A BMRC RESEARCH DIGEST
Spring 2020

The Safe Third Country Agreement

Irregular Migration and Refugee Rights: A Canadian Policy Challenge

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What you need to know

In 2017 an unprecedented number of asylum seekers irregularly crossed the Canada-U. S. border. As a result, the Safe Third Country Agreement (STCA) became an important policy question. Canada and the U. S. signed STCA in 2002 as part of an effort to enhance border security and effectively manage a secure flow of people, specifically refugees and asylum seekers. We examine the functionality of the Agreement by asking whether a so-called "loophole" in the STCA is an incentive for asylum seekers to use irregular points of entry.

What is this research about?

This research provides an historical overview of the STCA's development, legal and policy challenges and its implications for refugee protection. The legitimacy of STCA relies on the "continuing" designation of the U.S. as a "safe" country. The purpose of this research is to address key policy questions regarding the STCA in light of recent changes in asylum policies under the Trump administration. Multiple empirical studies raise concerns over refugee rights, the state of refugee protection and the risk associated with refugees being returned to the U.S. under the Agreement.

How was the research carried out?

We undertook an extensive critical analysis of government documents and websites, print media, policy reports, and academic literature. We relied on data from the Office of the Auditor General, the Office of the Parliamentary Budget Officer (PBO) and the Standing Committee on Immigration and Citizenship for accurate estimates of the number of asylum claims, their financial costs as well as budget and border strategy investments. An on-line search was also conducted of policy and legal challenges to the STCA from 2002 to 2019 in the Supreme Court of Canada and the Canada Federal Court of Appeal.

What have we learned from the research?

Spikes in irregular migration pose challenges to the resilience of the Canadian immigration system. The financial costs and the strains placed on municipalities, provinces and the federal government call into question numerous aspects of immigration policy and necessitate evidence-based policy strategies. For example, in 2019 the City of Toronto reported that their refugee shelters reached full capacity and that over 38% of claimants did not have housing arrangements upon arrival. The federal government reported that increased border crossings contributed to financial pressure by raising the cost of processing claims to $340 million by 2019. The Safe Third Country Agreement has been challenged over its implications for refugee rights. It was overturned in 2007 by the Canadian Federal Court based on non-compliance with Article 33 of the Refugee Convention (principle of non-refoulement) and s.7 and s.15 of the Canadian Charter of Rights and Freedoms. Although this decision was reversed in 2008 by the Federal Court of Appeal, issues concerning human rights remained. Recent empirical studies of refugee protection in the U.S. indicate that refugee rights are jeopardized by the following policies targeting asylum claimants: (1) entry restrictions for Central American migrants at southern land borders, (2) increased risk of "refoulement", (3) restricting the right of asylum seekers to file claims to a one- year period, (4) expedited removals, (5) detention practices and (6) immigration raids. The research identified three key recommendations: a) safe third country designation (s.102 of the IRPA) should be continuously re-evaluated; b) substantive and procedural differences in application of international law and the Refugee Convention should be considered in safe third country designations (i.e., gender-based claims); and c) provisions in the Canadian Charter of Rights and Freedoms in regard to the right to life, liberty and security should be applied to safe third country designations.

How can you use this research?

Policy-makers and refugee advocates could benefit from applying a human rights lens to determine whether the STCA should be suspended or amended. The current state of refugee protection under the Trump administration in the United States may continue to spur irregular migration into Canada. Amending the agreement to close the “loophole” may force refugees to use dangerous measures (i.e. human smugglers) to enter Canada without authorization. Overturning the agreement would mean that refugee claims could be made in Canada through regular and official border points of entry. This would eliminate the need for unauthorized crossings, address some of the costs associated with policing the border, while easing negative discourses and anti-immigrant rhetoric against refugees.

Who is leading this research?

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This research was funded by Ryerson University in support of the BMRC/IRMU partnership.

Learn more

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For access to the full report please use the following link: https://bmrc-irmu.info.yorku.ca/files/2020/03/Asylum-Seekers-Safe-Third-Country-Resilience-Final-March-2020.pdf