REFUGEE UPDATE

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INSIDE:

EDITORIAL

BILL C-11 AND THIS ISSUE'S ARTICLES ON PERSPECTIVES DURING THE PROCESS

Bill C-11 has significantly changed Canada's refugee determination procedures and the Bill C-11 process dominates this issue. However, we kept a place for the overseas scene and we routinely report current action calls from the Canadian Council for Refugees, CCR.

Bill C-11 was tabled March 30th, 2010. After a remarkable set of last minute compromises on key issues, it moved swiftly through the House of Commons and Senate in June to receive royal assent June 30th. During late April and May the CCR and its members produced articles in newspapers across the country and wrote to parliamentarians successfully communicating concerns about the bigger problems.

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This issue has collected articles which give various agency perspectives on the Bill at slightly different points on the way. For example, the Canadian Centre for the Victims of Torture submission, which also describes that agency and its work for readers, came fairly early in the process and reveals the CCVT's special insights. The Amnesty account comes from near the end and gives a good sense of the process and the changes which were made. The Barrister & Solicitor's account focuses on four issues and comes after the changes.

In a nutshell, the Bill now provides for special treatment for asylum seekers (refugee claimants) from designated Safe Countries of Origin. The original formulation was a special concern for Amnesty International and the UN High Commissioner for Refugees. Such provisions are potentially in conflict with the 1951 Refugee Convention and other treaty obligations on non discrimination. The appeal of refugee status has been improved marginally. The promise to implement this appeal after a delay has been repeated. There have been other procedural changes aimed to speed things up which likely limit fairness.

The key elements of Bill C-11 are:

1. Introduction of an interview at the IRB for claimants, at which time refugee hearing will be scheduled.
2. Civil servants replace the Cabinet appointees in IRB Refugee Protection Division (responsible for first-level refugee decision)
3. "Safe countries of origin" – nationals of these countries would face special procedures.
4. Refugee appeal, with possibility of introducing new evidence.
5. Limits on the Humanitarian & Compassionate Administrative Process which, inter allia, allows family and children's rights at issue in deportation to be raised. No factors relating to the refugee definition or protection from ill treatment can be raised.

As with earlier legislative changes, there are issues which the Courts, given time, may deal with. Unreasonable timelines are a case in point. However, the job of a State like Canada is to make sure refugees can claim and enjoy their status now. Sadly, the approach taken by the government will cause some to miss out on their status while the changes are made and the courts do any fixing.

BILL C-11

NASRIN TABIBZADEH

The proposed changes to the Refugee Claim system in Canada, set out in Bill C-11, have passed the Committee Stage on June 10, 2010 with several amendments.

The Canadian Bar Association (CBA), the Canadian Council for Refugees (CCR), and other stakeholders, had raised many key concerns with the legislation as it had been drafted at introduction. The CBA submission of May 2010 listed concerns that included adequacy of procedural time frames, claimant access to counsel, claimant access to Humanitarian and Compassionate grounds jurisdiction, the designation of "Safe Countries of Origin" and consequent denial of access to Refugee Appeal Division (RAD) review, restrictions on evidence before the RAD, staged implementation and other issues. The CBA said these were significant flaws that rendered the proposed scheme fundamentally unfair and unsupportable.

Therefore, on June 10, 2010, the Government and Opposition Parties responded by agreeing to amendments that address several key concerns.

New Bill C-11 Amendments

The amendments to Bill C-11, established on June 10, led to the following major changes:

* Triage interview by IRB official with the refugee claimant within 15 days (instead of the timeframe of 8 days that was floated by Minister Kenney.

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* First level hearing within 90 days for **non-designated Safe Countries of Origin** (SCO) (former draft of C-11 was 60 days) and 60 days for **Designated Safe Countries of Origin (SCO)** to be set out in Regulations.

* There are now new provisions establishing criteria for the designation of "safe countries."

* There will be authority for the RPD (**Refugee Protection Division)** to state that a claim is a "manifestly unfounded claim" (MUC). It is not clear if the RPD will continue to be able to state whether a claim has "no credible basis". "Manifestly unfounded" will likely mean "clearly fraudulent".

* There will be authority for Regulations to state that MUCs and SCOs will not have a legislated stay of removal on application for Judicial Review (JR). However, they can still apply for a judicial stay of removal.

* Appeal to **Refugee Appeal Division** (RAD) for everyone. Previously, appeals were not available to claimants from SCOs at all. The Regulations will set out time limits to make the appeal and for the RAD to make a decision on the appeal. The time limit to make the appeal is expected to be 15 days for everyone. The time limit for RAD to render a decision is expected to be 30 days for SCOs and for **Manifestly Unfounded Claims** (MUCs) and possibly those found without credible basis. For all others, the target date for a RAD decision will be 120 days from appeal being made, but this will not be in Regulations.

* There will no longer be a one year bar on Humanitarian and Compassionate applications. However, one-year bar continues for PRRA applications.

* Most of the Pre-Removal Risk Assessment (PRRA) applications, except for serious criminals, etc will be transferred to Immigration and Refugee Board.

Transition

During the period of transition from the current Refugee system to the proposed new system, any cases at the Refugee Protection Division where substantive evidence has been heard continues under the old system with a GIC decision maker (Board member). All others will be heard by a Public Servant decision-maker in the new system set up by C-11.

Matters at the Refugee Appeal Division (RAD) and PRRA both have the possibility of an oral hearing, and will use the same criteria for the holding of a hearing. However, RAD is an Appeal and PRRA is a new application.

Impact of amendments

The CCR identified the following flaws in the previous draft of C-11, which the amendments seek to address:

1. Guaranteeing access to the appeal to all refused claimants.
2. Guaranteeing the right to counsel at the interview
3. Preserving full access for all, including refugee claimants, to a humanitarian and compassionate application, including a full examination of the hardship of removal from Canada as well as the best interests of any affected child.

Although the new amendments address the previous flaws, there are still grave concerns. The introduction of a list of "designated countries of origin" is wrong on principle: Refugee determination requires the assessment of an individual case, not judgments on countries. It is also a serious mistake to politicize the process by listing countries. The interview, which requires claimants to be prepared to immediately tell their story to an official, risks hurting the most vulnerable refugees, including women who have been sexually assaulted and persons persecuted on the basis of their sexual orientation.

The bill also fails to provide a mechanism to deal with changes of circumstances after a claimant has been refused, which may lead to refugees being sent back to face persecution.

Nasrin Tabibzadeh works at the Refugee Law Office, Toronto

TAKE ACTION! CCR CAMPAIGN UPDATES AND ACTIVITIES:

Join the Canadian Council for Refugees in raising public awareness of challenges to refugee rights and successful integration in Canada. Here are some areas where your actions can make a difference:

Reforming the Refugee Determination System – Bill C-11

At the end of March 2010, the Minister of Citizenship and Immigration presented a bill to reform Canada's refugee determination system to the House of Commons. In the weeks and months since then there has been a lot of debate, resulting in some changes to the bill. Significant amendments to Bill C-11 to better protect refugees include:

- Guaranteeing access to the appeal to all refused claimants.
- Guaranteeing the right to counsel at the interview.
- Preserving full access for all, including refugee claimants, to a humanitarian and compassionate application, including a full examination of the hardship of removal from Canada as well as the best interests of any affected child.

These important changes came about thanks to the commitment of Members of Parliament from all parties, and the impassioned advocacy of thousands of organizations and individuals across Canada.
However, there are still serious concerns with the bill.

The introduction of a list of "designated countries of origin" is wrong on principle: refugee determination requires the assessment of an individual case, not judgments on countries. It is also a serious mistake to politicize the process by listing countries. The interview, requiring claimants to be prepared to immediately tell their story to an official, risks hurting the most vulnerable refugees, including women who have been sexually assaulted and persons persecuted on the basis of their sexual orientation.
The bill also fails to provide a mechanism to deal with changes of circumstances after a claimant has been refused, which may lead to refugees being sent back to face persecution.

As *Refugee Update* goes to press, Bill C-11 in its amended form is being considered before the Senate. Government officials expect the amended bill to be passed before the parliamentary summer recess.
Our work will continue beyond the adoption of Bill C-11. It will be crucial that it be implemented with careful attention to ensuring the full protection of all refugees, in order to minimize the negative consequences of remaining weaknesses in the law. The CCR will encourage the government to consult fully on the rules and regulations, which will determine many of the details of the refugee system.

All of the submissions received by the House Standing Committee can be read at:
http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4564195&Language=E&Mode=1&Parl=40&Ses=3
The revised version of the bill following amendments can be found at:
http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4639515&Language=e&Mode=1
For media articles on the Minister's announcements and reforms to Canada's refugee determination system, see: http://ccrweb.ca/en/mediarefugeereform
For additional information from the Canadian Council for Refugees regarding Bill C-11, see: http://ccrweb.ca/en/refugee-reform

Take Action -

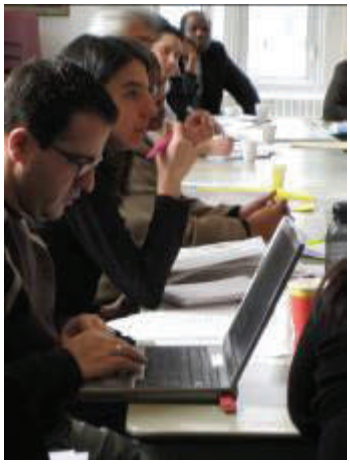
Absorbing the Cost of Transportation Loans for Refugees

Refugees resettled to Canada must pay for their medical exam and their travel to Canada. Since most refugees of course can't afford these expenses, Canada offers them a loan. As a result, refugee families start their

TAKE ACTION! CCR CAMPAIGN UPDATES AND ACTIVITIES (CONT'D):

new life in Canada with a debt of up to $10,000. They must repay this loan with interest.
The burden of transportation loans is having a painful impact on thousands of refugees and on Canadian society. It undermines refugees' ability to integrate and to contribute to their full potential in their new home. Refugee youth are forced work long hours while going to school, or even postpone further education, because of the need to repay the debt.
The cost to the federal government of absorbing the medical and transportation expenses would be insignificant in terms of the overall budget. It would also be a good investment as it would enable refugees to integrate much more quickly and contribute to the economy.
Ask that the government eliminate the burden on refugees of loans by absorbing the costs of transportation and overseas medical expenses for refugees.

Collect petition signatures and present them to your Member of Parliament
A new tool to add to your campaign efforts! Collect signatures from campaign supporters in your riding and present them to your local Member of Parliament. Ask him or her to present the collected signatures in the House of Commons in support of efforts to have the Canadian government absorb the cost of transportation loans for refugees.
Download a copy of the petition at: www.ccrweb.ca/en/petition-transportation-loans-refugees
For more information about the campaign on refugee transportation loans and additional campaign resources, see: www.ccrweb.ca/transportationloans.htm



Participants at a Working Group meeting in Toronto.

Save the dates!
CCR Summer Working Group meetings, 27-28 August 2010, Montreal

Do you want to be part of efforts to promote rights for refugees? Want to participate in in-depth discussions on pressing issues affecting refugees and immigrants in Canada? Looking to share information and strategies with others from across Canada? Come to the CCR Summer Working Group meetings in Montreal!

Moving forward on issues, Getting involved: The Working Group meetings are a chance to:
-advance many of the projects and positions adopted during CCR Consultations.
-look at issues in greater depth and plan local and national actions, all in a setting that encourages greater individual participation.
-become more involved in CCR activities at the national level, lending your experience and perspectives to the CCR's work.

Networking, Learning:
The Working Group meetings provide an excellent opportunity to:
-get to know others working on issues affecting refugees and immigrants.
-see links between many issues nationally and locally, and how they are relevant to our work with refugees and immigrants.

Details about the Summer Working Group meetings are available on the CCR website at: www.ccrweb.ca/meetings

Follow the CCR on Facebook, Twitter and YouTube
Stay informed about refugee and immigration issues in Canada and share ideas and actions with others online. If you already use these social networking applications, simply:

Become a fan of the CCR on Facebook and receive regular updates: www.facebook.com/ccrweb

Sign up to follow the CCR on Twitter at: www.twitter.com/ccrweb

Find videos on the CCR's YouTube channel: http://www.youtube.com/ccrwebvideos

TRACKING THE CHANGES TO BILL C-11

LINA ANANI

Following a lengthy period of negative rhetoric about "bogus" refugees and the imposition of visas on Mexico and the Czech Republic, the government introduced Bill C-11 in March 2010. The Bill contained sweeping reforms to the *Immigration and Refugee Protection Act.* While the Bill proposed many areas of reform, due to space limitations only the timelines, safe country list and humanitarian and compassionate (H&C) applications will be discussed.

The Bill introduced a new interview process for refugee claimants, which is to be conducted by the Immigration and Refugee Board (IRB). The Minister's statements indicated that the interview would take place 8 days after a claim is referred to the IRB and the refugee hearing would take place 60 days later.

These extremely tight deadlines raised serious concerns for vulnerable claimants, such as torture survivors, women fleeing gender persecution and claims based on sexual orientation. Vulnerable claimants need time to be able to fully disclose the reasons for flight. Additionally, the tight timelines raised serious questions regarding access to counsel. The Bill was revised and the interview will now take place at 15 days and the hearing at 90 days.

The Bill introduced the notion of a safe country list and restrictions for refugee claimants coming from those countries. The proposed amendments would allow the Minister to designate a country, a part of a country, or a class of nationals of a country if they meet certain criteria in the regulations (which have not yet been made public). Initially, claimants from these designated countries/groups could not appeal a negative refugee decision to the Refugee Appeals Division (RAD). They could only apply to the Federal Court for judicial review.

There was serious concern that the safe country list would politicize the process in terms of which countries would get on that list. Other concerns were that the denial of access to RAD would be a serious injustice, one that was based on discrimination due to nationality. However, the government revised the initial proposals and the revised Bill C-11 now allows claimants from the safe country list to appeal to the RAD. But claimants from the safe countries list will be fast tracked through the system.

The Bill also proposed amendments to humanitarian and compassionate (H&C) applications, including forbidding access to H&C for one year after a refugee claim has been denied, abandoned or withdrawn. This was intended to remove a way for failed claimants to remain in Canada. However, H&C applicants can be removed while awaiting an H&C decision. The attempt to deny access to the H&C would have been unjust and arbitrary because although some claimants may not meet the legal test of refugee, their experiences may meet the hardship test under an H&C.

Another disturbing amendment under Bill C-11 was the prohibition on considering an H&C applicant's risk of being persecuted, being subjected to cruel and unusual treatment or punishment, being tortured or killed. The lack of assessment on this basis would have had a very serious impact on applicants who may wish to raise a new risk that had not been considered in their refugee claim or in cases were country conditions had changed since the refugee claim.

However, the revised Bill will preserve access for all, including refugee claimants, to the H&C application. This includes a full examination of the hardship that removal from Canada would cause as well as the best interests of a child affected by the decision.

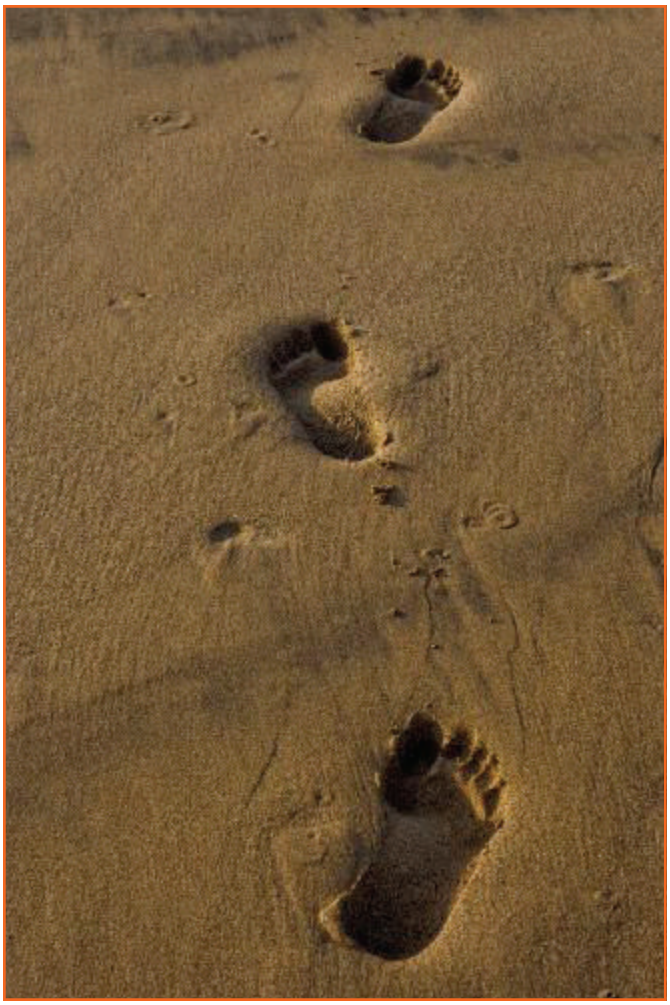
Lina Anani, a Barrister and Solicitor, practices law in Toronto.

Bill C-11 on refugee reform is now law. The changes to the asylum system will come into effect in the next 12 to 18 months. However, changes to the humanitarian and compassionate provisions came into effect immediately at Royal Assent.

THE IASFM 12TH CONFERENCE REPORT - EXCERPTS
FORCED MIGRATION STUDIES: 'WHO ARE WE AND WHERE ARE WE GOING?'

ALEXANDER BETTS, UK

The theme of the conference – boundaries – reflected the venue for the conference. The call for papers and many of the presentations reflected the overall theme exploring boundaries across three areas: policy, identity and community. In many ways, though, what emerged from the conference was a reflexive turn and an introspection about what Forced Migration Studies is: it generated an analytical reflection on the International Association for the Study of Forced Migration (**IASFM**)'s own identity, community and policies as the principal focal point for the meeting of academics, policy-makers and practitioners working on forced migration. Previous conferences had questioned and debated whether our field of study should be defined as Refugee Studies or Forced Migration Studies; at **IASFM12**, the consensus had generally emerged in favour of the latter but this left open the question of what the contours of Forced Migration Studies could and should be. At a time when the dynamics of forced migration and migration in general are in transition – with declining asylum space in the North, diminishing humanitarian space in the South, and with the emergence of new meta-challenges such as the global economic crisis, the implications of climate change, and the transition in power towards China and India – the opportunity to reflect on the scope, focus, and boundaries of our own work, as an association, was particularly welcome.



The conference theme was uniquely appropriate to the location of the event. By simply walking past the barbed wire fences of the border zone or crossing to the North in the old town, one was struck by the significance of boundaries in everyday life, and in defining identity, community, and policy. Indeed, while the location provided significant food for thought, many of the panels did too. Those panels with coherent, common themes stood out as offering particularly interesting insights.

The conference revealed that the boundaries of policy, identity, community are being challenged and reconstructed. Nick Van Hear highlighted in his opening address how forced migration is undergoing significant turbulence, transition and change, and these themes were constantly revisited in ways that highlighted new challenges and research agendas for forced migration studies. The very nature of forced migration is shifting, and the conference highlighted the need for research and policy responses to a range of groups often neglected in forced migration studies. Work on stateless people, urban refugees, survival migrants, and environmental displacement all highlighted groups and situations

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that fell outside the immediate purview of 'refugee studies' but are of increasing importance within forced migration, requiring the development of new research and innovative work by practitioners.

In his plenary address, Jeff Crisp reminded us that the changing context of forced migration – with the emergence of new drivers of forced migration and a new global political context for UNHCR's work - poses significant challenges to the global refugee regime. This theme was picked up in a number of panels with Charles Keely reflecting on the 'ruin' of the regime, others considering the role of the externalisation of asylum policy, and the growing trend in states 'bypassing without violating' the 1951 Convention. The Cypriot Minister of the Interior, Mr Sylikiotis aptly illustrated this point by highlighting how his government was exploring cooperation with Third Countries and "links with the countries of origin" through "bilateral agreements". Numerous participants raised the issue of the changing role of UNHCR in the context of inter-agency competition.

In the face of new problems and emerging policy responses, there is therefore a need for new understanding: for research within Forced Migration Studies to adapt. What could and should a Forced Migration Studies research agenda look like, and where should **IASFM** fit within this? **IASFM's** strength is in enhancing understanding through the interaction of academia, policy and practice based around rigorous academic work, in order to in turn inform policy and practice. It can and should be unashamedly academic in its attempts to develop rigorous and high quality research – but should draw upon the insights of practitioners as a crucial aspect of attempting to understand and explain forced migration, and engage policy-makers as an integral part of making the knowledge generated matter. In other words, **IASFM**'s primary goal should be to 'understand in order to inform'.

The conference also highlighted a range of important and emerging research questions that

may begin the shape the contours of the field in coming years, among those five topics stood out as having a major (and relatively new) impact on the conference: 1) Understanding movement and integrating the study of forced migration studies within migration theory in order to develop a more nuanced understanding of decision-making and choice; 2) Exploring the implications of the new drivers of forced migration – including environmental change, state fragility and livelihoods failure; 3) Developing the concept of humanitarian and protection space in the context of the evolving nature of conflict; 4) Taking account of the linkages between forced migration and conflict, post-conflict reconstruction, peace-building, and transitional justice; 5) Reassessing the global governance of forced migration.

The conference demonstrated that forced migration is in transition – at the level of policy, practice and academic research. Meta-level changes are creating new drivers of forced migration, while changes in global politics are changing international institutional responses to protection and displacement. These changes arguably make Forced Migration Studies more relevant than ever, and should create new impetus for academics, practitioners and policy-makers to come together in order to understand, explain and respond to these emerging challenges.

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1 The full report will appear in the *Journal of Refugee Studies* and will also be posted on the **IASFM** website at **www.iasfm.org**.

2 This conference report – despite its imperfections – is dedicated to John Nassari to say thank you for all of his tireless work as Chair of the Programme Committee for IASFM 12. Never has it been truer to say that something simply couldn't have happened without the role of a particular individual.

BILL C-11: REFORM OR REFORMATION?

(AS IT WAS PRESENTED ORIGINALLY ON MARCH 2010)

FRANCISCO RICO

Bill C-11 was tabled March 30th of this year and moved quickly through the House of Commons since the government aimed to have it pass the House before summer. Now in June, the Bill is stuck; it is not moving quickly any longer... the Minister is even considering withdrawing the Bill if he is not able to convince the opposition (the Liberals) to keep supporting the so-called refugee reforms.

The key elements of Bill C-11 are:

1. The Minister has tied increases in the number of refugees resettled from abroad to the passing of the inland refugee reform contained in the Bill.
2. Introduction of an interview at the IRB for claimants, at which time refugee hearing will be scheduled.
3. Civil servants replace the Cabinet appointees in the IRB Refugee Protection Division (responsible for first-level refugee decision)
4. "Safe countries of origin" – nationals of these countries would not have access to the refugee appeal.
5. Refugee appeal, with possibility of introducing new evidence.
6. No Humanitarian & Compassionate while refugee claim is in process or for 12 months afterwards. No one can raise in an H&C application factors relating to the refugee definition or other grounds for refugee protection (s. 96 and s. 97).
7. No PRRA for 12 months after refusal at refugee appeal.

Interestingly enough, in principal, there is a consensus in terms of the good and bad things that this Bill is introducing. In terms of the good things, there are three ideas that capture the imagination: First, the introduction of a Refugee Appeal Division is excellent; it is better than the one outlined in the 2002 Immigration and Refugee Protection Act (IRPA), but which was never implemented. Secondly, the commitment to higher levels of government-sponsored refugees is admirable and about time but, this increase was done without any consultation with groups and organizations that do private sponsorship despite a 50% proposed increase in this category. Thirdly, a commitment to make decisions in a timely fashion is also welcome, but it cannot come at the expense of fairness. The proposed timing is unrealistic.

Regarding the bad things in the Bill, there are four proposals that do not let us sleep:

The first proposal is the creation of two tracks of refugee adjudication which will depend on one's country of origin. This concept will never fly as a fair approach with refugee advocates. The first track is for those refugee claimants from "unsafe" countries who have would access to a refugee hearing and in case of a negative decision have access to the Refugee Appeals Division where their cases would be heard by an IRB member. The second track is for those originally from "safe countries" who would get only access to a one-time refugee hearing with no access to the Refugee Appeal Division at all. The above discrimination on basis of country of origin contradicts the 1951 Refugee Convention as well as our own Charter of Rights. Very conveniently, all the criteria and the regulations have not been outlined on how this system of designating countries as safe would work. To consider a country as safe is so political an act that for certain it is going to distort the relations between Canada and any country listed as "unsafe". What these unsafe countries need to do to be considered safe is anybody's guess.

The second proposal is the interview at the IRB for refugee claimants, which will replace the current Personal Information Form. This interview will be conducted just a few days after arrival in Canada and at which time the refugee hearing will be scheduled to take place in a couple of months later. These two timelines are not even part of the Bill and are clearly a direct interference by the Minister in the IRB jurisdiction, which defines these types of times under its rules. To hold a 'refugee claimant' interview by a public servant within days of arrival totally ignores the realities of survival of those who have been tortured, issues of sexual orientation, sexual violence or the complexity of separated children and families. Particularly troubling is the lack of time to access legal representation for the single most important interview of the process. The scheduling of refugee hearings within 60 days, even though it seems a worthy goal, will require a very flexible approach in regards to the collection of relevant documents in support of

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the refugee narrative. The very often complicated physical practicalities of obtaining support documentation and ID documents in a few weeks makes this timeline unrealistic. It also underscores the government's lack of knowledge or familiarity with the real issues that refugee claimants live with. For certain this is going to end up in a lot requests for postponements or in refugee hearings going forward with incomplete evidence. This will lead to more and more appeals, which will require more time and more resources and which would seem to defeat the purpose of the Bill in the first place.

Thirdly, the proposal of making civil servants (replacing the IRB Refugee Protection Division) responsible for first-level refugee decisions is going backwards. How susceptible would a civil servant be to the Minister of Immigration's intentions to increase or decrease the acceptance levels of particular types of cases or cases from particular countries? How independent would a civil servant be to the political determination of a country as safe by the Minister of Immigration? There is not a safeguard in the Bill to ensure that the refugee determination interviews would be conducted independently from the government's wishes. Again, very conveniently, all the criteria for the supposedly very-meritoriously-not-patronising selection process of the adjudicators have not been outlined yet by the government.

Fourthly, the whole notion of no access to the Humanitarian and Companionate Process (H&C) for refugee claimants, while they are either in process or during the next12 months after they receive the last negative decision, is just evil. The Conservative government has closed the inhumane circle by banning any person in Canada to be able to raise in an H&C application any factors relating to the refugee definition or other grounds for refugee protection. This is bringing the concept of a "one shot deal" to the extreme. Under this prejudicial concept, no refugee claimant could have immigrant characteristics or no immigrant could have grounds for protection from persecution in his/her life. This concept expresses the conservative anti-immigrant logic very well.

On the one hand, Bill C-11 is so unbalanced in terms of justice (taking so many things away and only giving back the refugee appeal) and is so prejudiced against refugees and immigrants (going against the concept of seeing any person as a holistic being) that the only thing to do, is to defeat it. On the other hand, the question now for refugee advocates is: whether the needs and interests of refugees are better protected by the adoption of a flawed bill like the one analysed above, or by the defeat of the bill, which may lead to potentially worse conditions for refugees in the future.

Francisco Rico is the Co-director of the FCJ Refugee Centre in Toronto.

CCVT SUBMISSION TO THE STANDING COMMITTEE WITH REGARDS TO BILL C-11

EZAT MOSSALLANEJAD

Thank you for providing the Canadian Centre for Victims of Torture (CCVT), with the opportunity to share its feedback regarding the recent proposed amendment to the Immigration Act (Bill C-11). Our contributions will be made with the perspective of an agency that is nationally and internationally celebrated for its 33 years of ongoing efforts in rehabilitation of survivors of torture, war, genocide and crimes against humanity.

Over the years, we have provided services to over 16,500 survivors of torture and organized violence from 136 countries. Every day, CCVT's staff counselors, affiliated lawyers, physicians, psychiatrists, psychologists and volunteers interact directly with survivors of torture, war, genocide and crimes against humanity who have come from all over the globe to build a new home in Canada. They include refugee claimants, Protected Persons, family members, government assisted and privately sponsored refugees. We have worked with the Ministry of Citizenship and Immigration, Canada Border Services Agency, the Canadian Centre for Foreign Policy Development, the Immigration and Refugee Board, and the Ministry of Foreign Affairs (among others) to educate officials about the problem of torture and the need for its prohibition as well as the rehabilitation of survivors, development of appropriate international responses, and monitoring of compliance with international treaties and conventions.

Following are our major concerns regarding the proposed amendment to the Immigration Act (Bill C-11):

1. Under the provision of the Bill C-11 refugee claimants will be interviewed by a civil servant within 8 days of making a claim. Based on our experience, 30 percent of refugees who come to Canada are survivors of torture, war, genocide and crimes against humanity. We feel that this provision will sacrifice procedural fairness and sensitivity for this category of claimants. These highly vulnerable people come to Canada psychologically traumatized. Most of them are unable to disclose everything they have endured quickly upon arrival. This is specifically true for survivors of rape and other types of gender related tortures.

2. We submit that the provisions of the Bill C-11 in expecting claimants to come up with the proper documentation of their case within 2 months are neither fair nor feasible. Torture victims often require medical and psychological reports from their home countries. They also require the same from local practitioners in Canada. Documentation of physical torture needs further medical examinations like X-rays, MRI, etc. that take a long time. This is true for psychiatric or psychological assessments. It sometimes takes us up to two months to get an appointment for a client from a CCVT-affiliated psychologist.

3. Survivors of torture and other horrible international crimes develop a sense of withdrawal to share their fearful experiences. The truth might come to the fore much later. The Pre-Removal Risk Assessment and the Humanitarian and Compassionate review of the failed claims can act as last remedies for survivors. We are concerned that the inability of failed refugee claimants to submit an H&C application within one year of their decision will result in sending back a number of traumatized failed claimants to torture. The proposal to deny access to humanitarian relief, including for children, or to a final assessment of risk prior to deportation violates Canada's obligations under both the Charter and international treaties, including the Convention on the Rights of the Child. As custodians of human rights both nationally and internationally, we Canadians are obligated under Article 3 of the Convention Against Torture not to return anyone to a country where there is a real risk of torture.

4. We submit that the creation of a list of countries viewed as safe is detrimental to the fairness of the refugee determination system with regards to survivors. A great number of our clients who have faced gender and/or sexual orientation persecution and/or harassment in their homeland come from seemingly stable and peaceful countries.

5. Presently, Canada has an independent IRB member to carry out refugee claims' proceedings. This is a commendable approach for its impartiality. We are afraid that under Bill C-11, this procedure will be changed and civil servants will be appointed for this purpose. Experience has shown that they are normally unqualified and lack independence and expertise to handle refugee claims. The systems using civil servants in

other countries have proved unsuccessful, with a large number of cases overturned on appeal.

6. As mentioned before, Canada is obligated under Article 3 of the Convention Against Torture not to return anyone to a country where there is a real risk of torture. This is reaffirmed under Sections 7 and 1 of the Canadian Charter of Rights and Freedoms. Such *refoulement* is also a breach of the ruling of the Supreme Court of Canada on the Suresh Case (2002). We are concerned that the infeasibility of the implementation of the Bill C-11 would lead to the rejection of hundreds of survivors who cannot be removed to their countries of origin due to Canadian obligation under the above instruments. The new amendment to the Immigration and Refugee Protection Act cannot obviously overrule the Canadian national and international commitments. The result is the creation of a new category of people in limbo, something that has led to the retraumatization of many of our clients.

7. We are concerned that the implementation of Bill C-11 into legislation will send an abhorrent message to our clients that the Canadian government is tolerant of the practice of *refoulement* to torture and is facilitating its continuation. This compounds the trauma of torture survivors who now reside in Canada. Further, we believe that the Canadian Immigration legislation must not jeopardize Canada's reputation as an advocate for the respect of human rights globally.

8. We submit that the implementation of C-11 will impose new costs (enforcement, removal, detention, etc,) on the Canadian tax-payers.

9. Finally, we submit that since 1976, the Immigration Act has gone through more than 32 amendments without resolving the Canadian refugee and immigration problems. We strongly believe that our different governments have failed to address the real obstacle: the need for establishing a link between immigration and human rights and assigning an ombudsperson for immigration responsible to the Canadian parliament.

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Agree or disagree?

We welcome letters to the editor with your comments.
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