Refugee Reform

Brief to the Standing Committee on Citizenship and Immigration

May 2010 - Toronto

Founded in 1983, the Mennonite New Life Centre of Toronto has twenty-seven years of experience serving refugees and immigrants to Canada. With three service locations and over thirty staff, the New Life Centre offers settlement and employment services, language instruction and child minding, as well as a variety of emotional integration and support programs, including individual counselling, parenting groups and leadership development workshops. We offer services in English, French, Mandarin, and Spanish. A majority of our refugee clients come from the Latin American community.

The Mennonite New Life Centre originates in a long tradition of peace and service work by Mennonite churches. Mennonite history is marked by a long series of migrations, motivated by religious persecution, as well as the desire to maintain a distinct way of life based on deeply held values of peace and non-violence. Mennonites therefore have a strong concern for immigrants and refugees, particularly the most vulnerable.

Bill C-11 is of great interest and concern to the Mennonite New Life Centre, due to the expected impact on vulnerable refugee claimants. Some of the expected impact is positive. We fully support efforts to speed up the refugee determination process, so that refugees can move on with their lives and be reunited with family members. However, we are concerned that the 8-day interview and 60-day hearing is too quick, and would lead to poor decisions, placing refugee lives at risk.

We are also pleased to see implementation of the Refugee Appeal Division, as provided for in the Immigration and Refugee Protection Act. The RAD acknowledges the fallibility of human decision making, and offers claimants the opportunity for a full appeal on the merits of their claim. Given the life and death consequences of refugee decisions, this is a necessary safeguard. However, we are concerned about the "safe" country provisions in the proposed legislation, which would deny access to the RAD to refugee claimants originating in countries deemed "safe." We respectfully suggest that it is precisely claims from these countries that would most require an appeal process due to complicated issues of fact and law, such as availability of state protection.

The Mennonite New Life Centre thanks the Standing Committee on Citizenship and Immigration for taking the time for community consultations on Refugee Reform. We trust that the following recommendations, rooted in the experience of refugee claimants and frontline workers, will help to inform decision making on this important piece of legislation. This brief highlights three specific areas of concern: timelines, access to the appeal, and access to humanitarian and compassionate consideration. We urge the government to make amendments to these aspects of C-11, to ensure that protection continues to be the priority in a fair and efficient refugee determination system.

1. Timelines

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-day refugee hearing is too quick and would lead to poor decision making, putting refugee lives at risk. We also question how the Immigration and Refugee Board Guideline on Procedures with Respect to Vulnerable Persons would be implemented under a scenario that does not offer sufficient time for the vulnerable claimant's need for procedural accommodation to be identified and communicated to those responsible for the interview or hearing.

We serve many refugee claimants: orienting them to the refugee determination process, supporting them to access legal aid and secure counsel, translating documents, and writing psychological reports. From a practical standpoint, we fear that the proposed timelines will not give claimants the time needed to access legal aid, find competent counsel to represent them, and/or acquire all of the documents and evidence required to support their claim. Some of this evidence must be obtained from far away countries, where political instability and/or travel conditions limit communication, and subsequently translated. Other evidence rests on medical and psychological reports that document torture or trauma. Our own community mental health program currently has a six week wait list, requires a minimum of two to three counselling sessions before issuing a report and has a two week turnaround for report writing and sign off from the clinical supervisor. Wait lists for psychiatrists and other specialists are much longer.

From a psychological standpoint, our experience tells us that claimants, particularly victims of rape, sexual violence and trauma, require time to establish sufficient trust to share essential details of their experience – even with a trained psychologist. Furthermore, claimants suffering from post-traumatic stress disorder may have difficulty providing coherent and consistent responses to questions about their experiences. Requiring claimants to participate in an 8-day interview will likely result in misleading and incomplete responses, and may also cause retraumatization.

Recommendations:

- Eliminate the reference to an 8 day interview in Bill C-11.
- Set the hearing date no sooner than 120 days of the claim being referred to the IRB, and preserve the current process with regards to preparation of the Personal Information Form.

2. Safe country list

Minister Kenney has suggested that Canada needs a "safe" country mechanism to counter "bogus" refugee claims. His choice of words is extremely damaging to refugees, and feeds misunderstanding of the lived reality of asylum seekers. In our experience, it is not that people are making up claims to abuse the system. Rather, people who have been forced to leave their homes seek protection and a future in Canada. Unfortunately, the system rejects many claimants because their legitimate needs and fears do not fit the narrow refugee definition, or because they are thought to be able to receive state protection, even when local authorities are ineffective or corrupt.

The proposal to designate "safe" countries threatens to politicize the refugee system and compromise the independence of the Immigration and Refugee Board (IRB). Refugee determination requires individual assessment on the merits of each case, and not group judgments. We believe that the human rights situation in many democratic countries is severely misunderstood. To offer just one example, we recently heard horrifying stories and statistics from Centro Pro for Human Rights in Mexico City. Based on their extensive human rights experience, this organization affirms that over 18,000 migrants are kidnapped in Mexico each year. Authorities regularly collude in such kidnappings, which commonly lead to torture, rape, exploitation, and sometimes death.

Our own work with the Latin American community supports the need for serious consideration of Mexican refugee claims. We have heard a great deal of "well founded fear" of persecution in Mexico, with authorities participating directly, or by turning a blind eye. Already, with the profusion of negative publicity, last year's introduction of a visa requirement, and expedited processing, Mexican claimants often feel that their country of origin is a strike against them. To enshrine bias in law is discriminatory and unfair.

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. 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. It is particularly

problematic to deny access to an appeal for claims from designated safe countries if first instance decisions are made by public servants, who lack the necessary independence to make unbiased judgements, and may not have the necessary legal and human rights expertise.

Recommendations:

- Delete provisions relating to designated countries of origin
- Establish a clear and transparent mechanism to appoint only the most highly qualified candidates as decision makers at both the first instance level and the RAD

3. Access to humanitarian and compassionate consideration

Humanitarian and Compassionate consideration is an important recourse to deal with humanitarian concerns, as well as risk not covered in the refugee definition. There are also special considerations such as the best interests of the child which are only dealt with through the vehicle of humanitarian and compassionate applications. Removing the right for claimants to apply on H & C grounds until a full twelve months following a refusal, particularly in an environment of increased investment in enforcement and deportation activities, may contravene Canada's international obligations under the Convention on the Rights of the Child, Convention against Torture, and Covenants on Civil and Political Rights and on Economic Social and Cultural Rights.

Furthermore, the proposed legislation strips the H & C application process of much of its responsiveness, by preventing humanitarian consideration of the risk factors that are taken into account in the determination of whether a person is a Convention refugee or a person in need of protection. This proposal is completely unworkable, and contrary to the spirit of "humanitarian" consideration. If anything, this is the time for expanded – not contracted - humanitarian measures. In Canadian immigration history, several regularization programs have been implemented at times when there have been changes to immigration and refugee law, enabling the government to deal with backlogs and address the situation of undocumented persons in an expeditious manner, while implementing new procedures.

Recommendations:

- Delete provisions that would bar access to H & C for 12 months following a refusal
- Ensure that H & C continues to include considerations of risk

Conclusion

Around the world, Canada is regarded as a positive example of the successful integration of refugees and immigrants, an integration that respects both cultural integrity and human rights. We share our concerns in this brief because we are proud of this reputation and wish for it to be fully reflected in the experience of all immigrants, refugees and refugee claimants, regardless of their country of origin.

We urge the Standing Committee to recommend substantial amendments to Bill C-11, so as to address the concerns outlined in this brief, and ensure that protection remains the first priority of a fair and efficient refugee determination system. We count on you, and refugees count on you, to deliberate carefully and courageously, and to take a firm stand on refugee rights.

Submitted by: Mennonite New Life Centre of Toronto
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