

Executive Summary

The Agreement between the Government of Canada and the Government of the United States of America for Co-operation in the Examination of Refugee Status Claims from Nationals of Third Countries (known as the Safe Third Country Agreement, hereafter "the Agreement") came into effect on December 29, 2004.

The Agreement affirms the commitment of Canada and the United States (U.S.) to more effectively share responsibility with respect to refugee claims, and builds on a strong partnership between Canada and the U.S. for cooperation on migration and asylum issues. The primary purpose of the Agreement is to reinforce refugee protection by establishing rules for the sharing of responsibility for hearing refugee claims between Canada and the United States. The United Nations High Commissioner for Refugees (UNHCR) has stated that responsibility-sharing agreements between states can, where appropriate safeguards are in place, enhance the international protection of refugees by ensuring the orderly handling of asylum applications.

The objectives of the Agreement are to enhance the orderly handling of refugee claims, strengthen public confidence in the integrity of our respective refugee systems, help reduce abuse of both countries' asylum programs, and share the responsibility of providing protection to those in need. Under the Agreement, a refugee claimant must seek protection in the country she or he first has the opportunity to do so—either Canada or the United States—unless she or he qualifies for an exception.

This report reflects the year one binational review of the implementation of the Agreement. The purpose of this review is to assess the implementation of the Agreement as well as to examine how effectively the binational policy objectives are being met. This review has been conducted in cooperation with the UNHCR and has drawn on input from non-governmental organizations (NGOs) in both countries, as mandated under section 8.3 of the Agreement.

Overall, both governments' assessment of the implementation of the Agreement is positive. Since the Agreement came into force, asylum seekers have been provided with access to a full and fair refugee status determination process in one country or the other. Implementation of the Agreement has been in full compliance with international refugee protection principles and in accordance with international human rights instruments. By establishing clear and consistent criteria for the allocation of responsibility for adjudicating asylum applications, Canada and the U.S. have instituted an effective mechanism to share responsibility for providing protection to refugees in North America. Both governments are effectively adjudicating exceptions. By putting in place an orderly process, the Agreement has served to reduce the potential for misuse. Reduction of the potential for misuse should strengthen public confidence in the integrity of asylum systems in both countries.

The UNHCR has played a central role in the monitoring and review of the implementation of the Agreement, as described and outlined in the UNHCR Monitoring

Plan endorsed by the Parties. The UNHCR's independent findings and recommendations have been considered in conjunction with the Parties' review of the Agreement. In summary, "it is the UNHCR's overall assessment that the Agreement has generally been implemented by the Parties according to its terms and, with regard to those terms, international refugee law. Individuals who request protection are generally given an adequate opportunity to lodge refugee claims at the ports of entry (POEs) and eligibility determination decisions under the Agreement have generally been made correctly."¹

In the individual country chapters of this report, both governments thematically address operational, management, oversight and policy issues related to the implementation of the Agreement, including those identified by the UNHCR and NGOs through consultations over the course of the year.

In Canada, based on the findings of this review, the government commits to phasing out the use of the direct back policy as applied to refugee claimants (since August 31, 2006, the use of direct back is limited to exceptional circumstances only); enhancing officer training in refugee interviewing techniques and implementing priority processing guidelines for vulnerable cases; making public information about the Agreement and its exceptions more easily accessible; revising the manuals concerning guidelines for reconsideration requests; and remaining open to exploring other discrete categories for inclusion under the public interest exception.

The Government of Canada notes that it has accepted, in whole or in part, 13 of the 15 new or outstanding UNHCR recommendations outlined in the UNHCR Monitoring Report. This demonstrates the spirit of cooperation between our organizations and the integral role played by the UNHCR in reviewing the Agreement.

In the U.S., based on the findings of this review, the government has provided additional guidance to U.S. Citizenship and Immigration Services (USCIS) Asylum Officers in facilitating telephone calls between detained applicants and third parties, and for clearly explaining the threshold screening process to applicants. Additionally, the U.S. is taking steps to clarify the threshold screening process to applicants by providing them with a UNHCR-recommended flow chart. The U.S. will also update its procedures manual to explicitly state that credible testimony is sufficient to establish an exception, consistent with existing training materials. The U.S. has updated and clarified local procedures and operational guidance for Customs and Border Protection officials with regard to applicants directed back to Canada, and how to process requests by applicants for reconsideration of their claims. The U.S. has provided procedures for Immigration and Customs Enforcement (ICE) agents to contact Canadian officials prior to removal of a claimant directed back from Canada. Finally, the U.S. has established time line targets for Threshold Screening Interviews (TSIs) in order to ensure that cases are determined in a timely manner.

Canada and the U.S. consider that implementation of the Agreement has been a success. The strong partnership with UNHCR and ongoing cooperation from NGOs and stakeholders have allowed the transparent and consultative process that characterized the

Agreement's development to continue with its implementation and review. This binational report marks an important step in building strong public support and partner confidence in the Canada-U.S. Safe Third Country Agreement.

¹ UNHCR Safe Third Country Agreement Monitoring Report, 29 December 2004 – 28 December 2005.