



# HEARING PREPARATION KIT

THE UNIVERSITY OF OTTAWA REFUGEE ASSISTANCE PROJECT

This Kit is produced by the University of Ottawa Refugee Assistance Project (UORAP), an access to justice initiative funded by the Law foundation of Ontario. UORAP aims to assist unrepresented refugee claimants in Canada as they prepare for the refugee hearing.

For more information please visit [www.uorap.ca](http://www.uorap.ca).

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*This Kit and its contents are intended as general legal information to assist refugee claimants and those assisting them to prepare for their refugee hearing without compensation.*

*La Trousse de preparation à une audience est également disponible en Français à [www.paruo.ca](http://www.paruo.ca).*



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## HEARING PREPARATION KIT

### INTRODUCTION

The purpose of the Hearing Preparation Kit is to help you as a community worker to prepare refugee claimants for their refugee hearing, after they have already completed their Basis of Claim (BOC) form. This kit will help you to use the Hearing Preparation Form (HPF) to understand a refugee claim; to determine which evidence is needed to prove it; to gather that evidence; to submit it to the Immigration and Refugee Board (the Board); and to give claimants information about their refugee hearing. The kit consists of four instructional guides; a sample HPF is included in Appendix A. The following is an overview of the four guides.

**For ease of understanding, Guides 2, 3, and 4 are addressed to the refugee claimant directly, even though you as a community worker will be the one assisting them. Therefore, in those guides, ‘you’ means ‘the refugee claimant’.**

#### GUIDE 1 – UNDERSTANDING THE REFUGEE CLAIM

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The Hearing Preparation Form (HPF) is based on the definitions of a *Convention Refugee* and of a *Person in need of Protection*. In order to help claimants prepare for their hearing, it will be important to have a good understanding of their claim, and to know which key issues will need particular attention. Guide 1 explains Part A of the HPF and should give you the tools you need to understand the refugee claim.

#### GUIDE 2 – GETTING EVIDENCE FOR YOUR HEARING

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In order for a refugee claimant to prove that they are either a *Convention Refugee* or a *Person in need of Protection*, they must provide evidence of:

- who they are (identity and nationality);
- their specific refugee story (what happened to them in their country); and
- general information about conditions in their country (showing why they are in danger if they return to their country).

Guide 2 explains Parts B and C of the HPF by describing the different types of evidence that can be used at the refugee hearing. Part B deals with **documents** that can be used as evidence to prove the claim. Part C deals with **witnesses** who can help prove the claim.

#### GUIDE 3 – PREPARING EVIDENCE FOR YOUR HEARING

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Guide 3 explains how to prepare evidence for the hearing. This includes information on how to prepare documents and submit them to the Board, as well as how to inform the Board about who will serve as a witness, and how to prepare witnesses for the hearing.

#### GUIDE 4 – THE REFUGEE HEARING

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Guide 4 provides practical advice about the hearing itself: who will take part in the hearing, what happens at the hearing, how the claimant can best present evidence, and how the claimant can tell his or her story.



## GUIDE 1: UNDERSTANDING THE REFUGEE CLAIM

### PURPOSE OF THIS GUIDE

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The purpose of this guide is to explain how to use the Hearing Preparation Form (HPF) to understand a refugee claim and what evidence a claimant needs to prove it. The HPF is based on the definitions of a *Convention Refugee* and of a *Person in need of Protection*. It is designed to help identify the most important facts in the refugee claim and the evidence needed to prove them.

When a claimant goes to a community worker with the HPF, it should ideally have already been completed by a lawyer (or someone else with refugee law training) who helped complete the claimant's Basis of Claim Form (BOC), but is unable to represent the claimant at their Refugee hearing. If the HPF has not yet been completed, and if the claimant cannot get legal assistance, try to use the HPF to identify the key issues and key evidence the claimant will need to prove the claim. This guide will only provide basic information about the refugee definition.

**It is important for every refugee claimant to tell the truth about his or her refugee claim.** The Hearing Preparation Kit assumes that the BOC form for each claimant you assist is truthful and accurate. If there is false information or if there are mistakes or omissions in the BOC form, the claimant must correct them. If possible, the claimant should seek legal counsel to make these corrections; if legal counsel is not available, he or she can make the changes (refer to rule #9 in the Refugee Protection Division rules).

### THE SUMMARY OF THE CLAIM – PART A OF THE HPF

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This section covers all the key elements required to prove a refugee claim. We will now look at each of these elements in turn.

**HPF:  
Section A1**

**A1: Name:** This is the claimant's legal name, even if he or she used a different identity to travel to Canada. The claimant must always prove his or her personal identity.

**HPF:  
Section A2**

**A2: Country of nationality:** This is the claimant's country of citizenship. If the claimant is a citizen of more than one country, every country of citizenship must be indicated, and the claimant must show he or she faces harm in each country. If the claimant has no citizenship, he or she must indicate a former country of habitual residence where he or she fears harm as described in the next section.

**HPF:  
Section A3**

**A3: Types of harm feared:** To be given protection in Canada, a claimant must show he or she meets either the definition of a *Convention Refugee* or a *Person in need of Protection*. Note that a claim can be made under both definitions. The types of harm feared are different for these two categories:

- a) For a **Convention Refugee**, the type of harm feared is '**persecution**'. Persecution is a key element of the refugee definition. There is no single definition of that harm. Normally it is harm, either physical or psychological, that is serious and persistent. Examples are a threat to life, arbitrary imprisonment, torture, or serious physical beatings. It may also be less serious harm that happens frequently such as a denial of any means of livelihood or multiple physical abuses



over a long period. In the HPF, it is important to identify every form of harm that the claimant fears.

b) For a **Person in need of Protection**, the type of harm feared is:

- Torture;
- Risk to life; and/or
- Risk of cruel and unusual treatment or punishment.

**This risk must affect the claimant personally.** It must not be a ‘generalized’ risk – for example a risk faced generally by most people in that country like general violence during a civil war or danger from high crime rates.

A claim can be made under both definitions. The *Convention Refugee* definition applies to most claims. *Person in need of Protection* is a second, less common way to analyze a claimant’s fear of harm.

**HPF: Section A4** **A4: Reasons for harm feared:** In the case of **Convention Refugees** only, the persecution that the claimant fears must be based on one or more of the following five reasons, or ‘grounds’:

1. Race,
2. Religion,
3. Political opinion,
4. Nationality,
5. Membership in a particular social group.

The ‘grounds’ are the reasons why the claimant could be persecuted. These are reasons related to the claimant’s identity. For example, she fears being arrested arbitrarily (the harm) because she is a Christian (the reason); or he fears being killed (the harm) because he is a member of a political party (the reason). ‘Membership in a particular social group’ is the most open-ended reason since it includes different types of social groups. These include groups defined by an innate characteristic, such as gender or sexual orientation. For example, a gay man fears multiple beatings (the harm) because of his sexual orientation (the reason). A particular social group may also be groups that associate for reasons that are matters of human dignity such as human rights advocates, journalists, or students.

**Note that a claimant may fear persecution for more than one reason.** For example, a claimant may fear being arrested because he is a member of a minority tribe and because he has a different religion. All reasons for the persecution should be indicated.

**HPF: Section A5** **A5: Agents of harm:** A claimant may fear persecution or personal risk at the hands of either **state agents** or **non-state agents**. A state agent is usually some part of government such as the police or the military. Examples of non-state agents include gangs, drug cartels, anonymous thugs, or even family members in cases of domestic violence. If the claimant fears harm at the hands of non-state agents, the issue of ‘state protection’ has to be addressed.

**HPF: Section A6** **A6: State Protection:** If the claimant fears harm at the hands of **non-state agents**, the claimant must show that his or her government is unable or unwilling to provide protection. The Board will presume that a government **is** able to protect its own citizens. Many refugee claims are refused because the claimant was unable to show that the government was unable or unwilling to do so. The claimant must prove the state cannot or will not give him or her protection – for example, by showing



that the police are unable to stop members of a religious majority from attacking a minority group, or that the police refuse to assist victims of gay bashings.

**HPF:**  
**Section A7**

**A7: Internal Flight Alternative (IFA):** Sometimes a claimant may face harm in only **one part** of his or her country, while another part may be safe. If it is reasonable for the claimant to move there, he or she will be denied protection in Canada.

In order to conclude that an IFA exists for a claimant, the Board Member must first suggest a specific region in the country of nationality as a potential IFA. The claimant must then be given an opportunity to provide evidence and arguments that:

- it would be unsafe to live in that region, or
- it would be unreasonable for the claimant to travel and live there, taking into account the claimant's particular circumstances.

These circumstances can include family, work, and other considerations. For example, it might not be reasonable for a single mother of young children to relocate to a region where she would not be allowed to work, even if she would not face persecution there.

**HPF:**  
**Section A8**

**A8: Subjective fear:** Although a claimant must prove that there is an objective basis to his or her fear of persecution, (i.e. that the fear is reasonable given his or her personal experiences and conditions in the country of nationality) the claim may still be rejected if the Board Member believes that the claimant does not truly fear harm back home. If, for example, there is a delay in leaving the country of nationality after the threat of persecution occurs or if there is a delay in claiming refugee status after departure, a Board Member may decide that the claimant does not have a 'subjective fear' of persecution. It is important for claimants to be able to explain any delays in fleeing their country, or in claiming refugee protection in Canada.

**HPF:**  
**Section A9**

**A9: Exclusion:** People who have committed certain very serious crimes may not receive refugee protection – they fall under a category called **exclusion**. The idea behind this category is that some claimants do not deserve refugee protection because they have committed very serious crimes or have been a member of a group that has committed serious crimes. If section A9 of the HPF identifies a potential exclusion issue, it will be very important to know exactly what crimes were committed by the claimant or the group. If the crimes were committed by a group (for example, a military unit) it will be important for the claimant to show that he or she did not participate in the committing the crimes and did not know about the crimes or was forced to be a member of the group.

**If a claimant has been notified that Minister's Counsel from Canada Border Services Agency (CBSA) or Citizenship and Immigration Canada (CIC) will take part in the hearing, it is very important that the claimant immediately seek out legal counsel.** Even if the claimant was previously denied legal aid, the notice of intervention from the Minister's Counsel may be sufficient for legal aid to reconsider its decision and grant assistance.



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## GUIDE 2: GETTING EVIDENCE FOR YOUR HEARING

### PURPOSE OF THIS GUIDE

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The purpose of this guide is to explain the two types of evidence that you (the claimant) can use to prove your claim: **documents** and **witnesses**.

At your refugee hearing, you will have to prove you would be in danger if you went back to your country of nationality. To do this, you will need to provide evidence of:

- who you are (your identity and nationality),
- your specific refugee story (what happened to you in your country), and
- general information about conditions in your country (showing why you are in danger if you return to your country).

### DOCUMENTS AS EVIDENCE – PART B OF THE HPF

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#### **B1-4: Documents about your identity and your refugee story**

These documents can help you prove **your identity or different parts of your refugee story**. Some can help you to prove **both your identity and a part of your story**. **Only submit genuine documents**.

Here are the four main types of documents:

**HPF:**  
**Section B1**    ***B1: Personal identity documents***

**You must prove who you are, that is, your personal identity and your nationality (citizenship).** Section B1 of the HPF will indicate whether any of your identity documents are available. It will also note the location of your document, using three options:

- **CBSA, CIC:** the document has already been taken by CBSA or CIC. If this is the case, they will send a copy to the Board; you do not need to send an extra copy.
- **Claimant:** you have the document but you still need to send it to the Board.
- **Other:** the document is somewhere else (for example, with a family member in your home country) and that you should try to get it and submit it to the Board.

**A valid passport is the best document for identification.** If you do not have a passport and cannot get one, try to get the most reliable document available. A government-issued document is better, preferably one issued by the national government. Here are some documents that can help you to prove your identity and nationality:

- Birth certificate,
- National identity card,
- Residence card;
- Certificate of baptism;
- School certificate or diploma
- Driver's licence, and



- Sworn declarations (affidavits) or letters (if no government identity document is available).  
The declaration can be from:
  - Family members or persons (in Canada or abroad) who knew you and your family in your home country.
  - One or more persons working in community organizations in Canada who can confirm your ethnicity, tribe, clan, and/or region of origin in your country based on your dialect, accent, or knowledge following a detailed interview.

Whenever possible, use sworn declarations rather than letters, as a sworn declaration is a stronger form of evidence (see *Preparing Sworn Declarations*, p. 14).

**HPF:  
Section B2**

***B2: Documents to prove your group identity or the reason you are in danger in your home country***

You need to prove that you are in danger in your home country. For example, if people want to harm you because of the political party you belong to, your religion, or your membership in a union, here are some examples of documents that can help you to prove this part of your story:

Example of Group Identity	Example of Documents
Member of a union	union card; letter from the union
Member of a political party	membership card; letter from the party
Member of a certain profession	business card; diploma; university degree
Member of a student group	education documents such as diplomas and transcripts; letters from the school confirming your attendance
Member of a religious faith	letter from the leader of your church, mosque, synagogue; baptismal certificate; statements from others who know about your beliefs

**HPF:  
Section B3**

***B3: Documents to prove important events in your story***

You need to show that the important events in your story really took place. For example, important events in your story could include a marriage, moving to a different city, being assaulted, witnessing a bombing, receiving a threatening letter, etc. Here are some examples of documents that might help you prove important events:

- Newspaper clippings and/or website printouts, from news organizations, Facebook, Twitter, etc. (These can also be used to show general country conditions, as will be discussed in the next section.);
- Marriage certificate, death certificate, or proof of living with your spouse;
- Property documents such as a lease or deed, proving where you lived;
- Photographs, proving family connection or group membership; and
- Sworn declarations (affidavits) or letters from persons who have personal knowledge of some part of your refugee story (see *Preparing Sworn Declarations*, p. 14).





**HPF:**  
**Section B4**

**B4: Reports**

**Police or Court reports:** If you were ever arrested or ever filed a police report in your home country, it is important to get a report from the police to prove that this happened. Often, police reports can prove key incidents in your claim. For example:

- Police reports from your country can confirm that you were arrested;
- Police reports from your country can show that you asked the police for help or reported a crime against you before leaving your country; and
- Court reports or decisions can show the outcome of a trial.

**Medical reports:** If you ever visited a medical doctor, a psychologist or other health professional regarding injuries or psychological harm you suffered, it is important to ask them to provide you with a report. You may have visited these health professionals in your country or in Canada. Reports from either country can be very helpful in proving important parts of your refugee story. For example, they can prove:

A **medical report** from a psychiatrist or psychologist in Canada can also give an opinion about your ability to participate in your refugee hearing (see *Explanations for missing documents*, p. 15).

- Physical harm
  - Medical reports from doctors or hospitals in your home country can confirm that you needed treatment for physical injuries, and may be able to prove the cause of those injuries.
  - Medical reports from doctors in Canada can describe and confirm your past injuries. For example, if you have physical marks or scars on your body from an attack, assault, torture, or other abuse a doctor in Canada may be able to give an opinion about the cause of those scars.
- Psychological harm
  - Medical reports from psychologists or psychiatrists in your home country can confirm that you needed treatment for psychological injury, including a professional opinion about the possible cause of your condition. This can be especially important for survivors of major trauma such as rape and torture.
  - Medical reports from doctors or psychiatrists in Canada can also confirm that you needed or still need treatment in Canada because of a mental health condition and can provide a professional opinion about the possible cause of that condition.

If you suffer from a severe mental condition, you may be a '**vulnerable person**' and may qualify for special help from the Board. It is important to try to seek legal counsel as soon as possible, including returning to legal aid to ask for assistance. If you cannot get legal assistance, contact the Board to ask about this as soon as possible.

**HPF:**  
**Section B5**

**B5: Documents about conditions in your country of nationality**

Documents can also help you to explain **the conditions in your country and how people in your situation are treated there**. For example, country reports may describe how your government treats



women, religious minorities, gays and lesbians, or other groups, how the police operate, or any other information about your country that is important to prove your claim.

These documents can help you prove that what happened to you in the past makes sense in terms of the situation in your country, and that you would be in danger if you went back there.

### ***Choosing documents on country conditions***

When deciding which country documents you will submit, you should ask yourself the following questions:

- What information about my country will help me to prove I would be in danger if I returned home?
- What information is contained in the documents in the Board's National Documentation Package (NDP) for my country (explained below)?
- Is there some useful information missing from the NDP?
- If so, where can I get that missing information?

**Example 1:** If you belong to a minority ethnic group which is treated badly, you should look for:

- Human rights reports and news articles about how members of your ethnic group are treated in your country.
- Reports and articles that describe how the police respond to members of your group who ask for help.
- Reports and articles showing that the problems of your group exist in all parts of your country.

**Example 2:** If you are a woman who has been abused by her husband, you should look for:

- Human rights reports and news articles about domestic violence in your country: Is it widespread? Are there shelters you can go to?
- Reports and articles about how the police respond to women who ask for help.
- Reports and articles about how difficult it is for a single, divorced, or separated woman to live on her own (without support of family) in your country.

### ***Finding country information***

#### **1. The Board's National Documentation Package (NDP)**

The Board has collections of documents on **general conditions** in many countries, for example, Mexico, Honduras, Iran, Sri Lanka, etc. The documents for a specific country are collected in a binder for that country. These are known as **National Documentation Packages (NDPs)**. The NDPs are updated every 6-12 months. The documents in these packages are arranged according to specific topics such as: general human rights, political organizations, identity documents, gender, etc.

The Board will treat the NDP for your country as evidence in your case. You do not have to send the documents that are in the NDP for your country to the Board. However, just because the NDP includes information about your country does not mean that the Board Member has had a chance to read it. **At the hearing, you should make sure to mention specific parts of certain documents in the NDP that are relevant to your case.**



You can find the NDP for your country in two places – the Internet and at Board offices.

**Internet:** If you have a way to access the Internet, you can visit the Board website to consult the NDP for your country. To do this, go to [www.irb-cisr.gc.ca](http://www.irb-cisr.gc.ca) and look for the link to ‘National Documentation Packages’, then find your country.

**Board Office:** The Board offices have paper copies of the NDPs. You can go to the front desk during business hours and ask to view a copy. You will not be allowed to take the copy away. You may photocopy pages from the NDP at the Board office. It can be expensive: \$.25 per page. It may be cheaper instead to print documents from the Board website at an internet café.

## 2. UNHCR Refworld

The UNHCR research site, Refworld ([www.refworld.org](http://www.refworld.org)), brings together country information and human rights reports from around the world. You can search for information by country, topic, organization, and date.

## 3. Human Rights Organizations

Many human rights organizations report regularly on the situation in countries around the world and produce annual reports which include information covering the previous year. These organizations also provide reports on important human rights developments throughout the year. You can look for annual and periodic reports on your country on these organizations’ websites.

### Some of the best-known human rights organizations:

- Amnesty International: [www.amnesty.org](http://www.amnesty.org)
- Human Rights Watch: [www.hrw.org](http://www.hrw.org)
- International Gay and Lesbian Human Rights Commission: [www.iglhrc.org/cgi-bin/iowa/home/index.html](http://www.iglhrc.org/cgi-bin/iowa/home/index.html)
- US Department of State Human Rights Reports: <http://www.state.gov/j/drl/rls/hrrpt/index.htm>
- UNHCR: [www.unhcr.org/cgi-bin/texis/vtx/home](http://www.unhcr.org/cgi-bin/texis/vtx/home)
- Forced Migration Online (FMO): [www.forcedmigration.org/research-resources/thematic/country-information-resources](http://www.forcedmigration.org/research-resources/thematic/country-information-resources)
- European Country of Origin Network (Ecoi.net): [www.forcedmigration.org/research-resources/thematic/country-information-resources](http://www.forcedmigration.org/research-resources/thematic/country-information-resources)

Some of these organizations (for example, Amnesty International and Human Rights Watch) publish reports in several languages. You may be able to find reports on your country in your own language. However, **any documents you provide to the Board must be in English or French.** Otherwise you will have to provide a certified translation (see *Translations*, p. 14).

Therefore, if you find a report in a language other than English or French, you should find the same report in English or French to use for your hearing. This will save you the cost and time of translation.

## 4. News Articles

National Documentation Packages rarely contain the most recent information about your country. Newspaper and internet articles about your country are often more up to date and can be very helpful. You should search for information about specific events or recent developments in your country in newspapers and, if you have access to it, on the internet.



News reports on specific events may relate to **general country conditions** (for example showing that union activists are often arrested in your country) or to **your own refugee story** (for example a news report about a specific strike, in which many people, including you, were arrested).

Try to find information from well-known and reputable sources as it is likely to be more convincing than an article copied from a small online blog.

**Some of the best-known news sources:**

- *Al Jazeera*: [www.aljazeera.com](http://www.aljazeera.com)
- *World News*: [www.wn.com](http://www.wn.com)
- *The Independent*: [www.independent.co.uk](http://www.independent.co.uk)
- BBC: [www.bbc.co.uk/](http://www.bbc.co.uk/)
- *IRIN*: [www.irinnews.org](http://www.irinnews.org)
- *The UN news service*: [www.un.org/News](http://www.un.org/News)
- *The New York Times*: [www.nytimes.com](http://www.nytimes.com)
- *The Washington Post*: [www.washingtonpost.com](http://www.washingtonpost.com)

If the article is from a less-known source, provide some context so the Board Member understands what kind of publication it is. The Board Member may not know that a publication is widely distributed and respected in your country.

**If you photocopy an article, or print something from the internet, make sure the name of the newspaper or website and the date of publication are clearly indicated.** If an article is from an actual

paper newspaper (not the internet) you should take the original of the newspaper to your hearing, if possible.

Any documents you provide to the Board must be in English or French. Otherwise you will have to provide a certified translation. Therefore, if you find an article in a language other than English or French, you should see if you can find a similar article in English or French. This will save you the cost and time of translation.

## 5. Sworn declarations (affidavits) or letters

Sworn declarations or letters should come from persons who know about conditions in your country of nationality. The types of persons who might provide such documents and the information these documents might include are described in *Witnesses as Evidence* below.

**HPF:  
Section C**

### **WITNESSES AS EVIDENCE – PART C OF THE HPF**

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Like documents, witnesses can help you to prove your **identity**, your **specific refugee story**, and **conditions in your country of nationality**. Some witnesses may help to prove more than one of these things.

**The most important witness at a refugee hearing is usually you (the refugee claimant) or a family member who is claiming refugee status with you.** You or your family member can testify about your whole claim: your identity, your personal refugee story and conditions in your country of nationality. You must also explain what you fear if you are obliged to return home.

You or your family member may be the only witness at your hearing. However, if someone else knows about an important part of your story, you may ask them to be a witness at your hearing.



Whether or not you decide to use witnesses will depend, in part, on the documents you are able to provide. For example, if you have no valid passport and no reliable identity documents, it would be important to have a witness testify about your identity. To take another example: if you have no documents to prove that you are part of a religious minority that is persecuted in your country, it would be helpful to have a witness who personally knows about your religious activity.

## **Types of witnesses**

Although a witness may help you prove more than one thing, it may be useful to think of witnesses as falling into the following categories:

### ***Identity witnesses***

You will need to prove who you are – your identity and your nationality (citizenship). If you came to Canada with false identity documents and cannot obtain a passport or other genuine documents, is there someone in Canada or abroad who can provide evidence of who you are? If so, he or she should serve as a witness at your hearing.

You may also be able to prove your nationality, or that you came from a specific part of your country, by showing that you know the language or dialect spoken in that country or region. You would need someone familiar with the language and/or dialects of your country or region to serve as a witness.

### ***Witnesses to help prove your refugee story***

If there is someone who has **personal knowledge of your refugee story**, it might be helpful to have him or her serve as a witness. Some examples of such witnesses might be:

- Someone who knew you in your country of nationality through membership in the same union or political party, and who knows you suffered harm, such as arrest or beatings, due to your membership in that union or political party;
- Someone who knew you in your country of nationality because they lived near you, and can confirm that you came from that region of your country (where, for example, persons of your ethnicity face mistreatment);
- Someone who is a member of your religious group. If your claim is based on your religious faith, look for a witness who met you in Canada because they go to the same church, mosque, synagogue or other religious institution as you, and who can confirm that you attend that institution regularly. Ideally, it would be one of the leaders of the institution;
- Someone who is able to confirm your sexual orientation, if you are in danger in your country of nationality because of your sexual orientation.

### ***Witnesses who have knowledge of conditions in your country***

Not every situation of persecution is reported in written documents. There may be witnesses who can explain conditions in your country that have not been reported, or who can add important details to what the documents report. For example:

- A university professor or journalist may be an expert on conditions in your country and may be able to say that there is no part of your country that is safe for persons who practice your religion;



- A woman who fled domestic violence in your country may be able to say that she called the police several times, but that they always refused to help. This would be helpful if you were in a similar situation.

### **Deciding between live testimony and sworn declarations**

Witnesses may be used in two ways:

1. By testifying at your Refugee Hearing, either in person or over the phone; or
2. By providing a sworn declaration or affidavit in writing for you to submit as evidence.

As mentioned above in the *Documents as Evidence* section, it is possible to have someone provide a sworn declaration (affidavit) or letter to provide information about your identity, your refugee story or conditions in your country.

A **Sworn Declaration** is a written statement by your witness, after they have made an oath to tell the truth (see p. 14).

For persons who have important information to offer, but may not be good witnesses, it may be best to have them do a sworn declaration. Although they can also do a letter, it is best to use sworn declarations whenever possible. A sworn declaration may also be the best option for persons who can provide important information, but who cannot come to the hearing and cannot be reached easily by telephone (perhaps because they live in a remote area overseas).

If you think someone would be a good witness, you can have them speak at your hearing in person or by phone. While there is no single 'best' way to do things, experience shows that having a very clear and knowledgeable witness speak at your hearing, especially one who knows English or French well, is likely to help your case a great deal.

### **Who is a good witness?**

Not everyone makes a good witness. A good witness is someone the Board Member will believe. The witness must know what they are talking about and will have a background that shows they are a responsible and honest person. The witness will be able to understand and answer questions clearly, will understand your situation, and will know how to present evidence that does not contradict anything you or your documents say.

A good witness will not exaggerate your story. Exaggeration can show that the witness is not trustworthy. That would weaken your case.



## GUIDE 3: PREPARING EVIDENCE FOR YOUR HEARING

### PURPOSE OF THIS GUIDE

The purpose of this guide is to help you (the claimant) prepare and submit your evidence to the Board. The Board has strict rules about how and when evidence should be submitted. This guide will first explain how to prepare and submit documents, and then how to prepare witnesses. Finally, it will explain what to do when you receive documents from the Board or Minister's Counsel.

### PREPARING AND SUBMITTING YOUR DOCUMENTS

This section explains how to prepare documents that you want to submit as evidence. This includes any of the documents that are mentioned in Part B (B1-B5) of your HPF.

#### Checking your documents for mistakes

You should check your personal documents carefully before submitting them to the Board. If there are mistakes in any documents, this could cause problems for you at your refugee hearing. **Inconsistencies between your documents and your testimony could result in your claim being refused.**

Therefore, if possible, **try to have any mistakes corrected before submitting your documents.** If you cannot have them corrected, you will have to decide whether you can provide a reasonable explanation for the mistake, or whether it is better not to submit the document at all.

#### Originals and copies

Make photocopies of all of your documents. You are going to bring the copies to the Board **before** the hearing. Keep the originals of all of the documents and bring them to the hearing. The Board Member may ask to see the originals. **Keep any envelopes in which documents arrived, because the Board Member may want to see those to understand how you got the documents.**

#### Highlighting specific parts of documents

It is a good idea to highlight (for example with a yellow highlighter) the most important paragraphs of documents, such as human rights reports and newspaper articles, on the copies you will be submitting to the Board and on your originals. This will help you to refer to them easily at your hearing.

#### 10 day disclosure (deadline for submitting documents)

**You must bring copies of all of your documents to the Board at least 10 days before your hearing.** To calculate your deadline for submitting documents, count backwards on the calendar from the date of your refugee hearing. For example, if your hearing is on April 3, you must file your documents by March 24<sup>th</sup>. If March 24<sup>th</sup> is a Saturday, Sunday or holiday, you must file the documents on the business day **before** the deadline (usually a Friday).

**You must bring copies of all of your documents to the Board at least 10 days before your hearing.**

If you cannot bring your documents in person, they can be sent by mail, registered mail or courier service (for example, Fed Ex or DHL). If you are sending 20 pages or less the documents can be sent by fax.





However, **you must make sure the documents arrive by the deadline.** If not, the Board Member may refuse to consider them.

### Translations

The Board only accepts documents that are in English or French. If any of your documents are in another language, you must get them translated into English or French English or French. Attach a copy of the document along with the translation. You must also attach a declaration signed by the translator. The translator does not have to be a 'certified' or 'official' translator but must be fluent in the original language and English or French.

#### Here is an example of a translator's declaration:

I, \_\_\_\_\_ (name \_\_\_\_\_), of the City of \_\_\_\_\_ (location) \_\_\_\_\_, hereby certify that I have faithfully and accurately translated this Marriage Certificate from \_\_\_\_\_ (original language) \_\_\_\_\_ to English, and that I am competent to render such translation, being fluent in the \_\_\_\_\_ (original language) \_\_\_\_\_ and English languages.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

#### If your translator is not fully fluent, the declaration may read:

I, \_\_\_\_\_ (name \_\_\_\_\_), of the City of \_\_\_\_\_ (location) \_\_\_\_\_, hereby certify that I have translated this Marriage Certificate from \_\_\_\_\_ (original language) \_\_\_\_\_ to English, and that I am **partially** competent to render such translation, being **partially** fluent in the \_\_\_\_\_ (original language) \_\_\_\_\_ and English languages. **A fully competent translator was not available.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### Preparing sworn declarations

As noted above, it is possible to submit sworn declarations from persons providing information about any part of your refugee claim. A sworn declaration is a written statement. It must be sworn to be true before a notary, lawyer, or commissioner of oaths.

**A sworn declaration should be kept as brief as possible and must only contain information that the person signing personally knows to be true.** It is possible that the Board Member will ask to speak with the person who signed the declaration, though it is unlikely. Unless it is impossible to reach them (for example, they live in a place where there are no phones) you should have their contact information available. You should attach the following to each sworn declaration:

- Documents to show the person's identity and citizenship;
- Documents to show their immigration status in Canada, if any;
- Documents to show their relationship to you or to a group that you belong to, for example a membership card, a certificate from a religious institution, school records, etc.





## Explanations for late documents

Sometimes it will not be possible to get all of your documents in time for the 10 day disclosure deadline. **Even if you do not have all your documents at the time of the deadline you must submit the documents that you do have.**

For any documents you receive **after** that deadline, submit a copy (and translation if necessary) to the Board as soon as you can. You should prepare and attach a letter which explains the reason why the document is late and include proof of when you received it, if possible. The explanation will depend on what happened, but some common reasons are that the document did not arrive on time or you did not get it back from the translator in time. You should make a list of all of your efforts to get documents. This should include all the actions you took to get the document and the dates on which you took them. Be prepared to explain these efforts at your hearing. It is important to try to get all documents as soon as possible.

### Rules about late documents:

1. You should always deliver your documents within the time limit, if possible.
2. If you do not receive all your documents on time, bring the documents you do have to the Board 10 days before the hearing (following the procedure described above).
3. If you receive one (or more) documents after the 10-day deadline, either bring a copy to the Board before your hearing, along with a letter explaining why the document is late and proof of when you received it, **or** bring it to the hearing, explain why it is late, and ask the Board Member to accept it because it is important to prove your story.
4. To prevent unfair surprises, the Board and the Minister's counsel have the same obligation as you to deliver documents on time. Always tell the Board Member if you receive documents late and need more time to give a response.

## Explanations for missing documents

Some documents might be impossible to get because they are lost, destroyed, or it is too dangerous for you to contact the people who have them. **You should keep a list of your efforts to get these documents** (see Appendix B: 'Your To Do List'). List the date and the actions you took to get each document. Be prepared to provide details about these documents, as well as all efforts to get them, at your hearing. If you do not try to get an important document because it would put you or someone else in danger, you must explain at the hearing why you did not get the document.

Medical reports can take a long time to get. If you cannot get one in time for your hearing, but feel that you need to submit medical evidence to prove your claim, here are some things you can do:

- If you have scars or marks on your body which are related to your refugee story, but you cannot get a medical description in time, photograph the scars so you can show the pictures at the hearing and explain how you got the scars.
- If you have seen a psychologist or psychiatrist and would like them to provide a report but it is not possible to get it before your hearing, ask the psychologist or psychiatrist to write a short letter to explain they are preparing a report and why they think it is important for the Board Member to wait for a psychological report before hearing your claim.



In addition to proving parts of your claim, a medical report from a psychiatrist or psychologist in Canada can give an opinion about your ability to participate in your refugee hearing. A psychological injury may affect your memory or your ability to testify about harmful experiences that you suffered. A medical report can explain your limited ability to testify, or that you may need to postpone your hearing because of a psychological condition. If you have met with a doctor but cannot get a report from him or her in time, ask the doctor to provide a letter for the Board explaining that more time is needed to provide a report (*see Pre-hearing discussion*, p. 21).

If you suffer from a severe mental condition, you may be a **'vulnerable person'** and may qualify for special help from the Board. It is important to try to seek legal counsel as soon as possible, including returning to legal aid to ask for assistance. If you cannot get legal assistance, contact the Board to ask about this as soon as possible.

**If you have not been able to get an appointment** with a psychiatrist or psychologist and you feel you are so traumatized that you need more time to prepare for the hearing, or need special treatment during the hearing:

- Bring evidence to show that you have requested an appointment and any information about when an appointment will be available.
- Ask someone who has been providing support and/or counselling to come to the hearing to explain why it is important to wait for a psychological report before starting the hearing.
  - This person can also explain why you need a Designated Representative to assist you at the hearing. If the hearing does proceed, this person will be able to remain with you in the hearing room.

### **Final preparation and list of documents**

Make sure all of your the documents are on 8.5x11" paper. The documents can be copied on one side of the paper or both sides.

Include a **list of documents**. If you have access to the internet, you can download the 'List of Claimant's Documents' form at this website: [www.irb-cisr.gc.ca/Eng/tribunal/form/Documents/form051\\_e.pdf](http://www.irb-cisr.gc.ca/Eng/tribunal/form/Documents/form051_e.pdf)

If you do not use this form, you can prepare your own list, making sure to include the following:

1. Your name and the names of any family members whose hearing will be held at the same time as yours;
2. Your IRB (Board) file number and the file numbers of any family members whose hearing will be held at the same time as yours;
3. A list of all the documents you are filing in order of the date they were created (earliest first and latest last) in the following format:

C-1 (name of document)  
C-2 (name of document)  
C-3 (name of document)

If possible, attach a tab to each document, and put them all in a binder, so you can locate each document easily.



4. Page numbers on all the pages in your package of documents. Number the pages consecutively until you reach the end. (1, 2, 3, 4 ... 45, 46, 47). You can do this in the upper right corner or lower right corner.

If you have been notified that Minister's Counsel from CBSA or CIC will be at your hearing, you must first send a copy of all your documents, along with your list of documents to the Minister's office. You must then submit all your documents and your list of documents to the Board, along with a letter explaining how and when you provided your documents to the Minister.

## **PREPARING YOUR WITNESSES**

Have witnesses write out a summary of what they are going to say. It is best to have them list the oldest events first. Compare this summary to your own story to make sure it does not contradict you. It is important that your witness has not confused any times, dates, or events. To do this, look at these sources to make sure that all of the information in them is consistent:

- Your BOC;
- Other statements you have made which you will find in the documents given to you after your interview with the CIC or CBSA officer;
- Any documents that you are submitting, such as news reports or birth certificates.

Review the evidence with the witness and discuss any contradictions or differences. Most people forget details as time goes by. Differences between you and the witness will cause credibility problems. For example look for differences about important events in your story:

- Dates of the events,
- Number of people present,
- How people were dressed,
- What time of day it was,
- The order events occurred,
- Whether or not medical treatment was provided,
- Whether or not the police were contacted.

**If there are important differences between you and your witness, you may choose to discuss them and see if the witness agrees with your version of events.** Otherwise it may be better not to have the witness speak at your hearing.

Write out your questions and practice asking them to the witness so they feel comfortable telling their story.

As noted above, witnesses who live far away can testify by phone. The phone number of the person must be given to the Board in advance. You will have to bring a phone card to the hearing to pay for the long distance charges. However, communication by phone may be difficult and it may be better to consider having the person do a sworn declaration.

**Make sure all witnesses know the date, time and address where the hearing is to be held. You and they should arrive at least half an hour before the hearing begins.**



## **Informing the Board about your witnesses**

Just as you must provide the Board with your documents 10 days before your hearing (as explained *Preparing and Submitting your Documents*, p. 13) **you must also submit information about your witnesses 10 days before your hearing.**

You must provide a list of any witnesses (other than yourself or family members who will have their hearing at the same time). For each witness listed you must provide the following information:

- The witness' contact information (address and telephone number, and fax number and email address, if any);
- A brief statement of the purpose and substance of the witness' testimony (for example: "Mr. Reyes will describe an attack on me that took place on April 10, 2012") or, in the case of a witness who is an expert (for example on country conditions) the witness' brief signed summary of the testimony to be given;
- The time needed for the witness' testimony (double your time estimate if the witness will be using an interpreter);
- How you know the witness (i.e. friend, family member);
- In the case of an expert witness, a description of the expert witness' qualifications; and
- Whether the witness will testify by phone (as opposed to coming to the hearing in person).

Witnesses should bring the following to the hearing:

- Documents to show their identity and citizenship;
- Documents to show their immigration status in Canada, if any;
- Documents to show their relationship to you or to a group that you belong to: for example a membership card, a certificate from a religious institution, school records, etc.

If you have been notified that Minister's Counsel from CBSA or CIC will be at your hearing, you must first send a copy of your witness list to the Minister's office. You must then submit the list to the Board, along with a letter explaining how and when you provided the list to the Minister.

## **DOCUMENTS FROM THE BOARD OR THE MINISTER'S COUNSEL**

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Sometimes the Board or the Minister's Counsel will send you documents before the hearing. They also must send the documents 10 days before the hearing. Read the documents carefully. If there is important information that is different from your story or is incorrect, you can send additional documents to the Board to show that information is incorrect. This new information must arrive at the Board 5 days before the hearing. If the Board's or Minister's information arrived late (less than 10 days before the hearing) tell the Board Member that you need more time to provide a response.



## GUIDE 4: THE REFUGEE HEARING

### PURPOSE OF THIS GUIDE

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The refugee hearing is your (the claimant's) opportunity to tell your story and present the evidence referred to in *Guide 2: Getting Evidence for your Hearing*. The purpose of this guide is to explain who will take part in your hearing, what will happen at your hearing, and how you can best tell your story and present your evidence.

### WHO WILL BE AT MY HEARING?

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#### You

You and any family members who are part of your claim are the main people involved in the hearing. If you are claiming refugee status alone, you will probably do most of the talking, or 'testifying', at the hearing. If you are part of a family claiming refugee status together, you may choose one family member to do most of the talking. However, if some family members have different reasons for claiming refugee status, they should speak as well. You, and any family members who are part of the claim, have the right to be present during the entire hearing. If there are small children in your family, they need to be present at the beginning of the hearing, but it is a good idea to have someone take care of them outside the hearing for the rest of the time. You should come to the hearing dressed as neatly as possible.

**Testifying** is when you or a witness speak at your hearing after swearing an oath to tell the truth. Generally, when you speak at your hearing you are testifying, and what you say is 'testimony'.

#### The Board Member

This is the person who will ask you questions, listen to what you have to say and make the decision to accept or refuse your claim for refugee protection. The Board Member will have received copies of all of your documents, including your BOC form, before the hearing. The Board Member will have read your BOC and should be familiar with basic information regarding your story.

#### The Interpreter

If you do not feel comfortable speaking English or French at your hearing, the Board will provide an interpreter who speaks your language. You should have made this request in your BOC. If you need an interpreter, but did not request this in your BOC, you should contact the Board to make this request as soon as possible.

The interpreter works for the Board and is not allowed to repeat to anyone outside the hearing room what you said during your hearing. As soon as the interpreter arrives, he or she should talk to you to make sure you understand each other. **Even if the interpreter says that he or she understands you, if you do not fully understand the interpreter, or if you think the interpreter does not fully understand you, you should tell the Board Member before the hearing begins.**

During the hearing, the interpreter is required to interpret into your language everything that is said by anyone who speaks in the hearing. He or she will also repeat everything you say in English or French



when you are speaking. You should pause after every one or two sentences to give the interpreter time to repeat what you said. Otherwise, the interpreter may forget what you said because it was too much to remember. If you do not understand something the interpreter says, ask him or her to repeat or use different words.

**Nothing is more important in the hearing than making sure that you understand everything that is said and that you are understood by everyone in the room.**

If you think the interpreter is not telling you everything that someone is saying, or if you think the interpreter is not repeating everything that you are saying, you have the right to complain. Tell the interpreter to tell the Board Member that you are not comfortable with the interpretation. If you do not understand the interpreter well enough to continue, ask the Board Member to stop the hearing and find a new interpreter. It is very important that you tell the Board Member about any interpretation problems right away. You should try to do this politely, but you should not be shy to make a complaint.

### **The Minister's Counsel**

Canada Border Services Agency (CBSA) may send a representative, known as the 'Minister's Counsel' to your hearing. This happens only if CBSA believes you should be excluded from refugee protection because you have been involved in a war crime, a crime against humanity, or other serious crime (see A9: *Exclusion*, p. 4), or that you have refugee status in another country and can return there

Citizenship and Immigration Canada (CIC) can also send a Minister's Counsel to the hearing if they have concerns about whether you are not telling the truth or using false documents.

**At most Board hearings, there is no Minister's Counsel present.**

### **Witnesses**

If there are witnesses other than you and family members claiming refugee status with you, they will have to wait outside the hearing room until it is their turn to testify. Once the witness has finished testifying, he or she can stay in the room for the rest of the hearing, if you allow them to.

### **Observers**

You have the right to bring one or two persons with you to the hearing to support you emotionally. This might be a family member who is not part of your claim, a community worker, a counsellor, or someone else you trust. They must sit at the back of the room and stay silent.

The only time an observer should say something is if he or she thinks there is a serious problem with the interpreter. For example, if your hearing is being conducted in English, an observer who speaks both English and your language may realize that the interpreter is not repeating everything you are saying or is making lots of mistakes. In that case, the observer should explain the problem to the Board Member. For this reason, it can be very helpful to have an observer present who is fluent in your language and the language of the hearing.

If you intend to bring observers, make sure that you are comfortable with them hearing all the details of your past experiences. For example, if you were sexually assaulted, make sure that you are comfortable talking about this in front of any observers you bring to your hearing.



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## HOW WILL MY HEARING PROCEED?

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### Pre-hearing discussion

At the very start of your hearing, you have the right to ask for a pre-hearing discussion with the Board Member. This is an opportunity to talk to the Board Member informally before your hearing starts. You can raise any issues you want the Board Member to know about before your hearing starts. These might include the fact that some documents have not yet arrived or are impossible to get. You should be prepared to explain all the efforts you took to obtain the documents. This is also the time to give the Board Member any documents that you have received but did not have time to send to the Board (see *Explanations for late documents*, p. 14).

If you believe you will have problems during the hearing, such as difficulty talking about or remembering past events, or difficulty talking for a long time without stopping to rest, you should tell the Board Member. You should mention this even if you do not have any official diagnosis of a mental health condition from a medical professional. However, if a psychologist or other health professional has done a report explaining such problems, and you have already submitted this report with your documents, you should explain this to the Board Member. If you only received the report shortly before your hearing, you can give it to the Board Member during your pre-hearing discussion and explain when you received it.

If necessary, you can also ask for a **postponement** during this pre-hearing discussion. This means asking for your hearing to take place at a later date. One reason for a postponement might be that you have a medical problem that would make it hard for you to go ahead with the hearing that day. If that is the case, you should bring a letter from your doctor to support your request for a postponement, if possible. **If the postponement is not granted, you will have to continue with the hearing.**

During the pre-hearing discussion you can also ask the Board Member to identify any specific issues in your refugee claim that he or she is particularly concerned about.

### The Hearing

You should stand whenever the Board Member enters or leaves the room. Before the hearing begins, the Board Member will turn on the recording machine so that everything that is said at the hearing is recorded. This is important. If your claim is refused and the Board member made a mistake about what you said, you will have a recording to prove what was actually said if you appeal the decision.

At the beginning of the hearing, the Board Member will ask you whether you and the interpreter (if you have requested one) understand one another. **If you are having a problem communicating with the interpreter, it is very important to tell the Board Member right away.**

The Board Member will list all of the documents she or he has received for your claim. Listen carefully and make sure that the Board Member lists all of the documents that you submitted.

If you asked the Board Member for a postponement because of medical reasons and the Board Member refused your request, you will have to restate your request so that it is recorded. You should also state your reasons for asking for the postponement. The Board Member will have to restate why she or he has refused your request.





You will then be asked to swear that you will tell the truth. You can swear the oath with your hand on a holy book (for example the Bible or the Koran, which you will have to provide), or by raising your hand and stating that you will tell the truth at the hearing. You will then be asked questions, which may be about any aspect of your refugee claim.

If there is a Minister's Counsel from the CBSA present, they will ask questions first. If the Minister's Counsel is there, you will have already been informed of the reason why (for example CBSA suspects you committed certain crimes). The Minister's Counsel will ask questions related to those concerns. He or she may also ask you questions about any other aspect of your refugee claim.

After that, the Board Member will ask you questions (or if there is no Minister's Counsel from CBSA present, the Board Member will be the first to ask you questions).

The Board Member can ask you anything about your refugee claim, for example:

- your identity;
- the reasons you left your country;
- why you are afraid to return;
- why you cannot get help from the police in your country, or why you did not try to ask for their protection if that is the case;
- why you cannot live safely in another part of your country; and
- questions about other parts of your life, for example your family, your education, and your jobs.

**He or she will expect you to know the approximate dates of the main events that caused you to flee your country.** You have the right to tell the Board Member anything that you think is important about your story.

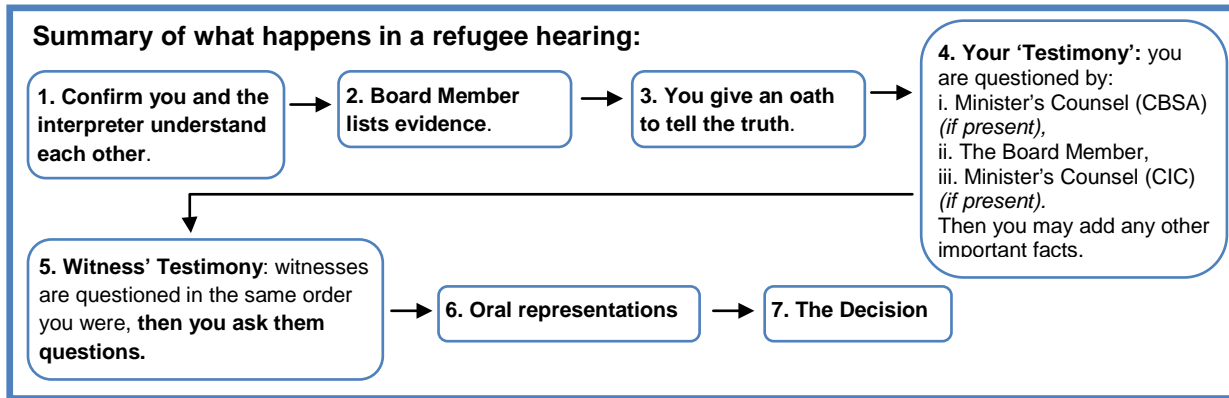
If there is a Minister's Counsel from Citizenship and Immigration Canada (CIC) present, they will be the last to ask you questions. If CIC has sent a Minister's Counsel to your hearing, you will have already been informed of the reason why (for example CIC suspects you are misrepresenting your identity) and the Minister's Counsel will ask questions relating to those concerns.

**After all the questions have been asked, you have the right to tell the Board Member anything else that you think is important.** If the Board Member has not asked you about an important part of your story, tell him or her that you have something to add to your testimony.

Once your testimony is finished, any other witnesses will testify, and each will be questioned by the same persons as above, in the same order. You will then have a chance to ask each witness questions. Once all the witnesses have testified, the testimony portion of the hearing is finished.

Whatever you or any other witness say while under oath at your hearing is known as "**testimony**".





## HOW TO ANSWER QUESTIONS

Look at the Board Member (not the interpreter or anyone else) while speaking during the hearing and do not speak while the Board Member is speaking.

### Tell the truth

**Telling the truth is the most important aspect of your testimony.** Before you answer any questions at your hearing, you must swear to tell the truth.

Telling the truth means that you should not change or exaggerate any part of your story. **Anyone who tells you that you should make your story 'better' by adding something that is not true has given you bad advice.**

If the Board Member believes that you exaggerated some part of your story, he or she may not believe other parts of your story. **The most common reason for refusals at the Board is that the Board Member did not believe the claimant was telling the truth.**

However, you also should not be afraid to express genuine emotions. If you are describing tragic events that you witnessed, it is normal to be emotional.

### Listen to the question

You should listen carefully to every question, and be sure you understand. To answer a question properly, you need to understand **exactly** what the person is asking. If you do not understand the question, **do not try to guess what the person is asking.** Tell the person that you do not understand the question and ask that it be repeated or explained. When you make such a request, the person will usually ask the question in a different way so that it is easier to understand.

### Do not give information that you are not certain about

Do not give exact dates or other information in an answer unless you are sure. **Do not try to guess what the answer should be.** Instead, answer the question as best you can (for example, if you do not remember the exact date that you were arrested, it is okay to say something like "it happened in the summer, but I cannot remember the exact date").



If you do not know an answer at all, just say so and explain why you do not know. For example, if you are asked why another person acted in a certain way, you should only answer if the person explained to you the reasons for his or her actions. Otherwise, you should answer by saying that you do not know and that you have no way of knowing.

### **Keep it simple**

**Listen carefully to the question, and answer only that question and nothing more.** Everything will go more smoothly if you respond to just the question being asked and do not talk about another topic while answering. If the person wants more information, they will ask another question. There will be a chance to add more information later in your *Oral Representations* if necessary (see p. 26).

### **Speak slowly in short sentences**

You may be nervous and want to speak quickly. It is important to speak slowly, especially for the interpreter. If you speak quickly in long sentences, the interpreter will not be able to accurately interpret every word. Also the Board Member needs time to take notes and to understand everything that you say.

### **Refer to documents**

When you are answering questions, or when you are telling your story, you can refer to your documents as proof to support your refugee claim. For example, if you are asked how long you have been politically active, first answer that question. Then you can also tell the Board Member that you have provided, as evidence, a letter from a party official that confirms your political activity. As another example, if you are asked about an incident in which you were assaulted, and you have a medical report that describes your injuries, you should refer to that report when answering the question.

If anyone asks you a question about a specific document (whether it was provided by you or someone else), it is very important to ask to see the document before answering the question. **Ask the person to point out the exact part of the document to which he or she is referring and then take the time you need to read it before answering the question.**

If you do not get a chance to refer to some of the documents that help to prove your claim, when answering questions, you can refer to them later in your *Oral Representations* (see p. 26).

### **Make sure everything is ‘on the record’**

Refugee hearings are recorded. Everyone taking part in the hearing will have a microphone in front of them to record whatever they say. This recording can be listened to afterwards, if necessary.

Anything recorded is considered to be ‘on the record’. Having a recording of the hearing can be very helpful to you if you decide to appeal the Board Member’s decision. For example, if the Board Member refuses your claim because he or she believes you gave an incorrect answer to a question, and you know the Board Member is mistaken, the recording will prove what you really said.

Because this recording may be important if there is an appeal, you must state clearly any concerns you have during the hearing in order to ensure they are ‘on the record’. For example, if you believe that the interpreter is not interpreting your words accurately, or if you are having trouble understanding the interpreter, you must tell the Board Member clearly. Otherwise, you may not be able to argue on appeal that the interpretation was inadequate.



Similarly, if the Board Member does not give you enough time to speak, you should politely but clearly ask for the chance to say more. If the Board Member refuses, it is important that this request and refusal be 'on the record' in case of an appeal.

If the Board Member speaks to you in an aggressive way, you have the right to tell him or her to speak to you politely. It is important to say this, in order for the Board Member to change his or her behaviour or, at least, to get your concern 'on the record' in the case of an appeal.

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## HOW TO ASK QUESTIONS TO YOUR WITNESSES

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Your questions to your witnesses cannot tell or suggest the answer. For example, you cannot say: "Tell us how I was attacked by the police while we were coming home from work together on January 15 2012". This is called a 'leading question', because it suggests the answer that you want the witness to give. Instead, you might ask; "Please tell us what you saw on January 15, 2012" or "Do you remember what happened on January 15, 2012?". These are called 'open questions'.

Once a witness starts to testify, he or she cannot discuss any evidence with you, not even during a break. Once all the witnesses have had their turn to speak, the 'testimony' portion of the hearing is finished.

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## HOW TO SEEK AN ADJOURNMENT

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There are two situations where an adjournment may occur during a hearing. The first is a brief break, mid-hearing. The second involves a situation where you ask for an adjournment to give you time to collect more evidence.

It is always acceptable to ask for a brief pause during the hearing: because you are tired, you need to go to the washroom, you need to calm down if you are upset, or you need to eat something. The Board Member will usually agree to such a request and grant a 15 to 20 minute break in the proceedings.

An **adjournment** is a pause in your hearing. This can either be a short pause of about 20 minutes during your hearing, or a pause of several days or weeks in order to get or respond to new evidence.

You can ask for a longer adjournment of a few days or a few weeks when you want to give the Board Member more evidence. Just like you have to deliver all of your evidence before the hearing, the Board and the Minister's Counsel (if present) need to tell you in advance if they have any evidence. If you are surprised with new evidence during the hearing, you have the right to ask for time to respond to this new information. For example, if the Board Member or Minister's Counsel presents a report that you have not seen before, you may ask for an adjournment to give you time to provide your own document in response. Another example would be where the Board Member suggests for the first time at the hearing a specific city or town in your country where he or she believes you could travel and live safely. In these circumstances, you may request an adjournment so that you can have some time to find documents showing that such a city or town is either not safe for you, or that it would be unreasonable for you to live there.



## ORAL REPRESENTATIONS

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Once your testimony (and that of any other witnesses) has been completed, you will be able to make oral representations (arguments). This provides you with an opportunity to summarize your claim and explain all the reasons why you should be granted refugee status.

**It is best to write these out before the hearing, but you may have to adjust them to talk about things that did not go the way you expected during the hearing.** You should ask for a short break before you start your oral representations. This will give you time to organize your thoughts and make any changes to what you have already written.

This is your chance to refer to any documents which you did not get to mention during your testimony. You can refer to medical reports, police reports, sworn declarations or any other documents that support your story. You can also refer to human rights reports, news articles or other documents showing that people in a similar situation to you have been persecuted. Whenever you refer to a document make sure to identify it clearly and mention the specific part (page number and paragraph) that is most important (see *Highlighting specific parts of documents*, p. 13).

If a Minister's Counsel was present during the hearing, he or she may make oral representations before you do. The Minister's Counsel may tell the Board Member why he or she thinks you should not receive refugee status. In your own oral representations, you should state why you disagree with the Minister's Counsel's arguments and point to any testimony or documents which show that you did not do what the Minister's Counsel is accusing you of.

If the Board Member tells you that you do not need to make oral representations, it generally means that your claim is going to be accepted. However it is impossible for you to know in advance whether this will happen, so you should always prepare your oral representations before the hearing.

### **In your oral representations you should explain:**

- how you meet the definition of either a *Convention Refugee* or a *Person in need of Protection*: setting out which person(s), organization(s) or government agent(s) you fear;
- what you are afraid would happen to you if you returned to your country;
- why your fear is supported by the documents that you submitted and the testimony of any witnesses who testified;
- why you believe that you cannot obtain adequate protection from the state authorities;
- if you are arguing that you are a *Person in need of Protection*, how the danger you face in your country is specific to you, and is not a danger that everyone in your country experiences; and
- if the Board Member has suggested a specific place in your country where you may be able to go to live, why it is not possible for you to travel or live safely there and/or anything else which would make it difficult for you to live there.



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## THE BOARD MEMBER'S DECISION

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Once everyone has completed their oral representations, the Board Member may either give the decision on your refugee claim right away, or may say that he or she wants more time to think about your claim and that you will receive the decision by mail at a later date.

The Board Member cannot just say that your claim has been accepted or rejected. He or she must also explain **why** that decision was made. These are called 'the reasons' for the decision. If the Board Member decides your claim right away, normally, he or she will take a brief break to prepare their reasons for the decision.

Normally, if a Board Member accepts your refugee claim, he or she makes the decision right away at the hearing. However, you should not worry if the decision is not given right away; you may still receive a positive decision later by mail. If the Board Member refuses your claim at the end of the hearing, you will still receive the reasons in writing later by mail.



## APPENDIX A: HEARING PREPARATION FORM (FORMULAIRE DE PREPARATION À UNE AUDIENCE)

Name of Counsel/Nom de l'avocat: \_\_\_\_\_

Phone/Téléphone: \_\_\_\_\_ Email/Courriel: \_\_\_\_\_

A: Summary of the claim/Sommaire de la demande d'asile														
<b>A1. Name/Nom:</b> _____ _____	<b>A2. Country or countries of nationality/Pays de nationalité:</b> _____ _____													
<b>A3. Types of harm feared/Types de préjudice craints:</b>	<b>A4. Reason for harm feared/ Motifs de préjudice craints:</b>													
<table border="1"><tr><td style="writing-mode: vertical-rl; transform: rotate(180deg);">Refugee/ Réfugié</td><td><input type="checkbox"/> Persecution/Persécution: _____ _____</td><td><input type="checkbox"/> Race/Race: _____</td></tr><tr><td rowspan="3" style="writing-mode: vertical-rl; transform: rotate(180deg);">Person in Need of Protection/ Personne à protéger</td><td><input type="checkbox"/> Torture/Torture: _____ _____</td><td><input type="checkbox"/> Religion/Religion: _____</td></tr><tr><td><input type="checkbox"/> Risk to life/Risque pour sa vie : _____ _____</td><td><input type="checkbox"/> Nationality/Nationalité: _____</td></tr><tr><td><input type="checkbox"/> Cruel or unusual treatment or punishment/Traitement ou châtiment cruel ou inhabituel : _____ _____</td><td><input type="checkbox"/> Political opinion/Opinion politique: _____</td></tr><tr><td colspan="2"></td><td><input type="checkbox"/> Membership in a particular social group/Adhésion à un groupe social particulier: _____ _____</td></tr></table>	Refugee/ Réfugié	<input type="checkbox"/> Persecution/Persécution: _____ _____	<input type="checkbox"/> Race/Race: _____	Person in Need of Protection/ Personne à protéger	<input type="checkbox"/> Torture/Torture: _____ _____	<input type="checkbox"/> Religion/Religion: _____	<input type="checkbox"/> Risk to life/Risque pour sa vie : _____ _____	<input type="checkbox"/> Nationality/Nationalité: _____	<input type="checkbox"/> Cruel or unusual treatment or punishment/Traitement ou châtiment cruel ou inhabituel : _____ _____	<input type="checkbox"/> Political opinion/Opinion politique: _____			<input type="checkbox"/> Membership in a particular social group/Adhésion à un groupe social particulier: _____ _____	
Refugee/ Réfugié	<input type="checkbox"/> Persecution/Persécution: _____ _____	<input type="checkbox"/> Race/Race: _____												
Person in Need of Protection/ Personne à protéger	<input type="checkbox"/> Torture/Torture: _____ _____	<input type="checkbox"/> Religion/Religion: _____												
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	<input type="checkbox"/> Cruel or unusual treatment or punishment/Traitement ou châtiment cruel ou inhabituel : _____ _____	<input type="checkbox"/> Political opinion/Opinion politique: _____												
		<input type="checkbox"/> Membership in a particular social group/Adhésion à un groupe social particulier: _____ _____												
<b>A5. Agents of harm (specify)/Agents de préjudice (précisez):</b>	<b>A6. State protection/Protection offerte par l'État:</b>													
<input type="checkbox"/> State agents/ Agents étatiques: _____ _____	_____ _____ _____													
<input type="checkbox"/> Non-state agents/ Agents non étatiques: _____ _____	_____ _____													
<b>A7. Internal flight alternative/Possibilité de refuge intérieur:</b> _____ _____ _____	<b>A8. Subjective fear/Crainte subjective:</b> _____ _____ _____													
<b>A9. Exclusion/Exclusion:</b>														
<input type="checkbox"/> 1F(a) – crimes against peace, war crimes, crimes against humanity/1F(a) – crimes contre la paix, crimes de guerre, crimes contre l'humanité: _____ _____														
<input type="checkbox"/> 1F(b) – serious non-political crimes/1F(b) – crimes non politiques graves: _____ _____														

This form is intended as general legal information to assist refugee claimants and those assisting them without consideration to prepare for their refugee hearing.

Ce formulaire offre des renseignements juridiques généraux pour aider les demandeurs d'asile et les personnes qui les aident sans considération à se préparer en vue de leurs demandes du statut de réfugié.



**B: Documents as Evidence/Documents à titre de données probantes**

**B1. Identification (indicate location of document)/Renseignements sur l'identité (indiquez l'emplacement du document):**

<input type="checkbox"/> Passport/Passeport	<input type="checkbox"/> National Identity Card/Carte d'identité nationale	<input type="checkbox"/> Birth Certificate/Certificat de naissance	<input type="checkbox"/> Other/Autre: _____
<input type="checkbox"/> CBSA, CIC/ASFC, CIC	<input type="checkbox"/> CBSA, CIC/ASFC, CIC	<input type="checkbox"/> CBSA, CIC/ASFC, CIC	<input type="checkbox"/> CBSA, CIC/ASFC, CIC
<input type="checkbox"/> Claimant/Demandeur d'asile	<input type="checkbox"/> Claimant/Demandeur d'asile	<input type="checkbox"/> Claimant/Demandeur d'asile	<input type="checkbox"/> Claimant/Demandeur d'asile
<input type="checkbox"/> Other/Autre: _____	<input type="checkbox"/> Other/Autre: _____	<input type="checkbox"/> Other/Autre: _____	<input type="checkbox"/> Other/Autre: _____

**B2. Proof of group identity (see A4)/Preuve des incidents clés (voir A4):**

Group 1/Groupe 1: _____	Group 2/Groupe 2: _____
Documents/Documents: _____	Documents/Documents: _____

**B3. Proof of key incidents/Preuve des incidents clés:**

Incident 1/Incident n° 1: \_\_\_\_\_  
 \_\_\_\_\_  
 Documents/Documents: \_\_\_\_\_  
 \_\_\_\_\_

Incident 2/Incident n° 2: \_\_\_\_\_  
 \_\_\_\_\_  
 Documents/Documents: \_\_\_\_\_  
 \_\_\_\_\_

Incident 3/Incident n° 3: \_\_\_\_\_  
 \_\_\_\_\_  
 Documents/Documents: \_\_\_\_\_  
 \_\_\_\_\_

**B4. Reports/Rapports:**

Police/ Court (arrest or conviction)/Police/tribunal (arrestation ou condamnation)  
 \_\_\_\_\_

Police – complaint/Police – plainte: \_\_\_\_\_  
 \_\_\_\_\_

Medical - Physical harm/Médical – préjudice physique: \_\_\_\_\_  
 \_\_\_\_\_

Medical - Psychological harm/Médical – préjudice psychologique: \_\_\_\_\_  
 \_\_\_\_\_

**B5. Country Information documents/Documents de renseignements sur le pays:**

Issue 1/Enjeu n° 1: _____	Issue 2/Enjeu n° 2: _____	Issue 3/Enjeu n° 2: _____
Documents/Documents: _____	Documents/Documents: _____	Documents/Documents: _____

**C: Witnesses as Evidence/Témoins à titre de données probantes**

**C1. Witnesses on identity, details of claim, or country information/Témoins de l'identité, des détails de la demande d'asile ou des renseignements sur le pays:**

Witness/Témoïn: _____	Witness/Témoïn: _____	Witness/Témoïn: _____
Purpose/But: _____	Purpose/ But: _____	Purpose/But: _____



## APPENDIX B: YOUR TO DO LIST

Your Name: \_\_\_\_\_

Deadline for delivering your evidence to the Board: \_\_\_\_\_

### 1. Documents about your story

Document	<u>What</u> needs to be done?	<u>Who</u> will do it?	<u>When</u> will it be done?

### 2. Documents about your country

Document	<u>What</u> needs to be done?	<u>Who</u> will do it?	<u>When</u> will it be done?

### 3. Witnesses

Witness	<u>What</u> needs to be done?	<u>Who</u> will do it?	<u>When</u> will it be done?

*This form is to help refugee claimants who do not have a lawyer for their refugee hearing. If you are a **refugee claimant without a lawyer**, you can use this form to list the evidence that will help you to prove your refugee claim. **You are the person who must deliver your evidence to the Immigration and Refugee Board in time for your refugee hearing.** The person who helps you create this list or get your evidence is not your lawyer and they will not represent you at your hearing. Do not pay any one to help you with this form.*

*If you are **helping a refugee claimant with this form**, make sure the claimant understands that you are not their lawyer or legal representative. **No payment may be requested or accepted for helping a refugee claimant with this form** or with getting their evidence.*







## APPENDIX C: LIST OF ACRONYMS AND SHORT FORMS

### ACRONYMS

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BOC	Basis of Claim Form
CIC	Citizenship and Immigration Canada
CBSA	Canada Border Services Agency
HPF	Hearing Preparation Form
IFA	Internal Flight Alternative
NDP	National Documentation Package

### SHORT FORMS

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Claimant	Refugee Claimant seeking Canada's protection either as a <i>Convention Refugee</i> or as a <i>Person in need of Protection</i>
The Board	Immigration and Refugee Board (IRB), specifically the Refugee Protection Division (RPD)
Board Member	Immigration and Refugee Board Member, who is the decision-maker at the refugee hearing
Hearing	Refugee hearing at the Refugee Protection Division (RPD), where a claimant gives testimony, and the Board Member decides the refugee claim (either immediately in person or by mail after the hearing)