

**Brief to Standing Committee on Citizenship and Immigration**  
**Re: Bill C-31, "Protecting Canada's Immigration System Act"**

**Submitted by:**  
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**(OCASI)**  
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**Summary**

This brief highlights some of our main concerns with Bill C-31.

OCASI calls on the government to withdraw Bill C-31, and bring forward legislation which is fair, timely, affordable, and independent of political considerations, and which complies with the Charter of Rights and Freedoms and Canada's international obligations.

OCASI is deeply concerned that the Bill would create a multiple-tier system of refugee protection in Canada which could result in some claimants being denied the right to appeal. It makes refugee protection in Canada dangerously vulnerable to political whims, rather than ensuring a fair and independent decision about who is a refugee. It subjects some refugees to different and harsh treatment based on the country of origin, mode of arrival and whether or not the person has citizenship in Canada.

Bill C-31 is a complex piece of legislation containing a wide variety of measures that could put refugees at risk. While OCASI has serious concerns about the majority of the provisions in the Bill, the following four are among the most troubling aspects: shorter time limits; safe country list; use of detention; and loss of permanent resident status. Our concerns about each aspect are explained in detail below.

**Introduction**

The Ontario Council of Agencies Serving Immigrants (OCASI) is the umbrella organization for the immigrant and refugee-serving sector in Ontario. The Council was formed in 1978 to act as a collective voice for immigrant-serving agencies and to coordinate responses to shared needs and concerns. OCASI is a registered charity governed by a volunteer board of directors. Our membership comprises more than 200 immigrant and refugee-serving organizations located across Ontario.

The government introduced Bill C-31 on February 16, 2012 as a way to reform Canada's refugee determination system. Canada has a strong reputation for refugee protection globally. At the same time, our commitment to those seeking asylum in Canada has been diminishing.

In 2010 Canada accepted only 24,696 refugees in all classes. This was about 11,000 fewer than the 35,776 refugees accepted in 2005<sup>1</sup>. In 2005, refugees in all classes accepted in Canada were about 13% of all permanent resident arrivals. Refugees accepted in 2010 were only 8% of all permanent resident arrivals, a drop of almost 5%.

The majority of provisions in Bill C-31 are focused on refugee claimants.

In 2005 the number of refugee claimants present in the country constituted approximately 0.3% of the Canadian population. In 2010 the percentage of refugees compared to the Canadian population was slightly lower at 0.28%. In 2010, 3,438 fewer refugee claimants entered Canada compared to 2005. Meanwhile, the number of people forcibly displaced in countries around the world has grown.

OCASI is deeply concerned that Bill C-31 will reduce even further, the number of individuals who seek to enter Canada in search of asylum.

The Minister of Citizenship, Immigration and Multiculturalism has said that Canada welcomes more resettled refugees per capita than any other country. Meanwhile, according to the UNHCR Global Trends Report 2010 released in 2011, 80% of the world's refugees are in the global south, in the world's poorest countries such as Pakistan and the Congo. The report found that roughly 43.7 million people are displaced worldwide. Of that number, 27.5 million people are displaced within their own country due to conflict.

In the global context, Canada's involvement in resettling refugees while admirable, doesn't quite measure up to the commitment of other countries in the world. According to the UNHCR<sup>ii</sup>, in 2010 Canada had 4.2 refugees to GDP per capita compared to Pakistan at 709.7, Congo at 475, Kenya at 247.3 and Chad at 224.5. The comparison becomes more stark when one considers the fact that Canada's GDP per capita is considerably higher than that in the countries named.

OCASI is also deeply concerned about the growing anti-refugee sentiment in Canada and the extent to which this could be exacerbated by government messaging about the Bill. Messages that characterize asylum seekers in stereotypically hurtful ways, suggesting that they are 'bogus' and are a drain on Canadian society can have a harmful effect. We are also deeply troubled by the misperception that these measures are necessary because Canada is facing supposed floods of refugees. This messaging contributes to increased intolerance towards refugees and has a harmful impact on their resettlement opportunities in Canada.

## **Key Concerns**

Bill C-31 is a complex piece of legislation containing a wide variety of measures that could put refugees at risk. While OCASI has serious concerns about the majority of the provisions in the Bill, the following four are among the most troubling aspects:

### **1. Shorter Time Limits**

The Bill gives those who make a refugee claim at Canada's ports of entry only 15 days to submit a written version of their refugee claim to the Immigration and Refugee Board (IRB). For many claimants, the time allowed will not be sufficient to obtain legal advice and prepare for the complicated legal requirements of the definition of Convention Refugee.

The shorter timelines will have the greatest impact on refugees who need time to build trust before they can tell their story before the IRB, and on refugees who lack important documents. Refugees who will be most disadvantaged would be those who have experienced torture, women and men who have experienced sexual violence, and LGBTQ refugees making a claim on the basis of sexual orientation and identity.

The Bill requires that an appeal must be filed within 15 working days. The combination of the two restrictive time limits can result in many valid claims being denied because of insufficient preparation.

The refugee hearing is the most crucial element in the process to determine whether an individual is a convention refugee. Bill C-31 severely reduces the period allowed for this process to 30 days for an individual from a ‘designated country’ and 60 days for everyone else. OCASI is deeply concerned that this would not give the claimant sufficient time to meet the complex requirements of the convention refugee determination. Under Bill C-11 the ‘Balanced Refugee Reform Act’ which has Royal Assent, the government had allowed 60 days for a claimant from a ‘designated country’ and 90 days for other claimants.

## 2. Safe Countries list

Bill C-31 will give the Minister of Citizenship and Immigration sole discretion to designate certain countries of origin as safe, and gives refugee claimants from those countries only 30 days to prove their claim (instead of the 60 days given to everyone else). They will also not have the right to appeal a negative decision.

A country that is seemingly ‘safe’ for some residents may be unsafe for others, particularly minorities including LGBTQ individuals who may face a different level of risk and women and men at risk of gender-based violence. Such individuals may not receive state protection because of systemic discrimination among the police and judiciary. They may be at risk of violence and persecution from family members and individuals they know in their personal and public lives. Every such refugee claim is context-specific and must address a complex set of factors in order to ascertain both persecution and whether state authorities have failed to protect the individual. They may often require more preparation. Under Bill C-31 these claimants will now have less time to establish to make their case.

Refused claimants could be deported after 45 days from the date of making their claim. A refugee claim may be denied for a variety of reasons, including because of mistakes and poor representation of the claimant. Denying a claimant access to an appeal is unfair, and the subsequent deportation will have serious consequences.

The importance of allowing a claimant sufficient time to prove a claim as well as allowing access to an appeal is tragically demonstrated by the following case:

Grise, a young Mexican woman, sought refuge in Canada from drug traffickers, who were persecuting her family. She was refused refugee status. After her return to Mexico,

she was kidnapped by the people she had originally fled. In June 2009, she was found dead, with a bullet in her head. She was 24 years old.

Grise might be alive today if she had had access to a refugee appeal. If Mexico were designated a safe country of origin, Grise would face the same risk of death under Bill C-31<sup>iii</sup>.

In another deeply troubling aspect, Bill C-31 gives the Minister virtually unrestricted authority to designate any country, on the basis of claim rate and rate of acceptance at the IRB.

When Bill C-11 the 'Balanced Refugee Reform Act' was introduced, the government agreed with all the political parties in Parliament to put restrictions on the Minister's power. The Bill which is due for implementation on June 29, 2012 provides for a check on the Minister's sole authority in the form of an advisory panel of experts. The panel is to be established by the Minister. It would include at least two non-government human rights experts must make a recommendation supporting the designation before the Minister can proceed.

We are at a loss to understand why this safeguard is removed in Bill C-31, despite the fact that it's inclusion in Bill C-11 was welcomed by the government. The lack of a safeguard on the Minister's power will allow Canada's present system of independent decision-making for refugees to run the risk of becoming vulnerable to economic and geopolitical interests.

### 3. Use of detention

Bill C-31 allows the Minister to designate refugees who arrive in a group as 'irregular arrivals', which would subject them to different treatment. Anyone within the designated group will be put in jail and will not have the right of judicial review until the end of one year. In a deeply troubling violation of the Convention on the Rights of the Child to which Canada is signatory, children 16 and over will also be detained and children under 16 would be forced to choose between being detained with their parents or being put into state care.

Those who make a successful refugee claim will not be allowed to apply for permanent resident status for five years after the date of acceptance of their claim, which can keep families apart for five years or more. Claimants in the designated group will not have a right of appeal if their claim is denied.

This measure is a harsh response to the largely media-generated hysteria that surrounded the arrival by boat of a group of 76 Tamil asylum seekers in 2009 and a group of 490 in 2010. This is not the first time that asylum seekers have had to resort to travelling by sea to reach safe haven.

In May 1939 the passenger ship the St. Louis, carrying more than 900 Jewish refugees sailed from Hamburg. Upon arrival at our shores, the Canadian government refused permission to land and the ship was turned back. Many of those on board were eventually killed in the Holocaust.

In contrast, Canada accepted over 100,000 refugees from Southeast Asia, mainly those who became known as the 'boat people' because of their escape by boat from Vietnam to neighbouring countries. This generosity earned Canada the UN High Commissioner for Refugee's Nansen Medal, in 1986, the only time that medal has been awarded to an entire nation.

Over the past twenty-five years there have been only 8 arrivals of ships carrying more than 25 migrants to Canada, occurring in 1986, 1987, 1999, 2009 and 2010. The arrivals totaled approximately 1500 people, representing only a fraction of all refugee arrivals during that period<sup>iv</sup>. Yet these arrivals have been met with a disproportionate outpouring of negative and harmful anti-refugee sentiment in public policy debates.

OCASI suggests that the harsh measures included in Bill C-31 will further exacerbate the negative environment towards refugees and can have a detrimental impact on refugees' resettlement opportunities in Canada. These measures are said to be in place to prevent human smuggling. But rather than do that, the Bill will make it more difficult for asylum-seekers to find safe haven in Canada and put them at greater risk of other forms of exploitation.

#### 4. Loss of Permanent Resident status

The Bill contains a completely new measure to revoke permanent resident status of those who arrived as refugees and were granted protection, regardless of how long that person has lived in Canada. The measure will put anyone granted refugee status and who has not yet obtained Canadian citizenship at risk of loss of status and deportation.

Even if the Minister identifies a country as safe from persecution based on sexual orientation, gender identity and gender-based persecution, LGBTQ refugees and women and men who have fled gender-based persecution may still face conditions of individual and personal threat and persecution. Their lives would be put at risk if they were to lose permanent resident status and are deported.

Under this measure, the person has no right of appeal and can be deported immediately. Access to an appeal would at least allow LGBTQ refugees and those who fled gender-based persecution the opportunity to present their individual circumstances that warrant the maintenance of their status in Canada.

This measure exempts citizens. However, individuals who arrived as refugees and are now permanent residents may not have obtained Canadian citizenship for a number of different reasons. Some may still be in the process of obtaining the necessary documents. Others may not have opted to seek Citizenship because the country of birth does not permit dual citizenship and may have consequences for attempting to give up citizenship. Despite making their home in Canada in all aspects save obtaining Canadian citizenship, some individuals will be singled out and threatened with loss of permanent resident status and deportation. The measure will have a serious impact on the many refugee communities in Canada.

This procedure will not be covered by legal aid. It would leave those unable to afford a lawyer, without legal representation in this serious matter. OCASI is deeply concerned that this measure will increase the burden on immigrant and refugee-serving agencies. Agencies in Ontario are already impacted by cuts to settlement funding and are anticipating future cuts. They do not have the resources or expertise to assist clients to deal with the potential loss of permanent resident status and deportation.

## Conclusion

Bill C-31 creates an unfair refugee system. It gives the Minister broad, vaguely defined powers with no oversight or accountability, thus creating a dangerous precedent. The Bill violates the Canadian Charter of Rights and Freedoms and ignores our international obligations under the Geneva Convention (on refugees) and Convention on the Rights of the Child. It is counter to Canada's humanitarian tradition and values.

OCASI urges the Standing Committee to recommend that the Bill should be withdrawn.

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<sup>i</sup> Facts and Figures 2010 – Immigration Overview: Permanent and Temporary Residents. Citizenship and Immigration Canada. <http://www.cic.gc.ca/english/resources/statistics/facts2010/index.asp>

<sup>ii</sup> UNHCR Statistical Yearbook 2010, UNHCR. <http://www.unhcr.org/4ef9cc9c9.html>

<sup>iii</sup> "Refugee Reform: Weighing the proposals". Canadian Council for Refugees. <http://ccrweb.ca/files/C-11weighingproposal.pdf>

<sup>iv</sup> "Hysteria and discrimination: Canada's harsh response to refugees and migrants who arrive by sea" by Alex Neve and Tiisetso Russell. University of New Brunswick Law Journal. Annual, 2011. [http://findarticles.com/p/articles/mi\\_7000/is\\_62/ai\\_n57969684/](http://findarticles.com/p/articles/mi_7000/is_62/ai_n57969684/)