

NEWS

'Like a criminal': Canada-U.S. asylum agreement has a human cost, refugee says

By SAMANTHA WRIGHT ALLEN (/AUTHOR/SAMANTHA-WRIGHT-ALLEN) SEPTEMBER 16, 2020

The U.S. 'is not a safe country for refugees,' says a woman who Canada turned away because she entered the U.S. first. Her case helped convince a Federal Court judge the SCTA should end, a ruling the feds are appealing.



Public Safety Minister Bill Blair, pictured outside a Liberal cabinet meeting in January, says the recent ruling striking down the Safe Third Country Agreement is being challenged by the feds to make clear the legal framework governing asylum law. *The Hill Times* photograph by Andrew Meade

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Five years ago, a woman fled her home in central Africa, arrived in the United States, and days later headed for the Canadian border to seek asylum. A political activist who'd witnessed election fraud, she feared for her life after the militia killed her cousin and another activist. The 29-year-old thought that was the worst she'd experience in her young life, but it was her treatment after Canadian officials turned her away to U.S. immigration in 2015 that years later brings her to tears.

Back in U.S. custody, border officials handcuffed her, treating her "like a criminal or an animal," she recently told *The Hill Times*, her voice breaking as she described how dehumanized she felt.

"I had no rights," said the woman who would later share her "traumatic experience" in an affidavit before the Federal Court as part of the mountain of evidence that led Justice Ann Marie McDonald to strike down the Safe Third Country Agreement (STCA) in a landmark July 22 ruling (https://www.canlii.org/en/ca/fct/doc/2020/2020fc770/2020fc770.html?searchUrlHash=AAAAAQAdQ2FuYWVpYW4gQ291bmNpbCBmb3IgUmVmdWdlZXMAAAAAAQ&resultIndex=9#_Toc46131681).

The Hill Times agreed not to identify the woman, who the courts also granted protection as an anonymous affiant, because she fears for her safety. She gave herself the pseudonym Mariama Bah. Speaking by phone on Sept. 11, she was accompanied by Kate Webster, a member of the counsel team involved in the STCA litigation with the Canadian Council for Refugees, Amnesty International, and the Canadian Council of Churches.

When Ms. Bah crossed the Canadian border, she'd never heard of the agreement, a 16-year-old pact that requires refugees to seek asylum in whichever of the two countries they arrive in first. Now she knows it's what led to her detention, which included 10 days in solitary confinement and 51 days locked in what she considered jail, in what she described as freezing conditions, with no privacy when she used the toilet.

“I couldn’t really differentiate between day and night,” or understand the guards who didn’t speak French, said Ms. Bah. “Every night I was sleeping thinking, ‘This is a dream. That can’t be.’ Not only I fled my country, but in this country, which I think and hope they respect human rights, but they are treating me like a criminal. I’m far from my country, can’t speak language, don’t even give me a translator.”

She said she felt “validated” by Justice McDonald’s July decision, and just as quickly, disappointed, when a month later the Liberal government appealed the ruling (<https://www.hilltimes.com/2020/09/02/they-are-just-buying-time-lawyers-weigh-feds-appeal-of-judgement-suspending-canada-u-s-asylum-agreement/261888>), a move she hopes politicians will reconsider.

“The U.S.A. is not a safe country for refugees ... I really want people to be aware that human rights are not being respected,” she told *The Hill Times*. “I don’t want anyone to go through what I went through. It’s already been five years. It still feels like it’s yesterday.”

Her story is one of many, said Janet Dench, executive director of the Canadian Council for Refugees, recalling how powerful evidence like this was when read into the record last November.

“The atmosphere in the court was extremely tense, it was very compelling evidence and I don’t think anybody could be unmoved and certainly the atmosphere you could cut with a knife, it was so tense,” said Ms. Dench, adding she wasn’t surprised that the judge made her “very clear” ruling.

Feds argue errors in judge’s ‘key findings’

A spokesperson for Border Security Minister Bill Blair (Scarborough Southwest, Ont.) reiterated statements his office has made since the government appealed the July 22 ruling (https://www.canlii.org/en/ca/fct/doc/2020/2020fc770/2020fc770.html?searchUrlHash=AAAAAQAdQ2FuYWVpYW4gQ291bmNpbCBmb3JlUmVmdWdlZXMAAAAAAQ&resultIndex=9#_Toc46131681), saying it did so because there are “errors” in some of the key findings of fact and law.

“The decision suggests all asylum claimants who are ineligible under the STCA and turned back to the U.S. are automatically detained as a penalty. This is not the case. The U.S. remains a party to the UN Refugee Convention,” said press secretary Mary-Liz Power.

Still, Ms. Dench said “a very high proportion of them find themselves in detention in these unspeakable conditions,” and questioned how the government could make that argument when it is not objecting to the evidence, including the experience of the woman *The Hill Times* spoke with, among many others outlined in affidavits.

“It’s not just extreme cases, but a generalized experience of being held in isolation, being subject to extreme colds, to experiences of racism, to not having sufficient food, to experiences of extreme alienation, the separation of families,” said Ms. Dench.

Even so, Justice McDonald said in her ruling that the impact on a “single person” is enough to establish “gross disproportionality”—that the risks of detention outweigh the administrative benefit of the agreement, in reference to Nedira Jemal Mustefa, one of the named applicants in the case.

“In my view, Ms. Mustefa’s evidence alone meets this test and is sufficient to “shock the conscience,” wrote Justice McDonald, who suspended the judgement for six months to give the government time to respond. The government has asked for a stay, which Ms. Dench said she hopes the court won’t grant.

There are a many parallels between the experience of Ms. Mustefa and Ms. Bah, whose family in 2015 scrounged US\$10,000 to get her out of detention, Ms. Dench said.



RCMP officers are pictured at an unofficial border crossing between Quebec and the U.S. Screenshot courtesy of CBC News

For two and a half years, Ms. Bah lived in New York City, moving from couch to couch, waiting for her hearings. In 2017, she learned it would be another two years before she'd get a hearing, and by then U.S. President Donald Trump was in power and she felt deportation would be certain. And so, in August of that year, she crossed at an unofficial border near Montreal, spending some days sleeping on the floor at the Olympic Stadium in Montreal, before she was released to stay with a friend.

Because she made her way across the Quebec border at an unofficial crossing—such crossings aren't covered under the agreement—Ms. Bah wasn't again immediately removed, though the STCA stamp remains on her file, and a person previously deemed ineligible is barred from making a refugee claim. She's among the reported 58,255 (<https://irb-cisr.gc.ca/en/statistics/Pages/Irregular-border-crosser-statistics.aspx>) people who have made irregular crossings from the U.S. since the beginning of 2017.

Her status has remained in that limbo and won't be affected by any future court decision on the agreement—a case many believe will end up at the Supreme Court. Certainly, if the Federal Court of Appeal overturns the decision, Ms. Dench said the organizations will appeal.

Welcome to Canada?

In a statement, Ms. Power said Canada is “welcoming” to those fleeing war and persecution, calling the agreement “an important tool” for both countries to have an “orderly processing of asylum claims along the shared border.

“The Safe Third Country Agreement has served Canada well for 16 years. We are in continuous discussions with the U.S. Government on issues related to our shared border. We believe that the STCA remains a comprehensive vehicle for the fair, compassionate and orderly handling of asylum claims in our two countries.”

Referencing Prime Minister Justin Trudeau's (Papineau, Que.) now famous (<https://nationalpost.com/news/politics/trudeau-tweet-caused-influx-of-refugee-inquiries-confusion-within-government-emails-reveal>) tweet from January 2017—which read: “To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength #WelcomeToCanada”—Ms. Dench called the current policy and appeal a “rather striking contradiction.”

Justin Trudeau 
@JustinTrudeau



To those fleeing persecution, terror & war, Canadians will welcome you, regardless of your faith. Diversity is our strength [#WelcomeToCanada](#)

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“A government that prides itself on respecting the charter and defending human rights and protecting refugees, it’s hard to understand how they could consider it in line with their values [to appeal]... knowing this is what’s going to happen to them in most cases,” said Ms. Dench, who

Both Ms. Dench and Ms. Bah say politics are at play.

“It’s almost like they don’t care about the humans being impacted by [the STCA], it’s more about the politics behind, which is so sad because this is people being traumatized and being impacted. It’s almost like they forgot about the human beings,” Ms. Bah said. “You feel rejected twice, in your country, but also in this country.”

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