MIGRATION IN LIBERAL DEMOCRACIES: MANAGING ENVIRONMENTAL CHANGE

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Sydney
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High Court sinks asylum strategy

Philippa Cool and Kirsty Needham

A DEMOTALIZED and humiliated Gillard government is contemplating a complete backdown by sending asylum seekers to Nauru and reintroducing temporary protection visas after the High Court ruled by six votes to one yesterday that its Malaysian plan was unlawful.

The consideration of what would be a total embrace of the Howard government’s “Pacific solution” was not being ruled out yesterday after the shock court decision, which the Immigration Minister, Chris Bowen, readily conceded was a “significant blow” to the government’s plans.

The opposition listed the policy failure as one more reason for voters to dump an “incompetent” government and there was widespread angst within Labor ranks last night about the broader implications of such a setback.

Federal cabinet will meet in Brisbane tonight to discuss a response. After months of rolling out Nauru and temporary protection visas, Mr Bowen said: “I’m not ruling anything in or out in terms of our response”. He warned that the court decision would result in a flood of boat arrivals and the government remained determined to stop people smuggling.

“The government has been forced to work very hard to try to maintain the integrity of the plan, and that’s been challenging,” Mr Bowen said.

David Marr

“If Canberra wants to try once again to set up machinery as vindictive as the Malaysian plan, it’s going to have to come clean and admit, for the first time, that we are backing away from our international obligations.”

Philip Cool

“It is hard to imagine how things could possibly get worse for this government.”

Comment – Page 5

4000 from Malaysia but they would no longer be additional to the annual intake meaning 199 fewer refugees waiting in camps elsewhere would be accepted.

After a challenge by the refugees’ lawyer David Mann, the court ruled the plan invalid on the grounds that a third country to which asylum seekers were sent was legally bound to meet three criteria: being bound by international or domestic law to process asylum seekers seeking protection, to protect those asylum seekers while being processed, and to protect those given all overseas processing, including on Nauru and Manus Island.

While the government was seeking legal advice to clarify this, the opposition spokesman on immigration, Scott Morrison, was confident. He pointed to the ruling which said the arrangements in Nauru were “very different” from those in Malaysia.

The government is rapidly negotiating replacing the detention centre on Manus Island in Papua New Guinea, which was part of the “Pacific solution”.

Two senior Labor MPs said the Nauru option should now be considered. The government would be punished in the short term for backing down but the matter would be defused over the longer term because both sides would have the same policy.

The government cannot legislate around the High Court decision because the Greens would block it in the Senate.

The chief executive of the Refugee Council of Australia, Paul Power, said the ruling was a “monumental decision” that upheld the critical importance of protection for asylum seekers “even when Australia is trying to expel them to another country”.

The UNHCR, which spent months negotiating with Australia to include human rights protection in the Malaysia deal, yet always held the hardball line that it would stop asylum seekers who reached Australia to be processed in Malaysia, said yesterday it would carefully study the judgment and assess its implications for the way asylum and refugee issues are dealt with in the future.

‘Let’s make no bones about it – today’s decision by the High Court is a profoundly disappointing one.’

Chris Bowen, Immigration Minister
State freedom in the international sphere

• Treaties not ratified
• Reservations to treaties
• Rights not recognised
• Rights qualified
• Latitude in implementation
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State freedom in the international sphere

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Mandatory detention of asylum seekers

• **ICCPR, Art 9(1):** “Everyone has the right to liberty and security of person. **No one shall be subjected to arbitrary arrest or detention.** No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

JUSTICE for CLIMATE REFugees
CLIMATE REFUGEES
A NEW ARENA FOR HUMAN RIGHTS

WEDNESDAY 2 MARCH 2011  15:30 > 19:00
ROOM ASP 3G-2 – EUROPEAN PARLIAMENT BRUSSELS

OPENING SESSION: Welcome by Richard HOWITT – S&D DROI Coordinator

PANEL 1: This panel will focus on the effects and consequences of climate change on migration and human rights, highlighting the specific case of Ethiopia. A 10 minute film on the situation in Bangladesh will also be screened by the Environmental Justice Foundation.

Cocktail
Some problems with treaties ...

• New provisions needed
• Respect – avoiding refugees as ‘victims’
• Conceptual – other forced migrations
• Definitional – who is in, who is out
• Procedural – status determination
• Institutional – diluting existing regimes
• Political – which States will ratify