

3. Please provide information on how the “safe third country” concept is applied and if there is any “safe third country” list in your country with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.

4. Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.

Responses to the questionnaire can be submitted in English, French or Spanish. Please send your inputs by email to [OHCHR-migrant@un.org](mailto:OHCHR-migrant@un.org) by **28 February 2022**. Please limit your responses to a **maximum of 2,000 words**. Legislation, policies and other types of background materials can be attached as **annexes** to the submission. Please submit your responses in an accessible format, such as MS Word.

If not stated otherwise in your submission, the responses received will be published on the [website](#) of the Special Rapporteur. Unless requested otherwise, the submissions may also be quoted, in part or in full, or referenced in the report of the Special Rapporteur.

For any questions or clarifications, please do not hesitate to contact the Secretariat through the Office of the United Nations High Commissioner for Human Rights ([OHCHR-migrant@un.org](mailto:OHCHR-migrant@un.org)).

## Canadian Response

- 1. Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021. Grateful if you could kindly submit the original text of the relevant provisions of the legislation or policy(ies), accompanied by an English translation if it is in a language other than English, French or Spanish.**

Since March 2020, as part of the Government of Canada's response to the COVID-19 pandemic, the Government of Canada has issued over 75 Orders-in-Council (OIC) to date under the *Quarantine Act* to manage access to Canada and mitigate the importation and spread of COVID-19 and its variants. Among these measures was a prohibition on entry for foreign nationals (US and non-US). Over time, certain amendments to Canada's travel restrictions have been made in a phased manner for certain priority groups. Regulatory amendments were made to the *Immigration and Refugee Protection Regulations* (IRPR) on an expedited basis to implement the prohibitions on entry<sup>1</sup>.

With respect to Refugee Claimants, those seeking to enter Canada at a designated land Port of Entry (POE) from the United States (US) to make a refugee claim and who meet an exception under the Safe Third Country Agreement (see Question #3) would be permitted entry, as would US citizens and individuals who may be subject to the death penalty.

For those entering Canada between designated POEs, there was a prohibition related to their entry to Canada. Thus, they were prohibited entry and temporarily directed back to the US unless they met an exemption (e.g., U.S. citizen, stateless, unaccompanied minor).

On November 21, 2021, the prohibition on entry between POEs to make a refugee claim was removed from the OIC. Current OICs do not have any prohibitions on entry for the purposes of making a refugee claim<sup>2</sup>.

- 2. Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country**

Under normal circumstances, foreign nationals present in Canada or arriving at a POE, irrespective of the mode of entry, can make an asylum claim, unless they seek to do so from the US (see Question #3). However, as already mentioned in response to Q. 1, OICs imposing border measures were issued under the *Quarantine Act* as part of the measures Canada has put in place to respond to the COVID-19 pandemic. These OICs temporarily directed claimants seeking

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<sup>1</sup> <http://www.gazette.gc.ca/rp-pr/p2/2020/2020-04-15/html/sor-dors55-eng.html>

<sup>2</sup> <https://orders-in-council.canada.ca/attachment.php?attach=41489&lang=en>

to enter between POEs back to the US, unless they met an exemption in the OIC (e.g., stateless, unaccompanied minors, US citizens) or were granted a National Interest Exemption by the Minister of Public Safety or the Minister of Immigration, Refugees and Citizenship Canada (IRCC). Individuals who were previously directed back to the US were able to return to Canada to make a refugee claim starting in Fall 2021.

Asylum claimants are exempt from the requirement to submit a pre-departure COVID-19 test, although those arriving by air would have to have one in order to board an aircraft. For those claimants without a suitable quarantine plan, IRCC has provided accommodation. As of January 15<sup>th</sup>, 2022, the majority of all travellers, must be fully vaccinated with a Health Canada approved vaccine in order to enter the country, however asylum claimants are exempt from the entry prohibition. Claimants must still quarantine if unvaccinated and test on arrival as applicable.

As a result of these OICs, overall asylum claim volumes decreased by over 60% in calendar year 2020 (24,050), from the previous year in 2019 (64,183). In fact, the reduction in overall asylum volumes was immediately felt with a 65% decrease in claim volumes between April-June 2020 and July-September 2020. The decline in claim volumes was most apparent in claims made along the U.S./Canadian land border. From April to June 2020 there were 3,153 claims made at the land border. In contrast, for July to September 2020, after the OICs were implemented, only 88 land border claims were made. With the easing of restrictions for fully vaccinated travellers and reopening along the land border in fall 2021, asylum claims volumes rose slightly in 2021.

The Government of Canada also seeks to prevent the smuggling of migrants and criminalizes the activity in the Immigration and Refugee Protection Act. Human smuggling is punishable by significant penalties, including a maximum sentence of life imprisonment and/or a fine of \$1 million, on indictment, as well as by mandatory minimum penalties of imprisonment. Additional legislative tools available to combat migrant smuggling include provisions that enable the seizing and forfeiture of property used to commit migrant smuggling and the illicit proceeds derived from this crime.

In response to the arrival of two large steel-hulled vessels in 2009 and 2010 from Southeast Asia used to smuggle migrants, the Government of Canada introduced legislative changes specifically targeting migrant smuggling. The measures were included in the Protecting Canada's Immigration System Act (Bill C-31), which received Royal Assent on June 29, 2012. The migrant smuggling provisions include:

- making it easier to prosecute migrant smugglers by broadening the offence of migrant smuggling, including by expanding the ways the offence can be established;
- providing for the possibility of mandatory minimum prison sentences on convicted migrant smugglers in defined aggravating circumstances including where the offence was committed for profit or endangered the life or safety of the persons smuggled;
- holding ship owners and operators accountable for use of their ships in migrant smuggling operations;
- mandatorily detaining participants 16 years and older who arrive as part of a designated irregular arrival with detention reviews within 14 days of initial detention and no sooner than every 180 days thereafter;

- preventing designated foreign nationals from applying for permanent resident status and sponsoring family members for a period of five years; and
- enhancing the ability to review the protected person status of individuals who demonstrate that they are not in legitimate need of Canada's protection or who misrepresented themselves when they applied for refugee status.

These measures are not intended to punish asylum seekers, but rather to deter migrant smugglers, dissuade migrants from taking part in dangerous voyages, and ensure that border authorities have sufficient time to establish the identity and admissibility of individuals before they are admitted into the country.

In addition, Canada works internationally to support the global response to migrant smuggling through the federal external affairs department Global Affairs Canada (GAC). GAC helps build the capacity of beneficiary states to prevent and respond to international criminal threats, including drug trafficking, cybercrime, migrant smuggling and other illicit activities. With respect to migrants smuggling in particular, funding is channelled through the Anti-Crime Capacity Building Program (ACCBP) which has a "Human Smuggling Envelope" (HSE) dedicated to supporting Canada's "whole-of-government" approach to prevent and disrupt migrant smuggling ventures. It works to increase the capacity of local authorities in both origin and transit countries to disrupt, interdict and deter human smuggling ventures. The focus of this envelope has mostly been on Southeast Asia, with additional programming in West Africa (see [here](#))

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The Safe Third Country Agreement (STCA) between Canada and the United States (US) was signed on December 5, 2002, and the U.S. was officially designated as a safe third country in Canadian law on December 29, 2004, through the adoption of amendments to the *Immigration and Refugee Protection Regulations* (IRPR). To date, the U.S. is the only country that is designated as a safe third country by Canada under our legislative regime.

Subsection 102(1) of the [Immigration and Refugee Protection Act \(IRPA\)](#) authorizes the making of regulations for the purpose of sharing responsibility with governments of foreign states for the consideration of refugee claims. Subsection 102(2) requires that the following factors be considered in designating (and monitoring) a country as safe third:

- Whether it is a party to the Refugee Convention and Convention Against Torture, and to an agreement with Canada for the purpose of sharing responsibility with respect to claims for refugee protection (i.e., a Safe Third Country Agreement).
- Its policies and practices with respect to claims under the Refugee Convention and with respect to obligations under the Convention Against Torture, and
- Its human rights record.

Only countries that respect human rights and the principle of *non-refoulement* (as per Article 33 of the Refugee Convention and Article 3 of the Convention Against Torture), and offer a high degree of protection to asylum seekers, may therefore be designated as safe third countries.

To date, the United States is the only designated safe third country. Under the Canada-US STCA individuals entering Canada at a land port of entry via the US border are ineligible to make a refugee claim and are returned to the US unless they meet one of the relevant exceptions or exemption under the STCA regime.

Under the STCA, which only applies at designated land POEs, refugee claimants are required to request refugee protection in the first safe country they arrive in (Canada or the US), unless they qualify for an exception to the Agreement. Exceptions include:

- undocumented minors;
- individuals with an “anchor relative” in Canada (defined as immediate family and limited extended family);
- individuals who have travel documents (e.g., temporary resident visa);
- individuals who are from a visa-exempt country for Canada but require a visa to enter the US;
- cases in the public interest (e.g., death penalty); or
- individuals being returned to Canada by the US.

If a claimant at a land POE does not meet an exception to the STCA, they are found ineligible to make a refugee claim and are returned to the US. If they do meet an exception and are otherwise determined to be eligible, their claim is referred to the Immigration and Refugee Board and they are permitted to enter Canada.

#### **4. Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.**

Currently, border management is a shared responsibility between public safety agencies. The Royal Canadian Mounted Police (RCMP) is responsible for intercepting individuals seeking to enter between ports of entry, while the Canada Border Services Agency (CBSA) is responsible for managing the flow of goods and persons seeking to enter Canada and making decisions related to entry. In addition, the CBSA is responsible for making enforcement decisions and actions under the IRPA and the IRPR.

At the current time, the Government of Canada has signalled its intention to create an independent review and complaints mechanism for the CBSA, as reflected in the Minister of Public Safety’s mandate letter [here](#)<sup>3</sup>:

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<sup>3</sup>Mandate letters outline the objectives that each minister will work to accomplish, as well as the pressing challenges they will address in their role.

- Introduce legislation to create a review body for the Canada Border Services Agency, including defined timelines for responding to complaints and recommendations.

Therefore, legislation would be introduced in the future to provide this important oversight function for the CBSA.