

Key Concerns and Improvements with Bill C-4 “Preventing Human Smugglers from Abusing Canada’s Immigration System Act”

Bill C-4 will do nothing to prevent human smuggling. More laws will not catch the smugglers, who are overseas. Mandatory minimum sentences will not deter: under the Immigration and Refugee Protection Act smuggling is already punishable by life imprisonment and mandatory minimums have been shown not to work as deterrents. Refugees know little or nothing about the laws before they arrive in a country of asylum, and even if they know, desperate fear for their lives forces them to do whatever they must to flee persecution. Australia tried punishing refugees to deter them: it didn’t work.

The government should address the problem of smuggling in ways that do not punish refugees. Below are the ways in which this Bill punishes refugees or relies on questionable facts, and suggested improvements to address the concerns.

Bill C-4 punishes refugees

The bill has been presented as legislation targeting smugglers, but in fact most of the provisions punish refugees not the smugglers. Under Bill C-4, refugees, including children, will be mandatorily detained for a year, without possibility of independent review, and denied family reunification and the right to travel abroad for over 5 years. Under Bill C-4, refugees will be victimized three times: first by their persecutors, secondly by the smugglers and finally by Canada.

Improvements: Either change the name of the Bill to reflect the fact that the goal is to prevent people from claiming refugee status in Canada with the help of a smuggler, or remove the sections of the Bill targeting refugees. As the Bill stands it is highly misleading, claiming to target smugglers but actually targeting refugees.

Bill C-4 violates the Charter and Canada’s international human rights obligations

The bill violates numerous rights protected by the Canadian Charter of Rights and Freedoms and by international conventions to which Canada is signatory, including the Convention relating to the Status of Refugees (Refugee Convention) and the Convention on the Rights of the Child.

Improvements: Do not impose a minimum time limit prior to having a detention review, set a significantly shorter (say 1 month) maximum time limit prior to having detention review. Children should never be detained, and Humanitarian and Compassionate Considerations should be allowed to account for the best interest of the child. Children should not be prevented from reuniting with parents or siblings, especially not for a huge portion of their childhood (minimum 6 years or 1/3 of their childhood)

Bill C-4 is discriminatory

The bill creates two classes of refugees, with one class (those “designated” based on mode of arrival) treated worse than the other. This is discriminatory and contrary to the Charter, which guarantees equality before the law (section 15).

Bill C-4 penalizes refugees based on mode of arrival

The bill imposes a series of penalties on “designated” persons, in violation of the Refugee Convention, which explicitly prohibits States from imposing penalties on refugees for illegal entry (article 31).

Bill C-4 imposes arbitrary detention

The bill requires the mandatory detention of designated persons, without independent review. This is arbitrary detention, which is contrary to the Charter and to international law.

Among those detained will be children. Unless they are accepted as refugees or released on discretionary grounds by the Minister, based on “exceptional circumstances”, designated persons will remain in detention for one year before having access to review of their detention.

The Supreme Court of Canada has recently clearly stated that unreviewed detention for lengthy periods is contrary to the Charter (section 7). Yet this is exactly what Bill C-4 proposes.

Arbitrary detention is also prohibited by international law, notably by the International Covenant on Civil and Political Rights.

The bill also provides for mandatory conditions imposed on release, and for persons to be indefinitely detained, beyond 12 months, without possibility of release, if the Minister is of the opinion that their identity has not been established. Both these additional measures deprive persons of liberty, without the opportunity for an independent tribunal to review whether they are necessary in the individual case, contrary to the Charter and international law.

Improvements: Instead of a minimum 1 year in prison (unless a decision has been rendered in the case), the Bill should include a significantly shorter (perhaps 1 month) maximum time that a refugee claimants could be in detention prior to a detention review, and state explicitly that a detention review can be made at any time up to the maximum, instead of preventing early release for clear cases.

Bill C-4 denies the right to equal access to justice

The bill denies designated persons the right to appeal a negative refugee decision to the Immigration and Refugee Board’s Refugee Appeal Division. An appeal is a fundamental safeguard in refugee decision-making, where a person’s life and liberty may be at stake. By eliminating the opportunity to correct errors at the first level, the bill puts Canada at risk of violating its most fundamental obligation towards refugees: not to send them back to persecution (Refugee Convention, article 33).

Improvements: Allow all refugee claimants the opportunity to appeal to the Refugee Appeal Division. The designation of a Minister does not change the possibility that a mistake might be made in the case. It is important to have recourse in case of human error.

Bill C-4 blocks family reunification

The bill deprives some refugees for five years the right to apply for permanent residence, therefore depriving them of reunification with their families, including their children. This is a violation of the right to family life, guaranteed by the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Improvements: Allow immediate family members to be sponsored immediately after receiving a positive decision. Maintain a consistent effective system for family reunification, especially for people escaping dangerous situations. Family members of an accepted refugee should not be expected to live in unsafe situations, unable to join their family members due to a decision of a Minister in Canada, this is not fair to anyone in the family.

Bill C-4 denies refugees the right to travel

The bill denies designated refugees the right, protected by the Refugee Convention, to a refugee travel document (article 28). The bill proposes to legislate away the right by improperly and arbitrarily interpreting the Convention not to apply to designated refugees. This would prevent, for example, a refugee from visiting a sick family member in a third country.

Improvements: Remove the prohibition on travel for refugees. By stating that designated refugees do not meet the definition of Article 28 of the refugee Convention, the government is stating that these refugees are not legally in Canada. The honourable solution is to abide by the meaning of the Refugee Convention, and to provide travel documents upon request for accepted refugees.

Bill C-4 blocks refugees' integration

By denying designated refugees the right for five years to apply for permanent residence, the bill significantly delays refugees' integration into Canadian society and their eventual application for citizenship, contrary to the obligation under the Refugee Convention to facilitate "the assimilation and naturalization of refugees" (article 34). Canada has already had an experience of refugees kept in long-term limbo: this was tried with Somali refugees in the 1990s, when thousands were denied permanent residence for years. The policy was a disaster, causing huge suffering to the individuals affected and the community. The government eventually settled a court challenge by changing the policy.

Bill C4 prevents consideration of the best interests of the child

The bill denies designated persons, including children, the opportunity to make an application on humanitarian and compassionate grounds for five years. This application is the only avenue for consideration of best interests of the child. Under the terms of the bill, children will therefore be deported from Canada without consideration of their best interests, in violation of the Convention on the Rights of the Child. Children will also have their rights violated by being imprisoned unnecessarily.

Improvements: Allow Humanitarian and Compassionate applications for denied refugee claimants. At very least, ensure that wherever a child (under 18) is implicated, that Humanitarian and Compassionate applications are permitted.

The deterrence measures in Bill C-4 have been tried by Australia – and they failed

Australia had policies to lock up refugee claimants long term and deny them permanent status even when granted refugee status, in an effort to stop refugees coming by boat. The policies resulted in refugees, including many children, being traumatized by their experiences in detention. The Australian Human Rights Commission, an organization created by Parliament, conducted a National Inquiry into Children in Immigration Detention and found that children in Australian immigration detention centres had suffered numerous and repeated breaches of their human rights. Far from deterring people, depriving refugees of their right to family reunification appears to have caused some people to arrive by boat, as later boats brought the wives and children of refugees in Australia unable to bring their families through legal channels. The Australian public was deeply divided, with many previously unengaged citizens joining a grass-roots network to protest at their country's inhumane treatment of refugees. In the past three years, Australia has moved away from the policies of detention and temporary status for refugees.

Bill C-4 is not likely to deter refugees

Research in the UK has shown that refugees don't choose their destination based on the policies in place. Of refugees participating in a recent study, few wanted specifically to go to the

UK and many did not have control over where they ended up. “The overwhelming majority (around nine out of ten of all respondents) said that they did not know anything about asylum policies in the UK before they arrived.”

Bill C-4 gives vast new powers to detain non-citizens based on mere suspicion

The bill gives the government the power to arrest and detain any non-citizen, including a permanent resident, based on a mere suspicion of criminality. This provision is not limited to designated persons, nor to refugee claimants: it applies to all non-citizens. This is a dramatic attack on the rights of newcomers – and long-term residents.