

MIGRATION IN LIBERAL DEMOCRACIES: MANAGING ENVIRONMENTAL CHANGE



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League's night of reckoning

SPORTSDAY

POISON IVY Patron's swipe at nightclub

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Who's for a midi?

STYLE PAGES 18-19

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High Court sinks asylum strategy

Phillip Coorey and Kirsty Needham

A DEMORALISED 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 major reason for voters to dump an "incompetent" government and there was widespread angst within Labor ranks last night about the broader implication of such a setback.

Federal cabinet will meet in Brisbane tonight to discuss a response. After months of ruling 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 break people smuggling.

"I think you can expect people smugglers to be capitalising on this arrangement and to say you can come to Australia now because the Malaysia agreement has been ruled invalid by the



→ **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."

→ **Phillip Coorey**
"It is hard to imagine how things could possibly get worse for this government."
Comment - Page 9

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 already negotiating reopening the detention centre on Manus Island in Papua New Guinea, which was part of the "Pacific solution".

Ten 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 bottom line that it would prefer asylum seekers who reached Australia to be processed in Australia, said yesterday it would carefully study the judgment and assess "its implications for the way asylum and refugee issues are dealt with in

'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

Ratification of Human Rights Treaties

YEAR	TREATY	AUS	CAN	NZ	US
1941	ILO 97 (Migration for Employment Convention)	✘	✘	1950	✘
1951	Refugee Convention	1954	1969	1960	✘
1966	ICCPR (civil & political rights)	1980	1976	1978	1992
1966	ICESCR (economic social & cultural rights)	1975	1976	1978	✘
1967	Refugee Protocol	1973	1969	1973	1968
1975	ILO 143 (Migrant Workers Supplementary Provisions Convention)	✘	✘	✘	✘
1989	Convention on the Rights of the Child	1990	1991	1993	✘
1990	Migrant Workers Convention	✘	✘	✘	✘
2011	ILO 189 (Domestic Workers	✘	✘	✘	5 ✘

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BEWARE

RAZOR TAPE
WIRE IN POSITION

10

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.”
- ***A v Australia***, (560/1993) 3 April 1997, UN Doc CCPR/C/59/D/560/1993.



JUSTICE
for
CLIMATE
REFUGEES

THE
2
POLY

CLIMATE REFUGEES

A NEW ARENA FOR HUMAN RIGHTS

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

Interpretation in
EN/FR/DE/ES/IT

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