

Information on Bill C-49

On August 13, 2010 the MV Sun Sea arrived on the coast of British Columbia carrying 497 asylum seekers. On October 21, 2010 the federal government introduced Bill C-49: Preventing Human Smugglers from Abusing Canada's Immigration System Act in Parliament. The Bill was introduced as an anti-human smuggling measure. However, the majority of provisions are focused on the treatment of refugees based on their mode of arrival to Canada. They violate the Canadian Charter of Rights and Freedoms, and Canada's international human rights obligations. There are very few provisions that are focused on preventing or dealing with human smuggling.

| Act | Impact on Permanent Residents |
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| <i>Lower standards for detention upon re-entry to Canada</i> | Whereas currently officers can detain permanent residents entering Canada only if they suspect inadmissibility on the grounds of security issues or the violation of human or international rights, Bill C-49 will allow them to detain individuals on suspicion that they may have committed an offence in another country, whether or not they have been convicted of it. |
| <i>Lower standards for continued detention</i> | Bill C-49 will allow permanent residents detained on suspicion of having committed a crime in another country, whether or not they have been convicted, to be detained until the government is satisfied they are not inadmissible. This could allow for open ended detention with little recourse for appeal. |

The Minister can "designate" any arrival of a group of people as irregular if:

- a) examinations to establish identity or determine inadmissibility can't be conducted in a timely manner; or
- b) it is suspected smugglers profited from the groups' arrival or criminal organizations or terrorist groups were involved.

- When a group has been "designated", all foreign nationals in the group become "designated foreign nationals" unless they have the required visas to enter Canada.

- All "designated foreign nationals" are to be arrested and detained, with or without a warrant.

- Once detained, a "designated foreign national" has no chance for review for 12 months.

| Act | Impact on Asylum Seekers and Refugees |
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| <i>Retroactive to March 2009</i> | Any refugee who arrived after March 2009 can be declared a "designated foreign national" and their application for permanent residency will be suspended. |
| <i>Detention without review</i> | Once declared a "designated foreign national", the individual must be detained and cannot have their case reviewed for 12 months, after which they can have their case reviewed only every 6 months if they remain in detention. |
| <i>Imposition of conditions for release from detention</i> | Unknown. These conditions will be outlined in regulations if C-49 passes. |
| <i>Requirement for refugees to report to officers</i> | "Designated foreign nationals" whose refugee claims are accepted will be required to report regularly to an officer and answer all questions in accordance with regulations to be later determined. |
| <i>No right to appeal a rejection of refugee status</i> | "Designated foreign nationals" whose application for refugee status is rejected will have no right to appeal the decision. |
| <i>Ineligibility for travel documents</i> | A "designated foreign national" whose refugee claim is accepted is ineligible for travel documents until they gain permanent residency. |

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| <i>Delayed application for permanent residency</i> | A “designated foreign national” whose refugee claim is accepted will not be able to apply for permanent residency until 5 years after they gain their refugee status, nor will they be able to apply to be reunited with their family until they gain permanent residency. |
| <i>Cancelation of refugee protection status</i> | At any time in the 5 year wait to apply for permanent residency or as part of the permanent residency application process, the government can revoke refugee status based on the analysis that the refugee’s country of origin is now safe. |

| Act | Violation of International Law | Bill C-49 |
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| <i>Punishing refugees for illegal entry</i> | Article 31 of the <i>Refugee Convention</i> : Canada must not impose penalties on refugees for illegal entry. | Imposes penalties for arriving in groups and being suspected of using smugglers, such as mandatory detention, no right to appeal refugee decisions, and 5 year wait on permanent residency application. |
| <i>Arbitrary detention</i> | Article 9 (4) of the <i>International Covenant on Civil and Political Rights</i> : All detained individuals have the right, without delay, to a court hearing to determine the lawfulness of their detention. | Detains “designated foreign nationals” without the opportunity for review for 12 months. |
| <i>Separation of families</i> | Article 10 of the <i>Convention on the Rights of the Child</i> : Canada must respond quickly to applications for family reunification. | Refugees who were formerly “designated foreign nationals” must wait 5 years before they can apply for family reunification. |
| <i>Right to travel</i> | Article 28 of the <i>Refugee Convention</i> : Canada must give refugees travel documents. | Refugees who were formerly “designated foreign nationals” will not be issued travel documents. |
| <i>Detention of Children</i> | Article 37(b) of the <i>Convention on the Rights of the Child</i> : Canada will not deprive children of their freedom arbitrarily. Detainment of children is a measure of last resort and for the shortest period of time possible. | Children who are part of a “designated” group will be arrested and detained for a minimum of one year, unless the Minister intervenes. |
| <i>Delaying application for permanent residency</i> | Article 34 of the <i>Refugee Convention</i> : Canada must make every effort to expedite permanent residency proceedings. | Refugees who were formerly “designated foreign nationals” must wait five years after gaining their refugee status to apply for permanent residency. |

| Act | Violation of Canadian Law | Bill C-49 |
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| <i>Detention without review</i> | Violation sections 7, 9 and 12 of the <i>Charter of Rights and Freedoms</i> . The Supreme Court recently ruled that the mandatory detention of foreign nationals considered a threat to national security for 120 days without review is unconstitutional. | “Designated foreign nationals” will be detained for 365 days without review. |

Charter of Rights and Freedoms

Section 7: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 9: Everyone has the right not to be arbitrarily detained or imprisoned.

Section 12: Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Other resources

Canadian Centre for Refugees: <http://ccrweb.ca/en/c49>