

Expanding Canada's borders

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Although Canada enjoys a good international reputation for its refugee resettlement programmes, it has also externalised refugee protection under the pretext of preserving the integrity of its asylum system and responsibility sharing.

In recent decades, Canadian authorities have been actively involved in intercepting asylum seekers and impeding their entry. The expansion of Canada's externalisation practices – such as border cooperation agreements, surveillance through data sharing and new technologies, and migration diplomacy tactics – is having an impact on the mobility of asylum seekers, and narrowing the space in which asylum seekers can access refugee protection in Canada.

The Canada–US border

The externalisation of Canada's asylum system has been facilitated by its well-established immigration and border relationship with the United States of America (US). The Canada–US Safe Third Country Agreement (STCA), established in 2004, requires asylum seekers to claim refugee protection in the first safe country (Canada or the US) they pass through. Accordingly, most asylum seekers from third countries who seek to enter Canada from the US at an official land border crossing point are found ineligible by Canadian authorities and returned to the US, without any form of risk assessment.

In July 2020, the Federal Court of Canada found that the STCA infringes on asylum seekers' rights to liberty and security as protected by the Canadian Charter of Rights and Freedoms. The Court noted that asylum seekers returned to the US by Canadian officials are systematically detained (often in solitary confinement) and subjected to racist treatment, and are at risk of being denied access to a fair refugee process.¹ Furthermore, the Federal Court emphasised that, far from being a "passive participant",² Canada is directly responsible for the violations of the rights of asylum seekers returned to the US. Urging Canadian authorities not to turn a blind eye to the consequences

of their actions, the Court concluded that imprisonment and threats to asylum seekers' security cannot be justified for the sake of administrative efficiency or responsibility sharing. On appeal, however, the Federal Court's decision was overturned in April 2021, a decision that was strongly criticised by the Canadian Association of Refugee Lawyers.³

The COVID-19 pandemic has further aided the federal government's efforts to externalise asylum by closing Canada's borders to those in need of international protection. Before March 2020, a loophole in the STCA allowed those who managed to arrive on Canadian soil irregularly to stay and make an asylum claim. Since the pandemic, however, the US and Canada have reached a temporary agreement that allows Canada to send back to the US asylum seekers irregularly entering Canada.

In addition to the longstanding cooperation through the STCA, border enforcement between Canada and the US has expanded to include digital technologies that facilitate information collection and sharing of passenger and biometric data. In place of more traditional document checks at the border, digital data are now drawn from a variety of sources. In 2011, under the Beyond the Border Action Plan, Canada began to implement automated information sharing on immigration issues with the US under the Biometrics (Steady State) initiative and the Canada–US Immigration Information Sharing (IIS) initiative. Such programmes claim to improve processes for border officers; however, expediting border procedures through digital technologies further externalises refugee systems by sorting, categorising and profiling the migration history and personal data of asylum seekers before they have an opportunity to explain in person the circumstances of

their migration path. Moreover, asylum seekers of certain racial, ethnic and religious backgrounds or specific countries of origin may be falsely associated with crime and terrorism through discriminatory profiling by border personnel or bias embedded in technology systems.⁴ Canada–US cooperation allows Canadian authorities to monitor and restrict the mobility of asylum seekers, thereby preventing them from accessing protection in Canada. A similar trend can be observed in Canada’s cooperation with some other countries in the Global North.

Five Eyes alliance

In 2009, Canada began to exchange immigration information through the High Value Data Sharing Protocol with members of the Five Country Conference (also known as Five Eyes), an intelligence alliance between the US, UK, New Zealand, Australia and Canada in areas of national security, borders and immigration. Between 2012 and 2016, the Canadian government entered into information-sharing agreements with all Five Eyes members.

In reality, these international agreements to share biometrics and personal data are largely used to prevent the mobility of asylum seekers. In 2019, for example, the Canadian government announced Can\$1.18 billion of funding over five years to support the implementation of the Border Enforcement Strategy in order to “detect and intercept individuals who cross Canadian borders irregularly and who try to exploit Canada’s immigration system”.⁵

Tellingly, in the same year, a new ground for refugee ineligibility was added to Canada’s Immigration and Refugee Protection Act (IRPA). The new provision stipulates that a refugee claimant who previously made a claim for protection in a country with which Canada has an information-sharing agreement is not eligible to make a claim in Canada. With the bilateral Five Eyes agreements on hand to support automated immigration information sharing, legislative changes such as the 2019 ineligibility ground reinforce barriers to making a claim for refugee protection in Canada without

ensuring that asylum seekers are provided with the necessary protection against *refoulement*. This risk has been exacerbated by developments in biometric data collection and the use of artificial intelligence technologies such as facial recognition and fingerprint verification, measures that have been included in a \$656 million funding allocation to the Canadian Border Services Agency (CBSA) in the 2021 Canadian federal budget.⁶

Despite concerns around rights violations such as privacy risks, discrimination and barriers to the right to seek asylum, there are clear indications that the Canadian government – along with other Five Eyes States – are pursuing objectives to fully digitise border control in order to externalise asylum. This is exemplified by an emerging Five Country alliance initiative, the Border of the Future Plan, which aims to leverage cooperation and emerging technologies to establish a ‘touchless’, digitally-based border in the name of global border information sharing and security.⁷

Interception, ‘capacity building’ and Canada’s migration diplomacy

The Canadian government actively collaborates with source and transit countries to interrupt the onward movement of asylum seekers, and has also been eager to support migration control measures abroad through its international assistance and diplomatic engagements. For instance, Canada’s Anti-Crime Capacity Building Program (ACCBP) provides support and financial assistance to source and transit States in Asia, Africa and the Americas (especially Mexico) to reinforce their border controls and provide training in investigative techniques to their law enforcement and border security officials.⁸ Canada also collaborates with the International Organization for Migration (IOM) to provide training workshops for law enforcement and immigration officers in examining and detecting fraudulent travel documents, and in capacity building for identifying and intercepting migrant smuggling. Passport and border officials from 18 countries were trained through this programme from 2018 to 2019.

Externalisation processes can be rationalised as transnational crime-control strategies to fight migrant trafficking and smuggling⁹ but placing its border control measures under the jurisdiction of foreign States allows the Canadian government to divert Canada-bound migration, including of asylum seekers. Available data on diplomatic practices have indicated several legal and human rights implications such as the detention or deportation of migrants in third or transit countries with limited infrastructure to ensure human rights.¹⁰

Barriers to evaluating impacts

Externalised asylum systems require transparency, oversight and evaluation if their impacts on the rights and experiences of people seeking asylum are to be fully understood. These requirements are not met in the case of Canada's externalisation procedures. Information on the evidence base for policies and their implementation is scarce. For instance, concerning the 2019 refugee ineligibility ground, our team made an access-to-information request to the CBSA, Immigration, Citizenship and Refugees Canada (IRCC) and the Immigration and Refugee Board (IRB) for data on the number of individuals who had made a refugee claim in the US, UK, Australia or New Zealand before making a claim in Canada. The IRB did not have any records to report, while the CBSA and IRCC were only able to produce partial data on previous claims made by those arriving from the US. For those coming from the other Five Eyes countries (other than the US), there was either no data available or the data were not collected. So the question is: what was the impetus for this new ineligibility ground if data on previous refugee claims were not recorded?

Further, information scarcity of government audits and reports on programmes such as the ACCBP make it difficult to track the implementation of such externalisation efforts. More accessible data are needed to examine and understand the full implications of externalisation policies on asylum seekers' rights and States' refugee protection obligations. Better access to

information would also support the creation of independent oversight mechanisms to hold the government to account, mechanisms which are currently lacking in Canada.

The opaque nature of the externalisation process also makes it difficult for civil society and refugee advocates to hold the Canadian government accountable for its actions beyond national boundaries. Transparency and accountability mechanisms that monitor and review externalisation policies are needed in order to ensure an accessible and equitable asylum system in Canada. Otherwise, externalisation practices will continue to hinder the rights of asylum seekers and undermine Canada's refugee protection obligations.

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