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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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● (0845)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning.

This is the Standing Committee on Citizenship and Immigration, meeting number 40, on Monday, May 7, 2012. The orders of the day, pursuant to the order of reference of Monday, April 23, 2012, are Bill C-31, An Act to amend the Immigration and Refugee Protection Act and other acts. This meeting is televised.

We have our first panel with us today; it has two members. We have Professor Catherine Dauvergne. She is the Canada research chair in migration law at the University of British Columbia Faculty of Law.

I understand you have a PowerPoint presentation, which we'll be watching.

Professor Sharryn Aiken, good morning to you. She is from the Faculty of Law at Queen's University. I went there, but I think it was so long ago my picture is down in the basement.

It's a pleasure to have both of you here. You each have ten minutes to make an introductory statement, and then there'll be questions from the committee.

Professor Dauvergne, you may proceed first.

Professor Catherine Dauvergne (Canada Research Chair in Migration Law, University of British Columbia, Faculty of Law, As an Individual): Good morning, and thank you for the invitation to speak with you this morning about Bill C-31.

[*Translation*]

I have been doing research into immigration law in Canada and Australia for nearly 20 years now. I teach refugee law in both countries.

This morning, I am going to talk about the mandatory detention system that is in effect in Australia.

[*English*]

I am also pleased to take questions on any aspect of Bill C-31.

[*Translation*]

I would like to thank you for having the presentation I will be making this morning translated for me. Given that 10 minutes goes by very quickly, I am going to begin by making a recommendation.

[*English*]

I'm just going to turn to the final point I want to make.

Australia now has more than two decades of experience with a mandatory detention scheme for people seeking refugee protection. Almost everybody seeking refugee protection is detained at some point. This system has not achieved its deterrence objectives. It has harmed many people and it has cost thousands of millions of dollars. In some respects, as I will detail momentarily, it is not as severe as the Bill C-31 proposals. For this reason I recommend to you that Bill C-31 be amended to eliminate the designated foreign national regime and to eliminate the mandatory detention scheme.

Recognizing that mass arrivals do provide serious challenges for any government, I recommend as an alternative to these provisions that you consider, in the case of a mass arrival, which is to be defined as a group of more than 50 individuals, where there is potential reason for detention under the current IRPA provisions—for example, when there is a difficulty establishing the identity of individuals—that if a group of more than 50 has arrived at the same time, the schedule for detention reviews be amended to allow for adequate and appropriate consideration of those individuals. The current detention regime requires reviews at 48 hours, 7 days, and 30 days, as you are aware. In the case of a group of more than 50 people arriving, it would be appropriate to alter this schedule to have an initial review at 20 days, a subsequent review at 25 days, and then move on to the ordinary scheme of reviews at 30-day intervals for any individuals who would still be detained after 45 days.

You will have heard from other witnesses about the first two reasons to reject the proposed mandatory detention scheme. This scheme is in breach of several provisions of the Charter of Rights and Freedoms, and it also is in breach of key international human rights documents to which Canada has long been committed. What I will focus my time on this morning is the evidence from Australia.

Australian evidence has now established that the detention regime there is not deterring people from seeking refugee protection in Australia. The evidence from Australia also demonstrates that this type of detention leads to lasting harms to individuals who are subject to it.

The mandatory detention regime for all unauthorized arrivals to Australia began in 1989. The majority of those who arrive in Australia without a visa are briefly detained, but most people are now granted a bridging visa—some, if they arrive at an airport, within a matter of days. For boat arrivals it's usually within two or three months. This bridging visa serves to release people from detention into the community.

Since 2001, Australia has had two separate streams for offshore arrivals and for mainland arrivals. As of January of this year, which is the midpoint of the Australian fiscal year, there were 4,783 people in one form or another of immigration detention, including community detention, which we would call release on conditions. The estimated spending for the current fiscal year on immigration detention in Australia is $629 million Australian, and that is pretty close to par with the Canadian dollar right now.

● (0850)

The Australian detention regime has been under active scrutiny since 2008. Some of the changes that have been made to this scheme include a move towards community detention rather than detention centres.

Children and families, as a matter of policy, are not to be held in detention centres. They are housed in special alternative places of detention, for the most part. The parliamentary inquiry that reported in March of this year found that there were still a few children in detention, but it's against policy.

Immigration detention is now officially considered to be a last resort in the Australian scheme, and all immigration detention is to be for the shortest possible time. The newest parliamentary inquiry in Australia is recommending a maximum of three months of detention time.

If we look at a comparison between Australia's immigration detention scheme and the scheme that would result in Canada from Bill C-31, we find that they are similar, in that there is a two-tiered system that is punitive to irregular boat arrivals.

In Australia, the time for people to be in detention is theoretically indefinite but presumptively shorter than 12 months. The Bill C-31 scheme is 12 months, but theoretically indefinite, so there's longer detention there.

Children and their families are not to be detained. The Canadian proposal, by contrast, says that young children will not be detained but may be separated from families.

In Australia, those who are in detention have priority processing for refugee claims in order to ensure the shortest possible time in detention. There is no such priority under Bill C-31 for people detained in Canada.

In the Australian scheme, anybody who is held in detention and making an asylum claim is granted legal aid for the preliminary and subsequent merit review stages of the asylum process. There's no guarantee of legal aid support in the Canadian proposal, Bill C-31.

It's also notable that Australian experience over the past 10 years has shown that a very high number of individuals who arrive on boats actually end up with refugee status; the appendix to the parliamentary report says 90%. I recall earlier figures suggesting it's closer to 80%, but that is still a very high acceptance rate, demonstrating that people who make these kinds of journeys are in fact those who are the most desperate.

The Australian mandatory detention regime has been found, in a number of inquiries, to breach both international and domestic human rights. It has not reduced the number of people coming to Australia to seek protection. There is a new study out of Monash University—which is not yet published, but which I heard about at a conference about three weeks ago—suggesting that the variations in rates of people arriving in boats in Australia can be completely attributed to conditions in sending countries, as well as weather conditions, rather than changes in Australian law.

There have been four major inquiries into the effectiveness of the Australian system since 2001, adding tens of millions of dollars to the cost. The evidence, which is now widely accepted—and this is reflected in the parliamentary report—includes the following: there are very high levels of suicide and other self-harm behaviours among the detained community; there are very high levels of depression and of post-traumatic stress disorder; these mental health problems affect the refugee determination process and make the process more difficult to manage; prolonged detention exacerbates previous trauma; and the detention regime harms family relationships and children's mental health in particular, whether the children are in detention or separated from their families because of detention.

Current developments in Australia include a commitment to move to community detention rather than closed facilities, both because of reduction of harm and because of reduction of cost, which has proven quite persuasive.

There was a temporary regime in Australia from 2001 to 2007 that restricted family reunification rights for people arriving on boats. This regime has been dismantled, so this is a departure from the direction that Bill C-31 is heading in.

There has been extensive work to improve conditions within detention centres. The bridging visa program has been expanded, with a sharp uptick since last November, so that more people are getting out of detention.

Last, the parliamentary report on Australia's immigration detention network was just released this past March—so a number of weeks ago—running to 356 pages.

I'll conclude there. Thank you, Mr. Chairman.

● (0855)

The Chair: Thank you very much, Professor Dauvergne.

Professor Aiken.

Professor Sharryn Aiken (Associate Professor, Faculty of Law, Queen's University, As an Individual): Thank you.

Good morning. I will address the anti-smuggling provisions and designated foreign national regime as well. I intend to focus somewhat specifically on the case of the Sri Lankan Tamil refugee claimants who have arrived in Canada over the last few years.

I want to say at the outset that I endorse and rely upon two briefs primarily—that prepared by Amnesty International, in particular part I of that brief with respect to anti-smuggling provisions, as well as by the Canadian Bar Association, particularly part VI, addressing the designated foreign nationals regime. For those reasons I won't rehearse the provisions in those two briefs but point you to them.

Bill C-31 would impose multiple penalties on claimants as well as protected persons designated as part of an irregular arrival. As you know, the penalties include mandatory detention without access to review for 12 months; the denial of the right to apply for permanent residence status or family reunification until five years have passed since a favourable determination of their protection claim; denial of access to relief based on humanitarian and compassionate grounds, temporary resident permits, or refugee travel documents for five years or longer; and finally, denial of the right to appeal an unfavourable determination of a protection claim to the newly established Refugee Appeal Division.

It is my view that the minister's discretion to designate is overly broad. It's not limited to mass arrivals, and it may be applied retroactively to March 2009. Arrivals of two or more persons "by irregular means" could attract designation.

Let's be very clear: the genesis of these provisions was a response to the arrival of two boats off the coast of British Columbia, the *Ocean Lady* in the fall of 2009, followed by, almost a year later, the MV *Sun Sea*. These provisions have been specifically targeted to the case of the Sri Lankan Tamil refugee claimants. If we have any doubt, the proposal to make them retroactive to March 2009 should leave no question lingering.

I will say more in a few minutes about that, but I want to emphasize that in my view these provisions are unconstitutional and violate a number of important provisions in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, as well as the 1951 refugee convention.

These violations are detailed very thoroughly in the CBA and Amnesty briefs, as well as in the May 3 submission of the Canadian Association of Refugee Lawyers, "Canada Must Protect, Not Punish, Refugees".

I want to urge quite simply, and in the most forceful terms, that we ensure that these provisions are eliminated from the final version of Bill C-31. It is my view that no amendment or incremental improvement around the edges should be acceptable. I want to point out that existing tools within the Immigration and Refugee Protection Act are more than adequate to deal with genuine concerns about mass arrivals.

Let's look at how the system responded to the two boats off B.C.

Refugee claimants were detained until authorities were satisfied that they knew who they were and/or that they didn't pose any security risk. Those for whom there were still concerns remained in detention until those concerns were addressed. It's true that detention reviews are supposed to take place within the first 48 hours. It's merely a review; it doesn't mean that somebody gets released after 48 hours. Indeed, as I mentioned, many refugee claimants were subject to prolonged detention while authorities addressed concerns about who these people were and whether or not any of them posed a genuine risk.

For people on those boats with respect to whom there were security concerns, the government had ample tools in its legislative tool box to designate them a risk and use admissibility procedures before the Immigration and Refugee Board to bar access to the asylum procedure altogether. Indeed, a number of people, particularly those arriving on the *Sun Sea*, faced those very procedures.

● (0900)

What I want to emphasize is that concerns about irregular arrivals are legitimate. It does pose an enormous burden on a government to process a large group of people who all arrive together—when it's some 500 people, for example—but we have the tools to deal with it, and they work, quite frankly. I see no reason to impose what in my view would be an egregiously draconian set of provisions on people, many of whom may end up being genuine refugees. I want to say that at the outset.

I want to go back to the situation of the Sri Lankan Tamils because there seems to have been much misunderstanding with respect to the causes and conditions that led these people to assume risky voyages in the first place and to brave several months on the high seas to come to Canada.

Sri Lanka, as you may know, is a country that has been wracked by ethnic conflicts that spiralled into civil war, the roots of which can be traced to the period immediately following the country's independence. For 30 years, this civil war was brutal. Atrocities were committed by all parties to the conflict, but we need to keep squarely in view the fact that the primary driver of that conflict was the Sri Lankan state's failure to recognize minority rights within that country: its failure to grant its Tamil citizens, some 18% to 20% of its population, equal rights.

With intermittent ceasefires when conditions appeared to ameliorate, things improved. However, overall, there were significant rates of disappearances, extremely high rates of torture and detention, and a complete lack of accountability throughout the course of that civil war.

The war finally ended with the defeat of the LTTE in May 2009, but as the International Crisis Group has noted in a series of reports over the past three years, including two very recent briefs in March, we see neither peace nor even modest steps toward genuine reconciliation in that country. Indeed, there is deepening militarization in the north and a policy of Sinhalization, a policy that explicitly privileges the majority ethnic group and continues to systemically disadvantage Tamils and Muslims, the two minority groups in Sri Lanka.

Now, recent media reports have suggested that acceptance rates for Sri Lankan Tamils have plummeted. I'm making reference to a recent report in the *National Post*, but in reality, Sri Lankan Tamils were accepted at the rate of some 57% in the last year. Of all claims made by Sri Lankan Tamils, 57% were accepted. That's a very significant number. Yes, it's down from the high of some 91% of positive claims in 2009, but it is still a very significant number.

I put a call out to refugee lawyers across the country when I realized I would have the opportunity to appear before you today, and I asked them to send me the positive decisions they've received with respect to clients they've represented from the *Ocean Lady* or the *Sun Sea*. I had an opportunity to review four such decisions very recently, four positive decisions, three from the *Sun Sea* and one from the *Ocean Lady*, and I want to share with you some of the observations made by the board members in those cases.

They include observations such as this one: that the Sri Lankan government continues to screen and check former Tamil Tiger members and those it has suspected in the past of being a Tiger member or supporter. This is seen as a pre-emptive strategy to discourage Tamil radicalization.

Suspected Tiger members and rehabilitated Tiger members are regularly subjected to rearrest or harassment or are forced to act as informants for the military. The new detainees are often not formally charged. Many are tortured.

Under the Prevention of Terrorism Act, government officials who may commit wrongful acts such as torture are provided with immunity from prosecution. Legal proceedings against government officials are prohibited if an individual acted in good faith.

The long and the short of it is that human rights violations persist in Sri Lanka to an enormous extent.

Do Sri Lankan Tamils have a choice in terms of what to do? Those who are able to get on a plane and fly to Thailand, Malaysia, or Indonesia, or to take a voyage to India, find themselves languishing for years. In Thailand in particular, I want to emphasize, there are still at least 60 people in detention in deplorable conditions, without adequate hygiene or nutrition.

● (0905)

They are told to join the queue, yet there is no queue. These countries are not signatories to the UN refugee convention, and at best they wait for years.

The Chair: Thank you very much.

Ms. James has some questions.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair.

Good morning, and welcome to both of our guests.

I'll direct my first set of questions to Professor Dauvergne.

Based on your experience and expertise, in your opinion, would someone who truly feared persecution in their country and who came to Canada as a refugee claimant voluntarily abandon or withdraw their claim and return to their country of origin?

Prof. Catherine Dauvergne: There are a number of things that contribute to people abandoning claims. We quite often hear from refugee lawyers in Canada that claims are sometimes abandoned because people receive very poor advice from unscrupulous community members or consultants. There are conditions under which people who genuinely fear persecution will return to their home country. Sometimes there's a threat to children, but those are rare cases. Often people whose children or families are threatened will make difficult decisions to return while waiting out a process that at present simply takes too long.

● (0910)

Ms. Roxanne James: One of the examples you gave was receiving poor advice. I'm not so sure that if I received poor advice in Canada I'd flee back to my country to face persecution, but I'll accept your answer.

You've given a couple of reasons why people voluntarily withdraw or abandon their claims. But we're seeing it in droves, where 95% of people coming from the European Union, for example, either abandon or withdraw their claims, don't show up for the first hearing, or their claims are actually rejected.

If they're returning and voluntarily pulling out their claims, is that not an admission that they're not really in fear of persecution in their own countries? I can't imagine, if I were in a situation where I had to flee my country, that I would ever want to go back.

Do you not think that's an admission that they're possibly not being persecuted, as they originally claimed?

Prof. Catherine Dauvergne: Our abandonment rates are not as high as 95%. Among citizens of the European Union who actually get before a tribunal, acceptance rates have been running around 20%. That is lower than other groups, but not insignificant. Without actual evidence about why people are making decisions, we cannot draw a conclusion one way or another.

Ms. Roxanne James: When I said 95%, I meant they either abandoned or withdrew their claims, or they were rejected, meaning they didn't pass as legitimate refugees. I'm not necessarily saying that 95% are just walking away from their claims. But you do recognize that there is an issue.

There is a potential problem with our immigration system if these people can come to Canada, collect our benefits, and then voluntarily leave without even going to their first hearing. You do recognize that is a serious problem that's costing taxpayers millions of dollars every year.

Prof. Catherine Dauvergne: It's absolutely true that we need to have a system that makes good and fair decisions promptly. This will address any number of issues, including cost.

Ms. Roxanne James: We've had a number of witnesses before you. This is our second week of witnesses and testimony.

Prof. Catherine Dauvergne: Undoubtedly you're working very hard.

Ms. Roxanne James: We heard that within the European Union there are 27 countries, so someone from one particular country could choose to go to another country that's very close by if they were fleeing for their life or in fear of persecution.

Why would someone come all the way to Canada and submit a claim as a refugee fearing for their life, as opposed to going to another country where they would have protection immediately?

Prof. Catherine Dauvergne: If you're a citizen of a European country, you're allowed to cross the border and enter another country, but there's no provision to get protection in that country. The European accord on the common asylum system prohibits the extension of refugee protection to EU national citizens. Somebody who is, for example, of Roma ethnicity and is fleeing persecution will find they not only can't get protection in a neighbouring European state, but they also cannot remain there. That is because capacity to remain is contingent on finding a place within the labour market.

For the group of people who are severely discriminated against, one form this discrimination often takes is labour market discrimination. They cannot get the one thing that will give them the right to remain within that country. Although it is a small number and a small percentage, and although much of Europe is a quite reasonably safe place for most individuals, in cases of severe discrimination the right to remain simply cannot be extended.

Ms. Roxanne James: You've specifically mentioned Roma. You've said they're not going to choose a country that's close by, for various reasons.

So again, why come to Canada as a refugee claimant, not come the proper way with a visa, permanent residency, and so forth, and then abandon their claim? To me it doesn't make sense to say they can't go to another European Union country and receive that protection when they come to Canada, accept benefits for one to two years, and then don't show up for their hearing. They abandon their claim, voluntarily leave, and go back to their country of origin. I don't think we've actually had an answer that makes sense to the people who may be listening to this committee today.

As a separate side note, when we talk about the European Union, would you say that the health benefits and the welfare system here in Canada are far better than in countries in the European Union? Do you know that answer?

● (0915)

Prof. Catherine Dauvergne: I'm not an expert on European health care, but we know it's of a high standard—western world.

Ms. Roxanne James: We had someone here from the Taxpayers Federation who indicated it costs Canadian taxpayers about $50,000 per refugee claimant. We have some figures: $170 million per year in benefits, such as welfare, health benefits, etc.

The Chair: I'm afraid your time has expired. I'm sorry.

Ms. Sims.

Ms. Jinny Jogindera Sims (Newton—North Delta, NDP): Thank you very much. Thank you for taking the time to come to talk to us today.

Catherine, my first question is to you. Then I will have questions for Sharryn as well.

We've heard the government MPs be very consistent in their insistence that asylum seekers, the irregular ones, will be released from mandatory detention when they are identified and security checks are complete.

Is that your understanding, based on the legislation as it sits right now?

Prof. Catherine Dauvergne: That's not what the legislation says at present.

Ms. Jinny Jogindera Sims: Okay. That seems to be very consistent with what we have heard from other experts who have reported on that.

Prof. Catherine Dauvergne: That is what the current Immigration and Refugee Protection Act provides, so we have a legislative scheme already actively in place that creates exactly the scheme you've just suggested.

Ms. Jinny Jogindera Sims: The great Canadian compromise that's been talked about a lot but has never really been implemented is Bill C-11 in its entirety.

I know you talked about Australia a fair bit. In 2008, Australia reformed their immigration system because they saw there were some flaws in it. Can you explain the problems with Australia's past immigration policy, and how Bill C-31 will have the same problems?

Prof. Catherine Dauvergne: Australia created a system in 2001 in which individuals who arrived on boats were denied family reunification rights and were given only temporary protected status that could later be turned into protected status. It is worth noting that in Australia, somebody who gets protected status, except for between 2001 and 2007, becomes a permanent resident on that day. It's a complete determination that is quite different from any Canadian scheme.

What happened in 2001 when the decision was made that people who arrived on boats would get inferior protection? Until 2001, most people arriving on boats in Australia were able-bodied young men, to put it bluntly. After the change, when family reunification rights were cut off, the people arriving on boats were more likely to be family groupings, with a greater number of children and their moms. This is a real issue in Australia, because people drown every year doing this and it puts different communities at risk. It was also very clear that people seeking protection were willing to take this risk because they were in very difficult circumstances.

Those particular provisions about having only temporary protection and no right of family reunification were removed from Australian law in 2008 because of the harm they were causing to people seeking protection. The removal of family reunification rights is one thing that is directly targeted at people who are designated foreign nationals under Bill C-31.

Ms. Jinny Jogindera Sims: Thank you.

I have a question for you, Sharryn, from my part of the world, from UBC. We want to promote regional solutions to the global refugee crisis. That seems to be the mantra. In this regard, shouldn't we be encouraging refugees from Sri Lanka to pursue asylum in India or Thailand?

● (0920)

Prof. Sharryn Aiken: Thank you for the question.

As I touched on just at the end of my remarks, the problem is that there's no process for doing that. Neither India nor Thailand—nor Malaysia or Indonesia, for that matter—is a signatory to the refugee convention. None of those countries has implemented refugee status determination procedures.

At best, what can happen in a country like Thailand, for example, is that the refugee claimants can approach the UNHCR to register. They're given a form of documentation that is supposed to serve as evidence to the Thai authorities that they've registered with the UNHCR and that they're in process for the possibility of resettlement. In the meantime, they're at risk of being rounded up, arrested, detained, and sent back to Sri Lanka by Thai authorities. It's a very precarious life.

Those who are lucky enough to be identified for resettlement will wait years. Imagine this if you are a family with young children. You fled human rights violations in your country of origin—in this case, we're talking about Sri Lanka—you came to Thailand hoping for a solution, and you are told that you have no right to stay in Thailand, to integrate, to work, and to build a life. Yes, you can join the queue, you are told, but your child will probably be of university age by the time he's identified for resettlement to Canada. What kind of life is that?

Essentially, it's a holding pattern. At worst, it's detention. At best, it's a marginalized existence, with no right to participate in a community in which you're situated.

So regional solutions, yes, and I am absolutely an advocate for them. But that means countries getting together and coming up with genuine solutions for the global refugee situation, not simply saying that those refugees should stay in the region where they came from when there's no procedure set up to deal with them.

Ms. Jinny Jogindera Sims: In regard to my next question, you know that often the justification for this bill is that it's to deter human smuggling. That's sort of the big push behind it. Don't you think it's important for us to deter human smuggling?

Prof. Sharryn Aiken: Smuggling rings, yes. Smuggling rings are often coordinated by very large criminal enterprises, and there's no question that the full force of the law should be engaged to deal with that form of transnational crime.

Indeed, Canada is a signatory to the transnational protocols on organized crime, and we have implemented very serious sanctions already in Canadian law to prosecute and punish human smuggling. That's as it should be.

The reality is that whatever we do in Canada is going to be limited, because the real kingpins of these networks aren't in Canada and rarely get here. Even the people who might accompany a group of refugee claimants on a boat are not the kingpins of the organization. At best, they are people who've been paid a modest sum to escort the group, but they're not the people profiting from the networks.

So my answer is yes, of course, we need to address human smuggling. The sad reality is that our legal tools will never be adequate to stamp them out. What we have to be absolutely careful about is not to punish the very refugees who are using those services because they have no other choice.

The Chair: Thank you very much.

Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Thank you, Mr. Chair.

In listening to both presentations, but Catherine's in particular, I can't help but think that here we are passing Bill C-31, or we're here in committee with the expectation that the government is going to want to pass this bill, but hopefully there will be a series of amendments to the bill.

You paint a fairly bleak picture. In essence, you're saying that Australia's system has clearly demonstrated its failure, specifically in and around that whole mandatory detention question. We seem to be going further than what Australia is actually currently putting in place.

My question to you is, do you think this is in fact a bill that can be amended, or should it just be sent back? Should we allow the previous bill, Bill C-11, to go forward and just go back to the drawing board? What would be your suggestion?

Prof. Catherine Dauvergne: Well, I would certainly be pleased to see the whole bill withdrawn. I can't deny that. I just don't think the mandatory detention provisions in Bill C-31 can be saved. I don't think they can be brought into compliance with the Constitution or with international law, and I think the provisions for designating a foreign national go hand in hand with those mandatory detention provisions.

On the west coast, when the boats arrived, the refugee lawyers group in Vancouver really had problems staffing detention reviews. The Department of Justice couldn't deliver detention reviews, although we ran them until midnight every night. So it might make sense, and hence I have suggested in the case of mass arrivals, that in order to allow any government to remain in compliance with its own law, a different timeframe—going to 20 days, 25 days, 30 days—for detention reviews for mass arrivals is an amendment that would allow the government not so frequently to be in breach of the law, as it has been in the case of recent boat arrivals.

But certainly with regard to mandatory detention, I think these provisions should be withdrawn entirely.

● (0925)

Mr. Kevin Lamoureux: Is it fair to say that your position on mandatory detention would be, number one, that it infringes upon a wide spectrum of rights, and that it would be, in the long run, at a great cost to all Canadians? Is that fair to say?

Prof. Catherine Dauvergne: Yes, that's right.

To return to Ms. James's point about health care costs, there is absolutely crystal clear evidence that if you have a concern about health care costs, you really ought not to detain people. Detention, particularly long-term detention, creates all sorts physical health problems, and particularly mental health problems.

So if health care cost is the concern driving the government's actions, the most logical thing would be to ensure that people are not detained and that good, fair decisions are made in an appropriately timely manner.

Mr. Kevin Lamoureux: I wonder if I could get both of you to provide a quick comment with regard to the whole concept of a safe country list. This particular minister wants to have the authority himself as opposed to a panel that designates a safe country to a list. We believe it should be a panel of professionals as opposed to the minister.

That aside, on the concept of a safe country list, can you both provide just a very quick comment? I think I'm almost out of time.

Prof. Catherine Dauvergne: The concept of a list is an anathema to international refugee law, and if it must be done.... I'm not supportive of it being done in any fashion.

Prof. Sharryn Aiken: I would echo those comments.

There's always an interest in new fixes for the asylum problem, but I think we need to remember that the best fix is a functioning, fair refugee determination system that processes claims in appropriate timeframes so that people have an answer, either positive or negative, and can get on with their lives.

When the system works, we can deal with all these challenges, whether it's claimants who ultimately aren't accepted ending up on health care, or people from countries who generally are not recognized as refugees. All of that can be dealt with through an effective refugee status determination procedure without the need for these additional layers of procedures that ultimately harm the very refugees we are trying to help.

The Chair: Thank you.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you, Mr. Chair.

Good morning, and thank you for being here with us today and for the time you took to prepare your presentations to us.

I have a whole bunch of questions, but unfortunately I'm limited to seven minutes, so I'll try to get in as many as I can.

With regard to the motivation for why this bill has come here, clearly the current system is not working, not when refugees have to wait 1,038 days on average to finalize their claims. It's a heck of a long time for someone to be stuck in limbo. With the provisions in this bill, we're looking to reduce that to 45 days for people coming from designated countries and 216 days for other claimants.

Having said that, I've heard your presentations this morning, and they're very similar to a lot of presentations we heard last week, certainly from the academic, if you will, and theoretical side of the equation. But there is the reality, the practicality, of what we're dealing with when these folks come here, especially, obviously, through irregular means.

I have a question regarding the United Nations High Commissioner for Refugees—the UNHCR, for quick purposes.

The UNHCR has recognized the validity of providing expedited processing for refugee claimants from designated countries of origin. In fact, former UNHCR Commissioner António Guterres has said, and I quote:

> ...there are indeed safe countries of origin. There are indeed countries in which there is a presumption that refugee claims will probably be not as strong as in other countries.

The UNHCR has also indicated that it's completely legitimate to accelerate these claims.

I have a few questions around that.

First of all, is that correct?

● (0930)

Prof. Catherine Dauvergne: Yes.

Prof. Sharryn Aiken: Is it correct in the sense that it is legitimate to accelerate claims? I would certainly say that, yes, it can be correct. I don't dispute it. The question is to what extent and how, and what additional things are we doing? Keep in mind that we're proposing to eliminate the right to appeal for people from designated countries of origin, and Mr. Guterres never suggested that.

Mr. Costas Menegakis: My questions are specific to the comments he made.

Is it true that many other western industrialized countries have a designated country of origin policy to accelerate these claims?

Prof. Sharryn Aiken: There are a number of countries that have adopted similar provisions.

Mr. Costas Menegakis: Do those include, for example, the U.K., France, Germany?

Prof. Sharryn Aiken: Yes.

Again, I focus on the package of provisions that Bill C-31 is attempting to address. You're talking about timelines. There's no issue from an international law perspective about acceleration, as long as the claimants have adequate time to prepare for their hearing. The question is, what else are we saying? Are we denying them the right to appeal? Are we denying them the right to access counsel? Because effectively they'll have no opportunity. Those are the concerns. It's not the notion of expediting the claims in and of itself that we're concerned about.

Mr. Costas Menegakis: Let me just say this. For us, it is the notion of getting people who legitimately need our assistance in and processed as quickly as possible and not clogging the system.

Prof. Sharryn Aiken: Absolutely. We both share those concerns.

Mr. Costas Menegakis: Human smuggling, as you may well know, has become a very lucrative business for some questionable characters around the world. There are very sophisticated operations.

Do you agree with the notion of stronger jail times and fines for criminals who are human smugglers?

Prof. Sharryn Aiken: Actually our legislation currently imposes the possibility of life imprisonment and $1 million fines.

Mr. Costas Menegakis: That wasn't my question.

I'm sorry. Do you agree that we should have strong jail terms and fines?

Prof. Sharryn Aiken: That's my point. We already have very strong penalties in Canadian law.

Mr. Costas Menegakis: You don't agree with stronger ones?

Prof. Sharryn Aiken: No, because they're already very strong.

The issue this bill wants to deal with is the whole question of mandatory minimums, which I didn't address in my comments. I think there are problems with that.

Are the sanctions for human smuggling serious? They absolutely are. They're the most serious they can be: life imprisonment or a $1 million fine. The problem is we don't get the people who really deserve those sanctions in Canada. They're offshore. That's the biggest problem.

Mr. Costas Menegakis: That's not necessarily true. We do get them.

Prof. Sharryn Aiken: We get some.

Mr. Costas Menegakis: We're cracking down on them, and we want to crack down on them.

Here's the real issue for us. You mentioned the two ships that came in, the *Ocean Lady* and the *Sun Sea*. Clearly, we as a government have an obligation to identify people as soon as possible. We need to know the identity of an individual before we allow them into mainstream Canada, allow them around our families, and allow them in our streets. We can't just say, let's just be super compassionate, and of course these people need assistance, so let's allow them in. On those two ships, for example, 41 people were deemed inadmissible to Canada for two reasons: one, they would pose a security risk to our country, as 23 of the 41 did; and, two, they had perpetrated war crimes in their country of origin, as the other 18 had. Certainly, one would think that we wouldn't want those types of people in our communities, around our children, in our schools, and all over the place.

How would you propose dealing with that particular issue?

Prof. Sharryn Aiken: Thank you for the question.

My point is that our existing legal tools are more than adequate to deal with them. They've been detained, they've been subject to admissibility procedures, and they will be denied access to refugee hearings. That works. Ultimately, those who deserve it will be removed from Canada.

My point is, what about the other people on the boat? You mentioned 23 of 41. We're talking about a population of almost 600 people, many of whom are genuine claimants from a country that has an egregious human rights record, a country that tortures its citizens.

● (0935)

Mr. Costas Menegakis: Let's speak about the other people for a moment.

They're currently waiting 1,038 days—

Prof. Sharryn Aiken: And I agree with you that's a problem.

Mr. Costas Menegakis: Sorry, let me finish what I was saying.

They're currently waiting 1,038 days. How fair is that to those folks who are being bogged down by those who are tying up the system? Clearly, it's not very fair.

Is my time up?

The Chair: You have about a 15-second answer, or is that just a statement?

Mr. Costas Menegakis: I'm done actually.

Thank you.

The Chair: Thank you.

Ms. Sitsabaiesan.

Ms. Rathika Sitsabaiesan (Scarborough—Rouge River, NDP): Thank you, Mr. Chair.

Thank you to our witnesses as well. Going back to the motivation for this bill, we've heard some government members say it's to deter the asylum seekers from coming in large numbers, and we've heard others many times say it's not about deterrence.

In your expert opinion of the bill—and we know that Bill C-11 still hasn't been implemented and Bill C-31 is now being pushed through—what do you think is the motivation? Either one of you.

Prof. Catherine Dauvergne: This bill is omnibus in character, so it has diverse motivations. But certainly a majority of the provisions are directed toward punishing people who come to Canada by irregular means.

A small number of the provisions are directed toward increasing penalties for smuggling, but mostly by adding to the slate of penalties—mandatory minimums, which are highly problematic. Thank goodness, we actually can't increase the penalty of life imprisonment under Canadian law. So we are already at the most extreme penalty for human smuggling that our law permits.

Ms. Rathika Sitsabaiesan: Thank you.

Ms. Aiken, other countries use the prospect of detention as a strategy for deterring self-selected asylum seekers. Why should or should not Canada do this?

Prof. Sharryn Aiken: I think Professor Dauvergne has ably outlined some of the problems, the serious cost to individual health and welfare, and the studies that have documented that.

I want to emphasize that we already have the tools to detain where it's warranted. Where warranted, refugee claimants can be detained. That's as it should be.

I don't think either one of us is suggesting that detention should never happen. It should be a last resort. The legislative tools within the Immigration and Refugee Protection Act already provide for detention where warranted.

Ms. Rathika Sitsabaiesan: Thank you.

The provisions in Bill C-31 don't prohibit genuine refugees from sponsoring their family members or acquiring permanent residence; they merely impose a waiting period.

What's wrong with that? Do you think the government's attempt to strike a balance, as they say, in this regard is legitimate?

Prof. Sharryn Aiken: No, I don't. The waiting period in question would result in very, very serious hardship to those people who are found to need our protection. Waiting five years before even being able to initiate a process of family sponsorship means that children who've been left behind, a spouse who has been left behind, won't see their family members for up to six or even eight years.

In the meantime, travel documents are also not going to be an option, so the family here in Canada who are recognized as deserving of our protection won't be able to travel outside of Canada to see their family. They risk the possibility of losing their status in Canada altogether.

We're talking about enormous personal hardship to people we've pledged to protect.

Ms. Rathika Sitsabaiesan: Along those lines, I want to share about one of my constituents who came here as a refugee claimant, was accepted as a refugee, and because his wife and four children are in hiding and being tortured in his home country, he has left and gone back to his home country—I don't want to say which country—because he fears for their lives more than his own life.

He's gone back to his home country even though his brother had his head beaten; the brother was killed for the work that this man did in his country.

For people to say that people who flee persecution may not want to go back to their home country.... I'm a person who fears for my life to go back to my home country. To say that people are just bogus refugee claimants because they go back to their home country is personally hurtful for me. I understand this man's story.

Thank you. I've probably run out of time.

● (0940)

The Chair: Thank you. You have.

Mr. Opitz.

Mr. Ted Opitz (Etobicoke Centre, CPC): Thank you, Mr. Chair.

I'm going to be rather quick because I want to share at least the last minute or so of my time with Mr. Dykstra. If you could tell me when I'm at the three-and-a-half-minute mark, I'd appreciate it.

Can either one of you tell me the percentage of refugee claimants who are in detention in Australia? Do you know that?

Prof. Catherine Dauvergne: It's a difficult question to answer, because Australia has a universal visa system, and anybody who enters Australia without a visa will be detained. So there are a lot of people who come into the country who are detained for a short period of time when they first arrive.

Mr. Ted Opitz: Is everybody in Australia, every refugee claimant, detained?

Prof. Catherine Dauvergne: No, because lots of people arrive in Australia and have permission to enter the country. They have tourist visas. They have student visas. They have business visas. Just as in Canada, all sorts of people who eventually end up seeking asylum can arrive in a number of different ways. It's only people without visas who are detained.

Mr. Ted Opitz: They are people whose identities are not established. Would that be fair?

Prof. Catherine Dauvergne: Well, you can have an identity document and still be detained in Australia.

Mr. Ted Opitz: If you walk into the country and they don't know who you are and you're not really cooperative, you would expect to be detained, right? Is that fair?

Prof. Catherine Dauvergne: Yes. You wouldn't have a visa unless your identity was proven. Australia doesn't issue visas without it.

Mr. Ted Opitz: I'm going to move fairly quickly, because I want to share my time with Mr. Dykstra.

What's the percentage of Canadian refugee claimants you anticipate—

The Chair: You have about two minutes total for the two of you.

Mr. Ted Opitz: Do you know the percentage who will be detained under the current plan? Do you have an estimate?

Prof. Catherine Dauvergne: If we only talked about boat arrivals, we would be looking at 20% or 10%. It would vary, as some years it would be nobody. There's actually very little detail in the bill to suggest who will be designated. The capacity to designate foreign nationals is enormous. So the question is impossible to answer. Possibly you have information about how this designation power will be fleshed out that we don't have yet.

Mr. Ted Opitz: I'm just going to make a quick statement, and then I'll turn the rest of my time over to Mr. Dykstra.

Human smugglers, mass arrival events, are dangerous things. I know you're talking about the LTTE and others, but it's a mixed bag of people who arrive in these things.

I know something about war zones. They're not black and white. A lot of the people who come aboard those ships are ones who have pioneered suicide bombers, the use of child soldiers, and all kinds of things. So when all these people come here and we don't know who they are...Canada has a right to defend its integrity, and it has a right to defend Canadian families. If we don't know exactly who those individuals are, it's in Canadians' best interests.... I'm sure that if these guys get off the boat, you're not going to be inviting them into your home until you know who they are.

I'm not asking for an answer. That's what I think you would probably do. That's something you need to consider.

The Chair: You have two minutes, Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): Thanks.

Sharryn, you mentioned what I thought was an interesting perspective. If you are an individual who is seeking asylum in a country, the UN queue is actually one that is going to take a long time to satisfy you. In fact, you could end up being of university age before you actually come.

In your words, you mentioned that the queue is a long line, and therefore it is a lot more advantageous to people to get into Canada by taking, although dangerous, the route of coming across in a boat.

Prof. Catherine Dauvergne: The issue—

Mr. Rick Dykstra: Actually, I was asking Sharryn that question.

Prof. Sharryn Aiken: Okay. The very reason countries around the world have refugee status determination procedures is that they recognize that globally we don't have a program of refugee resettlement that's adequate to the demands of the numbers. We have way more refugees worldwide than we have resettlement spots.

In any particular year, Canada, along with a handful of other countries, accepts resettled refugees. Because the spots are so few, the queue is so long. The very reason asylum procedures are set up is to allow people who are desperate to, in effect, self-select and say, "I'm in danger, I'm at risk, and I can't wait in the queue for 12 years."

● (0945)

Mr. Rick Dykstra: I appreciate your pointing that out.

The Chair: I'm sorry. You've run out of time, Mr. Dykstra.

Mr. Rick Dykstra: She's just the first person opposed to the bill who has actually acknowledged that there's a queue.

The Chair: Well, unless there's unanimous consent, the time has come to an end.

That clock is wrong, incidentally. The chairman's clock is always —

Mr. Rick Dykstra: It's always right. I know.

The Chair: Professor Aiken, Professor Dauvergne, thank you very much for your comments. The committee appreciated your taking the time to speak to us. Thank you very much.

We will suspend.

● (0945)

(Pause)

● (0950)

The Chair: Thank you. We will reconvene. Our second panel is here before us.

We have with us two witnesses from B. Refuge at McGill University. The two spokespersons are Karina Fortier and Kelsey Angeley.

Good morning.

We have Amnesty International here, with Alex Neve, the secretary general of Amnesty International Canada, and Béatrice Vaugrante, the executive director of Amnistie internationale Canada francophone.

Thank you for coming. Each group has up to 10 minutes.

Ms. Angeley, you can start.

Ms. Kelsey Angeley (Student, B. Refuge, McGill University): Good morning, Mr. Chairman and honourable members.

Thank you very much for hearing our testimony today. We are honoured to speak before you on behalf of a group on the McGill campus called B. Refuge. For the past four years, B. Refuge has worked to facilitate interactions between refugee claimants and students, with the purpose of sharing language and culture and helping to orient refugee claimants to the city.

The work we do is premised on the belief that refugee claimants are valuable members of our community and potential Canadians. By asking Canadians to view refugee claimants as frauds and criminals, Bill C-31 undermines this premise.

Accordingly, this past year we have turned our attention to raising awareness among our peers about Bill C-31 and educating them on the dangers we believe it presents to refugees and to the larger Canadian community.

[*Translation*]

Ms. Karina Fortier (Student, B. Refuge, McGill University): We therefore undertook an awareness campaign with the objective not of persuading people to our position, but simply of informing them about the content of Bill C-31. And what happened was that a majority of the students we approached were opposed to the proposed changes. In the space of just four hours, we collected over 150 signatures to stop Bill C-31 from being passed. I would also like to ask the committee's permission to send it a copy of the petition.

Ladies and gentlemen, members of the committee, why do you think that young students like us are wary of this bill being enacted? The reason is that we make up a demographic group that takes an interest in the news and in Canadian politics, but that actually will not hold any seats in the House of Commons for another 10 or 15 years.

In the meantime, we are apprehensive as we follow the enactment of new laws like this one, which proposes to put entire groups of newcomers, including minors, in detention for one year. We are shocked by the fact that families will be separated for at least five years. We are shocked that entire countries might be considered to be safe, when to obtain refugee status, a person has to prove that they have been persecuted in their country, as an individual.

We consider it to be anti-democratic that the responsibility for drawing up that safe country list will be assigned to just one person, the minister. We wonder why the government considers the distinction between real refugees and bogus refugees to be so important, and penalizes the latter group. Even if they do not meet all the criteria in the official definition of a refugee in the Geneva Convention, a large majority of those refugee protection claimants are in need of help.

We are also disappointed that the minister would deny that the proposed changes will in fact punish these so-called bogus refugees.

[*English*]

Ms. Kelsey Angeley: When our generation assumes the political positions that you now occupy, we do not want the burden of correcting past mistakes. While we are welcome participants in Canada's democracy, and our testimony at this hearing is proof of that, it is you who are its current caretakers. We ask you to consider the long-term consequences of this bill and how it will shape the country we will inherit.

By disregarding Canada's international obligations, Bill C-31 threatens Canada's moral integrity on the international stage and the soft power that comes with being a humanitarian state.

When Australia implemented similar legislation, its image and reputation as a humanitarian state were called into question. We do not want to see that happen with our country.

Furthermore, infringing on the rights and dignity of asylum seekers—as are guaranteed by the Canadian Charter of Rights and Freedoms—puts everybody's rights at risk. When one person loses their rights and dignity on Canadian soil, everyone's rights and dignity are put at risk.

Moreover, our peers are in consensus with us that Bill C-31 represents a misuse of finances. As the Auditor General's May 2008 report notes, it costs $70,000 a year, on average, to detain a refugee claimant. Had Bill C-31 been law at the time of the MV *Sun Sea* arrival off the coast of British Columbia, Canadian taxpayers would have spent $34,440,000 on detaining people who had done nothing but exercise a right guaranteed to them by international and domestic law.

● (0955)

As there currently exist provisions under the IRPA for detaining individuals who are deemed a threat to Canada or who cannot be identified, generalized detention is unnecessary and expensive. We believe it would be more responsible and productive to use taxpayer money to perhaps hire more legal aid workers and lawyers to help refugee claimants navigate the determination process, or to create more positions on the Immigration and Refugee Board, which would not only ensure a fair hearing for refugee claimants but would help to expedite the process.

Bill C-31 is not a political or a financial legacy that we wish to inherit. Rather than leaving it to us to correct this mistake in 10 years, we ask you, the honourable members of Parliament, to make sure we avoid it altogether.

[*Translation*]

Ms. Karina Fortier: Once again, we sincerely thank you for inviting us to share our comments on this bill with you. As my colleague said, this is a good illustration of the enormous potential of our democratic system. That potential will become a true asset if, and only if, you truly take the opinions of all the witnesses who appear before this committee into consideration.

It is all very well to say that the future belongs to youth. For the moment, however, you are the ones who are building the future of this country, where we are only just beginning to carve out a place for ourselves. We want to avoid the stereotype of the overly optimistic and emotional student. Nonetheless, we call on you to be guided by your heart as well as by your sense of justice when it comes time to make a final decision. Let us remember that these are human beings who will be affected by this bill. It is their lives and well-being that are at stake.

Thank you.

[*English*]

The Chair: Well, the young spoke very well this morning. Thank you very much.

Mr. Neve.

Mr. Alex Neve (Secretary General, Amnesty International Canada, Amnesty International): Actually, Madame Vaugrante will begin for us. Thank you.

[*Translation*]

Ms. Béatrice Vaugrante (Executive Director, Amnesty International Canada Francophone, Amnesty International): Good morning, everyone. I would like to thank the committee for giving Amnesty International an opportunity to present its views on Bill C-31.

Amnesty International has analyzed this bill from the perspective of the following three points. First is our expertise in the area of compliance or non-compliance with international human rights law and Canada's commitment in that regard. There is also our experience. We are often asked to protect the rights of asylum seekers in Canada and we intervene when we consider it to be necessary. And there is our commitment, at the global level, to protecting the rights of people who immigrate and are trying to flee fear and want, as the Universal Declaration of Human Rights says, at whatever cost it may be to their families.

To begin with, we acknowledge that the process for accepting refugee claimants is difficult and complex, and will certainly always have its imperfections and inconsistencies. It calls for an ongoing process of change and reform. Amnesty International agrees that it is the responsibility of governments to guarantee the integrity of any refugee determination system. Those changes and reforms, which are certainly designed to achieve greater effectiveness and are concerned with abuses, must nonetheless always be based on respect for the rights of claimants.

Amnesty International is concerned. Bill C-31, which is being considered today, violates Canada's obligations under international law and violates the Canadian Charter of Rights and Freedoms. We will start by identifying the issue of discrimination, which we are disappointed to see can be found in several provisions of the bill. All refugee claimants should be treated fairly. The discrimination is based not only on manner of arrival in Canada, but also on country of origin.

My colleague, Alex, will come back to three general provisions of the bill that would, if they are implemented, generate serious violations of international laws relating to protection of refugee claimants, to human rights and to the Canadian Charter of Rights and Freedoms.

The first provision talks about making it mandatory for designated foreign nationals to be imprisoned with no review of the grounds of detention possible. The minister may decide that a person is a designated foreign national if the minister believes the person used human smugglers to enter Canada. The second provision makes it impossible for designated foreign nationals to appeal an unfavourable determination regarding their refugee status. And the third provision talks about identifying countries of origin as safe solely by decision of the Minister of Citizenship, Immigration and Multiculturalism.

The following points are also of concern to us: the fact that access to permanent residence status is barred for five years, which prevents family reunification; the times allowed, which are much too short and unfair; and the unfairness and impossible choices that exist between the refugee protection process and the humanitarian reasons process.

Amnesty International has nine recommendations to ensure that, at a minimum, this bill meets Canada's international obligations in relation to human rights. What we are talking about are obligations that Canada itself helped create and develop.

I am going to let Alex speak to the next three points.

● (1000)

[*English*]

Mr. Alex Neve: Thank you, and good morning, committee members.

The right to liberty is a cornerstone human right grounded in the innate human yearning for freedom. Human rights norms universally, therefore, make it clear that the state's power to take away liberty through arrest and imprisonment is and must be constrained and restricted. To ensure that the right to liberty is well protected, human rights treaties clearly lay out that anyone deprived of their liberty must first be informed of the reasons for their imprisonment and then have a prompt and effective opportunity to challenge their imprisonment before a judge or other legally authorized person.

Amnesty International's research has demonstrated that asylum seekers and other migrants the world over are particularly vulnerable to abuses of the right to liberty. In particular, it has become clear that numerous governments have resorted to locking up refugees and migrants as a means of deterring other refugees and migrants from coming. Nothing in international law recognizes that as a valid reason to take away liberty.

International law does recognize that states have the right to control their borders. There is also, of course, an obligation to ensure that individuals are not sent back to countries where they would face persecution. At the border, therefore, international law is very careful. It has recognized that only for a length of time strictly necessary may a state be justified in detaining asylum seekers to verify an individual's identity, to ensure that someone who poses a flight risk will appear for proceedings, or because someone poses a demonstrated threat to security. But there must be a timely ability for the individual to challenge the reasons for their imprisonment.

International standards recognize that the liberty rights of certain groups of migrants, such as asylum seekers and minors, must be particularly scrupulously protected. The refugee convention, for instance, lays out that the mere fact that an asylum seeker has entered a country through illegal means is not in itself valid reason for punishment. The UNHCR's guidelines on detention note that asylum seekers have often experienced considerable trauma and hardship that must be taken into account in making any decision to detain them. International law with respect to both refugee protection and the rights of children is also very clear that minors should only be imprisoned as a measure of absolute last resort.

Bill C-31 contravenes these universally established norms protecting the fundamental right to liberty. Individuals are not detained for any of the recognized grounds for detaining migrants, such as verifying identity or dealing with flight risks or security threats, all of which are already well established in Canadian law. The reason they lose their liberty is instead the mere fact that they have entered Canada as part of a group of individuals designated by the minister to be an irregular arrival. It has nothing to do with the individual's own circumstances. It makes no difference whether they have a plethora of valid identity documents or a collection of forgeries, whether they are guaranteed to show up for future proceedings or almost certain to go underground, or whether they pose an obvious and grave threat to national security or are a paragon of virtue. Their arrest and imprisonment are automatic, solely on the grounds of how they arrived. There's no exception for individuals who make refugee claims. There's no exception for individuals who have experienced torture, rape, or other human rights violations. There is no exception for minors over the age of 16.

The problems with this new detention regime do not end with the grounds for arrest and imprisonment. They extend to the crucial internationally mandated requirement that individuals who are locked up must have meaningful and regular access to a judge or other authorized person to challenge the reasons for their arrest and seek their release. Under Bill C-31 they do not. The immigration division is to review the reasons for their continued detention on the expiry of 12 months after they have been taken into detention, and "may not do so before the expiry of that period".

Arbitrary mandated detention without timely review violates Canada's international obligations. UN-level human rights bodies have made this clear. The UN Committee Against Torture, commenting on similar mandatory detention provisions in Australia, called for it to be abolished. Notably, that same committee will be reviewing Canada's human rights record later this month, and this issue is in front of them.

● (1005)

Last month the UN Committee on the Elimination of Racial Discrimination called on Canada not to go ahead with mandatory detention provisions. Those provisions should be withdrawn. Canada rightly criticizes arbitrary detention in other countries. We cannot do so credibly if we legislate it ourselves.

The safe country of origin concept is also one that Amnesty is concerned about. We're concerned that it is not workable and cannot be applied in a principled manner. We know. Human rights research and reporting are things we have been doing for over half a century. We grapple with this all the time.

Amnesty International is asked to do exactly this all the time: to rank countries, to compare countries, to measure countries from one year to the next. We're asked to give a statistical measure summing up a country's human rights record, and we do not do so for several reasons, but very pragmatically we do not do so because there is no way to do it objectively and accurately. There is no way to draw the line between countries that are safe and countries that are unsafe when it comes to human rights.

How does one compare a country that has widespread torture but generous access to education with a country that has no torture but draconian laws that limit access to education for women and minorities? How much torture, how much restricted education, just how much and of what would it take for a country to move over the line from safe to unsafe or from unsafe to safe? It cannot be done in a way that doesn't in the end involve subjective and arbitrary line drawing, and when it comes down to people's lives, rights, and freedom, subjective and arbitrary are not acceptable. There is too much risk of countries being categorized as safe, therefore, because of irrelevant trade and foreign policy considerations, and in that regard we were troubled to see that an earlier proposal for an expert advisory committee in this area is no longer on the table.

The Chair: Perhaps you could conclude, Mr. Neve.

Mr. Alex Neve: Okay.

The last point I want to make is a point about appeals. For years the lack of an appeal on merits has been the notable shortcoming in Canada's refugee system. We welcomed, therefore, the inclusion in Bill C-31 of establishing the Refugee Appeal Division. What is deeply troubling, though, is the discrimination in terms of who gets access to an appeal, most notably those who have arrived as part of an irregular arrival or those coming from designated countries of origin.

Discrimination in something so fundamental as access to justice contravenes Canada's international human rights obligations. An appeal hearing is not superfluous; it is essential, and this should not be part of the bill.

Thank you.

The Chair: We have to move on, sir. Thank you very much, Mr. Neve.

Mr. Weston.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): Thanks, Chair.

First let me just say how proud I am to be a Canadian today. Your testimony reminds me of where I was as an international relations student, not long ago, it seems, in my mind, and, by the way, it won't be 10 years before you're members of Parliament. You don't need to wait that long. Thank you for being here.

Amnesty International I've supported personally. My family also has, perhaps because of Charlie Pley, my law school classmate, who was very involved in Amnesty in Ontario. Again, I'm proud that you're here today.

However, I want to say that while we rally around the same conclusions, that as Canadians we want to extend compassion to people who are in these unacceptable circumstances, my interpretation of the bill differs from yours in some ways. One of the basic issues I have is that I think it's also a human rights violation for us to keep people waiting for over 1,000 days, on average, the way we currently do, to process them, and I believe we need to do that faster. In this difficult position of being decision-makers in government, we have to make some decisions, and it's inevitable that there will be individual cases and problems with the decisions we make.

Let me ask you this first. If you understood that a large percentage of claims from certain countries—and I'm referring to the EU countries—were being abandoned or withdrawn, if you knew that people who come in from those countries were occupying a large amount of our financial resources—and Kelsey referred to financial usage—and you knew that they were using a lot of the processing time, which is therefore delaying the processing time for people who ultimately, we know, are refugees, wouldn't that in itself be something we would have to tackle? The percentages are very large. We're learning that about 90% of claims from Hungary weren't withdrawn, so there is where the bill moves to designating so-called safe countries.

Let me just throw in one more thing. Don't believe for a minute that the minister can totally, arbitrarily, and capriciously decide which are safe countries, because our Federal Court will require him to be accountable vis-à-vis certain criteria. The criteria, by the way, are laid out in the bill, criteria dealing with, for instance, countries where the numbers of claims are withdrawn or abandoned. So he has to be guided by that, and not arbitrarily and capriciously just say what is a safe country.

Let me get a response from Amnesty.

● (1010)

[*Translation*]

I would like Ms. Angeley and Ms. Fortier to answer as well.

[*English*]

Mr. Alex Neve: Thank you very much. I certainly appreciate learning of your support for Amnesty International.

Absolutely, we agree that speedy, expeditious processing of refugee claims is not just an important government objective, it's an important objective for refugees themselves. Obviously they want their fate to be resolved. They want to be able to move on with rebuilding lives, reunite with family, and most importantly have that critical psychosocial sense of safety. At the same time, we have to be certain that we are not doing so in ways that may set unrealistic, unfair timelines that make it very difficult or even impossible for people to adequately prepare or present their cases. We also have to make sure that at the same time we're moving towards expeditiousness, we're not adopting policies that contravene key international human rights standards, such as the provisions I outlined earlier that are of concern to Amnesty International around arbitrary detention.

With respect to countries of origin—

Mr. John Weston: Let me just interrupt quickly. You geared all of your concerns about arbitrary detention as if it's punishment, but the specific expressed objective is to identify people so that we know that they are not security risks, not to punish them. That's clearly one of the objectives of the bill. That's why I think this can survive scrutiny by the courts.

But I interrupted you.

Mr. Alex Neve: We already do have provisions in Canadian law that allow for detention for the purposes of verifying identity. This new approach of imprisoning an entire group simply on the basis of their group identify and their means of arrival is something very different, with respect.

Mr. John Weston: It's less than 1% of all refugee claimants, by the way, who would be in that category.

[*Translation*]

Ms. Angeley or Ms. Fortier, do you have anything to add?

[*English*]

Ms. Kelsey Angeley: I appreciate your comments, and it's true the backlog is unacceptable.

I made a friend in my first year who was a refugee claimant, who only just recently, last month, received her hearing. During that time I finished a university degree. I think in matters of expeditiousness it's a trade-off between speediness and living up to Canada's reputation as a humanitarian state.

Before designating a list of safe countries, there are other measures we can take. For example, the IRB is currently only 80% full. We can fill the rest of those appointments. We can listen to refugee claims on a case readiness basis.

And certainly we and our peers are concerned with the elimination of the expert panel. That seemed a nice check and a guarantee that if there is a list of safe countries, it would be done in a fair manner.

Mr. John Weston: The minister's ideal here is to expedite the process, not to become arbitrary or capricious. He has to be guided by certain criteria. For me, we're insulated from some of the concerns that you raised.

Let me add one thing. I think we would all probably give credence to the UNHCR, which has clearly recognized the validity of providing expedited processing for refugee claimants from designated countries of origin. In fact, former UN High Commissioner António Guterres has said that there are indeed safe countries of origin and there are indeed countries in which there is a presumption that refugee claims would probably not be as strong as in other countries.

Do you think that's correct, Béatrice or Alex?

● (1015)

Mr. Alex Neve: I think there's a big difference between a notion of expediting claims on the basis of country of origin and denying access to something as fundamental as an appeal hearing in something as consequential as a refugee claim. I think the high commissioner's comments were dealing with timelines and speeding up processing. Of course, that's the compromise that was reached earlier in the Balanced Refugee Reform Act, using country of origin lists as a means for expediting. Amnesty International does still have concerns about the very concept, and I think we speak authoritatively as an organization that researches, documents, and reports on human rights violations all the time, as to the real difficulties in coming up with country of origin lists that are reliable. But at a minimum, the Balanced Refugee Reform Act took an approach that wasn't about something as fundamental as denying access to an appeal hearing.

The Chair: Thank you, sir.

I'm sorry, Mr. Weston, we have to move on.

Madame Groguhé.

[*Translation*]

Mrs. Sadia Groguhé (Saint-Lambert, NDP): Thank you, Mr. Chair.

I would like to thank our witnesses for being here this morning.

Some of the witnesses who have appeared here have talked to us about the importance of having a speedy system, but they have also said, as you have stressed this morning, that it must be based on respect for fundamental rights and humane, universal justice. In our opinion, these are really key points that will have to be taken into account in relation to this bill.

I have one question regarding the country of origin designation process. Bill C-31 amends both the country of origin designation process and the criteria for making that designation that are set out in the Balanced Refugee Reform Act. Could you comment on the new process that is proposed for designating countries of origin?

Ms. Béatrice Vaugrante: With pleasure.

Amnesty International does have serious concerns about the possibility of an entire country being designated as safe. First, the situation as regards human rights violations within a country can change very quickly. We need only think of Kenya. We thought things were going very well, but all of a sudden, a wave of violence washed over the country.

As well, human rights violations may be slow to reach us, even with all the means of communication available to us, and sometimes it is the refugees who tell us about them. It may be that a country presents a relatively positive picture in terms of various aspects of human rights but has serious problems in a particular region. For example, there could be an issue in relation to homosexuals. There may also be violence against women. If a country like that were designated as a safe country, it would become impossible to put a finger on problems of that nature.

As well, there is no way to objectively designate a country as safe. The process will end up being subjective. We have concerns about that subjectivity and how it is going to be measured. We are also concerned, in relation to designation of safe countries, that interests other than human rights may end up being taken into account: for example, trade or political interests.

Mrs. Sadia Groguhé: Thank you.

Karina and Kelsey, do you think this bill is going to solve the problem of human smugglers, in any way, or was it designed to penalize refugees? Do you think that this bill does anything at all to resolve the issue of human smugglers and human trafficking?

● (1020)

Ms. Karina Fortier: I have no answer to that question.

Mrs. Sadia Groguhé: If not, Mr. Neve or...

[*English*]

Ms. Kelsey Angeley: I think the measures the bill proposes do not punish human traffickers. They punish the refugees who pay for human trafficking services.

Actually, in the committee meeting on April 26, the Minister of Citizenship and Immigration talked about deterring passengers as the most important component of this bill. I just don't think that will work. People who pay for the services of human smugglers are motivated by desperation and fear. To deter them assumes a level of rationality, and fear and desperation are irrational. Furthermore, many of the refugees we work with do not know anything about the system before they arrive here. The measures in place in this bill assume that there are networks for distributing information abroad and that people are aware of the punitive measures before they come to Canada, which, in reality, is not the case.

[*Translation*]

Mrs. Sadia Groguhé: Thank you.

Mr. Neve, some witnesses have told us that the rules relating to irregular arrivals, including detention for one year, were unreasonable and excessive. Could you give us more detail on that point and tell us what international legal obligations or what charter rights these rules infringe?

[*English*]

Mr. Alex Neve: Thank you.

There are many international legal provisions at stake when we look at the detention regime here. It starts with the Universal Declaration of Human Rights, which guarantees against arbitrary arrest and detention, and the need for regular, timely access to an ability to challenge the reasons for detention.

It's repeated in the International Covenant on Civil and Political Rights, which Canada ratified in 1976.

There are provisions in the Convention on the Rights of the Child that deal in particular with the liberty rights of children and the importance of ensuring that they are not subject to arbitrary arrest. In fact, their detention is only an option of absolute last resort.

There are also numerous provisions in refugee law. The hard-law provisions in the refugee convention, for instance, make it clear that simply because a refugee claimant arrives in a country through illegal means, which is a very normal and necessary step for many refugee claimants, that is not in itself grounds to punish him or her. Obviously, imprisonment constitutes punishment.

There are also guidelines and other documents from the UNHCR that make it very clear that detaining refugee claimants should not be a normal course and that great care should be taken, particularly with respect to refugees who are vulnerable: children and survivors of rape, sexual violence, and torture. There are no provisions in this legislation for that.

[*Translation*]

Mrs. Sadia Groguhé: In view of everything you have addressed, do you think Canada is still a country that is in compliance with the conventions and the charters of rights and freedoms?

[*English*]

Mr. Alex Neve: We're very clearly of the view that these detention provisions do not conform to our international legal obligations. I think we're already starting to see that signalled. As I said, earlier this year, in February, Canada was reviewed by a UN-level human rights body, the UN Committee on the Elimination of Racial Discrimination. These mandatory detention provisions were brought to their attention. They expressed concern and called on the Canadian government not to go ahead with this. So I think we're already seeing signals at the international level that UN human rights experts will be concerned about this, and that's not a step we should be taking.

The Chair: Thank you, Mr. Neve.

Mr. Lamoureux.

Mr. Kevin Lamoureux: I'd like to pick up on that particular point and maybe add a little bit more to it. I think we do need to be clear that Bill C-31 will be a fairly extensive bill in terms of financial costs to taxpayers, but more importantly, there is the issue of human rights, the idea of challenges that will no doubt come out if this bill passes as it is, without amendment. There will be constitutional challenges. Many, including myself, would argue there would be successful constitutional challenges because of the mandatory detention clause.

There are other issues surrounding the bill that one would argue have tarnished Canada's international reputation, and I think that's most noteworthy. When you look at the larger picture of the number of refugees worldwide, in excess of 10 million refugees, Canada has historically played a fairly strong role in terms of providing leadership on the refugee file. This is going to take away from our ability to do that.

To Karina and Kelsey, I appreciate your comments. I'd be very much interested in receiving a copy of the petition you make reference to. I think it's great that a body of students at McGill has taken an interest in what's happening in Bill C-31. You both expressed passionately your thoughts on it.

I have a very limited amount of time; that's why I wanted to get a few points on the record.

I guess my first question is in regard to what else is happening at your university. Are you expanding, making other universities aware of it? I would welcome the opportunity to even have a discussion on Bill C-31 with the minister at your university, if the minister were prepared to go to debate this particular bill.

Can you provide what else is happening at your university?

● (1025)

Ms. Karina Fortier: We had two sessions where we tried to raise awareness about this project. We set up a table where a lot of people pass through, and as I said, we just stopped people and asked them if they had heard about Bill C-31. Most people hadn't heard about it. We told them what it was.

Further than that, it's summer now and most students have gone home or are on vacation. As for next year, we're very interested in getting the media involved and, as you said, connecting with other universities.

We are hoping this bill is not going to pass so that we have more time to oppose it, with the connection of other networks.

Mr. Kevin Lamoureux: I appreciate the comments.

There's a component in the bill that says if you are deemed as one of those irregular arrivals and you're held in mandatory detention for one year, after that, even if you're a bona fide refugee, you cannot sponsor a family member.

I'm wondering if you can provide comment as to what you think the impact of that might be.

Mr. Alex Neve: That is another deeply troubling piece of the legislation, the fact that there will essentially be a five-year bar because of the inability to get permanent residence for five years for the individuals you've described, and with that, therefore, an inability to sponsor family members. That's of grave concern on a number of levels.

Again, it contravenes important international human rights obligations, in the Convention on the Rights of the Child, very notably, which makes it clear that states are supposed to do everything they can to expedite the reunification of separated families when minor children are involved. A five-year mandatory delay is certainly not expeditious reunification, so there are legal consequences.

The psychosocial cost and impact of keeping families separated for such a lengthy period of time is a very severe one. Here's an individual whom Canada has recognized does have protection needs, is going to be protected by us. We're complying with those international obligations, but at the same time we are saying they have no right to be reunited with their family in a speedy way because of how they travelled to Canada.

Mr. Kevin Lamoureux: Are you concerned with regard to the perceived, and now real, distinguishing...now we have two types of refugees as a direct result of that. That, in itself, might be in contravention of some of the UN resolutions that have been passed.

Mr. Alex Neve: I think the sense of discrimination that lies at the heart of this bill, treating refugees differently based on how they've arrived in Canada, based on their country of nationality, and therefore being denied equal protection of some key human rights issues—access to appeal provisions, access to family reunification, ability to travel abroad—simply on those grounds is deeply troubling. Yes, we would argue that it does run afoul of obligations we have under international human rights treaties not to treat people in a discriminatory fashion, but it will also have a very serious human impact and cost.

The Chair: Thank you.

Mr. Leung.

Mr. Chungsen Leung (Willowdale, CPC): Thank you, Mr. Chair. Thank you to the witnesses.

Mr. Neve, there's a fine balance between Canada's world reputation on human rights and the generosity we extend to refugees or people in need—the reality of the cost of settling refugees, to the tune of $50,000 per person per year, and maybe up to $1.6 billion over a period of five years.

Is Canada's health and social welfare system for refugees much more generous than that of other EU countries, or other countries, like the United States or Australia, which are also caught in the same bind of having to deal with mass arrivals or refugee arrivals in general?

● (1030)

Mr. Alex Neve: I don't have an authoritative or statistical answer to that question. I think we should pride ourselves, yes, on being generous. I would argue that in our generosity what we are doing, though, is complying with our international human rights obligations. It's not a question of charity; it is a question of living up to rights obligations.

I think there is unevenness across the country. While some provisions are, of course, provided and funded by the federal government, in other areas some of the social welfare, education, and health costs, for instance, are a matter of provincial jurisdiction. Different provinces have different approaches and policies as to what degree they give access to that kind of assistance. So one clear, national-level story doesn't emerge.

Compared with other countries, yes, in many respects, we're at the top of the list. There are probably other areas where we're not. Other countries offer some generosity as well. Even if we were at the top of the list in every respect, in terms of the level of assistance and support we provide, we should not be shying away from that. In fact, we should be proud of it.

Mr. Chungsen Leung: Thank you.

On the same point, my next question is for Kelsey and Karina. If we were to inherit this cost burden of nearly $1.6 billion over five years, from your perspective, as youth becoming mature adults in Canada where you have to work and so on, I'm wondering how you feel about inheriting this burden.

I need you to expand on this. You talked about the B. Refuge. I'm curious as to why you think Canada's asylum system is anti-democratic. I speak from a little experience, in that I was an international student here and made stateless some 40 years ago.

Ms. Karina Fortier: Where does the $1.6 billion burden come from?

Mr. Chungsen Leung: It comes from looking at the cost savings by having Bill C-31 protecting our borders and extrapolating over a five-year period, on the basis of the fact that we have to look at about somewhere between $50,000 to $70,000 per refugee claimant, which is the cost to us today.

Ms. Karina Fortier: As my colleague mentioned, we are very worried about the fact that it will cost so much. We got this number from the 2008 Auditor General's report, which says that it costs $70,000 a year to detain a refugee in a detention centre. We are confident that those resources can be spent in a much more useful way, for example, by appointing more IRB members or refugee lawyers.

Ms. Kelsey Angeley: I think there's the assumption that refugees only take from Canadian society. By investing in refugees and refugee claimants while they're here, they become better members of our community once they are accepted as Canadians. For example, detaining people can have horrible effects on mental health, especially in children's development. That's a cost that people have to bear later. I think when we invest in refugee claimants, it's investing in future Canadians, and that's valuable.

As for the determination process being undemocratic, I don't think it's undemocratic; I think what's undemocratic is infringing on their charter rights, which Bill C-31 would do. In 1985 the Supreme Court said that the charter does apply to refugee claimants.

As soon as one person's rights are called into question on Canadian soil, I think that puts everybody's rights at risk. It's a domino: if one person's rights are worth less, then everybody else's rights are worth less.

● (1035)

Mr. Chungsen Leung: I just want to put it on the record that our government has tripled the resettlement services for asylum seekers to the tune of about $300 million. You probably do not know this.

But I'm not sure why your point was that it's costing us more to keep these people in detention—given the legal service and given the social and other services—as we look into and determine their identity, as we determine their cause...and security to our Canadian society.

Ms. Karina Fortier: You are suggesting that this process will be accelerated when we appoint more IRB members and refugee lawyers. We are suggesting that more cases will be able to go through, and therefore refugees will be able to obtain a work permit faster and to contribute to the Canadian economy as they receive those services. Meanwhile, if you put them in detention, don't tell me you're not going to feed them. You're going to give them a free meal, and water, and health care.

In the long run, this will cost a lot more, especially if it's for a minimum of one year for every one of those.

The Chair: Thank you....

Go ahead.

Ms. Kelsey Angeley: I think it's clear that the refugee determination process does cost money. That's not something that we're denying. It's a matter of how we spend our money. We think detention is not the right way to spend it.

The Chair: Time's up.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

First of all, I want to thank all of you for coming and for making the presentations.

It always warms my heart when we get presentations from our youth and from our university students. They are so heavily engaged in social justice issues and looking at the future, at the kind of Canada we want, at the compassion that we all associate with Canada.

To either Karina or Kelsey, in Bill C-31 there is a concept that's being introduced of a conditional permanent residence, basically. That is, you could actually be recognized as a refugee, get your PR card, but six, ten, thirteen years later you could be told, "Well, things have gotten better in your home country now", and there could be re-designation, so to speak.

This is just one example of more and more power being positioned into the hands of a minister—and it's nothing against one minister; it's any minister for any government.

What do you think about the extent of the powers being given to the minister via this bill and about our ability to re-designate and send back?

Ms. Karina Fortier: It's very, very troublesome. I try to talk about it to as many of my peers as I can. I don't understand how, exactly, so much power, which will determine whether one person will be able to live on or not, whether they will be able to construct a life in Canada or not, depends on one person.

We can very well say that this person will have to respond to certain criteria. Nevertheless, it does leave room, too much room, for a concentration of power within that person. There are not enough checks and balances within that bill to limit that power.

Ms. Jinny Jogindera Sims: Thank you very much.

To Alex, Bill C-31 would introduce a substantial restriction on the ability of refugee claimants to make humanitarian and compassionate applications. Does this give you any concern?

Mr. Alex Neve: It does indeed. For many, many years, advocates, and I think government officials, have recognized that the humanitarian and compassionate process offers a valuable avenue to ensure that a whole variety of concerns, often involving serious human rights issues that don't necessarily fit easily into other processes—they don't naturally satisfy the refugee definition, for instance—will not go unaddressed.

To see the proposals in this bill that will be forcing people to make choices between either making this application or that application, or in some instances being barred from making humanitarian applications—this is for designated irregular arrivals—for a period of five years will put many people into impossible positions of having to choose between whether they want to try to assert these human rights concerns or those human rights concerns.

These are not duplicative processes. There is some overlap between them, but in many respects they address different kinds of human rights and humanitarian situations, and to close it down is problematic.

● (1040)

Ms. Jinny Jogindera Sims: The five-year window in which you cannot apply for anybody or get travel documents doesn't mean that families are going to be reunited after five years. That's when they can apply, and that creates a lot of humane concerns, as well as some practical ones.

My next question is around the new proposed timelines. Everyone of us wants to see refugees expedited, but what do you think about the timelines that are proposed in this bill? We've had quite a bit of feedback on how they actually take away rights rather than protecting rights.

Mr. Alex Neve: I'm sure you will probably have already heard, and will probably continue to hear, from individuals who do refugee work on a daily basis—refugee lawyers, people working with front-line organizations—who I'm sure can tell you very powerfully that speed is so valuable, absolutely. Everyone wants speed, and the agony all of us hear from refugee claimants in our offices as they learn that their hearing isn't going to be scheduled for 8 months or 18 months or those sorts of delays is also agonizing.

However, these timelines are unrealistic, in the sense of putting many refugees in positions where it will simply be impossible to prepare and gather documentation and have adequate consultation with lawyers to make sure they are putting their case forward in the clearest, strongest way possible. That in itself will help expedite the process, because a poorly prepared case will only cause further delays.

The Chair: Thank you, Mr. Neve.

Mr. Dykstra has two blocks of time.

Mr. Rick Dykstra: Thank you, Mr. Chair.

This has become a recurring theme. I had hoped that when we started the process, in terms of witness presentation—and I don't hold any of you responsible for this—we would be hearing from different themes in terms of support or not support of the bill. I find I'm repeating myself on a regular basis.

Based on the opposition that you have to the bill, I understand your perspective, but we have heard it on a number of occasions already. In fact, I do want to clarify a couple of things.

Number one, the former United Nations High Commissioner Abraham Abraham said that the UNHCR does not oppose the introduction of a designated or safe country of origin list, as long as this is used as a procedural tool to prioritize or accelerate examination of applications in carefully circumscribed situations and not as an absolute bar. Many countries, including the United Kingdom, Ireland, France, Germany, the Netherlands, Norway, Switzerland, and Finland all use and implement the designated safe country.

In terms of the criteria for claimants from countries—for example, there are two quantitative thresholds for countries that have a mass number of applications into our country, for those who are seeking asylum as refugees. They have to meet one of two quantitative thresholds, or limits, as set out in the order. The proposed triggers for a review are based on rejection rates, withdrawal, and abandonment rates. A rejection rate, which includes abandonment and withdrawal, of 75% or higher would trigger a review. Similarly, an abandonment and withdrawal rate of 60% or higher would also trigger a review, and I repeat “a review”. It doesn't automatically mean that the designation is going to take place. An internal review led by the Ministry of Citizenship and Immigration, in partnership with a number of other ministries within the government, will make the determination or recommendation based on a review that the country that is in question has either hit the criteria from a quantitative perspective or is subject to a review based on the number of withdrawals or abandonments that we have seen. So there are defined criteria that will be here.

I was part of Bill C-11. I sat through every minute of the hearings, and also the negotiations in terms of moving it forward, and 80% to 85% of Bill C-11 is going to move forward. There are just additional aspects that we have brought to the table here.

Under Bill C-11, which was a problem with respect to the designated country, there was no provision for transparent criteria. The criteria would be determined by the group itself. The concern we had was (a) what would those criteria consist of, and (b) there were no assurances as to the time allocation of how long that determination process would take. So at least through here, (a) we have a transparent set of criteria, and (b) we actually know the timeframe within which this designated country application will actually take place.

For claimants from countries with a low number of claims, we're actually going to move to a qualitative checklist, which will be established right in the legislation itself. So the qualitative checklist will include (1) the existence of an independent judicial system in that country; (2) recognition of basic democratic rights and freedoms, including mechanisms for redress if those rights or freedoms are infringed; and (3) the existence of civil society organizations.

While I respect that you may not agree with the process in terms of how we come to the conclusion, it's unfair, and it's also untrue to state that there aren't qualitative and quantitative criteria built in to both the legislation and the mechanism that will be used to go through the process for review. It's really important that this gets put on the table. I think part of the reason that folks come to the table and state that they're unsure of, or leery of, the designated safe country is that this information isn't necessarily at your fingertips. I do understand that is a concern, but I also understand that as we move forward in terms of Bill C-31...and part of the reason why we're doing these hearings is to afford us all the opportunity to understand the bill as it sits in a much stronger form.

Kelsey, I wanted to ask you about one of the concerns I have. I respect the fact that the opposition to a particular piece of legislation is democratic, but so is the support of the legislation, and we've heard from a majority of Canadians across this country that in fact this bill doesn't go far enough and that it should be more aggressive in its nature. We don't necessarily agree with that. We want a bill that is going to do both: suit and meet the expectations of most Canadians, and also, obviously, respect the rule of law as closely as we possibly can.

● (1045)

You spoke a number of times about the issue of rights and fairness. Over the last decade, we're talking about approximately 100,000 to 120,000 refugees who have come to this country and have been accepted, of which there were only 600 in the last decade.... Two ships have come here with approximately 600 people, and you've spent a great deal of time focused on the rights of those 600 individuals, while not acknowledging and complimenting the fact that between 100,000 and 120,000 refugees in fact have had those rights, in the same aspect that you're talking about.

So what we're concerned about here is only one small part of the bill, which gets at the irregular arrivals. I think it's important to note that we are talking about...less than half a per cent of the impact of our system within this bill is focused on those who come as different arrivals—other than by land or off-land.

I come to this point because currently we have over 40,000 individuals who have claimed refugee status in Canada and who we can't find. We don't know where they are. We have over 2,000 individuals who were approved for permanent residency or refugee status and actually got it by basically cheating the system, by not being forthright and honest about their perspective—or at least their claim.

For me, when you say we have to protect the rights of an individual, we also have to protect the rights of Canadians, and my concern is that we cannot.... I know it's important that everyone is as equal as we can potentially come to, but there is a balance that gets struck when we have over 40,000 people—and that's why I believe the system is broken—who we currently cannot locate. We do not know where they are. Now, we don't know if they present a danger to society; we won't know until something actually happens. But then... and there, I think, is where the rights of Canadians as individuals are and that we as a collective have to ensure. The government's responsibility is to protect those rights as well.

Ms. Kelsey Angeley: Well, I think Canada should be commended on its outstanding reputation toward refugees. Canada is the only country to have received the Nansen medal for refugees.

As you said, irregular arrivals by boat are a very small percentage, but I believe that under the current bill people arriving in groups of more than three would be considered irregular...?

● (1050)

Mr. Rick Dykstra: That's actually not the case. I appreciate the fact that it isn't as defined as one may like it, but a family coming in and declaring refugee status in Canada is not going to be declared an irregular arrival.

Ms. Kelsey Angeley: But I do think it's a dangerous precedent to set by doing something like mandatory detention—

Mr. Rick Dykstra: Mandatory detention—

The Chair: We've run out of time. I'm sorry. That was just starting to get interesting.

Thank you very much to our two groups, B. Refuge and Amnesty International, for your presentations. You've sparked some interest. Thank you for coming.

We will suspend for a few moments.

● (1050)

(Pause)

● (1055)

The Chair: I'd like to call the meeting back to order. This will be interesting because we have so many people present.

We have Ambassador Brinkmann, who is here leading a delegation of the European Union to Canada. With him in Ottawa is Jose-Antonio Torres Lacas, who is the first counsellor, and Terri-Ann Priel, who is the adviser on political and public affairs.

We also have eight people in Brussels by teleconference. I'm not going to introduce you, so before you speak, could you identify yourselves, because it's complicated here. It will make it easier when you answer a question if you just give your name before you speak.

We also have, by video conference from the Federal Government of Germany, Anja Klabundt, counsellor of the European harmonization unit, Ministry of the Interior; and Roland Brumberg, counsellor of immigration law, Ministry of the Interior. Good morning to you.

I see a third person there. Is he just observing?

● (1100)

Mr. Christoph Ehrentraut (Counsellor, European Harmonization Unit, Federal Government of Germany): My name is Christoph Ehrentraut, and I am also responsible for European asylum laws.

The Chair: Thank you to you all.

Your Excellency, you will have up to 10 minutes to make a presentation.

Ms. Klabundt, you will have up to 10 minutes to make a presentation.

We will ask Ambassador Brinkmann to speak first. Good morning, sir.

Ms. Jinny Jogindera Sims: I have a question of clarification before we start.

The Chair: On a point of order, yes.

Ms. Jinny Jogindera Sims: Our norm is to have two witnesses. Because we have three, the 20 minutes will be kind of.... Will their speaking time be adjusted?

The Chair: No. The delegation from Brussels is part of Ambassador Brinkmann's group.

Ms. Jinny Jogindera Sims: Thank you so much for the clarification.

The Chair: Thank you.

His Excellency Bernhard Brinkmann (Ambassador, Delegation of the European Union to Canada): Thank you, Mr. Chairman, honourable members of Parliament, ladies and gentlemen. Good morning. It's a great pleasure to be here. I'd like to thank you for inviting us to this important hearing.

This bill is of interest to the European Union, mostly on two aspects. First I would like to say that we are ready to answer any questions you might have on how we deal with these issues in Europe, but we're not here to comment on your legislative process. It's not for us to comment on draft bills you deal with. We are more than happy to answer any questions you have on our own policies.

Why is this of particular interest to us? There are two aspects. The first is immigration policy. For us, Canada is a model as concerns the immigration policy and the resulting multicultural society you have, the pluralism. You probably know that in Europe we have some difficulties with these issues, with integration. Some have stated it's the end of multiculturalism, and so on. Therefore, we watch all this with great interest, and we have made reports on that to Europe.

The situation is also different in Europe, of course. We have nation states with very homogeneous populations, where immigrants stand out, whereas in Canada, as you know, almost everybody is an immigrant or is descended from immigrants. Immigration into Europe is mostly of a different quality than in Canada. In Canada you choose most of your immigrants. You want qualified people, whereas in Europe most immigrants come from the south, and the majority are almost illiterate, and so on. So it's a different situation.

The second aspect of why it's interesting for us is the visa issue. Citizens from three of our member states—Romania, Bulgaria, and the Czech Republic—still require visas to come to Canada, whereas Canadian citizens have visa-free travel within the entire European Union. For the countries concerned, but also for the European Union as a whole, it's a serious issue because of matters of principle. Our visa policy is based on the principle of reciprocity. If you grant visa-free access to one country, then that country should also grant you visa-free access to its territory. It's also because of solidarity among member states. This is a problem, especially the reintroduction of the visa for the Czech Republic. We are working to solve this issue as soon as possible.

That is linked to asylum policy, I would say; therefore I would like to briefly explain to you immigration and asylum policy in the European Union—just the big headlines—and leave it to the experts to go into the details.

The issue of immigration and asylum is traditionally a responsibility of the member states and national competence. They deal with that in accordance with the applicable international instruments, like the Geneva Convention, and their national laws. However, since 1999, at the European level we have tried to work on a common asylum policy. Like so many things in the European Union, it is a work in progress—a process in progress—and we're still working on it. We do that through legislation at the European level, mostly with directives that then have to be implemented by member states through practical cooperation and the harmonization of national practices.

● (1105)

We work under the principle of minimum standards. That means that member states, individually, can go further in the protection of refugees and grant more rights or more favoured treatment. There are minimum standards for protection: material conditions, such as housing, food, etc.; access to the labour market, which would be granted after 12 months in the territory; and assistance for vulnerable applicants, such as unaccompanied minors, pregnant women, and victims of torture and violence and so on.

After a maximum of six months after they have applied for asylum, they should have their "first instance" procedure.

You may know that in the European Union we have free movement of persons. But also within the 23 member states we have the Schengen, in which there has been an abolition of border controls. You can drive from one member country to the other inside the Schengen area without even slowing down. It's like going from Ontario to Quebec. There are no border controls at all. That means completely free movement, which also applies, of course, to asylum seekers. That has resulted in a problem we call "asylum shopping". People apply for asylum in one member country, and when they're refused there, they go to another one and reapply there.

To resolve that problem, there is the Dublin II Regulation, which serves to determine which member state is responsible for dealing with an asylum claimant. It's based on certain criteria, such as country of first entry and so on.

Also, fingerprinting of asylum seekers has been introduced. These fingerprints are stored in a database called Eurodac. When an asylum claimant presents himself or herself, fingerprints can be checked to see if an application has been made and treated somewhere else in the European Union. If that's the case, the asylum claim is not admissible.

I should make clear that this only applies to third-country nationals—people who have come from outside the European Union who are asking for asylum inside the European Union. Between member states, we don't accept asylum seekers from one member state who is going to another member state. The treaty itself says that because we have democracies based on the rule law, and we have oversight of this rule of law and the principles of asylum and so on by the European Commission and the European Court of Justice and so on, an asylum seeker from a member state is inadmissible in another member state he or she goes to.

Finally, I have a comment on numbers. We have, on average, around 250,000 asylum seekers in the European Union. The number increased last year with the Arab Spring, as you know.

There are big variations from country to country. Some of the southern member states, which get boatloads of people coming over the Mediterranean Sea, have had a maximum influx. But to give you an idea—

The Chair: You have less than one minute, Your Excellency.

Mr. Bernhard Brinkmann: Okay. I won't go further with the numbers.

Finally, I will just say that at the European level, we try to help those member countries that receive the most asylum seekers through several funds. The European Refugee Fund is €630 million over five years. Related funds are the European Integration Fund, at €825 million, the European Return Fund, at €676 million, and the External Borders Fund, at €820 million.

I will stop here, and I will be happy to answer questions.

● (1110)

The Chair: Thank you, Ambassador. I appreciate your coming and bringing your assistants with you to brief us on what's happening in the European Union.

I will say, wearing another hat, that I'm the president of the Canada-Europe Parliamentary Association, so I bump into Ambassador Brinkmann regularly. He keeps me well informed as to what's going on in Europe. It's a pleasure to see you.

We now have, from the Federal Government of Germany, Ms. Klabundt.

Are you going to address the committee?

Ms. Anja Klabundt (Counsellor, European Harmonization Unit, Ministry of the Interior, Federal Government of Germany): No. I'm going to turn it over to Mr. Brumberg, who is doing the introduction.

The Chair: Mr. Brumberg, you may proceed, please. Thank you.

Mr. Roland Brumberg (Counsellor, Immigration Law Unit, Federal Government of Germany): Hello, everybody.

By now we have already heard a lot of things about the European system of asylum and immigration, so I will make it very short.

The German legislation is influenced by the European legislation —it has to be influenced by it a lot—and therefore I don't want to mention all these subjects again that we have heard about.

I will just start with numbers. In 2011 Germany had 45,000 asylum seekers. This was an increase of 10% compared to the previous year.

As far as national legislation is concerned, I might give you a very rough idea about the structure of our legislation in order to help you shape questions regarding our legal structure.

We make a systematic distinction between regular, legal, and illegal immigration on the one hand and the regulations on asylum seekers on the other hand. That means that only in cases of asylum claims are there special rules that are different from those in the regular regime.

If a person claims asylum, the person falls under a special procedure for the examination of the claim. If there is an appeal regarding the administrative decision on the asylum claim, then there are special modified procedures. Appeals against decisions on asylum cases follow the regular rules of administrative courts in Germany.

In the case of a positive decision on an asylum claim, a person would fall back into the regular immigration regime and would be granted some advantages towards gaining a permanent residence permit, as long as the asylum status is not withdrawn.

In the case of a negative decision, the person falls back into the regular immigration regime as far as deportation is concerned, so there are no special rules as far as asylum seekers are concerned. The same regulations apply as they do to anyone else not staying in the country legally. A person who has applied for asylum might be barred from getting a residence permit in other circumstances, such as under family reunification or as a student in the country. These are negative effects of having claimed asylum unsuccessfully.

This gives you a very rough idea of the German system. We look forward to your detailed questions.

The Chair: Thank you very much, Mr. Brumberg. I know there will be questions.

We will start off with a representative from the Conservative Party, Ms. James.

● (1115)

Ms. Roxanne James: Thank you, Mr. Chair.

I'd like to extend a special welcome to all of our guests today. There are certainly a large number here, and I'm very delighted to see you all here.

Much of Bill C-31, which we're debating here, has to do with designating certain countries as safe countries. I know that many democratic European countries designate certain countries as safe and actually accelerate asylum procedures for claims from those countries. There's a long list of these countries: United Kingdom, France, Germany, Switzerland, Norway, Finland, Ireland, Netherlands, and so on. This is not something new on the world stage. Canada is actually behind a lot of the other countries we're most commonly compared against.

I just have a question specifically regarding the United Kingdom, the U.K. The process for claimants in some streams takes as little as 10 to 14 days—that's what I've been told. Is this a correct statement?

I'm not sure who I should direct this to. Perhaps our guests—

The Chair: It should probably go to somebody in Brussels.

Ms. Roxanne James: Did you hear the question?

Ms. Ioana Patrascu (Legal Officer, Directorate General, Home Affairs, Asylum Unit, European Commission): We heard the question.

Ms. Roxanne James: My question was whether it is correct that in the U.K. the processes for certain streams take as little as 10 to 14 days.

Ms. Ioana Patrascu: I'm not in a position to comment on specific practices of member states without first checking, but these can vary. Based on our information, this could be the case.

Ms. Roxanne James: We've actually done some research, and it is 10 to 14 days, which is actually a much shorter timeline than what we're proposing in Canada under Bill C-31.

We keep hearing that we might be in violation of the UN convention on refugees. In your opinion—and this is to any of the guests who can answer this question—is the United Kingdom in contravention of the UN convention on refugees?

Ms. Ioana Patrascu: If you strictly refer to the duration, then the answer is no. However, this needs to be assessed in conjunction with other elements, so it's the way it's applied.

Ms. Roxanne James: Is it also true that included on the U.K.'s list of safe countries are countries such as Gambia, Ghana, Kenya, Liberia, Malawi, Nigeria, and Sierra Leone? Are those also designated as safe countries in the U.K.?

Ms. Ioana Patrascu: Again, I am sorry, but I cannot comment on behalf of specific member states.

As you are aware, these are national lists of countries, not European ones, so I'm not in a position to reply on this. I don't have the information.

Ms. Roxanne James: Are there any of our guests here today who could confirm that statement?

The Chair: These people are here representing the European Commission, not individual states.

Ms. Roxanne James: Okay. Let me reword that question a bit.

With regard to not representing an individual state or country, do you believe any of these countries that are currently in the process of designating safe countries, with a very short timeline for review and processing, are in violation or contravention of the UN convention on refugees? If you do, then that long list of countries I just named would be a serious problem right now.

Do you believe that any of those countries right now are in contravention of the UN convention on refugees?

The Chair: I think they've already answered that they don't know. They don't know individual states.

Ms. Ioana Patrascu: The commission is monitoring the situation. However, we cannot pronounce ourselves today on the fact of knowing whether a member state is in violation of the *acquis* or not. When we consider that this is the case, we launch legal proceedings to the European Court of Justice.

Ms. Roxanne James: Thank you.

Ms. Ioana Patrascu: This is the only thing I can say.

● (1120)

Ms. Roxanne James: Thank you.

Perhaps I'll direct a couple more questions toward the Federal Government of Germany.

Germany has a policy by which all EU claimants and designated safe countries include Ghana and Senegal, and are presumed manifestly unfounded unless proven otherwise and are processed on a fast track.

Do you believe that your policies in Germany contravene the UN convention on refugees, if this is the current process you are using today?

Ms. Anja Klabundt: We think the countries you named, Senegal and Ghana, are safe countries of origin, and we don't think the procedure opposes the UN convention.

Ms. Roxanne James: Thank you very much.

My last question is directed to Germany. Compared to many other EU countries with the designated country of origin policy and process, under Canada's bill, which we're proposing, Bill C-31, Canada would have longer timelines for DCO countries than many other European countries do today.

Do you agree with that, based on information that you can provide?

Ms. Anja Klabundt: We have no accelerated procedures, except the so-called airport procedure.

To be honest, I don't know the timelines foreseen in the new Canadian asylum system.

Ms. Roxanne James: It's actually 45 days for processing for the safe countries that we want to designate. It's a lot longer than many other countries currently have, countries that we're compared against in the long list I provided.

The Chair: We're out of time.

Ms. Anja Klabundt: I can just say that we normally have no deadlines; we just have a normal asylum procedure, except for the so-called airport procedure, and there we have shorter deadlines.

Ms. Roxanne James: Thank you very much.

The Chair: Thank you.

Mr. Davies, it's a pleasure to see you back.

Mr. Don Davies (Vancouver Kingsway, NDP): Thank you, Mr. Chairman. It's a pleasure to be back.

Your Excellency and witnesses, thank you for being with us today.

I'm going to pick up on what Ms. James said, because I'm not completely sure that a complete picture was given to you.

The legislation currently before Parliament would allow the Minister of Immigration himself to designate certain countries as safe. Also, it allows the Minister of Immigration himself, or herself, as the case may be, to designate as irregular arrivals people who arrive in Canada other than by being settled through the UNHCR process. This would apply to groups of two or more, although that is undefined in the bill. If the minister designates people as irregular arrivals, then they would be prohibited by this legislation from making permanent resident applications in Canada for five years, and it would also ban them from sponsoring family members for a period of five years. If they come from a so-called safe country, unlike other refugee claimants they would have no access to the Refugee Appeal Division, which is an appeal division set up under this legislation, and they're subject to be mandatorily detained for up to one year without review.

The reason I'm telling you all those things is it's in those factors that many people have asserted that this legislation would violate the UN convention on refugees and the UN Convention on the Rights of the Child, because what it does is it imposes penalties on refugees who arrive on Canada's shores by irregular means, contrary to article 31 of the UN convention on refugees, which says that no signatory state may impose a penalty on a refugee claimant because of their mode of arrival.

Now, with that context, I want to ask any of you if you know if any European states have special prohibitions on refugees that give them fewer rights than other refugees because of their mode of arrival into your country.

● (1125)

The Chair: Someone at the European Commission perhaps, or Germany?

Ms. Ioana Patrascu: I can reply concerning the legal framework in the European Union.

No, refugees are not to be penalized due to the way they arrive. So if they are regular migrants who arrive irregularly, they should not be penalized. There are also specific provisions saying that an asylum seeker should not be detained only because he or she arrived irregularly and applied for asylum.

No, we don't have these kinds of differentiations based on regular entry or irregular entry in terms of rights for asylum seekers and refugees.

Mr. Don Davies: Thank you.

I'm sorry, did someone else want to answer?

The Chair: Could you identify yourself please?

Ms. Angela Martini (Policy Officer, Directorate General, Home Affairs, Border Management and Return Policy Unit, European Commission): My name is Angela Martini. I work on borders, but I worked for many years on asylum.

I would also like to underline one fact that you are aware of, Mr. Davies. Contrary to Canada, in Europe the vast majority of asylum seekers arrive by irregular means. The vast majority of asylum seekers who arrive here don't have travel documents or visas. Very few arrive by regular means. You are aware that resettlement in the European Union is not very developed. For us, of the 250,000 who arrived last year, a big chunk arrived irregularly.

As Ioana said, they're not penalized. When they arrive from a country that has been designated at the national level as a safe country of origin, they go through a quicker procedure. They're not penalized. There is a presumption that their claim is unfounded. They still have access to remedies.

If I may add, regarding the first question about the duration of a procedure, there is no such thing as the ideal duration, whether it's too short or too long. Too long we could say is if someone is stuck for a year waiting for a decision. The most important thing is that the guarantees of the asylum seeker are respected so that he or she has access, for instance, to a lawyer and to an interpreter, that the interview takes place allowing enough time for the applicant to put forward the elements of his or her application, and that there has been access to a judicial review. The assessment is to be done more on the merits of the individual examination rather than to say that 14 days is too short a time, or not. It might be a perfectly adequate period of time if the procedural steps are being respected.

Mr. Don Davies: Thank you, Ms. Martini. I appreciate that clarification.

Everybody is agreed that, in and of itself, there's nothing wrong with having a streamlined or quicker procedure for claimants from safe countries or even having a safe country list. We're talking about whether or not we make sure we still have procedural and substantive protections and equality.

I want to move on to the safe country list. It's the position of the opposition that any country on earth is capable of producing a refugee. That's our position. What we're concerned about is making sure that even those who come from so-called safe countries have their rights respected.

I want to focus on the Roma.

The Chair: You're really out of time, but be very quick, please.

Mr. Don Davies: Thank you.

We know there's a rise of right-wing extremist activity, and some of it is violent. We know that in May 2011, the UN Special Rapporteur found that violent crimes are increasing in Hungary. Other governments are not really able to protect the Roma. There have been any number of human rights complaints against Hungary in particular and about its descent into authoritarianism.

Could you comment on whether you feel that Hungary as an EU member is a safe country for the Roma, and whether you think the Roma are adequately protected there?

● (1130)

The Chair: I'm only giving you extra time because I like you.

Is anyone there?

Ms. Angela Martini: It's a very difficult question that you asked. I don't think we are here to comment on that.

As you know, in the treaty of the European Union there are articles that allow action to be taken against a member state that is considered to be violating human rights in a constant, repetitive manner. We are not in a position to pronounce on the policies of Hungary.

However, on the first part of your question regarding whether any country, even Canada, could be producing refugees who are persecuted, in a way, yes, I could agree. At the same time, in the European Union we have the presumption that each country is a safe country of origin. It doesn't prevent—

The Chair: We have to move on.

Ms. Angela Martini: —a member state from examining a claim. It's not obliged to refuse it.

The Chair: Angela, thank you.

Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you to all the presenters.

Your Excellency, it's great to see you here this morning.

If you're a family of four, a husband, a wife, and two young children, let's say, under the age of 15, in my understanding there is the potential of being put into some sort of detention if you don't have proper ID. Do you break up the family? Is each individual state responsible for making that determination, or does the European Union as a whole decide? Here is a refugee family of four. Because we don't know who they are, we're going to put the kids in a foster care facility and we're going to hold the parents in detention. How does that work?

The question is for the European Commission first.

The Chair: Go for it, Angela.

Ms. Angela Martini: In the European Union, examination of asylum applications is dealt with by member states' administration. We don't examine any applications; however, there are rules at the EU level, and for the moment there are also minimum standards on how you examine the application and on, let's say, the reception of asylum seekers.

As Ioana said before, in a way, detention should be a measure of last resort, so it might be possible—

Mr. Kevin Lamoureux: I'm going to interrupt, because I only have five minutes. I'm going to ask that the answers be quite short.

Ms. Angela Martini: Families should be kept together.

Mr. Kevin Lamoureux: Are there situations—I'm going to go to the family of four. Do you put young people in detention? If the answer is yes to that, okay, if the answer is no, do you keep the family unit together?

Could you provide a very brief answer? You have less than a minute to comment, and then if I could get the Government of Germany to provide comment on that issue too, that would be nice.

Thank you.

Ms. Angela Martini: The family should be kept together, whether they are just in reception or in detention. In general, families should not be put in detention.

Mr. Kevin Lamoureux: I agree.

The Chair: Mr. Brumberg.

Mr. Roland Brumberg: From a German point of view, it's not excluded to put families in detention, but as our colleague from the commission said, as far as the EU return directive—which is important in this situation—is concerned, there has to be very strong scrutiny of the principle of proportionality, so you would put a family in detention in a very special case.

● (1135)

Mr. Kevin Lamoureux: Does Germany determine which country is deemed to be a safe country?

Mr. Roland Brumberg: Germany determines it, and it's a decision of Parliament.

Mr. Kevin Lamoureux: Does Germany have mandatory detention for irregular arrivals?

Mr. Roland Brumberg: No, detention in Germany is only a means to allow for deportation, and every case has to be assessed on whether there is justification for detention.

Mr. Kevin Lamoureux: In Germany, you keep families together as much as possible, right?

Mr. Roland Brumberg: Yes. This is one consequence of the EU return directive.

Mr. Kevin Lamoureux: Do all refugees in Germany have some sort of appeal mechanism?

Mr. Roland Brumberg: Yes, we have a general system of administrative courts, and every decision can be appealed to the Federal Administrative Court.

Mr. Kevin Lamoureux: Finally, in Germany, are both irregular and regular refugees treated equally in terms of appeal?

Mr. Roland Brumberg: We don't have a distinction between irregular and regular refugees.

The Chair: Thank you, Mr. Lamoureux.

Mr. Menegakis.

Mr. Costas Menegakis: Thank you, Mr. Chair.

Ambassador, thank you so much for joining us today.

I want to thank the officials from the European Commission and from the Federal Government of Germany for joining us today.

We're in the midst of evaluating this new legislation, as you may very well know, which we believe is going to speed up our system. One of the things that is clogging our system, one of the elements, is that we are getting a large percentage of claimants—particularly from the European Union, I might add—who end up clogging the system. At some point throughout the processing of their claim, they end up abandoning their claim and returning to their home country.

I was wondering if I could get your opinion on that. First of all, are you seeing that same phenomenon in the EU? Second, in your opinion, would someone who is genuinely fleeing from persecution of some nature abandon a claim in a free and democratic country like Canada and return to the place where they're potentially in danger?

Perhaps we can start with our German officials and then go to the European Commission.

Mr. Brumberg?

Mr. Christoph Ehrentraut: I am also dealing with European asylum issues in Berlin.

It might happen, but we don't have any statistics. According to my experience, we don't have many cases where people just give up their application and return to their country of origin. It might happen, but I don't have any statistics about that.

Mr. Costas Menegakis: Would somebody from the European Commission care to comment on that?

Ms. Ioana Patrascu: Again, we don't have statistics because member states do not have these statistics, so they don't communicate them to us—sorry.

Mr. Costas Menegakis: Okay.

We've heard about populations in several countries that face discrimination. Is discrimination the same as persecution, in your opinion? Can you explain the difference?

The Chair: Who are you addressing that to?

Mr. Costas Menegakis: I'm addressing it to both groups here with us today, so whoever would care to go first....

Perhaps we can start with you again, Mr. Brumberg, on the difference between discrimination and persecution.

Mr. Roland Brumberg: I'm sorry. I have to say that we are not in a position here to comment on that, as the other people who are at the table are....

Mr. Costas Menegakis: Okay. How about the European Commission? Would somebody care to weigh in on that?

Ms. Ioana Patrascu: This is a question that can only be answered at length, but I will try to be very short.

Discrimination does not always equal persecution; however, it can. Persecution must reach a certain degree of severity, so if it is not severe enough, we define it as a severe violation of basic human rights. I think it's the same in the UNHCR guidelines. We have the same approach as the UNHCR on the issue of discrimination as persecution or not.

I hope this replies to your question.

● (1140)

Mr. Costas Menegakis: Thank you. In part, it does.

We've heard from witnesses who are of the opinion that there is systematic persecution of the Roma in EU countries. Now, I can appreciate that this is a difficult question, but I'd like to hear your opinion on whether you feel there is systematic persecution of the Roma, not only in Hungary but in European countries.

Does somebody want to touch that issue?

Mr. Roland Brumberg: I'm sorry. Again, I have to say that we are not in a position to comment on that. We are prepared to answer questions on the legal systematics and not on the material application of law.

Mr. Costas Menegakis: How about the European Commission?

The Chair: I think this was asked before, Mr. Menegakis.

Ms. Angela Martini: I think I've already tried to reply. It is not only a question of it being difficult, but also, as Ioana was saying, discrimination is a bit different from persecution. As a matter of fact, the Roma issue in Hungary is followed by other colleagues of ours. We cannot really pronounce on it ourselves on their behalf. It's a very distinct issue. For you, it might be related, but for us it's not so related.

Mr. Costas Menegakis: Okay. Let me go on a little further, then.

I was really struck by the high percentage of refugees who come to the European Union by irregular means. Could you elaborate a little on the identification process you use to identify the refugees before you allow them into the EU and allow them around your families, communities, and cities? What identification processes do you use to identify those refugees prior to making a decision?

Ms. Angela Martini: Before taking a decision...these are asylum seekers and not recognized refugees.

Mr. Costas Menegakis: I'm sorry. Could you repeat that?

Ms. Angela Martini: I think there is a bit of mixing up of different categories of people. You have to imagine that the majority of people in Europe arrive by boat or at the border to claim asylum. The moment they even say the word "fear", "persecution", or "asylum", they have to be allowed into a procedure to have their claim examined. Most people do not have documents with them, so member states in general have specialized, trained officials who determine the origin of the person, their language, and so on.

It is for the member state to decide whether they are satisfied or not that the person is a genuine refugee. Then they grant a permit to stay, or they return the person, if possible.

The Chair: Your time is up. I like you a lot, but not as much as Mr. Davies.

Ms. Sims.

Ms. Jinny Jogindera Sims: Thank you very much.

I want to thank His Excellency and every other presenter who is here. I think it's very courageous of all of you to give up this much time to face a committee across the great waters.

Just for the record, Canada does recognize members of the Roma community as convention refugees. In the 2011 country report we received the other day, 165 applicants from Hungary were accepted by the IRB, compared to 117 from North Korea. The numbers being withdrawn or abandoned in 2011 actually went from 95% previously right down to 55%. I just want to put that out there, because as Canadians we have recognized that they are refugees who are deserving of that designation.

We've also heard information regarding Roma and EU countries. His Excellency made it very clear that there are no asylum seekers from member states within the European Union.

We have also heard a lot about this free movement of people within the EU. Why do they have to travel on dangerous boats or by plane to come to Canada? Why can't they just go to a nearby country? The right of location within the EU is really limited. For example, you can move somewhere, but after three months you have to have a job. You stipulated that.

We also know and have heard reports that there's a high level of prejudice against Roma in EU countries, and they're finding it hard to find jobs. Plus the economy doesn't help. Mass deportation of Roma from France in 2010 was also another indication of the kind of persecution they face.

Why do EU countries refuse to accept that some Roma fleeing Hungary, the Czech Republic, and Slovakia could be refugees, when other countries such as Canada have officially ruled that numerous Roma are indeed convention refugees?

● (1145)

Ms. Ioana Patrascu: We cannot comment without knowing the particulars of cases. The decision to recognize refugee status or not depends on the personal circumstances of a person. Therefore, just based on general statements, we cannot know.

Furthermore, there are legal provisions concerning Roma who are EU citizens. They are EU citizens; therefore, they benefit from the regime of freedom of movement, and they are outside the scope of the EU asylum instruments. Therefore, we cannot pronounce ourselves further on this issue, in addition to what we have already said.

Thank you.

Ms. Jinny Jogindera Sims: Thank you very much.

To add further to the comments His Excellency made, you've made it very clear that within the EU, Roma cannot seek asylum because they come from member states that are part of the EU.

We often hear different arguments, but if Canada were to continue to accept Roma refugees, would that jeopardize the current Canada-EU trade agreement negotiations? What has the EU communicated to the Canadian government on this issue?

This question is to the European Commission or His Excellency.

The Chair: I don't know whether these people know anything about trade.

Ms. Jinny Jogindera Sims: I think His Excellency was getting ready to answer.

The Chair: I think he probably doesn't want to talk about it.

Ms. Jinny Jogindera Sims: Then he will tell me.

The Chair: Ask former President Sarkozy.

Go ahead, Mr. Brinkmann.

Mr. Bernhard Brinkmann: Thank you.

We are well aware of the fact that there are many Roma who come here to Canada to apply for asylum here. We are also aware of the fact that the majority abandon their request once it comes to appear before a committee and so on. The reasons for that are also well known. The Roma have a traditional nomadic lifestyle. Many of them have no permanent employment or revenues.

On the other hand, we have discussed this with representatives of the government here. When they come to Canada, they are accepted as asylum seekers and receive a cash payment from the day they are accepted as asylum seekers until their hearing or until the procedures come to an end, which can take several years.

In our view, there is a pull factor here, because, as you are aware, they come from their country of origin, but they can move freely in Europe. They can live and work in other countries. They can be there as long as they don't become a burden to the social system of one country for more than three months, where they can look for employment.

The Chair: Thank you.

Mr. Bernhard Brinkmann: The question was about—

Ms. Jinny Jogindera Sims: Thank you very much.

Do I have time?

The Chair: No, you are through.

Mr. Weston.

● (1150)

Mr. John Weston: Thanks, Chair.

Thank you to all of you gathered here today. There's a history of friendship between our nations, which is I think epitomized by the gesture of Anja and Roland to have our two flags sitting in front of you, so *danke schön* for that.

My colleague, Ms. Sims, has referred to the ongoing trade negotiations. Of course, we would love to broaden the already strong ties between our two countries.

Your Excellency, you referred to the visa issue in the Czech Republic. One reason we are here today, of course, is because of the influx of unsubstantiated refugee claims from the Czech Republic, which led in July 2009 to that visa requirement. Of course, we are trying to deal with that refugee issue as we speak today.

My first question is directed to you, Anja, and perhaps to you, Your Excellency. Do I understand that the Roma are not completely barred from claiming asylum in a neighbouring European country and it's just that the restrictions or the rules are different if you come from a neighbouring European Union country?

Ms. Anja Klabundt: Yes, that's correct. You can't say that applicants who are Roma are generally not admitted as asylum seekers, so you have to check each case. If you check the circumstances of each case, it might be that even a Roma coming from another European country may be accepted as an asylum seeker.

Mr. John Weston: Your Excellency, since you sit here in Ottawa with us, maybe I can direct this to you. Why do you think people would travel from Europe at so much greater cost and greater difficulty than going next door to a fellow European Union country?

Mr. Bernhard Brinkmann: Beats me. I can only guess.

Mr. John Weston: Would you suggest perhaps that the social and health benefits provided to refugee claimants in Canada might be more generous than what they might experience in a neighbouring country in Europe?

Mr. Bernhard Brinkmann: I would think so. I would think there's an incentive to come here because of the cash payments they receive here, which can last for several years.

I could also say I was involved in asylum dealings in a former life as a judge at the Administrative Court of Hamburg. There we were confronted with similar problems from other countries with refugee claims that were unfounded. We solved this problem in part by substituting the payments in cash with providing assistance in kind, like housing or clothing or food stamps and things like that.

Mr. John Weston: In fact we heard from the representative of Hungary. He said quite clearly that the social and welfare benefits were a major draw for people who could have otherwise chosen a neighbouring European country.

Let me just quote from the UNHCR, which has recognized the validity of providing faster processing for refugee claimants from designated countries of origin. The former UN High Commissioner for Refugees, António Guterres, has said:

> ...there are indeed safe countries of origin. There are indeed countries in which there is a presumption that refugee claims will probably be not as strong as in other countries.

So from the UNHCR perspective, it seems legitimate to accelerate these claims.

First, Your Excellency, could you comment on that?

Then, Anja, I'll come back to you for a comment.

Mr. Bernhard Brinkmann: Yes, I think a fair process but a quick one is a good solution. I think that's what we have done in the European Union and what we strive to do by providing more manpower to deal with these asylum seekers and so on.

If the process is up to standard, according to the Geneva Convention and according to our laws, then it being done in a shorter period of time could very much help in reducing those factors.

Mr. John Weston: Thank you.

Anja, would you care to comment on that question?

● (1155)

The Chair: Unless Mr. Opitz yields his time....

Mr. Christoph Ehrentraut: I'll take this question.

Mr. Ted Opitz: Mr. Chair, I'll let him finish his question.

Mr. Christoph Ehrentraut: As has been said before, we don't have accelerated administrative procedures provided for by the legislation, except for airport procedures, but in the implementation of our legislation, it might well be that certain cases are processed faster than others, especially cases that don't show enough substance to the claim.

So it depends on the individual circumstances of the case. As I said before, there is no legal provision that obliges or enables us to have accelerated procedures.

Mr. John Weston: Sir, my colleague has stated that according to her research, countries like Ghana and Sierra Leone, I think she mentioned, were considered safe countries of origin, at least vis-à-vis some European countries.

So there seems to be a gap between that statement and yours.

Mr. Christoph Ehrentraut: No, I'm not aware of a gap. There are safe countries of origin, this is true, but except for the airport procedures, we are not obliged to treat these applications in accelerated procedures. We can do it in an individual case, but there is no legislation that obliges us to do it, except for the airport procedures.

Mr. John Weston: Thank you.

The Chair: Go ahead.

Mr. Ted Opitz: *Dzien dobry, pan Busiakiewicz*. I just wanted to say that.

My friend John Weston here, who was just questioning, was also a graduate of Krakow University.

Ioana, it was you, I think, when we were talking about discrimination a little while ago, who made a distinction about "severe". I would like to know, what is the scale you use to measure discrimination or persecution? Do you have a scale? Do you have a sense of measure on how you do this within member states?

Over to you, Madam.

Ms. Ioana Patrascu: Again, I'm sorry, but unfortunately we do not have information on how member states in general implement these provisions. We are not decision-makers, so we do not deal with individual cases.

These scales will need to be applied in each and every case based on the circumstances of that case. The severity will depend also on the personal circumstances of each applicant. They cannot be assessed in general terms.

At the level of the European Union, we deal with the general legislation, not with its implementation in individual cases. Therefore, I cannot tell you more than what I have already said. I'm sorry.

Mr. Ted Opitz: Okay. I would have thought there would have been a standard.

Now, in terms of a refugee claimant in any member state, if they arrive and do not provide their identity or you cannot confirm their identity, what do you do with that individual? Do you release them?

Can anybody answer that?

Mr. Roland Brumberg: My answer to that is it's not possible to keep somebody in detention for deportation.

Mr. Ted Opitz: I'm sorry, say that again, sir.

Mr. Roland Brumberg: It's not possible to keep somebody in detention for deportation if there is not a clear perspective of when the person can be deported from the country. If there is no idea about the nationality of the person, there might be difficulties in putting him in detention.

What you can do in order to check the nationality is try to analyze the spoken language. You can try to check documents that he has with him. You can try to present him to embassies of other states that you think could be the person's state of origin, and you have to go to...[*Technical difficulty—Editor*]

Mr. Ted Opitz: I lost the end of that. I hope you can hear me now.

You're telling me if you can't identify the person, then you release him. You immediately deport the person. If you're deporting the person, how long do you take to do that? Is it a month, two months, six months?

● (1200)

Mr. Roland Brumberg: The deportation is only possible if you have the country of origin that is willing to receive the person. If you can't determine his nationality, you're not able to deport him.

In German law, which I think is the same according to the return directive, detention for deportation is not allowed just to bring pressure on people to tell us who they are or where they came from. Detention is only allowed to facilitate the deportation procedure, in order to prevent that person from—

Mr. Ted Opitz: That is understood, but then what do you do with that person?

Mr. Roland Brumberg: We try to check, and the administration tries to find out who he is.

Mr. Ted Opitz: If you can't determine that, where does the person go? If you're not holding him, what do you allow that unidentified individual to do?

Mr. Roland Brumberg: The individual in Germany would get something that's called a *duldung*. It is a piece of paper that says the person can't be deported at the moment. It has to go to the foreigners administration in order to prolong the duration of the paper. This is necessary in order to get any social benefits. If the person doesn't help the administration in clearing his identity, there are some restrictions, as far as the amount of social benefits is concerned and as far as the possibility to work is concerned.

Mr. Ted Opitz: Do you give an unidentified person benefits? You don't know who this unidentified individual is, yet he is collecting benefits.

Mr. Roland Brumberg: Yes, we do that.

The Chair: That's it. I'm sorry, we're over time.

Mr. Brumberg, Ms. Klabundt from Germany, and I can't recall the third person, thank you for your presentations.

Your Excellency, as usual, you've given us great comments. And particularly to Angela Martini, I'll never forget that name—it's a great name. I want to thank all of you from the European Commission for coming today and making your presentations to us.

We will reconvene at 3:30 this afternoon.

This meeting is now adjourned.

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