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Bill C-4: Key concerns about proposed amendment to the *Immigration and Refugee Protection Act*

(Produced with information prepared by the [Canadian Council for Refugees](#))

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BACKGROUND:

On 16 June 2011 the Government of Canada reintroduced legislation that has been widely condemned as violating the rights of refugees. Despite the government's claims that the bill targets smugglers, the people who will be punished if it is passed include people fleeing persecution, including children.

"We are celebrating this year the 60th anniversary of the Refugee Convention, but instead of honouring this Treaty, the government is proposing to violate it," said Wanda Yamamoto, President of the Canadian Council for Refugee. "Let's not forget that the Convention was adopted because many countries, including Canada, had closed their doors on Jewish refugees fleeing the Nazis, and we said 'Never again!'"

The bill is a reintroduction of Bill C-49, tabled in the previous session of Parliament, which was widely condemned. All opposition parties and over 80 civil society organizations rejected it and many legal experts have stated that it violates the Canadian Charter of Rights and Freedoms and international law. (For a list of organizations and joint statements see www.ccrweb.ca).

KEY CONCERNS

Bill C-4 punishes refugees

The bill has been presented as legislation targeting smugglers, but most of the provisions punish not smugglers, but refugees. Under Bill C-4, refugees, including refugee 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 five years. Under Bill C-4, refugees can be victimized three times: first by their persecutors, secondly by the smugglers, and finally by Canada.

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. For example, Bill C-4 says that designated persons are detained for one year without review. The

Supreme Court of Canada has recently stated that detention without review for long periods is contrary to the Charter. If Bill C-4 is approved by Parliament, it could be challenged in the courts, which would probably decide that some parts of the Bill are illegal because they do not respect the Charter. But while the courts are deciding the case, refugees would suffer in detention.

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).¹ 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.

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 (IRB) Refugee Appeal Division (RAD). 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).

Bill C-4 blocks family reunification

The bill deprives some refugees of the right to apply for permanent residence for five years, and therefore reunification with their families, including their children. This is a violation of the right

¹ *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, 2007 SCC 9

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.

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. For example this would prevent a refugee from visiting a sick family member in a third country.

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). In the 1990s Canada kept Somali refugees in long-term limbo, when thousands were denied permanent residence for years. The policy caused enormous suffering to the individuals affected and the community. The government eventually settled a court challenge by changing the policy.

Bill C-4 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.

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

Australia had policies to detain 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.² 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

² http://www.refugeecouncil.org.au/docs/resources/submissions/2002-03_intakesub.pdf. Irene Khan reported on a woman who drowned in Australian territorial waters as she attempted to enter Australia clandestinely in order to join her husband, an Iraqi refugee in Australia, because his Temporary Protection Visa did not allow him to apply for family reunification. Khan, I. 2003. "Trading in Human Misery: A Human Rights Perspective on the Tampa Incident" Pacific Rim Law and Policy Journal 12(1), 9-22.

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."³

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 mere suspicion of criminality. This provision is not limited to designated persons, nor to refugee claimants: it applies to all non-citizens. This provision could have a dramatic impact on the rights of newcomers – and long-term residents.

Conclusion

The members of the Canadian Council for Refugees, which includes CFSC, believe that Bill C-4 should be withdrawn or defeated at second reading. The government should address the problem of human smuggling in ways that will have also punish refugees more broadly.

TAKE ACTION!

Here are some suggested actions against Bill C-4 for organizations and for individuals:

- Collect signatures for the petition against C-4 (available on the CCR webpage)
- Write a letter to the editor of your local newspaper
- Meet with or write to your Member of Parliament (see model text and suggestions on CCR webpage - <http://ccrweb.ca/en/c4-action>) and share your concerns. Ask them to either withdraw the bill (if they are in government) or defeat the bill (if they are in opposition).
- Speak to groups that you belong to about the unfairness of Bill C-4 and how it punishes refugees, and urge them to take the action.

More detailed information on the Bill, different actions for groups and organizations, links to statements from organizations that are against the Bill and a myth busters fact sheet are among the information on the Canadian Council for Refugees website: <http://ccrweb.ca/en/c4-action>.

³ Crawley, H. 2010. Chance or choice? Understanding why asylum seekers come to the UK, London: Refugee Council, <http://www.refugeecouncil.org.uk/policy/position/2010/18jan2010>