A Christian resource for meeting human need

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**Written Submission on Bill C-11**
**Prepared for the House of Commons Standing Committee on Citizenship and Immigration**
**May 27, 2010**

Mennonite Central Committee (MCC) is a worldwide ministry of Anabaptist churches, sharing God's love and compassion for all in the name of Christ by responding to basic human needs and working for peace and justice. One example of the kind of on-the-ground work we support can be found in the MCC Refugee Office in Vancouver, which has been providing orientation, advocacy, and accompaniment for refugee claimants in the Vancouver area for nearly 20 years.

While our Vancouver office supports claimants at all stages of the refugee claim process, since 2004 the focus has been on people who have been rejected at the Immigration and Refugee Board (IRB), and who are seeking assistance in submitting leave for Judicial Review, Pre-Removal Risk Assessment, or an application for residence on humanitarian and compassionate grounds.

Based on our experience, we wish to express the following concerns about the proposed reforms to the Immigration and Refugee Protection Act:

1. We are concerned for the well-being of claimants from countries that have been designated as safe, since they will not have the opportunity to appeal the assessment of their claim.

2. We are concerned that the goal of holding an interview to hear the basis of a claim within eight days of referral to the IRB will result in fewer claimants having access to counsel for the first significant telling of their story to Canadian authorities, and that this will negatively affect the outcome of their claims.

3. Finally, we are concerned that barring failed claimants from filing a Humanitarian and Compassionate Application (H&C) for one year after their refugee claim jeopardizes those who are genuinely at risk of extreme hardship, and whose cases merit ministerial relief.

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1. **We are concerned for the well-being of claimants from countries that have been designated as safe, since they will not have the opportunity to appeal the assessment of their claim.**

In our Vancouver office we deal largely with claimants from Latin America, including many Mexicans. While Bill C-11 does not specify which countries will be designated as safe, given the current political climate, we are concerned that Mexico will be among those designated. Although the majority of Mexican claims before the IRB are refused, 11.4% are accepted. This means that Mexico is determined to be an *unsafe* country that is unable to protect its citizens in more than one out of every ten cases, a number that is significant enough to raise grave concern should any blanket assessment of safety be applied to a state such as Mexico. If a significant number of Mexican claimants are in genuine need of protection, none should be denied the basic right of due process, including an opportunity to appeal.

Furthermore, most of the Mexican claimants we see in our Vancouver office are already denied legal aid for their Personal Information Form (PIF) preparation and/or for their hearing. This is because legal aid authorities believe their claims will likely be refused at the IRB on the grounds that they have access to state protection, or represent an Internal Flight Alternative (IFA). Thus Mexican claimants with genuine fears and risks are already dealt a major blow by not having access to legal counsel, and so it is all the more important that they have access to an appeal process.

2. **We are concerned that the goal of holding an interview to hear the basis of a claim within eight days of referral to the IRB will result in fewer claimants having access to counsel for the first significant telling of their story to Canadian authorities, and that this will negatively affect the outcome of their claims.**

The likelihood of obtaining a lawyer by day eight is extremely low. In British Colombia, most claimants arriving at a port of entry get connected to the International Red Cross program First Contact, who refers them to a settlement agency. Our office is unable to receive such referrals, schedule appointments, refer a claimant to legal aid, receive a response from legal aid, and set up an appointment with a lawyer within eight days. Waiting for a response from legal aid alone can take up to two weeks, and scheduling a meeting with a busy lawyer can take another week or more.

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Claimants not having access to a lawyer at the initial interview is of significant concern, as unrepresented claimants at hearings have a much lower approval rate before the IRB than represented claimants. Government of Canada data indicates that the overall acceptance rate in 2009 was 54.9%; for unrepresented claimants the average acceptance rate was 14.7%. This suggests that it is not merely the substance of a case that determines its success, but the manner in which it is presented. It is therefore crucial that claimants have access to counsel who can help them organize, articulate, and present their story in the clearest way possible.

Moving ahead too quickly with the interview process sets up a situation in which claimants will be telling their story for the first time under unnecessary pressure, rather than, as with a lawyer or with a friend, where they have time for reflection and recollection, and can calmly sort through details that may still be highly personal, traumatic, or repressed. Any mistakes they make at their initial interview could seriously jeopardize their credibility later at their hearing.

3. **Finally, we are concerned that barring failed claimants from filing a Humanitarian and Compassionate Application (H&C) for one year after their refugee claim jeopardizes those who are genuinely at risk of extreme hardship, and whose cases merit ministerial relief.**

Much feedback to the committee on this point has already been made by various organizations. We will not repeat such arguments here, but simply affirm that the H&C process provides needed protection and safety to a demographic that may not fit into the narrow definition of a refugee. Furthermore, we believe that access to this type of application *must remain open* regardless of whether, or when, a refugee claim has been filed. We base this belief on our knowledge of multiple individuals who, after failing their refugee hearing, successfully completed the H&C process in the following year. We strongly believe that individuals who have reason to fear grave hardship upon return to their country—even if they do not meet the Section 96 and 97 refugee/protected person definitions—must continue to have access to this life-saving option.

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**Recommendations:**

1. If the Designated Countries of Origin provision remains, we recommend that the list is made subject to a "sunset clause" that would require the re-evaluation of each country's inclusion one year after it was first designated.

2. Regarding the proposal to replace filing the Personal Information Form within 28 days with an interview within eight days and hearing within 60 days, given the importance of any initial statements and the adverse consequences that might flow from an incomplete or inaccurate statement, we urge the Government of Canada to make arrangements with the provinces to provide legal aid at this initial stage. Failing such a commitment, we recommend that the operational requirements for the new process be changed to 28 days for the initial interview and four months for the hearing.

3. We believe there are ways to maintain a fast, fair, and efficient H&C process that address concerns over delayed removals. We therefore recommend that refugee claimants continue to be entitled to make a concurrent H&C application, or to withdraw their refugee claim and file an H&C application. Procedural safeguards can and should be put in place to ensure this option remains a meaningful remedy in deserving cases.