

PROTECT REFUGEES FROM BILL C-31

The Justice for Refugees and Immigrants Coalition (comprised of Amnesty International, the Canadian Association of Refugee Lawyers, the Canadian Civil Liberties Association, and the Canadian Council for Refugees) supports an immigration system that is fair, independent of political considerations, and affordable. **Bill C-31** is unconstitutional, undermines our humanitarian traditions, and violates our international obligations - **it should be withdrawn**.

Bill C-31 is bad policy. It creates a manifestly unfair system for deciding refugee claims and gives Ministers broad, unfettered and unprecedented powers. The concentration of enormous and vaguely defined powers in a Minister, with no mechanisms of judicial accountability, displays a dangerous inclination away from the rule of law and principles of responsible and democratic governance.

This omnibus bill rolls together the earlier bills C-4 and C-49, elements of the Balanced Refugee Reform Act, and additional provisions. The resulting Bill C-31 would detain groups of refugees, keep families apart, undermine the refugee claim and protection process, introduce the use of biometrics, and authorize the stripping of permanent residence from refugees. Without proper time for scrutiny and discussion, the bulky and complex nature of Bill C-31 inhibits the detailed analysis necessary in an area where constitutional and international compliance is required. It will also prevent informed public debate of what is a dramatic shift away from the Canadian tradition of welcoming the stranger in our immigration policy. The government is rushing Bill C-31 without enabling time for adequate consideration and debate.

The proposed legislation will negatively impact our refugee and immigration system.

1. Hasty timelines deny refugees a fair chance to prove their claims.

Bill C-31 imposes unrealistic deadlines on all refugee claimants. A failure to meet deadlines may disqualify claimants, without affording them a fair and reasonable opportunity to establish their refugee claims.

- Refugees Claimants will have 15 days to deliver a written version of the basis of their refugee claim. This is not enough time for newly-arrived refugees to seek legal advice, respond to complicated legal requirements and gather the evidence to prove their claim.
- Refused claimants will have 15 days to complete an application to appeal an initial refusal. This is an impossibly short deadline, and will render illusory the availability of an appeal to correct mistakes made by the Immigration and Refugee Board.

Bill C-31 allows the government to remove refugee claimants whose claims were not accepted without a Pre-Removal Risk Assessment. Unlike the Balanced Refugee Reform Act, there is no assurance of a fair, accessible appeal to catch errors made at the first level. There will now be an unfair claim process and an unreliable appeal. There will be a much greater risk of refugees being deported to a serious risk of persecution.

2. The revised process for designating certain countries as "safe" 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.

Bill C-31 gives the Minister broad powers to designate refugee source countries as “safe”. The Minister's opinion is not dependent on expert opinion regarding country conditions, nor need the Minister take account of the differential risk faced by certain minorities in a country that is ‘safe’ for some, but not for others. This renders the process susceptible to becoming a political tool at the expense of ensuring that genuine refugees are recognized and protected. If a country is designated as “safe”, claimants will be subject to an expedited claim process that denies them a reasonable opportunity to prove their refugee claims. They will also be immediately removable without a right of appeal, thus increasing the possibility that those facing a legitimate fear of persecution will be deported.

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. Bill C-31 also minimizes the opportunity for judicial oversight of the exercise of these extraordinary powers.

The Bill will give the Minister of Public Safety broad, vague and subjective discretion to designate two or more foreign nationals as a group of 'irregular arrivals' based on administrative convenience or suspicion of “smuggling”. The consequences of this designation will include the following:

- mandatory, warrantless, automatic, unreviewable one-year detention for all persons aged 16 or older;
- discretionary power to detain children under 16, or to forcibly separate them from accompanying parents for one year;
- 'irregular arrivals' who make successful refugee claims will be denied access to permanent resident status for a minimum of five years. During this 5+ year period, refugees will be:
 - prohibited from applying to reunite in Canada with spouses and children; this means that actual reunification will be delayed for approximately 6-8 years after their grant of refugee status;
 - required to report regularly to immigration authorities for questioning and to produce documents - the scope, purposes and uses of these inquiries is undefined;
 - prohibited from travelling outside Canada for any reason.

The Bill’s proposed mandatory, warrantless, unreviewable year-long detention is patently unconstitutional. The Supreme Court of Canada decided this issue in the clearest of terms. As well, the Minister of Immigration could use the 5+ year period to revoke refugee status in certain circumstances; this prolongs insecurity and creates fear that the government could use the reporting requirement to find reasons to strip them of refugee protection.

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.

Bill C-31 permits the Minister to seek to revoke an individual's refugee status anytime up until they gain citizenship, which will in turn result in the automatic rescission of permanent resident status and removal from Canada.

Bill C-31 undermines our commitment to resettle refugees and provide them with the security of permanent residence. Even if they are a permanent resident, the Minister can apply at any time for a finding that a refugee is no longer at risk in his or her former country. If the Minister is successful, the refugee will automatically lose both refugee status and permanent residence and will be immediately deportable from Canada. This provision will apply equally to those who made claims in Canada and those who were resettled here by the government or by private sponsorship groups like churches or cultural associations.

Someone who came to Canada under a refugee resettlement program over a decade ago and who has spent years building a life and family in this country could be stripped of his or her status and deported with no right of appeal.

The authority of the Minister to seek revocation is unconstrained by any stipulated criteria. Regardless of how often the Minister exercises this power, the threat of refugee status revocation and expulsion will hang over the heads of all refugees who have permanent residence but do not yet have citizenship. They will be denied the security that Canada has traditionally afforded refugees. This is inconsistent with Canada's international legal obligations.

This status-stripping provision reverses a fundamental objective of Canada's long-standing refugee policy to promptly integrate refugees in order to get on with lives and to fully contribute to Canadian society.

5. The Minister's references to "bogus" claims are an egregious misrepresentation

The Minister has repeatedly referred to refused claims as "bogus." This is not true. The refugee definition is very technical. Many failed claimants come with a genuine fear of persecution but may not meet the definition of a refugee. Their search for protection is genuine. Constant references to refugee claimants as "frauds" or "bogus" or "abusers" undermine the independence of Canada's refugee system. They also undermine confidence in the system's capacity to render fair and correct decisions.

6. Canada's humanitarian safety net is gravely weakened

Canada has long recognized that a broad humanitarian consideration process is necessary to preserve the flexibility of our protection system. Barring access to this is contrary to our humanitarian tradition.

As a coalition, we recognize the need to achieve a fast, fair and effective refugee system. We urge the government to:

- 1. Withdraw Bill C-31.**
- 2. Implement the Balanced Refugee Reform Act, which was passed with the unanimous approval of parliament, subject to the qualifications below.**
- 3. Eliminate the 15 day disclosure interview which all parties, including the government, agree would be costly and ineffective.**
- 4. 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.**