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Media Release

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Rights Groups Express Dismay with Appeal Court Ruling on Safe Third Country

Amnesty International, the Canadian Council for Refugees, the Canadian Council of Churches and John Doe expressed their dismay today with the June 27 Federal Court of Appeal ruling on the Safe Third Country Agreement. The appeal court overturned an earlier Federal Court decision which found the United States does not comply with the Refugee Convention and Convention against Torture and that the Safe Third Country Agreement is in breach of Canada's Charter obligations.

“We are deeply disappointed that the Court condones the Canadian government disregarding US practices that place refugee lives in danger”, said Elizabeth McWeeny, President of the Canadian Council for Refugees. “This judgment fails to give life to the promise of protection in the Charter and in international human rights agreements which Canada has signed.”

“Sadly the court chose to focus on the scope of the review and questioned the right of the petitioners to bring forward such a challenge, rather than on the human rights issues at stake for refugees,” commented Gloria Nafziger of Amnesty International. “The evidence shows that United States falls short of its responsibilities to protect refugees under international law. It fell short of those responsibilities on the day the Agreement was signed, and has continued to fall short of these responsibilities to this day.”

Under the Safe Third Country Agreement, most refugee claimants arriving in Canada at the US border are ineligible to make a claim and instead must claim in the US. The groups argued that the United States does not comply with its international human rights obligations under the Refugee Convention and Convention against Torture.

In his majority reasons for the Federal Court of Appeal, Justice Noel wrote that the lower court's conclusion, based on voluminous evidence, “that the US does not 'actually' comply is irrelevant.” He determined that so long as Cabinet had “considered” the human rights situation in the US and was not acting in bad faith in entering into the agreement, the reality facing refugees affected by the agreement does not matter. He also ruled that a challenge to the designation of the US as a safe third country could only be brought by a refugee who has been denied entry to Canada and is facing a real risk of return to torture or persecution.

“This decision is deeply troubling,” said Andrew Brouwer, one of the lawyers representing the groups. “The Court of Appeal has not addressed the fundamental human rights issues at stake in this case, and has largely insulated the government from review by the Court. The Court’s finding on public interest standing is likewise a step backwards. In effect, the Court of Appeal is demanding that before a court can hear a challenge to the legality of the agreement a refugee must put her life at risk by coming to the border, getting refused and handed over to US authorities for likely deportation to torture or persecution. This requirement is both impractical and dangerous.”

The organizations are considering bringing an appeal to the Supreme Court of Canada.

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