

**AMNESTY INTERNATIONAL
BRIEF ON BILL C-11:**

An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger

March 2001

AMNESTY INTERNATIONAL'S ROLE IN REFUGEE PROTECTION

Amnesty International is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental human rights. The main focus of its campaigning is to:

- *free all prisoners of conscience.* These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language - who have not used or advocated violence;
- *ensure fair and prompt trials for political prisoners;*
- *abolish the death penalty, torture and other cruel treatment of prisoners;*
- *end extrajudicial executions and "disappearances".*

Out of this mandate derives a particular, limited role related to refugees. We oppose the forcible return of persons to countries where they face the risk of arbitrary detention, torture, "disappearance" or execution.

Our refugee concerns lead us to monitor and report on the treatment of refugees around the world, and to advocate for the protection of those in need of asylum. In 1997, we mounted a worldwide campaign to publicize the falling off around the world of commitment to refugee protection and to encourage the international community to respect its human rights obligations towards asylum-seekers. In addition, Amnesty International researches and provides credible information on human rights situations worldwide. This information is frequently used in refugee status determination.

In Canada, our work on Amnesty International's "refugee mandate" lies in two main areas. We assist refugees whom we feel to be at risk of return to the kind of human rights violations Amnesty International condemns, either by supplying information to be used in the refugee determination process or, where that fails, by intervening with the Immigration Department or at the ministerial level to prevent the removal of persons from Canada to a

country where they will be at risk. We also monitor the development of the legislative and regulatory regimes which govern Canada's treatment of asylum-seekers. Where we identify proposals or practices that we believe could result in the return of individuals to arbitrary detention, torture, "disappearance" or execution, we comment and campaign to effect change.

Amnesty International has made submissions to parliamentary Standing Committees on various Bills of concern to us. We presented briefs concerning the introduction of Bills C-55, C-86, and C-44. We meet with Ministers of Immigration and senior officials of the Immigration Department, as well as administrators and members of the Immigration and Refugee Board. Internationally, Amnesty International is a regular observer at meetings of the Executive Committee of the United Nations High Commissioner for Refugees.

Our response to Bill C-11 focuses primarily on those provisions which fall most closely within the scope of Amnesty International's mandate. Upon review of Bill C-11, we are concerned there may be some people who are not protected from return to situations where they may be arbitrarily detained, tortured, disappeared or executed.

CHANGES FROM C-31

Amnesty International prepared a submission on Bill C-31, the predecessor of Bill C-11. We are pleased to note several changes which have been made to the current Bill, which we believe will strengthen the protection of asylum seekers. Most notably these changes include the restoration of Ministerial discretion in determining the eligibility to make a refugee claim of 'serious' criminal offenders convicted of crimes outside Canada.¹ This change leaves the door open for certain cases to be referred to the refugee board when charges outside Canada may be the result of political dissent. While this change is an improvement from the previous Bill, we make recommendations in this submission which we believe further contribute to the protection of certain individuals.

We appreciate that unsuccessful refugee claimants, refugees who have withdrawn or abandoned their claims and refugees excluded from the Immigration and Refugee Board (IRB) process will now have access to a pre removal risk assessment prior to removal, and that the risk review may provide for an oral hearing in some cases.

¹ S. 101(2)(b)

However, we fear that several elements of the Bill do not enhance refugee protection and allow for return of people to situations of gross human rights violations.

RIGHT TO SEEK ASYLUM (Article 14(1) of the Universal Declaration of Human Rights)

Citizenship and Immigration Canada (CIC) has been active in the last few years in “interdiction”, which means stopping people who are without valid ID documents from embarking on modes of transportation bound for Canada. CIC has sent immigration control officers overseas to train local personnel to carry out this interdiction. This practice concerns us as it may mean people are stopped from fleeing persecution and torture.

While recognizing that governments are entitled to control immigration and entry to their territory, Amnesty International calls on them, in doing so, to ensure and demonstrate adequately that asylum-seekers have effective access to their asylum procedures and that any restrictions on entry, such as visa requirements, sanctions on airlines or other transporters, or other similar restrictive measures, do not obstruct this access in practice. AI opposes the use of such restrictions on entry which do not meet these criteria.

In releasing the predecessor to Bill C-11, Bill C-31, the Minister of Citizenship and Immigration declared that one of her goals is to “close the backdoor to those who would abuse the system.” In order to achieve this goal, the Minister secured funding to “strengthen overseas interdiction.” According to the Background paper “Closing the Back Door”, the government intends to have “more immigration control officers stationed at our offices abroad to direct genuine refugees to appropriate missions or international organizations while preventing undocumented persons from seeking irregular channels of migration to Canada.”

Amnesty International seeks to ensure that states' asylum procedures, including the procedures and practices followed at their airports and borders, are adequate to identify asylum-seekers who would risk serious human rights violations if sent against their will to another country. We call on all governments to observe certain basic principles in their asylum procedures.

Amnesty International is concerned that insufficient thought has been given to the protection needs of persons seeking protection in Canada, who are interdicted by immigration control officers while en route to this country. Sometimes the only way that genuine refugees can escape persecution in their own countries and seek asylum abroad is through “irregular channels” and by means of false documentation. The language in the

background paper, however, suggests that “undocumented persons” “seeking irregular channels of migration to Canada” are not “genuine refugees”. In our experience, in many cases, nothing could be farther from the truth. It is this apparent misconception of what constitutes a “genuine refugee” which raises our concern about the welfare and safety of those interdicted abroad.

Our consistent concern has not been with the measures themselves, but with the fact that there are no, or inadequate, mechanisms to allow exceptions for individuals who are fleeing persecution to come to Canada, or to ensure that they have access to a fair and effective procedure for refugee determination elsewhere.

1. We recommend that measures be included in the legislation which clarify and define the powers of immigration control officers stationed abroad. Officers must ensure that asylum-seekers, whether properly documented or not, are referred to an authority before which they can exercise their right to seek asylum. The authority must be recognized as one that upholds its country’s obligations under the Refugee Convention, in policy and practice. If such a referral cannot be guaranteed, the asylum-seeker should be allowed to continue her voyage to Canada.

ACCESS TO THE REFUGEE PROTECTION DIVISION

Amnesty International is concerned about the restrictions as to who will be eligible to have their refugee claims determined by the new Refugee Protection Division (RPD). Such restrictions deny claimants access to the independent expert tribunal that is best qualified to assess whether individuals face persecution or torture in their countries. This could result in such people being denied protection by Canada. We are concerned that in the proposed legislation, the pre-existing grounds for ineligibility remain.²

As per S.101(1)(f) people who are ineligible include claimants "determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality". These terms in S.101(1)(f) are not defined, although S. 102 says that regulations may be developed to define the terms. We are concerned with the scope of the inadmissibility provisions,³ and with how the terms will be defined.

² Ineligibility provisions are sections 101-102

³ Inadmissibility provisions are sections 33 through 42

We believe that definitions which are responsible for denying certain categories of asylum seekers from access to the Refugee Protection Division are too important to be left to regulations, and should be included in the Bill.

Included in these provisions are people who are members of an organization that there are reasonable grounds to believe engages, has engaged or will engage in various acts, including terrorism.⁴ We fear that persons who are members of organizations that no longer engage in terrorism, and who personally had no involvement in such activities might be ineligible to make a claim for refugee status or protection. In addition, the term “terrorism” is difficult to define, and open to political expediency.

2. We recommend definitions applying to membership, international rights, criminality and terrorism be incorporated into the legislation.

People ineligible to make a refugee claim also include those suspected of violating human or international rights. In this category will be, according to s. 35(1)(b), a “prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity”. This may be casting too wide a net.

In our experience, not all senior officials in such governments were involved in the crimes described in this section. Although, the Minister has the power to exempt someone from s. 35 (1) where “the foreign national satisfies the Minister that their presence in Canada would not be detrimental to the national interest”⁵, such considerations by the Minister can be extremely time-consuming and cumbersome. In our view, an examination of membership and the exact culpability of former senior officials would best be conducted in the context of a refugee protection hearing - before the expert tribunal. In many cases, even the most remote involvement with a repressive regime will put the individual at risk if returned to his country - particularly if the regime for which he/she served has been replaced.

3. We recommend that all eligibility issues be dealt with in the context of a refugee hearing.

⁴ S. 34(1)(a)(b)(c)

⁵ S. 34.(2) and 35(2)

CONSOLIDATED DECISION-MAKING

Amnesty International supports the move to consolidate responsibility for decision-making with regard to refugee status and other protection claims within the Refugee Protection Division of the Immigration and Refugee Board (IRB). Amnesty International welcomes the recognition that all decisions with regard to risk and protection should be made by an independent and expert body, such as the IRB, and is pleased with the inclusion of the “persons in need of protection” provision.⁶ We are pleased that protection decisions should take account not only of Canada’s obligations under the *Convention relating to the status of refugees*, but also Article 1 of the *Convention against Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*.

Other international instruments are also pertinent to the protection needs of refugee claimants. These include: *The UN Declaration of Territorial Asylum*, the *UN Declaration on the protection of all persons from enforced disappearance*, the *UN Principles on the effective prevention and investigation of legal, arbitrary and summary executions*, the *International Covenant on Civil and Political Rights* and the *Geneva Convention relative to the Protection of Civilian Persons in Time of War*. These instruments, together with the 1951 Refugee Convention, spell out the fundamental safeguards for refugee rights and human rights and reflect the principle of non-refoulement.

4. We recommend that the Act and Regulations be constructed and applied in a manner that takes into consideration those international human rights instruments to which Canada is a signatory which pertain to the protection needs of individuals.

NEW APPEAL PROCESS

For years, Amnesty International’s most consistent and fundamental criticism of the Canadian system of refugee determination has been the lack of a meaningful appeal - an appeal on the merits - from negative refugee decisions. Amnesty International believes an appeal of a quasi-judicial nature, on the merits, and conducted independently is a necessary element in any fair refugee determination system. We are very pleased,

⁶ Section 95(1)(b)

therefore, that the proposed legislation calls for the establishment of the Refugee Appeal Division (“RAD”)⁷ that is able to consider appeals based on questions of law, fact, or mixed law and fact.

Section 110 (3) of the Bill restricts the RAD to a *paper review* on the basis of the “record of the proceedings” and an optional consideration of written submissions from various specified parties. In our view, this limitation on what may be considered by the RAD is artificial and overly restrictive.

A change in country conditions, for example, can be extremely relevant to the issue of protection. Should such a change occur after a decision is made, obviously, this is evidence which could not possibly have been submitted at the time of the Protection Division hearing. There are other circumstances where relevant evidence may be available only after a decision has been rendered. The failure to produce such evidence at the initial hearing may be a consequence of inadequate or inexperienced counsel, lack of representation or severe trauma resulting from rape or torture. As with evidence regarding a change of country conditions, this new evidence may have a significant bearing on the need for protection.

5. It is our recommendation that *any* evidence relevant to the issue of protection be considered by the RAD, including new evidence or evidence which was not available at the time of the initial hearing.

DECISION MAKERS

Amnesty International has always believed that the Immigration and Refugee Board (IRB) be retained due to the importance of independent decision-making. We have, however, simultaneously highlighted our concern that the lack of an open and transparent process for appointing the members of the IRB seriously compromises that sense of independence. It also fails to ensure the requisite level of expertise that decision makers must possess. Over the past decade many competent individuals with appropriate

⁷ S. 105.

training and background have been appointed to the Board. At the same time, it is clear that many have been named to the Board simply because of their political connections.

Steps have been taken in the past to remedy this problem, in particular, in 1994 with the establishment of the Ministerial Appointments Advisory Committee. However the Committee's existence, let alone its powers and membership, are not established in legislation or regulation. At present, it is unclear who the members of the committee are, what procedures they use in assessing candidates, and whether those procedures are applied equally to all candidates.

Bill C-11 contemplates that refugee decisions are to be made by single member panels⁸ rather than two member panels as is currently the case. The competence and expertise of board members will become more important than ever. While the Bill introduces the possibility of appeal, there is to be no oral hearing before the RAD. This means that only a single decision maker will actually hear the refugee claimant.

6. Amnesty International recommends an open and transparent process, whereby the constitution, mandate and power of the Ministerial Advisory Committee are set out in regulations, and the names of committee members and recommendations made by the committee are a matter of public record.

JUDICIAL REVIEW

A part of any fair appeal process should be complete access to judicial review which must have a suspensive effect on expulsion. The requirement for leave to the federal court provides for summary disposition of applications and removes the suggestion that judicial reviews unnecessarily delay removal. Amnesty International is concerned that Bill C-11 does not prevent the removal of failed refugee claimants prior to completion of the judicial review process before the Federal Court, unless a successful application is made for a judicial stay of execution of a removal order.⁹

⁸ S. 163

⁹ Ss.48-50

We find this step unnecessarily onerous on the individual seeking to remain in Canada, with the likely effect of a dramatic increase in the number of applications for discretionary stays to the Federal Court.

7. Amnesty International recommends that removals be suspended, without the need to apply for a stay, until the completion of the judicial review of the RAD decision process before the Federal Court.

PRE-REMOVAL RISK ASSESSMENT

Generally speaking the Pre-Removal Risk Assessment reference (“PRRA”),¹⁰ is an improvement over the existing legislation in that it provides an assessment of risk immediately prior to removal from Canada. This makes considerably more sense than the current Post Determination Refugee Claimants in Canada (“PDRCC”) review, which requires refused refugee claimants to submit their applications immediately after a negative determination by the Refugee Board, and in reality, can mean the risk is assessed long before removal takes place. We are also pleased to see the Bill provides for access to the possibility of an oral hearing for a limited number of individuals at this stage.

One concern we have regarding the PRRA is the restriction on evidence that may be considered. Section 113 (a) states that in the case of a foreign national whose claim was rejected by the Board, the only evidence that may be presented is “new evidence that arose after, or was not reasonably available at the time of rejection.” In our view, this restriction is unnecessarily limited. The risk evaluation should not focus exclusively on change of circumstances since the claimant’s arrival or the IRB decision(s), but should also be forward looking and consider any evidence that relates to risk if returned.

8. We recommend that *any* evidence relevant to risk should be taken into account by the PRRA.

PEOPLE WHO COULD BE RETURNED TO TORTURE

¹⁰ S.112

Amnesty International is concerned that certain classes of persons may be removed from Canada even though it has been determined that they would be at risk of torture, or that they may be removed without ever getting access to any form of risk review.

Under the proposed legislation,¹¹ persons excluded by the IRB under 1E or F of Article 1 of the Refugee Convention are by definition not persons in need of protection. Those excluded under Article 1 F are also not eligible to receive refugee protection under the PRRA.. This could mean that persons at risk of torture may be removed from Canada when they fall within one of the exclusion clauses of the Refugee Convention.

There are people who can apply for PRRA but cannot receive its protection. For example, people whose cases involve security or criminality concerns, or persons excluded from refugee protection under section F of Article 1 of the Refugee Convention.¹² In such cases, the Minister is to balance the risk to the applicant against security or danger concerns in Canada. If allowed to stay, they receive a temporary stay of removal. If not, they are removed.

It is the firm view of Amnesty International that the human right to be secure from torture is 'nonderogable' and under no circumstances should a person be removed to a country where there is a serious risk that he or she will be subjected to torture. If necessary, measures should be taken to protect both Canadian society *and* the individual concerned. (See "Prosecution of Human Rights Abusers" below)

Removing someone from this country to face torture would be in violation of Canada's obligations under the Convention Against Torture (CAT). Article 3 of the CAT states that: "No State Party shall expel, return ("*refouler*") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". In Article 2(2) of the CAT, it is specified that "[n]o exceptional circumstances whatsoever....may be invoked as a justification of torture." In November 2000, the UN Committee against Torture reminded Canada that this is an absolute obligation, for which there are no exceptions.

¹¹ S. 98

¹² S. 112(3) (a)(b)(c)

Further to Canada's obligations under the CAT, Principle 5 of the *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions* states that "No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country".

The principle of absolute prohibition on *refoulement*, where there is a risk of torture, is reflected also in Article 8 of the *UN Declaration on the Protection of All Persons from Enforced Disappearance* "No State shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance"

It is an accepted principle of international law that the prohibition against torture is absolute. "The point is not to regulate its use, nor to allow exceptions, nor to specify conditions under which it is legally or morally permissible. Torture is seen - like slavery, genocide, war crimes, aircraft hijacking - as never justifiable. In legal terms, the prohibition (and thus the human right to be secure from torture) is 'nonderogable': that is, the authority cannot be suspended or curtailed at any time or under any circumstances."¹³

In addition to being a derogation of international law and our treaty obligations under the CAT, removing someone from Canada to face torture is contrary to Canadian values. This point was recognized by the Supreme Court of Canada in the case of *Kindler v. Canada*.¹⁴ In *Kindler*, the Court asked itself whether surrendering a fugitive to a jurisdiction where he may be subjected to the death penalty would "shock the conscience" of the Canadian public. In one of the two majority decisions, Mr. Justice La Forest states: "There are, of course, situations where the punishment following surrender - torture, for example - would be so outrageous to the values of the Canadian community that the surrender would be unacceptable."¹⁵

¹³ Jongman, Albert J., "Torture: Definition and Legal Instruments", found in Ronald D. Crelinsten and Alex P. Schmid, *The Politics of Pain: Torturers and their Masters*, Appendix 1.

¹⁴ *Kindler v. Canada (Minister of Justice)* (1991), 84 D.L.R. (4th) 438.

¹⁵ *Ibid*, at page 446.

9. We recommend that persons who are excluded from protection under Article 1(E) or (F) of the Refugee Convention by the Refugee Protection Division, be provided with access to the PRRA, where the risk of return to factors described in S. 97 can be fully evaluated.

Also ineligible for the PRRA are people who do not make a claim for protection before they are issued a removal order,¹⁶ and for which the “prescribed period has not expired”. We are concerned that some individuals included in this group could be removed without having any form of risk assessment. We are aware of the case of two Afghan men traveling through Canada to join their wives in the United States, to claim asylum there. As such, they did not claim asylum in Canada, but were detained by *Citizenship and Immigration Canada* with removal orders against them and no right to a risk assessment. Under S.112(2)(c) they would not be eligible to a PRRA until the (undefined) prescribed period had expired, by which time they may have been removed to Afghanistan, without access to a risk evaluation.

10. People under a removal order who have not made a refugee claim should not have to wait a prescribed time.

Bill C-11 defines a person in need of protection as being someone for whom "the risk ...*is not faced generally by other individuals* in or from that country" ¹⁷. However, this serves to deny protection to some people clearly at risk if returned, as is the current case for some Colombian refugee claimants. Many, although certainly not all, Colombians would be at risk in current-day Colombia, but some are being refused Convention refugee status because they do not meet the standard of the violence being personally directed at them, for who they are.(i.e. those who have already been targeted by one of the various factions practicing violence there.)

11. We recommend that section 97(1)(b)(ii) end with the words “every part of that country”.

¹⁶ S. 112(2)(c)

¹⁷ S. 97(1)(b)(ii)

Amnesty International is also concerned that Section 112(2)(a) of Bill C-11 precludes an application for PRRA by foreign nationals who are subject to extradition. This results in persons subject to extradition being denied an opportunity to prove that they may be at risk of torture if extradited. This concern is compounded by the fact that persons under extradition are also ineligible to have their claims heard by the Refugee Protection Division.

Extradition is currently dealt with subsections 69.1(12) to (15) of the *Immigration Act*. Although these subsections have been reworded and included in Bill C-11 under section 100, their effect remains the same. Amnesty International expressed its views at the time the *Extradition Act* was amended, and remains concerned about the extradition provisions in the immigration legislation.

Under the proposed section 100, if the authority to proceed under section 15 of the *Extradition Act*¹⁸ has been granted, both the Refugee Protection Division and the Refugee Appeal Division shall suspend its consideration of a person's claim for refugee status until the final order for discharge or surrender for extradition has been issued. If the person is ordered surrendered under the *Extradition Act*, the surrender order is deemed to be a rejection of the claim for refugee protection. In accordance with section 100(4) of Bill C-11, this deemed rejection may not be appealed and is not subject to judicial review except to the extent that it is allowed under the *Extradition Act*.

By allowing extradition proceedings to take priority over refugee and other protection concerns, persons who may be at risk of persecution on account of their political beliefs, for example, may be returned to a country under the guise of *bona fide* criminal proceedings, without any consideration by Canadian authorities of that potential risk.

Section 100 specifies that the extradition system will trigger a suspension of the refugee determination process for those crimes punishable by at least 10 years of imprisonment. The list of *Criminal Code* offences which would fall under this 10 year threshold includes "offences against public order". These are crimes such as treason, high treason, or using a forged passport. Also included are crimes "against the administration of law and justice", such as perjury or obstructing justice. These are precisely the types of offences that repressive governments pursue against political dissidents and/or asylum seekers.

¹⁸ S.C. 1999, c.18.

Finally, under Canadian extradition law, a person is committed for extradition where the state seeking extradition has demonstrated the existence of some evidence upon which a jury could convict. That is - a *prima facie* case for conviction must be made out, but not proof of guilt. The extradition hearing, then, is not a full trial, nor a full inquiry into the underpinnings of the criminal charge against the individual. Because the burden of proof is low, such hearings are not ideal for exploring whether a charge has been politically motivated, or whether the person concerned faces persecution, as opposed to prosecution.

If it is established that the individual may be at risk of persecution if removed from Canada, he or she should not be surrendered to the country seeking extradition. That refusal to surrender could be exercised by the Minister of Justice, who is given such authority under the provisions of the *Extradition Act*.

12. Persons under extradition should have access to a risk assessment.

PROSECUTION OF HUMAN RIGHTS ABUSERS

While Amnesty International believes that countries must give effect to prohibitions against *refoulement* by not returning anyone, even serious criminals, to countries where they face torture, enforced “disappearance” or execution, abiding by *non-refoulement* does not mean countries should allow human rights abusers to go free.

Amnesty International opposes the use of refugee protection regimes to shelter human rights abusers. We campaign actively against impunity for human rights offenders, calling upon all countries to bring such people to fair, speedy justice. Some countries have an effective regime to prosecute human rights abusers for offences committed outside their borders. While such laws do exist in Canada, such as criminal code amendments enacted in 1987, no prosecution has yet been initiated. The UN Committee Against Torture urged Canada to begin prosecutions of alleged torturers found on Canadian soil at a November 2000 hearing.

A further alternative in some cases would be an International Criminal Court. Amnesty International and others have campaigned for the establishment of an International Criminal Court.

As a general principle, Amnesty International believes that individuals who have committed human rights abuses should be brought to justice. However, the means which states employ, and the procedures followed, in such cases must not themselves violate states' international human rights obligations.

HUMAN SMUGGLING

Bill C-11 states that “No person shall knowingly organize the coming into Canada of one or more person who are not in possession of a valid visa, passport or other document.”¹⁹ This is a broadly worded offence, that would, in certain circumstances, prohibit a well-meaning individual from helping a close friend or relative escape persecution in his or her country of origin. Sometimes the use of a false passport or other travel document is the only way that refugees can effectively leave their countries and seek asylum.

13. We recommend narrowing the definition of human smuggling to situations where the “organizing” is done for profit.

JUDICIAL NOTICE

Section 68 (5) of the *Immigration Act* stipulates that where the Refugee Division takes “judicial” notice of any facts, information or opinion, or relies on its “specialized knowledge” to make findings of fact, it must notify refugee claimants of its intention to do so and afford them a reasonable opportunity to make representations with respect thereto. In Bill C-11, s. 170 (i) gives the Refugee Protection Division the same powers regarding “judicial” notice and “specialized knowledge”. However, the requirement to notify claimants and provide them with the opportunity to make representations is omitted. Amnesty International believes that this important requirement for procedural fairness should be re-instituted into the new bill.

¹⁹ S. 117

14. We recommend that 170(i) be modified to include a requirement to notify claimants regarding judicial notice and specialized knowledge, and provide them with the opportunity to make representations, as per s. 68(5) of the current Immigration Act.

AMNESTY INTERNATIONAL

SUMMARY OF RECOMMENDATIONS

- 1. We recommend that measures be included in the legislation which clarify and delimit the powers of immigration control officers stationed abroad. Officers must ensure that asylum-seekers, whether properly documented or not, are referred to an authority before which they can exercise their right to seek asylum. The authority must be recognized as one that upholds its country's obligations under the Refugee Convention, in policy and practice. If such a referral cannot be guaranteed, the asylum-seeker should be allowed to continue her voyage to Canada.**
- 2. We recommend definitions applying to membership, international rights, criminality and terrorism be incorporated into the legislation.**
- 3. We recommend that all eligibility issues be dealt with in the context of a refugee hearing.**
- 4. We recommend that the Act and Regulations be constructed and applied in a manner that takes into consideration those international human rights instruments to which Canada is a signatory which pertain to the protection needs of individuals.**
- 5. It is our recommendation that *any* evidence relevant to the issue of protection be considered by the RAD, including new evidence or evidence which was not available at the time of the initial hearing.**

- 6. Amnesty International recommends an open and transparent process, whereby the constitution, mandate and power of the Ministerial Advisory Committee are set out in regulations, and the names of committee members and recommendations made by the committee are a matter of public record.**
- 7. Amnesty International recommends that removals be suspended, without the need to apply for a stay, until the completion of the judicial review of the RAD decision process before the Federal Court.**
- 8. We recommend that *any* evidence relevant to risk should be taken into account by the PRRA.**
- 9. We recommend that persons who are excluded from protection under Article 1(E) or (F) of the Refugee Convention by the Refugee Protection Division, be provided with access to the PRRA, where the risk of return to factors described in S. 97 can be fully evaluated.**
- 10. People under a removal order who have not made a refugee claim should not have to wait the prescribed time.**
- 11. We recommend that section 97(1)(b)(ii) end with the words “every part of that country”.**
- 12. Persons under extradition should have access to a risk assessment.**
- 13. We recommend narrowing the definition of human smuggling to situations where the “organizing” is done for profit.**
- 14. We recommend that 170(i) be modified to include a requirement to notify claimants regarding judicial notice and specialized knowledge, and provide them with the opportunity to make representations, as per s. 68(5) of the current Immigration Act.**