

Submission to the Standing Committee on Citizenship and Immigration on Bill C-31 the Immigration and Refugee Protection Act

August 15, 2000

Introduction

The Evangelical Fellowship of Canada (EFC) appreciates the opportunity to participate in these hearings on Bill C-31.

The EFC is an association of 32 Protestant denominations and its membership includes numerous church-related organizations, churches and individuals. It is estimated that there are approximately 3 million evangelicals in Canada, of which an estimated 1.2 million are affiliated with EFC member organizations. We participated in the Department of Citizenship Immigration (CIC) Legislative Review in March 1998 and responded to the White Paper on Immigration in March 1999. We made a submission to the Standing Committee on Citizenship and Immigration on Bill C-63 on April 22, 1999.

The biblical teaching calling us to care for our neighbour, particularly those who are vulnerable, motivates us to be involved in refugee issues. Refugees are among the most vulnerable groups in our world. Those who have fled their homes because of threat of torture or death are in a precarious situation — in an unfamiliar country, living in fear, among strangers.

Some of EFC's member denominations are Sponsorship Agreement Holders with the Canadian government; others are active in providing assistance to refugees and other newcomers to Canada in various ways. Our concern about the refugee system is also informed by our monitoring of international religious persecution. EFC established a Religious Liberty Commission in 1997 to promote freedom of religion for all people in the world. This commission, chaired by Dr. Paul Marshall, monitors religious freedom, responds to infringement of religious liberty and communicates the need for constant vigilance in maintaining religious liberty.

Our comments and recommendations on Bill C-31 flow primarily from our experience with those who are persecuted for their religious beliefs.

Refugee Provisions

We applaud Bill C-31's objective in section 3(2)(a) "to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted."

Living in the peace and security of Canada, it is often difficult to realize that in many parts of the world people are persecuted for their religious beliefs. However, religious persecution is widespread internationally. Right now, it is estimated that over two hundred million people are persecuted for their faith and four hundred million suffer from discrimination and legal impediments.¹

It is to Canada's honour that refugees are welcomed and sheltered here.

Canada must treat genuine refugees with fairness and compassion. We are concerned that some of the provisions of Bill C-31 keep it from attaining its objective of saving lives and offering protection to the displaced and persecuted. Specifically, we are concerned about the bill's provisions on identification documents, serious criminality and prior claims, as well as to its objective of the family reunification of refugees. We also have some general comments about the overseas resettlement program.

A. Identification Documents

People fleeing persecution may not be able to obtain required identification documents. Refugees, by definition, are those who face the threat of death or violence, sometimes by their own governments. If the government is the agent of persecution, it may withhold documents or the one who is persecuted may call attention to himself or herself by applying for identity or travel documents. As well, some countries are not stable enough to have document-granting agencies; others may not recognize life changes such as marriage or birth by issuing documents. Refugees may be refused identification documents, subject to long delays or unable to apply for them due to desperate circumstances

Even if one has had identity documents in the past, circumstances may make it necessary to leave them behind or they may be destroyed. One Sudanese refugee recently told us of the difficulty in presenting the required documents. She pointed out the difficulty of stopping to find and pack the required “school leaving certificate” before fleeing a burning village.

In order to travel to safety, refugees may use fraudulent identification documents. As this committee has found, “the flight to freedom is often fraught with peril, speed and the necessity to use whatever means are available to reach safety.”² We do not endorse the use of fraudulent identification documents, however we recognize that this is a fact of life for many refugees.

Upon reaching Canada, genuine refugees may not retain their identification papers. If they are using false papers, they may be afraid that this will cast their refugee claim in a negative light. They may destroy false papers on the advice of those who provided them, or as a condition of their use. The lack of identification documents alone should not negatively affect a refugee claimant’s credibility.

Even with great incentive to retain or obtain identification documents, a growing number of Convention refugees do not have them. According to CIC,

The phenomenon of persons arriving without documentation who are subsequently determined to be Convention refugees began to occur in significant number in 1990. This trend continues, despite legislative provisions aimed at encouraging refugees and claimants to retain whatever documentation they possess.³

One form this “encouragement” has taken is the refusal to grant permanent residence to refugees without satisfactory identity documentation, through legislation passed in 1993. Without permanent resident status, a refugee cannot sponsor their immediate family members to come to Canada. Even with this great incentive to obtain identity documents, a growing number of Convention refugees cannot obtain them. CIC states: “It was recognized that the great majority of persons in this situation were genuine refugees who, through no fault of their own, were unable to obtain an identity document from their country of origin”⁴ While some small minority of refugee claimants may destroy their identity papers in order to hide information about themselves, this is not the majority of refugee claimants. In attempting to exclude the small minority of deceitful claimants, we must be careful to be fair and compassionate to the majority who are honest.

i) Credibility

Bill C-31’s provisions on identity documents are likely to exclude genuine refugees from receiving protection in Canada. The bill proposes a prohibition against the possession and use of fraudulent immigration-related documents (s. 115). Bill C-31 seems to acknowledge the situation of refugees by proposing an exemption from prosecution for refugee claimants while their claims are being processed and if they are found to be refugees.

However, this same proposed legislation requires the Refugee Protection Division to consider a claimant’s lack of identity papers when it considers the credibility of the claimant (s. 101). While the exemption seems to recognize the reality of refugees’ lives, this recognition is sabotaged by the requirement to consider those refugee claimants without identity papers as less credible. Less credible refugee claimants are less likely to be granted refugee status. An appeal to the Refugee Appeal Division would be a paper process, in which it would be difficult to establish credibility. If the claimants are refused refugee status, they may then be subject to prosecution for using false identity papers, which carries a penalty of up to 14 years in prison.

Would these refugees be considered any more credible if they kept the fraudulent documents and did not destroy them? Bill C-31 acknowledges the need of some genuine refugees to use fraudulent documents to travel to safety, yet it places them in a position where their claim for protection is less likely to be accepted. This provision does not demonstrate understanding of the situations refugees face; rather, it seems to be a vicious circle which does not promote fairness or compassion.

We recommend the deletion of s. 101 from Bill C-31, which would remove the requirement for the IRB to consider the lack of documentation in evaluating credibility.

ii) Document Offences

In addition, we question whether the reverse onus provisions, in the prohibition against the possession of false papers, would infringe on the right to be presumed innocent under section 11(d) of the *Charter of Rights and Freedoms*.

We encourage this committee to review the possession offence in s. 115 to determine whether it is consistent with the *Charter* right to be presumed innocent.

iii) Interdiction

CIC announced increased overseas interdiction, turning back those who are undocumented before they reach Canada. The discovery of fraudulent identity papers may place refugees in jeopardy in the country they are attempting to leave. If that country has laws against the use of fraudulent documents, as Bill C-31 proposes, this discovery could lead to refugees being imprisoned. Further, they would then be considered serious criminals under the definition set out in Bill C-31, and ineligible to make a claim for refugee status in Canada. Alternatively, this discovery could result in the return of refugees to countries where they are being persecuted.

This scenario points to changes that should be made to Bill C-31's provisions on serious criminality, which we will address in the following section. It also leads to some of our comments on overseas resettlement in section D.

Bill C-31 acknowledges that refugees fleeing persecution may not have proper documentation. Turning improperly documented refugees away before they reach our border transgresses the spirit of Canada's humanitarian commitments in the 1951 United Nations *Convention Relating to the Status of Refugees*, if not the actual requirements.

B. Serious Criminality

We are pleased that serious criminality includes only those acts which are offences in Canada. We note that in countries which persecute minority religious groups, religious observance is often punishable by law. Prosecution for blasphemy, proselytization or conversion is not uncommon. However, we are concerned that this category may exclude from refugee status those who have been convicted falsely and that the definition of serious criminal is not limited to serious offences.

We understand that it is the government's responsibility to maintain the security of Canadian society and that the immigration and refugee admission processes must screen for potential security risks. However, Bill C-31's provisions on serious criminality cast a far wider net than is necessary to exclude those who are grave security risks from Canada. Refugees' experiences of harassment and persecution in their countries of origin may include fraudulent charges and convictions. Persecution by one's government may take the form of unjust criminal charges and incarceration.

In one recent example of persecution by the state, William Shaiboub, an Egyptian Coptic Christian, was convicted of the murder of two other Coptic Christians. Shaiboub was held in prison for months, where reports indicate he was tortured.⁵ On June 5, 2000, the court reached a verdict of guilty, even though

the prosecution witnesses had retracted their incriminating statements claiming they had been made under duress. Shaiboub was sentenced to 15 years of hard labour. According to Joseph Assad, Middle East analyst for the Center for Religious Freedom at Freedom House, Shaiboub's verdict and sentence were dictated by political considerations.⁶ Christians in Egypt are likely to suffer systematic discrimination.⁷ Were William Shaiboub to apply for refugee status in Canada, under the proposed provisions he would be considered inadmissible as a serious criminal.

The provisions on serious criminality in Bill C-31, as they apply to refugees, may exclude innocent people in need of protection. As we noted above, a conviction for using false identification documents would place a refugee claimant in the category of serious criminal and make him or her ineligible for refugee status in Canada. As the United Nations High Commissioner for Refugees notes in her brief, the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* specifies that a "serious" crime must be a "capital crime or a grave punishable act."⁸ Bill C-31's definition of serious criminal is not limited to grave offences only.

One way of avoiding this kind of injustice is to review the eligibility of refugee claims in context, providing opportunity for evidence of trumped up charges. CIC has set up the IRB to be the specialized and independent tribunal best qualified to determine who is a refugee. This seems to be the best arena for determining eligibility for refugee status in context.

Refugee claimants should have their eligibility to make a claim heard in context, preferably through a hearing before a specialized adjudicator.

C. Prior Claims

Bill C-31 proposes to make anyone who has made a previous refugee claim in Canada ineligible to make a new refugee claim.

We understand concerns that the refugee system may be abused as a "revolving-door" for repeat refugee claims. This would contribute to a backlog in hearing the cases of genuine refugees and be a burden to the taxpayer. While the intent of these provisions is to limit abuse of the system, there is much they fail to take into account. There are legitimate reasons for a refugee to make a repeat claim.

A change in circumstances may lead to a substantially new claim for protection. Refugees may need to make a repeat claim for protection if they are from politically volatile countries where governments change dramatically within the

span of a few years. As well, within one's personal life, significant changes may occur, such as religious conversion or a change in political orientation, which may greatly increase the risk of persecution. In some Muslim countries such as Pakistan and Iran, Muslim converts to other religions face imprisonment or death. As the age of the person changes, his or her situation may change significantly. For example, as an adult in her child-bearing years, a woman in China may face forced sterilization.

These may be substantially new claims, yet they would be excluded from the regular refugee determination process

There are other situations within the refugee system which may give rise to the reconsideration of a refugee claim. There is no appeal within the system of the determination that a claim has been withdrawn or abandoned, only the possibility of a procedural review by the Federal Court. As well, the Refugee Protection Division is required to reject a claim for refugee protection when the circumstances that led to the claim change, with few exceptions. We believe the application for protection to the Minister proposed in Bill C-31 will help to keep those in danger from being returned to situations of imminent risk. However, if a refugee claim is substantially new or worthy of review, involving complex issues, the most appropriate body for reviewing these types of claims is the IRB, the specialized tribunal with the responsibility to determine who is a genuine refugee.

Refugee claimants whose claims have been rejected before this bill takes effect will not have had access to an appeal on the merits of the case. Will they be barred from making a claim to the IRB or an appeal to the Refugee Appeal Division?

Bill C-31's provisions on prior claims may keep refugees from receiving a fair and thorough review of their claim and for this reason, we recommend that they be reconsidered.

D. Family Reunification

In framework legislation, it is particularly important to have clearly worded objectives. Section 3. (2) (f) sets out one of the objectives of the Bill: "to support the self-sufficiency and the social and economic well-being of refugees by facilitating reunification with their family members." The focus of this objective is to support the self-sufficiency and social and economic well-being of refugees, with family reunification as a means to this end. We believe that the focus should be on family reunification, which may enhance the self-sufficiency and social and economic well-being of refugees. The goal of

refugee protection is not the same as the goal of immigration. We accept persecuted people on compassionate grounds, to shelter them from torture and the threat of death. Facilitating family reunification for refugees should not be seen primarily in terms of bolstering our economy, rather it is an extension of the compassion which led to the offer of protection to the refugee in the first place. If we are going to offer refuge to the persecuted, we should not make them choose between safety and their immediate families.

The objective of family reunification within the immigration system stated in section 3.(1) (d), "to see that families are reunited," is appropriate for the refugee system as well.

The objective of family reunification for refugees should be amended to read: "to see that families are reunited."

E. Overseas Resettlement

For refugees to be accepted into Canada for resettlement, not only must they convince the visa officer that they are refugees, but also that they have the "ability to successfully establish" in Canada within a certain period of time, currently one year. We agree with the recommendation of the Legislative Review Advisory Group in *Not Just Numbers* that refugees should be selected in response to their protection needs, whether inland or overseas.

Refugees should be selected primarily in response to their protection needs, whether inland or overseas, not on the basis of their economic potential.

In order to provide refuge to those who are most vulnerable and to fulfill Canada's humanitarian commitments, there should be a commitment to increase the number of Canadian visa officers in or near areas of conflict. For example, one officer in Cairo seems insufficient to address the pressing needs of Sudanese refugees who have fled to Egypt. CIC has announced more officers to be involved in interdiction. This will create a need for more visa officers to process and assist the greater number of refugees turned away through interdiction.

CIC should commit to increasing the number of Canadian visa officers in or near areas of conflict.

Conclusion

This legislation needs some amendment in order to ensure its framework is compassionate and just, and takes seriously the situations faced by refugees. The amendments we recommend will help the bill fulfill its objective of saving lives and offering protection to the displaced and persecuted.

Summary of Recommendations

We recommend the deletion of s. 101 from Bill C-31, which would remove the requirement for the IRB to consider the lack of documentation in evaluating credibility.

We encourage this committee to review the possession offence in s. 115 to determine whether it is consistent with the *Charter* right to be presumed innocent.

Refugee claimants should have their eligibility to make a claim heard in context, preferably through a hearing before a specialized adjudicator.

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CIC should commit to increasing the number of Canadian visa officers in or near areas of conflict.

Endnotes

¹For a detailed account of modern religious persecution, see *Their Blood Cries Out*, by Dr. Paul Marshall, Word Publishing, Dallas, Texas, 1997.

² Standing Committee on Citizenship and Immigration, *Refugee Protection and Border Security: Striking a Balance*, March 2000.

³ "Regulations Amending the Immigration Regulations, 1978, and Making a Related Amendment: Regulatory Impact Analysis Statement," *Canada Gazette, Part I*, December 12, 1998, v. 132, no. 50.

⁴ Ibid.

⁵ Christian Solidarity Worldwide, "Coptic Christian Sentenced to 15 Years for Double Murder," News Release, June 6, 2000.

⁶ Freedom House, "Freedom House Protests Egypt's Sentencing of Coptic Christian Without Due Process," News Release, June 7, 2000. Freedom House is an American non-governmental organization specializing in human rights.

⁷ Dr. Paul Marshall, *Their Blood Cries Out*, p. 37.

⁸ United Nations High Commissioner for Refugees, "Comments on Bill C-31: Submission to the House of Commons Standing Committee on Citizenship and Immigration," Ottawa, July 11, 2000.