

REFUGEE LAWYERS' ASSOCIATION OF ONTARIO

Media release

For immediate release
October 22, 2010

Anti-Smuggling Bill Targets Genuine Refugees for Unfair and Arbitrary Treatment

TORONTO - The Refugee Lawyers' Association of Ontario (RLA) today expressed profound concern over the provisions of the Government's proposed Bill C-49, the Preventing Human Smugglers from Abusing Canada's Immigration System Act.

"This bill is a grave assault on the human rights of refugees," said Geraldine MacDonald, President of the RLA. "While human smuggling is a serious problem that needs to be addressed, it is perverse to tackle the problem by targeting the desperate refugees who get smuggled. It is also in direct contravention of both international law and Canada's own Charter of Rights and Freedoms."

The RLA is concerned that people at risk of torture and fear for their lives turn to smugglers out of desperation will be caught by the Minister's broad powers under this bill. It is recognized by the refugee Convention and international treaties that refugees will use irregular means to enter a country such as Canada in order to seek safety. They should not be punished for doing so.

Under the banner of trying to stop human smuggling, the bill would give the Minister the power to single out for special punishment refugees who have fled their country by means of smugglers, even if they are found to be genuine refugees. They will be subject to mandatory detention for the first year after arrival, with no chance of review.

"The detention provisions violate article 31 of the Refugee Convention and go against shared Canadian values," said Geraldine MacDonald. "Mandatory detention is not only unnecessarily harsh for innocent victims of persecution, including children, but it also means that the government will incur the costs of housing and feeding people who could otherwise be working to support themselves. It will make it even harder for refugees to adjust to Canadian life once they are released."

Of equal concern to the RLA are the proposals to deny access to permanent residence for five years and to limit access to justice.

The prohibition on designated foreign nationals to apply for permanent resident status for five years after a positive decision will leave such persons in limbo and means that they will remain separated from family members who remain in the home country and who are often at risk. With processing times, the separation will be much more than five years. "To intentionally keep families apart for such a long time is inhumane and goes against one of the stated goals of Canada's Immigration and Refugee Protection Act—that of family reunification," said Geraldine MacDonald.

Under the terms of the legislation, the delay in applying for permanent residence will mean refugees cannot apply for a travel document and will be forced to remain in Canada until attaining permanent resident status. Thus, they would not be able to visit family in a third country, or even go on a simple vacation, even though there is no evidence that the refugees are a danger or engaging in criminality. Again, this is an arbitrary and unfair restriction.

Access to justice is seriously undermined by the bill, as it would deny persons designated by the Minister the right to appeal a negative refugee decision to the Refugee Appeal Division. It also provides that there is no appeal of a cessation or vacation decision, which is perverse. It is arbitrary for the Minister to deny the right to appeal based on mode of travel and whether refugee claimants travelled with others. Arbitrary justice is not justice at all.

We call on the Opposition parties and all Members of Parliament who believe in human rights and the equal dignity of all persons to unite to defeat this bill at second reading.

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The Refugee Lawyers' Association of Ontario is a non-profit organization of more than 200 lawyers who practice refugee and immigration law.

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