HUMAN RIGHTS WATCH

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Dear Member of Parliament:

Human Rights Watch is writing to raise concerns about certain provisions of proposed Bill C-31, *Protecting Canada's Immigration System Act*, that we believe are harmful to refugees and asylum seekers and incompatible with international refugee and human rights law. Although the detention provisions of Bill C-31 are ostensibly proposed to deter human smugglers, Human Rights Watch believes that these provisions, in fact, target refugee claimants fleeing persecution, who will suffer their consequences. Human Rights Watch is an independent nongovernmental organization that monitors human rights worldwide. Our most recent World Report, our 22nd annual report, covered human rights conditions in more than 90 countries and territories worldwide in 2011.

Without taking a position on other provisions in Bill C-31, Human Rights Watch would like to raise the following specific concerns with this legislation:

1. Year-long mandatory detention without review

Bill C-31 would provide the Minister the authority to designate certain groups of people arriving in Canada irregularly for a year of mandatory detention without review. The government would have discretion to detain children among the designated groups.

Using detention to penalize refugees for irregular entry into a country contravenes Canada's obligations under Article 31 (2) of *the Convention Relating to the Status of Refugees* (the "Convention"). Article 31 prohibits imposing penalties on refugees on account of their illegal entry or presence without authorization.

Detention of refugee claimants should always be a measure of last resort and should be for reasons clearly recognized in international law, such as concerns about danger to the public, or an inability to confirm an individual's identity. Canada's *Immigration and Refugee Protection Act* already provides a system for detention of foreign nationals on these grounds. The extraordinary detention provisions proposed by Bill C-31 are explicitly linked to the migrant's "irregular arrival" without regard to whether the person may, in fact, be a refugee. As such, the rationale for mandatory detention as well as other provisions, such as precluding applying for permanent residence, appears to be punitive and inconsistent with the obligation not to punish refugees on account of their illegal entry.

The "exceptions" to mandatory detention are unlikely to result in practical relief. The Bill does provide that refugee claimants may be released before a year if a final determination is made on their claim. It is probable, however, that the final determination would not take place within one year given current timelines for refugee processing in Canada, and the fact that a determination would not be considered

"final" until all appeals had been exhausted.

Bill C-31's provisions for one-year's detention without review similarly contravene the International Covenant on Civil and Political Rights, which provides in Article 9 (4) that:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Human Rights Watch's research on immigration detention practices in other countries has shown that the practice can be harmful and inconsistent with human rights obligations unless detainees are afforded the right to promptly challenge the legality of their detention. Our December 2010 report on the treatment of migrants and asylum seekers in Ukraine, for example, documented that the lack of access of judges or other authorities to challenge the legality of detention resulted in arbitrary detention, which contributed to Ukraine's failure to process asylum claims, corruption, and other problems (see: http://www.hrw.org/reports/2010/12/16/buffeted-borderland-0). Our reporting on Australia has shown that mandatory detention of irregular migrants fails to account for the needs of vulnerable groups for whom detention can be particularly harmful (see http://www.hrw.org/sites/default/files/related_material/2011_Australia_JointletterUPR.pdf).

2. Five-year bar on adjustment to permanent resident status

Bill C-31 would preclude designated individuals from applying for permanent resident status for five years after arrival, even if the individual had been recognized as a refugee. This provision, we believe, is incompatible with Article 34 of the Refugee Convention, which provides that:

"The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

Far from the Convention's entreaty to "make every effort to expedite naturalization," C-31 would preclude a refugee from applying for permanent residence for five years.

This provision would also have a negative impact on the right of separated refugee families to reunite. The right to family unity is considered by UNHCR to be a fundamental aspect of effective protection of refugee children (see: http://www.unhcr.org/refworld/docid/3bd3f0fa4.html). Children, especially unaccompanied children and girls, are some of the most vulnerable migrants imaginable. The delay in family reunification in Bill C-31 could damage both the welfare of the children and their families, as well as the integration prospects for the migrants concerned.

Before obtaining permanent resident status, which would likely take six to seven years after arrival, the individual would have no ability to sponsor and be reunited with family members. Five-year separations could lead to irreparable damage to minor or dependent, unmarried children and to families. For example, some families may become separated in the course of conflict and escape; others may not be able to flee war and persecution at the same time or be able to send all family members overseas at once to seek safety. If one parent of a young family used the family savings to seek safety in Canada and was designated, his or her small children would become grown in the six to seven years that would elapse before their family members could be sponsored to arrive in Canada, during which time those very children would presumably

be exposed to many of the same risks that caused the parent to seek refuge in the first place.

The delay in family reunification violates the UN Convention on the Rights of the Child, which states in Article 10 that:

> ….. applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

3. Age of majority; Detention of children

Throughout the detention provisions of C-31, the bill refers to designated people as those who are "16 years or older on the day of arrival." This means that children aged 16 and 17 years old, who meet the definition of children under the Convention on the Rights of the Child, would be subject to mandatory detention.

Subjecting 16- and 17-year-old children to mandatory, unreviewable detention violates the UN Convention on the Rights of the Child, which provides in Article 37 that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

…

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

We recognize that the government is moving an amendment to C-31 to allow unaccompanied children under the age of 16 who have been smuggled into the country to be released from detention, and we emphasize that the government should do its utmost to ensure that unaccompanied children of all ages are never detained. In addition, we are concerned that even with this amendment, children in the company of their parents who are designated for detention under C-31 would, in fact, likely be detained with their parents. The psychological impact of long-term detention can be devastating, particularly on children. A study published in the journal of the Canadian Paediatric Society documents effects of immigration detention on the mental health of children, which include post-traumatic stress disorder, major depression, suicidal ideation, behavioural difficulties, developmental delay weight loss, difficulty with breast-feeding in infants, food refusal and regressive behaviours, and loss of previously obtained developmental milestones (see Mandatory detention of refugee children: A public health issue?" by Rachel Kronick MD, Cécile Rousseau MD, Janet Cleveland PhD, Paediatrics and Child Health, October 2011, Volume 16 Issue 8, accessible at: http://www.pulsus.com/journals/toc.jsp?HCtype=Consumer&sCurrPg=journal&jnlKy=5&fold=Current%20Issue&).

4. Power vested in the Minister to designate countries of origin as safe

Bill C-31 would give the minister of Citizenship, Immigration, and Multiculturalism exclusive authority to designate certain countries as "safe." Human Rights Watch has serious reservations about the concept of a

"safe-country of origin," and we would be extremely cautious about putting the decision-making power for adding countries to the list of Designated Countries of Origin (DSO) into the hands of a single, non-independent, authority. Refugee claimants from the DSO list would have expedited hearings, would not have access to the new Refugee Appeal Division, and, their applications for leave before the federal court would not suspend their removal, so that by the time the court might reverse a denial of asylum, the refugee would already have been subjected to persecution back home.

In introducing Bill C-31 the minister of Citizenship, Immigration, and Multiculturalism specifically cited refugee claimants from the European Union as people who should presumptively be regarded as coming from safe countries. Human Rights Watch has documented racist and xenophobic violence directed particularly against Roma and migrants -- and inadequate police protection -- in a number of EU member states, including Italy, Greece, and Hungary. Vigilante groups in Hungary, Czech Republic, Slovakia and recently in Bulgaria have attacked and held demonstrations against Roma, with inadequate government condemnation of such actions. We have reported on the treatment of asylum seekers and other migrants in Hungary and Slovakia, including those who have been pushed back to Ukraine from the Hungarian border without adequate consideration of their protection needs.

While we believe that it is impossible to make a blanket determination that any country is safe for everyone and would never produce a refugee, those countries, such as Canada, that have safe-country-of-origin provisions in their law should exercise the utmost caution in making such designations. We do not think that resting the power to make such a decision in the person of the minister of Citizenship, Immigration, and Multiculturalism provides adequate consultation for such a consequential decision.

Conclusion

HRW believes that the detention provisions of Bill C-31 unduly and inappropriately impose penalties on vulnerable migrants, asylum seekers, and refugees. Instead of identifying and punishing human smugglers, these provisions of the bill would punish irregular migrants, including refugee men, women and children fleeing indiscriminate violence and/or persecution. These people should not be punished on the sole basis of their "irregular" entry.

In addressing the issue of human smuggling, Canada's government should abide by its obligations under Canadian and international law, and should focus on measures that punish those profiting from human smuggling, not those fleeing persecution. Human Rights Watch strongly urges Members of Parliament to consider the concerns detailed in this submission when studying Bill C-31 and not to enact any provisions that would harm refugees and other vulnerable migrants.

Sincerely,

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