House of Commons
CANADA

Standing Committee on Citizenship and Immigration

CIMM • NUMBER 014 • 3rd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, May 11, 2010

Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

Tuesday, May 11, 2010

● (1530)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen.

This is the Standing Committee on Citizenship and Immigration, meeting 14, Tuesday, May 11, 2010. The orders of the day, pursuant to the order of reference of Thursday, April 29, 2010, are to consider Bill C-11, An Act to amend the Immigration and Refugee Protection Act and the Federal Courts Act.

For the first hour, we have a number of witnesses, a number of guests.

From the Canadian Council for Refugees, we have Wanda Yamamoto and Judy Dench...or not "Judy" Dench—I'm thinking about somebody else, sorry about that—but Janet Dench, executive director.

From Amnesty International, we have Claudette Cardinal, who is the coordinator of refugees, Canadian francophone section; and Mike Bossin, the chair of the anglophone section.

Good afternoon to all of you.

Our fourth guest is not present, but I'm going to assume he will be soon.

Each of you has up to seven minutes to make a presentation.

We will start with the Canadian Council for Refugees, and I trust that one of you will speak.

Ms. Wanda Yamamoto (President, Canadian Council for Refugees): Thank you.

We welcome the opportunity to address you on this important bill that will profoundly affect refugees seeking Canada's protection. We have submitted a detailed brief of our comments on Bill C-11 and recommendations for changes.

Unfortunately, we will not have time today to discuss our concerns more than superficially. The speed with which the committee is rushing through the study of this bill undermines any capacity to have the thoughtful review that is merited. We remind you that you are dealing with a complex process that, if done wrong, can and quite likely will result in people being sent back to persecution and even death.

Unlike most proposed reforms to the immigration legislation, the government in this case chose not to consult externally. Our expectation was that members of Parliament would therefore recognize the particular need for a thorough study. We have been hearing strong expressions of shock and disillusionment from our members when they realize how rushed your hearings are.

Turning to the objectives of refugee reform, we believe they are clear and widely shared. We need a system that recognizes refugees quickly and discourages people who don't need protection from entering the system, or deals with their claims efficiently if they do enter it. Bill C-11 contains some positive elements, but also several serious faults that would put refugees, particularly the most vulnerable, at risk of being deported to persecution. Some provisions would also make the system more inefficient. A number of provisions would likely lead to a great deal of litigation.

On the positive side, Bill C-11 offers most claimants access to the refugee appeal division. An appeal on the merits is long overdue and absolutely necessary to ensure that mistakes are not made. We are also painfully conscious of the very long delays currently faced by refugee claimants waiting for determination, and we support the goal of speeding up access to a hearing.

On the negative side, the introduction of the safe or designated countries of origin is, in our view, a serious mistake. We sympathize with the objective of addressing patterns of unfounded claims, but we believe this is the wrong solution. If adopted, it will lead to injustice for refugees in need of protection. It may also cause unintended practical problems that will undermine the goal of efficiency.

Treating claimants differently based on nationality is wrong because it is discriminatory. Refugee determination requires individual assessment of each case, not judgments on countries.

The idea of safe countries of origin is drawn from Europe, where it has been extremely controversial. Many serious problems with refugee determination in Europe recently led to the adoption of the Council of Europe's resolution on improving the quality and consistency of asylum decisions, in which the parliamentary assembly, in Resolution 1695, called on member states to refrain from using lists of safe countries of origin

> to ensure that each asylum case is examined individually with rigorous scrutiny of the particular situation of each applicant with respect to the country in question.

Under the proposed bill, nationals of designated countries would be denied access to an appeal on merits. They would also face a bias against them even at the first level, since decision-makers would be aware of the government's judgment on the country. None of this would matter if we could be sure that no individuals of designated countries would be refugees in need of protection. However, experience teaches us that, on the contrary, there are likely to be refugees among those affected.

There are few, if any, countries in the world that are completely safe. In countries that generally appear to be safe, women often nevertheless suffer serious gender-based persecution, and there are grave abuses against gays and lesbians.

The minister has said that his intention is to use these provisions to target claimant groups where there are concerns about abuse of the system. Yet if we look at the experience of recent years, we generally find that there are individuals within the groups who do very much need protection, even if most do not.

Take the Mexican claimants. They have come to Canada for economic reasons, but a significant number have fled for their lives. There are serious and widespread human rights abuses occurring in Mexico. In 2009, 516 Mexicans were accepted as refugees by the Immigration and Refugee Board. Denial of a fair process to these claimants may lead to their forced return to persecution, in violation of human rights law.

● (1535)

Depriving these claimants of an appeal is shortsighted if the goal is to have a smooth-running system. Often these claimants are among those who most need an appeal due to difficult issues of fact and law, such as the availability of state protection. This is the case, for example, with claims from Mexico where the Federal Court has repeatedly overturned decisions of the Immigration and Refugee Board because of a failure to apply appropriately the test of state protection.

The advantage of an appeal-level decision is that it could set a precedent for future decisions, allowing better and more consistent decision-making. It is possible that excluding claimants from the appeal may in fact be more expensive and time-consuming than granting them access to an appeal, since the Federal Court is likely to feel the need to scrutinize more closely the cases of claimants denied an appeal.

We note that there have been suggestions here that the legislation include criteria for designated countries. In our view, this would be more window dressing that would in no way redeem a fundamental flaw in the proposal.

I will pass it on to Janet now.

The Chair: She has one minute.

Ms. Janet Dench (Executive Director, Canadian Council for Refugees): The CCR believes there are more effective ways to address the real problems of patterns of unfounded claims. The principal problem in addressing these claims lies not with the refugee determination system, but rather with the lack of coherent enforcement action. Such claimants are often quickly refused but then wait months, or even years, to be called in for removal proceedings.

[*Translation*]

Instead of introducing designated countries of origin, the CCR recommends that the act give authority to the Minister of Public Safety to identify a limited number of claims—say 5%—that the IRB would be required to hear on a priority basis. This might help CBSA to be more coherent in its analysis of which cases should be a priority for enforcement action.

Had there been more time, we would have wished to present to you our concerns with the eight-day interview and excessively rushed hearings, and with dramatic restrictions on humanitarian and compassionate applications.

[*English*]

The Chair: Thank you, Ms. Dench.

Next we have Claudette Cardinal and Michael Bossin from Amnesty International.

One of you will be speaking, or perhaps both.

[*Translation*]

Ms. Claudette Cardinal (Coordinator, Refugees, Canadian Francophone Section, Amnesty International): Good afternoon. We want to thank the Standing Committee on Citizenship and Immigration for giving us the opportunity to share our concerns about Bill C-11, which is very important to people seeking asylum in Canada. We have only one presentation, but Mr. Bossin will speak on behalf of the Canadian Anglophone Section of Amnesty International and I will speak on behalf of the Canadian Francophone Section.

Our joint document will be submitted to you in a few days. Today, we want to talk about two points we are particularly concerned about: the designation of safe countries of origin and the rush to hear refugee claimants.

Under Bill C-11, a refugee claimant would be interviewed eight days after arriving, and the hearing would be held 60 days later.

We agree that refugee claimants currently wait too long for a hearing and a decision. But speed should not be the overriding concern in the amended act. What is needed is an equitable process, and we are afraid that speeding up the process, which is what Bill C-11 would do, will lead to incorrect negative decisions that could violate Canada's international obligations and put refugee claimants' lives at risk.

Under the current system, refugee claimants have the time to complete the personal information form including their narrative, information on their education and work experience, the names of their family members, previous places of residence and so on. Even more importantly, claimants will have the time to prepare a detailed account of why they are claiming refugee status, with the help of a competent legal advisor who knows the law and what constitutes evidence.

Often, claimants have to obtain medical, legal, police and other documents from their country of origin and have them authenticated. They must also have those documents translated here. Sometimes they have to find an expert witness. All that takes time. In addition, a very human factor has to be taken into account, and that is that claimants who have suffered rape, sexual abuse or torture will not feel comfortable confiding in a stranger they just met, if they are lucky enough to find an advisor quickly. Disorientation is another factor that has to be taken into consideration. Someone who has been here for just eight days and does not speak the language may not understand much. And more often than not, that person also needs an interpreter.

In addition to the short time frame, we are concerned that the bill does not clearly describe the purpose of this initial interview. Is it for information gathering only, or is it a substantive interview? And the parameters of the second interview—the hearing—are not set out in legislation, but in the regulations or even just in internal procedural rules.

Our concerns about the initial interviews apply to the hearing as well. Our concerns are set out in more detail in the document that is to come. We have three recommendations on this point: do away with the initial interview as described in the bill; keep the personal information form or change it to make it simpler; add the case to the IRB schedule when the person is ready to proceed or within six months of the case referral.

Now, Mr. Bossin will share his concerns about designating safe countries of origin.

● (1540)

[*English*]

The Chair: You have three minutes, sir.

Mr. Michael Bossin (Chair, Anglophone Section, Amnesty International): I want to suggest an analogy that's appropriate to the designated country list. Imagine a neighbourhood where there's a lot of crime, where studies have been done that show that 95% of everyone from this neighbourhood who is charged with a criminal offence is convicted. So the government decides to address this issue, and it brings in a law that says that people from this neighbourhood who are convicted of a crime won't have an appeal. They'll have their trial, they'll have their day in court, but if they lose, there's no appeal. That will reduce crime, it will discourage people from that neighbourhood from committing crimes, and it will unclog the appeal courts, because these people will no longer have an appeal.

On the surface it sounds pretty good, but I would suspect that no one on this committee would ever vote in favour of a bill like that. Why? Because it's discriminatory. Because it's unfair. Because it treats people differently based not on what they've done, but on where they come from.

We all know that under that system, even if 99 out of 100 people from that neighbourhood are going to be found guilty, one day an innocent person is going to come before the court and be found guilty, will go to jail, won't have an appeal, and an injustice will have been done. For that reason alone, I would suggest that kind of law is unjust.

Bill C-11 follows the very same logic, yet we are seriously considering passing this into law. Bill C-11 creates a two-tiered system for refugees, those who come from the countries with the good reputation and those who come from the countries with the bad reputation, and they are not treated the same. They are not treated differently because of what they did, they're treated differently because of the national country of origin—where they come from.

Of course, they still get a judicial review, but I would suggest that if a judicial review were an appropriate remedy, this government would not be proposing implementing the refugee appeal division for most claimants.

Amnesty International is in the business of monitoring and reporting on human rights abuses. Every year, people would like us to come up with a top 10 list of worst countries. I think if we did that, we'd be very popular and we'd probably raise a lot more money than we do now, but we don't do that. In our brief, we set out a number of good reasons why to do so is simply an unreliable method of determining which country is safe and which country is not safe. To do so would be irresponsible and unreliable.

Amnesty International is all for improving our refugee determination system.

Like all of the NGOs who are appearing before you today, we would happily work together with this committee and with this government to make that happen. But we are not all for making things worse.

We strongly urge this committee to take a deep breath, to consider the implications of this bill, and to reject what is unfair, discriminatory, and ill-considered. Take as much time as it takes to get it right.

● (1545)

The Chair: Thank you, Mr. Bossin.

Our third guest is James Bissett, who is a former Canadian ambassador and a former executive director of the Canadian Immigration Service.

Good afternoon, sir. You have up to seven minutes to make a presentation.

Mr. James Bissett (Former Ambassador, Former Executive Director, Canadian Immigration Service, As an Individual): Thank you, Mr. Chairman.

Apart from my fellow panellists, I think it's generally recognized that our current asylum system is seriously flawed and has lost public confidence. Its key weakness is it cannot distinguish between those who genuinely need our protection and those who use it to gain entry by avoiding having to meet immigration rules.

It has other serious flaws. It's terribly expensive, it's exploited by human traffickers and smugglers, it interferes with our tourism and trade, and it damages our bilateral relations with a number of countries. It also inhibits our ability to contribute to helping the United Nations High Commissioner for Refugees to resolve the enormous global refugee and displaced people problems that confront the world.

There are estimated to be close to 42 million people under the aegis of the United Nations High Commissioner for Refugees. These are people who are in camps; 16 million of them are defined as refugees, and 26 million others are uprooted people who are under the responsibility of the UNHCR.

Canada used to be the leader in helping resolve world refugee problems, but now we've lost our leadership role by continuing to tolerate a dysfunctional system. We're also in danger of retaliation by the European Union if we continue to demand visitor visas for some of their nationals. The European Union has put us on notice that if we don't fix the system, Canadians will need tourist visas to go to Europe.

Asylum shopping by people who abuse the system is not unique to Canada. In the last 25 years, approximately 10 million asylum claims have been made in western countries; 800,000 of those have been made in Canada. Less than 20% of those who have made claims have been found to be genuine refugees, and the costs have been staggering: 400,000 asylum seekers each year in western countries costs an estimated $10 billion U.S. When you compare that to the annual budget of the UNHCR to look after some 40 million people, their budget is about $4.5 billion, so this consistent attempt to try to sort out the genuine refugees from the economic migrants is very costly.

Every attempt at reform in Canada has been met with fierce resistance by immigration lawyers, immigration consultants, and refugee activists. The challenge of any system is to design a program that works and sorts out the bogus claims before they can clog up the system. We cannot afford any longer to waste scarce financial resources on those who exploit the system, as they have been doing for years. The proposed legislation is a step forward. It attempts to balance fairness with the reality that asylum claimants coming from countries that respect the UN convention and the rule of law and are democratic do not warrant the same level of scrutiny as do those coming directly from countries known to persecute individuals.

In effect, it's a triage system, a fast-track system. It's practised in all of the European Union countries and it's sanctioned by the UNHCR. The proposal is an attempt to reform a broken system that has proven to be unworkable and damaging not only to Canada, but to the interests of genuine refugees. It deserves the support of this committee.

As I see it, there is a risk here that the change proposed in this legislation may be too little and too late. The key is whether the first level of decision-making can be made fast enough to make the system function effectively. If the first level doesn't work, the new system will be as bad as the current one, if not worse.

We are now faced with an enormous backlog of undecided claims, somewhere in the neighbourhood of 62,000 undecided claims waiting here. The costs of that are just staggering. The department has said it's $50,000 per refugee per year. Just do the figuring.

The work of this committee is going to go on for some time and the legislation may not be passed, if it is passed, for many months. In the meantime, human traffickers and smugglers know that the law is going to be tightened up, and I would suspect that we'll get a very high rush of individuals trying to get here before that deadline.

I think, and I hope, that this committee takes their responsibilities seriously here and makes this first rather timid step for reforming a system that has been broken for years.

Thank you.

● (1550)

The Chair: Thank you, Mr. Bissett, for your presentation.

Our fourth witness, here via video conference, is in Toronto. She is with the Ontario Council of Agencies Serving Immigrants. Her name is Amy Casipullai. She is the coordinator of policy and public education.

Good afternoon to you. You have up to seven minutes.

Ms. Amy Casipullai (Coordinator, Policy and Public Education, Ontario Council of Agencies Serving Immigrants (OCASI)): Good afternoon.

The Ontario Council of Agencies Serving Immigrants, OCASI, thanks you for this opportunity to speak to you on this very important bill. I will unfortunately not be able to share with you in detail all of our concerns with the bill in the time that I have been given, pretty much like the other witnesses. I will therefore focus on some of the areas that are of greatest concern to our member agencies. We will be sending you a written submission on this shortly.

Bill C-11 is an important piece of legislation that would significantly change Canada's refugee protection system and have a profound effect on refugees. It deserves careful study and thoughtful consideration by this committee. Canadians deserve the time to be heard on this very important issue. One of our biggest concerns is the speed at which this bill is being pushed through the parliamentary process, and even through the committee process.

One of the things that refugees and immigrants arriving in Canada learn very quickly is the extent to which Canadian residents are allowed, and even encouraged, to have a say in the decision-making process of various levels of government. One of the things many have said they appreciate is being able to appear before a committee such as this, and many have appeared before you over the years to share their experience and have a voice in the discussion on important laws that would affect them and would affect future residents of Canada. We call this “civic engagement”, and it's something that we and all levels of government have actively promoted.

The process for Bill C-11 unfortunately is going to be one where there is little or no consultation and where there is little or no opportunity for those actually working with refugees to have a say.

OCASI is the umbrella organization for immigrant- and refugee-serving agencies in Ontario. Our member agencies include those that work with refugees who have experienced torture, that work with those from Mexico, Hungary, and other countries who arrive here seeking Canada's protection and file a refugee claim. They include organizations such as the Canadian Centre for Victims of Torture, recognized worldwide for their work with torture survivors; organizations such as the Roma Community Centre, which has worked for years with Roma refugees from Hungary and other countries; and organizations such as the FCJ Refugee Centre and many others that work with those who arrive from Mexico and other countries, seeking protection in Canada.

Our member organizations are working on the front lines with those who would be profoundly affected by the changes proposed in this bill. They can tell you first-hand how those changes would affect their clients. Unlike other opportunities, when important changes to Canada's immigration and refugee protection laws are before you for consideration, they will not have the opportunity to appear before you to share their experience.

On behalf of these member agencies and others, OCASI would like to tell you that it's not too late to take the time to hear from these organizations and others that work with refugees who would be deeply affected. As the standing committee, you're one of the critical components of our parliamentary system, intended to give community organizations and ordinary people a chance to be heard on very important concerns in a way that is fair and transparent.

In regard to the bill, we welcome the minister's stated intent to introduce a reform that is fast and fair. We welcome the creation, at last, of a refugee appeal division. We welcome the spirit in which it is introduced, the recognition that refugees, too, deserve a fair appeal process. The possibility of introducing new evidence is made available with what's proposed in this bill. Unfortunately, the appeal would not be available to all claimants from those countries designated by the minister as safe countries.

The Canadian Council for Refugees and Amnesty International have shared with you some of their concerns with regard to the proposed safe country list, and OCASI echoes those concerns.

We are particularly concerned about the potential impact on those who are seeking protection because of persecution on the basis of gender or sexual orientation, and who may be from other countries that are potentially deemed safe by the minister but who are still genuinely at risk. We are concerned that this process would become highly politicized and would then have an impact on refugees, with possibly tragic consequences.

We welcome the minister's proposal to speed up the process for those waiting to have their claims resolved. That's a good thing. Our member agencies can speak to the effect on individuals having to wait for years to have their claims resolved, and the impact of that wait. Therefore, we agree that it is a good idea to speed up the process, but our concern is that fairness could be sacrificed for speed.

Many claimants come from a system or a background where they may be unfamiliar with our refugee hearing process. They may be in circumstances where they are still terrified, in shock, likely not ready to share with a complete stranger the details of why they need protection. Many may not be able to recall the details, may not be able to put what happened to them together in a coherent way.

The point is that each circumstance would be unique and would deserve full and fair consideration of the merits, and we fear that the fast process would not allow that to happen.

● (1555)

Perhaps there may be some claimants who would be ready for an initial hearing within eight days, but there would definitely be some who wouldn't. Are we going to bring a bill, a one-size-fits-all system, when lives are at stake? Would it not be better to err on the side of fairness so that each person seeking protection has a fair chance to tell her story or his story?

Our second concern with this is that the decision-maker at the first hearing would be a civil servant rather than someone appointed by cabinet. The problem is that civil servants would lack the independence that is required.

Assigning the refugee determination to civil servants is fundamentally problematic because they don't have independence, but limiting the appointments to civil servants would also exclude some of the most highly qualified potential decision-makers from a different range of backgrounds who would be able to bring their perspectives to the decision-making process, and this would affect the quality of decisions.

This is something that we have drawn from the materials prepared by the Canadian Council for Refugees, of which OCASI is also a member. There is much more that we could say, but again, the limitation is time.

Unfortunately, Bill C-11will do nothing to address the current delays and backlog that's already in the system, presumably the reason it's being introduced. It will only deal with the claims filed in the future. Therefore, while we welcome the minister's proposal to address some of these major concerns, we would like to suggest that the problem with the current system is that it's starved of resources. So we welcome the minister's suggestion that he bring more resources to the new system that is proposed to make it work better. What we would like to know is why would you not do the same for the system that is currently in process?

We ask you as a committee to consider investing those resources in the current system while you take the time to study what is proposed with Bill C-11, to give refugees a fair chance.

The Chair: Thank you very much.

Thank you all for your presentations.

Committee members will now have some questions.

We will begin with Mr. Bevilacqua.

Hon. Maurizio Bevilacqua (Vaughan, Lib.): I'm going to let Mr. Coderre ask his questions.

The Chair: Mr. Coderre has the floor.

[*Translation*]

Hon. Denis Coderre (Bourassa, Lib.): Thank you, Mr. Chair.

I have to say that I feel we are moving very quickly for such an important bill, especially given the questions that are being raised today. I think we are going to have to reconsider everything.

I am very familiar with the Canadian Council for Refugees, Amnesty International and Mr. Bissett, especially. I would like to use my time to go into some things in more depth.

This is a fairly important bill, but parts of it are unacceptable, in my opinion. One of our values as Canadians is that we recognize that every case is unique. I think it is totally unacceptable to decree that someone cannot be considered a refugee because he comes from a certain country.

Ms. Dench, Ms. Yamamoto, I would like to give you some time to tell me what you think. We agree, but we are looking at this in terms of procedure. I myself was in St. John's, Newfoundland and Labrador, when I suspended the right of appeal, but we had good reasons for doing so.

From an administrative standpoint, are you happy to have a team of civil servants in charge of the first hearing and then to have an appeal? Do you have any objections, even though there will be a right to appeal on the merits?

● (1600)

Ms. Janet Dench: Nationals of designated countries will not have a right of appeal. We are very concerned about having civil servants handle the first level, because they will have sole decision-making authority in these cases.

Hon. Denis Coderre: What would you say if there were no designated countries?

Ms. Janet Dench: We have certain reservations and concerns about the fact that these are civil servants. We are also not happy with the current system, because of partisanship. The government has to find another solution. We have concerns about civil servants' independence and about recruitment.

The important thing is to find the best candidates, whether they come from inside or outside the public service. We would like to see amendments that would guarantee a high degree of independence and an openness to the best candidates, whether or not they are from the public service.

Hon. Denis Coderre: Okay.

[*English*]

Mr. Bissett, you're a former executive director. We've known each other for a while.

Do you think it's fair that we put in place a system where we say, “Well, because you're coming from that country, you cannot apply as a refugee”?

Are there ways to say, “Well, there are some exceptions, and the fact that you have some issues with gay people...?” We've been witnessing in Mexico, for example, some of those situations.

Don't you think we could say, “Okay, let's work on the process”, and provide...?

I agree with you that the timeframe is disgusting—we need to shorten it—but do we truly have to say, “Okay, we should designate some countries and say that you're because you're coming from Japan, well, forget about it”?

Mr. James Bissett: Well, we don't forget about it. In the system that is designed now, the initial level of decision-making will be done by a public servant, it's true. As a former public servant, I don't really see anything wrong with that. They will be able to sort out, one would hope, the ones who deserve to go on to the next level. It's possible for someone to go on. In addition to that, remember, they all have the right to seek leave to the Federal Court.

The problem, if you give everybody an appeal, is that you're never going to resolve the system, because you can't have any kind of quasi-judicial body that has levels of appeal that can handle volume. We're getting 30,000 to 40,000 asylum seekers every year. We just can't handle that.

There has to be a fast-track system, as every other country in Europe has found out. I mean, the Germans, in 1993, ended up with 493,000 asylum seekers. They had to change their constitution to try to speed the system up. Now they're using the system that we are now going to adopt.

Hon. Denis Coderre: In my book, because I've been in that job, I believe every case is specific. That's a start.

Mr. James Bissett: Yes. I agree with that too.

Hon. Denis Coderre: If we settle the issue of the process—remember, we were fighting together against immigration consultants and all those issues—and if we have the proper process and have that kind of appeal by merit, we can do what France does. Their own IRB is an appeal board.

I don't have any problem having a special department that will be well trained to address any issue regarding refugee claims, and if we're not satisfied with the result allows for an appeal. If it's a “yes, but” instead of a “no, but”, I think we can fast-track.

The problem is that if we put more processing in the field, the lawyers or immigration consultants might be happy, but if we reduce and make sure that the process is working according to the timeframe and the process, why would we need to have some designated countries?

● (1605)

Mr. James Bissett: I think you need designated countries to try to ensure that the system fundamentally works quickly.

Look at the Czech Republic. They're very upset that their citizens need tourist visas to come to Canada. They have a problem with Roma, as do most eastern European countries, but the Czech Republic has human rights laws just as generous as ours. They're democratic; they follow the rule of law. They have a problem with Roma people, who are discriminated against, but the Roma people don't have to come to Canada to get refuge. They can travel to any one of the European countries. There are 27 European countries; the Roma are free to go about their business there.

Hon. Denis Coderre: In the past, for example in Costa Rica, we applied a visa requirement, because we knew that some people were passing through there.

Do we need to change the law and have designated countries? Instead, can't we have some visa procedures or a change such as in Australia, where they apply a visa requirement to everybody, and not put in jeopardy our own values and the reputation of our refugee system?

Mr. James Bissett: I don't think we are putting our values at stake here. France, Germany, England are countries that are democratic. They all have a system that we're now proposing—much more severe than anything we are proposing now. In France, if you appeal, you leave; then the appeal is held when you're not present. We're not suggesting that. And the same is true in England.

The Chair: Thank you, sir.

Mr. St-Cyr.

[*Translation*]

Mr. Thierry St-Cyr (Jeanne-Le Ber, BQ): Thank you, Mr. Chair. Thank you all for being here.

Ms. Dench, in your presentation, you talked about an alternative mechanism that would expedite the procedure in cases where it is suspected that there is an organized mechanism to bring people here, often to their own detriment. I believe you are suggesting that, instead of having designated countries, the Canada Border Services Agency have the authority to identify a certain number of case it considers potentially suspicious and to ask the IRB to process these cases on a priority basis.

Is that what you are proposing, and could you explain why you feel it would be better than the scenario in Bill C-11, both for refugees and for the system itself?

Ms. Janet Dench: Yes, thank you.

We agree that there is a problem and that there sometimes needs to be a way of dealing with certain cases when most or all of them are unfounded. At the same time, there must be an equitable system that treats everyone equally and gives everyone a fair hearing. That is why we feel that having designated countries is not acceptable.

We also feel that the concept of designated countries could pose a legal problem, because there will likely be charter challenges. There is some vulnerability in this regard. We are looking for a solution that not only recognizes that the IRB and the refugee determination system must treat all claimants equitably, but also recognizes the concerns about enforcement, because some groups of people may not appear to need protection at first glance. We therefore give them the chance to go through the process.

These people may not be refugees. But because the agency determined that they are of interest, this could help it be more consistent in its enforcement actions. In our experience, people are often quickly refused by the determination system, but then nothing is done to enforce the law.

● (1610)

Mr. Thierry St-Cyr: If I understand correctly, the mechanism you are proposing is not based on the country, but on the individual. With your proposal, any individual whose claim the agency questioned could ask the IRB for faster processing. I imagine that the idea would be to dismantle any dishonest networks before the situation deteriorated.

Ms. Janet Dench: That's right. I would add that the government could act more quickly by processing cases in this way. It could take a long time to designate a country using the proposed process. Our proposal would make it easy for the agency to determine overnight that it has a problem and must act quickly. Often it is fast action that counts. This is a fairer process, because everyone is treated the same way at the hearing. At the same time, it can be faster.

Mr. Thierry St-Cyr: There is another issue we have not had much time to address. Under Bill C-11, failed claimants would no longer be able to use a PRRA, a pre-removal risk assessment, to protect themselves against possible deportation if the situation had changed.

I know that the existing mechanism is cumbersome and not very efficient. What would you suggest that would be more efficient?

Ms. Janet Dench: We understand that the current PRRA system does not work. Review requests cannot be processed again; that is not feasible. At the same time, there has to be a possibility... For example, if a person's refugee claim is denied and the next day his family is murdered in his country of origin, the process has to allow for this new evidence to be heard. We propose that the IRB be able to reopen a case if the claimant can submit new evidence that will convince the IRB to reopen the case.

Mr. Thierry St-Cyr: If I understand correctly, you are saying that the PRRA could be eliminated and claimants could be given the right to ask the IRB to reopen the case. This would not be an appeal as of right. The claimant would have to at least show that reopening the case is worthwhile and that it is not futile or simply a way to buy time.

Ms. Janet Dench: Yes. We do not want the process to be too cumbersome. We envision a mechanism whereby the claimant can make a request. The IRB can consider the request quickly. If there is nothing to it—in most cases, there will likely be nothing to it—the IRB can say it does not want to hear any more about it. But if the IRB finds that something dramatic has happened, such as the massacre of a family, it can say that it has to look at the new evidence a bit more.

Mr. Thierry St-Cyr: Ms. Cardinal, you and your colleague questioned the concept of designated countries.

Do you think that a solution like the one that was just proposed, where the agency could designate individuals whose cases would be processed on a priority basis, could be a good way to make the system work, to achieve that objective? The system would not be saturated with illegitimate claims, and no one would be lost in the process.

Ms. Claudette Cardinal: I think that Mr. Bossin is better able to answer that question.

Mr. Michael Bossin: Regarding that suggestion,

[*English*]

we think that there are better ways to deal with claims that are not well-founded. I think this is what Mr. Bissett is getting at. There are people who come to this country and make asylum claims who, it's pretty obvious at a very early stage, are really not in the right stream and do not fit into that category.

The Chair: I'm sorry, sir. I'm going to have to cut you off. I have to keep the clock going here. I apologize.

Ms. Chow.

Ms. Olivia Chow (Trinity—Spadina, NDP): To the Canadian Council for Refugees, how many members do you have, and are they aware of this bill? Are you notifying them, and if so, how?

● (1615)

Ms. Janet Dench: We have about 180 member organizations across Canada, and obviously there is enormous concern from our membership about the dramatic changes.

But our organizations are also very busy with the daily demands of serving refugees and immigrants. One of the constraints that your very tight processing times here at the committee create is that many groups are simply not in a position to put together a brief and make a submission to you in this short amount of time.

Ms. Olivia Chow: But do they know of this bill, have you sent them a note, are they sending responses back to you? If you add up all your member organizations, have you done a quick poll of whether they support it or think there should be some changes, etc.?

Ms. Janet Dench: We have been clear in the positions that the CCR has been taking, insofar as we see that there are some positive elements in this bill but there are also some very serious concerns. All the feedback that we have received from our members is that they endorse the position of the CCR and share the concerns and are very anxious about the direction the bill is taking Canada in.

Ms. Olivia Chow: For Amnesty International, how many members do you have, and what are some of their responses?

Mr. Michael Bossin: There are 75,000 members in Canada—that's including both branches of Amnesty. I think we would say something similar to what the CCR has said, which is that there are some good aspects of this bill.

Ms. Olivia Chow: And do they know—have you communicated with them like the CCR—and are you getting response back that they have trouble with this bill and that there are amendments they want to make?

Mr. Michael Bossin: I think that as time goes on.... When people first heard that this bill had come down, I think people's expectations were that it was going to be worse than it is.

The more time that we have spent examining this bill, and looking at this bill, and considering the implications of this bill, the more concerned our members are.

Ms. Olivia Chow: Yes, Claudette?

Ms. Claudette Cardinal: Let me just add that in Montreal, Amnesty is involved with a number of NGOs, and next week there will be a public meeting that I believe the CCR will be attending. People are very concerned.

We have been mobilizing people not only in Amnesty but in the other NGOs that are dealing with refugee issues, at least since Bill C-281, or is it Bill C-291—the one on the RAD—for about two years. People are very aware, and yes, they think the process as it exists is much too long, but they're very concerned about some of the changes.

Ms. Olivia Chow: Okay.

This is to OCASI, whom we see on video conferencing. How many organizations do you represent, have you communicated with them, and what is the response of the different organizations you're representing?

Ms. Amy Casipullai: We have almost 220 organizations across Ontario. Understandably, not all work with refugee claimants, but many do. The ones that we've heard from, the ones that I mentioned, are deeply concerned about the bill.

Their other concern is that unlike other cases when the committee has important legislation before you, they don't have a chance to be heard. They're concerned about that, about the elements of the bill, very concerned about the short amount of time in which claimants have to make their case to a civil servant. But in general, our members want to be heard.

As Janet said, not everyone is in a position to submit a written brief or even prepare something in detail, but they definitely want to have their concerns heard.

Ms. Olivia Chow: All three organizations represent a large number, because you have member agencies: 220 member organizations in Ontario and 180 organizations across the country. So the organizations themselves would have received some information from your group and they are responding back to you. Would they have the opportunity to now get involved and tell their members?

For example, if I represent an immigrant-serving agency in Toronto, I would receive an e-mail or a letter from OCASI or from CCR saying, “This is our concern.” Would they be able to sign on to say, “We agree with your recommendations on how you want this bill to be modified”? Is there such an opportunity?

Ms. Janet Dench: We haven't proposed to them specifically to endorse the whole brief, but there is an open letter that the CCR has been circulating around. It has been signed by quite a number of organizations, some of them CCR members and others non-members who share the concerns. It identifies the principal concerns.

I would be happy to table a copy of that letter in both English and French with this committee.

● (1620)

Ms. Olivia Chow: That would be wonderful. The brief, I would assume, would be similar to what both Amnesty and OCASI are interested in, which is primarily the safe countries designation, the shortness of the eight days, the lack of humanitarian and compassionate grounds consideration, the lack of PRRA, or the fact that if you are in safe countries you have no appeal.

Those are the four or five main areas. I'm sure there would be other smaller areas, but those are the key areas of concern. Would you be able to collectively bring that together and say that these are the organizations that are signing on, including maybe the majority of the 75 members from Amnesty International who are saying, "Here are the things that we want the bill to change; keep the appeal division, but remove the safe countries designation," for example?

Is that something that someone can pull together?

Mr. Michael Bossin: We're trying.

Ms. Olivia Chow: You're trying. It's not a lot of time.

Yes, Ms. Dench.

Ms. Janet Dench: Can you give us some more time?

Ms. Olivia Chow: How much time are you looking for?

Ms. Janet Dench: As we said at the outset, we and our members have expressed real shock at the way in which the committee is proceeding at such a rushed pace. We're talking about really serious legislation that affects people's lives. We are talking about a process that is very difficult to get right, and when you get it wrong, you can be costing people's lives. You can also be creating processes that end up being inefficient when they were intended to be faster. You can end up with a law that leads to enormous amounts of litigation.

Ms. Olivia Chow: I understand all that, but—

The Chair: Sorry, Ms. Chow and Ms. Dench, we have to move on.

Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Ms. Dench, I'm going to turn most of my time over to Ms. Grewal, but I want it to be clear. In the first part of your comments, you indicated that you had not been consulted and that you have had no consultation in this process. Could you clarify that for me?

Ms. Janet Dench: I think we said that there has not been broad external consultation. We repeatedly asked for a meeting with the minister, which he was not willing to give. We have also spoken to the department and said that we would like to have a consultation with the department.

Mr. Rick Dykstra: So you have not had a meeting with anyone in the department. You did not sign a non-disclosure agreement with the ministry to sit down and have a discussion on the framework of how this was going to proceed?

Ms. Janet Dench: With the ministry? You mean the department?

Mr. Rick Dykstra: Yes.

Ms. Janet Dench: No, I have not met with the department.

Mr. Rick Dykstra: Have you met with anyone in the ministry, or the minister's office?

Ms. Janet Dench: Well, we've met with people in the ministry, of course. I have met with a member of the minister's staff. But as I said to him at the time, that would not count for us as a consultation with the CCR.

Mr. Rick Dykstra: It may not count with you, but he actually has probably spent more time on this file than any ministry official has. He reached out to you, did he not, to ask you to come meet with him, to sit down and spend almost two hours reviewing what I think was a pretty robust conversation? I know we're not going to get into the details of it, but it certainly was a conversation where there was a lot of listening going on in terms of direction that we needed to take.

Ms. Janet Dench: I'm at a bit of a disadvantage, because I'm not allowed to say what was said or not said at that meeting. But as I said to him before the meeting, the CCR is an umbrella agency. I'm a staff person of it, but I cannot speak on behalf of all of our members, and especially not when I'm forced to sign a disclosure, if I'm to enter into the conversation.

Mr. Rick Dykstra: No, that's fair, and I'm not trying to put you in that position. I just want to make sure that it's clear and on the record that there was consultation that you did have. It certainly was a longer period than the seven minutes that you've had here to present today. Yes, no...?

Ms. Janet Dench: As I say, if I was allowed to speak about what was discussed in the meeting, I could have comments, but since I had to sign a non-disclosure, I cannot say what I would want to say in response to your—

Mr. Rick Dykstra: All I was asking you to do was confirm that a meeting had happened.

I'll turn the rest of my time over to Ms. Grewal.

Mrs. Nina Grewal (Fleetwood—Port Kells, CPC): Thank you, Chair.

Mr. Bissett, could you please tell us what's wrong with the current system, and why is it vulnerable to abuse?

Mr. James Bissett: I think it leads to abuse because it's wide open. That is to say, we're one of the few countries in the world that allows anyone, from any country in the world, to come and claim that they're persecuted and then let them have an opportunity to enter before a quasi-judicial tribunal and go through all these various steps.

In 2002, for example, we had citizens of 152 different countries make refugee claims in Canada. Now, that's ridiculous. We had people from Switzerland, from Germany, from the United States coming here and making claims. This is what clogs the system up, and this is why we have to have a system that says, look, if you're coming from the United States or from England, you will be heard, and you'll have an opportunity of explaining why you think you're persecuted, but we're not going to give you the full process, because it's taking too long and it costs too much money. In addition to that, however, if you feel that the decision at the first level is not proper, hasn't treated you fairly, you can seek leave to appeal to the Federal Court. If they think you've got a case, they'll hear you out.

To me, that's about the only system that's going to work. It took a long time for the European Community to realize that they were being overwhelmed by asylum-seekers. As I mentioned, in Germany they get 493,000 in one year; they had to change their constitution. The European Community got the first onslaught of asylum-seekers. They finally resolved it by coming in with a system that said, look, if you're coming from safe countries that are signatories to the UN convention, that are democratic, that follow the rule of law, that don't normally persecute people, then we'll hear you, but it will be a fast hearing; it will be a summary hearing, a triage, so that we can save our time for the ones who are coming from countries where we know that people are persecuted and mistreated.

● (1625)

Mrs. Nina Grewal: So you think that the safe country of origin policy will help deter abuse. Do you think it will also help address the spikes in unfounded claims?

Mr. James Bissett: Of course it will. I'm sure it will; yes, absolutely.

Mrs. Nina Grewal: How does the safe country of origin policy compare to visas as a tool to address spikes in claimants?

Mr. James Bissett: It will depend on how the minister decides to handle that. It could be done by giving a list, saying that any of the countries of the European Union are safe, or it could be done by not listing any country, except when you do get a problem, like the Czech Republic, or Mexico, or Brazil, or Turkey. As in the past, we've had to put visas on almost 100 countries because we were being flooded by claimants. It started out with India, as a matter of fact, and we finally had to put a visa on Indian nationals.

In addition to that, we've had to put visas on Brazil, on Turkey, on Portugal, and on many countries when the international smugglers and lawyers found out that anybody could come and started encouraging these people to do so. They would say, look, why wait in the backlog at immigration, where 900,000 people are waiting? Come and make a claim. Why wait? You'll be here for two or three years before your claim is even heard. In the meantime, you're allowed to work or get welfare, with free medical, and when you appear before the board, you get free legal advice.

I mean, the system is designed to pull in people who want to get here. I'm not blaming people for trying, but it's a system that's unworkable unless reform is instituted. I have very serious doubts that this proposal goes far enough.

Mrs. Nina Grewal: I'll give the rest of my time to—

The Chair: No, I'm afraid there's no more time. I'm sorry.

Our time has come to an end. We thank you all for your....

You have a point of order, Monsieur Coderre.

[*Translation*]

Hon. Denis Coderre: I will say it in French.

I understand why my colleague, Mr. Dykstra, asked Ms. Dench a question earlier, but I felt that he did not go about it in a very nice way.

I want us to understand each other. I have met with the Canadian Council for Refugees. We have had meetings where the conversation was robust, but it was consultation. It was not to sign a paper saying that what was discussed would be kept secret.

Mr. Chair, I do not feel that the witness was very well treated here. She cannot reply fully, because she signed a non-disclosure agreement about that meeting. I would like you to give me some clarification. Not only is a witness being put on the spot, but I do not call that consultation—and we have not always agreed. I feel that a witness has been put in a very delicate position today.

● (1630)

[*English*]

The Chair: Monsieur Coderre, it's a point, but I don't think it's a point of order. Thank you for your intervention.

Do you have a point of order, Monsieur?

[*Translation*]

Mr. Thierry St-Cyr: I agree with Mr. Coderre. That said, I also know that Mr. Karygiannis has a point of order. I think we should deal with them at the end of our meeting this evening, when only we are left, because we have another panel to hear in 45 minutes. If members start raising points of order, there will not be much time left for people.

Hon. Denis Coderre: It is just that Ms. Dench—

Mr. Thierry St-Cyr: I think Ms. Dench knows we support her. We can talk seriously about this with Mr. Dykstra this evening.

[*English*]

The Chair: I agree with you, but I have to recognize a point of order.

We are out of time. If you want to take away from the next presenters for the next 45 minutes, Mr. Karygiannis, I'll recognize you. And I will recognize you.

Hon. Jim Karygiannis (Scarborough—Agincourt, Lib.): Thank you, Chair.

Chair, I think the way we're treating our witnesses—having four an hour, giving them seven minutes, and herding them through—is unfair to them. We're herding them like cattle. I think we need to change that, because....

Chair, let me finish.

What we're doing here is changing people's lives. Certainly, on a point of order, I think that after we come back from the break, we need to re-examine the four panels, as well as to make sure that people who have put their name forward do not get an e-mail from the clerk that says, “This is going to be brought forward to the committee members”, because that has not been brought forward to the committee members.

If that's a way of hiding for the chair, it's totally unacceptable.

The Chair: Mr. Karygiannis, that's not a point of order either; it's a point.

The process has been set by this committee. If the committee wishes to change the process, we can hold another meeting at another time that won't interrupt these proceedings to change the process, if that's what the committee wishes.

At this particular point in time, I'd like to thank you all for coming.

I know that the Canadian Council for Refugees has given us a written presentation, which we thank them for. If the other three presenters wish to make a more elaborate presentation in writing, we would be pleased to receive that as well.

Thank you all for coming.

I will suspend for a couple of minutes to set up the next hearing.

Thank you.

● (1635)

(Pause)

● (1635)

The Chair: Ladies and gentlemen, I would like to call the second session to order.

This committee will end at 5:15, because we will have to go to vote. So we'll have to judge ourselves accordingly. Instead of each caucus getting seven minutes, it will get five minutes, or we'll never finish.

I'm going to start with another witness from Toronto, who is from the Metro Toronto Chinese and Southeast Asian Legal Clinic.

I hope I don't mess up your name too much: Salimah Valiani.

Was that close?

Ms. Salimah Valiani (Coordinator, Colour of Poverty, Metro Toronto Chinese and Southeast Asian Legal Clinic): You almost had it.

The Chair: And you're the coordinator of Colour of Poverty.

You have up to 10 minutes, ma'am, to make a presentation to the committee. Thank you for coming.

Ms. Salimah Valiani: Thanks very much.

We really appreciate the opportunity to give a deputation regarding Bill C-11, on the changes to the refugee determination system.

I work at the Metro Toronto Chinese and Southeast Asian Legal Clinic. We are a clinic that serves about 3,000 clients a year. Immigration law figures at the top of the types of files we open.

We offer legal services in Cantonese, Mandarin, Vietnamese, Khmer, and Laotian .

I would like to make points around four areas of the reform. First of all, we are very enthusiastic that there is a proposal to implement a refugee appeal division. Errors inevitably occur in the first instance, and an appeal on merits is necessary to correct errors.

We would urge that a merit-based selection process for the refugee appeal division members be laid out such that political appointments are avoided and high-quality decision-making becomes the basis for selection for the refugee appeal division.

Second is the area of humanitarian and compassionate consideration. Humanitarian and compassionate grounds are a necessary recourse to consider human rights issues including, for example, the best interests of the child. The distinction between what is a well-founded fear of persecution, which is the convention refugee definition, and very serious hardship, which is the test for a humanitarian and compassionate grounds application, is not black and white but instead grey.

One Immigration and Refugee Board member may accept a claimant as a refugee based on the same facts upon which another board member may refuse the claimant. How then are we to advise a client to choose between making one type of application and the other?

We have many cases of people from China who are accepted under humanitarian and compassionate consideration after being refused under the refugee definition—for example, people arriving for fear of persecution under the one-child policy.

Humanitarian and compassionate consideration is a safety net for those not qualifying as refugees but still facing disproportionate hardship if returned home.

The new system would likely drive such clients underground for a year or more as they wait to make an application on humanitarian and compassionate grounds. This would be detrimental to both clients and the system as a whole, and would waste precious time during which people in need of a safe home in Canada could instead begin the settlement process.

The third area I would like to touch on is the question of an interview after eight days in Canada and a hearing after 60 days. Most of our clients obtain legal aid certificates in order to be accompanied by a lawyer through the refugee application process. It is completely unfeasible to expect that these certificates could be obtained within the first eight days of arrival in Canada.

Claimants then without legal aid would have to represent themselves or become subject to representation by unregulated consultants who are often very unreliable.

Our clients additionally have language barriers, and it would be virtually impossible to arrange language interpretation services within eight days of arrival. If interpretation is inadequate, then the stories of claimants' risk become distorted, and that prevents a fair process.

In cases from China we have made claims on behalf of minors arriving in Canada unaccompanied. These are often complex cases involving trafficking and the sex trade. Such cases are on the rise. In the month of April, the McCarthy Tétrault Unaccompanied Minors Project received its 100th client.

Given the experiences of fear and trauma involved, we again doubt that effective interviews could be carried out within the first eight days of arrival in Canada. In many cases, 60 days to gather evidence for claims—that is, to prepare affidavits, translate documents, and obtain expert reports—will also be too little time.

● (1640)

In addition to adequate time to prepare for interviews and hearings, we need accountability measures to assure that the rights of unaccompanied minors and other claimants who have faced trauma or torture are protected in the system.

Finally, I have a point on the safe countries designation. The use of safe country lists politicizes the refugee system, and this thereby defies the very principles of refugee protection.

Refugee determination requires individual assessment on a case-by-case basis in order to guarantee fairness. Fairness will be denied to claimants from countries designated as safe, based on the Canadian government's subjective judgment of the socio-political situations in their countries. There are no objective or quantifiable criteria by which to determine countries as safe, and patterns of human rights change very quickly in countries.

This is likely the reason why the bill does not contain a definition of safe countries, which again underlines the political nature of labelling countries as safe and then denying full rights, especially the right of appeal, to claimants from those countries.

Those are the major points we would like to make. The emphasis on a fair process for all claimants comes back to the fact that if a fair assessment is not made, these are people who risk death and injury if they are returned home. So we would urge the committee to take these points into consideration, and would like to submit our brief in writing.

Thank you.

● (1645)

The Chair: Thank you very much for your presentation.

Our second guests are from the Canadian Bar Association. Mitchell Goldberg is an executive member of the citizenship and immigration law section. Kerri Froc is a staff lawyer on law reform and equality.

Welcome to you both. You have up to 10 minutes for the two of you to make your presentation.

Thank you for coming.

Ms. Kerri Froc (Staff Lawyer, Law Reform and Equality, Canadian Bar Association): Thank you, Mr. Chair.

The Canadian Bar Association is very pleased to appear before this committee today on Bill C-11, the Balanced Refugee Reform Act.

The Canadian Bar Association is a national voluntary association with about 37,000 members across the country. The citizenship and immigration law section comprises about 1,000 lawyers, with expertise in all areas of citizenship, immigration, and refugee law. The primary objectives of the organization are improvements in the law and in the administration of justice. It is through this optic that we make our comments here today.

For the purposes of our appearance today we have circulated to you the executive summary of our larger submission. We'll also be providing the larger submission to you in due course.

I'm going to ask Mr. Mitchell Goldberg, who is an executive member of the citizenship and immigration law section, to make substantive comments about the bill.

Mr. Mitchell Goldberg (Executive Member, Citizenship and Immigration Law Section, Canadian Bar Association): Thank you very much.

I first should say that I'm a Montrealer. I figured that, as a Montrealer, with the Habs doing so well, it gives me a little bit more credibility.

I'm sure the Montrealers in the room would agree with me here.

Voices: Oh, oh!

Mr. Mitchell Goldberg: I might be on shaky ground with some of you.

The Chair: Unfortunately, Mr. Goldberg, the chairman's a Toronto fan.

Mr. Mitchell Goldberg: But the Habs are the Canadians. I hope to think I speak for all of Canada now.

On a more serious note, I'm going to tell you what the Canadian Bar Association likes and does not like about Bill C-11. We support the principles of fast and fair. We think that streamlining the process is very important. We also think that an appeal on the merits is essential for fairness. The CBA has been on record about this issue for many years, advocating that section 110 of the Immigration and Refugee Protection Act be implemented. We congratulate the government on putting this in the bill.

We are also very pleased to see that there will be more resources for the refugee determination process. However, we also have serious concerns about sacrificing fairness. We do not think that you need to sacrifice fairness to have fast decisions and fast removals.

To begin with, the designated list unnecessarily politicizes the process. As Ms. Valiani said before, it has very serious consequences, in that people who are deemed to be on this designated so-called safe list would be denied this very important, very crucial appeal on the merits for life-and-death decisions.

We also, in our submissions, make suggestions to mitigate the damage this would cause. If this committee and Parliament absolutely insist on this process that we disagree with, in the alternative we think at the very least the committee that selects designated countries must be composed of human rights experts, and the criteria for establishing whether or not a country should be on that list must be completely based on human rights and state protection criteria, nothing else.

Just as we are against politicizing access to the refugee appeal division, we also oppose politicizing appointments. As you know, the Canadian Bar Association, with many other groups, has strongly opposed anything that deviates from appointments based on the merits. We think that the appointment process is still unnecessarily political right now, especially the reappointment process to the Immigration and Refugee Board.

At the very least, we think that the refugee protection division should be allowed to select the best possible candidates out there. And that means opening it up beyond the civil service. We have no problem with members being selected who are civil servants. There are many excellent members of the immigration division right now who come from the civil service, but we also should allow others who qualify to contribute their skills.

We are also very concerned about a part of this bill that I don't think has received any attention. Quite frankly it's even hard for immigration lawyers, or for anyone, to figure this out. We have struggled with understanding it. In our opinion, the bill provides for a very unbalanced, unfair, and unexplained stage implementation.

There are parts of the bill that could go into effect in up to two years after proclamation, and other parts of the bill that could be implemented immediately. We're very concerned that this could mean that the bar on applications on humanitarian grounds and pre-removal risk assessments could be implemented immediately, whereas the implementation of the long-delayed refugee appeal division could have to wait for up to two years. This would create a serious injustice for the people who are affected by this.

Like many others, we're also concerned about the delays that are not part of Bill C-11. The government has announced, as Ms. Valiani stated, that there would be an initial interview in eight days and a hearing that would be immediately scheduled 60 days later. As we said before, we are extremely concerned about the slowness of the existing process. Refugees need to have certainty. They need to have a fast decision.

● (1650)

Many of them are waiting to be able to bring their family members, their children, over to Canada. So of course we agree with speeding up the process. But we think that some minor adjustments can be made, such as 28 days for the initial interview and four months for the hearing. It's not a big change from what's currently being proposed, but we think it will help refugees who are very vulnerable and it will help people to be more likely to engage competent counsel.

Finally, we are concerned about the bar on temporary residence permits and also humanitarian and compassionate applications. On this last point, I'm going to talk a little about the bar on H and Cs, humanitarian grounds applications.

The humanitarian grounds applications are there for a good reason. When we argue before the United Nations whenever there's criticism of certain aspects of the system, or when there's concern about how to protect the best interests of children, for example, reference is always made by the government—the Liberal government, the Conservative government—that we have this process. It's called humanitarian grounds applications. It catches situations that fall through the cracks. It prevents injustices.

What's particularly noteworthy here is that humanitarian grounds applications do not stop removals. Unlike pre-removal risk assessments, there is no administrative bar on removals once a humanitarian grounds application is filed. On the other hand, their removal of H and Cs for refugee claimants will lead to human rights violations. I'd like to give you one example from my own law practice. There are many examples I could give, but in the interest of time I'd just like to mention a situation that's one of many.

I had these clients who were a lovely African family. There were two children and their mother and dad. The board member from the refugee protection division recognized their claim, recognized that they feared persecution and that they had gone through atrocious past persecution because of their political opinion. They were members of the opposition party. However, based on a technicality, the member refused the parents. Why? Because they had a double nationality. They were also citizens of another African country. But the children were only citizens of one country. So the member accepted the children. They were recognized as refugees, but the parents were denied.

Under what's being proposed in Bill C-11, the parents could very well be removed back to the country, while the children—and these were minor children—remained in Canada. Fortunately, they had the right to make an H and C application. They did, they were accepted, and I'm happy to say that the entire family is here together in Canada.

I can also think of many situations of women—and their children—who are victims of domestic violence by their husbands here in Canada. This has nothing to do with the Geneva Convention on refugees. It doesn't meet the refugee test, but these people are in a very vulnerable situation, and H and Cs are the only way to give them protection.

● (1655)

The Chair: I'm afraid, Mr. Goldberg, that concludes the time allowed for your presentation.

Mr. Karygiannis, you have up to five minutes.

Hon. Jim Karygiannis: Thank you, Chair.

I thank you both for being present here with us today.

Mr. Goldberg, you said that you would like to see 28 days and four months. Should we also have PRRA?

Mr. Mitchell Goldberg: First, I should say that we understand, unlike for humanitarian grounds applications, the concern about the current system for pre-removal risk assessments, because right now it's neither fast nor fair. It does, as it's currently structured, delay removals for a long period of time, and almost nobody gets accepted.

We propose a much more efficient system that would correct mistakes, and that would be to give jurisdiction to the new refugee appeal division so that people could apply, make a written application, to reopen their case only if there are very special changed circumstances.

Hon. Jim Karygiannis: Should people be removed before an H and C has been heard?

Mr. Mitchell Goldberg: It does happen now. Basically—

Hon. Jim Karygiannis: That doesn't mean it's right.

Mr. Mitchell Goldberg: No. Basically, right now somebody could make an application to the Federal Court for a stay of removal. The Federal Court will only delay the removal if they believe the person will suffer irreparable harm.

Hon. Jim Karygiannis: Does the fact that we're going to be moving to having immigration officers making that decision not concern you? In some cases when immigration officers make a decision on something like a visitor visa, or an immigration application on which you have the right to appeal within 30 days, the decision is final. Some of our immigration officers are greatly talented people, but some of them, if they get out on the wrong side of the bed—too bad.

Mr. Mitchell Goldberg: We are extremely concerned about the appointment process. We think refugees and Canadians deserve to have a completely merit-based process. It's not complicated to do. Everybody knows what has to be done. You've heard this from human rights organizations. You've heard it from lawyers. You've heard it from academics. You'll be hearing more about that point, because we frankly think it's unacceptable that anyone except the most qualified decision-makers are appointed to the Immigration and Refugee Board.

Hon. Jim Karygiannis: Ms. Valiani, do you have a problem with safe third countries? Some people have come in front of us and have mentioned a couple of countries. And one of the countries that certainly stands out clearly in my mind is Turkey. They said that Turkey could be a safe country. And then you have the problem with the Kurds and you have human rights violations in Turkey that are beyond any reasonable doubt. You have the occupation of the north part of Cyprus.

Do you have a problem with our saying safe third countries? Should we treat countries as safe? Or should there be a board that sort of looks at the country so it's not left up to the immigration minister? Or should everybody have the same qualification and it doesn't matter where they apply from? Should we do away with the third countries?

Ms. Salimah Valiani: We should absolutely do away with the safe third country.

What we insist on for a fair process is a case-by-case determination for every claimant. The path of arrival to Canada will vary for different people, depending on their situations. And that same person will face different threats in a so-called third country.

Again, we come back to the question of what is safe, and this is—

Hon. Jim Karygiannis: Ms. Valiani, can I take you down a path that this committee has examined?

The United States, our neighbour to the south, certainly is a safe third country and will be deemed as that. Is that correct?

Ms. Salimah Valiani: Right, but if you have people who are persecuted on the basis of religion and racial profiling is increasing now in the U.S., for Muslims in particular as an example, is the U.S. safe for that person? It's unclear that it is.

● (1700)

Hon. Jim Karygiannis: But the United States has engaged in a war in Iraq that was not sanctioned by the United Nations. Some people who were born in the United States and some people who are not Muslims but are Caucasians do not want to engage in the war, and they have fled the war as they did back in the days of the Vietnam War. These people are here in Canada and they're fleeing a situation about which they say, "It goes against my religion to engage in war. It goes against what I signed on to in the war. It goes against what I thought this war was about, and for me to be sent back for a second tour, or else whatever...."

Shouldn't they be given a chance? But if we go down the scheme of Bill C-11, these people will not have the opportunity. Am I correct in this?

Ms. Salimah Valiani: You're correct. We agree with you.

The Chair: Thank you, Mr. Karygiannis.

Monsieur St-Cyr, you have up to five minutes.

[*Translation*]

Mr. Thierry St-Cyr: My question is for the people from the bar association. In the discussion on possible measures to limit or restrict the scope of the concept of designated countries, it was proposed that the act set out the most objective possible criteria for designating a country.

Based on your experience, can you tell us whether having such criteria in the act could result in a court's overturning the decision of the executive? Are these absolute criteria the minister would have to comply with, or would the minister ultimately determine the criteria and would there not really be any chance of appeal even though they were included in the act?

Mr. Mitchell Goldberg: We think that at the very least, the criteria should be included in the act, but that is not enough. There have been Federal Court decisions that gave the government fairly broad discretion to choose their... That was in connection with safe third countries, the agreement with the United States. Those decisions gave the government the choice, even though there were criteria.

That is why we believe that the committee that selects the designated countries will have to be made up solely of people who, at a minimum, have human rights expertise.

Mr. Thierry St-Cyr: In passing, I want to talk about an increasingly common practice of the Conservative government. It gives bills feel-good titles that have a political slant to them instead of sticking to strictly legal aspects of the bills. This bill is called the Balanced Refugee Reform Act.

As a lawyer, would you prefer that Parliament stick to the legal aspect of legislation? Do you think it is acceptable to put bill names out there so that every time a lawyer has to refer to a law in court, he will be forced to say it is a balanced law, because that is the name of the law?

Mr. Mitchell Goldberg: Members of the Canadian Bar Association have come out against this sort of title, because it does not necessarily describe the law, but we have not taken an official stand.

Mr. Thierry St-Cyr: Okay.

Previous witnesses talked about solutions. It was suggested that instead of having designated countries, the Canada Border Services Agency could be authorized to identify individual cases it considered questionable and to ask the IRB to process them on a priority basis. Claimants would still have the right to appeal, if need be.

Do you think this would be a fairer, more balanced measure that could replace the concept of safe countries and still protect the system?

Mr. Mitchell Goldberg: I cannot comment on the idea of giving the agency the power to name certain countries. We have not taken a position on that. But I can say that the Canadian Bar Association is strongly opposed—let me be clear, because we talked about criteria—to having designated countries. We believe that will create injustices.

● (1705)

Mr. Thierry St-Cyr: Yes, but the proposal had nothing to do with countries; it had to do with individuals. If the agency thinks an individual's claim is suspicious, it asks the board, which does not have to prejudge the claim, but just process it more quickly.

Mr. Mitchell Goldberg: Refugee determination is very complicated. It is a very individual process. Every individual must have the right to a hearing. That is in our charter, and it is recognized by the Supreme Court. It is very dangerous for a border officer to say he has a problem with someone or does not like someone's attitude or story. That is very dangerous.

[*English*]

The Chair: Ms. Chow, you have up to five minutes.

Ms. Olivia Chow: Can I ask Ms. Valiani about the 100 cases of minors trafficked from China to Canada? They are mostly for sexual purposes, I would imagine. You said that eight days is too short a time for them to be interviewed, because they're probably fairly traumatized. There's the 28 days suggestion, and the four months for a hearing that I heard from the Canadian Bar Association for these minors being trafficked to Canada. Is that an adequate period of time? Eight days is too short. Would 28 days at least give them a chance?

Please give a short answer, because I only have a few minutes.

Ms. Salimah Valiani: Yes, we may need longer than that for those kinds of traumatic cases.

Ms. Olivia Chow: But with four months for a hearing plus 28 days, you're looking at five months. Would that be sufficient time?

Ms. Salimah Valiani: Sometimes it can take an entire year. If the children are detained, which happened in one of our cases, we have to deal with their detention as well. There is safety within Canada, which is first and foremost. On top of that we need to compile the evidence to make the actual claims. So it may take up to a year to file the evidence for the hearing.

Ms. Olivia Chow: Mr. Goldberg—

Ms. Salimah Valiani: These are not easy cases.

Ms. Olivia Chow: Thank you.

Mr. Goldberg, in terms of the safe third countries, it sounds like the bar association is against the designation. Some of my colleagues support it, I don't. Who would you ask to assist the minister? Because ultimately it's the minister who makes the designation.

Are you suggesting that it should be an arm's-length agency—let's say Amnesty International? I can't see Amnesty International willing to take up the task to designate safe countries, because they don't support the concept. They have said that after 50 years of doing human rights work, they can't term or designate any countries as being safe.

So who do you think the government can request to assist? I can't imagine any organizations that are willing to do so. Can you suggest an organization? Would the Canadian Bar Association be willing to do that?

Mr. Mitchell Goldberg: I can't speak for the CBA at this moment without consulting our membership on that point, but there are many individuals, human rights experts, such as professors....

Ms. Olivia Chow: So should this be a political appointment by the minister to appoint three or four people who have human rights knowledge?

Mr. Mitchell Goldberg: I would like to see a process that would be similar to where people are nominated—judges for example, where there are recommendations from stakeholders—

Ms. Olivia Chow: From the bench.

Mr. Mitchell Goldberg: —not only lawyers' associations in this case, but from other organizations, human rights groups.

Ms. Olivia Chow: So for example, if we—

● (1710)

Mr. Mitchell Goldberg: There's the Canadian Council for Refugees. I think if organizations were consulted, organizations could propose certain names of people who are very well recognized as having serious credentials.

Ms. Olivia Chow: So let me just picture this. Previously, before you came here, we had Amnesty International and the Council for Refugees. They certainly have experience. Then the minister would ask them to suggest some names to propose to sit on a panel. The panel would then suggest. So would the panel be the one that would pick the safe countries, or would it be the minister? Or would the panel say that the following five countries we believe are safe, and therefore the minister would declare them safe? Is that—

Mr. Mitchell Goldberg: Our submission is that it should be strictly the panel that would recommend it. The minister would not have the power to override the panel.

Ms. Olivia Chow: Because you don't want to politicize—

The Chair: Thank you, Mr. Goldberg.

Mr. Dykstra.

Mr. Rick Dykstra: It's Dr. Wong.

The Chair: Dr. Wong, you have up to five minutes.

Mrs. Alice Wong (Richmond, CPC): Right now I think I just want to let the committee know, and also the panellists, that the IRB actually has discretion to adjourn the interview if the claimant appears vulnerable or traumatized. So that's on the record.

The Chair: Can we have order, please?

Mrs. Alice Wong: Also, there have been concerns mentioned with regard to the selection of the IRB's people division that will be interviewing the claimants. The IRB chair last time did indicate that the selection of the members of the IRB division is not only limited to civil servants. They are open to looking for people with merit. So that is on the record from our last panel as well.

I would like to ask the Metro Toronto Chinese and Southeast Asian Legal Clinic, because those two communities I'm very familiar with, do you feel that the current 19-month decision-making time is too long for refugees to wait to have a decision on their claim?

Ms. Salimah Valiani: Again, it depends on the case. It can be very long for some people. On the other hand, if that is the time required to determine a complicated case, then it is fair.

Mrs. Alice Wong: Well, how do you decide which is complicated and which is not? Right now we have two sets of dates, eight days and then within 60 days a decision has to be made. Of course in the first initial interview that's data collecting.

If you look at other countries, they actually have even fewer days. So I just wanted to look at that. Your organization actually, when the bill was first introduced, did have some very positive comments.

I would like you to also comment on that part first, and then we can discuss other issues.

Ms. Salimah Valiani: We do need a system that processes people quickly, because people need to get on with the settlement process. In that sense, we agree that time is important to save.

On the other hand, we do not want to sacrifice time for fairness, and we don't want to sacrifice the chance to present full evidence in the interests of, again, time and accelerating the removal process. These are people who risk death if they are removed without proper grounds.

Mrs. Alice Wong: There is a refugee appeal division. How would that, then, improve the asylum system?

Ms. Salimah Valiani: We applaud the refugee appeal division, as I said in the beginning of my presentation, but if everybody doesn't have access to that appeal division, then it doesn't serve the purpose it was mandated to serve in the Immigration and Refugee Protection Act.

Also, if the members of the division are politically appointed, then there again we lose the ability of that division to make high-quality decisions.

Mrs. Alice Wong: Again, I'd like to—

Ms. Salimah Valiani: That is why we think a merit-based selection process is key, and we wish that would be included in the bill as well.

Mrs. Alice Wong: It is. The IRB chair actually indicated how he would select the members of the IRB division, which will do the initial interview, the collection of data. These people will be well trained so that they know what they are doing. Again, they will be mandated by the IRB to help them, in the beginning, in the initial interview of these claimants. With lots more people there...because otherwise people have to wait for 10 years. We have somebody in the Chinese community who is still here after 10 years, after appeals, after going to court. He is still here.

I don't think you would probably like that to happen.

● (1715)

The Chair: We need a quick response, because the bells are about to ring.

Mrs. Alice Wong: So is 10 years reasonable for you?

Ms. Salimah Valiani: Is that to me?

Mrs. Alice Wong: Yes.

Ms. Salimah Valiani: Clearly 10 years is excessive, but that often has to do with the abilities of the people judging the case. When you have civil servants who are dependent on their jobs, serving as the interviewers, we don't think that is going to speed things up. In fact, it will likely lead to more mistakes, which is the experience in other countries where civil servants have performed this function.

Again, these are people who are dependent on their employers' decisions, and that will enter into the determination process. That will delay things further, because appeals will be made.

The Chair: Thank you very much. I think our time has come to an end, although the bells aren't ringing yet.

Mr. Clerk, I understand that we have to be there at 5:30.

I want to thank Mr. Goldberg, Ms. Froc, and Ms. Valiani for taking the time to come to the committee this afternoon and give us your thoughts. Thank you very much.

This meeting is adjourned until 6 o'clock tonight.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

Additional copies may be obtained from: Publishing and Depository Services
Public Works and Government Services Canada
Ottawa, Ontario K1A 0S5
Telephone: 613-941-5995 or 1-800-635-7943
Fax: 613-954-5779 or 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Also available on the Parliament of Canada Web Site at the following address: http://www.parl.gc.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

On peut obtenir des copies supplémentaires en écrivant à : Les Éditions et Services de dépôt
Travaux publics et Services gouvernementaux Canada
Ottawa (Ontario) K1A 0S5
Téléphone : 613-941-5995 ou 1-800-635-7943
Télécopieur : 613-954-5779 ou 1-800-565-7757
publications@tpsgc-pwgsc.gc.ca
http://publications.gc.ca

Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante : http://www.parl.gc.ca