



What Makes a Safe Country and Who Decides?

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Federal immigration minister Jason Kenney has tabled long awaited and sensible reforms to the refugee system.

The reforms are a realistic response to the problems that have existed for some years. Under the proposed reforms, claimants will receive a full hearing from public servant decision-makers assigned to the Immigration and Refugee Board, with an appeals process for some, though not all refused claimants. They promise speed and efficiency and they address the long time frames between the arrival of a refugee and the final disposition of their claim.

The reforms mirror some of the ideas proposed by Peter Showler, the head of the Refugee Forum at the University of Ottawa and the former chair of the Immigrant and Refugee Board. In September 2009, Showler released *Fast Fair and Final* which said a reformed system needs to be based on the following three pillars: a good first decision; a reliable appeal; and the prompt removal of failed claimants.

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The Minister's reforms are responsive to that mandate. Like all potentially good reforms, the devil will be in the details. One such detail is the so-called "safe country list" or the Safe Country of Origin list.

In the proposed system, a claimant who is refused will be able to appeal their first decision to the new Refugee Appeal Division of the Immigration and Refugee Board. However, claimants from those countries which are on the list will not be able to appeal.

Contrary to what some would expect, there is no mention of the word "safe" in the legislation. It is also not a list of all possible countries we imagine to be safe. Instead, it will be a short list of countries from where there is a "significant and sudden refugee flow to Canada." And Canada will be called on to decide whether claims from such source countries should have access to an appeal or not. This decision will have life-altering consequences for claimants.

Some believe that any country with democratic elections should qualify for the list. Others, particularly those with state security perspectives, believe the primary disqualifier should be the threat of state sanctioned or tolerated torture for returnees. And still others believe the primary criterion should be whether the state has the capacity to protect its citizens.

We are in this latter camp. We believe that many countries which have elections and apparently operating democratic systems are unable to protect citizens who are at risk of being persecuted by drug cartels or criminal gangs, by homophobes or political factions, or by other extremist elements in society. The key criterion for being on the list should be the ability of the state to protect its citizens, the first role of the state.

It has been proposed that the Minister will make a decision on which countries are safe or not based on the recommendations he receives from an advisory committee. Like Peter Showler, we believe its members should include people outside of government with human rights expertise. The government so far has said that this committee will consist only of CIC public servants and a UNHCR representative.

Refugees have made great contributions to Canada. The vast majority of them bring enormous drive, energy, intelligence and ability to this country. A reformed system should make it faster for qualified refugees to be accepted, and easier to remove those with inadequate or fraudulent claims. The Minister's reforms seem to meet those objectives and could be strengthened by proper transparency and oversight in the designation of the Safe Country of Origin list.