once described it as the country’s “most primitive” processing centre. It was closed in 2002, but re-opened in 2010 by the previous Labor government.

By shifting these refugees to a remote location and cutting off all legal aid, in outright contempt of basic legal rights, the current government is also setting precedents that can be used more broadly against working class people as resistance develops to the scrapping of welfare entitlements and other brutal austerity measures.

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