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Chair

Mr. David Tilson

Standing Committee on Citizenship and Immigration

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• (1530)

[English]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I call the meeting to order.

This is the Standing Committee on Citizenship and Immigration, meeting number 53. Orders of the day, pursuant to Standing Order 108(2), are our study on “Standing on Guard for Thee: Ensuring that Canada's Immigration System is Secure”.

For the first hour we have two witnesses. One is here with us today all the way from Montreal. From Action Réfugiés, we have Jenny Jeanes. You have been with us before, on Bill C-31. You're the program coordinator. Thank you for coming again today.

All the way from London, England, by video conference, we have Lutz Oette, counsel with the group REDRESS. Sir, can you hear me?

Mr. Lutz Oette (Counsel, REDRESS): Yes, that's correct.

The Chair: Thank you, sir, for taking the time to speak to the committee.

Each of you will have up to 10 minutes to speak. Then there will be questions from different members of the committee.

Ms. Jeanes, you may go first.

Ms. Jenny Jeanes (Program Coordinator, Action Réfugiés Montréal): Hello. My name is Jenny Jeanes, and I coordinate Action Réfugiés Montréal's detention program. Thank you for inviting me here today to speak about immigration detention.

Some of the comments I will make today will echo some of the evidence provided during the examination of Bill C-31, but are relevant to the current study.

Action Réfugiés Montréal was founded in 1994 by the Anglican Diocese of Montreal and the Presbyterian Church in Canada through the Presbytery of Montreal. Our mandate includes assisting refugee claimants who are detained in the CBSA Immigration Holding Centre in Laval, Quebec.

Since joining Action Réfugiés Montréal in 2005, I have visited the Canada Border Services Agency holding centre in Laval on a weekly basis, meeting with individual detainees. Each week we meet newly arrived refugee claimants who have for the most part been detained in order to verify their identity. We help them understand complex immigration procedures, especially the refugee claim process; assist them in finding legal counsel; provide phone cards to those who need to call their families and ask for identity documents to be sent;

and identify the more vulnerable detainees in order to provide them extra support.

I understand committee members have visited the three holding centres. Having visited, you have been able to gain valuable information about detention conditions. However, a single visit does not provide complete information. I hope that our experience visiting the centre on a weekly basis, following the cases of detainees through the investigations process, and accompanying them to detention review hearings will provide a more complete picture.

This information is essential for your study. When making decisions about detention as a tool to enhance security, the government has a responsibility to ensure safeguards are in place to prevent further harm to people fleeing persecution. The consequences of the decision to detain must be considered.

The four key points I would like to speak to you about today are the following: the situation of children accompanying their parents in detention; the inadequate consideration of vulnerability in the decision to detain or maintain detention; the inability of the immigration division to fully review detention on the grounds of identity; and the impact of detention on refugee claimants. All of the cases I will mention today are of refugee claimants detained on identity grounds.

I believe the committee has been provided with statistics about the number of children detained in Canada each year. It is essential to keep in mind that many of the children who spend time in holding centres each year are not officially detained but accompany their detained parents; these children do not appear in the official statistics.

The Canadian Council for Refugees published a report highlighting such cases in 2009. In theory, these children may leave into someone else's care; however, most of the families—

The Chair: Excuse me, I'm sorry to interrupt, but this is all being translated, and the translators require you to go just a tad slower if you could.

Thank you.

• (1535)

Ms. Jenny Jeanes: Okay.

However, most of the families that I have met in detention include young children between zero and five, even breast-feeding children, where it is not reasonable or even possible for the children to be separated from their parents. One of the key problems with accompanying children is that the IRB does not consider the best interests of these children when deciding whether to maintain detention for or release the parents.

I would like to share stories of some of the families we have met in detention.

One is about a woman refugee claimant from Ethiopia and her three children, ages four years, three years, and eight months. At her seven day review, her lawyer presented a known shelter for women and children refugees as an alternative to detention, arguing that considerations should be given to the presence of three young minors in detention. However, detention was maintained, and the family spent 29 days in detention, during which the children were ill and had to be taken several times to hospital.

A female refugee claimant from Somalia was held with her young son who was quite ill. After more than 40 days their detention was once again maintained, despite affidavits from family members in Canada as to their identity, despite the presence of an alternative, and despite arguments about the child's health.

Some parents share with us the difficulties their children face in detention, including fear, trouble eating or sleeping, or physical discomforts. Other parents indicate that while their children do not seem disturbed by being in the centre, their own stress and anxiety have negative effects on their children.

The next point I would like to address is that of the detention of vulnerable persons, including the elderly, those experiencing physical or mental illness, pregnant women, or unaccompanied minors.

One of the problems that arises with vulnerable persons who are detained for identity is that once the decision has been made to arrest and detain, vulnerability is no longer directly relevant to the decision to release or maintain detention. There is no clear direction for either CBSA or the IRB to consider release due to vulnerability or compelling circumstances.

In 2009, I met a 75-year-old woman from the Democratic Republic of Congo in the holding centre, a refugee claimant detained on identity. She had a significant language barrier and health problems. An alternative was offered from the day she was detained in the form of a community worker who spoke her language and was willing to provide shelter and support. This alternative was endorsed by her designated representative, a social worker. However, the woman spent 17 days in detention, which was very difficult for her since she was unwell and had trouble communicating even via an interpreter.

In our experience, many vulnerable people end up in detention, which creates an enormous strain not only on them, but on CBSA's resources, and yet often suitable alternatives exist. It would seem there is a lack of clarity as to how to address vulnerability.

In 2010, CBSA conducted its own internal review process called "CBSA Detentions and Removals Programs - Evaluation Study". In

the final report released in November 2010, CBSA identified areas for improvement in detention, including better training on mental illness, and the need for clearer guidelines as to how to address vulnerable persons, since the wording of enforcement manuals was found to be insufficient. This was seen to result in inconsistencies across Canada. For example, minors, persons with mental health issues or other special needs were extremely unlikely to be detained in the Atlantic and prairie regions, unlike other regions.

A special mention should be made of unaccompanied minors. Although there is greater clarity in the law and regulations as to detention being a last resort, we have seen numerous cases of unaccompanied minors spending nearly a month or longer in detention, despite alternatives existing. In one fairly dramatic case, the unaccompanied minor herself had a baby with her, was breast feeding, and had family members with whom she could stay in Canada.

My next point focuses on the inability for IRB members to adequately review detention on identity grounds. Unlike flight risk or danger to the public, immigration division members cannot overturn the initial decision to detain on identity made by a CBSA officer, no matter how much evidence the detainee has provided, or how fully they are collaborating, and certainly not based on any compelling circumstances.

Sometimes new evidence is provided at detention reviews that was not available to the arresting or investigating officer, including new documents or significant testimony. Board members' experience in handling detention cases allows them to develop a familiarity with the identity issues, but they do not have the power to satisfy themselves of the person's identity, no matter how much experience they have.

● (1540)

In one case, a Kurdish refugee claimant appeared for review after having spent 40 days in detention on identity grounds, in part due to doubts as to the authenticity of two UNHCR identity documents. At the review, a letter from the UNHCR was provided to the board member confirming the authenticity of the documents; however, the board member was unable to render a decision on identity and instead provided an additional 12 days of detention for CBSA to confirm the information.

In other cases, documents with security features have been found to be authentic and verifications completed, yet CBSA calls for detention to be maintained for other factors, such as waiting for a passport to arrive. In such cases, the board member is unable to overturn CBSA's opinion on identity even when multiple elements confirming identity are present.

All of these factors place a strain on CBSA resources when alternatives are often possible, but I would like to focus on the strain it places on detainees. During our weekly visits, we hear from refugee claimants about how hard they find detention.

One of the most common things we hear about is the shame they feel at wearing handcuffs. Handcuffs are a powerful symbol of punishment for most. We also hear about the shame of being under constant surveillance, the fear of deportation, and chronic physical discomfort such as constipation and fatigue.

We regularly meet detainees who speak no English or French.

The toll that detention takes on the mental health of refugee claimants has been documented in the research of Janet Cleveland from McGill University.

There is the added stress of having to prepare one's refugee claim while in detention, with no privacy and with obstacles to communicating with family or legal counsel. Detainees regularly express distress at having to prepare their personal information form within 28 days. This will be exacerbated with the shorter delays under Bill C-31.

In light of all these observations, I believe there is the potential for far more consideration of alternatives to detention by both CBSA and the IRB. This would reduce the human costs of detention and also the considerable financial costs.

I recently had the opportunity to participate in a binational round table meeting on alternatives to detention, which was organized by the UNHCR. Many examples of alternatives were provided. It was clear that alternatives can be effective and necessary, and that one key element is to develop tools for early screening of vulnerable persons.

The UNHCR has published new guidelines on detention that provide fresh direction to states as to when detention is reasonable, proportionate, and necessary, and when alternatives are appropriate. They call for an assessment of the overall reasonableness of detention, taking into consideration all factors, including special needs or considerations.

The Chair: Ms. Jeanes, are you almost finished?

Ms. Jenny Jeanes: Yes.

I hope my comments are helpful in this regard.

Thank you.

The Chair: I'm sorry I interrupted.

Ms. Jenny Jeanes: No problem.

The Chair: Mr. Oette, it's your turn, sir. You have 10 minutes to make a presentation to the committee. Again, thank you for taking the time to see us.

Mr. Lutz Oette: Thank you very much.

Good afternoon—or good evening, in my case—distinguished members of the committee. Thank you for inviting us to testify to the committee today.

In my statement I will focus on what steps Canada could and should take where suspects of international crimes are present in the country.

I'm counsel at REDRESS, an international human rights organization based in London that seeks justice for torture survivors worldwide. REDRESS has been involved in a number of cases in several countries around the world, cases aimed at bringing to justice perpetrators of international crimes such as genocide, war crimes, crimes against humanity, and torture.

Suspects of international crimes who are foreign nationals fall within the broad scope of immigration, but they clearly constitute a

special category whose treatment raises some distinctive legal questions. Here I will focus on the situation that has given rise to concern in respect of Canada's practice; that is, what should or must the state do if it finds such suspects on its territory?

The rules of international law are quite clear on this point. The convention against torture and the 1949 Geneva Conventions require states either to extradite suspected perpetrators of torture or war crimes to face prosecution or to exercise their jurisdiction to prosecute such suspects. This principle is also increasingly held to be applicable to genocide or crimes against humanity; indeed, this is widely recognized and followed in state practice.

More than 125 states have relevant implementing legislation. Over 15 states have brought prosecutions on the basis of extraterritorial jurisdiction. In Europe, this includes perpetrators of international crimes committed in Argentina, the former Yugoslavia, Rwanda, Afghanistan, and Iraq.

These developments are part of an international commitment to ensure that there's no impunity for those who inflict intolerable suffering on their fellow human beings and to provide justice to victims who have nowhere else to turn. To this end, the international system relies on states' commitment and cooperation to bring perpetrators to justice in the appropriate forum. Legislation enabling national authorities to exercise jurisdiction over international crimes and institutional arrangements to make prosecutions effective are the key means to achieve this goal.

Indeed, Canada is among the countries that have taken a lead to hold perpetrators of international crimes to account. Its Crimes Against Humanity and War Crimes Act in 2000 was the first of its kind to implement the Rome Statute of the International Criminal Court in national laws, a move that has been followed by several states in Europe since. As a general rule, a state must prosecute a suspect found on its territory unless it extradites him or her.

Importantly, the rule explicitly refers to extradition as the formal procedure to be used in criminal cases. Other measures, such as deportation used in the immigration context, are insufficient to meet the state's obligation under international law, this for good reason. In extradition proceedings, a state actively cooperates with other states in line with its extradition laws, and this signals a mutual interest in criminal justice being done. Deportation proceedings, in contrast, are aimed at removing a person. The deporting state has no formal interest in what happens to the deported person. The person may or may not be prosecuted for international crimes, but the deporting state has no formal role in this.

On this point, I would like to draw your attention to the UN Committee Against Torture's June 2012 concluding observations on Canada's state party report. In its observations, the committee expressed its concerns that Canada's "policy of resorting to immigration processes to remove perpetrators from its territory rather than subjecting them to the criminal process creates actual or potential loopholes for impunity". This means that individuals "have been expelled and not faced justice in their countries of origin".

•(1545)

The committee therefore recommended that Canada exercise its jurisdiction over persons responsible for torture, including foreign nationals. It emphasized that Canada “should enhance its efforts, including through increased resources, to ensure that the ‘no safe haven’ policy prioritizes criminal or extradition proceedings over deportation and removal under immigration processes.”

This is particularly important, considering that Canada may not be able to secure extradition and may also be prevented from sending a suspect to the country concerned because he or she faces a genuine risk of torture, ill treatment, or persecution if returned. It is in these situations that a state must be ready to prosecute. If a state fails to do so, it breaches its international obligations.

There are also sound policy reasons for a policy of prosecuting suspects of international crimes found in Canada.

First, it sends a strong message to perpetrators that they are not welcome.

Second, it pre-empts Canada's having to face a situation in which it stands accused of tolerating the presence of war criminals or taking measures, such as deportations, that fail to ensure justice.

Third, it underscores Canada's commitment to international justice, which enables it to take a leading role and speak with enhanced legitimacy when seeking to prevent and respond to international crimes worldwide.

Fourth, such policy and practice act as a precedent and potential deterrent if coordinated with other states. As such, any expenditure for the prosecution of international crimes constitutes a good investment toward international peace and stability.

Fifth, mirroring the first point, Canada would send a strong signal that it is on the side of victims of international crimes. While there may be no short-term political currency in taking such a stance, it builds on historical precedents that are essential to a stable and just international order and international solidarity.

What does all this mean in practice? Where suspects of international crimes are in the country, Canada should cooperate with authorities of other states with a view to ensuring criminal accountability. Equally, it is important that Canada make strenuous efforts to strengthen the capacity of its authorities to investigate and prosecute suspects of international crimes when the individuals concerned cannot be extradited to face trial.

Experiences from Europe may be helpful in this regard. While there are a number of difficulties, the European Union has taken steps to strengthen state cooperation to make the investigation and prosecution of international crimes more effective.

Several countries have been inspired by Canada's war crimes program. Belgium, Denmark, France, Germany, the Netherlands, Norway, Sweden, and Switzerland have established specialized units within their police and/or prosecution services dedicated to cases involving international crimes. What is critical here—and this applies equally to the crimes against humanity and war crimes program in Canada—is that sufficient resources are allocated so that these programs can effectively fulfill their task. In the absence of

such concerted efforts, we risk that the cycle of international crimes and atrocities, and the instability and suffering that goes with it, will never end.

•(1550)

The Chair: Thank you, Mr. Oette.

We now have questions from the committee for both of you, and I thank both of you for your presentations.

There are several new members on the committee. The first round will be seven minutes each. Unfortunately, Mr. Andrews, you have only five minutes, but I know you'll ask some excellent questions.

Ms. James, you're first.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair. Welcome back. We certainly missed you. Welcome back to one of our guests, Ms. Jeanes, and welcome also to our guest overseas.

I'm going to start my questions with Mr. Oette. I hope I pronounced that correctly.

As you know, we've been studying security. You're probably very aware that we have problems with the asylum system in Canada. I'm going to outline one specific notable case, and I'm going to ask some questions related to that case afterwards.

The case is about a gentleman named Mahmoud Mohammad Issa Mohammad, who carried out terrorist acts with the Popular Front for the Liberation of Palestine. Despite Mohammad's established connection to terrorism, and there's no disputing his connection to terrorism, he has been able to remain in Canada since 1987. He has done so by launching a series of judicial appeals, a process that has cost Canadian taxpayers—and you might want to write this down—\$3 million.

I'm listening to you speak about how we deal with people after they're already in Canada and we need to remove them, and our other witness this afternoon is talking about asylum seekers who are in detention because their identities are unknown.

My question for you, Mr. Oette, is, how do we prevent someone who is a threat to Canadian security from coming to Canada, instead of having the situation of someone like Mr. Mahmoud Mohammad Issa Mohammad costing Canadian taxpayers \$3 million and being here since 1987? What are the flaws in Canada's screening system that allowed him to come into Canada in the first place?

Mr. Lutz Oette: My focus was really on the situation that Canada, or any country for that matter, faces when someone is already in the country. Of course a country also is entitled to bar the entry of anyone, under article 1F of the refugee convention, who is suspected of having committed international crimes or having been involved in acts of terrorism.

My point would—

Ms. Roxanne James: Thank you.

I understand we're going to be studying another bill in the future, which is the fast removal of foreign nationals who are linked to terrorism or crime, etc.

Do you have actual recommendations that you could give to this committee on how Canada could better screen people who come to Canada?

Obviously, this gentleman fell through the cracks. He came in. I don't know if you have any idea how long it would take an average Canadian to earn \$3 million, but my guess is that it's never.

I'm wondering if you could give any solid recommendations to this committee on what Canada should do to better screen people like this gentleman so they don't actually land here in Canada and cross our border.

Do you have any recommendations?

•(1555)

Mr. Lutz Oette: Do you mean where the screening is done externally?

Ms. Roxanne James: If you want to go in that direction, sure. We're looking for your recommendations to the committee.

Mr. Lutz Oette: Well, I wouldn't have any particular recommendations, but I'll mention that in the European context we now have a number of specialized units, war crimes units, and one of their prime tasks is to undertake the screening.

Obviously, that is mainly done in country, but I don't have any special expertise on the screening procedures, as such.

Ms. Roxanne James: Are you familiar with biometrics?

Mr. Lutz Oette: No, I'm afraid not.

Ms. Roxanne James: You're not familiar at all with biometrics. I'm surprised. It's basically the use of—

Mr. Lutz Oette: Well, I have a general knowledge, but I—

Ms. Roxanne James: —face recognition and fingerprints.

Mr. Lutz Oette: Yes, but this is leading into a rather different direction from what I came to talk about.

Ms. Roxanne James: That's unfortunate. I was hoping to get some answers on that.

Let me try a different question that maybe you can answer.

How successful do you think Canada has been in preventing criminals, such as members of the Popular Front for the Liberation of Palestine, from coming in? How successful has Canada been up to this point in preventing people like them from crossing our borders?

Mr. Lutz Oette: Well, I don't know the ins and outs of Canada's system. You have the figures in the annual reports of the war crimes program, and this is a matter of concern for you.

I think what is important is that you develop a coherent policy that has both elements, screening and prosecution, where someone is found in Canada itself and cannot be extradited.

Ms. Roxanne James: Okay, thank you.

I understand you don't have a specific recommendation, just better screening. Obviously, that's why we're here. We want to make sure that we can better screen people so this situation doesn't happen.

I will refer to your remarks to the committee. You were mentioning that possibly in some situations, or maybe in all situations, Canada should try war criminals or people tied to terrorism here in Canada. I want to refer to the specific case of Mahmoud Mohammad Issa Mohammad costing Canadian taxpayers \$3 million. Do you think we should go further and try someone like him if there were any charges to be laid? Do you think we should put more money out? Do you think it's the responsibility of Canada to foot the bill?

Mr. Lutz Oette: I think it's an internationally shared responsibility. The more money you spend on specialized and dedicated units that are capable of investigating and prosecuting international criminals, the more effective the international system will be. As I mentioned, that would also act as a deterrent in the long run, hopefully. It requires a coherent policy and a shared burden.

Ms. Roxanne James: With regard to the different types of immigration streams, do you see one stream over another that would cause the most issues of security threat in your country maybe, but also here in Canada? Do you think there's a specific immigration stream that poses the most threat?

Mr. Lutz Oette: What would you mean by that?

The Chair: I think you're going to be saved by the bell. Ms. James, we'll try, but you're over.

Ms. Roxanne James: Examples of different types of immigration streams would be family reunification, asylum seekers coming in without any identification on them, foreign workers, those types of things. Do you see a potential for the greatest threat to Canadian security in one immigration stream over another?

Mr. Lutz Oette: I wouldn't be able to comment on that, I'm afraid.

The Chair: Okay.

Madam Groguhé.

[Translation]

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

I would like to thank our two witnesses for their presentations.

My first question is for Mr. Oette.

You have significant experience in defending human rights. You have worked with a number of research institutions and organizations to defend human rights, both in Germany and Great Britain. You have just published a study in *The International Journal of Human Rights* on the difficulties faced by governments with respect to implementing regulations prohibiting torture.

What do you think governments should do when the removal of a foreign criminal involved in crime is likely to expose that person to torture? Could you please give me a specific opinion on this matter?

• (1600)

[English]

Mr. Lutz Oette: I'm not sure that I understood the question correctly. What do I think about foreigners who....

[Translation]

Mrs. Sadia Groguhé: When a foreign criminal involved in crime is here, in Canada, how should we, as a government, react to that person's deportation or extradition in order to prevent him or her from being tortured in another country? What recommendations would you make in that regard?

[English]

Mr. Lutz Oette: Of course, it depends on the case at hand.

Once you confirm the initial suspicion that someone may have been involved in international crimes, the question is whether there is an extradition treaty in place. If you cannot extradite him or her, then of course there is the prohibition of refoulement, and you have to keep him or her in the country. I think that's where the crux lies, because that's the situation where Canada has to be able to prosecute, and that has obviously been a problem.

[Translation]

Mrs. Sadia Groguhé: Okay, very well.

You mentioned the issue of the international commitment of governments with respect to international law. You also suggested that deportation was not the best way to deal with crime.

Could you please expand on that and give us some specific ideas that could be used to make recommendations?

[English]

Mr. Lutz Oette: I specifically referred to Canada's obligation under international law. It says very clearly that for international crimes states either have to extradite or prosecute. You cannot simply deport someone who is suspected of these crimes to another country. The overriding idea is that they should face justice, be it in the country they are returned to, or in Canada for that matter.

That's what the committee against torture said as well.

[Translation]

Mrs. Sadia Groguhé: You contrast the issues of extradition and deportation. Do you think that means that, with respect to crime, it is better and more conceivable for a government to extradite rather than deport? Could you please provide some clarification on this?

[English]

Mr. Rick Dykstra (St. Catharines, CPC): I have a point of order.

The Chair: Stop the clock, please. Go ahead on your point of order, Mr. Dykstra.

Mr. Rick Dykstra: I know that Bill C-43 will be coming fairly quickly, but I just want to be clear that this meeting is related to the study on securing our country.

[Translation]

Mrs. Sadia Groguhé: I am simply coming back to the topic mentioned by our witness, and I would like clarification about the specific themes he shared with the committee. I'm not really referring to Bill C-43.

[English]

Mr. Rick Dykstra: Okay.

The Chair: We are talking about security, and I think her questions are borderline but they're relevant.

Go ahead. We'll start the clock again.

[Translation]

Mrs. Sadia Groguhé: Could you please answer, Mr. Oette?

[English]

Mr. Lutz Oette: Yes, I think a deportation policy alone would be insufficient in these circumstances, when we talk about those suspected of international crimes.

[Translation]

Mrs. Sadia Groguhé: Do I have any time left?

[English]

The Chair: You have another three minutes.

[Translation]

Mrs. Sadia Groguhé: Furthermore, there was some discussion about the possibility of applying further measures to prevent criminals from coming to Canada and our having to remove them.

Do these additional measures require broader international work than what we have now and, if so, how could we proceed?

• (1605)

[English]

Mr. Lutz Oette: Again, I think it's part of a bigger international policy aimed at ensuring accountability for international crimes. If you look at it from an immigration perspective, of course a state has an interest in ensuring that no one suspected of these crimes should come into the country.

From our perspective I think it should be even broader. If you have a no safe haven policy, that should apply to anyone, even from friendly countries, coming to Canada who is suspected of having engaged in such activities.

[Translation]

Mrs. Sadia Groguhé: In July 2011, the Minister of Public Safety, Vic Toews, published a list of individuals accused of or complicit in war crimes and crimes against humanity.

What do you think of that particular initiative?

[English]

Mr. Lutz Oette: From what I hear, and I'm talking here as an outsider, it has been very controversial. Again, I can only repeat that the basic principle is that if these suspects—and I understand they are suspects—cannot be extradited, then they should be prosecuted in Canada.

Again, I understand that we are talking about deportation measures, so I find that problematic.

[Translation]

Mrs. Sadia Groguhé: Do you think the current provision in the Immigration and Refugee Protection Act on inadmissibility makes it possible to effectively screen out people involved in war crimes? How should it be amended, if necessary?

[English]

Mr. Lutz Oette: I think that article 1F of the refugee convention is very clear on what should be done. I think that is well established as a matter of international law, but it should form part of a coherent policy.

What I hear is a desire to focus on prevention in the immigration context, but it should form part of a broader and more coherent policy. I think all components need to be considered fully.

The Chair: Thank you.

Mr. Andrews, welcome to the committee. You have up to five minutes.

Mr. Scott Andrews (Avalon, Lib.): Thank you very much, Mr. Chair.

I'm filling in for our representative today, and unlike him I won't be using all my time. He could ride the clock for a full five or seven minutes without doubt.

The Chair: I've seen you, Mr. Andrews, and you do very well.

Mr. Scott Andrews: Thank you very much, witnesses, for being here today. I have only one question.

Maybe you could elaborate a little on children going through the process.

I've been told of certain cases where children have been born here or have come here when they were very young. However, when they go through the immigration process and they are being deported they could have been here for a long period of time, and all they have known is Canada. I wonder what impact this has on those children. Is there any research or statistics on this? Could you elaborate on your comments regarding the impact on children?

The Chair: We have a point of order.

Ms. Roxanne James: Mr. Chair, I know that Mr. Andrews is filling in for his colleague, Mr. Lamoureux, but I just want to make sure that we all understand that we're here studying security.

He has asked a question and I want to make certain the committee is aware that whatever the answer may be, it won't appear in the study. I think it might be better if he uses his time to ask a question that might actually be relevant to the study.

That is just a side note.

The Chair: The clock has been stopped.

My recollection is that Ms. Jeanes did talk about the detention of children. I think it's a relevant question. Just to be clear, Ms. Jeanes, in her speech, made a comment about children in detention. Detention is about security. So I think Mr. Andrews is perfectly in order.

Go ahead.

Ms. Jenny Jeanes: It's a bit complex, because my presentation was focused more on refugee claimants: children who themselves are claimants, or children of adult claimants who are found in detention in Canada. The question about removals is somewhat of a different concept.

What's very important is to look at the impact of detention on children while they are here, the possibility of alternatives, and the link to a fair, due process. Being in detention can have a detrimental effect on a family's access to due process while they're in Canada.

I can't speak to the question of the impact of the removal on them and what happens when they go home, but I think there is a lot of information about the impact on parents and the impact on children of being in detention. I want to underline that alternatives seem to be appropriate when children are in detention.

• (1610)

Mr. Scott Andrews: What kinds of alternatives would you have in mind?

Ms. Jenny Jeanes: There is a lot of research available. As I said, I recently attended a conference where international research was presented by the International Detention Coalition and by the United Nations High Commissioner for Refugees. There were examples from Canada, the U.S., and Australia.

They often involve guidelines for screening vulnerabilities very early on, either at the moment of arrest or as early as possible in the detention process, to see when alternatives are appropriate. The determination of the appropriate alternatives can be done by looking at where people are in the process, which has an impact on their likely compliance with the procedures, and at the available resources. For example, there are shelters, and in Montreal we have a team of social workers that follows claimants very closely.

Some of the research shows that a case management approach that accompanies people through the process increases compliance and increases the chances that people will appear throughout their refugee claim process.

Mr. Scott Andrews: Thank you very much.

The Chair: Thank you.

Mr. Dykstra.

Mr. Rick Dykstra: Thank you, Chair.

Mr. Oette, I just want to be clear. In general, you're obviously opposed to war criminals leaving their country of origin to seek safe haven in a new country. What you're really seeking is some international consistency among all countries in terms of the treatment of war criminals. If they do try to get into a country and claim refugee status, or if in fact they have done that, and there isn't an extradition treaty between the two countries, there's no ability to get that person out of the country.

Is that a fairly clear analysis of what you believe?

Mr. Lutz Oette: That's correct. It's not only what I believe; it's actually what international law stipulates.

You have a situation in any country, be it here in the U.K. or in Canada, where for one reason or another you have hundreds, if not thousands, who are suspected of international crimes. That is a dilemma you face.

Mr. Rick Dykstra: Thank you for that response.

It leads me to the next question. I had a chance to visit the Netherlands and meet with officials there. One of the interesting aspects of how they determine how people can actually stay in the Netherlands is that people have to have clear and concise documentation with them.

They indicated that in the Netherlands, any time people come into the country on a specific airline and no longer have their identification or their passports because they've either eaten them or have thrown them out, and they claim refugee status, those individuals aren't detained anywhere other than right at the airport itself. Once their identification is determined, if they do not qualify to apply for refugee status in the Netherlands, they're put on that same airline and flown back to their country of origin.

Do you have a similar process in Germany?

Mr. Lutz Oette: In Germany you have attempts to return refugees as well, but the problem with these procedures is the same. As soon as someone enters the territory, they benefit from non-refoulement, so if they are at risk of torture or persecution abroad, they shouldn't simply be sent back.

Mr. Rick Dykstra: If they are determined not to qualify for refugee status in a particular country, why would that prevent them from being returned to their country of origin?

Mr. Lutz Oette: The moment you enter the territory, you benefit from the prohibition on sending someone back. It engages the responsibility of the state.

• (1615)

Mr. Rick Dykstra: Yes, but if the state determines within that 48-hour timeframe that the person doesn't qualify for refugee status and then sends him back, my point is that there are countries in the world that have a lot less of a timeframe to prepare a case than we do in Canada, and that is with Bill C-31.

It leads me, Ms. Jeanes, to a couple of points. One of the points you made when you were here with respect to Bill C-31 was to request, as many of the witnesses did, that we go to the facilities across the country. We did. We went to all three of them. We viewed them in-depth and went through each and every one of them. In fact, we had lunch at Laval just to get a clear understanding of what the

food was like there, because that was another one of the complaints that a number of you brought forward.

You said today that although we went, one day doesn't qualify as a true interpretation of what happens there. I have to say that while I have my own specific understanding after visiting the three facilities which model we should be running, Laval isn't one of them. I find that the comments of organizations that are not Amnesty International and are not Red Cross....

You don't have any specific obligation under any provincial or federal government jurisdiction. You're free to go there and visit with potential refugees and those who are being detained there, but you don't have any official responsibility to do so on behalf of any government.

Ms. Jenny Jeanes: No, we're not there on behalf of any government. We're a non-governmental organization, but for many years we have been visiting the holding centres in Montreal, and not just the one in Laval but the previous incarnations as well. We have a formal agreement with the Canada Border Services Agency that dictates what our access is and what our role is. Although we're not the UNHCR and we're not the Red Cross, we do play an essential role. We're there every week, whereas those organizations that have an official mandate with the government go far less often, several times per year.

Mr. Rick Dykstra: We heard from those organizations while we were there in terms of getting their perspective on it. Whenever they have concerns, those concerns are immediately brought forward to the CBSA officials and are dealt with regardless of the level of complaint or concern.

I find it somewhat conflicting that while it may be true that detention isn't as good as freedom, it's a lot better than where they may have come from in seeking refugee status. Individuals without identification, such as the potential war criminals Mr. Oette was speaking to, would have the potential to seek means of being held other than detention. While I empathize with what you're saying, and you've told some very sad stories in your testimony, I'm left with the impression that one of the three facilities across the country may be run more effectively and efficiently in dealing with the clientele and the refugee applicants who are there. For that matter, they aren't necessarily refugee applicants. Some of them are there because they face deportation because they have been determined not to qualify for permanent residency, extended temporary visas, or refugee status. There is a requirement for those folks to be detained to make sure they do return to their country of origin.

The Chair: Your time has expired, Mr. Dykstra.

Ms. Freeman is next. This is the first opportunity I've had; you're a permanent member of the committee, and I want to welcome you.

Ms. Mylène Freeman (Argenteuil—Papineau—Mirabel, NDP): Thank you, Mr. Chair.

The Chair: You have five minutes.

Ms. Mylène Freeman: Thank you very much.

[Translation]

My questions are for Jenny Jeanes. Thank you for your presentation. I found it very informative.

Could you please talk about the need to support refugees and their integration into the community? I think this really touches on security-related issues. Can you please explain how these actions, in addition to being good things to do from a humanitarian point of view, are positive initiatives for Canada's security?

Ms. Jenny Jeanes: Thank you.

I think that the committee's visits to prevention centres in Canada is a very important initiative. Congratulations. I hope my comments today will complement that information. In fact, by visiting the centre, we can see what the conditions are like, but we cannot really get an idea of the procedures surrounding detention.

As for the impact on refugees and their integration, it is important to know that a number of people I am speaking about today were later accepted as refugees and began living in Canada. In some cases, these people end up becoming citizens. The first few days, weeks and months were spent in detention. The repercussions may decrease over time, but I think it is important to find a balance between security measures and, as you said, the humanitarian side of things.

Our agency's goal is not to look at the financial costs of detention, but it is an important issue. When there are minors, people who are ill and seniors involved, many more resources are required from the agency. For example, transport to the hospital is expensive. Moreover, the centre needs more security guards and specialized education services. These constitute significant costs.

However, should the government want to really look at security issues, the money could be spent in other ways. The vulnerability of people during the proceedings and all the factors of detention need to be taken into account. I think the UNHCR directives are very helpful in that regard. In fact, it clearly says that all the factors, be it identity, vulnerability or all the other possible solutions, need to be considered. To promote security, a balance really must be found between the amounts of money spent with respect to detention.

• (1620)

Ms. Mylène Freeman: Since I have been here, a lot of witnesses who have appeared as part of this study have spoken about the technology associated with physical security measures at the border.

How effective are these measures compared with something like community support, again, in terms of security?

Ms. Jenny Jeanes: I didn't really understand your question. Are you talking about technology at the border?

Ms. Mylène Freeman: For example, biometrics, fingerprinting...

Ms. Jenny Jeanes: The investigation measures are used to identify people. But in this field, the money may be better spent in some cases than in others. As for alternatives to detention, the investigations could go on. I mentioned examples where the information about the identity of individuals was quite sufficient. I'm not talking about releasing someone whose identity is not at all known to us. Vulnerability is still important. A 75-year-old woman from the Democratic Republic of the Congo who speaks only Lingala may present less of a risk to society than another detainee. In that case, vulnerability is also a very important factor.

When there is information about a person's identity, the current system is not flexible enough to enable the Canada Border Services

Agency and the IRB to release that person more quickly and spend the money more effectively.

Ms. Mylène Freeman: Thank you.

[English]

The Chair: Thank you.

Mr. Menegakis.

Mr. Costas Menegakis (Richmond Hill, CPC): Thank you to our witnesses for appearing before us today.

We are studying security, and there are a few tools we have heard about repeatedly from witnesses and experts in the field that we would like to get your opinion on.

I'm going to start with you, Mr. Oette. Do Germany and the U.K., as far as you know, currently track the entry and exit of everyone who enters the country?

Mr. Lutz Oette: I don't know the details, but I know the German prosecutors have a new system in place whereby they screen people with respect to article 1F. I would think they have such checking in place.

• (1625)

Mr. Costas Menegakis: It is very important for us as a government to identify people prior to allowing them into Canadian society. I think it makes sense to do that before allowing people who are potential risks to the safety and security of our families, children, businesses and communities to walk our streets. That's why we have a detention process, so we can identify them.

Once we know who people are, certainly they're not in detention centres. Once we identify them, they get into the stream of being allowed into the country. Not knowing who they are is a risk for us.

I want to ask Ms. Jeanes my next question. It specifically has to do with biometrics, which has been described to us by the highest law enforcement agencies in our country, CSIS, the RCMP, CBSA, as being a 21st century identification tool. It's an additional tool that our officers will have in attempting to identify non-identified people. What do you think about biometrics?

Ms. Jenny Jeanes: I have to say that I don't have expertise on biometrics.

As a tool, I think it's worth studying to evaluate its usefulness. Many of the people whom we deal with in detention have never been to Canada before, have often never travelled outside their country of origin, have never made a visa application. Biometrics wouldn't be helpful in identifying them. I really can't speak on biometrics with much authority, but I will say that when it comes to whatever tools CBSA does need to identify people, I would raise the question about costs, and whether with certain detainees there might be better alternatives, which would allow CBSA to pursue its investigation more effectively.

Mr. Costas Menegakis: I would suggest to you that spending the money to identify and catch criminals prior to their getting into the homes of our families and neighbours, becoming our neighbours, or walking around our communities is money well spent, certainly. That is an identification tool. We can share information with our friends and partners around the world, and catch people prior to their coming into the country. That is very important.

I share some of your concerns about some of the sad situations you stated, but I think if we go back and see what happened with the *Ocean Lady* and the *Sun Sea*, 43 people of some 500 were deemed inadmissible to Canada; 24 had perpetrated crimes in their country of origin, and 19 were deemed to have perpetrated war crimes. Those are 43 people I don't want to be my neighbours, and I know my neighbours don't want them here either.

It's important that we identify who they are.

Tools that we give our law enforcement officers to identify people up front can make life a lot easier for the people whom you're commenting about in your testimony, because they don't want them around them either, and the sooner, the better.

Mr. Oette, are you familiar with the electronic travel authorization? It basically monitors the exit and entry provisions in a perimeter agreement that Canada has signed with the United States. It allows us to know every time a person crosses our borders either by land or air.

Mr. Lutz Oette: I've heard of it, but I haven't studied it in detail, no.

Mr. Costas Menegakis: Are you familiar with it, Ms. Jeanes?

Ms. Jenny Jeanes: I'm not familiar with that particular initiative, but I can say that in the investigations process, it often occurs that information that helps to identify people is obtained either from the United States or European countries. What I was trying to get at in my presentation is that the way the current system works, there isn't necessarily the possibility for that information to be used in an effective way to release people, in terms of a more efficient system.

The Chair: Thank you, Mr. Menegakis. Our time has expired, Mr. Oette and Ms. Jeanes. Thank you very much for coming and speaking to us, and enlightening us with your thoughts.

We will suspend.

• (1630) _____ (Pause) _____

• (1635)

The Chair: Ladies and gentlemen, we're going to reconvene the meeting.

We have two witnesses. Ms. Casipullai, we've met you before, haven't we? And Ms. Douglas has been here, too, I think.

Ms. Debbie Douglas (Executive Director, Ontario Council of Agencies Serving Immigrants (OCASI)): Yes, I have.

The Chair: Ms. Douglas, you're the executive director of the Ontario Council of Agencies Serving Immigrants. Ms. Casipullai, you are the senior policy and communications coordinator. Thank you very much for coming.

By video conference from Toronto, we have Angus Grant.

Good afternoon, Mr. Grant. Can you hear me?

Mr. Angus Grant (As an Individual): I can hear you fine. Can you hear me?

The Chair: We can hear you, sir.

You are a Ph.D. student in security issues and I understand you practise law in immigration.

Mr. Angus Grant: That's correct, sir.

The Chair: I thank you for coming and I'd like to welcome you to the immigration committee. We're studying the topic that you're studying and we look forward to hearing your comments.

You will each have up to 10 minutes to speak.

Ms. Douglas, we'll have you go first, and you have up to 10 minutes, as you know.

Ms. Debbie Douglas: I promise not to use up my whole 10 minutes, after my last time here and your great patience with my going over time.

Mr. Chair and members of the committee, I want to thank you again for this opportunity. I apologize for not having copies of my remarks for you. Time ran away on us, unfortunately.

We would like to address two items in your area of study. I will begin with the issue of detention.

The committee has already heard that the majority of people detained for immigration reasons are being held because of identity issues, or because they are waiting to be deported and have been considered a flight risk. The majority of those in detention are in immigration holding cells and the rest are in provincial jails.

We are deeply concerned about both situations, but especially the latter, the fact that people who have not been charged or convicted of a crime are being held in the same conditions as those who have are being punished.

While immigration holding centres are different from provincial jails inside, whenever the person needs to go outside for something such as medical attention, she is often handcuffed and shackled and treated as if she were a criminal. I know you have that report. It was part of the presentation to you by Dr. Cleveland in April on Bill C-31.

We know that people being held in immigration detention will often forgo medical treatment because they wish to avoid the humiliation and trauma of being treated like a common criminal.

Children in detention are an ongoing concern. I know that my colleague, Jenny Jeanes, spoke to that as well. Already they are being held with their parents under our current laws.

We were glad to see that when Bill C-31 came back, the government had removed the automatic detention of children. While it's not written into Bill C-31, the reality is that unfortunately, young children will end up in detention with their parents because otherwise, they will be separated from the only person—or persons, if both parents are being detained—they know and trust, as opposed to being left with strangers.

Either situation seriously affects children and their parents. It is not surprising then that many parents choose to have their children with them. I think the last time I was here I talked about that as putting parents in a position of no choice, where they have to choose between having their children detained or giving them up to the custody of the state.

Our concern includes as well that children between 16 and 18 years are detained. The committee has heard from government witnesses that 500 children were in detention last year, and these were refugee cases. Some of our colleagues who have appeared before this committee have already noted that those figures may not capture the full scope of which children are in detention with their parents—

• (1640)

The Chair: On a point of order, Mr. Dykstra.

Mr. Rick Dykstra: Ms. Douglas, I really appreciate your being here today. You know a lot, and you did a great job on Bill C-31 in terms of presenting your position. But we're studying the security boundaries of the country, and I hope you're going to get to that point. I know your feelings—

The Chair: Address your comments to the chair.

Mr. Rick Dykstra: Sorry, Mr. Chair. I know that Ms. Douglas has strong feelings, which I happen to disagree with, about detention, and that's fine. That's the great thing about this country. But the fact is we are dealing with the security of this country in terms of how we can make sure our borders are more secure. I fail to understand the relevance of how children not being with their parents in detention, or the age of those children, is relevant. It was very relevant with respect to Bill C-31. In fact, we changed the clauses within the legislation based on some of the presentations, such as Ms. Douglas's. But I really would like to hear what she believes will make for a stronger secure border, and not necessarily about issues which, while relevant to the ministry, are not relevant to what we're working on right now.

The Chair: Mr. Benskin.

Mr. Tyrone Benskin (Jeanne-Le Ber, NDP): I'm sorry but this constant bullying of witnesses is disrespectful.

The Chair: Mr. Benskin, I don't think he's bullying. He's raised a point of order. Try to be as courteous to him as he is to you.

Mr. Tyrone Benskin: Well, he's not being very courteous to witnesses. The witnesses have been invited here to speak on their topic. Let them speak on their topic. If he has questions about that afterwards, then—

The Chair: That's his point, Mr. Benskin.

Mr. Chisholm.

Mr. Robert Chisholm (Dartmouth—Cole Harbour, NDP): Mr. Chairman, I'm new to the committee, but my understanding of the process of committees is that the committee undertakes a study, the members of the committee present a list of witnesses they'd like to hear from, and the clerk invites these people to come and speak. Sometimes people will present information with which we don't necessarily agree, but we've invited them to come and speak to our committee. Therefore, I think it's an obligation of our committee to

hear them for their 10 minutes. Let them speak, and then we can question them, or we can ignore them.

The Chair: I thought we were getting along so well.

Mr. Opitz.

Mr. Ted Opitz (Etobicoke Centre, CPC): On my colleague's point, respectfully, it's not the issue of people speaking, Mr. Chair; it's the issue of relevance to the topic that's being studied.

The Chair: Mr. Menegakis, and then Madam Groguhé.

Mr. Costas Menegakis: Mr. Chair, it's a matter of relevance to the terms of reference of the study. I believe that is what Mr. Dykstra is referring to.

The Chair: Madam Groguhé.

[Translation]

Mrs. Sadia Groguhé: Mr. Chair, I would simply like to point out that we raised the same issue about detention earlier and that you have already dealt with it. So I would like to remind the members of the committee that you have already ruled on this.

[English]

The Chair: I have, indeed, and I also have an obligation to listen to points of order.

Mr. Dykstra, I have no problem with Ms. Douglas proceeding in the way she was proceeding.

Part of our study involves detention, whether it's detention of males or females or children. You are talking about the detention of children, and I have no problem with your continuing on in that vein, Ms. Douglas. You may proceed.

Start the clock again.

• (1645)

Ms. Debbie Douglas: Thank you, Mr. Chair.

Mr. Dykstra, when we received the invitation we looked very carefully at the scope of the study, and we made sure that detention and deportation would fit within the scope of the study. That is why we have chosen to speak to these two issues this afternoon.

In terms of the children, it has been well documented that the incarceration of anyone, but particularly children, has a detrimental effect. The front line workers in OCASI's member agencies often speak to this.

Many of those in detention are coming from traumatizing situations, and being detained retraumatizes them. We believe that the trauma done to children is deeply troubling, and is something that will have long-term effects.

While statistics show that the majority of those who are detained are let go within about 20 days, a significant number of people are detained for much longer. The longer they are held, the worse they are affected, and the greater difficulty they have in adjusting to life outside of detention.

Detention is an expensive proposition for the government, in terms of the damage it does to human beings and the long-term health and social costs, but also in terms of economic costs, such as the costs of building and maintaining detention facilities around the country. We anticipate that with the implementation of Bill C-31 we will see those numbers increasing.

I've said all of this because I want to talk about alternatives to detention.

I, too, attended the bilateral meeting that was held a couple of weeks ago, which was co-hosted by the Canadian branch of UNHCR as well as the U.S. branch of UNHCR. Both Citizenship and Immigration and CBSA presented, along with their colleagues from Australia, the U.S., and Sweden. What was surprising to those who were representing Canada there is that we seem to be way behind in terms of any formal program that looks at alternatives to detention.

You heard from the previous witness that Australia in particular has programs where they've built in conditions that address issues of security. We're not talking about looking at alternatives to detention that would allow, for example, war criminals to get out of detention, but about paying particular attention to those who are at low risk, those who are vulnerable, for example, pregnant woman or people in the deportation stream who are ready to go home and have no need to be in detention.

Here in Canada the only program we are able to point to as an example is the Toronto bail program. It's certainly something we can build on. Australia works very closely with the Red Cross, but also with other civil society organizations and NGOs. They have set up quite extensive and effective programs where those who do not belong in detention and are going through the process, either for ID purposes or deportation purposes, are able to live in the community until such time as they are removed from the country. We believe—and they have testified to the fact—that this is certainly more humane and cost-effective. Compliance is in the 90th percentile.

It is certainly something I'm strongly recommending. The time has come for us as a country to look at a national formal alternative to detention program. I would love to have a conversation about that when I'm finished.

Before my time is up, I also want to talk about the second point, which is the impact of the Faster Removal of Foreign Criminals Act. My concerns are based on two factors. First—

Mr. Rick Dykstra: This has no relevance whatsoever.

The Chair: The government is itching to talk about that. We will be holding hearings on Bill C-43, which the House of Commons is going to vote on tomorrow. This committee will be studying that bill.

It does involve security, but I don't think we should hear that specific topic yet. You can come another time and make a presentation then.

•(1650)

Mr. Rick Dykstra: I had a feeling she would—

The Chair: Try to stay away from Bill C-43, because we will be getting that in another hearing.

Ms. Debbie Douglas: Let me finish then by talking about security in terms of the impact minimum sentencing will have on those who

have grown up in Canada who might find themselves in situations, often because of petty crime, where because of the sentence that has been handed down, they may be seen as someone who should be removed from Canada.

That is certainly a concern for us for people who are by all intents and purposes Canadian. They've grown up here. They have very little, if any, attachment to another country, and for whatever reason they have not become a Canadian citizen. There are many reasons for this, including family breakdown, and the fact that some children become wards of the state. Unfortunately, it is only now that many of our provincial organizations are starting to pay attention to immigration status and issues of citizenship, whereby many of these people, in particular, young men from racialized communities, and in our case young black men, are finding themselves headed toward deportation to countries where they have no connections because they are deemed to be a security risk. This certainly is something the committee should be taking into account when looking at security measures. We need to ensure we are not punishing everyone because we were trying to secure our borders, and those who for all intents and purposes should be Canadians are being expelled from our country.

The Chair: Thank you, Ms. Douglas.

Mr. Grant, good afternoon again. You have up to ten minutes to make a presentation to the committee.

Mr. Angus Grant: Thank you. Can you hear me?

The Chair: Yes we can, sir. They're all saying yes.

Mr. Angus Grant: Okay.

Thank you, members of the committee, for inviting me today. I'm honoured to take part in the conversation you are having, which is an important one.

In the context of your discussion on security in Canada's immigration system, I want to address the specific issue of how security threats are dealt with in the immigration section, specifically under section 34 of the IRPA.

I am a lawyer, as the chair mentioned, and while I still have a small practice, I'm devoting my time right now mostly to doctoral studies on precisely this topic, on the application of security provisions both in Canada and in other jurisdictions. I've recently published a paper on the topic in the *Georgetown Immigration Law Journal*.

I want to begin by telling a story, which perhaps many members of the committee have heard, about Habtom Kibraeb, an individual in Halifax, who on a winter day in February 2010 walked to a car and committed suicide. It was a tragic event. It saddened many people in the Halifax community.

What I want to talk about with respect to Mr. Kibraeb is that prior to coming to Canada, he had taken part in the independence movement of the Eritrean people in their efforts to create their own country and separate from the highly oppressive regime in Ethiopia.

The efforts he took part in were universally recognized as being for human rights and a democratic purpose. In fact, Canada was one of the first countries to recognize the legitimacy of the Eritrean liberation movement, and we opened up an embassy in the new Eritrean state very shortly after it was created.

There was no talk at the time the independence movement was being carried out about violations of human rights. In fact, it was the opposite. The struggle was intended to create a more positive human rights situation for the Eritrean people.

Fast forward 20 years, and Mr. Kibraeb was in grave danger in his home country, so he came to Canada. After he did, he was found by Canadian immigration authorities to be a terrorist threat. He was found, under section 34, to be inadmissible to Canada.

This was not a question of danger to Canada and not a question of the security of our borders, and it should not be portrayed as such. Nevertheless, he was captured under the rubric of section 34, which is about security. No one ever alleged that he was a danger to Canadians or Canada; it was all about the activities he had taken part in and the movement he had supported, as I said, some 20 years earlier.

Please don't take what I am saying to suggest that Canadian immigration authorities or officials are responsible for the tragic death of Mr. Kibraeb. What I want to talk about today, and what the story really illustrates, is that when immigration security decisions are made in a way that captures the wrong people, it ruins their lives. This happened with Mr. Kibraeb, but I've seen it personally happen to many individuals. This is what I want to talk about today.

The process prevents people who otherwise can't return to their country—and everybody recognizes this because of the threat they face in their country—from working in Canada. It forces them to go on social assistance. It cuts them off from any health care benefits they may have had. Most importantly, it forces them to live in constant fear that they are going to be returned to a country where they know they will be killed. It forces them to face the prospect that they will be wrenched from their family members, many of whom are here with them and not subject to the inadmissibility proceedings. For all family members involved, this is obviously a wrenching situation.

It's simply an incontrovertible fact that the inadmissibility provisions under section 34 capture a wide swath of individuals beyond those who may pose a security threat to Canada. The provisions of section 34 are clear. The plain wording captures any member of the African National Congress. In fact, we have seen that, and efforts are being made to obtain a waiver for ANC members. Also, because of the plain wording of the provision, any member of the U.S. armed forces is categorically caught.

Members should know the wording of section 34, but I'll repeat it. It is that anyone who has engaged in or instigated "the subversion by force of any government" is categorically inadmissible to Canada.

What happens in these situations? Discretionary decisions are made to let in some people and not let in others, to kick out some people and not kick out others.

●(1655)

I find this process to be fascinating and troubling because of the way it plays out very frequently.

The fact of the matter is that the way the inadmissibility provision under section 34 has been interpreted, there is no temporal dimension to it. It applies to anyone who has been affiliated with an organization that has sought to subvert a government, whether that government was a repressive one or a democratic one. For example, someone who today joined a party or an organization which a hundred years ago sought to subvert another government would nevertheless, in the plain wording of the act, be inadmissible.

As I said, the crux is that these fundamental decisions that are being made about the security of our country and the lives of individuals who may have a risk to their lives back home are discretionary in nature.

I want to propose three things that this committee should take into account in looking at these factors and discretionary decisions.

First of all, I think it is absolutely incumbent on this committee to propose to Parliament that broad waivers are afforded to the classes of individuals, such as the African National Congress, we know pose no threat to the Canadian public but who may have participated in events that put them on the wrong side of section 34.

This has been done in the United States. The United States has a waiver for individuals who belong to organizations that are not terrorist organizations and do not pose a threat to the United States, but who, in the same way in the United States, have run afoul of the terrorism legislation in immigration law.

Secretary Napolitano in August issued a broad waiver of this variety, so that anyone who was a member of one of these non-concerning organizations does not have to worry about being sent back to persecution and potential torture because of their involvement in one of these organizations.

Second, we need to do a better job of training individuals who make these discretionary decisions about what poses a threat to Canadian national security and what doesn't. We need to do a better job of training them as to the complexities that arise when people come to Canada from conflict situations all over the world.

It's very easy to cast the net broadly, but it's much more difficult and much more important to bring that net in, in a way that doesn't capture people who all of us would agree do not pose a threat to Canada. This could be done in part through this broad waiver scenario and in part through other specific training about what kinds of decisions should be made and who is and who is not a threat. That could be improved on, and I could go into more detail on that.

Finally, the waiver provision under subsection 34(2) would be changed somewhat under Bill C-43. I won't tread on Bill C-43 territory, but the provision remains in the new legislation, albeit somewhat changed.

I am firmly of the view that this decision should not be made by the minister. It's currently, and always has been, in the minister's hands, but I would urge the committee to consider a suggestion to change the process. I would argue that no minister, Conservative or Liberal, has probably ever enjoyed or done a particularly good job of making these waiver decisions. They are inherently difficult for a politician to make. They have to worry about the prospect of providing a waiver to someone who has been caught in the terrorism legislation.

Also, the backlog of decisions under subsection 34(2) is simply an abomination. The waiting times are up to 10 years for people whose lives are in limbo. There is a lot of social science evidence to suggest that the waiting time that people face on immigration decisions can amount to a larger torture than people experienced in their home countries. To have to wait 10 years for these decisions, to be perfectly frank, is abhorrent.

I'll stop my comments there. I look forward to a larger conversation about these issues.

• (1700)

The Chair: Thank you very much, Mr. Grant and Ms. Douglas. You've both given excellent presentations.

We do have questions.

Mr. Opitz.

Mr. Ted Opitz: Mr. Grant, I'd like to know how you know that somebody does or does not pose a threat just based on association with a particular group. How do you determine that on your own?

Mr. Angus Grant: I can tell you that in many inadmissibility hearings I've had with CBSA officers, that has not been a topic of conversation. I think everybody acknowledges—the board charged with making the decision, the minister's counsel in charge of prosecuting the decision, and the defence—that no one says there is a threat to Canadians. In fact, the matter that has led to this person coming before an inadmissibility referral or decision had nothing to do with Canada or any threat posed to Canada.

I'm speaking mostly about individuals where it is not controversial. There are many of these individuals. It's not a small group. It's not an isolated incident when this happens.

The fact is that the breadth of the provision captures people who it's uncontroversial they pose no threat.

Mr. Ted Opitz: I would say that may be in your experience, but oftentimes there are people who do pose a threat, and this is one of the things we're talking about. It's the security. It certainly is an evolving thing in this country and others and we are trying to improve it as best we can, given that time moves forward and there are new technologies that we will try to put in place.

As my colleague pointed out earlier, Mahmoud Mohammad Issa Mohammad, who in fact did carry out terrorist acts for the Popular Front for the Liberation of Palestine, has been here since 1987 and has been launching a series of judicial appeals in a process that has cost Canadian taxpayers at this point about \$3 million. Has legal aid, in your opinion, ever spent \$3 million to defend a serious criminal?

What's the most, in your experience, that has been spent in such a situation?

Mr. Angus Grant: I couldn't hear the end of your question, but I did hear the beginning of it.

Mr. Ted Opitz: The end of the question is that this fellow has cost Canadian taxpayers \$3 million, and he's a guy with a terrorist past with the Popular Front for the Liberation of Palestine. Legal aid has spent \$3 million to defend this guy, who has clear links to terrorism.

Do you think that this is an appropriate cost? In your experience, have you ever come across that kind of cost to defend somebody in his category?

Mr. Angus Grant: I'll answer the second question first. No, that would be an extreme outlier of a decision.

My answer to the first part would be a question for you, as to whether or not you believe in the presumption of innocence. If you do, you need to have a process to actually test whether an individual has engaged in these kinds of acts. If you don't, well then I'll leave that to you. But I personally do believe in the presumption of innocence and in the rule of law, and in a process that can fairly and efficiently ascertain whether or not someone is such a threat.

As I said throughout my comments—

• (1705)

Mr. Ted Opitz: That's okay, sir. Because I have limited time, I'm going to carry on.

That's 25 years of presumption of innocence, and even though that's still before our courts, it's carrying on.

What do you know about biometrics?

Mr. Angus Grant: My expertise is not in biometrics, and that's not what I'm here today to talk about.

Mr. Ted Opitz: Do you understand the concept of biometrics, such as, photographs, face recognition, fingerprints, something that will help determine a person's identity? Do you think that's the way to go conceptually?

Mr. Angus Grant: I do know that photographs [*Inaudible—Editor*]

Mr. Ted Opitz: Okay, but do you think that kind of implemented program is the way to go to identify people definitively?

Mr. Angus Grant: I'm not going to comment on the biometric issue. Again, that's not why I'm appearing today. It's not my focus. It's not the focus of my legal practice; it's not the focus of my doctoral work.

Mr. Ted Opitz: Okay.

Ms. Douglas, I'm going to address a similar question to you, because you've met that.

How do you determine who should be in detention or not? Oftentimes people have come to this country and have not cooperated in identifying themselves. We don't know who they are. We don't know where their true intentions lie. Until we can de facto identify these people, why should we let them out to be around your friends and neighbours? Would you keep somebody in your own home, with your own kids, under those circumstances?

Ms. Debbie Douglas: That's why we're recommending that we begin a plan of setting up a formal alternative program. What we will do, then, is identify the conditions that people must meet, under which—

Mr. Ted Opitz: But, madam, you're not answering my questions.

Ms. Debbie Douglas: Yes, with all due respect, yes—

Mr. Ted Opitz: Okay, I'll give you another minute.

The Chair: Did I see a point of order? Stop the clock on a point of order.

[*Translation*]

Mrs. Sadia Groguhé: Mr. Chair, I find this very painful. We should at least let the witnesses finish their sentences before we react. I think it is important, and it is the minimum amount of respect we should show them.

[*English*]

Mr. Ted Opitz: Mr. Chair, given the limited amount of time I have, if I feel the witness is not fully answering the question I've asked, then I think I do have a right, politely and respectfully, to redirect that witness.

The Chair: I agree. We've all done that, but she was in the middle of an answer.

Mr. Ted Opitz: I did tell her to carry on and finish her answer to see if it met my—

The Chair: Let's let her finish her answer.

Go ahead, Ms. Douglas.

Ms. Debbie Douglas: Thank you, Mr. Chair.

I don't presume to know who is innocent or guilty of whatever, but that is why we believe it's important to build a formal program that is an alternative to detention and that will set out the conditions by which we measure those who are at minimum risk, those who belong to vulnerable populations, those who will be compliant with whatever conditions we as a country believe need to be in place for our security.

I don't think—and you've heard it from many witnesses—that detention is necessarily the place for everyone who comes into our country. We've talked about children, about women with vulnerabilities, and we've talked to the obvious. We've talked about pregnant women and whether they should be kept in detention for 20 days or 10 days.

If we have these limits that we've set, if we have testing processes in place to ensure that folks meet those conditions, and if we have a program that's set up, including the bail programs in our various cities across the country and including NGOs that are willing to work with CBSA and other security forces to ensure that those released into their care are complying with the conditions put in place, then I think that's the better way to go.

Mr. Ted Opitz: You're making my point, because you need to establish the identity of the individual before you can actually apply any of those conditions. If you don't know who they are, you can't let them out in the general public and you can't do all these other things.

• (1710)

Ms. Debbie Douglas: We're not arguing that with you.

Mr. Ted Opitz: Yes, but madam—

The Chair: I'm going to have to argue with both of you. Your time has expired. I'm very sorry.

Go ahead, Mr. Chisholm.

Mr. Robert Chisholm: Thank you very much, Mr. Chairman.

I'd like to start with Mr. Grant. I was very interested in your testimony as it related to the application of the security provisions.

Your first point was the whole issue of discretion and the problems there, particularly in relation to the issue of the determination of a class of people. You mentioned that in the U.S. a class waiver was in fact introduced this year. Would you please expand a bit more on that?

Mr. Angus Grant: Sure. Thank you very much.

This actually continues on with the questions from Mr. Opitz that I didn't get to finish my answer to, which is that, in fact, as you, Mr. Chisholm, have referred to, it is possible to identify individuals who are of concern and who are not of concern. This is precisely what the Department of Homeland Security has done in the United States.

In the United States they have tiers of organizations: tier I organizations, tier II organizations, and tier III organizations. Loosely speaking, they relate to the level of threat that they may pose. A tier I organization would be al-Qaeda. Tier III organizations would be a very different variety.

The waiver that has been provided across the board is to tier III organizations, and there are some exceptions to it. Some of the exceptions are, for instance, where there is evidence specifically that someone has turned to violence as a means of furthering their goals or where someone who belonged to a tier III organization also may have potentially, in a different capacity, targeted a U.S. interest or an American person.

There are exceptions to it, but generally speaking and across the board, it's for people who belong to these organizations. The Department of Homeland Security has done its homework and in interaction with various stakeholders has created this list of organizations that generally relate to the example I gave. They are people who belonged to organizations that were supporting contained, regional, domestic, or internal conflicts that did not in any way touch upon the security of the United States.

At a minimum, this is what I am suggesting the committee look at seriously, because frankly, it's a waste of resources to deal with these individuals. An across-the-board waiver of people who simply are not any concern to us is a first good step to bring us in line with the United States, which is not generally known as being less concerned about security than Canada.

Mr. Robert Chisholm: Thank you, Mr. Grant.

You mentioned an example of someone who was identified as not being a threat and yet fell within one of these classes that you referred to. You said that everybody—counsel for the minister, the defence, the officials with the government—agreed that the person wasn't going to be a threat, but they had to follow the provisions of the legislation. How was that resolved? Would the person have been deported?

Mr. Angus Grant: I didn't quite understand the question. Are you talking about people who would belong to one of these tier III organizations but who ran afoul of the other provisions?

Mr. Robert Chisholm: No, you referred to the ANC being classed as a terrorist organization, and yet everybody agreed, and this was an example you gave, that the person wasn't a threat to Canada or to Canadians and yet there was no opportunity to use discretion within that setting. What was the outcome in that situation?

Mr. Angus Grant: Until 2008 Nelson Mandela required a specific waiver to go to the United States. It was an absurd situation.

We had precisely the same situation in Canada. In fact, I think Minister Kenney spoke to this issue quite recently, and Mr. Cotler introduced a motion in Parliament to create a specific regulation to provide a waiver essentially to ANC members. What I'm saying is the ANC provides a very helpful window of analysis into the problem, because everybody knows the ANC, everybody knows its noble aspirations, and everybody knows that ANC members don't pose a threat to Canada. The exact same situation with no differences is replicated in many different countries around the world, and historically in many different conflicts that have arisen. What I'm suggesting is that we come up with some kind of process to identify this systematically and strategically. This can be done. As I said, we have a precedent to do it.

I'm not sure that answers your question, but in the United States the ANC would have been a tier III organization.

• (1715)

Mr. Robert Chisholm: That's helpful. Thank you.

How much time do I have, Mr. Chairman?

The Chair: You have a minute.

Mr. Robert Chisholm: This is for both of you.

The issue of biometrics has come up. I understand, in reviewing the minutes from the last meeting, that Dr. Benjamin Muller, in his presentation, noted that a five-year study released in September by the National Research Council in Washington labelled biometrics as "inherently fallible": they only provide probabilistic results and not yes and no answers."

We've had other witnesses talk to the committee about inherent flaws in profiling.

Ms. Douglas, you've been asked this question. Would you share with the committee your views on the direction of the government as it relates to profiling and biometrics?

Ms. Debbie Douglas: I don't pretend to have expertise in biometrics, but with every new tool that our government explores, I often give a caution to pay attention that particular groups not be profiled unnecessarily, that we have systems in place. This is something someone asked me the other day. For example, if immigrants or asylum seekers, regardless of which immigration class they are coming in under, had to go through a biometric system and eventually they became Canadian citizens, would we not be creating two-tier citizenship? After all, those of us who were born in Canada would not have gone through a biometric system and that information wouldn't exist.

The Chair: We have to move on, Ms. Douglas. Thank you.

Mr. Andrews.

Mr. Scott Andrews: As both of our witnesses would realize, under the current system, people can be detained if they can't establish their identity, if they constitute danger, or if they are a flight risk. I am just curious. Could both of our witnesses tell us if they would suggest any changes to these? Ms. Douglas, you mentioned youth in your testimony. How would they apply to children?

Ms. Debbie Douglas: When we look at the examples from our allies around the world who have alternative to detention programs, they do a test based on vulnerability and therefore risk.

For example, women who are travelling with their children are often not detained when there is a reasonable belief that they do not pose a threat. Often they are put in alternative shelters while their identity documents are being worked out.

Sometimes folks come from countries where it is not possible to determine their identities. We do have failed states and people make their way to our country. The question then becomes, do you keep those people in detention indefinitely, or do you take the reasonable risk that they are not a threat to us and place them in more appropriate shelter or living arrangements? That is certainly something we could take a look at.

What was interesting when we were having this conversation in Buffalo with our U.S. counterparts is they said that over the last four years Homeland Security made an intentional decision to switch their focus and resources around issues of criminality. Instead of going after folks for immigration purposes, for ID purposes, and detaining them, they put all their resources into going after those who had committed crimes, whom they had deported but who had come back into the country and were continuing to commit crimes. Then they worked with, unfortunately in the United States it's for-profit organizations, to create an alternative to the other folks whom they were dealing with on immigration and ID issues only.

I think there's a conversation to be had here in Canada in terms of what we should be doing other than detaining everyone until we determine their identity or because they've come in through what we deem to be irregular arrivals or whatever the implementation of Bill C-31 is going to bring.

• (1720)

Mr. Scott Andrews: Mr. Grant, we know that people can be detained for three reasons before they risk being deported. Do you recommend any grounds on which these rules be changed or are the current grounds good enough for deportation?

Mr. Angus Grant: In my experience as a lawyer representing individuals, the vast majority of people whom I've represented have been detained for identity purposes. I understand the logic behind that and I wouldn't argue with the logic behind it. However, sometimes I would argue with the way in which it is used by immigration decision-makers, because there are times when people come from situations that are inherently virtually impossible to come with identification documents that are satisfactory for the immigration division.

The only thing I would encourage in this respect is for the committee to urge Parliament and decision-makers to think about creative ways of confirming identity. There are creative ways out there that immigration division members and I have fashioned to allow someone to be released, to recognize it is in no one's interest to detain anyone, to come up with these creative ways, such as several affidavits confirming identity in lieu of formal identity documents, and have the means for letting people out earlier than they are being let out right now.

I'll leave it at that.

The Chair: Thank you.

Mr. Weston.

Mr. John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country, CPC): I was really glad to hear what you had to say, Ms. Douglas. I'm also someone who cares a lot about human rights. We probably have a lot in common. I created the Canadian Constitution Foundation, which is there to stand up for Canadian individuals when governments are pushing them around.

I think if we ask the wrong question, we may end up with the wrong answer. If we ask whether we have concerns about people who are wrongly detained, I would say yes, I regret that there are people who are detained who ultimately should not have been detained. If instead we ask whether we should close down the whole refugee system because we can't identify people, or because we don't have the security measures in place, then obviously, we'd be denying all those people who are truly being persecuted in their far-off lands. You and I and everyone else in the room would say that this was a wrong decision.

I think the parallel, and I'll get Mr. Grant to comment on this in a second, is whether we abandon our criminal justice system for fear of a wrongful conviction. We're humans, and we have imperfect human institutions, and there will be mistakes, no matter what we do. But most people would say that we still need a criminal justice system. Then we work progressively to improve its accuracy.

What I understand we're doing by looking at things like biometrics is improving the accuracy of our decisions so that we are, in fact, going to be detaining the right people. We will still detain people who ought ultimately not to have been detained, but that's the price for having the refugee system, isn't it?

I looked back at your comments in April when you were discussing Bill C-31. You said that you were concerned about the characterization of refugees and that the Canadian people may develop an increasingly negative perception of refugees. Wouldn't it be true that they would be even more negative if we didn't have security provisions in place to give them confidence that we can continue our refugee program?

Could you comment on that?

• (1725)

Ms. Debbie Douglas: Absolutely, and thank you for the question.

I think that all of us who have presented here as witnesses, even though we say that Canada should not be concerned about our security as a nation, absolutely we should, but what I am saying, though, is that as we build in these security measures, we must be

cautious that we put in place conditions that will minimize the harm we do to the vast majority of people. It means that when we're looking at detention, we pay attention to things such as profiling and the kinds of groups we're going after because of race, as an example.

We pay attention to the fact that we want to know the people who are coming into the country. Is keeping a pregnant woman and her child in detention the only way to determine their identities, or is there another way to have them live within an alternative setting and still go through the process? We have determined that they pose a minimum risk, whether it be a risk of flight or a risk of security.

It is not all or nothing, as you just said. Do we protect our systems? Do we protect ourselves as a nation? Do we ensure that we have security measures in place that will continue to protect us and continue to protect our systems, including our immigration and refugee determination system? Absolutely. At the same time, should we ensure that we are building systems that minimize the harm that happens to a vast majority of people? Absolutely. Those things are not mutually exclusive, I would suggest.

Mr. John Weston: I don't know the facilities that you know well. You're from Toronto, I believe.

Ms. Debbie Douglas: Yes, I am.

Mr. John Weston: I visited the facilities in Vancouver as part of our study, and I found them to be very humane. They are built to attend to the function of detaining people while their identities are, in fact, being confirmed.

Again, I am mindful of the fact that if our populace loses confidence in what we're doing, they push elected officials to start narrowing. We believe that we have the most generous refugee program in the world per capita. We want to make sure that we stand behind that banner and let it fly very proudly.

Mr. Grant, we share a profession. I heard you say just a minute ago that we need to improve the tools at the disposal of border security people and to improve communication among the agencies involved. You're not an expert in biometrics, you said, but don't you agree that being able to confirm a person's identity through unerring measures, such as fingerprints and iris scans, gives them the tools to do exactly what you were prescribing?

Mr. Angus Grant: Again, I don't really want to speak to biometrics because it's not my area of expertise. I'll say a couple of things, though, because I've been asked a question twice now, so I understand from the committee that there is interest in this issue.

The first thing I'll say is that I think courts and lawyers are and should always be somewhat skeptical of new scientific approaches that are presented as being utterly infallible, because if we've learned anything, it's that very little in this world is infallible. If we could be 100% sure that x would provide y , then it's all very simple. The problem is you can rarely do that. I'll leave my comments in that respect at that.

I'm sorry, did you want to say something?

Mr. John Weston: Just give me a second. If you don't mind—

The Chair: I don't know whether you have a second.

Mr. John Weston: We're not aiming at perfection, because should we do so we'd be paralyzed. We'd have to close down all of our programs. We're aiming at improving progressively all the time so that we can continue the refugee program. You're right in that we shouldn't say it's infallible, but it's certainly going to be a better security provision and enable us to prevent people from unfairly claiming welfare and other programs in Canada once they do arrive here.

• (1730)

The Chair: Thank you, Mr. Weston.

Mr. Benskin, you have a minute.

Mr. Tyrone Benskin: Great, wonderful.

I want to touch on the human factor. We've been talking a lot about detention and how it's relevant to the security issue. I think the security issue we're talking about, or that we should be talking about if we're not, is the overall security. It's one thing to have border security, but it's another thing to have social and community security.

I'll ask either one of you if you agree. When you treat people in a certain manner, when people come to this country and are detained,

it sets off a chain reaction. These young people grow up feeling unwanted and persecuted in this country, and therefore they take that into the community and act out, to oversimplify things.

Do you think that would be an accurate assessment of what detention can do?

Ms. Debbie Douglas: It may have been Ms. Jeanes who talked about this earlier, in terms of the medium- or long-term effects of trauma on children who have been detained, and whether or not there is a direct causal relationship between deviant behaviour and detention at an early age. I'm not a psychologist, so I wouldn't know that, but we do know a sense of alienation often happens when people are kept outside of a society into which they are trying to integrate.

The Chair: Mr. Grant, Ms. Douglas, our time has expired. I thank both of you for coming. You've raised some issues which I know the committee will be pleased to think about.

This meeting is adjourned.

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