



Submission of the Barbra Schlifer Commemorative Clinic, The Metropolitan Action Committee on Violence Against Women and Children (METRAC), and the Women's Legal Education and Action Fund (LEAF) to the Parliamentary Standing Committee on Immigration regarding the Committee's review of Bill C-31

April 24, 2012

Bill C-31, introduced by the government of Canada on February 16, 2012, contains provisions that will result in the arbitrary detention, intimidation, failure to protect, and ultimate re-victimization of highly vulnerable people who seek asylum in Canada, and who are also positioned to ultimately contribute significantly to Canada once settled. We are particularly concerned about the impact of Bill C-31 on women survivors of violence and children.

Background of the Barbra Schlifer Commemorative Clinic, METRAC, and LEAF

The Barbra Schlifer Commemorative Clinic is a front-line service provider to women who have experienced all forms of violence. Our services include free legal representation, professional counselling and multilingual interpretation. We also engage in various public advocacy initiatives, including public legal education, clinical education for law students, and law reform. We assist over 4000 woman every year to build lives free from violence.

METRAC is a non-profit, community-based organization that works to prevent violence against women and youth from diverse backgrounds. Established in 1984, METRAC has delivered Safety Audits and training, peer-directed violence prevention for youth, innovative public education, legal research and policy work, and legal information for service providers and women.

LEAF is a national, federally incorporated non-profit organization founded in April 1985 dedicated to promoting substantive equality for women through legal action, research and public education. Central to LEAF's commitment to substantive equality is identifying and addressing the inequalities suffered by women who experience discrimination on multiple and intersecting grounds, such as on the basis of immigrant status, race, place of origin, poverty, disability and religion. LEAF has intervened in over 150 equality rights related cases at the Supreme Court of Canada and provincial appellate courts and has contributed to the development of equality rights jurisprudence and the meaning of substantive equality in Canada. LEAF also has a long history of submissions to House of Commons committees on the impacts of proposed legislation on women, and in particular marginalized and vulnerable women.

Summary of Main Concerns with Bill C-31

We are gravely concerned that Bill C-31 will:

- Impose unreasonably short deadlines on asylum-seekers, thereby preventing legitimate claims from being properly presented;
- Designate certain countries as 'safe' when in fact they are not safe for women;
- Lead to the deportation of women survivors of violence prior to an individualized risk assessment;
- Severely limit access to vital humanitarian and compassionate applications, which are often the last resort for women refugees and their children;
- Impose one year of automatic detention on certain refugee claimants which may re-traumatize those who have fled violence;
- Prevent family reunification for at least five years for certain refugees, endangering women and children left behind who are waiting for sponsorship;
- Allow the permanent residence of legitimate refugees to be withdrawn at any time, creating a sub-class of new Canadians who can never fully settle and feel safe;
- Conflict with Canada's obligations under sections 7 and 15 of the *Charter*, the *Convention relating to the Status of Refugees* (1951) and its *Protocol* (1967), the *United Nations Convention against Transnational Organized Crime* (2000), the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (2000), the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000), and the *International Covenant on Civil and Political Rights* (1966).

Background Information on Women Refugee Claimants

Through our work we have encountered several common scenarios involving women refugees:

- Women fleeing abuse at the hands of an intimate partner. Often women arrive in Canada not knowing about or understanding the refugee determination system;
- Women arriving in Canada with an abusive partner, whose claims for refugee protection are joined. Typically women in this situation have very little or no direct involvement in making their claim for refugee status; and
- Women leaving an abusive partner in Canada while an inland spousal sponsorship application is in process, resulting in a 'sponsorship breakdown' situation. These women, despite exhibiting remarkable resilience, are often scared, confused and extremely vulnerable.

Refugee women often struggle with post-abuse trauma, as well as language barriers, and social isolation. As a result, there are often very steep barriers to asserting their legal rights and dealing with their lack of immigration status.

Women in each of these scenarios will have fewer rights if the changes proposed under Bill C-31 are passed into law. As a result, a significant number of women will never have their own risk of persecution or hardship assessed prior to being deported from Canada.

Changes to Refugee Determination System

Under Bill C-31, many of the problematic changes introduced but not yet implemented in Bill C-11 are exacerbated. In our view, the cumulative effect of the changes will be to block a significant number of women from having any meaningful access to the refugee determination system.

Unreasonably Short Deadlines

Under Bill C-31, refugee claimants will have 15 days to provide a written statement detailing the basis of their refugee claim. Hearings will take place within 30 to 60 days of making a claim.¹ Appeals must be made within 15 days of a refusal. It is

¹ Note this depends upon whether a claim is made inland or at a port of entry and upon whether the claimant comes from a 'Designated Country of Origin' (See, respectively, Bill C-31, s. 56 amending the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("IRPA") by adding ss. 100(4) and (4.1) (replacing s. 11(2) of *BARRA*); and Citizenship and Immigration Canada, Background - Summary of Changes to

unreasonable to expect a full and complete application or appeal to be prepared in such a short time because of the amount of time required to apply for legal aid, retain legal counsel, gather evidence in support of the claim, and communicate the basis of one's refugee claim, which can be a very painful and traumatic experience, and which takes time to recount and relay. The effect will be that legitimate claims will not be properly presented and therefore denied.

Designated Safe Countries

The 'designated country' provisions give the Minister broad discretion to designate countries as 'safe'. Refugee claimants from these designated countries will then have fewer procedural protections. The concept of safe countries is flawed in principle, as it is by definition based on past experience, such as rejection rates and perceptions of a country not generally producing refugees, rather than on current, individualized assessments. This fails to account for new developments in the country of origin, new understandings of risk, the claimant's individual need for protection, and systemic inability or unwillingness to protect certain identifiable groups.

These provisions fail to recognize that women often experience systemic discrimination and unchecked gender-based violence in countries that are otherwise considered safe. The problem is exacerbated by the loss of an expert panel to determine the list of designated countries, and by removing the discretion to recognize that a country may be 'safe' for some citizens, but not for others.

Increased Possibility of Deportation of Women Prior to Risk Assessment

Women refugee claimants whose application is joined with an abusive partner are further affected by changes to the system for appeals. If a woman refugee is prevented from getting a fair hearing because of a controlling, abusive partner, she has very limited recourse, as Bill C-31 removes the ability of the Refugee Board to reopen cases even when there has been a breach of natural justice.² If a woman leaves an abusive partner after a final refugee board determination, she has no right to a Pre-Removal Risk Assessment (PRRA) for 12 months, even though the grounds of her own risk have never been assessed.

Canada's Refugee System in the *Protecting Canada's Immigration System Act*, February 16, 2012, online: <www.cic.gc.ca/english/department/media/backgrounders/2012/2012-02-16.asp>.)

² Bill C-31, s. 51 amending *IRPA* by adding ss. 170.2.

Changes to Humanitarian and Compassionate (H&C) Applications

Under Bill C-31, a refugee claim and an H&C application may no longer be in process at the same time.³ In addition, subject to two exceptions, a claimant will not be able to submit an H&C application for one year after her refugee claim is denied.⁴ Both changes will limit the ability of women survivors of violence to access fair and meaningful remedies to injustice.

Women's experiences of persecution differ from that of men: women often suffer domestic violence with little protection from the state and throughout the migration experience, and are exposed to danger less often at the hands of state actors, or state actors alone. As such, women's experiences of horrendous abuse and violence most often do not fit neatly into the traditional refugee definition. The H&C regime has always been intended to function as a safety net for such circumstances of hardship that are recognized as unjust and warranting humanitarian and compassionate intervention. As H&C applications do not prevent an applicant's removal from Canada, it is imperative to be able to submit an H&C application while a refugee claim is in process, to increase the likelihood that a full and fair decision will be made prior to removal proceedings being carried out.

Furthermore, H&C applications are often the last resort to prevent the separation of a mother and child in Canada, when the mother is facing deportation. For this reason as well, women refugees must have the opportunity to make refugee claims and H&C applications at the same time.

Finally, many women will be denied the opportunity to submit an H&C application due to the ban on H&C applications within one year of a negative refugee determination. Given the short timelines of the new process, the intention to remove failed claimants from Canada 'as soon as possible', and the lack of access to a further risk assessment prior to removal, it is likely that most claimants will not be able to remain in Canada long enough to have access to an H&C application. As such, many women will be removed from Canada without having had meaningful access to either the refugee determination process *or* an H&C application.

³ Bill C-31, s. 11 (3) amending *IRPA* by replacing ss. 25 (1.2)(b).

⁴ Bill C-31, s. 11 (3) amending *IRPA* by replacing ss. 25 (1.2)(c). Note, this provision does not apply to those "(a) who, in the case of removal, would be subjected to a risk to their life, caused by the inability of each of their countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, to provide adequate health or medical care; or (b) whose removal would have an adverse effect on the best interests of a child directly affected" (Bill C-31, s. 11 (3) amending *IRPA* by adding ss. 25 (1.21)).

Automatic One-Year Detention for “irregular arrivals”

Under Bill C-31, groups of refugees who arrive in Canada in an “irregular” manner may face immediate imprisonment for twelve months, without the right to go before a judge to challenge their imprisonment. The rule will apply to anyone 16 years or older.

The effect of such a measure on women fleeing violence, rape, incest and torture is potentially devastating. Confinement may trigger psychological effects from previous trauma; the feelings of powerlessness and injustice from the inability to explain their case to an adjudicator may compound the effects of abuse already suffered. Children who are imprisoned will suffer similar effects. Young children, who are spared imprisonment, will suffer from being separated from their imprisoned parents.

Furthermore, this measure may disproportionately affect women, because they are often forced to flee individual and institutional persecution that is not recognized by their state. As a result, migration by “regular” methods is not available.

Forced Family Separation for Five Years

Bill C-31 will force hardship on refugees who arrive in Canada in an “irregular” manner, by preventing those who are ultimately granted refugee status from applying for permanent residence for five years. Without permanent residence, a person cannot sponsor a family member to immigrate and join them in Canada.

In cases where wives, partners, mothers and children are unable to flee with a male family member, they will be left behind for a minimum of five years, despite the recognition of conditions producing legitimate refugees. During this imposed waiting period under Bill C-31, women and children will continue to languish, endure persecution, violence and possible death. The forced separation of partners and spouses may foster family breakdown, leaving family members behind to dire conditions, and tragic consequences.

In cases where women are forced to flee persecution and are unable to make the journey to Canada with their children, mothers and children will be forcibly kept apart for a minimum of five years, and then the resulting time to process sponsorship to allow for reunification.

In cases where children are left behind, young children may eventually be reunited with parents they do not know; older children may become too old to qualify for family sponsorship.

The physical and psychological effects of Bill C-31 will be severe on individual men, women and children both inside and outside of Canada, by forcing families to stay apart for a prolonged period.

Additionally, successful refugees caught under these provisions of Bill C-31 will not be entitled to a travel document for at least five years.⁵ Consequently, women who are separated from their children and other family members will not be able during this time to reunite even briefly with family members abroad.

General Increased Powers of Detention

Under Bill C-31, any person detained by immigration authorities may have their detention extended if the Minister has a 'reasonable suspicion' that a crime has been committed.⁶ In our experience, many women have been criminally charged due to false reports by abusive partners seeking to exert power and maintain control. Indeed, we have noted a recent rise in the number of these false reports. This provision has the potential to place further power into the hands of abusers. Indeed, merely arousing a suspicion of criminality is enough to ensure that a person is kept in detention. Perversely, this could lead to women being detained as a result of attempting to flee their abusive partners, as abusers may seek to maintain control by reporting false charges.

Unlimited Right to Withdraw Permanent Residence

Under Bill C-31, refugee claimants who are found to be legitimate and granted refugee status, and who become a permanent resident, may be automatically stripped of their permanent residence and deported to their country of origin, if it is subsequently found to have ceased to be a risk.⁷ Deportation will be possible regardless of the length of time a person has been living in Canada, and regardless of the extent of establishment in Canada.

This provision could tear apart families where the person subject to deportation has a partner or children who are Canadian citizens. Individuals and families could be forced to return to a country where there are no ties, and where lives will have to be rebuilt again.

The constant threat of such upheaval and displacement is a form of abuse. Such destabilization will contribute to the trauma that refugees have already suffered from persecution in their countries of origin, and undermine their ability to live in health, security and safety.

⁵ Bill C-31, s. 16 amending *IRPA* by adding s. 31.1.

⁶ Bill C-31, s. 26(1) amending *IRPA* by changing s. 58(1)(c). Both permanent resident and foreign national detainees are included in this provision.

⁷ Bill C-31, s. 19 (1) amending *IRPA* by adding ss. 46 (1)(c.1); Bill C-31, s. 18 amending *IRPA* by adding ss. 40.1.

Furthermore, the provision will create a sub-class of immigrants who will feel and be regarded as never fully accepted in Canada. In addition to the toll this will take on individuals, it will undermine any claim that Canada is a true refuge for victims of persecution.

Changes to the Removal Regime

Often the last resort for women who are facing imminent removal from Canada is to ask an immigration officer to exercise his or her discretion to delay deportation until an underlying application (usually either an H&C or a PRRA application) is decided. The availability of this discretion is imperative for women facing deportation in circumstances where her own risk has not been assessed by an immigration decision-maker—a situation which is likely to occur more frequently if Bill C-31 is passed into law.

Bill C-31 imposes a further restriction on the already narrow discretion of enforcement officers to defer removals, by calling for removal “as soon as possible”.⁸ It also establishes the authority to make regulations that would outline the factors to be considered in determining when enforcement is “possible”.⁹ Fettering the discretion of immigration officers would further increase the possibility that women will be deported from Canada without having their risks of persecution and severe hardship assessed.

Compounded Negative Impact on Women

Women who do get access to a PRRA will struggle to meet the new, shorter deadline. Women from designated countries will face additional barriers, as they will not have access to an appeal and will be subject to removal proceedings approximately 45 days after filing a refugee claim in Canada. Removal may proceed, regardless of whether their original refugee decision was unreasonable, and regardless of whether the refugee claim contained any information of their own risk of violence.

These changes, considered cumulatively, remove the ability of a significant number of women who come to Canada with their abusers and rely on the abuser’s refugee claim while living under his power and control, to have their risk of persecution assessed *at all*. The lives of many women will be put at risk and Canada’s reputation as a safe haven of gender equality will be severely undermined.

⁸ Bill C-31, s. 20 amending *IRPA* by replacing ss. 48(2).

⁹ Bill C-31, s. 22 amending *IRPA* by replacing ss. 53(e).

Canadian Charter of Rights and Freedoms

In light of the many and severe negative effects of Bill C-31, which will have a disproportionately greater impact on women, as discussed above, we believe that the proposed regulations may violate the equality rights of immigrant women protected under s. 15 of the *Charter*.

Further, the proposed law also poses serious threats to the safety, health and wellbeing of women and children. As already discussed, the proposed measures will expose women survivors of violence to further risk. We therefore believe that the proposed regulations may violate the *Charter's* s. 7 rights to life, liberty and security of the person of the affected women and children.

Conclusion

If Bill C-31 is passed into law, a significant number of women may never have their own risks or hardships assessed prior to being removed from Canada. It is a common scenario that an abused woman never substantively participates in a refugee claim, appeal, or judicial review, instead being subsumed in the claim of her abusive partner. Under Bill C-31, a woman in that situation may not reopen her refugee claim under any circumstances. She will not have access to her own PRRA application for 12 months after a final determination, a period during which the government will likely attempt to deport her. In the meantime, she is not permitted to submit an H&C application during her refugee claim. If she falls under an exception that allows her to submit an H&C application after a refugee determination, the application will not prevent her removal from Canada, and the narrow discretion of immigration officers to defer removal will be further limited. As such, many women, including survivors of some of the most horrendous forms of violence, will never have their voices heard in the Canadian refugee and humanitarian system.

Bill C-31 will have a severe impact on women refugees by denying them a fair opportunity to have their refugee claims considered with a reasonable time to prepare, and distinct from an abusive partner. It has the potential to increase abused women's exposure to violence in Canada by increasing the abuser's power and control over her as a dependent to his claim. It will significantly delay family reunification for refugees who arrive in an irregular manner, with potentially dire circumstances for women and children left behind in dangerous homelands. The failure of Bill C-31 to recognize gender-based conditions of persecution has the potential to exacerbate the inequality that women refugees have historically suffered. And it will create a sub-class of new Canadians who can never fully settle and feel safe, because they are forever at risk of being stripped of their permanent residence, and sent back to a homeland, regardless of how long ago they left.