Brief to the Senate Committee on Social Affairs, Science and Technology

regarding

Bill C-11, *Immigration and Refugee Protection Act*

By

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INTRODUCTION

The Maytree Foundation welcomes this opportunity to provide input to the Senate during its consideration of Bill C-11, the proposed *Immigration and Refugee Protection Act.*

The Maytree Foundation is a Canadian charitable foundation established in 1982. Our interest in refugees and immigrants goes back to the early years of the Foundation. The objectives of the Foundation's current Refugee and Immigrant Program are threefold: (a) to assist newcomers in accessing suitable employment in part by promoting fair recognition of the skills, education and experience they bring with them; (b) to accelerate the settlement and landing process for refugees who experience undue delays in obtaining permanent resident status; and (c) to build on the strengths and capacities of refugee and immigrant organizations and leaders.

The Maytree Foundation supports projects which improve services for newcomers, assist Convention refugee youth in their post-secondary education and training pursuits, provide opportunities that build the leadership capacity of organizations and individuals, and through a variety of means, inform and educate the public and policymakers about the issues facing refugees and immigrants today.

While we have a strong interest in much of what is – and what isn't – contained in Bill C-11, we will largely limit our comments in this brief to those areas that relate directly to the objectives of our Refugee and Immigrant Program.

GENERAL COMMENTS

We would like to begin by affirming some of the positive aspects of Bill C-11 as passed by the House of Commons. At the very broadest level, for example, we applaud the decision to distinguish between the objectives of the immigration program and the objectives of refugee protection. We also support the effort to make the legislation more accessible both by its improved organization and its use of plainer language.

At the same time, however, we must register our concern with respect to the tenor of the Bill. The Bill is much more about who cannot come to Canada and how they will be removed, than it is about who we will welcome, who we will protect, and how we will do that.

Bill C-11 substantially increases the discretionary power of immigration officers to make decisions that will profoundly affect peoples' lives. In many cases there is little or nothing in the Bill to guide these decisions in any meaningful way. It is true that Bill C-11 includes some real improvements from its predecessor, Bill C-31, in this regard. We applaud the Minister, for example, for emphasizing in s. 3(d) the key principles of equality and freedom from discrimination. We also affirm inclusion at several points of the best interests of the child as a factor to be considered by immigration officers, for example in s. 60 with respect to detention of minor children. However, as important as these principles are, they are far from adequate. Moreover, the Bill severely lacks avenues to appeal discretionary decisions.

We are also concerned about the process by which the government has chosen to reform the immigration and refugee protection regime, and the implications for the future. In our earlier submissions and commentaries on the bill and its predecessor, Bill C-31,[1] we expressed our concern with the fact that so much of the substance of the new immigration and refugee protection regime has been left to regulations without so much as guiding principles being enshrined in the Bill. We recognize the pragmatic benefits of this shift: it would allow for a more responsive and malleable system that could respond more readily to rapidly evolving circumstances. However, this approach also shields profound decisions of national and even international importance from public scrutiny and democratic input. It removes authority from elected legislators, who are accountable to the people of Canada, and puts it in the hands of a largely invisible and unaccountable civil service.

[1] See "Brief to the House of Commons Standing Committee on Citizenship and Immigration regarding Bill C-31: *Immigration and Refugee Protection Act*" (Toronto: Maytree Foundation, August 18, 2000) and "Brief to the House of Commons Standing Committee on Citizenship and Immigration regarding Bill C-11: *Immigration and Refugee Protection Act*" (Toronto: Maytree Foundation, March 26, 2001), as well as our earlier published commentaries, *Don't Slam the* Door (Ottawa: Caledon Institute of Social Policy, January 2001) and *The New Immigration Act: More Questions Than Answers* (Ottawa: Caledon Institute of Social Policy, May 2000).

The addition of s. 5(2) is a welcome measure in this regard, but it will remain to be seen what form the House Committee review of regulations take and whether there will be opportunity for public input.

International human rights obligations

Another area of both support and concern has to do with Canada's international obligations. Canada is a signatory to and has ratified numerous international human rights conventions and covenants. Some attempt has been made to include such obligations in the Bill. For example, s. 3(2)(b) lists as an objective of the Act "to fulfil Canada's international legal obligations with respect to refugees." Maytree also strongly applauds the addition of s. 3(3)(f) by the House of Commons Standing Committee on Citizenship and Immigration, which requires that the Act be "construed and applied in a manner that …complies with international human rights instruments to which Canada is a signatory." In addition, selected provisions of the UN *Convention relating to the Status of Refugees*, the *Convention Against Torture* and the *Convention on the Rights of the Child* have been incorporated into various sections of the Bill.

However, international human rights obligations have not been fully incorporated into the Bill. Perhaps the most egregious example of this inconsistency has to do with the *UN Convention Against Torture.* While Bill C-11 includes the Convention as grounds for protection in the new consolidated decision making process, s. 115(2) of the Bill explicitly exempts Canada in certain situations from respecting one of the Convention's most important provisions: the absolute prohibition on refoulement under Article 3 of the Convention (prohibiting countries from returning anyone to a country where they face torture). Moreover, it does so without even providing due process for the person being removed.

Recommendation:

> *We urge the Senate to delete subsection 115(2) of Bill C-11, in order to remove the exception to the principle of nonrefoulement. This would bring the Bill into compliance with Article 3(1) of the* UN Convention Against Torture.

Appeal of negative protection decisions

The Maytree Foundation applauds the introduction of an appeal on the merits for negative protection decisions by the Refugee Protection Division of the IRB. The lack of such an appeal is a significant blemish on the reputation and quality of the current refugee determination system. While we understand the economic and efficiency arguments for limiting this appeal to a paper review in general, there are situations where justice can only be served by a claimant and counsel appearing in person before an independent decision maker.

Recommendation:

> *We urge the Committee to amend s. 110(3) to read: "The Refugee Appeal Division shall proceed with a hearing, on the basis of…"*

At a very minimum, the option of an oral appeal should be available where issues of credibility are at stake, or where new evidence is to be provided.

REFUGEES IN LEGAL LIMBO

The impact of Bill C-11 on the problem of "legal limbo" – the long delays experienced by some Convention refugees seeking permanent resident status – is somewhat ambiguous and contradictory. While there are elements of the Bill that offer some faint hope that changes may be on the way to eliminate some existing barriers to landing, other proposals suggest that the situation may worsen.

The fact that Bill C-11 does not eliminate the problem of legal limbo is of great concern to The Maytree Foundation. The current situation is untenable – thousands of Convention refugees are living in legal limbo in Canada today. They are unable to travel outside of Canada; they are barred from sponsoring family members to come to Canada[2];

[2] Family reunification is the main concern of most refugees. According to former Immigration Minister Lucienne Robillard, family reunification is "the cornerstone of Canadian immigration policy" [Citizenship and Immigration Canada 1999]. Yet Convention refugees who apply for landing alone (for example, because at time of application they are unable to locate their families overseas, and don't want to defer their application indefinitely) must complete their own landing before they can sponsor their families.

Any extended family separation has consequences for emotional and financial health. Refugees carry the extra burden of knowing that their spouses and children often are living in very precarious circumstances in their country of origin, or in desperate conditions in a Third World refugee camp.

they are denied access to loans for post-secondary education[3]; and they often face difficulties getting good jobs.[4] Refugees in legal limbo also are denied a voice in the democratic process.

There are a number of steps that need to be taken to reduce or eliminate existing barriers to landing, and to minimize the impact of not having landed status. These are addressed below.

Identity documents[5]

Since 1993 the *Immigration Act* has required that in order to be granted permanent resident status, Convention refugees must provide a "valid and subsisting passport or travel document or a satisfactory identity document" (s. 46.04(8)). Since the imposition of this requirement increasing numbers of Convention refugees lacking "satisfactory" identity documents have had their landing "suspended" indefinitely. They are left in legal limbo – the untenable situation of having been granted Canada's protection from persecution but denied permanent status here – including the rights and privileges that go with such status.

Psychological problems experienced by families that have suffered severe trauma are exacerbated [Canadian Council for Refugees 1995: 14-20].

The imposition of this obstacle to family reunification contradicts not only Canada's stated commitment to bringing families together, but also international human rights norms. The United Nations Convention on the Rights of the Child recognizes the right of children to be reunited with their parents [Article 10]. The Final Act of the Conference that adopted the 1951 Convention on the Status of Refugees also recognized the importance of family unity.

[3] Currently, the *Canada Student Financial Assistance Act* restricts access to student loans to citizens and landed immigrants. Regulations governing the provincial loans programs mirror this restriction on access. For a full discussion of this issue see Brouwer, A., *Equal Access to Student Loans for Convention Refugees* (Ottawa: Caledon, 1999).

[4] It is widely reported that Convention refugees' Social Insurance Number, which begins with a 9, is a barrier to adequate employment. The reason is that most employers recognize that a number beginning with a 9 indicates that the holder has only temporary status in Canada. For some employers, this is a disincentive to hire the person, at least for a long-term position or one that requires training, because they are unwilling to invest in someone who may not be around a few days, weeks or months later. For other employers, seeing a Social Insurance Number that begins with a 9 is a signal that the person can be paid less than permanent residents and citizens because their employment opportunities are limited.

The federal government's intent to indicate to employers that a particular person may not be employed unless they provide a valid employment authorization is quite reasonable. The problem lies in the application of the same marker to refugees as to others who do not have permanent resident status in Canada. As noted above, Convention refugees who have been granted protection by the IRB are in the vast majority of cases here to stay and may not be returned to their country of origin. They are therefore in a fundamentally different position from others who in Canada on a temporary basis. This distinction needs to be made clear to prospective employers.

[5] For a full discussion of this issue, see Brouwer, A. *What's In A Name?* (Ottawa: Caledon, 1999).

Recognizing that the document requirement was a barrier to many refugees who simply could not acquire "satisfactory" documents due to the lack of a functioning government in their country of origin, in 1997 the federal government introduced a special program for undocumented refugees from Somalia and Afghanistan. The Undocumented Convention Refugee in Canada Class provided for landing of Convention refugees from those two countries even without the required documents, after a five-year waiting period (reduced to three years in 2000).

The UCRCC program has been a failure. In 1996 the Department of Citizenship and Immigration estimated that there were 7,500 undocumented Somali and Afghan refugees in Canada [Citizenship and Immigration Canada 1998: 3342]. *Yet as of July 1, 2000, according to statistics provided to The Maytree Foundation by the Department of Citizenship and Immigration last August, only 1,980 Convention refugees have been landed under UCRCC – just a quarter of the original group!* [Citizenship and Immigration Canada 2000a]

Moreover, it appears that between 1996 and mid-2000 an additional 4,637 refugees from Somalia and Afghanistan have been granted Convention status in Canada by the IRB [Immigration and Refugee Board 2000; 1999; 1998; 1997], and only 3,160 have been landed under the regular process [Citizenship and Immigration Canada 2000b; 2000c], adding a further 1,477 refugees to the pool of Somali and Afghan Convention refugees in limbo.

The UCRCC program is discriminatory both to those included in it and to those who are excluded. Somalis and Afghans who through no fault of their own do not possess the required documents face a waiting period not applied to other refugees who do possess the required documents. However, lack of documentation is not a problem limited to Somalis and Afghans. Most refugee-producing countries are significantly less document-oriented than we are in Canada, and it is much less common for ordinary citizens of those countries to possess identity documents as a matter of course. Moreover, the nature of refugee flight makes possession of identity and travel documents even less likely – very few refugees have the time to apply for documents before taking flight; often it is

dangerous to do so. Even where the refugee possesses documents, there often simply isn't time to go home and retrieve them before fleeing. And seeking to obtain identity documents from the country of persecution when already in Canada is sometime impractical and dangerous. Indeed, international refugee law expert Prof. Guy Goodwin-Gill and UNHCR representative Judith Kumin have observed that to do so might be construed as voluntarily reavailing oneself of the protection of one's country of nationality, putting the refugee at risk of losing Convention refugee status per s. 108(1)(a) of Bill C-11.[6]

For these refugees, even the flawed UCRCC program is unavailable, and they therefore have their landing suspended indefinitely.

Bill C-11 has dispensed with the explicit document requirement for refugees. S. 21(2) now states that, except in certain circumstances, "a person whose application for protection has been finally determined by the Board to be a Convention refugee or to be a person in need of protection, or a person whose application for protection has been allowed by the Minister, becomes…a permanent resident if the officer is satisfied that they have made their application in accordance with the regulations and that they are not inadmissible on any ground referred to in s. 34 or 35, ss. 36(1) or s. 37 or 38." This subclause was added to Bill C-11 by the House of Commons Standing Committee on Citizenship and Immigration, apparently to ensure that Convention refugees and protected persons not be caught by the document provision in s. 21(1) and to indicate that landing should be the general rule. (A more audacious proposal advanced by several NGOs as well as Standing Committee members – that permanent resident status be conferred automatically upon conferral of protection – was rejected by the government.)

While the elimination of the legislated document requirement is a positive step, it may well prove less significant than it appears. There is reason to suspect that the document requirement will simply be shifted to the regulations. (Indeed, a conversation in

[6] Guy Goodwin-Gill and Judith Kumin, *Refugees in Limbo and Canada's International Obligations* (Ottawa: Caledon, September 2000) p 11.

May with a Departmental staff member responsible for this area of policy confirmed that this is the government's intent.) If so, it is hard to see what will have been gained.

In *Refugees in Limbo and Canada's International Obligations* (Ottawa: Caledon, September 2000), Professor Guy Goodwin-Gill of the University of Oxford, an authority on international refugee law, and Judith Kumin, Representative to Canada for the UN High Commissioner for Refugees, examine Canada's legislation and practices with respect to undocumented refugees in light of our obligations under the 1951 *UN Convention relating to the Status of Refugees*. They find that Canada is not, in fact, complying with Articles 25 (administrative assistance), 27 (identity papers) and 28 (travel documents). The authors make it clear that as a signatory to the Convention, which Canada ratified in 1969, we have an obligation to provide undocumented refugees with the same freedoms and rights provided to documented refugees. We are required to issue official identity papers to all determined refugees in Canada who are without travel documents, without exception. We are also required to issue travel documents to all recognized refugees – including those whose landing has been "suspended" due to lack of satisfactory identity documents from their countries of origin.

Requiring identity documentation from Convention refugees is not only inherently unjust and contrary to international law; it is also unnecessary. The Immigration and Refugee Board conducts a thorough investigation into identity during the refugee determination process. It has developed detailed and rigorous procedures for doing so, with a very strong track record of accuracy. The Maytree Foundation has proposed that these procedures should be accepted as sufficient by the Department for the granting of permanent resident status[7], and we reiterate that proposal here. The same position is argued forcefully by Professor Goodwin-Gill and Ms. Kumin.

The argument that the identity document requirement deters refugees who otherwise might destroy their documents has been effectively countered by the Department of Citizenship and Immigration itself: "This trend (of undocumented arrivals) continues,

[7] See Brouwer, A. *What's In A Name? Identity Documents and Convention Refugees* (Ottawa: Caledon, March 1999).

despite legislative provisions aimed at encouraging refugees and claimants to retain whatever documentation they may possess" [Citizenship and Immigration Canada 1998: 3341].

Nor is national security a valid reason to automatically withhold permanent resident status from *all* undocumented Convention refugees. The Department, in co-operation with the Canadian Security Intelligence Service and the RCMP, conducts background checks on all landing applicants, documented or undocumented. Where there is reason to suspect that a landing applicant poses a danger to Canada, these authorities advise the Minister to deny landing. *Should new evidence of war crimes come to light after landing, it is still possible to arrest and deport the person in question.* Furthermore, to date there have been no reports of criminals or terrorists having been found among Convention refugees during the UCRCC waiting period.

Lack of documentation is not an indication that an applicant may be a perpetrator of war crimes; in fact, it would seem generally to be quite the opposite. Common sense suggests that, in most cases, those who held positions of power in oppressive governments would have access to any documents they need. Likewise, recent news reports indicate that false Canadian and other passports are readily available to those who are "connected." It is the innocent who are caught up in the document requirement.

Finally, as a blanket requirement applied to all Convention refugees, the policy results in the denial of landing to even the most completely, undeniably innocent: the children.

It would appear that the Minister has made an attempt to respond to the arguments of Professor Goodwin-Gill, Maytree and others by adding a "status document" provision to Bill C-11. Ss. 31(1) of the new Bill provides: "A permanent resident and a protected person shall be provided with a document indicating their status." While the purpose of such a status document is not explained in the Bill, Departmental officials have indicated that one of the purposes is to allow those holding such documents to use them when seeking access to other government services. The document thus appears to be designed to

allow Canada to comply with Article 25 of the 1951 *Convention relating to the Status of Refugees*, which requires States to provide administrative assistance to undocumented refugees in their territories.

Maytree applauds the inclusion of this provision – indeed we advocated extending it to all refugees and protected persons, rather than just some of these persons as proposed in the original version of Bill C-11.

Departmental representatives have unofficially suggested that the status document will enable holders, including undocumented refugees, to apply for and obtain travel documents as well. While this would clearly be a very positive move, and would bring Canadian practice into line with Article 28 of the Convention, we are not satisfied to rely on unofficial suggestions on this issue. Access to travel documents is enshrined as a provision of the Convention and is thus guaranteed to all refugees in Canada, except where there are "compelling reasons of national security or public order" to refuse such documents. The Convention emphasizes the particular importance of providing travel documents to undocumented refugees, stating that governments should "in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence." Given the importance of this issue, Maytree believes that the provision of travel documents should be explicitly included in the Bill.

Where the government has made no attempt to comply with the trilogy of document requirements under the Convention is with respect to Article 27. Of the three articles discussed here, Article 27 is the most unambiguous. It states simply: "The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document." There are no exceptions or limitations; the requirement is unequivocal. While on first glance the status document provision in s. 31 of Bill C-11 appeared that it might serve as an identity document, the Department has made it clear that this is not the case. This is a clear and intentional violation of Article 27 of the Convention which must be corrected in the Bill.

Recommendation:

> ***We urge the Senate to amend Bill C-11 to explicitly guarantee identity and travel documents to undocumented Convention refugees and protected persons. We propose that this provision be incorporated into s. 31, after subsection 31(2), as follows:***
>
> ***-add new subsection 31(3): A protected person who is undocumented shall be provided with a document establishing their identity, upon conferral of protected status by the Refugee Protection Division.***
>
> ***-add new subsection 31(4): A protected person shall be provided with a travel document allowing re-entry into Canada, upon conferral of protected status by the Refugee Protection Division***
>
> ***-subsection 31(3) of the current Act should be renumbered as subsection 31(5).***
>
> *These amendments would bring Canadian practice into compliance with Articles 27 and 28 of the* UN Convention relating to the Status of Refugees.

(If it is deemed unwise to reopen the bill at this time, Canadian practice (if not legislation) could be brought into compliance with international human rights obligations by drafting document regulations appropriately.)

Security screening

The Maytree Foundation strongly supports the continuation of a thorough security screening process in order to protect Canadian security. Those who pose a threat to the lives and safety of Canadians must not be allowed to stay here. However, we also firmly believe that the security screening process must be fair, that innocent Convention refugees should not be subjected to long and unnecessary delays, and that there must be full respect of human rights and due process. We believe in transparency in government and in a publicly accountable civil service. As it stands, the security screening process fails to meet these requirements.

(The Minister has announced plans to make some changes to the security screening process, but few details are available to date. Our analysis thus focuses on the current system first, with comments on the proposed changes following thereafter.)

Currently, security screening of refugees is conducted after refugee determination and prior to landing. In most cases this screening does not add significantly to the processing time. Some cases, however, are passed on to the Canadian Security Intelligence Service (CSIS) for more thorough review and investigation, and a recommendation to CIC on whether or not to land the person. Some of the Convention refugees referred for further investigation end up in long term limbo as neither CSIS nor CIC makes a decision on their case.

Perhaps the biggest problem in the current screening process lies in the wording of ss. 19(1)(f)(iii) of the current *Act*, which lists as inadmissible "persons who there are reasonable grounds to believe…are or were members of an organization that there are reasonable grounds to believe is or was engaged in…terrorism." The words "members" and "terrorism" are not defined in either the *Act* itself or in accompanying regulations.[8] Rather than rectify this problem, Bill C-11 simply carries it over into the new legislation, via s. 34.

This lack of definition has led to the over-broad application of the section to people whose "membership" consists of nothing more than being involved in a particular newcomer community and espousing the goal of political liberation or autonomy for their people. While details are very difficult to obtain from either CSIS or CIC on these matters, it would appear that whole communities are currently being placed under suspicion. For example, CSIS seems not to differentiate between the desire of many Turkish Kurds for political autonomy for their people, active membership in the political wing of the PKK, and participation in terrorist activities. Yet the vast majority of Kurds from Turkey have come to Canada and been recognized as refugees precisely because they face persecution from Turkish authorities at home, often because they are seen by the Turks as supporters of Kurdish independence.

The way CSIS reads the *Immigration Act* would allow it to apply the "member" of a "terrorist organization" label to nearly every member of the Kurdish community in Canada – men, women, even children. The only way for these individuals to avoid the

[8] This issue is currently before the Supreme Court of Canada in *R v. Suresh*.

label appears to be that they refrain from exercising their *Charter*-guaranteed right to express their political support for Kurdish independence from Turkish rule, and that they refrain from participating in completely legal community events and organizations. Iranian, Tamil and other communities face similar targeting by CSIS.

In an April 2000 report on a complaint by a Kurd from Turkey who has been awaiting completion of his security review for some seven years, the Security Intelligence Review Committee criticized CSIS for its broad interpretation of "membership" and "terrorism", noting that if CSIS had applied its interpretation of those words to Nobel laureate Nelson Mandela, he too would have failed the test and been barred from the country [Security Intelligence Review Committee 2000][9]. The Committee called on CSIS to develop a more sophisticated analytical framework for the terms.

We agree that a more sophisticated analysis is crucial, but we believe that the definitions should be public, and should be tied directly to ss. 34(c) and (f) of Bill C-11 (s. 19(2)(f)(iii) in the current *Immigration Act*).

Recommendation:

> *We urge the Committee to recommend that the terms "members" and "terrorism" be fully defined in Bill C-11.*

Another central concern in the existing security review process is the question of accountability. CSIS has guidelines setting out the length of time in which it must complete its investigation and submit its recommendation to CIC, and an oversight body, the Security Intelligence Review Committee, which can hear complaints about how CSIS conducts its business.

It appears that currently SIRC's recommendations do not carry the kind of authority that a watchdog body's should carry. For example, in reviewing CSIS actions and recommendations in the aforementioned case with respect to the security clearance of a Kurdish refugee from Turkey, SIRC had full and unimpeded access to all the expertise

[9] See also Aiken, S. and A. Brouwer "We could deport Nelson Mandela" (commentary in Globe and Mail, June 7, 2001)

and evidence that CSIS had compiled, as well as full arguments from the complainants themselves. On the basis of its careful, impartial and lengthy deliberation on all the facts, SIRC found that CSIS has erred in advising CIC that the complainant was inadmissible, and recommended that CSIS advise CIC that the individual be landed promptly. However, these recommendations are not binding.

More than a year after the SIRC report was tabled, the complainant refugee received a notice from CIC directly contradicting the recommendation of SIRC, informing him that he had been found to be inadmissible under s.19(1)(f) and was therefore denied landing. In support of this decision the notice reiterated the same list of allegations that had been found by SIRC to be either groundless or insufficient for a determination of inadmissibility. A second complainant in parallel proceedings before SIRC received a similar notice. The third of three complainants has been informed that he would be landed via "Ministerial relief," meaning that CIC continues to disregard the advice of SIRC and continues to see the individual as formally within the ambit of s. 19(1)(f), but that the Minister has decided to allow the individual to be landed anyway because she does not view doing so as contrary to the national interest.

For SIRC to have any real credibility, its recommendations must be binding on CSIS, and must supersede CSIS' own recommendations on the security reviews of the claimants. A watchdog must have teeth for it to serve any protective function. While we recognize that SIRC matters are not strictly within the purview of the Minister of Citizenship and Immigration, the Minister is nevertheless responsible to ensure that Convention refugees applying for permanent residence receive fair treatment and that inadmissibility decisions are made justly and according to principles of fundamental justice and due process.

Recommendation:

> *We urge the Committee to recommend that the Minister work with the Solicitor General to expand the authority of SIRC to make its recommendations binding upon CSIS, at least with respect to inadmissibility decisions.*

While CSIS has timelines to meet and an oversight body, the Security Review section of the Department of Citizenship and Immigration has neither of these. The fact is that while some of the delays in security screenings of prospective permanent residents are caused by CSIS, many others are due to inaction on the part of the Department.

There is no excuse for keeping people in a state of long-term legal limbo simply because the Department has not come to a decision. The intimidating process of being investigated by an intelligence agency, and the uncertainty and fear in which those under investigation live, causes severe emotional and psychological pain for many refugees who have fled from fear and intimidation at home. The Department should be held accountable for its decisions and should work within strict timelines for decision making.

Recommendation:

> *We urge the Committee to recommend that a reasonable time limit for security reviews be established. If at the end of that period neither CIC nor CSIS has discovered evidence for a finding of inadmissibility, then the person should receive a security clearance and be landed promptly. Only where there are valid reasons to extend the investigation should this time limit be exceeded, and then only upon application to the Minister for an extension.*

It must be borne in mind that the Minister retains authority to revoke landed status and even citizenship should new evidence appear that indicates that the individual is a security threat.

The proposed changes

The Minister has announced plans to move towards front-end screening for inadmissibility. S. 100(1) stipulates that an immigration officer is required to make an eligibility decision and refer eligible claims to the Refugee Protection Division of the IRB within 72 hours of receipt of a claim. However, under s. 100(2)(a) consideration of eligibility, and hence referral to the IRB for a protection decision, may be suspended while a determination is being made with respect to inadmissibility. Further, s. 103 allows an

officer to "claw back" or suspend a claim that has already been referred to the Refugee Protection Division if the officer decides to refer the matter to the Immigration Division for investigation regarding inadmissibility.

In principle, front-end screening for security and serious criminality makes good sense. The Maytree Foundation agrees – as, we believe, would most Canadians – that people who pose a serious threat to Canadian security should be identified and removed as quickly as due process and our human rights obligations allow. In addition, starting the screening process early could significantly reduce the length of time that refugees spend in "security limbo" as described above. However, our observation of the current system of security screening gives us cause for serious concern about front-end screening.

We have contacted the Department to request details about how the proposed screening system will function; however, we have not yet received any further information. In the absence of further information, all we can do is state some of our concerns, in the hope that the Committee will either be able to provide answers or will seek full explanations from the Minister before passing judgement on the Bill.

- Shifting the limbo problem rather than resolving it

We are concerned that front-end screening may shift the limbo problem from post-determination to pre-determination. Notwithstanding the problems outlined above with respect to the current screening system, at least those refugees being screened today are protected from *refoulement* and have access (albeit inadequate) to social services, education, health care, etc. Under the proposed new system, the screening will begin before a refugee has been granted protection, and refugee determination may be suspended until an admissibility decision has been rendered. This will leave those being investigated in a much more vulnerable situation, as mere claimants. They will lack the protection against *refoulement* guaranteed to Convention refugees. Unless changes are made to a wide range of laws and regulations, they will have extremely limited access to social services. For example, their medical coverage will be for emergencies only. Not only will they be ineligible for student loans, they will be charged foreign student fees. And the list

goes on. Long-term limbo as a Convention refugee is bad enough; shifting limbo to the pre-determination stage would be an extremely regressive step.

- The screen itself: how wide or narrow?

How wide or narrow will the security and criminality screen be at the starting point? What measures and criteria will be taken to ensure that overworked officers seeking to prevent potentially inadmissible claimants from being granted protection don't simply refer anyone who raises even the slightest question as to admissibility to the Immigration Division, and thence to CSIS, for investigation, thus significantly increasing the number of people in limbo? This is a basic question of balancing and risk management, and will need to be clearly articulated either in the legislation or in regulations (with guiding principles in the legislation), to give guidance to officers.

- Discriminatory screening

Will some sort of profiling be used to select those claimants that share characteristics that suggest a higher risk of inadmissibility? If so, how will the Minister ensure that this profiling does not result in discrimination based on race, national or ethnic origin, religion or other Charter-protected ground? Many critics contend that the current security screening process has a discriminatory impact on certain groups. Given the much more severe implications of security limbo if it happens at the predetermination stage, these criticisms – and litigation – will only increase. Again, clear, reasonable criteria for suspending claims are needed.

- Transparency and accountability

What steps will be taken to ensure transparency and accountability in the security screening process? There must be narrow time limits for the suspension of claims. Our recommendations 16-18 apply equally to front-end screening as to the current process.

ACCOUNTABILITY

The problems facing refugees in legal limbo discussed above is just one area of concern in the immigration and refugee protection system. There are many others. Considering that the Department has the mammoth job of managing the immigration to Canada of more than 200,000 immigrants and refugees each year, it is little wonder that there are numerous gaps and flaws in the system, and that even where processes are effective for the majority, there are nevertheless numerous people who are not well-served. There are unacceptable delays, lost files, mismanaged cases, inconsistencies, lapses in judgement and systemic failures. Many of these problems occur behind the closed doors of a Department not known for its transparency or accountability.

Those who fall through the cracks of this imperfect system have no formal venue to make complaints. Many rely on interventions by their political representatives. A few manage to bring their cases to the attention of the Minister herself, often through the help of community advocates. While this system has worked for some, it is a very inconsistent, *ad hoc* approach that inevitably leaves out some who have very valid complaints but may not have access to an advocate or whose MP does not have sufficient expertise to intervene effectively on their behalf.

The Minister has indicated her willingness to personally hear about cases that "fall through the cracks." However, given the size of the department and its enormous case load, the grave implications of flaws in the system for which there are no existing systemic remedies, and the responsibility of the federal government to ensure that all its departments and agencies are publicly accountable and transparent, to rely on personal intervention by the Minister is clearly impractical.

The Maytree Foundation believes that a formal complaints procedure needs to be established. Specifically, we would urge the Minister to establish an arm's-length Ombudsperson's Office. This Office should be resourced and empowered to hear complaints, issue recommendations, and table a public report to the legislature on an annual basis.

Recommendation:

We urge the Committee to recommend that an arm's-length Ombudsperson's Office be established to hear complaints about any activities undertaken by the Department, to make recommendations, and to table annual public reports to the

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