



BILL C-11

A just and fair bill for female survivors
of sexual assault and violence
REALLY?

The Mouvement contre le viol et l'inceste submits this position paper as the voice of women who have survived sexual assault and violence. Their voices tell us of sexual crimes often trivialized, minimized and discredited by the IRB. For this bill to bring safety, justice and equity to women who have survived sexual assault, it must incorporate clear provisions for the IRB to:

- 1. Give credibility to the women's experience;*
- 2. Deem sexual assault and violence and their devastating effects on the lives of women and their children a human rights crime;*
- 3. Use a gender-specific analysis matrix when it studies the safety of women's countries of origin.*

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A just and fair bill for female survivors of sexual assault and violence REALLY?

Mouvement contre le viol et l'inceste

The Mouvement contre le viol et l'inceste is a community support centre that combats sexual assault. For the past 35 years, our centre has been working with adolescents and women who have survived sexual assault and violence.

Created by women of many ethnocultural backgrounds and diverse sexual orientations, the centre has been working with immigrant and refugee women for many years. We work toward social change by defending women's rights and combating and taking action against discrimination and oppression. One of the most devastating effects of the intertwining and intensification of discrimination and oppression is the sexual assaults and violence inflicted on women, adolescents and children.

Why this position paper?

In our frequent appearances before immigration tribunals with many women at various stages of their application for refugee status, it is quite unusual to hear from IRB members who have taken into account the full gravity of the women's own situation and the situation in their countries of origin regarding sexual assault and violence. These experiences have led us to submit this paper in the hope that this bill, if passed, will provide greater safety, justice, and equity to the women, as well as greater respect for their rights.

We would like to express our disappointment regarding the consultation method surrounding this bill. The dissemination of clearer and more accurate information would have allowed many groups, especially those that work on the front lines with refugees, to submit position papers and be heard.

1. Sexual assault and violence: human rights issues

Devastating effects on the lives of women.....and yet the question that always crops up: is it true?

Sexual assault and violence can happen in the country of origin, during the migratory trip or when the women arrive in Canada. Regardless of when or where **this crime** took place, the woman's word is often called into question. For example, we have heard and read the following arguments:

[translation] "We were not present at the time of the attack; we do not know for certain if it occurred."

[translation] "The doctors talk about the state of her health, but there is no evidence linking it to sexual assault."

"If this is true, why didn't the woman disclose it when she submitted the application?"

In 35 years of ongoing work with sexual assault survivors, we have never directly witnessed lies and made-up stories. Instead, we witness silence, omissions, doubts and facts explained differently each time, because each time the women are faced with new memories.

This has NOTHING to do with lies or a desire to deceive. This is a known and recognized coping strategy used to survive the horror, shame, humiliation and fear of judgment. Throughout our interventions with women, we observe these factors when the time comes to tell us about their experience. We have learned that **time and a relationship of trust are two factors needed for women to speak out.**

For 35 years, the Mouvement contre le viol et l'inceste and all the other support centres in Quebec and Canada have been fighting for women's credibility and for their testimony as survivors of the crime of sexual assault to be allowed and taken as seriously as the facts demand and deserve.

Why does the IRB frequently question the word of women applying for refugee status?

How does the IRB explain this scepticism when it involves an action denounced and considered unacceptable for Canadian women?

Necessary links between experience and state of health

For 35 years, the Mouvement contre le viol et l'inceste has provided support to women who have survived sexual assault and violence. Although we have never had occasion to directly witness the facts reported by survivors, their impact on the women's health is undeniable and systematic.

Specifically and very briefly, we want to discuss the fate of women who have survived sexual assault and violence in the context of war or armed conflict, in which they are objectified. At our centre, we receive women from Rwanda and Congo, for example, who were subjected to mass rapes aimed at their extermination as an ethnic group and as procreators. The rape of the enemy's women and girls is also a strategy of attack, to destroy any resistance or opposition to the group in power. In all cases, the criminals' intent was not just to injure the women, but also to annihilate them, to remove any shred of their humanity. Their health will be forever compromised as a result of the physical and psychological aftermath.

In many women, we observe a state of "total pain" resulting from the annihilation of their BEING. This confirms to us a serious state of distress linked to their experience.

Days, months.....years of silence

Many women do not report the sexual assaults suffered. As the United Nations High Commissioner for Refugees explains, ***"Victims of sexual violence might not be forthcoming with this information at the outset and this reluctance to report sexual violence may have significant effects on refugee status determination. Experience has clearly shown that incidents may not come to light until refugees have been resettled and seek therapy which may be months or even years later. Individuals may have contact with many refugee workers without sometimes ever disclosing their experience. Information disclosed later by the victim may be disregarded, and may even be considered to reflect negatively on the credibility of the applicant. Paragraphs 57 through 61 of UNHCR's Guidelines on the Protection of Refugee Women provide guidance."***¹

¹ <http://helid.desastres.net/en/d/Jh0198e/>

When female refugees do not report sexual assaults suffered, they are doing just what many Canadian women do. For example, in Quebec: [translation] ***"In 2008-2009, nearly half of the women interviewed in the CALACS waited between 6 and 12 years before seeking help. Sexual assault remains a major social taboo. Victims often experience shame and guilt because of the prevailing myths and prejudices about them and about attacks of a sexual nature."***²

Why does Canada expect refugee women to behave differently from many Canadian women, especially given the unsafe context that exists in many countries and is not conducive to disclosure?

Could we call that discrimination?

We have rarely heard the IRB say that sexual assault is at the core of its analyses, with all the horror that it has inflicted upon the lives of the women and their families. Minimizing, forgetting, trivializing have often been the lot of survivors. Even in recent events as striking as the Rwandan genocide, it took the determination and struggle of international women's coalitions to have rape redefined no longer in terms solely of the attack on dignity and honour, but also of the physical and psychological effects. The first major step was the recognition, in 1986, of rape as a form of torture by the Special Rapporteur on torture.³

Recommendations

That Bill C-11 include the obligation for decisions made by the people responsible for determining the status of female survivors of sexual assault and violence to:

- 1** Follow the recommendations of the United Nations High Commissioner for Refugees:⁴
 - *Recommends that in procedures for the determination of refugee status, asylum-seekers who may have suffered sexual violence be treated with particular sensitivity;*

Executive Committee Conclusion No. 73 (XLIV) (1993), paragraph (g), on Refugee Protection and Sexual Violence

- In this context, ***it is essential that status determination officers be conscious of possible reactions to trauma (see, for instance 3.9 (a) Common Psychological Reactions, page 45) and be familiar with culturally different patterns of behaviour and language. When an asylum applicant says she has been "badly treated", this may be an euphemism for rape. Training of the relevant officials is therefore highly recommended.***

Executive Committee Conclusion No. 73 (XLIV) (1993), paragraph (j), on Refugee Protection and Sexual Violence [translator's note: this quotation actually comes from section 4.3 of Sexual Violence against Refugees - Guidelines on Prevention and Response (UNHCR; 1995; 106 pp.)]

² Regroupement québécois des centres d'aide et de lutte contre les agressions sexuelles: http://www.rqcalacs.qc.ca/public/communiqu%C3%A9/Denoncer_ce_n_est_pas_la_seule_fa%C3%A7on_d'aider

³ Nduwimana, Françoise (1999). "Le viol de guerre : la riposte des femmes," Relations, November (655), p. 269-272.

⁴ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: SEXUAL VIOLENCE AGAINST REFUGEES – GUIDELINES ON PREVENTION AND RESPONSE. <http://helid.desastres.net/en/d/Jh0198e/>

2 Follow UN Resolution 1820:⁵

- “sexual violence ... may in some cases persist after the cessation of hostilities”;
- “rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide...”

2. Country of origin designation. Clause 12, adding new subsection 109.1 of the IRPA

Safe countries for female sexual assault and violence survivors. Really?

Bill C-11 would give the Minister the power to designate countries whose nationals would not have access to an appeal process for refugee claims. The Citizenship and Immigration Canada Backgrounder mentions the expression “safe country of origin,” but Bill C-11 does not define the word “safe” and contains no criteria on this matter. The bill would also authorize the Minister to assign this kind of designation to a portion of a country or a category of its nationals.

The safety of each country is an interdependent concept because it is closely linked to the political positions and actions of other countries. This relationship involves special issues for North-South relations. To this end, the Mouvement contre l’inceste et le viol questions Canada’s responsibility, its policies and its actions, including its military commitments and the machinations of mining and petroleum companies or any other Canadian organization with a presence in countries of origin for female refugees.

What is Canada’s responsibility when the lives of women in other countries are devastated by sexual assault and violence?

Many women who seek refugee protection because of sexual assault or violence are dealing with gender-specific problems that can include threats to their safety, even if these problems do not correspond specifically to the narrow legal definition of what constitutes persecution or a risk under Canadian and international law.

Sexual assault and violence, a form of torture in so-called safe countries

The Convention Against Torture refers to torture when it is inflicted by nations. However, many paramilitary groups, armed groups such as the “Maras,” and guerrillas of diverse allegiances associated with organized crime and drug trafficking, often consist of former police and military officers. These criminal groups act with complete impunity and often in collusion with local authorities.

For these groups, the systematic and repetitive rape of women is a strategy for individual and collective destruction, an exemplary punishment strategy designed to annihilate individuals and communities, to deprive them of any opportunity for protest

⁵ « L’ONU fait du viol un crime contre l’humanité » [The UN makes rape a crime against humanity]. <http://www.lepoint.fr/actualites-monde/2008-06-20/l-onu-fait-du-viol-un-crime-contre-l-humanite/924/0/254740>

In this context, rape and sexual assault are a form of torture of which the goal according to the Convention Against Torture ⁶ is as follows:

*“torture means any act by which severe pain or **suffering, whether physical or mental,** is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, **punishing him for an act he or a third person has committed** or is suspected of having committed, or **intimidating or coercing him** or a third person...”*

The survivor is no longer the same person as before this experience, because she has been profoundly scarred by it.

Aid workers are in the field every day and have been for many years

In our day-to-day activities, we often find the same arguments used to justify the denial of refugee protection for victims of sexual violence: [translation] “the country where the woman is coming from is a safe country.” These arguments are a far cry from the testimonies given by various sources that have been working in the field for many years. Whether local NGOs, Doctors Without Borders, reports from feminist organizations associated with the World March of Women, our information sources certainly do not corroborate the viewpoints of the people responsible for determining the future of these women. How is that so?

Despite the fact that many countries have signed international agreements, women in those countries live a very different daily reality. The combined effects of racism, sexism, poverty, lesbophobia in some cases, and virtually systematic impunity in cases of sexual assault, create a situation in which survivors rarely report the crimes they have suffered for fear of not being believed, fear of being ostracized by their community, fear of being victimized again by the authorities, who more often than not minimize, deny or even ridicule the experiences of survivors of sexual assault and violence.

Finally, the controversy and strong criticism triggered by application of the safe country of origin principle by the European Union countries are well known. In this respect, the Mouvement contre le viol et l’inceste concurs with the analyses and recommendations presented in the position paper from the Canadian Council for Refugees.

Recommendations

1. Delete the provisions on designated countries of origin.
2. We support the recommendations of the Canadian Council for Refugees on pages 13, 14 and 15 of its position paper.

3. Interview before the Immigration and Refugee Board (IRB): Clause 11(2), replacing subsection 100(4) of the IRPA. Also, clause 20, amending subsection 161(1) of the IRPA with regard to rule-making

According to the CIC Backgrounder: “...individuals who are determined to be eligible to make an asylum claim would meet with a public servant at the IRB within eight days of being referred to the IRB. During this information-gathering interview, information on the claim would be collected, forms properly completed and a hearing scheduled before another public servant at the IRB within 60 days.”

⁶ Adopted and open for signature, ratification and accession by the General Assembly in its 39/46 resolution of 10 December 1984. http://www.dhsantementale.net/cd/tort_intro.php

It would be beneficial for the current waiting times to be shortened given the negative effects of long delays. These delays contribute significantly to the deterioration of the women's mental health, because, being in survival mode, they are unable to focus their energy on the therapy required to rebuild their lives following the violence experienced.

However, this timeframe must take into account several factors that have already been mentioned by other groups, i.e., the difficulty in obtaining papers within a reasonable timeframe. It should be noted that most survivors of sexual assault and violence leave their country of origin without seeking medical attention or reporting the crime to the police. In some cases, several documents are still in the home where the attack occurred and therefore remain inaccessible when the woman leaves.

In Quebec, it was not until April 1, 2006, after years of struggle by women, that the Civil Code added a provision to allow a tenant to terminate her residential lease if her safety or that of a child living with her is threatened as a result of domestic violence on the part of a spouse or a former spouse, or as a result of sexual aggression, even on the part of someone who is neither a spouse or a former spouse.⁷ The woman is accompanied by the police when she later returns to collect her possessions.

How can it be claimed that, in a context of violence, the documents required for refugee claimants can be available without threatening the women's safety?

The timeframe of 60 days to produce documents is completely unrealistic and will penalize women who have fled from sexual violence.

Moreover, when a person flees life-threatening danger, as is the case with many women who come to our centre, how can she be expected to bring with her ALL THE DOCUMENTS AND EVIDENCE of her experience and the violence suffered?

Recommendations

1. The scheduling of hearings must factor in the status of the claim and the specific situation of the refugee claimant.

4 Claims based on humanitarian and compassionate considerations

Claims based on humanitarian and compassionate considerations go through a long process after the refugee claim is rejected. We have noticed that claims made following persecution (conjugal violence, repeated rape, death threats, threats to third parties, especially children) exclude the real grounds for the initial claim and become diluted in the humanitarian claim. Thus, we see many errors in the current immigration system.

⁷ Terminating a residential lease in the event of spousal violence or sexual aggression. Quebec Ministry of Justice. <http://www.justice.gouv.qc.ca/english/publications/generale/bail-a.htm>

Moreover, the reasons cited in many humanitarian and compassionate claims are often related to the health status of the refugee claimant.

It is of the utmost importance to maintain the right of asylum for humanitarian and compassionate reasons. This process factors in the psychological state not only of sexual assault victims, but also of their family. Moreover, claims based on humanitarian and compassionate grounds allow for consideration of the mother's reality and maintenance of the family unit when children have experienced sexual assault.

As we pointed out in the first section, women need time to be able to speak the unspeakable. Furthermore, the words to describe sexual assault may not even exist in some languages.

How can this bill require women seeking asylum to immediately speak of the sexual violence experienced, and moreover in many cases to a male officer?

How can we require a woman who has experienced these horrors to coldly describe them to a public servant responsible for studying her case and shrug off all the taboos around sexual violence?

For all practical purposes, this entails disregarding the trauma that sexual assault survivors experience, trauma that is accompanied by memory loss, confusion (over dates for example), and temporary or permanent incapacity to describe what they experienced.

Recommendations

To process the refugee claims of female survivors of sexual assault and violence justly and fairly:

1. When processing such claims, the IRB must factor in the traumatic experiences undergone by these women;
2. IRB members must be trained on gender-specific analysis;
3. IRB members must factor into their analysis and decisions the actual situation of the women in the various countries of origin.

5 We enthusiastically support

Our position paper sheds specific light solely on the reality of female refugees who have survived sexual assault. With regard to all the issues and concerns raised by Bill C-11, the Mouvement contre le viol et l'inceste supports the position paper submitted by:

- the Canadian Council for Refugees, of which we are a member;
- the Fédération des femmes du Québec.

As for the issues and concerns raised by Bill C-11 with regard to the rights of Lesbian, Gay, Bisexual, Trans and Queer refugees, the Mouvement contre le viol et l'inceste supports the position paper submitted by:

- AGIR: Action for Lesbian, Gay, Trans and Queer Immigrants and Refugees, a group we work with regularly.

Summary of recommendations

Sexual assault and violence: issues, brief overview

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- In this context, **it is essential that status determination officers be conscious of possible reactions to trauma (see, for instance 3.9 (a) Common Psychological Reactions, page 45) and be familiar with culturally different patterns of behaviour and language. The statement by the asylum applicant to have been “badly treated” may be an euphemism for rape. Training of the relevant officials is therefore highly recommended.** Executive Committee Conclusion No. 73 (XLIV) (1993), paragraph (j), on Refugee Protection and Sexual Violence [translator’s note: this quotation actually comes from section 4.3 of Sexual Violence against Refugees - Guidelines on Prevention and Response (UNHCR; 1995; 106 pp.)]

2. Follow UN resolution 1820:⁹

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3. Country of origin designation. Clause 12, adding new subsection 109.1 to the IRPA

- Delete the provisions on designated countries of origin
- We support the recommendations of the Canadian Council for Refugees on pages 13, 14 and 15 of its position paper

4. Interviews before the Immigration and Refugee Board (IRB)

- The scheduling of hearings must factor in the status of the claim and the specific situation of the refugee claimant

5. Claims based on humanitarian and compassionate considerations

To process the refugee claims of female survivors of sexual assault and violence justly and fairly:

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- IRB members must be trained on gender-specific analysis;
- IRB members must factor into their analysis and decisions the actual situation of the women in the various countries of origin.

⁸ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: SEXUAL VIOLENCE AGAINST REFUGEES – GUIDELINES ON PREVENTION AND RESPONSE. <http://helid.desastres.net/en/d/Jh0198e/>

⁹ L’ONU fait du viol un crime contre l’humanité. [The UN makes rape a crime of humanity] <http://www.lepoint.fr/actualites-monde/2008-06-20/l-onu-fait-du-viol-un-crime-contre-l-humanite/924/0/254740>