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Irregular migration to Canada: Addressing current policy responses that impact refugee claimants' arrival and settlement in the country.

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Introduction

The unexpected influx of refugee claimants irregularly crossing the US-Canada border since 2016 has strained Canada's immigration system. According to the Immigration and Refugee Board of Canada (IRB), 47,425 claims were referred to the IRB in 2017, and more than 43,000 were still pending at the end of the year (IRB, 2017). This only increased in the following years; in 2018, 55,388 claims were referred to the IRB and as of June of 2019 more than 74,000 were still pending. Compared to the total claims referred to the IRB in 2016 (23,350) and 2015 (16,592), these numbers represent a significant increase which consequently strains Canadian settlement services (IRB, 2019a). While Canada has a global reputation for humanitarianism and human rights leadership (Atak, et. al 2018), the lack of coordination to effectively manage the increase in inland claims during recent years reflects systemic limitations of the reception and processing of spontaneous and irregular arrivals. This *Policy Points* discusses Canadian policy changes and responses to refugee claimants and analyzes how these are detrimental for their arrival and settlement in Canada.

Background and Policy Context

Despite its privileged geographical position away from major refugee producing areas, Canada has been considered one of the most generous nations for refugees. Although known for its leadership in efforts to

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protect and promote cultural diversity, immigration, and refugees' rights, Canada's immigration and refugee system has faced criticism due to its interception practices designed to deflect spontaneous arrivals and its adoption of policies that privilege economic migrants (Mountz, 2010).

After 2016, the volatile conditions in the US, including Trump's proposed travel bans, the elimination of Temporary Protected Status, the Deferred Action for Childhood Arrivals, and the detention of children at the border, prompted the arrival of thousands of asylum seekers to Canada through irregular border crossings. In 2018, of 19,419 crossings, 18,518 arrived to Quebec, 479 to British Columbia and 410 to Manitoba (Government of Canada, 2018). This included people whose temporary protection status in the US was revoked or in danger of being revoked, such as Haitians and Somalis. Other asylum seekers transited through the US on tourist visas with the intention of crossing irregularly into Canada. Provinces like Quebec used emergency systems to manage the arrival of more than 27,000 asylum seekers in 2018 alone, of which 18,518 were irregular arrivals (Immigration Quebec, 2019). Even though Ontario has not recorded interceptions of refugee claimants in unofficial ports of entry, the city of Toronto has had a significant increase in claims. Shelters in the city have registered the arrivals of people that crossed from the US to Quebec and moved to Ontario as secondary migration. In addition, the city has received people coming from the US, who also moved to Canada due to recent changes in US policy, and who made claims at regular ports of entry since their claims meet one of the exceptions of the Safe Third Country Agreement.[2] In 2018, Toronto served 9,406 total refugees and asylum claimants in its shelter system and incurred over $65 million in expenses to fund the additional 2,500 beds for this group of people. As of September 2019, the shelter capacity of the city was operating at 95% (City of Toronto, 2019).
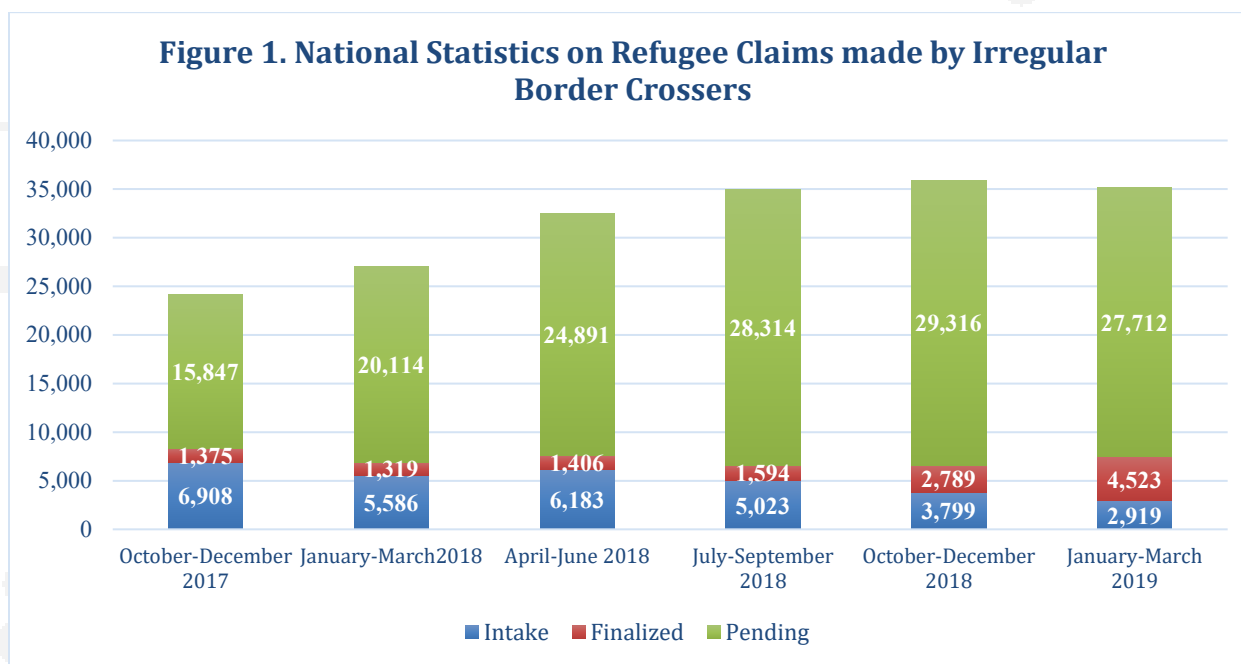
Figure 1. National Statistics on Refugee Claims made by Irregular Border Crossers

Source: Immigration and Refugee Board of Canada (2019c). Irregular Border Crossers Statistics. URL https://irb-cisr.gc.ca/en/statistics/Pages/Irregular-border-crosser-statistics.aspx#1

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[2] The Safe Third Country Agreement allows for the return to the US of a person who seeks protection in Canada arriving from the US. The Agreement exceptions will be only applied to those claimants who have family members in Canada, who are unaccompanied minors, who hold valid Canada visas or travel documents or who have returned to Canada after having been denied the entry to the US (Government of Canada, 2018a).

Due to the increase in asylum claims, Canada, at the federal level, has adapted its immigration and refugee policy to control irregular crossings at its border. The government's current responses and the creation of ad hoc strategies reveal that the system was not designed to receive mass arrivals at single or multiple entry points.

Situational Analysis

Canada's policy responses towards irregular border crossings have included international and domestic strategies. Internationally, Canadian representatives have engaged in official and unofficial talks with the US to control the influx of migrants crossing their border. Also, Members of Parliament have connected with immigration organizations and immigrant communities in the US to educate potential refugees on how the Canadian immigration system works (Government of Canada, 2017). This outreach program aligns with the increasingly used strategy by the Global North to externalize domestic tools of immigration control to prevent migrants reaching sovereign land and making asylum claims (Hyndman and Mountz, 2008).

However, important changes to Canada's immigration and refugee system have been made domestically which affect in more imperative and compelling ways both refugees that have crossed to Canada after 2016 and potential irregular crossers. These changes in policy refer to modifications that were prompted by the arrival of asylum seekers crossing the US-Canada border. The strategies outlined below align with securitization and protection of borders theories, which privilege the nations' sovereignty over individuals' protection.

a. The creation of the Ministry of Border Security and Organized Crime

The establishment of the Ad Hoc Task Force on Irregular Migration in 2017 suggested the potential for a temporary policy solution to issues related to irregular migration and border security. However, in July 2018, Prime Minister Trudeau announced the creation of a Ministry of Border Security and Organized Crime under the administration of Minister Bill Blair as a way to ensure that Canada's border is well managed and prepared for the arrival of irregular migrants who will make asylum claims. The creation of this ministry represents a more permanent solution for Canada to control immigration through securitization and criminalization discourses.

Of the eight top priorities included in the ministry's mandate letter, three refer to the management of irregular migration, four to the regulation of crime, drugs, firearms and smuggling, and one to pre-clearance options for travelers to the US (Trudeau, 2018). According to the mandate, all these factors should be regulated to ensure Canada's safety, thus, all of these are considered threats to Canadian society. The association between drugs, crime, and irregular migration that is addressed in the ministry's mandate stands to deepen narratives of crisis and criminalization of refugee claimants. The impromptu establishment of the ministry sends mixed signals about the Canadian government's priorities and strategies to manage migration.

Confusion regarding roles and responsibilities between the new ministry and other immigration agencies also creates uncertainty and overlapping of functions. For example, current documents do not specify how this ministry will be linked to other key agencies like the Canada Border Services Agency (CBSA) and the Royal Canadian Mounted Police, which already have enforcement powers at the border. Moreover, the role of this ministry in enforcing the Immigration and Refugee Protection Act is not clear. This creates confusion as the new ministry's proposed actions sometimes overlap with other agencies' obligations; for example, the mandate letter states that Minister Blair will represent the Government of Canada in the Ad Hoc Task Force in Irregular Migration, however the Minister of Immigration, Refugees and Citizenship is already a permanent agent of the Task Force (IRCC, 2018a).

On the other hand, following the mandate's priorities on irregular migration, the new ministry aims to get all people coming to Canada to cross at regular border points. However, as the Safe Third Country Agreement is in place, this would mean that only a small number of people, those whose claims meet one of the agreement's exceptions, will qualify to make a claim in Canada, thus excluding a much larger group of people in need from making claims in the country. These discourses show that this ministry considers irregular entry an illegitimate way of seeking asylum, that irregular migration is a risk for Canada, and that Canada prefers to support those who abide by the border and immigration "legal" processes.

The creation of this ministry represents a mode of governmentality that aims to restore the public's and the opposition's confidence that the federal government is capable of taking action towards the increase in irregular arrivals. Thus, this particular response aims to create an illusion of control over fictitious security threats related to immigration. In addition to contributing to narratives of crisis, the ministry is part of a more complex structural change in which the border becomes central for Canadian politics and ends the previous low-maintenance approach to border control matters.

b. Processing times in refugee hearings

The Protecting Canada's Immigration System Act (PCISA), introduced in 2012 by the Conservative Party under Prime Minister Stephen Harper, contained a number of restrictive measures that mainly affected inland refugees – those applying from within Canada – and those arriving by irregular means to the country. These reforms included expedited refugee hearings, increased immigration detention and reduced procedural guarantees. A list containing Designated Countries of Origin (DCO) was created with the purpose of fast-tracking refugee hearings of people coming from countries who do not normally produce refugees and who offer protection. The purpose was to easily detect unfounded claims as these countries are usually considered safe for refugees. Those from DCOs who made claims after 2012 were subject to fast-track hearings without enough time to prepare properly and to unfair deportation, while those who made claims before 2012 whose cases were not yet resolved became "legacy claims" and were forced to wait years for their hearings as the IRB prioritized new cases over older ones.

Although many legacy claims were still pending after the 2012 reforms, the IRB maintained the narrative of efficacy as they were able to handle a proportionate number of claims. However, by late 2017, the IRB faced again a significant backlog due to the arrival of thousands of refugee claimants. More than 43,000 claims were still pending at the end of the 2017, and as of February, 2018 the projected waiting time for claims for refugee protection was 20 months (IRB, 2018). After 2018, the IRB introduced changes in their hearing system as they started reviewing cases in the order in which they were received, instead of prioritizing the newer cases over the old ones. However, in 2019 they announced the introduction of the "Reduction Task Force for Less Complex Claims," which focuses on quicker resolution of claims through paper-based or short-hearing decisions depending on the type of claim and country of origin (IRB, 2019b).

These rapid changes in the IRB hearing process demonstrate the urgency to improve administrative efficiency and reduce the inventory of pending claims; however, a faster immigration system does not always equal increased rights for refugee claimants. The changes in hearing times implemented in 2012 were aimed at relieving the pressure on an overburdened refugee determination system; however, the burden was pushed onto refugee claimants whose cases provided a convenient opportunity to prioritize efficiency over fairness (Atak et al., 2012; Neylon, 2015). Currently, as in 2012, those who are subject to "fast-track" processes are at risk of not having their cases ready in time, affecting their right to due process, and those who are not eligible will only wait more time, forcing them to live through an extended temporary status.

Considering that currently there is only a short list of nationalities eligible for fast-track processes and that only two of these nationalities (Nigeria and Iran) were among the top five countries of citizenship for asylum seekers in 2018 in Canada, most of the claimants arriving after 2016 will probably wait long periods of time before receiving their final decision. These longer waiting times also affect their final refugee decision as the situation in their countries of origin may change after months or years of the initial claim, providing grounds to give a negative result (CCR, 2017). On the other hand, the precariousness of refugee claimants' lives is visible in Canada as they do not have the same access to resources and settlement services as other types of refugees and their temporary status is extended with no assurance of receiving Canada's protection.

c. The provision of social services for refugee claimants

In Canada, once an individual is eligible to make a claim by the CBSA or IRCC, they have access to social assistance and settlement services; however, Canada's settlement system often is not consistent in meeting the needs of all refugee claimants.

The impact of the current influx of asylum seekers was immediately evident through the increased demand for settlement services. Cities like Montreal and Toronto arranged emergency accommodation to provide shelter to those making asylum claims, and municipal staff began to exhaust personnel, facilities, and financial resources. Although the unanticipated allocation of resources to manage refugee arrivals started in 2017, it was not until June of 2018 that the federal government listened to the cities' pleas for financial assistance. As part of their "taking action on irregular migration" strategy, the federal government argued it was working with provinces and municipalities to provide them funding and support for temporary accommodation. The federal government provided initial aid of $50m for accommodation, with Quebec receiving $36m, Ontario $11m and Manitoba $3m (IRCC, 2018b). While this initial funding relieved immediate pressure, the total cost will not be covered until further financial help is given.

Despite the federal government's response to this situation, two particular aspects need to be addressed to provide adequate services to all refugee claimants. First, there is a lack of partnership and rapid response between the different levels of government. Municipalities and provinces are immediately responsible for refugee claimants' arrival and social service access, while the federal government only provides support to claimants through the Interim Federal Health program. Thus, there is a division of supports and funding which is dependent on peoples' immigration status. This division does not allow for a more comprehensive system of settlement services as one group of refugees will have greater access to the system while others will be limited, hindering their settlement. Moreover, the financial aid of the federal government for housing only arrived after Toronto and Montreal made urgent requests as they were already facing a strained shelter system. A prompt federal response could have lessened the social and financial impact of claimants' arrivals in these provinces.

Second, there is a lack of sustainable investment in settlement services as the government has focused on temporary measures when funding could have been invested in long-term solutions. The emergency solutions implemented in 2018 included housing refugees in motel/hotel rooms and in college dormitories, which only increased the financial burden for the provinces, instead of investing in facilitating claimants' transition to permanent residence. In addition to this, at a provincial level, the Government of Ontario has made cuts in budget that directly affect the provision of services, like Legal Aid or the Child's Benefits support. Between the lack of sustainable solutions and cuts to services, claimants are at risk of not settling adequately and rapidly as their income will diminish, increasing issues of poverty and homelessness. Even though an increase in asylum claims in the future is not certain in Canada, an increase in the need for support due to the lack of federal investment and provincial cuts will certainly occur.

Recommendations

Due to regional and global geopolitical instability, Canada will continue receiving refugee claimants in the upcoming years; however, there are policy options that the federal, provincial and municipal levels of government should consider to efficiently manage the situation:

1. **A renewed partnership between the federal, provincial and municipal governments is needed**. This will allow the provincial and municipal governments to communicate their needs, and the federal government then to respond to urgent issues related to immigrant arrivals, including offering funds for enhanced social services and integration processes.

2. **Increase personnel at the Immigration Refugee Board, Canada Border Services Agency and Immigration, Refugees and Citizenship Canada**. Sixty-four new decision makers were employed in 2018 at the IRB (IRCC, 2018c), but staff is also required in those agencies where eligibility decisions are carried out (e.g., the CBSA and the IRCC). In the current climate, asylum seekers wait months until their eligibility interview, when the original wait time was 2 to 3 weeks. The eligibility interview is the first step in entering the refugee claim process; thus, before this interview, asylum seekers are not recognized as refugee claimants which leaves them in a legal limbo where their access to social services is limited.

3. The creation of the Ministry of Border Security and Organized Crime could be seen as a matter of political discourse rather than one of national compliance with human rights obligations under international law. In order to mitigate negative public attitudes towards refugees and the refugee system, **the federal government must maintain a clear division between issues of crime, security, and migration**.

4. **Invest in sustainable solutions to offer better settlement services to all refugee claimants.** Redirect funding to more permanent solutions in sectors like housing, which will enable positive long-term settlement outcomes for claimants. This will also help to avoid future budget cuts as the money would be better allocated instead of being used for expensive temporary solutions. The settlement agencies will also benefit as they will have more resources to offer to their clients. For example, more rotation will exist in refugee shelters as people would find permanent housing more rapidly leaving the space for other people in need.

5. Apart from the efficient processing of refugee claims, the federal and provincial governments should continue to employ the triage system to **redirect refugee claimants from crowded cities**, like Montreal and Toronto, to other municipalities.

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