

## **Some thoughts on Bill C-49**

This year is turning out to be an extremely busy one for the government's immigration portfolio. After numerous changes to the immigration law, regulations and implementing guidelines, here comes Bill, C-49, also known as the "*Preventing Human Smugglers from Abusing Canada's Immigration System Act*", which is being presented by the government as a measure to address the serious problem of human smuggling.

The bill is clearly a reaction to the arrival of a group of Tamil migrants aboard the ship Sun Sea in Vancouver in August 2010 less than a year after another group of Tamil migrants arrived in BC via the ship Ocean Lady in October 2009.

The rhetoric following these arrivals were sadly filled with sweeping judgments against the migrants even before they were accorded due process within our refugee determination system. These migrants who have all submitted refugee claims were branded as "queue jumpers", "terrorists", "human smugglers" and/or "human traffickers."

First of all, we need to clarify the distinctions between "human smuggling" and "human trafficking" as I often hear these two terms being used interchangeably in the ongoing debates. These two terms, although closely related, are not exactly the same. Generally, "human smuggling" is defined as the act of facilitating the illegal entry of a person into another territory in exchange for a direct or indirect financial or other material benefit.

"Human trafficking" on the other hand, is generally defined as the recruitment, transfer or harbouring of persons, by means of threat, coercion, fraud, deception or abuse of power for the purpose of exploitation (e.g. prostitution, forced labour, slavery). Unlike human smuggling, trafficking of persons does not need to involve the crossing of international borders.

Therefore, one may conclude that human smuggling is not as insidious as human trafficking in that the latter always involves the elements of involuntariness and exploitation while the former may not. This is not to say however, that human smuggling should not be deemed as a serious crime. Within the context of transnational organized crime, human smuggling is certainly wrong and ought to be criminally prosecuted. However, if the so-called "human smuggling" is simply done with the goal of saving the lives of those who are fleeing persecution, then I am not sure that we should be as quick to condemn the act of "human smuggling" within this context. Lawmakers should therefore be careful in distinguishing these two types of crimes lest the public be misled into thinking otherwise.

Meanwhile, Bill C-49 has been the subject of intense criticism due to the following:

Under Bill C-49, refugee claimants, including women and children, who arrive in Canada by boat with the help of human smugglers will be subject to mandatory one-year detention without a review. This is a clear violation not only of international human rights standards but also of the Charter prohibition against arbitrary detention as recently affirmed by the Supreme Court of Canada in the 2007 case of *Charkaoui v. Canada*.

If a detained refugee claimant is eventually granted refugee status, Bill C-49 proposes that they cannot apply for permanent residence hence unable to sponsor family members, for five years. With the current immigration processing delays, this could lead to lengthy periods of family separation lasting 7 to 10 years or even longer.

Accepted refugee claimants will not be granted travel documents nor be allowed to travel anywhere thus violating their rights provided by the United Nations Refugee Convention and other relevant human rights treaties.

Contrary to the general perception that Bill C-49 only deals with human smugglers and refugees, it is worth noting that it also proposes to give the government the power to arrest any non-citizen (including permanent residents) based on mere suspicion of criminality, and to detain them indefinitely while the investigation is ongoing.

The proposed bill also takes away the right of appeal for refused refugee claimants, a remedy that was recently put in place through the Balanced Refugee Reform Act enacted just a few months ago.

The only provision in Bill C-49 which directly pertains to human smugglers is that which proposes a mandatory minimum sentence for those found guilty of the crime of human smuggling.

The government's response to human smuggling therefore mainly involves the imposition of stricter measures against smuggled people because they allegedly encourage the growth of this activity by paying the smugglers. The logic then is that, if the "consumers" are "punished" they will think twice if not avoid using smugglers altogether, ergo, smugglers will lose business instead of flourish.

Unfortunately, human migration is a complex reality which could not simply be addressed by pure logic. What then is the alternative?

Full respect for human rights. Promoting socio-economic development in poverty-stricken nations. A healthy dose of compassion and generosity towards the less fortunate. These are indispensable elements of Canada's proud humanitarian tradition and must therefore be part of any proposed solution.

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