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SUBMISSIONS TO STANDING COMMITTEE ON CITIZENSHIP AND IMMIGRATION

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Bill C-11: Has struck a reasonable balance between fast and fair, but dangers abound

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For over 23 years The Mennonite Coalition for Refugee Support (MCRS) has been providing direct support to refugees claimants in the Waterloo Region. In 2009, MCRS served over 300 new refugee claimants, from 33 different countries. We also serve and support a further 350 refugee claimant families still navigating the long and complex refugee claims system.

Our mission is to create a more just, welcoming, and supportive environment for refugee claimants in our community, through the provision of orientation and advocacy throughout the refugee claim process, settlement support, and through the building of a community of mutual support."

MCRS has carefully examined the provisions of Minister Kenney's Bill C-11, proposing major changes to the refugee determination process in Canada. While the Bill C-11 contains some good elements (such appeal on the merits, and the commitment to more timely hearings for refugees), but also some disturbing elements that would put some refugee at risk of being deported to persecution, and also the drastic modification of the discretionary provision of section 25(1) of the IRPA which allow for 'humanitarian and companionate" (H&C) applications for permanent residence.

Some provisions would also make the system more inefficient. A number of provisions would likely lead to a great deal of litigation.

Fairness and doe process for refugee cannot be sacrificed for efficiency.

A. We agree with:

1. Increasing the number of resettled refugees coming to Canada.
2. Implementing the Refugee Appeal Division (RAD)
3. Designating additional funds to the Refugee Determination System
4. Speeding up the refugee decision-making process so that lives are not on hold

B. Our concerns are:

1**. 8- day interview and hearing after 60 days**: We share a common interest in having a fast, fair, and balanced refugee determination system. However, we are concerned that the 8-day interview and 60 days for a hearing is too quick and would lead to poor decisions with serious consequences. We fear claimants will not be able to access legal aid, competent counsel to represent them, and/or acquire all the documents and evidence (and translate them) in time. We question how vulnerable persons and gender guidelines will be applied at the interview, and are concerned that due to trauma and fear of divulging information, the interview notes will not adequately represent their case, and lead to mistaken negative decisions.
We recommend that a hearing date be set after 120 days of the claim being referred to the IRB and the current process with preparation of the Personal Information Form (PIF) be preserved.

2. Designated country of origin: Will be "unfair". -Treating claimants differently based on country of origin is discriminatory. Refugee determination requires individual assessment of each case, not group judgments.

-Claimants that will be particularly hurt include women making gender-based claims, and persons claiming on the basis of sexual orientation. In many countries that otherwise seem fairly peaceful and "safe", there can be serious problems of persecution on these grounds.

-Claimants from designated countries will face a bias against them even at the first level, since decision makers will be aware of the government's judgment on the country.

- Claims from countries that generally seem not to be refugee-producing are among those that most need appeal, due to difficult issues of fact and law, such as availability of state protection.

- Denial of fair process to these claimants may lead to their forced return to persecution, in violation of human rights law.

Other concerns: The designation of Safe Countries politicizes the refugee system and compromises the independence of the IRB. Refugee determination requires individual assessment on the merits of each case, and not group judgments. We are also concerned with

the ambiguity of designation ‘classes of nationals’, and fear this could negatively affect gender-based and sexual orientation-based claims. Claims from countries that are generally thought of as ‘safe’ are those that would most require an appeal process due to complicated issues of fact and law, such as availability of state protection.

3. **Decision makers:** First-level decisions will be made by public servants.

-Assigning refugee determination to civil servants is fundamentally problematic because they lack the necessary independence.

-Limiting appointments to civil servants will exclude some of the most highly qualified potential decision-makers, from a diverse range of backgrounds, such as academia, human rights and social service. This will affect the quality of decision-making.

-The question of appointments to the RAD remains unresolved. Under this bill, they would be political appointees. This will affect the quality of decision-making.

The system also needs high quality first decisions made by professional competent decision makers with a background in areas of human rights; we believe public servants should not be making such complicated refugee determinations.

3. Appeal and Pre-Removal Risk Assessment

The Refugee Appeal Division (RAD) would (finally) be implemented and would be able to hear new evidence, taking on the role of the Pre-Removal Risk Assessment (PRRA). The RAD would also be able to hold a hearing.

An appeal on the merits is necessary to correct the inevitable errors at the first instance.

PRRA is ineffective and inefficient: it makes much better sense to look at new evidence at the RAD.

Concerns:

For some claimants, the bill leaves in place the highly inefficient PRRA, which routinely takes months or years for a decision (average in 2006: 202 days). In addition to the lengthy delays, PRRA is terrifically inefficient, by requiring a whole second structure to do the same work of refugee determination that the Immigration and Refugee Board does.

4. Humanitarian and Compassionate Considerations are an important recourse to deal with humanitarian issues, and risk not covered in the refugee definition. There are also special considerations such as the best interests of the child that should be taken into account.

Removing the right to apply on H&C consideration until 12-months following a refusal, and the

removal of assessing risk factors, could have drastic consequences for many people and families notwithstanding the spirit of our Charter of Rights and Freedoms.

Recommendations:

-Having IRB members appointed through a merit-based selection system that is not restricted to civil servants.

-Eliminating the designation of safe countries of origin.

-Allowing claimants more time to prepare themselves for their hearing.

-Eliminating the bar on claimants making humanitarian and compassionate applications.