Changes to the refugee determination system included in Bill C-97

Bill C-97, the Budget Implementation bill, includes proposed changes to Canada's refugee determination system that go far beyond implementing a budget: the changes undermine the basic rights of some of the most vulnerable people in Canadian society, and place many people at increased risk of being sent back to face persecution, in violation of Canada's international human rights obligations.

The changes of main concern are in Division 16 of Part 4 (page 274 ff).

Introduction of a new ground of ineligibility for refugee protection if a claimant has previously made a claim for refugee protection in another country

This means that numerous refugee claimants, who may need Canada's protection because they are refugees, will be denied access to Canada's refugee determination system.

The Immigration and Refugee Protection Act already has several grounds of ineligibility. These include situations where someone has refugee status in another country to which they can be returned, or where a person has previously made a refugee claim in Canada, even if it was many years ago and circumstances have changed dramatically since then. These grounds are criticized because they leave some refugees without the protection they need.

However, the proposed new ground of ineligibility is potentially even worse: it denies access to the refugee determination system to claimants who may never have had a hearing on their refugee claim.

Even in the case of someone found ineligible because they can be returned to the US under the Safe Third Country Agreement, the Canadian government argues that the person has access to the US refugee determination system (although, in the view of the CCR, it is a far from fair system).

The proposed new ineligibility provision affects refugee claimants who have made a claim in a country with whom Canada has a relevant information-sharing agreement (US, UK, Australia, New Zealand). It will particularly affect people who have passed through the US.

- Ineligible claimants will have access only to a Pre-Removal Risk Assessment (PRRA), a process that is procedurally far inferior to refugee determination at the Immigration and Refugee Board (no right to a hearing, decision-makers who are not part of a quasi-judicial tribunal and who don't have the same access to training, legal services and Chairperson's guidelines). The acceptance rate has historically been extremely low. The Supreme Court of Canada made it clear in its 1985 Singh decision that basic elements of fairness, including the right to an oral hearing, are necessary to ensure that refugees receive the protection they require. Shortcomings in the PRRA system will almost certainly lead to people who need protection being denied it and facing removal from Canada to persecution, in violation of their Charter Rights and Canada's international obligations.

- Ineligible claimants have significantly fewer rights than eligible claimants (lack of access or significantly delayed access to social assistance in many provinces, work permits must be paid for).
- It is misleading to present this as a response to "irregular arrivals" – the measure also applies to people who arrive at a port of entry. This includes people entering from the US who are exempt from the Safe Third Country Agreement because they have a family member in Canada (in other words, the government agrees that it is appropriate for them to pursue their claim in Canada). The result will be families who are reunited in Canada but forced into separate legal processes (which is also inefficient).
- Rather than denying yet another category of claimants access to the refugee determination system, the government should eliminate the eligibility provisions altogether and ensure all refugee claims are heard fairly and efficiently at the IRB. It is inefficient, as well as unfair, to have a parallel PRRA process outside the IRB to determine the need for protection of some claimants.

Extending the bar on applications for Pre-Removal Risk Assessment and humanitarian and compassionate consideration for refugee claimants who apply to the Federal Court for judicial review

The law currently makes refugee claimants wait 12 months from the final decision on their refugee claim before they can bring new evidence of risk forward in a Pre-Removal Risk Assessment (PRRA). This is already problematic because there may be dramatic new developments in a person's case (e.g. a family member was arrested) during the year, leaving the person with no forum to raise it.

The proposed amendment would start the 12 month clock from the final decision on an application for judicial review at the Federal Court.

This makes no logical sense since it is impossible to raise new evidence in the Federal Court process. Therefore claimants will face a period far longer than 12 months during which important new evidence of risk to their life and liberty may come forward without any avenue to present it before they are removed from Canada.

The same applies to the bar on making a humanitarian and compassionate (H&C) application. This application is crucial for many people whose compelling circumstances cannot be raised in any other process. An H&C application does not stop removal so the only effect of barring access is that it prevents people from even bringing forward compelling humanitarian factors.

This new provision is nothing but a means of punishing people for using the legal recourse provided in Canadian law.

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