



**FCJ REFUGEE CENTRE**

*Walking with Uprooted People*

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# UNDERSERVED COMMUNITIES RESEARCH

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## ***UNACCOMPANIED MINORS***

*This tool-kit was made possible by the generosity of*



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**FCJ REFUGEE CENTRE**

**208 Oakwood Ave. Toronto, ON.**

**M6E 2V4**

**416- 469-9754**

**[www.fcjrefugeecentre.org](http://www.fcjrefugeecentre.org)**

## **Introduction**

The purpose of this tool-kit is to identify the impacts and relevance of the recent refugee system changes to migrating unaccompanied minors. This tool-kit addresses problems that are expected to result from the changes and problems that have already been identified with the recent changes. The research below is based on community research initiatives and data collected at FCJ Refugee Centre.

Please note that this tool-kit does not aim to explain all the recent changes to the refugee system.

For a clarification of the all the changes in the refugee system please see <http://www.fcjrefugeecentre.org/canadas-refugee-process/>

## **Definitions of minor/child:**

*United Nations Convention on Rights of Child (CRC):*

“Every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”<sup>1</sup>

*Canada:*

Definition of a minor child varies by province as follows<sup>2</sup>:

*Alberta, Manitoba, Ontario, Quebec, PEI – person under 18 years*

*BC, Nova Scotia, New Brunswick, Yukon, Nunavut, Northwest Territories- person under 19 yrs*

*Newfoundland- person under 16 years*

*Saskatchewan- person under 16 years*

## **Changes that impact Most Unaccompanied Minors (UAMs)**

- **Expedited Timelines:**

Bill C-31 *Protecting Canada's Immigration System Act* makes provision for standard case hearings to occur within 60 days.<sup>3</sup> UAMs seeking refugee status after December 15, 2012 face expedited timelines. The amount of time a person has to prepare their refugee claim depends on the manner of entry (port or inland); however, regardless of the manner of entry it is important to note that these timelines process refugee claims faster than previous timelines.

The new expedited timelines are problematic for UAM claimants because they make the same demands of minors as they do from adult refugee claimants. The timelines usually make no accommodations to UAM claimants based on their status as minors. Rather, most minor claimants are expected to meet the accelerated deadlines and to take all the necessary steps to make a successful refugee claim. These steps include producing identity documents, producing

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<sup>1</sup> <http://www.cic.gc.ca/english/resources/tools/refugees/canada/processing/minors.asp>

<sup>2</sup> <http://www.cic.gc.ca/english/resources/tools/refugees/canada/processing/minors-prov.asp>

<sup>3</sup> The Bill received Royal Assent on 28-06-2012.

[http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697417&File=24&Col=](http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697417&File=24&Col=1)

the grounds for the claim in written form, collecting evidentiary documents, retaining competent counsel, and preparing to testify for the hearing.<sup>4</sup> A UAM claimant's situation is complicated by the fact that their status as a minor brings new responsibilities in addition to their responsibilities as refugee claimants. For instance, they may need to attend medical examinations, undergo psychological assessments, find housing, complete placement evaluations, and find a school to register in.<sup>5</sup> These shortened timelines increase the hardships on UAM claimants as they are required to take all these steps without the guidance and support of parents or guardians.

If you are a UAM and you are making or have made a refugee claim, please be aware of all your deadlines. We recommend that you seek out help from a lawyer and centres like the Covenant House Toronto and the FCJ Refugee Centre **immediately**.

### **Changes that impact DCO (Designated Country of Origin) Unaccompanied Minors**

#### **Definition:**

*DCOs are countries that do not normally produce refugees, respect human rights and offer state protection, and are therefore 'safe'.*<sup>6</sup>

- **Expedited Timelines:**

See above for the impact of expedited timelines on unaccompanied minors. Note that DCO claimants face even more stringent timelines and a 75% or higher rejection rate.<sup>7</sup> Their claim is heard in 30 days (inland) and 45 days (port of entry). However, due to the designation of their country as "safe", marginalized groups subject to violence and without adequate state protection will often have their application rejected, without right to appeal.<sup>8</sup>

### **Changes that impact Designated Foreign National Unaccompanied Minors**

- **Mandatory arrest and Detention**

The recent refugee changes permit Canadian Border Services Agents to arrest and detain unaccompanied minors aged 16 and over who are designated as foreign nationals or "irregular arrivals".<sup>9</sup> These youth can be detained for a minimum of two weeks and if they cannot establish their identity they will be detained for an additional six months.<sup>10</sup>

The mandatory arrest and detention of UAM is problematic for UAM aged 16-18 for multiple reasons. First, automatic detention of UAM claimants increases the amount of stress the claimant experiences as the incarcerated minor will be prevented from "living with a warm host family" or

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<sup>4</sup> [http://www.cssdelamontagne.qc.ca/fileadmin/csss\\_dlm/Publications/MEMOIRE\\_SUR\\_C-31.ENG.CSSDLM\\_PRAIDA.mai\\_2012.pdf](http://www.cssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/MEMOIRE_SUR_C-31.ENG.CSSDLM_PRAIDA.mai_2012.pdf)

<sup>5</sup> Ibid

<sup>6</sup> <http://dl.dropboxusercontent.com/u/13748381/The%20World%20According%20to%20Kenney.pdf>

<sup>7</sup> Ibid

<sup>8</sup> <http://www.cdp-hrc.uottawa.ca/projects/refugee-forum/documents/c31summaryjanetcleveland.pdf>

<sup>9</sup> <http://www.cic.gc.ca/english/departement/media/backgrounders/2012/2012-06-29k.asp>

<sup>10</sup> <http://www.carl-acaadr.ca/our-work/issues/DFNR#Primer>

from finding shelter at a centre that can meet their unique needs.<sup>11</sup> Second, the Canadian Border Service Agents make no distinction between adults being detained and minors being detained. They are all treated the same as the same processing rules apply. Third, it deprives young people the possibility of working with social practitioners that will help them cope with mental, psychological, and emotional stability issues. Related to this is the fact that detention isolates them from participating in normal youth activities, such as going to school and making friends their age.<sup>12</sup> UAM claimants come to Canada seeking protection; however, as these examples show, mandatory arrest and detention places additional stress and pressure on UAM claimants.

Moreover, the effects of being designated an irregular arrival are long lasting. Specifically, UAM claimants must deal with procedural demands for a period of time that reaches beyond their refugee claim. For instance, designated foreign national refugees are denied the right to travel outside of Canada for any reason for five years.<sup>13</sup> Such a restriction is particularly problematic for UAM claimants since it denies UAM refugees the possibility of family reunification<sup>14</sup> and it restricts future possibilities for UAM claimants who are considering working or studying outside of Canada within the 5 year period after the claim is accepted.

Another long-lasting procedural demand that will affect designated UAM claimants is the requirement to regularly report to immigration authorities for a five year period after the refugee claim is accepted. This requirement places an additional burden on minor claimants as they are expected to report, just as adults are expected to report. This required reporting interferes with the ability of UAM claimants to successfully adjust themselves to life in Canada.

It is also important to note that there is no judicial review of the mandatory imprisonment or the procedural demands (e.g. travel ban for five years, regular reporting).<sup>15</sup> This means that although there may be very valid reasons for UAM claimants to be excluded from the effects of being a designated foreign national, there is no appeal or procedural method to apply for exclusion.

- **Lack of age Appropriate Assessment Procedures**

Currently in Canada there is a lack of appropriate age assessment procedures/policies in place. Given that UAM claimants are treated as adults after they turn 16, most of these restrictions, particularly mandatory arrest and detention, hinge on assessment of age. “In Canada the interviewing officer is required to use documentary evidence or testimony;”<sup>16</sup> however, this criterion is problematic because many UAMs arrive without proper birth documentation.<sup>17</sup> Age assessment essentially depends on the officer’s discretion and expertise becoming a subjective test.<sup>18</sup> This is a danger given that this assessment comes with high stakes. If the designated UAM

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<sup>11</sup> [http://www.cssdelamontagne.qc.ca/fileadmin/csss\\_dlm/Publications/MEMOIRE\\_SUR\\_C-31.ENG.CSSDLM\\_PRAIDA.mai\\_2012.pdf](http://www.cssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/MEMOIRE_SUR_C-31.ENG.CSSDLM_PRAIDA.mai_2012.pdf)

<sup>12</sup> Ibid

<sup>13</sup> [http://www.unicef.ca/sites/default/files/imce\\_uploads/unicef\\_canada\\_bill\\_c-31\\_submission.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/unicef_canada_bill_c-31_submission.pdf)

<sup>14</sup> Ibid

<sup>15</sup> <http://www.carl-acaadr.ca/our-work/issues/DFNR#Primer>

<sup>16</sup> <http://www.parl.gc.ca/Content/LOP/researchpublications/prb0715-e.htm>

<sup>17</sup> [http://www.unicef.ca/sites/default/files/imce\\_uploads/unicef\\_canada\\_bill\\_c-31\\_submission.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/unicef_canada_bill_c-31_submission.pdf)

<sup>18</sup> Ibid

claimant is found to be 16 years of age and older the claimant will be treated as an adult and will lose his/her liberty.

### **Data collection**

#### **Primary Government Sources**

<http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-06-29k.asp>

<http://www.cic.gc.ca/english/resources/tools/refugees/canada/processing/minors.asp>

<http://www.cic.gc.ca/english/resources/tools/refugees/canada/processing/minors-prov.asp>

<http://www.cic.gc.ca/english/department/media/backgrounders/2012/2012-06-29k.asp>

<http://www.parl.gc.ca/Content/LOP/researchpublications/prb0715-e.htm>

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5697417&File=24&Col=1>

#### **Additional Secondary Sources**

<http://www.carl-acaadr.ca/our-work/issues/DFNR#Primer>

[http://www.csssdelamontagne.qc.ca/fileadmin/csss\\_dlm/Publications/MEMOIRE\\_SUR\\_C-31.ENG.CSSDLM\\_PRAIDA.mai\\_2012.pdf](http://www.csssdelamontagne.qc.ca/fileadmin/csss_dlm/Publications/MEMOIRE_SUR_C-31.ENG.CSSDLM_PRAIDA.mai_2012.pdf)

<http://www.cdp-hrc.uottawa.ca/projects/refugee-forum/documents/c31summaryjanetcleveland.pdf>

<http://www.carl-acaadr.ca/our-work/issues/DFNR#Primer>

<http://dl.dropboxusercontent.com/u/13748381/The%20World%20According%20to%20Kenney.pdf>

[http://www.unicef.ca/sites/default/files/imce\\_uploads/unicef\\_canada\\_bill\\_c-31\\_submission.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/unicef_canada_bill_c-31_submission.pdf)