



April 23, 2010

The Honourable Jason Kenney, P.C., M.P.
Minister of Citizenship, Immigration and Multiculturalism
House of Commons
Ottawa, ON K1A 0A6

Dear Minister Kenney:

Re: Bill C-11 (The Balanced Refugee Reform Act)

On behalf of the Board of MOSAIC, the Public Policy Committee is submitting this letter to you for your consideration.

Summary of MOSAIC's POSITION

- MOSAIC supports the goal of expediting the refugee determination process.
- We commend the commitment of greater resources to the refugee determination process.
- MOSAIC supports the establishment of a meaningful appeal process through the establishment of a Refugee Appeal Division.
- We support an increase in the number of government assisted and sponsored refugees.
- We believe a more robust consultation process is appropriate for such important and significant legislative changes.
- MOSAIC is concerned that the time limits contained in the legislation do not permit sufficient time for claimants and their counsel to properly prepare for the hearing, and therefore, are unfair.
- MOSAIC does not support limits on the ability to bring further applications or introduce new evidence after an initial determination.
- We believe that decision makers at first instance should be independent of the Department in order to ensure fairness and the appearance of fairness.
- MOSAIC has serious concerns about the implementation of a "Safe Country List" and does not support a two-tier system dependent on country of origin rather than an assessment of risk on an individual basis.

MOSAIC

As you are likely aware, MOSAIC is a multilingual non-profit organization dedicated to

addressing issues that affect immigrants and refugees in the course of their settlement and integration into Canadian society. Our mandate is to support and to empower immigrant and refugee communities, helping them to address critical issues in their neighbourhoods and workplaces. We are one of BC's largest social services organizations, with over 500 staff and contractors and thousands of volunteers providing language, employment and other services. Besides providing diverse services to meet newcomers' needs, MOSAIC engages policy makers for systemic policy changes.

MOSAIC has frequently been asked by the federal government to provide feedback and input with respect to proposed legislation and policies.

Bill C-11 (The Balanced Refugee Reform Act)

MOSAIC applauds the Government's goal of reducing processing times in the refugee determination process. Reducing processing times enhances protection for refugees while deterring economic migrants who might otherwise take advantage of long processing times.

MOSAIC also commends the Government for implementing the Refugee Appeal Division. Having a meaningful avenue of appeal is essential to ensuring fairness and accountability in the determination process. Fairness and correctness is particularly important with regard to refugee determinations given that they frequently are literally life or death decisions.

We also strongly support the commitment to provide additional resources to the Immigration and Refugee Board. This is critical to reducing processing times without sacrificing quality decision-making.

We are also encouraged by the government's intention to increase the number of government-assisted and private-sponsored refugees considering the numbers of sponsored refugees has remained the same for over two decades. Increasing the number of assisted and sponsored refugees will help to ensure that the refugee system is not abused, while at the same time assisting refugees in reaching their full potential for the mutual benefit of the refugees and Canada. While we are supportive of a number of elements of the plan, the proposed legislation also raises several serious concerns. These include:

Legislative Process

The lack of a formal consultation process with respect to this legislation makes a full review by Parliament essential. MOSAIC strongly urges the Government to allow a meaningful opportunity for input from interested parties and Parliament. The Bill would benefit immensely from a full range of Committee witnesses representing the diversity of perspectives that exist on refugee reform.

Short Time Limits

While imposing time limits on the refugee determination process can be an effective manner of reducing processing times, the currently proposed time limits are insufficient to allow proper preparation of cases, particularly for refugees who have recently

escaped traumatic circumstances including torture. A 60 day limit may not be sufficient time to gather critical evidence from overseas, translate and file documents, and retain and instruct competent legal counsel. The short deadlines and the impact on evidence gathering and case preparation are of particular concern when viewed in combination with the proposed limitations on introducing new evidence on appeal to the Refugee Appeal Division. MOSAIC recommends allowing claimants more time to prepare themselves for their hearing.

Limiting Post-Claim Options

MOSAIC acknowledges the government's objective of preventing the same arguments from being raised again and again before different decision makers. However, it is inaccurate to suggest that options such as Pre-Removal Risk Assessments and Humanitarian and Compassionate ("H&C") applications based on risk are unnecessary following hearing of a refugee claim. The Refugee Determination Division and the Refugee Appeal Division do not assess all risks of return; they only assess persecution on Convention grounds. There may well be, and frequently are, other legitimate risk factors that are beyond the scope of the Convention. Decision makers should be able to assess all relevant circumstances when deciding such applications and claimants should have a meaningful opportunity to seek to remain in Canada on the basis of legitimate risks that are not within the jurisdiction of the RDD.

Bill C-11 would also bar refugee claimants from applying for H&C (while the claim is in process and for 12 months afterwards). Applicants for H&C would also be barred from bringing new evidence forward related to risks feared in the country of origin. An inability to present new evidence, particularly where security of the person is at issue, is fundamentally unfair and contrary to the tenets of natural justice. MOSAIC recommends eliminating the bar on claimants making humanitarian and compassionate applications and raising new evidence of risk.

Lack of Independence and Politicization of Decision-Making

MOSAIC is concerned about first-level decisions being made by public servants who are not independent of the Department. This lack of independence could be partially remedied by universal access to a fully independent appeal process. However, given the importance of the decision at first instance, MOSAIC believes it is crucial that the original adjudicators be completely independent of the Department. In any event, MOSAIC strongly supports the implementation of the Refugee Appeal Division to ensure decisions at first instance are correct and fair.

MOSAIC supports an apolitical, merit-based appointment mechanism for RAD members.

Designated "Safe Countries of Origin"

MOSAIC is concerned about the proposal for a "Safe Countries of Origin List", including the risk of politicization and the creation of a two-tier determination system. The list is susceptible to being influenced by other countries and by lobby groups in Canada. Additionally, such a list may be susceptible to considerations other than risk as well as outdated or incorrect information. Nationals of listed countries will be denied

numerous important procedural protections, so such a list should be used very sparingly if at all.

We are also concerned about the disproportionate impact of the “Safe Countries of Origin List” on women and those making claims based on sexual orientation or identity. These groups may be subject to persecution even in relatively democratic countries which are otherwise safe and peaceful.

Language in the Act and Public Statements

The Act contains what MOSAIC considers to be inflammatory language such as referring to “bogus” claimants when discussing the issue. Use of such terminology hinders an open and informed debate, and promotes public misunderstanding of the refugee protection system. The use of such language mistakenly suggests that anyone who is not found to be entitled to protection under the Convention has come to Canada for illegitimate reasons or under false pretences. While there may be some instances of claimants bringing applications on improper bases, the vast majority of claimants are bona fide and have reason to fear for their safety. Tarring all rejected claims with the same brush of fraud is neither fair, nor appropriate, particularly within a statute.

MOSAIC strongly urges the Government to avoid use of unfair or inflammatory language when speaking about refugee claimants.

Yours truly,



Brook Greenberg
President, Board of MOSAIC

cc: The Honourable Maurizio Bevilacqua, P.C., M.P.
Liberal Opposition Critic, Citizenship & Immigration

Ms. Olivia Chow, M.P.
New Democratic Party Opposition Critic, Citizenship & Immigration

Ms. Libby Davies, M.P. (Vancouver East)
New Democratic Party

Mr. Andrew Bartholomew Chaplin
Clerk of the Committee
Standing Committee on Citizenship & Immigration