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UNHCR Statement Relating to Bill C-31,
Protecting Canada's Immigration System Act

Senate Standing Committee on Social Affairs, Science and Technology
18 June 2012

Chairman Ogilvie, Honourable Committee Members, Ladies and Gentlemen,

Je tiens d'abord à exprimer la gratitude du HCR d'avoir été invité à comparaître devant le comité du Sénat pour offrir nos commentaires sur le projet de loi C-31, Loi visant à protéger le système d'Immigration au Canada.

Les commentaires du HCR sur la législation nationale dérivent du mandat qui lui a été conféré par l'Assemblée générale des Nations Unies de fournir une protection internationale aux réfugiés et aux personnes relevant de sa compétence et d'aider les gouvernements dans la recherche de solutions permanentes aux problèmes des réfugiés. Tel qu'énoncé dans son Statut, le HCR remplit son mandat de protection internationale par, entre autres, « la poursuite de la conclusion et de la ratification de conventions internationales pour la protection des réfugiés, en surveillant leur application et en y proposant des modifications ». Le rôle de supervision du HCR est à nouveau réitéré dans l'Article 35 de la Convention relative au statut des réfugiés de 1951 et dans l'Article II du Protocole de 1967 relatif au statut des réfugiés.

UNHCR recognizes the great value of Canada's commitment to refugee protection worldwide, the challenges it faces in ensuring the sustainability of its asylum system and the high standards it applies in protecting displaced persons seeking asylum and solutions on its territory. The Office also appreciates the constructive dialogue with the Government of Canada.

My presentation today is informed by the amendments introduced by the House Standing Committee on Citizenship and Immigration during its recent sessions.

Important amendments were introduced in the text of the Bill, most notably regarding the detention regime. This has alleviated one of UNHCR's main concerns. Another amendment to the text that gives certainty to the asylum system in Canada is the non-revocation of permanent residence for refugees on the grounds of "changed circumstances in the country of origin". This is an important recognition that refugees deserve a durable solution to their plight, without fear of being stripped of their legal protection.

In relation to other provisions in the Bill, I would like to draw your attention to the May 2012 submission to the House Standing Committee for the detailed comments provided by UNHCR. Based on those earlier comments, in this brief intervention, we would like to make the following observations:

Regarding the Designation of Foreign Nationals as Irregular Arrivals:

Asylum-seekers are often compelled to resort to smugglers to reach safety. The proposed designation of irregular arrivals could lead to a penalization of those in need of international protection.

With regard to the grounds for designation as an "irregular arrival", Bill C-31 may create two classes of asylum-seekers and refugees in Canada based on the designation provision, and of particular concern is the designation for operational reasons.

Consequences of the designation include a more restrictive detention regime, no right of appeal, restrictions on the issuance of Convention Travel Documents, reporting requirements despite the granting of Convention refugee status, and a five year bar on regularizing status, with its implications for family unity. In this context, UNHCR's Executive Committee has underlined the need for family unity to be protected.

From a non-discrimination point of view, UNHCR has regularly pointed out the problems associated with differentiated treatment of asylum-seekers and refugees, depending on the mode of arrival, as well as the significance of effective remedies being available through an appeal process which offers substantive review both of the facts and law.

Regarding Designated Countries of Origin (DCO):

UNHCR does not oppose the introduction of a "designated" or "safe country of origin" list, so long as this is used as a procedural tool to prioritize or accelerate the examination of applications in certain situations.

The designation of a country as a safe country of origin cannot, however, create a presumption of an absolute guarantee of safety for all nationals of that country. It may be that, despite general conditions of safety in the country of origin, for some individuals the country remains unsafe. UNHCR's written submission makes a number of suggestions for ensuring the adequacy of such designations.

Regarding the Restriction of Access to Asylum on Criminality Grounds:

Asylum applicants should not be considered inadmissible unless the individual concerned has already found effective protection or access to a fair and effective asylum process in another country.

Regarding Shortened Time Limits Under the New Asylum Process:

Efforts by Government authorities to decide applications in a timely manner are appreciated. Overly restrictive or very short timeframes in the context of a sophisticated asylum process can, however, in UNHCR's experience, lead to increased rates of abandonment and a rise in the number of unrepresented claimants. Asylum claimants do not ordinarily have the knowledge to navigate the legal system. Even where a claimant retains counsel, enough time needs to be allowed for applicants to apply for legal aid and to engage counsel. The consequences of abandonment are, in effect, a

final negative decision, where there is no right to an appeal or access to a pre-removal risk assessment for one year after the negative decision.

Regarding the Refugee Appeal Division (RAD):

The right to appeal is an important requirement of a fair and efficient asylum procedure. At the core of the 1951 Convention is the principle of *non-refoulement*, whereby those with international protection needs cannot be returned to a place where they may be at risk of persecution. The purpose of a second review through an appeals mechanism is to ensure that errors of fact or law at the first instance can be corrected to ensure respect for the principle of *non-refoulement*.

Regarding Restricted Access to Pre-Removal Risk Assessments and Humanitarian and Compassionate applications (PRRA and H&C):

PRRAs and H&Cs are important safeguards against the deportation of persons who are not recognized as refugees according to the law, but who are still in need of international protection. In particular, given the many categories of asylum-seekers who will not have access to an appeal under the RAD, the availability of such mechanisms will constitute important procedural safeguards.

Chairman Ogilvie, Honourable Committee Members, Ladies and Gentlemen, I thank you.