



Bill C31 – Diminishing Refugee Protection
A Submission to
The House of Commons' Standing Committee on Citizenship and Immigration
By the
Canadian Council for Refugees
April 2012

Introduction

The Canadian Council for Refugees (CCR) is a non-profit umbrella organization committed to the rights and protection of refugees in Canada and around the world and to the settlement of refugees and immigrants in Canada. We currently have some 175 member organizations across Canada involved in the settlement, sponsorship and protection of refugees and immigrants.

The CCR has called for the withdrawal of Bill C-31 because it provides for an unworkable process that will fail to respect the Canadian Charter of Rights and Freedoms and international obligations and will fail to give protection to refugees. What is more, it will be harmful to the successful settlement of refugees in Canada. We have previously communicated our concerns to Parliament regarding provisions in Bill C-31's antecedents: Bill C-11¹ and Bill C-4². Since the introduction of Bill C-31, we have joined with other organizations in the Justice for Refugees and Immigrants Coalition³ regarding the key problems with the bill and how it is being promoted, identifying them as:

1. Hasty timelines that deny refugees a fair chance to prove their claims
2. The revised process for designating certain countries as "safe" that eliminates an expert, independent advisory body that would have guarded against countries being designated on the basis of erroneous or irrelevant political, trade and other considerations.
3. The Bill gives the Ministers of Citizenship and Immigration, and Public Safety and Emergency Preparedness, extensive powers to imprison refugee claimants, to deny refugees the ability to reunite with family members and to strip refugees of secure legal status, while minimizing the opportunity for judicial oversight of the exercise of these extraordinary powers.
4. The Bill makes permanent residence status for resettled and in-land refugees precarious and insecure, placing hundreds of thousands of refugees who have resettled in Canada at risk of deportation.
5. The Minister's references to "bogus" claims are an egregious misrepresentation.
6. Canada's humanitarian safety net is gravely weakened.

We have appealed instead for legislation that is fair, affordable, that complies with Canada's Charter and international obligations, and that ensures independent decision-makers. For the CCR:

Fair treatment of refugees means:

- Equal rules for everyone everywhere
- Listening to people's stories and decisions in a reasonable time

Independent decision-making for refugees means:

- Decisions for refugees based on facts and law
- Each case decided on its own merits and not on political, trade, or military considerations or person bias

¹ See: CCR, Protecting rights in a fair and efficient refugee determination system - Submission on Bill C-11, 5 May 2010, <http://ccrweb.ca/files/c11submissionmay2010.pdf> (English) and La protection des droits dans un système équitable et efficace de détermination du statut de réfugié Mémoire au sujet du projet de loi C-11, 5 mai 2010, <http://ccrweb.ca/files/C11memoiremai2010.pdf> (français)

² See: CCR, Bill C4 – Comments on a bill that punishes refugees, 11 November 2011, <http://ccrweb.ca/files/c-4-brief.pdf> (English).

³ Comprised of the CCR, Amnesty International, the Canadian Association of Refugee Lawyers, and the Canadian Civil Liberties Association. See: <http://ccrweb.ca/en/protect-refugees-c31-statement> (English); <http://ccrweb.ca/fr/protoger-refugies-contre-c31-declaration> (français).

An **affordable refugee system** is one that avoids unnecessary costs for refugee families and for Canadian taxpayers, hence:

- Reasonable costs to reach the right decision the first time and
- Enabling refugee families to support each other and contribute to Canadian society

Honouring our legal obligations towards refugees means:

- Respecting the Canadian Charter of Rights and Freedoms and
- Respecting Canada's obligations as a signatory to the Convention Relating to the Status of Refugees and the Convention on the Rights of the Child

In the experience of CCR members, these different elements are inherently and intimately interconnected. In their appearances before the Standing Committee on Citizenship and Immigration, different CCR members and coalition partners will be highlighting different concerns with the Bill, just as CCR has highlighted its fundamental concerns in its past submissions regarding Bills C-11 and C-4. For the purposes of this submission, we will focus particularly on 3 provisions contained in Bill C-31 and illustrate the concerns they raise in line with the CCR's rights, protection and settlement priorities. We thus will highlight the issues of family separation and precarious permanent residence, as well as the processing times prescribed in the Bill.

Family Separation and Precarious Permanent Residence – barriers to successful settlement, harmful to refugees

Family Separation

Bill C-31 contains new provisions that, for “designated foreign nationals”, also referred to as “irregular arrivals,” will result in the separation of families.

The Bill stipulates:

20.1 (1) The Minister may, by order, having regard to the public interest, designate as an irregular arrival the arrival in Canada of a group of persons if he or she

(a) is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility — and any investigations concerning persons in the group — cannot be conducted in a timely manner; or

(b) has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection 117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.

This provision grants very broad discretion to the minister: a “group” could be 2 or more people; a “timely manner” is entirely subjective and ultimately is dependent on the resources allocated to the system. The designation may or may not be applied to people brought to Canada by smugglers and it may be applied retroactively. As noted above, we see this discretion as problematic.

Once the designation is made, it will incur many negative consequences for refugees and persons in need of protection. These include:

1. *(under section 23 of the Bill) Mandatory arrest and detention for those 16 and older on the day of arrival for a minimum of one-year without independent review or until:*
 - *(a) a final determination is made to allow their claim for refugee protection or application for protection;*
 - *(b) they are released as a result of the Immigration Division ordering their release under section 58; or*
 - *(c) they are released as a result of the Minister ordering their release under section 58.1.*

and

2. *(under section 5.(1.1) of the Bill) A ban on an application for permanent residence until five years after: a final determination in respect of their refugee claim is made, a decision on their application for protection is made, or after they become a designated foreign national.*

The provision for mandatory detention of designated foreign nationals aged 16 and older will result in a draconian choice for families who arrive together in Canada and make a refugee claim. They must either:

- accept to be separated with their children put into foster care
or
- choose to go into detention with their children.

Other provisions that will result in even longer family separation are contained in the Bill.

Section 5 stipulates:

(1.1) A designated foreign national may not make an application for permanent residence under subsection (1)

(a) if they have made a claim for refugee protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made;

(b) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or

(c) in any other case, until five years after the day on which they become a designated foreign national.

Section 13 deals with the issue of family reunification where:

...the Minister is of the opinion that it is justified by humanitarian and compassionate considerations relating to the foreign national, taking into account the best interests of a child directly affected.

However, the section stipulates that:

A designated foreign national may not make a request under subsection (1) (i.e. for humanitarian and compassionate consideration):

(a) if they have made a claim for refugee protection but have not made an application for protection, until five years after the day on which a final determination in respect of the claim is made;

(b) if they have made an application for protection, until five years after the day on which a final determination in respect of the application is made; or

(c) in any other case, until five years after the day on which they become a designated foreign national.

In the same vein, if they have an application for humanitarian and compassionate consideration in process when they become designated foreign nationals, their application will be suspended.

The bans for five years on applications for permanent residence and for humanitarian and compassionate consideration by designated foreign nationals will impose a terrible burden on refugees arriving in Canada without family members. Ultimately, this will be for a period even greater than 5 years since the separation will include time necessary to conclude the refugee determination process, as well as time necessary to process the application for permanent residence and to process the applications of the family members. Again, this will put extreme stress on the family, will be harmful to children and spouses, who will be prevented for many years from being reunited with family members here, and may leave those outside of Canada in dangerous or even life-threatening situations.

These provisions in Bill C-31 contravene numerous obligations to support and protect families as prescribed in Canada's international obligations (see next page). Keeping in mind these different rights, rights that Canada has pledged to uphold and protect, the Government needs to ensure that the provision of its immigration and refugee laws will ensure it respects these obligations. The concerns identified above demonstrate that it will fail to do so.

Canada's obligations to families under international law

The Universal Declaration of Human Rights

- *Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*
- *Article 16 (3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

The International Covenant on Civil and Political Rights

- *Article 23 (1). The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
- *Article 24 (1). Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*

The International Covenant on Economic, Social and Cultural Rights

- *Article 10 (1). The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.*
- *Article 10 (3). Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions...*

The Convention on the Rights of the Child

- *Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,*
- *Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,*
- *Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,*
- *Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,*

- *Article 2: 1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
- *Article 2: 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

- *Article 9: 1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*

- *Article 22: 1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.*

- *Article 3: States Parties shall ensure that:*
 - *(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*

Two Scenarios

To better illustrate these concerns, consider the following, entirely plausible scenario.

A woman is targeted by security forces in her country because of her work for the rights of her community. She is a member of a religious minority. She has complained publicly about the harassment and, later, about the death threats she has received because of her efforts, but the police and justice system are sympathetic to the regime; the police regularly attack people in her community and two of her neighbours have been raped by police - they dared not complain. She knows of people from her group who have fled to a neighbouring country, only to be returned home or put into camps where local people have attacked them. New threats indicate that her life is at risk, but she sees no path to safety for her family other than to pay a smuggler to come to Canada. She recognizes the trip will be dangerous, but there is no one she can trust to keep her two daughters ages 10 and 15, so she pays for them to come, as well. The trip by boat is dangerous: there is not enough food and people are sick from the unsanitary conditions and drinking dirty water. Worse, both daughters are at risk of sexual abuse by young men on the boat. To protect them, she provides sexual favours to an elder. Arriving in Canada, she believes she will finally be safe, but the minister identifies her group as "irregular arrivals." She is detained in a prison since there is no room in the immigration detention centre. She opts for her children to go into foster care because she feels it will be safer. Despite the timelines in the law, the refugee system does not have the resources to process her claim quickly – she is in prison for more than a year. She cannot visit with her children because they are far from the prison and the foster family won't bring them to visit. They are adjusting badly and are severely depressed.

Another entirely possible scenario is:

The same woman, facing the same situation in her home country, pays smugglers to come to Canada, but cannot afford the price to bring her two daughters. She thus leaves her children with friends. Once here, she is designated as an "irregular arrival" and is detained for 14 months until she is accepted as a refugee. At that point, she is released but cannot apply for permanent residence for five years from the date of her refugee decision. She eventually finds a job and sends what money she can to her daughters. However, after three years the situation at home is so bad they flee with other members of their community to a neighbouring country. Her older daughter, now 19, takes ill along the way and dies. After two more years, the woman can finally apply for permanent residence and to be reunited with her younger daughter, now 16.

These two scenarios indicate at multiple points how Bill C-31 will fail to protect the rights of this woman and her children. They will have been triply punished: by their country, by the smugglers, and by Canada. Their prospects for successful settlement are severely diminished if not eliminated due to what they have experienced.

In its brief on Bill C-4, which has been incorporated into Bill C-31, the CCR noted that Canada has already tried denying accepted refugees the right to apply for permanent residence. In the 1990s, thousands of Somali and Afghan refugees were prevented from becoming permanent residents. Under the Undocumented Convention Refugee in Canada Class, they had to wait 5 years in order to become permanent residents. During that time they could not be reunited with their families, could not travel outside Canada, could not pursue post-secondary education and generally could not get on with their lives.⁴ The policy was a disaster for the individuals and the communities affected. The policy was challenged in the courts on the basis that it was discriminatory, and the government eventually agreed to end the policy.⁵

⁴ For more information, see Caledon Institute, *What's In A Name: Identity Documents and Convention Refugees*, 1999, <http://www.caledoninst.org/Publications/PDF/whats.pdf>

⁵ A Charter challenge was launched by 9 Somalis in Ottawa, leading to an agreement in 2000 (an order made by Justice Hugessen of the Federal Court in December 2000 detailed the components of the agreement). The settlement was subsequently written into the 2002 Immigration and Refugee Protection Regulations, s. 178.

Precarious Permanent Residence

Bill C-31 contains another provision, which is entirely new and poses another serious concern. It would amend section 40 of the Immigration and Refugee Protection Act regarding “Cessation of refugee protection”, stipulating:

18. *The Act is amended by adding the following after section 40:*

40.1 *A person is inadmissible on a final determination under subsection 108(2) that their refugee protection has ceased.*

A passage from the Legislative Summary of the Bill explains this in greater detail:

"Bill C-31 introduces a new provision governing inadmissibility by adding section 40.1 to the IRPA. Clause 18 states that upon a final decision that refugee protection has ceased, the individual who was previously a Convention refugee is now inadmissible to Canada, and therefore cannot remain in or enter Canada. Cessation of refugee protection is described in section 108 of the IRPA and involves situations such as the individual returning to his or her country of origin, reacquiring his or her original citizenship or acquiring a new one, or simply that the conditions in the country of origin have changed and the person is no longer in need of protection. The Minister must make an application for cessation, on which the RPD decides. Bill C-31 makes the impact of cessation decisions more serious, providing in clause 19 that permanent resident status may be lost."⁶

Note that there is nothing in Bill C-31 that limits this provision to refugees that make a claim in Canada; those sponsored from overseas, whether by the government or by private sponsors, are also affected by this change.

The provision of permanent residence, as opposed to temporary protection, to refugees has always been a mainstay of Canadian immigration and refugee policy. It is often said that Canada's refugee policy is one of the most generous in the world – the provision of permanent residence has been one of the defining characteristics of that generosity. To be clear, this assurance of permanent residency has also benefited Canada, as it has provided the security necessary for refugees to rebuild their lives and contribute to the political, economic, social and cultural fabric of the country.

Bill C-31 - costly for Canada

The provisions in Bill C-31 will be costly for Canada in a number of ways.

Prolonged detention comes at a high cost. As a recent study by Delphine Nakache found:

Supplementary estimates tabled in Parliament in February 2011 reveal that the Canada Border Services Agency (CBSA) spent over \$ 22 million for the MV Sun Sea detentions. The costs for the Immigration and Refugee Board, largely for the detention reviews, total \$900,000. As the Canadian Council for Refugees (CCR) notes, these costs would be lower if the government had given the MV Sun Sea passengers the same treatment as other asylum seekers.⁷

⁶ Parliament of Canada, "Legislative Summary of Bill C-31: An Act to amend the Immigration and Refugee Protection Act, the Balanced Refugee Reform Act, the Marine Transportation Security Act and the Department of Citizenship and Immigration Act", p. 19, at http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?Language=E&ls=c31&Parl=41&Ses=1&source=library_prb

⁷ Delphine Nakache, «The human and financial cost of detention of asylum-seekers in Canada», December 2011, p. 62 <http://www.socialsciences.uottawa.ca/edim/eng/documents/1.pdf>

The agency said more than 80 per cent of a total of \$22-million for the arrival, processing and detention of the migrants [MV Sun Sea] costs went toward detention.⁸ Moreover, according to CBSA, the average cost per day per detainee is 200\$.

According to the Nakache study, “(There is a) lack of readily available, up-to-date statistics on the financial cost of immigration detention (in general) and the detention of asylum seekers (in particular)” that “hinders effective public monitoring.”⁹

Cost of detention versus community-based alternatives in other countries

It is widely acknowledged that almost any alternative measure will prove cheaper than detention. Australia issued its *New Directions in Detention* policy in 2008, which aims to use immigration detention as a last resort. According to the Department of Immigration and Citizenship of Australia, this policy will provide “more humane treatment of those seeking our protection.”¹⁰

The government of Australia acknowledged the high social and financial costs of long-term detention:

The impacts on both the physical and mental health of the detainees are severe. Recent research undertaken by the Centre for Health Service Development at Wollongong University dramatically highlights the deleterious health impacts of long-term detention.

The cost to the taxpayer of detention is massive and the debt recovery virtually non-existent. In 2006-07, it cost some \$220 million to operate Australia’s immigration detention system.

*Also, enormous damage has been done to our international reputation*¹¹.

The confirmed costs of running detention facilities across the Australian network in previous financial years were as follows:

- FY2008-09: \$147.6 million
- FY2009-10: \$295.6 million
- FY2010-11: \$772.2 million¹²

Comparatively, the cost of community-based alternatives to detention during the 2010-2011 financial year was \$15.7 million¹³.

Studies conducted in Europe reveal similar concerns. A report from Jesuit Refugee Service highlights that community-based alternatives are five times cheaper than immigration detention, which costs states like Belgium, Netherlands and the UK as much as 200 euro per day.¹⁴ In the United Kingdom, “detention costs around £130 per person per day. The costs of supporting an asylum seeker in the community have been

⁸ Tim Naumetz, “Mass detention of 300 Tamil migrants cost \$18-million, says Canada Border Services Agency”, *The Hill Times Online*, 14 February 2011 http://www.hilltimes.com/news/2011/02/14/mass-detention-of-300-tamil-migrants-cost-%2418-million-says-canada-border-services-agency/25475?page_requested=1

⁹ Delphine Nakache, “The human and financial cost of detention of asylum-seekers in Canada”, December 2011, p. 6 <http://www.socialsciences.uottawa.ca/edim/eng/documents/1.pdf>

¹⁰ Department of Immigration and Citizenship, “New Directions in Detention - Restoring Integrity to Australia’s Immigration System,” July 2008, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

¹¹ Department of Immigration and Citizenship, “New Directions in Detention - Restoring Integrity to Australia’s Immigration System,” July 2008, <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>

¹² Joint Select Committee on Australia’s Detention Network, Final Report, March 2012, p. 194.

¹³ Joint Select Committee on Australia’s Detention Network, Final Report, March 2012, p. 25.

¹⁴ Jesuit Refugee Service Europe, “From deprivation to liberty, Alternatives to detention in Belgium, Germany and the United Kingdom,” December 2011, p.13, <http://www.jrseurope.org/JRSEuropeFromDeprivationToLiberty20122011.pdf>

estimated at £150 per week, i.e. £21 per day. This suggests that it costs around £109 extra per day to keep someone in detention, rather than in the community. Our data suggests that the cost to the taxpayer in 2010 of the periods of unnecessary detention at the start of the Detained Fast Track process may have been over £2,020,000.¹⁵

Similarly, data regarding costs in the United States mitigate against detention. A study by the Detention Watch Network indicates, "(t)he average cost of detaining an immigrant is approximately \$122 per person/per day. Alternatives to detention, which generally include a combination of reporting and electronic monitoring, are effective and significantly cheaper, with some programs costing as little as \$12 per day. These alternatives to detention still yield an estimated 93% appearance rate before the immigration courts."¹⁶ Catholic Charities Archdiocese of New Orleans runs Community-based Alternatives to Detention Programs for immigrants. A total of 64 long-term detainees were released to Catholic Charities from August 1999 to December 2003. At any one time, the program's case manager worked actively with 20 to 30 clients to offer services [helping with housing and job searching]. The cost to run the program was about \$1,430 per client per year, or \$3.90 a day.¹⁷

Of course, there will be other costs incurred if Bill C-31 is adopted: costs associated with the construction and operation of detention facilities to house refugees or for the use of corrections facilities. There will be the costs of the processes to revoke peoples' refugee status and permanent resident status, and then the costs to remove them. There will also be the cost to the Canadian economy of funds sent overseas to separated family members while those here await their opportunity to apply for permanent residence.

More importantly, there is the human cost to the mental health and well-being of refugees who are separated from loved ones, especially those who are in dangerous situations. A recent study has documented this clearly:

Three children (four, six and seven years of age) are detained with their mother and father – both asylum seekers – for five days in a Canadian immigration holding centre. They are brought to detention after being `arrested` by several officers who force the children into a van when they resisted in fear. The mother and children are separated from their father who is kept in a separate men's section. Before detention, the children were in good health and functioning well, although the six-year-old had language delay. After detention, the two eldest children developed symptoms of post-traumatic stress disorder and separation anxiety including nightmares, sleep difficulties, tantrums, school refusal and selective mutism. For several months, the six-year-old regularly resisted leaving the house to attend school because of debilitating anxiety, but remain symptomatic with ongoing anxiety, irritability and sleep difficulties.¹⁸

In a 1998 study, the CCR looked at contributors to successful integration. We noted:

As early as 1952, the United Nations Economic and Social Council, recognizing its complexity, defined integration as a "gradual process by which new residents become active participants in the economic, social, civic, cultural and spiritual affairs of a new homeland. It is a dynamic process in which values are enriched through mutual acquaintance, accommodation and understanding. It is a process in which both the migrants and their compatriots find an opportunity to make their own distinctive contributions" (cited in Kage, 1962:165).

It is very much this definition to which immigrant and refugee-serving agencies subscribe. *Immigration Settlement Counselling: A Training Guide* (OCASI, 1991:8) defines settlement as "a long-term, dynamic, two-way process through which, ideally, immigrants would achieve full equality and freedom

¹⁵ Detention Action, «Fast-track to despair, The unnecessary detention of asylum-seekers», may 2011, p. 24, <http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/FastTracktoDespair.pdf>

¹⁶ Detention Watch Network, «About The U.S. Detention and Deportation System», 2008, <http://www.detentionwatchnetwork.org/aboutdetention>

¹⁷ Sue Weishar, «A more human system, Community-based alternatives to immigration detention (Part 2)», *JustSouth Quarterly*, Loyola University New Orleans, Spring 2011, p. 8-9, <http://www.loyno.edu/jsri/sites/loyno.edu.jsri/files/MoreHumaneSystem-Spring2011jsq.pdf>

¹⁸ Example cited in Rachel Kronick, Cécile Rousseau et Janet Cleveland, «Mandatory detention of refugee children, A public health issue?», *Paediatrics and Child Health*, vol. 16, no. 8, October 2011, p. 66

of participation in society, and society would gain access to the full human resource potential in its immigrant communities".¹⁹

The provisions in Bill C-31 described above will undermine successful integration and the achievement of that equality and freedom of participation in society, as well as the gains for society, which have helped to define the country that Canada is today.

Timelines

Bill C-31 provides very tight timelines for an amended refugee determination process. It is clear that these timelines will be ineffective and will risk returning refugees to persecution. While the CCR has consistently called for a system that will provide a timely decision that will enable refugees to get on with their lives, consideration must be given to the need for claimants to properly understand and prepare for the process, to obtain necessary documents to support their claims, and to overcome fears they may have in regard to telling stories of persecution to government authorities. Women, LGBTQ refugees, and others who have suffered torture and other forms of cruel and degrading treatment need time to properly prepare for the process. The timelines in Bill C-31 will deny them this possibility. They also risk rendering the right to counsel void.

The timelines proposed in relation to Bill C-31 are not consistent with serious efforts to get the necessary information to make a proper determination of a refugee claim.²⁰ While claimants often need weeks if not months to feel secure enough to talk about traumatic events, professionals such as psychologists, counsellors for survivors of torture and medical practitioners are often unavailable to meet with claimants, let alone prepare reports, for weeks. Research in or even about the country of origin or the issues involved in the claim is often time-consuming. While some cases are amply documented from the beginning and can be quickly given a positive determination, others will take a long time. Just refugee determination must take account of the complexity of the issues and be able to be flexible.

Purpose of these provisions

The Minister of Citizenship and Immigration has repeatedly stated that the intent of these provisions in the Bill is to deter smugglers. In fact, they punish refugees who come to Canada with the assistance of smugglers. Comments by former Canadian Security Intelligence Director Ward Elcock, the prime minister's special adviser on smuggling, support this analysis. While accompanying the prime minister on his recent mission to Thailand, he stated, "If you get the right legislation mix, the demand will drop and the ability of the criminal groups to actually profit from it; they'll cease to be able to profit," he said.²¹ The end result is that they will harm refugees, including their children and their families.

However, research has shown that such punitive measures do not dissuade asylum seekers. For example, Australia tried a system of temporary protection visas, but later abolished them:

Why TPVs (temporary protection visas) have been abolished

The (Australian) government is committed to providing fair and certain outcomes for refugees and abolishing TPVs is consistent with the government's commitment to treating asylum seekers fairly and with dignity.

TPVs and THVs (temporary humanitarian visas) were introduced by the previous government to discourage people smuggling activities resulting in unauthorised boat arrivals (UBAs) and to discourage refugees leaving their country of first asylum.

¹⁹ CCR, "Best Settlement Practices: Settlement Services for Refugees and Immigrants in Canada," February 1998, p. 9, <http://ccrweb.ca/bpfina1.htm>

²⁰ The government published timelines in a Backgrounder at the time it tabled the Bill. <http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-02-16f.asp>. However, for the most part, these are not found in the Bill itself.

²¹ The Canadian Press, "PM wraps Thai visit with focus on human smuggling," CTV News March 24, 2012, <http://m.ctv.ca/topstories/20120324/prime-minister-stephen-harper-asia-trip-thailand-final-day-120324.html>.

The evidence clearly shows TPVs did not have any deterrent effect. In fact, there was an increase in the number of women and children making dangerous journeys to Australia.²²

The need for a durable, fair refugee system

Founded in 1978, the CCR is now in its 35th year of discussions with the government regarding Canadian refugee policy. For over three decades, we have been discussing the problems of a system that has struggled to render decisions in a timely manner. All too often, governments have blamed refugees for the problems with the system, invoking rhetoric that calls them “bogus”, “abusers”, “fraudsters”, and “queue-jumpers,” claiming that Canada is being “inundated,” that there is a “crisis,” and stating that it’s time for Canada to “get tough.”

While such rhetoric attracts much media and public attention, it encourages gross generalizations, fans the flames of intolerance, and ultimately undermines faith in the refugee determination system both among Canadians and among those who seek safe haven here. The rhetoric surrounding Bill C-31 has been harsh; however, the reality of the provisions of the bill will be harsher for those who have already been punished by their own governments because of their race, religion, nationality, membership in a particular social group or political opinion.

Over the years, Auditors General have repeatedly raised the problem of under-resourcing the system as being at the root of the problems, while new measures purported to “fix” a “broken refugee system” have invariably required tempering by the courts and by governments that, confronted with the consequences of their laws, have realized that their measures will send people back to situations of persecution and possible death, or that there are strong humanitarian and compassionate reasons to allow people to remain in Canada. This has created a vicious circle of refugee reform that has failed to provide timely, durable, fair and secure solutions for refugees in need of protection.

Failure to provide sufficient resources for timely and fair decisions have resulted in backlogs of people awaiting decisions on their claims that are costly to the taxpayer and are even more costly to refugees forced to live uncertain lives, separated from loved ones who are often in unsafe situations, while awaiting protection in Canada.

Conclusion

It is in light of the above concerns that the CCR has stated:

Bill C-31 must be withdrawn and replaced with legislation which is fair, affordable, and independent, and which complies with the Charter and Canada’s international obligations.

With other members of the Justice for Immigrants and Refugees coalition and those who have endorsed its declaration, we urge the government to:

- Withdraw Bill C-31.
- Implement the Balanced Refugee Reform Act, which was passed with the unanimous approval of parliament, subject to the qualifications below.
- Eliminate the 15 day disclosure interview which all parties, including the government, agree would be costly and ineffective.
- Impose reasonable time limits for the initial delivery of claim information and for the filing of an appeal. Reasonable time limits of thirty days, rather than the fifteen currently proposed, will not appreciably delay the claim process and will assure Federal Court judges, Canadians, and international observers that Canada’s refugee system is capable of producing fast and reliable refugee decisions.²³

²² Australia, Department of Immigration and Citizenship, “Visas, Immigration and Refugees, Refugee and Humanitarian: Overview of the changes,” http://www.immi.gov.au/refugee/tpv_thv/abolition/overview.htm

²³ <http://ccrweb.ca/en/protect-refugees-c31-statement>