The Standing Senate Committee on National Finance
Senate of Canada
Ottawa, Ontario
Canada K1A 0A4

Re: Clause 306, Division 16, Bill C-97 (Budget Implementation Act, 2019, No. 1)

Honourable Senators,

Please accept this letter on behalf of Amnesty International as a written submission to the Standing Senate Committee on National Finance to draw your attention to significant concerns our organization has with respect to changes to the refugee protection system proposed in Division 16 of Bill C-971 through amendments to the Immigration and Refugee Protection Act.2

At the outset, I would like to bring your attention to the fact that these rights-impairing changes are opposed by all major civil society organizations involved in providing services to refugees and newcomers or advocating for migrant rights in Canada, including 46 women’s human rights and equality organizations.3

1 Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, 1st Sess, 42nd Parl, 2019, (report stage 31 May 2019) [Bill C-97].

Alex Neve
Secretary General
Amnesty International Canada
Date: June 5, 2019
We are aware that the United Nations High Commissioner for Refugees (UNHCR) has offered their support for these proposed changes. Their support is, however, based on their current position that the Pre-Removal Risk Assessment (PRRA) process meets Canada’s obligations under international law. As we have indicated in our oral testimony and written submission to the House of Commons Standing Committee on Citizenship and Immigration and in a meeting with Senators organized last month by Senator Omidvar, we strongly disagree with this position. Amnesty International is of the view that the proposed measure is inconsistent with Canada’s international legal obligations because it discriminates between classes of refugee protection claimants, and because it constitutes an automatic barrier to accessing Canada’s refugee protection system for some claimants. Moreover, we draw to your attention earlier UNHCR positions opposing similar reform proposals in 2001 and 2012, with which we agree.

Amnesty International endorses fully the submissions made by the Canadian Association of Refugee Lawyers and the Canadian Council for Refugees on 29 May 2019 before this Committee. Amnesty also shares the concern of the Standing Senate Committee on Social Affairs, Science and Technology which released their report of their pre-study of the IRPA amendments on June 6, 2019, where the committee “questions why the Government of Canada has embedded a substantive piece of proposed legislation in a budget bill, which limits Parliament’s ability to conduct a detailed examination of a legislative amendment that will have profound effects on a vulnerable population group.”

The proposed reforms to the refugee protection system, Honourable Senators, would undermine the Immigration and Refugee Board (IRB)’s vitally important position as the independent tribunal of first instance for refugee claims in Canada. The IRB was established in 1989 in response to the Supreme Court of Canada’s 1985 *Singh* decision to ensure that individuals seeking refugee protection in Canada would have an independent body to determine their claims.

---


5 Amnesty International Canada, “Amnesty International’s Submissions to the House of Commons Standing Committee on Citizenship and Immigration: Clause 306 of Bill C-97, the Budget Implementation Act, 2019, No 1” (10 May 2019), available online: https://www.ourcommons.ca/Content/Committee/421/CIMM/Brief/BR10478967.br-external/AmnestyInternationalCanada-e.pdf.

6 Ibid, see the “Inconsistency with International Law” section in the submission.

7 See United Nations High Commissioner for Refugees (UNHCR), *UNHCR Comments on Bill C-11: An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger*, 5 March 2001, available online: https://ccrweb.ca/sites/ccrweb.ca/files/static-files/c11hr.PDF, para 40: “automatic bars to consideration of asylum claims are not in conformity with the Refugee Convention [emphasis in original].” See also UNHCR, *UNHCR Submission on Bill C-31: Protecting Canada’s Immigration System Act*, May 2012, available online: https://www.refworld.org/docid/4faa336c2.html, para 86: “Where access to the refugee determination procedure is denied, and claims referred to the PRRA for determination, there is the risk of creating a two-tier system, in which the protection risks of one class of asylum-seekers are assessed by the Immigration and Refugee Board, while those of another are assessed by CIC officials. This could affect both the efficiency of the system and consistency of decision-making.”


9 *Singh v Minister of Employment and Immigration*, [1985] 1 SCR 177, 17 DLR (4th) 422.
have their claims assessed by an expert and independent decision-maker, with an in-person oral hearing ensuring a fair opportunity to be heard.

Bill C-97 takes away access to this expert, independent and fair hearing before the IRB for anyone having made a previous refugee claim in a country with which Canada has an “agreement or arrangement … for the purpose of facilitating information sharing to assist in the administration and enforcement of their immigration and citizenship laws.”

At present that applies to our “Five Eyes” partners: The United States, United Kingdom, Australia and New Zealand. Such individuals will only have access to the PRRA process – a review carried out by a departmental employee, not an independent decision-maker, and only currently involving an in-person hearing (structured as an interview) in exceptional cases.

After weeks of assurances of an “enhanced PRRA,” the government has now agreed to an amendment adopted\(^\text{11}\) at the House Standing Committee on Finance that would guarantee a hearing. Nevertheless, there remain unanswered questions with respect to the nature of the hearing – there are no guarantees that it will it be a full oral hearing, that it will measure up to the important safeguards of the IRB in ensuring procedural fairness, that there will be adequate and appropriate translators, hearing rooms and other staffing and infrastructure needed to support a hearing process, or even whether the hearing will include the ability to adduce evidence and conduct cross examinations.

The government has indicated that further reforms addressing these questions of fairness will be introduced through regulations. Amnesty International is of the view that matters as fundamental as denying access to the IRB should be addressed in statute and not regulations. You, as Senators, do not have the opportunity to scrutinize and approve regulations. Further, there is not even a rudimentary draft of those regulations before you to consider. You have no assurance, in being asked to strip thousands of refugee claimants of a fair process, that you can be confident an equally fair procedure will be guaranteed to refugees.

There is also no requirement in the proposed legislation to assess the refugee protection record of any of the countries that are covered by the proposed amendments, currently the United States, the United Kingdom, Australia and New Zealand. This can be distinguished from the Safe Third Country Agreement (STCA) system under which the designation of the United States as safe (a conclusion with which Amnesty International strongly disagrees\(^\text{12}\)) does at least require the government to assess the US record with respect to refugee protection and human rights more widely.

The designation of these four countries under Bill C-97 is solely on the grounds of the existence of information sharing agreements and is not related in any way to their refugee determination systems and whether they meet international human rights standards. Notably, while individuals denied access to the

\(^{10}\) Bill C-97, \textit{supra} note 1, clause 306.


Canadian refugee protection system in the STCA context would be turned back to the United States, those who are denied access to the IRB as a result of the proposed amendments and are then unsuccessful at the PRRA stage would be removed to their country of origin, making the stakes potentially very consequential.

Amnesty International’s concerns are compounded by other deficiencies related to the PRRA process. While there is a right to appeal a decision of the IRB’s Refugee Protection Division to the Refugee Appeal Division (RAD), resulting in an automatic stay of deportation, there are no appeals from the PRRA process. PRRA decisions can only be judicially reviewed, with leave of the Federal Court, with no automatic stay of removal. These are concerns that the Standing Senate Committee on Social Affairs, Science and Technology has also noted.

Further, while an appeal to the RAD is on the merits of the case, a judicial review is not. Instead, a judge considering an application for judicial review shows deference to the initial decision maker. If a decision is deemed unreasonable, the judge will simply quash it and require that a new decision be rendered by another officer, rather than substitute his or her own decision on the merits.

Although representatives of the Government made assurances during their appearance before you on Wednesday, May 29, 2019 that they will include an automatic stay of removal, no such amendments have been brought before you for review.

Alongside Amnesty International’s serious concerns about the human rights impacts of these amendments, we note that these changes are almost certainly going to lead to duplication and waste of resources as a parallel bureaucracy to the IRB begins to take shape. In our experience, inefficiencies only compound concerns about unfairness in refugee status determination, adding to delays and uncertainty that prolong decision-making and leave refugees in limbo.

In the wake of the damning Auditor General’s report finding significant duplication and inefficiency, Amnesty International urges the Senate to consider the inefficiencies that would result from these amendments, and the associated human rights impacts.

In conclusion, Honourable Senators, what lies before you is a piece of legislation hastily conceived and drafted with no civil society consultation. This legislation will fundamentally impair the rights of thousands of refugees. Ostensibly aimed at restoring public confidence in the refugee protection system, it misses the mark completely by undermining the IRB’s legitimacy as the tribunal of first instance in the refugee protection system, by creating a rights-violating two-tier system with the likelihood of further impairing refugee rights through inefficiencies resulting from a parallel bureaucracy, and by ignoring the voices of civil society organizations at the forefront of human rights advocacy and immigration and refugee service provision.

---

13 IRPA, supra note 2, s 49(2)(c).
14 Ibid, IRPA s 72(1).
15 Supra, note 8.
Stated plainly, these amendments do not belong before you as currently presented, and they certainly do not belong in a budget bill.

Amnesty International urges you, in no uncertain terms, to reject these amendments entirely.

While we have not been provided an opportunity to appear before you during your hearings into this matter, we remain open to meeting at any time, with individual Senators or collectively, to discuss our concerns further. I can be reached via my Executive Assistant Thomas Ndayiragije.

Sincerely,

Alex Neve
Secretary General,
Amnesty International Canada