IV. Canada Chapter

A. How the Process Works

The in-Canada refugee determination system is based on our international and domestic legal obligations, most notably the 1951 *Convention Relating to the Status of Refugees* and the *Canadian Charter of Rights and Freedoms.*

This section provides a brief overview of how the refugee determination system works, how the Safe Third Country Agreement is applied, and the safeguards that are in place to ensure that high protection standards are maintained.

Canada takes its refugee protection obligations seriously. It must meet these obligations in a way that respects the need to ensure the safety and security of Canadians and in a manner that maintains public and partner confidence. The refugee determination process must effectively balance the dual priorities of maintaining the integrity of the process and providing effective protection.

1. Port of Entry Refugee Processing

When a person makes a claim for refugee protection, he or she must undergo admissibility andeligibility determinations, as outlined under IRPA. The CBSA is responsible for administering the POE process.[9]

Upon making a claim for protection at the POE, an individual appears before a CBSA Border Services Officer (BSO) for an examination in order to determine whether his or her claim is eligible to be referred to the Immigration and Refugee Board (IRB). Qualified interpreters are provided, as required. The applicant may be accompanied by a third party of his or her own choosing provided no undue delay results and it does not unduly interfere with the process.

People whose refugee claims are determined ineligible include, *inter alia*, those who:

- have a record of a serious crime or have been involved with terrorism or other security concerns;
- have been granted refugee status in another country;
- have had a previous claim refused by Canada; or
- have arrived in Canada directly from a designated safe third country.

As required by section 100(3) of IRPA, if an eligibility decision is not made within three working days after receipt of a claim, the claim will automatically be “deemed” referred to the Refugee Protection Division of the IRB.

2. Canada Safe Third Country Process

Eligibility Determinations under the Agreement

Under the Agreement, a person seeking refugee protection in Canada at a POE along the Canada-U.S. border is not eligible to access the refugee determination process in Canada unless he or she can satisfy the BSO, on a balance of probabilities, that he or she qualifies for an exception outlined in the *Immigration and Refugee Protection Regulations* (IRPR). The Agreement applies to all refugee protection claims made at land border POEs. When the Agreement came into force, the legislative provisions found within section 101(1)(e) were exercised for the first time. To date, the U.S. is the only country that has been designated by Canada as a safe third country.

Exceptions to the Agreement

Exceptions to the Agreement, as outlined in the Regulations, take into consideration other key policy objectives, and are consistent with the principles established in IRPA, which favour family reunification and the protection of the best interests of the child. Under the exceptions, a claimant arriving at the land border will be allowed to make a claim for refugee protection in Canada if the claimant:

- has a family member in Canada[10] who is a: Canadian citizen; permanent resident; protected person; person in favour of whom a removal order has been stayed for humanitarian and compassionate considerations; person over age 18 who has made a claim for refugee protection and awaits a hearing at the IRB; holder of a valid work or study permit;

- is an unaccompanied minor[11];
- has a valid Canadian visa or other valid admission document (other than a transit visa) issued by Canada; or was not required to obtain a visa to enter Canada but was required to obtain a visa to enter the U.S.[12]
- has been charged with or convicted of an offence that could subject the claimant to the death penalty in the U.S. or in a third country[13];
- is a national of a country with respect to which the Minister has imposed a stay on the enforcement of removal orders or a stateless person who is a former habitual resident of a country or place where such a stay has been imposed and the stay has not been cancelled.[14]

Removal Procedures

Pursuant to the Agreement, persons whose claims are found to be ineligible and who are issued a removal order can be removed to the U.S. Removals are in most cases the same day.

Officer Training

As part of their overall training, BSOs receive instruction specific to processing refugees. This generally involves a mentoring period where a new BSO will spend up to two months observing an experienced officer processing refugee claimants before taking on a claim alone.

Since the implementation of the Agreement brought forward considerable changes to the processing of refugee claimants, additional training and guidance was provided to BSOs in December 2004. For more complex or difficult cases, National Headquarters at CIC and the CBSA continue to provide ongoing assistance.

3. Safeguards and Oversight Mechanisms

The successful implementation of the Agreement depends upon effective oversight. Both governments sought to establish comprehensive and transparent oversight mechanisms in order to maintain high protection standards. Overall, this involves many complementary and mutually reinforcing components consisting of oversight of eligibility determination decisions, including the role of the Minister's Delegate and access to the Federal Court; a binational dispute resolution mechanism; functional guidance and coordination; the partnership with the UNHCR; and the binding requirement in Canada to report to the Governor in Council on changes in U.S. laws or policies which may have an impact on the implementation of the Agreement.

Together, these mechanisms serve both to safeguard access to a refugee determination process, and to ensure the integrity and transparency of the implementation of the Agreement.

Assessment of the Initial Eligibility Determination

Upon making a claim for refugee protection, the eligibility determination of the claim by one officer is reviewed by a separate decision maker (Minister's Delegate). This safeguard provides for two independent assessments of the eligibility of the claim.

Judicial Review

When a refugee claimant disagrees with an officer's finding of eligibility, the formal mechanism to correct errors is to file a request for leave to seek judicial review with the Federal Court of Canada. A claimant does not have to be physically present in Canada to pursue a judicial review application before the Federal Court. This mechanism is available for all decisions rendered by the Government of Canada.

Dispute Resolution Mechanism between Governments

As mandated under Article 8.2 of the Agreement and articulated in the Statement of Principles ("Procedural Issues Associated with Implementing the Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries"), a dispute resolution mechanism exists for resolving differences between the Canadian and U.S. governments respecting the interpretation and implementation of the terms of the Agreement. This mechanism is not an appeal process for claimants.

Functional Guidance and Coordination

CIC and the CBSA share responsibility for the implementation of the Agreement in Canada, with CIC holding jurisdiction over refugee protection policy and the CBSA managing POE operations. Officials from both organizations collaborate in providing functional guidance to POE officers in processing refugee protection claims in line with the principles established. Officials from both countries also endeavour to maintain strong lines of communication at the national and local levels.

Partnership with the UNHCR

The partnership with the UNHCR is instrumental in ensuring that appropriate safeguards in decision making are intact. The UNHCR monitored the first year of implementation of the Agreement in order to independently assess whether implementation is consistent with the terms and principles of the Agreement as well as with international refugee law. These monitoring activities relied on the cooperation and support of both governments, full and open access to POE and detention facilities where interviews with refugee claimants impacted by the Agreement could be conducted, as well as ongoing consultations with NGOs.

Governor in Council Monitoring

Prior to the signing of the Agreement and since its implementation, the government has continued to monitor developments in U.S. law and policy which could have an impact on the integrity of the Agreement, as mandated by the order-in-council on directives for ensuring a continuing review of factors set out in subsection 102(3) of IRPA with respect to countries designated under section 102(1)(*a*) of IRPA.

Under IRPA, when designating a country for the purpose of sharing responsibility for refugee protection, certain factors must be considered, namely: (a) whether the country is a party to the Refugee Convention and the Convention against Torture; (b) its policies and practices with respect to these two conventions; (c) its human rights record; and (d) whether it is a party to an agreement with the Government of Canada for the purpose of sharing responsibility with respect to claims for refugee protection, such as this Agreement.

Pursuant to subsection 102(3) of IRPA, a process for ongoing review is now in place in order for the Minister of Citizenship and Immigration to monitor compliance with these factors for the government. The Minister will report formally to the Governor in Council on a regular basis or more often should the circumstances warrant.

B. Issues by Theme

Throughout this review process, systematic government oversight, UNHCR monitoring efforts and stakeholder input have helped identify concrete successes and areas where clear improvements can be made. This section thematically illustrates the challenges encountered and outlines the Government of Canada’s response to address them. The

monitoring role of the UNHCR was central in framing this section of the review, and new or outstanding post-mid-term recommendations are prominently reflected.

1. Operational/Management/Administrative

i. Pre-Implementation

The Agreement between Canada and the U.S. came into effect on December 29, 2004. There were challenges faced with both the timing of the implementation and the management of the anticipated rush on the Canadian border. It was anticipated that during the transitional phase leading up to the implementation of the Agreement, a significant number of individuals who were already in the U.S. would come forward to make a refugee claim in Canada. However, in the period leading up to implementation, it became apparent that a particular POE could not adequately manage the surge of claims being received.

In response, the government used special administrative measures to safeguard protection rights and ensure the orderly handling of these claims, including the processing of claims under the previous rules prior to the Agreement coming into force, dedication of additional staff and resources, temporary provision of shelter and transportation, and the issuance of temporary resident permits (TRPs) to claimants. Every effort was made to ensure that protection rights were not denied and that claimants were dealt with fairly and appropriately. By mid-March 2005 all transitional cases were fully processed.


The UNHCR recommends that in the future, careful consideration be given to the timing of the implementation of new legislation or international agreements, and that contingency plans be in place in the event of a surge in asylum requests.

The government recognizes that there were challenges faced during the pre-implementation phase and agrees with the UNHCR's recommendation that it is imperative to always have contingency plans in place when new agreements and legislation are being implemented.

ii. Post-Implementation: Operational Overview

From an operational perspective, the Agreement has served to enhance the orderly handling of refugee claims at the land border. The Agreement continues to be properly applied and administered at the land POEs, ensuring that persons seeking refugee protection in Canada, and qualifying for an exception under the Agreement, continue to have access to the Canadian refugee protection system.

iii. Impact on the Volume of Refugee Claims and Processing Times

Since the implementation of the Agreement, there has been a significant decrease in the number of refugee claims made at the land border. This has allowed the government to

better manage the flow of refugee claimants arriving from the U.S. The data show that refugee claims at the land border have decreased by approximately 55 percent. In 2005, BSOs processed 4,033 refugee claims compared to 8,896 claims in 2004. Of these 4,033 claims, almost 95 percent were processed at three major POEs: Fort Erie, Windsor and Lacolle.

Although the number of claims has decreased, the length of time required to process a refugee claimant under the Agreement has significantly increased. Prior to implementation, processing times averaged between two and four hours. After implementation, processing times averaged between four and six hours for relatively straightforward cases and more than eight hours for complex cases. This increase is largely attributable to the lengthy process to establish whether a claimant qualifies for one of the exceptions outlined under the Agreement. Monitoring activities confirm that BSOs make exceptional efforts in this determination and are committed to giving applicants full opportunity to meet the burden of proof based on a balance of probabilities.

iv. The Scheduling System and Engaging the NGO Community

The majority of all land border refugee claims in Canada are received at the Fort Erie Peace Bridge and the Windsor Ambassador Bridge. Both POEs work extensively with U.S.-based NGOs to support refugee processing through a scheduling system whereby claimants make an appointment with the corresponding Canadian POE before presenting themselves at the border for examination.

Cooperation with NGOs can improve refugee processing, especially at some major POEs. The advantage of a scheduling system is clear both in terms of operations—it being the most efficient means of processing claimants by having the BSO and interpreters ready to process the claim—and the well-being of the claimant—by providing a high level of support through the use of NGO services in both the U.S. and Canada.

v. Direct Back Policy

The direct back policy was designed to handle sudden surges in the number of claimants or the unavailability of critical resources at a POE. In the context of front-end screening of refugee claimants, this policy allows for the person seeking refugee protection to be directed back to the U.S. with a scheduled appointment to have his or her claim processed in Canada at a later date. It is in no way intended to usurp Canada's commitment to the protection of persons seeking refuge in Canada. Individuals were directed back to the U.S., which, like Canada, is a party to the 1967 Protocol and the 1984 Convention against Torture, and does not engage in *refoulement.* Any person who has been directed back to the U.S. would have access to the U.S. protection regime before being returned to his or her country of origin. Furthermore, the vast majority of claimants affected by the direct back policy did gain access to the Canadian protection system.

 The UNHCR strongly recommends that direct backs be discontinued in order to prevent situations in which claimants who would otherwise be eligible to lodge refugee claims in Canada, are returned to their country of origin and as a result do not have access to the Canadian refugee determination system.

The government undertook a review of the use of the direct back policy, which took into account the recommendation of the UNHCR. Based on the findings of this review, the CBSA has decided to phase out the use of the direct back policy for refugee claimants arriving from the U.S. at the land border. Since August 31, 2006, its use is limited to extraordinary situations, subject to oversight by CBSA National Headquarters in consultation with CIC.

vi. Wait Times

A key objective of the Agreement is to enhance the orderly handling of refugee claims and timeliness is a significant indicator of success in this regard. As per operational guidelines, claimants are processed as soon as a BSO or an interpreter becomes available to begin the case. In accordance with the guidelines, every effort is made to process claimants on the day of arrival or the next day for late arrivals.

However, UNHCR monitors witnessed instances where claimants had to wait at the POE for periods in excess of 20 hours. This may have been due to competing POE priorities or the complexity of the individual cases.

The UNHCR has expressed concern that lengthy waiting and processing times may result in hardship for the claimant, particularly vulnerable cases and claimants with young children.

 While acknowledging that there are many competing priorities at POEs, the UNHCR urges CBSA to process refugee claimants in as timely a manner as possible and accord vulnerable cases priority processing.

The government agrees with the UNHCR that appropriate priority must be accorded to dealing with asylum seekers. To ensure that vulnerable persons' claims are processed in a timely manner, both CIC and the CBSA remain committed to working with the UNHCR to develop operational guidelines regarding how to properly identify vulnerable persons for priority processing. These guidelines, which will be in effect as of the fall of 2006, will concretely address priority processing procedures for vulnerable cases.

vii. Detention

Since the implementation of the Agreement, there have been relatively few instances of detention of refugee claimants subject to the Agreement. This is largely attributable to the

fact that the majority of claimants have identification documents in support of their claimed relationship or source country.[15]

 The UNHCR recommends that CBSA provide monthly data on detentions of cases to which the Agreement applies.

In the spirit of the monitoring plan, detention statistics are provided to the UNHCR on a monthly basis.

viii. Examinations and Determinations

Ensuring that claimants understand the eligibility determination process is another key element of successful implementation. The government recognizes the particularly vulnerable situation of persons seeking protection and the need to take extra measures to communicate the necessary information in a way that is best understood by the claimant.

In Canada, refugee interviews are carried out in accordance with Canadian and international standards. BSOs endeavour to put refugee claimants at ease while at the same time ensuring that the interview is carried out in a professional, polite and sensitive manner. Monitoring of the Agreement has shown that both positive and negative eligibility decisions taken by the BSOs are being correctly adjudicated.

 The UNHCR recommends that CBSA ensure that the refugee claimant process is explained in clear, comprehensible language to the claimant.

In the case of positive and negative eligibility decisions, BSOs provide a detailed oral explanation of the decision to the claimant, with interpretation support, as required. Copies of forms, relevant documents and interview notes along with other documents are provided to all persons found ineligible prior to returning the claimant to the U.S. as per the Agreement. A hand-out for all refugee claimants has also been developed to explain, in plain language, the process for claiming refugee status in Canada.

 The UNHCR recommends that the hand-out be shared with U.S.-based NGOs.

As per the UNHCR recommendation, this hand-out will be shared with U.S.-based NGOs that assist Canada-bound claimants. It is also publicly available on the CIC Web site.

ix. Irregular Crossings

During the development phase and since implementation of the Agreement, considerable concern has been expressed by stakeholders and parliamentarians about the possible increase in irregular crossings resulting from the Agreement coming into force.

Advocates believe that by limiting access at the land border POEs, claimants who fail to meet an exception may be forced to make dangerous crossings in order to gain access to the Canadian refugee determination system.

However, since implementation, Canadian and U.S. law enforcement agencies report that apprehensions of irregular migrants known to have attempted to cross the international border declined (in both directions) in 2005 from the previous year. In 2005, there have been no appreciable shifts from the previous year noted in irregular migration to reflect diversion from the land border to either entry between ports or at air and marine POEs.

The overall number of refugee claims decreased considerably from 2004 to 2005 (approximately 23 percent), and the Agreement may have contributed to a particular decline in the number of land border claims (approximately 55 percent) from 2004 to 2005. However, this decrease has not been reflected in any appreciable shift of the same nationalities that traditionally entered claims at land borders to air or marine POEs or inland offices. Inland office claims have also decreased in 2005, but as a relative proportion of overall claims, the percentage of claims made inland has risen due to a larger decline in POE claims.

Administrative Issues

The CBSA and CIC continue to work together to respond to a number of administrative recommendations identified by the UNHCR.

x. Training and Learning

The government recognizes the importance of delivering specialized training to BSOs in order the meet the diverse and special needs of Canada's refugee claimant population.


The UNHCR recommends that officers working at land border POEs receive training in refugee claimant interview techniques.

In light of the UNHCR's recommendation to improve officer training specific to refugee interview techniques, the CBSA and CIC are developing additional training materials and updating the manual, and will target training efforts toward POEs that do not possess extensive experience in processing claims. The government recognizes the importance of ongoing training and is committed to developing and amending training products in consultation with the UNHCR and stakeholders, as required.

xi. Public Information

The implementation of the Agreement represents a significant policy change in how refugee claims are processed and managed at the Canada-U.S. land border. Immediately following the implementation, there was public confusion as to the exceptions under the Agreement and who qualified for them. NGOs and other stakeholders have informed the

CBSA and CIC that there is still, to some extent, a lack of knowledge of the Agreement among interested parties.

 The UNHCR recommends that information on the Agreement, including the exceptions, be made more readily available to the public.

To address this issue, CIC and the CBSA are improving the information on the Agreement on their respective Web sites by adding additional reference materials, including the exceptions, and creating better links within and between the two sites. Should additional public information materials be required, consultations with stakeholders will be undertaken to develop products in other formats.

The government is committed to providing comprehensive public information about the Agreement in order to correct any existing misconceptions and provide clear and accessible access to the facts.

xii. Communications

Over the first year, the government sought to reinforce existing lines of communication and build new channels, both internally and bilaterally, to facilitate timely and open dialogue at all levels of government and with the UNHCR. This is a work in progress and efforts will continue in this regard.

 The UNHCR recommends that CBSA border officials and their appropriate U.S. counterparts communicate more regularly on issues relevant to the Agreement.

The government maintains an open dialogue with U.S. officials at the national and local levels through various formal and informal discussions. Both governments will encourage POEs to involve more local officials representing both governments in future working group meetings and stakeholder consultations.

 The UNHCR recommends that CBSA headquarters ensure that when appropriate, information with respect to concerns expressed by the UNHCR about activities at the POEs be shared with the field in a timely manner.

The government agrees that UNHCR concerns should be shared with the field in a timely fashion. The appropriate channels are being improved to better facilitate the flow of this type of information. A designated point of contact at CBSA Headquarters is now responsible for ensuring that all UNHCR issues are expeditiously transmitted to the field through Regional Program Specialists.

2. Oversight Mechanisms

i. Review Mechanisms

As illustrated in an earlier section of this report, a variety of complementary oversight mechanisms serve to guarantee the protection rights of individuals under the Agreement and reinforce the success of its overall implementation.


The UNHCR recommends that a transparent administrative review mechanism be created for the review of cases that may have been erroneously found ineligible or in which new information in support of eligibility becomes available after the initial determination of ineligibility. CIC and the CBSA should also agree with U.S. authorities to a temporary suspension of removal from the U.S. pending the timely review of such cases.

The government notes that both the UNHCR and NGOs are advocating for the institution of a formal administrative review mechanism, in addition to judicial review, to hear requests for reconsideration or appeals from claimants on a mandatory case-by-case basis. While committed to ensuring that all applicants have access to a full and fair refugee determination process, the government is satisfied with the effectiveness of the existing measures. This includes a review of each decision, positive and negative, by a Minister's Delegate. Should the claimant not be satisfied with the decision, the claimant can file a request for leave to seek judicial review with the Federal Court of Canada. Together, these mechanisms serve both to safeguard access to the refugee determination process and to ensure the integrity and transparency of the implementation of the Agreement. As such, the government does not consider it necessary to implement a formal level of review. Adding another level of review would not significantly enhance oversight and would have serious implications for operational effectiveness and efficiency.

It is important to distinguish between those mechanisms that provide opportunities to review individual decisions and those that support the broader regime established by the Agreement.

The formal recourse mechanism for refugee claimants who are not satisfied with the decision rendered on their eligibility is to file a request for leave to seek judicial review with the Federal Court of Canada. While there is no individual right under the Agreement to seek reconsideration of a case, the CBSA has been open to considering individual requests on a case-by-case basis where compelling new evidence is brought forward.

In order to ensure that the Agreement is implemented properly and to the satisfaction of both signatory governments, Article 8 states that the Parties shall develop operating procedures that shall include mechanisms for resolving differences respecting the interpretation and implementation of the Agreement.

Article 8 of the Agreement established the foundation of a dispute resolution mechanism for resolving differences between the Canadian and the U.S. governments respecting the

interpretation and implementation of the terms of this Agreement. It is not an appeal process for claimants.

Both governments note that operationally, the formulation of the guidelines to support Article 8 has given rise to confusion among both refugee claimants and border officials regarding the dispute resolution mechanism. This ambiguity has resulted in a few instances where claimants found ineligible to make a claim in Canada have approached U.S. DHS officials with a request to initiate a reconsideration process in Canada on their behalf, or vice versa. This is not the intent, nor the desired function, of the dispute resolution mechanism between the Parties, as neither side is mandated nor equipped to assess the validity or the legitimacy of the eligibility determination made by the other government on a case-by-case basis.

Partners in both Canada and the U.S. have raised concerns with respect to this mechanism and have recommended that clarifications be provided to address this issue.

 The UNHCR recommends that CIC/CBSA enhance the guidelines in the manual for reconsideration of cases determined to be ineligible.

The Government of Canada will revise the manual chapters to clarify these issues. As stated, the dispute resolution mechanism is not an appeal process for claimants. Regarding reconsideration of cases determined to be ineligible, the formal recourse for individual claimants is to file a request for leave to seek judicial review with the Federal Court of Canada. The government does not consider it necessary to institute an additional formal review process.

ii. Ongoing UNHCR Monitoring

Monitoring of the Agreement will no longer be considered a “special project” but will be mainstreamed into the UNHCR’s regular supervisory responsibilities pursuant to Article 35 of the Convention and paragraph 8 of the UNHCR Statute.

 The UNHCR recommends that the modus operandi established between CIC/CBSA and the UNHCR to facilitate the monitoring functions of the UNHCR with respect to the Agreement be maintained. This relates in particular to the domestic working group and the regular and timely supply of statistics.

Recognizing the integral role played by the UNHCR during the first year of implementation of the Agreement, the government fully endorses this recommendation and will actively support the ongoing involvement of the UNHCR. In the upcoming year, the government will build upon the strong lines of communication already established and draw upon the special expertise and experience of UNHCR partners to ensure that the Agreement continues to meet its objectives.

iii. Regular Reviews

As per monitoring requirements under section 102.3 of IRPA, the Minister of Citizenship and Immigration will report to the Governor in Council on a regular basis or more often should the circumstances warrant. A review of implementation of the Agreement will be conducted by the government as part of these reviews.

3. Policy

i. Public Interest Exceptions

In addition to the specific exceptions to the Agreement established by both countries to address policy imperatives, including a shared commitment to family unity and the best interests of the child, Article 6 states that "notwithstanding any provision of this Agreement, either Party may at its own discretion examine any refugee status claim made to that Party where it determines that it is in the public interest to do so."

The public interest exception is a tool which allows both governments to take responsibility for claims where it would be in the clear public interest to do so.

In Canada, this affords the government the opportunity to define the public interest in terms of public policy, which can flow from Canada's Parliament, courts, international treaty commitments or ministerial policy statements. Generally speaking, public policy considerations are relevant to a category of individuals. Canada does not apply it on a case-by-case basis but rather as a means to achieve an articulated public good or outcome.

Article 6 is an important provision not only in ensuring that Canada meets its legal obligations both internationally and domestically, but also in enabling the government to proactively address public policy objectives.

In approaching this issue, the government opted for a regulatory mechanism to codify examples of when the public interest exception should be exercised. The advantage of defining categories in the regulations, rather than relying upon guidelines, is that regulations provide for maximum transparency and objective decision making.

In response to the Report of the Standing Committee on Citizenship and Immigration on the Safe Third Country Regulations, the government acknowledged that it is not possible to exhaustively describe in sufficiently objective criteria all the situations where the public interest exception should be exercised, and that the Regulations may be supplemented by guidelines, where appropriate. In order to respond effectively to new or extraordinary circumstances, including those relating to concerns for the safety of individuals in the U.S., and which engage the public interest, the guidelines could be used as an interim measure outlining further situations where the Minister may exercise his discretion, until the Regulations are amended.

The current Regulations codify a public interest exception in two specific situations:

a. persons charged with or convicted of an offence punishable by the death penalty in the United States or abroad; and
b. nationals of, or stateless habitual residents of, countries where the Minister has imposed a stay of removals under subsection 230(1) of the IRPR.

Concerning the death penalty, Canada has chosen to adopt an abolitionist stance that is consistent with the fundamental values of our legal system and the basic rights of the individual under the Charter, and that is reinforced by Canada's accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, a United Nations treaty that confirms our continued opposition to the death penalty. In order to reflect these values and honour these obligations, this exception allows the government to take responsibility for hearing claims from persons who face capital charges in another country. The exception is consistent with the decision of the Supreme Court of Canada in United States v. Burns, 2001 SCC 7, which provided for a constitutional prohibition against return to face the death penalty in the extradition context.

In the case of suspension of removals, a t times, Canada will declare a TSR to certain countries due to conditions of generalized risk. It would be inconsistent with this policy to allow return to the U.S. when it can be established that the individual could be removed from the U.S. to one of these countries. This is consistent with section 230 of the IRPR.

Canadian public policy on the death penalty is of general application, and is not based on the merits of any particular capital case. Similarly, IRPA provides for a broad moratorium on removal to countries in turmoil, regardless of individual protection needs (albeit with limited exception for serious criminals and terrorists). Any future regulatory amendments would need to be similarly based on policy considerations generally relevant beyond individual cases, no matter how compelling.

Article 6 garnered considerable attention during the Agreement’s development phase, and remains an area of interest to the UNHCR, NGOs and parliamentarians. Some stakeholders advocate for the broadening of the application of Article 6.


The UNHCR recommends that the Government of Canada consider broadening the interpretation of Article 6 to include, for example, vulnerable persons who do not fall under any of the exceptions to the Agreement.

In review, the first year of implementation has demonstrated that the regulatory approach has worked to the benefit of many claimants. For example, persons from a moratorium country had certainty that they could approach an official at a Canadian POE and be allowed to enter Canada and make a claim for refugee protection. However, implementation of the Agreement has not, as yet, clearly revealed another category of cases that would warrant inclusion in the Regulations, and the general immigration

legislative scheme has been sufficient to deal with unanticipated situations deserving of special attention.

But that does not rule out the possibility of identifying a new category in future, and the government is open to exploring other examples which could engage the public interest. However, the aim of this exercise would be to identify discreet groups through clear and objective criteria.

In specific reference to "vulnerable individuals," the government is interested in further pursuing a dialogue with partners about how this category can best be defined. If throughout these discussions, concrete examples which could engage the public interest emerge, dialogue on broadening the application of Article 6 of the Agreement could follow. But at this time, the government does not feel the necessary analysis has been completed, nor has an adequate definition been articulated, to accept the UNHCR recommendation that "vulnerable individuals" be included under the public interest exception. We look forward to working with the UNHCR on this issue in the upcoming year.

ii. Clarification and Guidance

Strong policy guidance and support to the field are of paramount importance when implementing new agreements. The government is constantly engaged in updating manuals and improving working tools to support operational demands.


The UNHCR recommends that CIC and CBSA National Headquarters provide additional clarification on the issues of statelessness, habitual residence, unaccompanied minors and vulnerable and spousal abuse cases. POEs should be encouraged to seek guidance on complex individual cases from Headquarters, should the need arise.

CIC and the CBSA recently updated the manual sections dealing with statelessness and habitual residence, in consultation with the UNHCR. Manual revisions are also under way to comprehensively address priority processing guidelines for vulnerable cases and provide clarification on spousal abuse cases. Input from the UNHCR will be sought on both of these issues.

CIC and CBSA National Headquarters collaborate on an ongoing basis to provide functional guidance and support to the field in dealing with complex individual cases. In 2005, effective communication between the field and the National Headquarters offices resulted in prompt responses to some complex and unusual situations involving processing of refugee claims at the POEs. Highlights of these cases include determining former place of habitual residence, assessing family relationship, and exercising discretion in allowing a minor claimant to reunite with his or her family.

C. Statistics Section

1. Overview

The purpose of this section is to provide a statistical snapshot of pre- and post-implementation data on refugee claims made in Canada, focusing on land border claims as per the application of the Agreement. The data are organized by year, POE/location, country of origin and exceptions granted by category under the Safe Third Country Agreement.

Overall Refugee Protection Claims in Canada

Over the past several years, the number of refugee claims made in Canada has steadily declined. This, in part, reflects a global decrease in asylum claims in Western countries. According to the UNHCR report, *Asylum Levels and Trends in Industrialized Countries in 2005*, the number of asylum seekers in Europe and in the non-European industrialized countries, including Canada and the U.S., continued to decline sharply in 2005. In the 50 countries covered in the UNHCR report, there have been 15 percent fewer applications for refugee status in 2005 (336,100) compared to the number of applications in 2004 (394,600).[16]

Table 1 shows a declining trend in the refugee claim intake in Canada since 2002.

Table 1: Refugee Claim Intake in Canada by Year and Location

Calendar Year	Total Intake	Canada-U.S. Land Border	Airport	Inland
2002	33,461	10,856	4,693	17,912
2003	31,893	10,940	4,179	16,774
2004	25,521	8,896	3,456	13,169
2005	19,735	4,033	3,337	12,365

In 2005, there was a three percent decrease in the number of refugee claims made at airports and a six percent decrease in the number of claims at inland offices across the country. Coupled with a 55 percent decrease at the land border, this led to an overall decrease of 23 percent in the number of refugee claims in 2005 compared to the number of claims in 2004.

Refugee Protection Claims at the Canada-U.S. Land Border

Refugee claims made at the Canada-U.S. land border have comprised a significant portion of the total refugee claims received each year during past years. On average, from 2002 to 2004, approximately 32 percent of the yearly refugee claims were made at the land border. In 2005, this proportion fell to approximately 20 percent.

From January 1 to December 31, 2005, Canada received 4,033[17] refugee claims at the Canada-U.S. land border.[18] As mentioned above, this figure is 55 percent lower than the number of refugee claims made at the land border during 2004.

Table 2: Land Border Claims in 2004 and 2005

Year	Total Claims	Claims at Land Border	Land Border Claims as % of Total Claims
2004	25,521	8,896	34.8%
2005	19,735	4,033	20.4%

Port of Entry/Location

In 2005, approximately 95 percent of all land border refugee claims were made at three major POEs: Fort Erie and Windsor in Ontario, and Lacolle in Quebec. Of the 4,033 refugee claims made in total, Fort Erie received 2,461[19] (61 percent), Windsor received 714[20] (18 percent) and Lacolle received 628 (16 percent).

General Scope

In 2005, Canada received a total of 4,033 refugee protection claims, of which 3,254 are reported to have qualified for one of the exceptions to the Agreement and were, therefore, able to pursue their claims for refugee protection in Canada.

During the same period, a total of 303 claims were determined ineligible as a result of the application of the Agreement as these claimants did not qualify for an exception. As per the terms of the Agreement, these refugee claimants were returned to the United States.

In addition, a total of 337 U.S. citizens made a claim at the Canada-U.S. land border. The majority of these claimants (324) were U.S.-born children who accompanied third country national parents. In accordance with the international legal obligations under the principle of *non-refoulement* outlined in the 1951 Convention and its 1967 Protocol, the Safe Third Country Agreement does not apply to citizens of the U.S. and stateless individuals who are considered former habitual residents of the U.S.

Lastly, in 139 cases, the result of the eligibility determination of the claim has not been recorded in FOSS. This may be a result of instances where a refugee claimant decided to withdraw his or her refugee protection claim and return to the U.S. before an officer determined the eligibility of the claim, or when an individual who was temporarily directed back to the U.S. did not appear for the scheduled examination at the designated POE, or as a result of data entry integrity issues. CIC and the CBSA are collaborating in a case-by-case review of these 139 files in order to update system records.

Exceptions

As outlined earlier in this report, the Agreement and its Regulations recognize key policy objectives, including the shared commitment to family unity, the need to take into account the best interests of the child, and the discretionary authority of each country to take responsibility for any application where it would be in the public interest to do so. These goals are addressed through exceptions to the general principle that requires the country of last presence to take responsibility for adjudicating the refugee claim. The following section provides an overview of exceptions granted by category.

Table 3 illustrates exceptions granted by category under the Agreement.

Table 3: Breakdown of Refugee Claims Processed at Canada-U.S. Land Border by Type of Exception, 2005

Refugee Claimants at Can-U.S. Land Border Who Fit an Exception	3,254
Relatives in Canada	1,577
Temporary Suspension of Removal	1,218
Face Capital Punishment	0
Unaccompanied Minor	49
Possess Canadian Visa	373
No Canadian Visa Required	37

Relatives in Canada

During 2005, 1,577 refugee claimants who qualified for an exception were individuals who had a qualified relative or family link in Canada, as defined in the Regulations. Of these 1,577 refugee claims, 860 individuals showed a family link in Canada who was a Canadian citizen or permanent resident; 216 individuals showed that their qualified family member residing in Canada had been recognized to be in need of Canada's refugee protection; 495 individuals showed that they had a qualified family member in Canada who was older than 18 years of age and who had already been referred to the IRB for determination of their refugee claims; and a total of 6 individuals showed that their family members in Canada were older than 18 years and were the holders of a work permit or study permit.

Public Interest Exceptions

The current Regulations codify a public interest exception in two specific situations:

a. persons charged with or convicted of an offence punishable by the death penalty in the United States or abroad; and
b. nationals of or stateless habitual residents of countries where the Minister has imposed a stay of removals under the IRPR.[21]

Since implementation of the Agreement at the land border, no individual has sought to qualify for an exception on the grounds that he or she faced capital punishment in the U.S. or abroad.

In 2005, the second largest number of exceptions (1,218) granted were to individuals from countries where Canada has temporarily suspended removals due to generalized risks. Currently, Canada has a TSR to the following countries: Afghanistan, Burundi, the Democratic Republic of Congo, Haiti, Iraq, Liberia, Rwanda and Zimbabwe.

Unaccompanied Minors

Among those who made a claim for refugee protection at the Canada-U.S. land border in 2005, 49 claimants were granted an exception on the basis that they were unaccompanied minors as described in the Regulations.

Canadian Documents

In 2005, a total of 410 refugee claimants were granted an exception under the Agreement on the grounds that they either possessed a Canadian document allowing them to enter Canada or they did not require a visa to enter Canada. The majority of these claimants (373) were issued a TRP during the period prior to implementation of the Agreement.[22]

Country of Origin and Gender of Claimants

Global refugee flows are dynamic and unpredictable, varyingly influenced by complex push and pull factors and shaped by ever-changing circumstances in source, transit and receiving states. Table 4 illustrates the top 10 source countries for refugee protection claims in Canada in 2004 and 2005.

In 2005, the primary source countries for refugee protection claims at the Canada-U.S. land border were Colombia, Zimbabwe, the U.S., Sri Lanka, Burundi, the Democratic Republic of Congo, Peru, El Salvador, Guatemala and Haiti. This compares to Colombia, the U.S., Peru, Pakistan, Sri Lanka, Venezuela, the Democratic Republic of Congo, Ethiopia, the Republic of Indonesia and India in 2004. Among the top five source countries, Zimbabwe and Burundi replaced Peru and Pakistan in 2005.

Table 4: Source Countries for Refugee Protection Claims in 2004 and 2005 at the Canada-U.S. Land Border

Source Country in 2004	Refugee Claims at Land Border	Female Claimants	Source Country in 2005	Refugee Claims at Land Border	Female Claimants
Colombia	3,521	47%	Colombia	874	48%

U.S.	617	47%	Zimbabwe	575	55%
Peru	400	49%	U.S.	337	49%
Pakistan	327	42%	Sri Lanka	189	22%
Sri Lanka	321	24%	Burundi	137	51%
Venezuela	217	43%	Dem. Rep. of Congo	137	56%
Dem. Rep. of Congo	170	48%	Peru	122	52%
Ethiopia	169	49%	El Salvador	120	45%
Rep. of Indonesia	147	49%	Guatemala	105	43%
India	140	46%	Haiti	103	41%

Overall, the proportion of female refugee claimants at the Canada-U.S. land border increased from 44 percent in 2004 to 47 percent in 2005, whereas the proportion of male claimants at the land border decreased from 56 percent in 2004 to 53 percent in 2005.

In 2005, almost half (46 percent) of 4,033 refugee claims at the land border were made by nationals of the Americas and another quarter (25 percent) were entered by nationals of countries in East Africa, primarily Zimbabwe, Rwanda and Burundi, as well as the four countries in the Horn of Africa. A significant proportion of the land border movement from nationals of Eastern African countries may be attributed to the Safe Third Country Agreement public interest exception that extends to the eight countries currently under a TSR from Canada.

Table 4 also shows a significant decrease in the number of refugee claims made by Colombian nationals at the Canada-U.S. land border in 2005. This drop may be attributable to fewer Colombian nationals in the U.S. or fewer leaving Colombia. The U.S. DHS reports that the number of Colombian refugee claimants arriving in the U.S. has been steadily declining since before implementation of the Safe Third Country Agreement. In 2003, 8,046 Colombians made a claim for refugee protection in the U.S. This number dropped to 1,672 in 2005[23] despite an increase in the approval rate for Colombian asylum claims in the U.S.

Resettled Refugees from Abroad

As committed to under Article 9 of the Agreement and the accompanying diplomatic note, Canada and the U.S. agreed to cooperate in the resettlement of refugees from outside North America. Consistent with international principles of responsibility sharing, the Agreement states that both countries shall, upon request, endeavour to assist the other

in the resettlement of persons determined to require protection in appropriate circumstances.

In 2005, Canada received 14 Haitian refugee resettlement cases from Guantanamo Bay, Cuba, referred by the U.S. under Article 9.

In-Transit Removal Cases

Article 5 of the Agreement outlines the procedures for processing refugee claims made by individuals who are in transit through Canada or the U.S. while being removed. In 2005, there were a total of 115 persons removed from Canada via the U.S. None of these individuals made a claim while in transit through the U.S. During the same period, there were no removals from the U.S. via Canada.

2. Preliminary Gender Impact Analysis

This section provides a preliminary analysis of data collected on individuals eligible to make a claim for refugee status and who entered Canada under the Safe Third Agreement.

CIC is required by IRPA section 94(2)(*f*) to include a gender-based analysis (GBA) of the Act in its annual report to Parliament. GBA is a public policy tool which focuses on social and economic differences between men and women, and different groups of men and women, over their life cycles.

More specifically to the Agreement, the Standing Committee on Citizenship and Immigration recommended that:

GBA be part of the ongoing monitoring of the Agreement to ensure that victims of domestic violence are not adversely affected.
(Recommendation 3)

In light of stakeholder concerns about how the Agreement may affect women and girl refugee claimants and the government's commitment to incorporating gender impact analysis into public policy development, the following section provides a starting point for an ongoing GBA that will inform the various review processes associated with this Agreement. The objective of this preliminary gender analysis section is to establish a baseline of data in order to track gender impacts and trends over time.

Overview

As illustrated in the preceding statistics section, since peaking in 2001, the overall number of asylum seekers has been decreasing in Canada.

Table 5 shows that the proportion of female claimants at the border has been comparable to that of the total claimants over the past four years. The proportion of female claimants

at the border increased slightly in 2005 (to 47 percent from 44 percent in 2004). This indicates that women continue to seek asylum at land borders and that this pattern has not changed as a result of the Agreement. That the proportion of women increased, rather than decreased, suggests that the Agreement did not act as a strong deterrent and that women continue to desire to make their asylum claim in Canada and were eligible to do so under the Agreement.

Table 5: Proportion of Refugee Claims by Women and Minors, 2002–2005

	Gender		Age		
Claim Year	**% Female among Total Claimants**	**% Female among Border Claimants**	**% Minors among Total Claimants**	**% Minors among Border Claimants**	**% Female among Minor Border Claimants**
2002	42%	43%	20%	29%	48%
2003	42%	41%	22%	30%	47%
2004	43%	44%	21%	28%	47%
2005	44%	47%	20%	28%	47%

Exceptions

Claims for refugee protection from persons who arrive at a Canadian land border POE from the U.S. are ineligible, unless they fall within an exception. These exceptions are consistent with the principles established in IRPA which favour family reunification and protection of the best interests of the child.

As noted in an earlier section, from January 1 to December 31, 2005, there were 4,033 refugee claims made at the land border. Of the 3,254 that were determined to have qualified for an exception, the largest category of exception concerned claimants with relatives in Canada (1,577, or 39 percent). The second largest category consisted of claimants from countries to which Canada had temporarily suspended removals (1,218, or 30 percent). The remaining exception categories had much smaller numbers.

As seen in Table 6, 46 percent of non-U.S. citizen border claimants were female. This figure compares very closely with 47 percent of females among total border claimants and 47 percent among total exceptions. The proportions of women in each exception category are comparable and female claimants do not seem to have qualified under the exceptions differentially than males.

Table 6: Exceptions by Gender, 2005

Type of Exception	**Number of**	**% Female**

		Exceptions Granted	
Total claims, non-U.S. citizens		3,254	46%
	Relative	1,577	48%
	Moratorium country	1,218	49%
	Had Canadian visa	373	45%
	Unaccompanied minor	49	43%
	No CDN visa required	37	36%

Table 7: Unaccompanied Minors by Gender and Country of Birth, 2005

Country of Birth	Refugee Protection Claims	Female Claimants	Male Claimants
Afghanistan	1	0	1
Colombia	15	6	9
Burundi	6	1	5
Chad, Republic of	4	1	3
Congo, Democratic Republic of	2	1	1
El Salvador	2	2	0
Eritrea	1	1	0
Gabon, Republic of	1	0	1
Guinea, Republic of	1	1	0
Honduras	1	0	1
Nepal	1	1	0
Rwanda	1	1	0
Somalia, Democratic Republic of	9	6	3
Sri Lanka	3	0	3
Turkey	1	0	1
Total	**49**	**21**	**28**

As seen in Table 7, 21 of the 49 unaccompanied minors granted an exception under the Agreement were girls. Given the particular vulnerability of this subgroup and the government's commitment to considering the best interests of the child, a case-by-case review is under way and this category will be closely monitored on an ongoing basis.

Domestic Violence

At the time of border crossing, the first step is the eligibility determination of the refugee claim. Details of the claim are required to be provided only at a later date, that is, at a hearing before the IRB. Research into claims citing gender-based persecution must therefore be part of a longer-term review process. The IRB continues to be guided by its Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution issued in 1993 and includes domestic violence among its considerations.

Conclusion

Initial evidence has not shown that the Agreement impacted claimants of different genders in a substantially divergent manner.

This first-phase analysis of the impacts restricts itself to data on all refugee claimants in order to identify issues and trends for further GBA. A second phase of analysis will explore gender and age in relation to region or country of origin and patterns of flows for land border crossings. Future analysis will also include a focus on dependants to better understand impacts on families.

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[9] The CBSA is responsible for determining whether or not the person is eligible to have a claim for refugee protection referred to the Immigration and Refugee Board (IRB). The IRB is responsible for rendering a final decision on the claim itself.

[10] A "family member," in respect of a claimant, means their spouse or common-law partner, their legal guardian, and any of the following persons, namely, their child, father, mother, brother, sister, grandfather, grandmother, grandchild, uncle, aunt, nephew or niece.

[11] An "unaccompanied minor" means an unmarried refugee status claimant who has not yet reached his or her eighteenth birthday and does not have a parent or legal guardian in either Canada or the United States.

[12] Countries whose nationals do not requre a visa to enter Canada include Antigua and Barbuda, Bahamas, Barbados, British overseas territory citizen, Botswana, Cyprus, Greece, Malta, Mexico, Namibia, Papua New Guinea, Republic of South Korea, St. Kitts and Nevis, St. Lucia, St. Vincent, Solomon Islands, Swaziland and Western Samoa.

[13] The claimant may still be found ineligible to apply for refugee protection in Canada despite the Agreement if the claimant has been determined to be inadmissible on the grounds of security, violating human or international rights, serious criminality or organized criminality under section 101(1)(f) of IRPA.

[14] IRPA provides the Minister of Public Safety and Emergency Preparedness with the legal authority to temporarily suspend or reinstate removals according to changes in country conditions. Under the Regulations, the Minister may impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population. The suspension is lifted and removals are reinstated when the situation in the country improves. The temporary suspension of removal (TSR) does not apply to individuals who have a history of crime, pose a danger to Canadian society, or have been convicted of war crimes or crimes against humanity. The stay of removal does not apply to persons listed under 230(3)(a) to (f) of the *IRPR*, which includes those found to be inadmissible on the grounds of security, violating human or international rights, serious criminality or organized criminality

[15] Under IRPA, the grounds for detention decisions include: the claimant is a danger to the public, the claimant is a "flight risk" who will not appear for a hearing or other immigration proceeding, or the claimant has not established his or her identity.

[16] Publication available on the UNHCR Web site: http://www.unhcr.org/cgi-in/texis/vtx/home?id=search.

[17] Source: Field Operations Support System (FOSS), January 6, 2006. Calendar year statistics are used for consistency with the data from previous years.
[18] Statistics include transitional cases processed under the old regime. In order to deal with pressures at the Canada-U.S. border during the pre-implementation period, some refugee claimants who approached the border were directed back to the U.S. temporarily and scheduled to return after December 29, 2004. Other Canada-bound refugee claimants waiting in Buffalo, N.Y., were issued TRPs allowing them to arrive at the Canadian border at Fort Erie, Ontario, after implementation of the Agreement and to be processed under the old rules. All transitional cases were processed by mid-March 2005.
[19] The figure includes claims processed at Fort Erie, Niagara Falls Rainbow Bridge and Queenston-Lewiston Bridge.
[20] The figure includes claims processed at Windsor International Tunnel and Windsor Ambassador Bridge.
[21] Subsection 230(1) of the Regulations.
[22] The 373 refugee claims were transitional cases. For further details, see footnote 13.
[23] Statistics provided by USCIS.