

# CANADIAN COUNCIL FOR REFUGEES

## BILL C-31 BRIEF: SUMMARY AND RECOMMENDATIONS

4 July 2000

### SUMMARY

#### *Introduction*

- The heavy enforcement emphasis with which Bill C-31 was presented promotes negative stereotypes about refugees and immigrants and caters to xenophobia and racism within Canadian society.
- Bill C-31 is a framework legislation that leaves many of the key rules to regulations. This is a concern since it gives wide powers to change the rules without any parliamentary oversight.
- Bill C-31 tends to give more discretionary powers to immigration officers and reduce individual protections. The CCR calls for the opposite.
- A separate *Refugee Protection* part to the bill is welcome. The CCR would like however to see it cover more of the refugee programs, notably the refugee resettlement program and applications for permanent residence by refugees (currently dealt with in the bill under Part 1, *Immigration to Canada*).
- The use of the term “foreign national” for all non-citizens, including permanent residents, promotes a view of non-Canadians as “aliens” and undermines the status of permanent residents as members of Canadian society.

#### *Human rights obligations*

- Bill C-31 makes more reference than the current *Immigration Act* to Canada’s human rights obligations (for example, by protecting people from return to torture, as guaranteed by Article 3 of the Convention Against Torture, and by referring to the best interests of the child). However, the bill is not consistent in ensuring that its provisions meet human rights obligations. The CCR urges the incorporation of relevant international human rights instruments.

#### *Refugee resettlement*

- The bill should be amended to exclude the possibility of setting quotas or numerical limits on refugee categories.
- The proposals to eliminate inadmissibility on the basis of excessive medical demand and to reduce the impact of the “successful establishment” criterion are welcome, but are only to appear in regulations. The CCR recommends that admissibility criteria for refugees be included in Part 2, *Refugee Protection*, and that the successful establishment criterion be completely eliminated.

- The bill provides for no review mechanism for refused applicants for refugee resettlement and imposes a leave requirement on applications to the Federal Court for judicial review. The CCR recommends that refugee applicants overseas have access to the Refugee Appeal Division of the Immigration and Refugee Board.

#### *Refugee Determination in Canada*

- The bill increases the bars to access to the refugee determination system, notably by denying any second claims as well as claims where there are issues of criminality or security. The CCR recommends that all claimants be granted access to the Immigration and Refugee Board and that any issues of eligibility be addressed there. Only eligibility issues that are consistent with the *Convention relating to the Status of Refugees* should be retained. Second claims should be addressed through the introduction of a re-opening mechanism.
- The CCR welcomes consolidation of decision-making at the Immigration and Refugee Board (risk review is moved from Citizenship and Immigration Canada where it is currently done). Also positive is the inclusion of protection for people at risk of torture, as required under the *Convention against Torture*. However, the Convention prohibits the return of anyone to torture, while the bill makes some exceptions. The definition of risk review is also restrictive in excluding risks faced generally in the country of origin. As well as amending these points, the CCR recommends including a provision to protect stateless persons.
- Under Bill C-31, most refugee hearings will be before a single board member, with no possibility of oral hearing at appeal. This means that a refugee will be heard by only one person. This reinforces longstanding concerns of the CCR with respect to the appointment process of board members. A transparent, professional and accountable selection process is urgently required.
- The CCR welcomes the introduction of an appeal for refugee claimants. The lack of an appeal on the merits is one of the fundamental flaws of the current refugee determination system. The CCR however calls for the appeal to be strengthened by allowing oral hearings where credibility is at issue, by allowing new evidence to be introduced, by clarifying the independence and hierarchical superiority of the Refugee Appeal Division and by allowing appeals from claimants whose claim has been declared abandoned.
- The introduction into the bill of a Pre-removal Risk Assessment is a welcome acknowledgment of the need to review potential risks faced by people about to be removed. However, the categories of people who will have access are restricted (partly because of some drafting problems) and should be expanded to cover anyone who might be at risk. In the interests of both fairness and efficiency, the Pre-removal Risk Assessment should be conducted by the Immigration and Refugee Board, not Citizenship and Immigration Canada.
- The bill provides for suspension of the removal of persons found to be at risk but where there are issues of criminality or security, they are to be left in limbo. People who have committed

crimes against humanity should be prosecuted in Canada. Other people should be allowed to apply for permanent residence (some of them may be people who have been convicted in a sham trial of crimes they did not commit).

- The bill provides for *refoulement* to torture or persecution in ways that are not consistent with international human rights obligations. The prohibition on return to torture is absolute. *Refoulement* of refugees is only allowed in cases where the refugee presents a danger to the public, not in cases where it is considered contrary to the national interest. These provisions should be corrected to comply with international instruments.

#### *Detention*

- The CCR is firmly opposed to the proposed expansions in powers of detention, which permit detention on the basis of administrative convenience and suspicion, broader powers of detention on the basis of identity, increased scope for detention without warrant, and link between mode of arrival and likelihood of detention. The CCR recommends that the only grounds for detention be danger to the public and flight risk.
- The bill envisages regulations to deal with special considerations for the detention of minors. The CCR recommends that the government go further and state in the bill that minors should not normally be detained. In addition, separation of families through detention should wherever possible be avoided.

#### *Applications for permanent residence by refugees*

- Permanent residence applications made by refugees should be addressed under Part 2, *Refugee Protection* and their speedy landing facilitated.

#### *Family reunification*

- The CCR welcomes various proposals for facilitating family reunification, but regrets that they are not incorporated into the bill. Family unity is a right and should be protected as such in the bill. In particular, spouses and children of recognized refugees in Canada should have the right to travel to Canada for processing here. Economic status (e.g. receipt of social assistance) should never be a bar to family reunification.
- The bill increases powers for collecting on debts associated with a sponsorship undertaking. There needs to be some mechanism for reviewing humanitarian circumstances before proceeding against sponsors.
- The length of spousal sponsorships is to be reduced from 10 years to 3 years, a very positive move. This should be extended to cover fiancé-e-s and children.

### *Inadmissibility and permanent residence*

- The bill expands the categories of inadmissibility, introducing some new categories that throw a very wide net (e.g. “engaging in transnational organized crime” and “misrepresentation”). The CCR calls on the contrary for the current inadmissibility categories to be narrowed.
- The current provisions for removing people on the basis of alleged security risk are unfair, both in terms of the broad definitions used and the lack of procedural protections for the individuals. Bill C-31 continues to refer to “terrorism” without defining it and to “being a member of an organization” without requiring that the individual constitute a security risk. Permanent residents accused of security issues lose access to the Security Intelligence Review Committee (SIRC). The CCR calls for the definition to be narrowed, access to SIRC to be granted to permanent residents and others, and the inclusion of a right of appeal from a Federal Court decision on a security certificate.
- Under Bill C-31, permanent residents can lose their status without any oral hearing, as a result of absence from Canada. The CCR recommends that some kind of “returning resident’s permit” be re-instated and that all permanent residents have a right to an oral hearing before the Immigration Appeal Division. This includes people who are inadmissible on the basis of criminality, security, serious human rights violations and organized crime. These categories are very broad and include people who have been convicted of no crime. Even in cases where they have committed a crime, humanitarian circumstances need to be considered (e.g. if the person has lived since infancy in Canada).
- Powers of immigration officers to examine non-citizens, including permanent residents, are extended to within Canada (instead of being limited to the border, as is currently the case). The CCR opposes this change, which treats all non-Canadians as if they are constantly at our borders, instead of members of Canadian society.
- Under Bill C-31, permanent residents lose their statutory right to enter Canada. The CCR argues that permanent residents must be treated as full members of our society and have a right to enter Canada until it has been established that they have lost their status.

### *Interdiction*

- The government has announced its intention of increasing interdiction measures, i.e. measures designed to prevent improperly documented travellers from reaching Canada. The CCR is deeply concerned about the impact of these measures on refugees, who often have no choice but to use illegal means of travel in fleeing persecution. The CCR calls for the bill to circumscribe the activities of immigration officers involved in interdiction overseas and to include the obligation to protect refugees.
- Carrier sanctions (i.e. fines on transporters, such as airlines and shipping agencies) should not be imposed when persons brought into Canada are subsequently determined to be refugees, since organizations should not be penalized for enabling refugees to flee persecution. There

should be no carrier sanctions for bringing stowaways into Canada, since they provide an incentive for throwing stowaways overboard.

- Bill C-31 exempts from penalties for illegal entry people who are subsequently found to be refugees. While this is welcome, it does not go far enough: it does not cover people who are interdicted overseas and as a result not recognized as refugees; nor does it cover people who, motivated by humanitarian concerns, assisted refugees to enter Canada.
- The CCR is very concerned at the significant increases in scope of offences and penalties associated with enforcement of the Act. They treat offences against the border as exceptionally serious crimes, which in the view of the CCR, is not at all justified. It is important to note that while most white people have the luxury of travelling wherever they want legally, many members of racialized minorities do not. The escalation of the offences and penalties, which in itself sends the message that Canada is threatened by foreigners, will have particular impact on these communities.
- The problem of human trafficking (the holding in bondage of human beings) is addressed in the bill through increased penalties for traffickers. The CCR is however concerned that there are no provisions to protect the rights of those trafficked.
- The CCR emphasizes the importance of approaching the bill with gender and anti-racist analyses. While from these points of view there are some positive aspects in the proposals, there are also many points of concern.

## RECOMMENDATIONS

- Recommendation 1      Amend the bill to remove reference to “foreign nationals”.
- Recommendation 2      Section 3 (3) (d) be amended to read “any person affected by the provisions of this Act is subject to standards, policies and procedures consistent with the *Canadian Charter of Rights and Freedoms*”.
- Recommendation 3      A further provision be added to Section 3 (3) to state that the Act is to be construed and applied in a manner that “complies with international human rights instruments to which Canada is signatory”.
- Recommendation 4      Add the words “and others at risk of human rights violations” after “with respect to refugees” in S. 3(2)(b).
- Recommendation 5      Amend S. 3(1)(i) and S. 3(2)(h) to read “to promote international justice, respect for human rights and security.” [i.e. add “respect for human rights” and delete “by denying access to Canadian territory to foreign nationals who are criminals and security risk”].
- Recommendation 6      Incorporate Article 3 of the *Convention against Torture* into the bill.
- Recommendation 7      Amend the bill to include specific reference to the *Convention on the Rights of the Child* and a clear direction that all decisions taken under the Act concerning children must make their best interests a primary consideration.
- Recommendation 8      Include in the bill the principle that minors should not normally be detained.
- Recommendation 9      Include in the bill measures to authorize the early admission to Canada of spouses and children of refugees, permanent residents or Canadian citizens, and the parents of minor refugees, permanent residents or Canadian citizens.
- Recommendation 10     Amend Bill C-31 to include protections for stateless persons on the lines of the *Convention on the Status of Stateless Persons*.
- Recommendation 11     Review the bill in the light of the February 2000 report of the Inter-American Commission on Human Rights on Canada’s refugee determination system.
- Recommendation 12     Seek an opinion on the bill from relevant international human rights bodies, notably the UN Committee against Torture, the UN Human Rights Committee and the Inter-American Commission on Human Rights.

- Recommendation 13 All matters relevant to refugees or persons in need of protection, including the resettlement program should be dealt with under Part 2, *Refugee Protection*, and not referred to Part 1, *Immigration to Canada* (S. 92(2)).
- Recommendation 14 Add to 14(2)(c) text to exclude 12 (3) (Convention refugees and protected persons) from this provision [providing for regulations on “the number of applications that may be accepted, processed or approved in a year, and the number of visas and other documents that may be issued, and the measures to be taken when that number is exceeded” i.e. quotas].
- Recommendation 15 Include a requirement for public consultation in the development of plans for refugee resettlement.
- Recommendation 16 Include in Part 2 of the bill (and not just in the regulations) a separate list of inadmissibility provisions to apply to refugees and persons in need of protection (resettled and in Canada), which list should not include inadmissibility on the basis of excessive medical demand.
- Recommendation 17 Eliminate the successful establishment criterion for resettled refugees and persons in need of protection.
- Recommendation 18 Amend S. 105 (Appeal to Refugee Appeal Division) to allow appeals to the Refugee Appeal Division from decisions overseas to reject applications for refugee protection.
- Recommendation 19 If refugees refused overseas are not given access to the Refugee Appeal Division, at a minimum exempt them from the leave requirement for applications for judicial review to the Federal Court
- Recommendation 20 Amend the bill so that all refugee claims are eligible. Any relevant eligibility issues should be addressed by the Immigration and Refugee Board in the context of the refugee hearing.
- Recommendation 21 Introduce into the bill a provision for re-opening refugee claims previously refused, for the consideration of newly available evidence.
- Recommendation 22 Amend the bill so that those who have not previously had a hearing (e.g. those who withdrew or abandoned their claim) have their claims referred to the Immigration and Refugee Board, so that they have access to an oral hearing, as called for by the Charter of Rights and Freedoms.

- Recommendation 23 At a minimum, amend the bill to make eligible claims from persons who have been refused refugee protection by Canadian visa officers abroad (who are applying different definitions and using a different determination process with inferior procedural protections).
- Recommendation 24 Amend the bill to refer all claims to the Immigration and Refugee Board, including claims involving allegations of criminality, security or human rights violations. These allegations should be considered in the context of the refugee claim determination and with reference to the exclusion clauses in the *Refugee Convention*.
- Recommendation 25 Amend the bill to refer all claims to the Immigration and Refugee Board, including claims of persons who have received refugee status in another country. The Immigration and Refugee Board should consider the question of whether the person already has meaningful protection elsewhere.
- Recommendation 26 Amend S. 93(1) by deleting the words “who is not subject to a removal order” so that claims from persons subject to a removal order can be referred to the Immigration and Refugee Board.
- Recommendation 27 Include in the bill a requirement that the Refugee Protection Division, in considering claims, first consider whether the claimant is a Convention refugee and, in the affirmative, identify the person as such.
- Recommendation 28 Amend Section 91 to add (at the end of the section) the words “unless that person has been found to be a person at risk of torture as defined in the Convention against Torture”.
- Recommendation 29 Ensure that those in Canada who have committed acts of torture be prosecuted in Canada where they cannot be extradited to another country to be brought to justice.
- Recommendation 30 Amend Section 90 (2)(b) [definition of risk], by deleting subsection (ii) “the risk would be faced by the foreign national in every part of that country and is not faced generally by other individuals in or from that country”.
- Recommendation 31 Introduce into the bill provisions to ensure a transparent, professional and accountable selection procedure for members of the Immigration and Refugee Board, on the lines of the Crépeau/Houle recommendations.
- Recommendation 32 Delete Section 101 [requiring the IRB to take into account lack of documentation in evaluating credibility].

- Recommendation 33 Amend S. 103 [cessation] to conform to the *Refugee Convention*, applying the grounds for cessation to applications by the Minister for cessation, and not making them grounds for rejection.
- Recommendation 34 Re-insert the leave requirement for applications for vacation of refugee status.
- Recommendation 35 Amend S. 105 (3) [Appeal to Refugee Appeal Division] to allow oral hearings, where credibility is at issue.
- Recommendation 36 Clarify the independence and hierarchical superiority of the Refugee Appeal Division in the bill.
- Recommendation 37 Clarify in the bill that new evidence can be introduced in the refugee appeal.
- Recommendation 38 Amend 105(1) to allow refugee claimants only (in Canada and overseas), and not the Minister, access to the Refugee Appeal Division.
- Recommendation 39 Allow appeals from claimants whose claim has been declared abandoned.
- Recommendation 40 Delete the one year period bar on second-time claimants presenting evidence.
- Recommendation 41 Have the Pre-removal Risk Assessment conducted by the Immigration and Refugee Board.
- Recommendation 42 Amend S. 108(2) to include an absolute prohibition on *refoulement* of persons to risk of torture (consistent with the Convention Against Torture), by excluding persons at risk of torture from the exceptions to the *non-refoulement* rule.
- Recommendation 43 Amend the S. 108(2) exceptions to the *non-refoulement* principle to make them consistent with the Refugee Convention.
- Recommendation 44 Amend S. 108(3) to delete “or the country from which the foreign national came to Canada has rejected their claim for refugee protection”, so that persons rejected as refugees in a safe third country cannot be removed by Canada to their country of alleged persecution, without any right to be heard on their claim.
- Recommendation 45 Limit the provisions denying full refugee protection to people who have actually committed very serious crimes and/or represent a danger to the security of Canada.
- Recommendation 46 Delete Section 50 (which provides for new grounds of detention of administrative convenience and suspicion).

- Recommendation 47 Amend S. 51(2) to restrict the powers of detention without warrant to situations where the officer has reasonable grounds to believe the person is a danger to the public.
- Recommendation 48 Amend the bill to delete identity as a ground for detention.
- Recommendation 49 In the alternative, at least limit the circumstances in which persons can be detained on grounds of identity, move S. 53 (3) to the regulations and restrict detention on the basis of identity to short-term detention.
- Recommendation 50 Omit any reference in regulations to arrival through criminally organized smuggling operations constituting a factor towards concluding that the person would not appear.
- Recommendation 51 Include in the bill a direction that minors normally not be detained and that the best interests of the child be a primary consideration in any detention decision affecting a minor.
- Recommendation 52 Include in the bill a direction that the right to family unity be taken into account in decisions relating to detention.
- Recommendation 53 Introduce into Part 2, *Refugee Protection*, provisions dealing with the acquisition of permanent residence by refugees and persons in need of protection, without any identity document or fee requirements, and introducing a fair process, with timelimits, for any security concerns.
- Recommendation 54 Consider amending the bill to grant automatic permanent residence status to everyone found to be a Convention refugee or person in need of protection. CIC would continue to be able to move to take away permanent residence status in the few cases where the persons are not entitled.
- Recommendation 55 Add the words “in Canada” to the objective S.3 (1)(d) “to see that families are reunited” and likewise in S. 3(2)(f) “by facilitating reunification with their family members”.
- Recommendation 56 Include in the bill some mechanism for determining whether there are humanitarian reasons for not collecting on debts associated with a sponsorship undertaking [S. 139].
- Recommendation 57 Amend the bill to give spouses, common law and same sex partners, and dependants of recognized refugees in Canada the right to travel to Canada for processing here.

- Recommendation 58 Reduce the length of sponsorship for fiancé-e-s and children.
- Recommendation 59 Entrench in the bill the right of all Canadian citizens, permanent residents and Convention refugees to family reunification, without discrimination on the basis of economic status.
- Recommendation 60 Delete the new inadmissibility category for transnational organized crime (S. 33(1)(b)).
- Recommendation 61 Delete the new category of inadmissibility for misrepresentation (S. 36). At a minimum include a provision for humanitarian considerations to be taken into account, particularly in cases involving vulnerable groups such as refugees.
- Recommendation 62 Define “representative of governments” (S. 31 (1)(c)) more narrowly to limit it to persons with direct responsibility for human rights abuses.
- Recommendation 63 Delete S. 30 (1) (c) [“engaging in terrorism”] and S. 30 (1)(f) [“being a member of an organization...”]
- Recommendation 64 Re-instate/grant access to the Security Intelligence Review Committee for permanent residents and non-permanent residents found to be inadmissible on security grounds.
- Recommendation 65 Delete S. 72 (c) [judge to deal with matters informally and expeditiously].
- Recommendation 66 Accord the right of appeal from a decision by the Federal Court on a security certificate.
- Recommendation 67 Provide for some kind of “returning resident’s permit” to allow people who must be overseas for more than three years to apply in advance for humanitarian consideration.
- Recommendation 68 Allow full oral appeals to the Immigration Appeal Division by persons facing loss of permanent residence on the basis of physical residence.
- Recommendation 69 Remove the bars on access to the Immigration Appeal Division to people found inadmissible on the grounds of security, violating human rights, serious criminality or organized crime.
- Recommendation 70 Restrict immigration officers’ authority under S. 15 to the authority to examine persons seeking to enter Canada (i.e. delete reference to authority to examine persons inside Canada).
- Recommendation 71 Amend S. 19 to assert the right of permanent residents to enter Canada unless their loss of status has been established.

- Recommendation 72    Include in the bill rules about the enforcement activities that can be undertaken by immigration officers overseas and include the obligation to ensure that, in any interdiction activities, refugees are protected, including from *refoulement*.
- Recommendation 73    Exempt carriers from sanctions when they bring into Canada persons who are subsequently determined to be refugees.
- Recommendation 74    Exempt carriers from sanctions when they bring stowaways into Canada.
- Recommendation 75    Narrow the scope of offences and reduce the penalties associated with contravention of the act and strengthen protections of civil liberties.
- Recommendation 76    Focus offences on smugglers and not those who are smuggled.
- Recommendation 77    Exempt from offences related to illegal entry people acting on humanitarian motives.
- Recommendation 78    Include measures in the bill to identify victims of trafficking and offer them particular protection, in the light of their status.