

11-2-2010

# Legislation won't stop asylum seekers using human smugglers

Sean Rehaag

Osgoode Hall Law School of York University, [SRehaag@osgoode.yorku.ca](mailto:SRehaag@osgoode.yorku.ca)

Sharryn Aiken

Follow this and additional works at: [http://digitalcommons.osgoode.yorku.ca/public\\_writing](http://digitalcommons.osgoode.yorku.ca/public_writing)



Part of the [Immigration Law Commons](#)

---

## Recommended Citation

Rehaag, Sean and Aiken, Sharryn, "Legislation won't stop asylum seekers using human smugglers" (2010). *News Editorials and Commentaries*. Paper 26.

[http://digitalcommons.osgoode.yorku.ca/public\\_writing/26](http://digitalcommons.osgoode.yorku.ca/public_writing/26)

This Article is brought to you for free and open access by the Faculty Scholarship at Osgoode Digital Commons. It has been accepted for inclusion in News Editorials and Commentaries by an authorized administrator of Osgoode Digital Commons.

# Legislation won't stop asylum seekers using human smugglers

## Abuses must be stopped abroad that lead people to flee home nations

BY SEAN REHAAG, SHARRYN AIKEN, FRANCOIS CREPEAU, CATHERINE DAUVERGNE, DONALD GALLOWAY, GERALD HECKMAN, NICOLE LAVIOLETTE AND AUDREY MACKLIN, FREELANCE

NOVEMBER 2, 2010  
THE EDMONTON JOURNAL



A family is escorted off a ship after they and an estimated 490 suspected Tamil refugees arrived at CFB Esquimalt on Vancouver Island in August. **Photograph by:** Andy Clark, Reuters, File, Freelance

This week, Parliament is debating bill C-49, the Preventing Human Smugglers from Abusing Canada's Immigration System Act.

The proposed legislation represents the government's attempt to deter human smuggling in response to a few hundred Sri Lankan asylum seekers who arrived on two ships in the past year. A better title, however, might be the Punishing Refugees and Evading our International and Constitutional Obligations Act, because the bill scarcely alters the sanctions for smugglers while clearly targeting refugees.

The government appears to believe that Canada currently lacks enforcement tools to prevent human smuggling. In fact, Canada already does everything in its power to prevent asylum seekers from getting here. It imposes visas on nationals of all major source countries, denies entry to anyone it thinks might make a refugee claim and works with transportation companies to prevent embarkation of anyone with suspect documents.

Adding to this arsenal more enforcement measures -such as the mandatory minimum sentences in the proposed legislation -will not stop human smuggling. Indeed, if the possibility of tough penalties could stop human smuggling, surely the life imprisonment currently faced by smugglers -the most serious punishment under Canadian law -would have done the trick.

Moreover, the experience of other countries demonstrates that tough enforcement measures are counterproductive. Such measures simply drive up the costs that human smugglers can charge, and hence the profits they make.

At the same time, they can lead smugglers to use more dangerous (and therefore less frequently monitored) routes into Canada to avoid detection thereby putting the lives of asylum seekers at risk.

The most objectionable features of the proposed legislation, however, are not measures targeting human smugglers, which are merely symbolic and bound to be ineffectual. The proposed legislation also imposes new penalties against those who come to Canada using human smugglers, whether these people are genuine refugees or not. These penalties include: unreviewable detention for periods of one year or longer, limits on rights to appeal refugee determinations, and for successful claimants a bar on obtaining either temporary or permanent status in Canada for a five-year period.

Some of these measures are in clear violation of Canada's obligations under the international Refugee Convention -a treaty that over 180 states, including Canada, voluntarily ratified. No matter how asylum seekers get to Canada, they are entitled under the convention to apply for refugee protection. Moreover, the convention prohibits countries from imposing penalties on refugees who arrive unlawfully. It also prohibits discrimination between refugee claimants and the detention of refugees for punitive purposes.

It is also worth noting that many of these unlawful penalties will apply retroactively: the proposed legislation allows the minister to apply these penalties to groups -- including the Sri Lankan asylum seekers that provoked the legislation -- who arrived after March 2009. Absent compelling circumstances, which are not present here, changing the rules after the fact is an affront to the rule of law.

Taken together, the proposed legislation will not stop human smuggling, but will only serve to criminalize asylum seekers - at least until its provisions are successfully challenged as violations of international law and of our own constitution.

If the government really wants to stop asylum seekers from resorting to human smugglers, it has to look elsewhere. We must work to stop the human rights abuses abroad that lead people to flee their home countries.

Also, we must work with transit states to ensure that asylum seekers can obtain meaningful protection abroad. Finally, we must create avenues through which refugees in need of immediate protection can get to Canada without resorting to human smugglers.

Until we do that, the government's bid to crack down on human smuggling will only harm asylum seekers -- who will come to Canada in any event -- and will undermine Canada's reputation as a good international citizen committed to respect for the rule of law.

*Sean Rehaag (Osgoode), Sharryn Aiken (Queen's), Francois Crepeau (McGill), Catherine Dauvergne (UBC), Donald Galloway (Victoria), Gerald Heckman (Manitoba), Nicole LaViolette (Ottawa) and Audrey Macklin (Toronto) are law professors specializing in immigration and refugee law.*