



Amnesty International's Submission to the Standing Committee on National Security, Defence, and Veterans Affairs on Bill C-12, *An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures*

I. Overview

Amnesty International¹ calls for the complete withdrawal of Bill C-12, *An Act respecting certain measures relating to the security of Canada's borders and the integrity of the Canadian immigration system and respecting other related security measures*. This submission outlines concerns regarding provisions in the Bill that could lead to breaches of Canada's international obligations, including regarding the right to seek asylum through a fair and effective procedure, the principle of non-refoulement, and the prohibition against discrimination.

Notwithstanding Amnesty International's call to withdraw the entire Bill and the fact that amendments cannot fully address the rights violations and breaches of Canada's international obligations that could take place if this Bill is passed, this submission provides proposed amendments that could address *some* of the harms that would be caused by the Bill.

II. Bill C-12 prevents people from having their claim for refugee protection fairly assessed and leads to further backlogs in the Federal Court.

Section 73 of Bill C-12 would make certain individuals ineligible to have their claim for refugee protection referred to the Immigration and Refugee Board (IRB), based on arbitrary grounds, furthering a two-tier system of refugee protection in which some refugee claimants have access to independent and specialized decision makers, the right to an oral hearing, and the right of appeal, and others have their claims assessed in a system internal to government, by decision makers without the same training or specialization, without the right to an oral hearing, and without the right of appeal.

Amnesty International Canada submits that s 73 would subject groups of asylum seekers to a substandard and non-human rights compliant system, based on arbitrary grounds.

One-Year Bar

Sections 73-75 of Bill C-12 would make people ineligible to have their claim for refugee protection referred to the IRB if they entered Canada after June 24, 2020, and made a claim for protection more than one year after the day of their first entry to Canada. This would apply retroactively, to claims made on or after 3 June 2025 (the day on which Bill C-2, which contains an identical provision, was introduced), even if Bill C-12 passes many months later.

¹ Amnesty International is a global movement of more than 10 million people campaigning for a world where human rights are enjoyed by all. Amnesty conducts research and leads efforts to advance international human rights at both the international and national levels, and is recognized as an accurate, independent, and credible source of research and analysis of human rights conditions around the world.

The amount of time since an individual's first entry into Canada has no connection to an individual's need for protection. Refugees may not file within a year of their first arrival in Canada for many reasons, including:

- **The circumstances leading to their fear of persecution might not exist within their first year:** An individual who came to Canada for a single day as a baby would be ineligible to have their claim referred even if they came back to Canada 20 years later. This Bill contains no exceptions for changed circumstances; it fails to account for the possibility of protection needs arising *sur place*. The date of entry to Canada in cases affected by changed circumstances and crisis is irrelevant, as the crucial element is having a "well-founded fear of persecution".
- **Barriers to seeking asylum and navigating the asylum system during their first year in Canada,** including:
 - Not speaking an official language.
 - Inadequate access to sufficient information: Some, including people fleeing gender-based violence, might be unaware that they are eligible for asylum.
 - Safety: Some, including LGBTQI+ individuals and people fleeing gender-based violence, may not be able to disclose their identity immediately due to risk of reprisals, stigma or ongoing family surveillance, or may still be navigating their sexual orientation or gender identity.
 - Trust: survivors of torture, trafficking and gender-based violence may not immediately trust authorities.
 - Addressing immediate needs, including housing, health (particularly for survivors of torture), enrolling children in school, and securing legal counsel and legal aid.
- **People may not wish to claim asylum when there are other immigration options available to them:** Some people may wish to explore other immigration options available to them, like work and study visas, before considering making a claim for refugee protection, even though they need protection.

In the United States, a similar one-year bar exists,² although, unlike the proposed one-year bar in Bill C-12, there is an exception for changed or extraordinary circumstances in the United States.³ Despite these exceptions, the filing deadline has barred refugees who have suffered persecution or have well-founded fears of persecution in their home countries from receiving asylum in the United States, and pushed credible refugee cases into the overburdened immigration courts, diverting limited time and resources that could be allocated to assessing the merits of claims.⁴ The UNHCR has called on the United States to repeal its one-year asylum filing deadline, noting that it prevents individuals from applying for asylum and subjects them to removal despite having a valid claim.⁵

Asylum seekers entering Canada via the United States

Sections 73-75 of Bill C-12 would make refugees who manage to cross into Canada between ports of entry and make a claim for protection after 14 days ineligible to have their claim referred to the IRB. People are forced to

² Division C of Pub.L. 104–208, 110 Stat. 3009-546, enacted September 30, 1996.

³ INA § 208(a)(2)(D).

⁴ Human Rights First, The Asylum Filing Deadline (29 September 2010), <https://humanrightsfirst.org/library/the-asylum-filing-deadline/>.

⁵ United Nations High Commissioner for Refugees, Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: United States of America (2015), <https://www.refworld.org/policy/upr/unhcr/2015/en/104849>.

cross in such a manner because of the Safe Third Country Agreement.⁶ People's manner of crossing is entirely irrelevant to the assessment of a claim for refugee protection as it has no connection to their need for protection. Further, Article 31(1) of the 1951 Refugee Convention prohibits penalization of asylum seekers based on their manner of entry into a country, making this provision inconsistent with Canada's obligations under the *Refugee Convention*.⁷

Pre-Removal Risk Assessments are not an adequate alternative

Pre-Removal Risk Assessments (PRRAs) are not an adequate alternative to having a claim determined by the IRB for a number of reasons:

- **Lack of independence:** The IRB is an independent, quasi-judicial decision-making body. PRRA officers are not independent of government – they are employees of Immigration, Refugees and Citizenship Canada.
- **Lack of expertise and training:** IRB members receive training and possess specialized expertise in administrative and refugee law, fact finding, conducting hearings, and the evaluation of credibility, all of which are necessary to evaluate refugee protection claims. They are also given training in cross-cultural questioning and various IRB Chairperson Guidelines, including on gender-related persecution, vulnerable persons, and claims based on sexual orientation and gender identity and expression. PRRA officers are not required to have the same level of expertise and training on the technical and legal aspects of evaluating a claim for refugee protection and are not bound by the IRB Chairperson Guidelines.
- **No guaranteed hearings:** The Supreme Court of Canada affirmed that refugees have the constitutionally protected right to an oral hearing.⁸ Hearings are not guaranteed for PRRAs.⁹
- **Routes of appeal:** The IRB has built in appeal routes: if the Refugee Protection Division issues a negative decision, it can be appealed on the merits to the Refugee Appeal Division, which has the authority to substitute its decision for that of the original decision maker. There is no right of appeal for a PRRA; it can only be judicially reviewed by the Federal Court, which requires an individual to first seek and then be granted leave before the judicial review can be heard. This will lead to further backlogs in the Federal Court. As with all judicial reviews, there is no full reconsideration of the case on its merits; it is limited to more technical grounds of review, conducted on a more deferential standard to the initial decision-maker, and if the court finds that the decision was unreasonable, it simply returns the case for reconsideration.
- **Procedural protections against non-refoulement:** While appeals within the IRB result in an automatic stay of removal, meaning that the person cannot be deported while the decision is pending, an application for judicial review does not. This means that the individual would need to apply to the Federal Court to seek a stay of removal, leading to further backlogs, and could be at risk of deportation while their application is pending.

⁶ Because of the Safe Third Country Agreement (STCA) between Canada and the United States, most people who cross into Canada via the U.S. are barred from seeking refugee protection in Canada and are sent back to the U.S. However, the STCA does not apply to people who cross between official ports of entry and make a claim for refugee protection after 14 days.

⁷ Guy S. Goodwin-Gill, Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection, Cambridge University Press, June 2003, <https://www.refworld.org/reference/research/cup/2003/en/77935>, page 209; UN General Assembly, 1951 Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189, p. 137, 28 July 1951, <https://www.refworld.org/legal/agreements/unga/1951/en/39821>, article 31 [Refugee Convention], .

⁸ *Singh v Canada*, [1985] 1 SCR 177.

⁹ IRPA s 113(b).

Deficiencies in the PRRA system mean that people barred from having their claims heard by the IRB risk deportation to torture or persecution without a fair assessment of their protection needs, contrary to the prohibition on refoulement contained in the 1951 Refugee Convention.¹⁰

People from “moratorium countries” will be left in legal limbo without status

People from countries or regions subject to a Temporary or Administrative Suspension of Removal are not eligible for a PRRA. If someone was ineligible to have their refugee claim referred to the IRB because of Bill C-12 but was from a country for which there is a moratorium on removals, then they could find themselves in legal limbo: they are not at imminent risk of deportation but cannot access protective status despite needing protection.

While someone could attempt to apply for Permanent Residence on Humanitarian and Compassionate grounds, grounds related to seeking refugee protection are not to be considered, and it could be difficult for someone who just arrived in Canada to show that they are established in Canada, one of the key factors to be considered. After someone applies, the current processing times for humanitarian and compassionate cases is over 10 years, during which time individuals would have no opportunity to reunite with their immediate family members.

Recommendations:

1. Remove the one-year bar by deleting 73(1)(b.1). Failing this,
 - a. Amend the one-year bar so that it applies to an individual’s most recent entry into Canada, by adding “most recent” to s 73(1)(b.1) and deleting the reference to June 24, 2020 so it reads “the claimant made the claim more than one year after the day of their **most recent** entry to Canada” and deleting s 73(1.1),
 - b. Exempt the following groups from the one-year bar:
 - i. People who develop a fear of return to their country of nationality after entering Canada, either due to a change in their personal circumstances or a change in the circumstances in their country of nationality.
 - ii. People whose claims are based on sexual orientation and gender identity.
 - iii. People fleeing gender-based violence.
 - iv. People who are children or who were children when the one-year claim period would have commenced.
 - v. People from moratorium countries, who will not be eligible for a PRRA but cannot be deported.
 - vi. People who were unable to make a claim within one year due to extraordinary circumstances.
 - c. End the retroactive application of this law, so that it takes effect when the law comes into force, and so that for those already in Canada on the day that the Bill receives royal assent, the one year countdown starts on the day that the Bill receives royal assent, so s 75 reads “Paragraph 101(1)(b.1) of the *Immigration and Refugee Protection Act* does not apply to claims made within one year of the day on which this Act receives royal assent”.
 - d. Mandate that people made ineligible to have their claim referred to the IRB under this bill are eligible for an “enhanced” PRRA, which guarantees the right to a hearing, in accordance with the Supreme Court of Canada’s 1985 decision in *Singh*.

¹⁰ Refugee Convention, *supra* note 7, Article 33.

- e. Create a right of appeal for negative PRRA decisions for those who are made ineligible to have their claim referred to the IRB by this bill. Mandate that individuals receive a stay of removal that is in effect until the later of:
 - i. The period to appeal or seek judicial review of the decision expires, and
 - ii. If an appeal is filed or judicial review is sought, pending the determination of the application.
2. Delete s 73(1)(b.2) as the manner of entry to Canada has no relevance to an asylum claim.

III. Bill C-12 would grant the government sweeping powers to cancel immigration documents for groups of people without due process

Part 7 would grant the Governor in Council powers to cancel, vary, suspend, or impose conditions on immigration documents, including permanent resident visas and work and study permits for entire groups of people, without any individualized assessment or due process. It could also suspend or terminate the processing of applications for such documents. Such powers could be used in arbitrary, politically motivated and discriminatory ways. They would also create profound insecurity for people who have established their lives in Canada and for those seeking to reunite with loved ones.

While the Minister of Immigration, Refugees, and Citizenship has suggested that these measures could be needed to stop groups of individuals committing fraud, the current provisions are much broader – the Governor in Council simply needs to be of the view that it is in the “public interest” to take any of the actions listed above, an overly broad criteria that could amount to anything. Further, it is unclear how the Governor in Council could determine that fraud was occurring without a case-by-case analysis, and the government already has the power to address fraudulent applications.

Recommendations:

3. Delete Part 7 so that immigration applications and documents cannot be cancelled without due process, individualized assessments, and specific and well-defined justification for cancellation.

IV. Bill C-12's information sharing provisions would put people at risk

Section 28 of Bill C-12 empowers the Minister to share personal information – including about the identity of an individual and changes to their identity (including their gender identity), the status of an individual and changes to their status, and the contents or status of any document issued by the Minister – with other government entities, including foreign governments in countries of origin of refugees and asylum seekers. Such sharing of information could expose people to persecution, discrimination and harm, and could inhibit refugees' and migrants' ability to access critical services without fear.

Recommendations:

4. Delete or amend section 28 so that information sharing does not expose people to persecution, discrimination and harm or inhibit access to essential services.