CANADIAN COUNCIL FOR REFUGEES

BILL C-11: NEW IMMIGRATION BILL

On 21 February 2001 the Minister of Citizenship and Immigration tabled Bill C-11, a revised version of last year's Bill C-31. If adopted it will replace the current *Immigration Act*. The Canadian Council for Refugees is deeply concerned that this bill will reduce the rights of refugees and immigrants.

Consultation process: In June 2001, Bill C-11 was passed by the House of Commons, after rushed and abbreviated hearings by the Standing Committee on Citizenship and Immigration at which groups, including the CCR, had only a few minutes to discuss their extensive concerns. Bill C-11 is a complex and substantial piece of legislation that will have enormous impact on the lives of hundreds of thousands of refugees and immigrants, and on the reputation of Canada. The CCR hopes that the Senate, which is now considering the bill, will take the time to fully address the problems in the bill.

Changes from C-31: C-11 brings a few welcome improvements over C-31. However, most of the CCR's criticisms of C-31 remain unaddressed. And C-11 includes some new and disturbing elements (for example, increasing immigration officials' powers to detain on the basis of identity without adequate independent oversight). Amendments to C-11 made in the House were minor.

Negative discourse: In announcing both C-11 and C-31, the Minister has portrayed the bill as "tough," laying emphasis on criminals and abusers. This focus stereotypes refugees and immigrants in highly negative terms and encourages Canadians to think they need to be "protected" against newcomers.

Security measures: The bill places a heavy emphasis on measures supposed to protect Canada from criminals and abusers, reducing individual rights and protections and increasing penalties. Many of the measures aimed at "closing the back door" are to be found in the bill. On the other hand, most of the measures announced to "open the front door" are merely proposals for the Regulations.

The new bill is to be called the **Immigration and Refugee Protection Act**, and has separate objectives for refugees, and a distinct part on *Refugee Protection*. This is a way of recognizing that refugees, as people forced to flee, are fundamentally different from immigrants. However, the distinction is not fully respected within the bill: refugee resettlement is covered under Part 1, *Immigration to Canada*. In addition, many of the rules affecting refugee claimants in Canada (for example, the provisions relating to detention) are found in Part 1, where the specific realities of refugees are not taken into account.

The bill is a piece of **framework legislation**, meaning that only the main overall rules are included, and most of the details are left to Regulations. The bill is much shorter than the current Act and is simpler and easier to read. However, because many of the important rules are in the Regulations, the Act by itself gives little idea of the real processes refugees and immigrants will go through. Furthermore, putting things in the Regulations opens the door to the government changing the rules, without parliamentary scrutiny, based on its convenience, public annoyance, displeasure at a court's decision on individual rights, etc.

For information on provisions in the bill, please consult the information sheets prepared by the Canadian Council for Refugees.

27/07/01

REFUGEE RESETTLEMENT

There is little in Bill C-11 about Canada's refugee resettlement program (whereby refugees abroad are selected at Canadian visa posts). Unlike refugee determination in Canada, the definitions and processes relating to refugee resettlement will appear only in the Regulations. The following are the most important changes in what the bill does have to say about refugee resettlement.

- Section 72 imposes a **leave requirement on all applications for judicial review**. This means that refugee applicants overseas and/or private sponsors will no longer have an automatic right to be heard at the Federal Court if they receive a negative decision, but have to apply for permission from the Federal Court. Even now, without the leave requirement, few refugees overseas are able to bring their case to the Federal Court, because of all the practical difficulties. The new leave requirement will make it even more difficult for refugees overseas to get any kind of appeal. The CCR is calling instead for applicants refused overseas to have access to the Refugee Appeal Division at the Immigration and Refugee Board.

- Applicants overseas will have **60 days** (rather than 15) to apply to Federal Court (S. 72(2)(b)).

- The bill provides for Regulations establishing **quotas** for numbers of applications accepted, processed, approved and numbers of visas issued (S. 14(2) (c)). This opens the door to the imposition of quotas on the numbers of refugees sponsored or otherwise resettled.

- The bill refers specifically to resettlement in its **Objectives** with respect to refugees. Section 3(2)(b) includes in the objectives of the Act to "affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement".

- Resettled refugees are to be exempted from inadmissibility on the basis of **excessive medical demand** (38 (2)(b)). This will make it easier for refugees with health problems to be resettled.

The government has also announced some points relevant to refugee resettlement that are to be included in the Regulations.

- The evaluation of whether refugees have the "**ability to successfully establish**" is to consider social and economic factors and the period during which refugees are expected to successfully establish is to be extended to 3 - 5 years. The goal here is to ensure that the need for protection is the overriding objective. This proposal should reduce the number of refugees rejected because they are believed not to be likely to settle in the same time as immigrants. However, the CCR continues to call for the successful establishment criterion to be eliminated altogether.

- Dependants (spouses and children) of refugees already landed in Canada will have a **one year window of opportunity** to be processed as part of the permanent resident's application. This will promote family reunification and mean that family members will not need to be sponsored under the family class

or demonstrate their own refugee claim, if they apply within one year of their family member's arrival.

DETENTION
(Sections 54 - 61)

The bill identifies three main grounds for detention: flight risk, danger to the public and identity issues. These are also in the current Act. However, the bill broadens the provisions for detention in a number of ways.

— The bill (S. 55(3)) gives immigration officers new powers to detain at the port of entry on the basis of **administrative convenience** (for example, to complete an examination). Officers will also be allowed to detain people where they have "reasonable grounds to suspect" inadmissibility on the basis of security or human rights violations.

There is no need for new detention grounds based on *convenience* and *suspicion*. The tests of danger to the public and "unlikely to appear" already cover all situations in which detention is necessary. The new provisions constitute a serious threat to the fundamental right of liberty.

— The bill (S. 55(2)) expands the provisions for **detention without warrant**. Currently, there are limited circumstances in which people inside Canada can be arrested without warrant. Under the bill, immigration officers will be able to arrest and detain, without warrant, people who are inadmissible, even when they are not about to be removed.

— The bill (S. 55(2)(b)) expands provisions for detaining people on the basis of **identity**. Any document requirement hurts refugees who are often forced to flee without ID, because it is their very identity that puts them at risk of persecution. Currently, people can only be detained for ID at the port of entry. Under the bill, people can be detained if they **fail to satisfy an immigration officer at any procedure** under the Act.

— Once someone is detained on ID grounds, the bill suggests that they may be **detained for weeks or months** (58(1)(d)). It says that they are not to be released if the Department thinks that identity could be established and they are making reasonable efforts to do so or the person is not "cooperating." This leaves the power very much in the hands of the Department and not the independent adjudicator. It can take detainees weeks or months to obtain identity documents. Refugees may not want to "cooperate" because applying from the home country for documents might put family or colleagues at risk of persecution.

This provision contrasts with the current Act which provides for short-term detention on ID.

— The government has announced that it plans to make arriving through **criminally organized smuggling operations** a factor towards concluding that the person would not appear. But people who arrive using smugglers are not in fact necessarily less likely to present themselves.

— Bill C-11 states as a principle that minors should only be detained as a last resort (S. 60). This is a welcome general statement, but only useful if alternatives to detention are made available.

REFUGEE DETERMINATION: ELIGIBILITY

(Sections 100 -104)

As is currently the case, not everyone who wants to make a refugee claim will be heard: only those found eligible by Citizenship and Immigration Canada (CIC). The bill however enlarges the categories of people whose claims will be found ineligible (i.e. will not be referred for a hearing to the Immigration and Refugee Board). The CCR calls for the eligibility stage to be eliminated and all claims heard at the IRB.

— **Second claims:** Anyone who has ever before made a refugee claim in Canada will be ineligible to make a new claim. This covers people whose first claim was refused, abandoned, withdrawn, accepted or found ineligible. No matter how many years have passed and no matter how much the person's situation has changed or the circumstances in the country of origin have changed, the person will not be heard by the Immigration and Refugee Board. This is an extremely significant change that is inconsistent with Canada's obligations not to send refugees back to persecution.

  The only recourse offered under the bill is a *Pre-removal Risk Assessment* and this is only open to claimants who have been outside Canada for at least six months since their first claim. The *Pre-removal Risk Assessment* offers very much less protection than a refugee claim: applicants have no right to an oral hearing or to an appeal, and the decision is made by immigration officials, rather than the independent and quasi-judicial Immigration and Refugee Board.

— **Serious criminality**: Claims will be ineligible (S. 101(2)) if the claimants have been (a) convicted in Canada of a crime punishable by a maximum of at least 10 years imprisonment, and for which a sentence of 2 years was imposed; or (b) convicted outside Canada of a crime that would in Canada be punishable by a maximum of at least 10 years and the Minister is of the opinion that they are a danger to the public.

  C-11 thus preserves the highly contentious use of the current "danger to the public" certificates, which deny claimants a refugee hearing in an arbitrary and unfair process. Restriction on the basis of criminality is contrary to international standards, since the allegations of criminality should be considered in the context of a refugee hearing, where the crimes committed can be weighed against the threat of persecution.

— **Organized criminality**: Claims are ineligible (S. 101(1)(f)) if the claimants are found to have engaged in activities such as people smuggling. There is no need for a conviction or for the person to have been people smuggling for profit. A person who helped family members escape persecution using smugglers could therefore be found ineligible to make a refugee claim.

— The bill provides for **automatic referral** of claims if Citizenship and Immigration Canada has not made an eligibility decision within three days (S. 100(3)). This measure will reduce delays in the system (sometimes claimants wait months to have their claim referred). Note, however, that even after the 3 days, CIC will be able to determine the claim ineligible and stop the person's hearing before the

Immigration and Refugee Board.

REFUGEE DETERMINATION: GROUNDS FOR PROTECTION
(Sections 96 - 98)

Bill C-11 combines what are currently two separate decisions (refugee determination and risk review), providing a single decision at the Immigration and Refugee Board (IRB).

For each claim for "refugee protection", the IRB will decide whether the person is:

A. A **Convention Refugee** (same as in current Act)

B. A person in need of protection, meaning:
   a) a person at **risk of torture** in their home country (as defined in the Convention Against Torture)
   b) a person whose life would be at risk or who risks **cruel and unusual treatment or punishment**, but only if the person was unwilling or unable to seek state protection, there is no internal flight alternative, the risk is not related to internationally acceptable and lawful sanctions, and the risk is not related to the availability of medical care.
   c) a **member of a class** of persons established by Regulations to be in need of protection.

The exclusion clauses of the Refugee Convention (Section E or F) apply to both Convention Refugees and persons in need of protection. (Section E excludes people who are firmly resettled; Section F excludes war criminals, those who have committed a serious non-political crime outside the country of refuge and anyone guilty of acts contrary to the purposes and principles of the United Nations).

The same definitions as above apply to decisions made in the Pre-removal Risk Assessment.

— The **consolidation of decision-making** at the Immigration and Refugee Board has been recommended by the Canadian Council for Refugees, in the interests firstly of fairness, and secondarily of efficiency.

— The specific reference to the **Convention against Torture** (CAT) is new and important. However, the definition does not fully comply with the CAT which, unlike the Refugee Convention, has no exclusion clauses. Article 3 of the CAT prohibits the removal of *any one* to torture, no matter what they may have done in the past or be likely to do in the future. The absoluteness of the rule reflects the international community's obligation to refuse any complicity with torturers.

— The threshold for **risk of cruel and unusual treatment** is, like the current post claims risk review (PDRCC), quite high. The risk must be particular to the person, meaning that no protection will be offered to people who face a very serious but generalized risk. The CCR calls for the definition be amended to ensure that all those at serious risk are protected.

REFUGEE DETERMINATION: HEARING PROCESS

Eligible claims for refugee protection will be heard by the Refugee Protection Division (currently Convention Refugee Determination Division) of the Immigration and Refugee Board. Claimants will normally have an oral hearing before a single member (currently there are two-member panels). A decision by the Refugee Protection Division can be appealed to a new Refugee Appeal Division. Appeals can be made by both the claimant and the Minister (i.e. from negative and positive decisions). The Refugee Appeal Division will not hold a hearing but will base its decision on written submissions. Decisions at appeal, usually to be made by a single member, can confirm the original decision, change the decision or send the claim back to the Refugee Protection Division for a new hearing.

— The Bill fails to do anything to change the **appointment process** for Board members. If refugee decisions are to be made by single member panels, the quality of the decision-makers is more critical than ever, since only one person will hear the claimant. Yet, according to the bill, appointments will continue to be political and there will still be no transparent, professional and accountable selection procedure.

— The introduction of an **appeal on the merits** (S. 110-111) addresses one of the fundamental flaws in the current refugee determination system. The lack of an appeal mechanism has recently been criticized by the Inter-American Commission on Human Rights in a report on Canada's refugee system.

  However, the proposed appeal offers very limited protections to refugee claimants, since it is on **paper** only, generally before a single member. A significant percentage of negative refugee decisions are based on credibility, yet it is extremely difficult to challenge through written submissions a finding that a person is not credible. Written procedures are also extremely problematic for claimants who do not have a lawyer to represent them – as is frequently the case because of inadequate legal aid coverage.

— The bill provides no guarantees of the **independence** of the Refugee Appeal Division and of the superior **expertise** of its members in the field of refugee determination. If the appeal is to function as an effective mechanism for correcting errors, the Refugee Appeal Division must be a clearly separate and higher section (as is the case in tribunals in other spheres of law).

— The bill gives **equal rights of appeal** to the refugee claimant and the Minister (S. 110(1)). The stakes are, however, not equal: for the claimant it is potentially a matter of life and death; for the Minister, the interests are very much less significant. Quite apart from the appeal, the Minister has ample opportunity to protect the integrity of the system through interventions in hearings and appeals and through applications for vacation of refugee status.

— The bill provides for hearings by **videoconference** where the claimant is not in the presence of the decision-maker (S. 164). The CCR opposes the use of videoconferences for refugee hearings, since credibility cannot be properly assessed in this way. In addition, it is often extremely difficult for refugees to testify to a camera about traumatic experiences.

PRE-REMOVAL RISK ASSESSMENT

(Sections 112 - 114)

The bill introduces new provisions for assessing the risks faced by people who for one reason or another are denied access to a refugee hearing before the Immigration and Refugee Board (IRB). The Pre-Removal Risk Assessment (PRRA) will apply the same definition as the IRB (Convention refugee and persons in need of protection) but will be conducted by Citizenship and Immigration Canada.

- People who have been **refused by the Immigration and Refugee Board** will have access to the PRRA after a prescribed period (possibly 3 months) (S. 112(2)(c)). For refused claimants, the PRRA will be an opportunity to bring forward new evidence (something that they cannot do in the refugee appeal).

- People who cannot make a refugee claim because of a **removal order** against them will have access to the PRRA.

- People who cannot make a refugee claim because they made **a claim in the past** and then left Canada will have access to the PRRA, but only if they have been outside Canada for at least six months. For people whose claim was previously refused, only new evidence can be submitted.

- People who are ineligible to make a refugee claim on grounds of **serious criminality, security, human rights violations or organized criminality** will have access to the PRRA. In making risk assessments in this category, the danger to the public and to the security of Canada will be balanced against the risk to the person (113(d)). People in this category cannot apply under the Convention Refugee definition and cannot be given refugee protection, only a stay of removal. Even people who are found inadmissible on the basis of a trumped up political conviction overseas can only be given a stay of removal.

  The PRRA mechanism goes some way towards recognizing the prohibition in the **Convention Against Torture** (CAT) against sending anyone to torture. But the provisions make clear that the government does not intend to abide by the absolute prohibition in the CAT, since they intend to balance risks to Canada against risks to the person. This means that some people will be sent back to torture. Furthermore, not everyone who may be at risk of torture has access to the PRRA: for example, people who return to Canada after less than 6 months.

- The risk assessment will be evaluating exactly the same risks that the Immigration and Refugee Board evaluates in the refugee hearing. Yet the bill gives this job not to the IRB, but to **Citizenship and Immigration Canada**, which will have to set up its own structures, training programs, documentation centres, oral hearing process (for some cases) etc. This is neither efficient, nor likely to lead to good decision-making.

FAMILY REUNIFICATION

Bill C-11 has relatively little to say about family reunification, since most of the relevant provisions are left to the Regulations. The government has however announced a number of measures relating to family reunification. It would be good to see more of the measures that promote family reunification incorporated into the Act.

- Spouses, common-law partners and children who are part of the family class are exempt from inadmissibility on the basis of causing **excessive demand on health or social services** (S. 38(2)(a)). This is a welcome change that recognizes that families should not be kept separate on health grounds.

- The government proposes to **prevent people on social assistance from sponsoring family members**, including spouses and minor children. (Currently, spouse and children are the only family members that can be sponsored by a person on social assistance). The proposed bar represents a denial of the rights of family unity on the basis of economic status.

- The bill simplifies procedures for the government to **collect on money owed** in relation to a sponsorship undertaking (S. 145-147). Thus if a person sponsors a family member who receives social assistance while under sponsorship, the sponsor can become liable for the amount and can have her or his wages garnisheed. There needs to be some mechanism for reviewing humanitarian circumstances before proceeding against sponsors.

- The government proposes to create an **in-Canada landing class** for sponsored spouses and partners. This promotes speedy family reunification, allowing families to be together in Canada while awaiting immigration processing. However, where the spouse cannot travel to Canada because they need a visa (as is the case for many refugees), this measure cannot be taken advantage of. The CCR urges that spouses and children of recognized refugees in Canada be given the right to travel to Canada for processing here.

- The **length of the sponsorship** requirement is to be reduced from 10 years to 3 years for spouses and same sex/common law partners. This is a very positive step towards ensuring newcomers' access to rights and services and towards reducing the relationship of dependency created by sponsorship, with all the associated dangers of conjugal violence. For the same reasons, the reduction should also apply to sponsorships of fiancé-e-s and children. However, the government has on the contrary announced that sponsorship of children will extend for 10 years or until the age of 22, whichever is longer. This means that a baby sponsored at the age of 6 months, will still be under sponsorship 20 years later.

- The **age limit of "dependent child"** is to be increased from under 19 to under 22. This will prevent separation of families with young adult children. However, there needs to be flexibility to take account of the fact that young adults over 21 are often still dependent on their families.

INADMISSIBILITY AND LOSS OF PERMANENT RESIDENCE

The Minister has spoken of her commitment to be "tough". The provisions relating to inadmissibility and loss of permanent residence live up to this label.

- The bill creates a new inadmissible category for **organized criminality** (S. 37), which does not require any criminal conviction and which includes a very vaguely defined reference to "activities such as people smuggling, trafficking in persons or money laundering". The bill clarifies that entering Canada with the assistance of people smugglers does not lead to inadmissibility, but this new category could catch people who help family members get to Canada using smugglers. Persons found inadmissible on the basis of organized criminality are barred from making a refugee claim and lose permanent residence without any right of appeal.

- The bill creates a new category of inadmissibility for **misrepresentation** (S. 40), valid for 2 years from the time the person is removed. It includes direct and indirect misrepresentation, persons sponsored by a person who made the misrepresentation (if the Minister chooses) and persons whose refugee protection is vacated for misrepresentation.

- **Security** and **human or international rights violations** inadmissibility: the bill retains (S. 34) the highly problematic reference to "terrorism" (undefined) and adds a new category: representatives of governments against which Canada has imposed sanctions (S. 35 (1)(c)).

- The **security certificate** process, already extremely secretive and unfair, reduces even further the few rights people now have. Currently, permanent residents facing security proceedings have access to the Security Intelligence Review Committee. But under the bill, permanent residents will be denied access and, like people with no permanent status in Canada, will have only the right of minimal review by a single judge of the Federal Court (S. 76-81). Non-permanent residents are mandatorily detained and cannot be released during the certificate process (S. 82-4).

- **Residence in Canada**: Permanent residents will need to be in Canada for two years out of each five year period, otherwise they lose their status (S. 28). An immigration officer is to look at humanitarian considerations and the best interests of any child affected before removing permanent residence.

- **No appeals** to the Immigration and Refugee Board can be made by permanent residents found inadmissible on the grounds of security, violating human rights, serious criminality or organized crime (S. 64). Serious criminality is defined here as a crime punished in Canada by a sentence of at least two years (this replaces the current highly problematic bar on appeals in criminality cases where a danger to the public certificate is issued). The two year imprisonment rule is less arbitrary than the danger to the public process, but inflexible in the face of cases where, for example, a person has been in Canada since infancy and represents no danger to the public. With respect to organized criminality, the bill does not require a two year sentence or even a conviction, just "engaging... in activities such as people smuggling". Thus a permanent resident could be deported without an appeal based simply on

allegations of minimal involvement with smugglers to help a family member escape persecution.

INTERDICTION

Bill C-11 and related announcements aim at reinforcing measures already in place to prevent "improperly documented travellers" from getting to Canada. These measures have a particular impact on refugees, who generally cannot get visas and often cannot even travel on their own passport. Yet interdiction efforts are applied blindly, blocking refugees and non-refugees equally.

— The government proposes to increase **overseas interdiction** by stationing more immigration control officers abroad. Interdicted refugees are at risk of being immediately sent back to the country of origin or put into jail in the country in which they are interdicted.

  Although the Act limits the enforcement activities that immigration officers can undertake in Canada, the whole area of overseas interdiction activities is left untouched by the bill. Giving a legislated framework to interdiction would be one way of addressing the impact of these activities on refugees.

— The bill expands the offences related to **organizing entry** into Canada or **using false documents** and increases the penalties for these offences (S. 117-123). Persons who are found to be refugees are exempted (S. 133). However, this exemption does not apply to others, for example family members, who help refugees to escape. The bill (S. 121) says that the courts are to consider offences committed for profit as an aggravating factor: this implies that even when the motive is not for profit, it is still an offence. Thus people whose only motive was compassion for someone fleeing persecution would be punishable and could face extremely serious penalties.

  The exemption for refugees also fails to cover people who are interdicted on their way to Canada and therefore cannot claim refugee status here. There are already cases where persons are interdicted on their way to Canada: when their spouse in Canada subsequently tries to sponsor them, they are declared inadmissible on the grounds of the crime of travelling on a false document. Under the bill, the problem is likely to get worse, because of the increase in both the scope of the offences and the penalties.

— Some of the provisions in the bill reflect the **protocols on migrant smuggling and trafficking in persons** signed in December 2000 (these are protocols to the Convention on Transnational Organized Crime). These protocols call for the criminalization of smuggling and trafficking offences. So, for example, the bill adds a new inadmissibility category (S. 37(1)(b)) for engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering. But while the bill includes enforcement measures inspired by the protocols, we do not see reflected in the bill the provisions in the protocols aimed at protecting migrants and victims of trafficking. The trafficking protocol has a series of provisions about the rights and treatment of trafficked persons. The migrant protocol states that the criminalization measures are not to apply to people who are smuggled into a country, whereas Bill C-11 gives an exemption only to those recognized as refugees.

HUMAN RIGHTS OBLIGATIONS

As a signatory to international human rights instruments, Canada has obligations to respect the human rights of non-citizens. The new *Immigration and Refugee Protection Act* needs to meet the standards set out in these instruments.

Unfortunately, despite some references, the bill does not incorporate the relevant instruments.

The following are only some of the comments that could be made on the bill's compliance with human rights standards.

— Bill C-11 makes specific reference to the **Convention Against Torture** and provides for the protection of people who are at risk of torture as defined in Article 1 of that Convention (S. 97(1)(a)).

  However, the bill does not fully respect Article 3 of the Convention, which prohibits sending anyone back to torture. Under the bill, the prohibition against sending to torture does not apply to people who are inadmissible on grounds of serious criminality or security (S. 115(2)).

— Article 3 of the **Convention on the Rights of the Child** requires that states make the best interests of the child a primary consideration in all decisions taken concerning them. The bill makes a step in the right direction by referring at various points to the need to take account of the best interests of any child directly affected. However, to comply fully with the Convention, the higher standard of *primary consideration* should be introduced and should apply to all decisions taken under the Act.

— The **Inter-American Commission on Human Rights** last year released its *Report on the situation of human rights of asylum seekers within the Canadian refugee determination system* (28 February 2000). This report makes a series of recommendations.

  Bill C-11's inclusion of an appeal on the merits in the refugee determination system and the consolidation of risk review at the IRB respond to two of the recommendations. However, there are many other recommendations to which the bill does not respond at all, or in fact aggravates the current situation. For example, the report calls for the substantive determination of eligibility to be placed within the competence of the IRB. The bill, on the other hand, actually increases the categories of people who will be declared ineligible and therefore prevented from being heard by the IRB. The report also includes recommendations unaddressed by C-11 on re-opening provisions, expediting family reunification, preventing long-term detention, adding safeguards in the security certificate procedure and not separating families through removals.

In view of the importance of ensuring Canada's compliance with international human rights obligations, the CCR is calling on the government to seek an opinion on the bill from relevant international human rights bodies, notably the UN Committee against Torture, the UN Human Rights Committee and the Inter-American

Commission on Human Rights.

GENDER ANALYSIS

The government's proposals need to be examined from the point of view of the potential differential impacts on men and women. The following are some of the relevant effects of the bill and proposed regulations.

- The Minister proposes to **bar from family sponsorship people who are on social assistance**. Since women, more often than men, are poor and single parents (and must rely on social assistance), they are likely to be disproportionately affected by this provision. In many cases, reuniting the family leads to the family being able to get off social assistance.

- The proposal to **reduce the length of spousal sponsorship** from ten years to three years will have a positive impact on sponsored women, by reducing their financial dependence on their husband. The sponsorship relationship reinforces the patriarchal model and makes sponsored women more vulnerable to abuse.

- The elimination of any possibility of making a **second refugee claim** will hurt women who never had an opportunity in the first claim to explain their persecution because the spouse was the principal applicant. Current experience shows that some women who have strong grounds of their own for claiming refugee status are not heard in their first claim made with their husband, because they are not asked, or because they are intimidated or traumatized.

- The proposals for regulations include a commitment to shift the balance in resettlement decisions away from "**successful establishment**" and towards protection concerns. This is positive since potential for "successful establishment" is evaluated using criteria that are unfavourable to women (e.g. education, professional experience and training). However, maintaining the "successful establishment" fails to address the underlying problem of the gender bias in this test.

- The bill fails to address a range of current problems that hurt women in particular. The requirement for refugees to produce **identity documents** for landing has a particularly negative impact on women and children, who tend to have been issued fewer documents than men. Similarly, demands for **DNA testing** to establish family identity delays family reunification (with the women more often than not waiting in precarious situations overseas). The costs of DNA testing are particularly burdensome to single mothers. In general, delays in family reunification cause serious hardship to both men and women separated from their spouses, and to separated parents and children. While the proposal to facilitate processing of spouses in Canada is welcome, this does not address the problems faced by many refugee families, where those overseas cannot travel immediately to Canada because nationals of their country require visas.

- Increased measures of **interdiction** have a differential impact on women in that the more barriers are set up, the more expensive are the services of the smugglers, and the less women can afford the price of escape from persecution. In addition, although the bill aims to get tough on **traffickers**, whose victims are often women, it does nothing to protect the rights of the victims of trafficking.