



# NAVIGATING REFUGEE CLAIMS

An Empirical Study on Supporting Refugee Claimants

Based on HMF's Internal Data

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## LAND ACKNOWLEDGMENT

With the utmost respect and a commitment to fostering meaningful connections with Indigenous communities, Healthy Muslim Families gratefully acknowledges our presence on ancestral lands. We are situated on Treaty 1 territory, encompassing the traditional territory of the Anishinabek, Cree, Oji-Cree, Dakota, Dene Peoples, and the Red River Métis. Additionally, we recognize that the research and completion of this report took place on the ancestral lands of these Indigenous communities.

## GENERAL ACKNOWLEDGMENT

We at Healthy Muslim Families extend our gratitude to the courageous individuals, families, and children who shared their narratives with us, allowing us to gain a deeper understanding of the journey and the process. As the foundation of this report, your narratives will help others in similar situations.

I would also like to thank the Refugee Claims Clinic team at our downtown office for their exceptional work in supporting asylum-seekers. Your passion has helped many. This report is a testament to your devotion

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## EXECUTIVE SUMMARY

Between January and June of 2024, a staggering 92,135 refugee claims were processed in Canada.<sup>1</sup> Immigration, Refugees and Citizenship Canada (IRCC) processed 885 in Manitoba.<sup>2</sup> 65 Manitoban claims were processed by the Canadian Border Security Agency (CBSA) at a land point of entry with another 30 processed at inland offices.<sup>3</sup> The CBSA is responsible for claims made at official points of entry which includes cases where claimants were caught within 14 days of irregularly crossing into Manitoba.<sup>4</sup> These asylum-seekers will likely be turned back to the US if they do not meet one of the exceptions to the Safe Third Country Agreement (STCA).<sup>5</sup> The claims processed in inland offices and a number of those processed by the IRCC likely successfully remained undetected for 14 days before submitting their claim as doing so avoids the STCA's purview altogether.<sup>6</sup> Recently, Manitoba experienced an influx of asylum-seekers who irregularly crossed the border, bypassing the Emerson point of entry to file an inland claim rather than at a land point of entry.<sup>7</sup>

The hopes and dreams of migrants at Manitoba's border, and the danger involved in fulfilling those hopes, were highlighted in 2022 when an Indian family of four died attempting to

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<sup>1</sup> Immigration, Refugees, Citizenship Canada, "Total Asylum Claimants processed by the CBSA and IRCC, January - December 2024" *Asylum claimants by year – 2024* (Immigration, Refugees, Citizenship Canada, 2 August 2024), online: < <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/asylum-claims/asylum-claims-2024.html> > [IRCC Stats]

<sup>2</sup> *Ibid.*

<sup>3</sup> IRCC Stats, *supra* note 1 "Asylum Claimants processed by the Canada Border Services Agency (CBSA), January 2024".

<sup>4</sup> *Ibid.*; Immigration, Refugees, Citizenship Canada, *Claiming Asylum in Canada – What Happens?* (Immigration, Refugees, Citizenship Canada, 6 October 2024), online: < [https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming\\_asylum\\_incanadawhathappens.html](https://www.canada.ca/en/immigration-refugees-citizenship/news/2017/03/claiming_asylum_incanadawhathappens.html) > [Asylum]

<sup>5</sup> Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries, 5 December 2002, Can TS 2004 No 2 (entered into force 29 December 2004) [STCA].

<sup>6</sup> *Asylum*, *supra* note 4.

<sup>7</sup> Immigration and Refugee Board of Canada, *Irregular border crosser statistics* (Immigration and Refugee Board of Canada, 30 August 2024), online: < <https://www.irb-cisr.gc.ca/en/statistics/Pages/Irregular-border-crosser-statistics.aspx> >

cross into the United States (US).<sup>8</sup> Their journey took place in January, walking in the frigid Manitoban winter cold for hours in the cover of night, hoping to enter the US without being detected.<sup>9</sup> Numerous Asylum-seekers also reported getting frostbite after irregularly entering Manitoba.<sup>10</sup> Irregular entry became more common because of the STCA's implication of being turned away if entering through the Emerson point of entry. In 2023, the STCA's expansion resulted in asylum-seekers being turned away if caught entering anywhere along the Canada-U.S. border.<sup>11</sup> As such, asylum-seekers must embark on more dangerous journeys to have the merit of their claim processed and avoid being turned back to the US. The situation at and around the Emerson point of entry highlights the need to increase support for the growing number of asylum-seekers at Manitoba's international border. Supporting them means supporting the nonprofits who help them with their claim and adjust to the realities of surviving in Canada. The experience of Winnipeg's nonprofit sector dictates that the issue will get a lot worse before it gets any better, especially if nonprofits are left to fend for themselves as they currently are.

This report analyzes the role of the Safe Third Country Agreement as it applies to asylum-seekers' decision to cross irregularly into Manitoba, bypassing the Emerson point of entry at the border with North Dakota, U.S.A. It follows data collected from Healthy Muslim Families' (HMF) Refugee Claims Clinic & Support Services. HMF is a non-profit with offices in Winnipeg, MB; Winkler, MB; and Halifax, NS. Data was taken from the claimants' Basis of

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<sup>8</sup> Hina Alam, "An Indian family of 4 died trying to cross into U.S. last year. Their surviving relatives still have questions" *CBC* (15 January 2023), online: < <https://www.cbc.ca/news/canada/manitoba/anniversary-patel-family-border-crossing-deaths-1.6714959>>.

<sup>9</sup> *Ibid.*

<sup>10</sup> *CBC*, "4 people found illegally crossing border in Manitoba, 1 suffering from weather exposure" *CBC* (12 December 2023), online: < <https://www.cbc.ca/news/canada/manitoba/illegal-border-crossers-emerson-manitoba-1.7056284>>.

<sup>11</sup> Additional Protocol to the Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries, 29 March 2022, Can TS 2023 No 3 (entered into force 25 March 2023, online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/additional-protocol.html>); archived version: [https://www.scc-csc.ca/cso-dce/2023SCC-CSC17\\_1\\_eng.pdf](https://www.scc-csc.ca/cso-dce/2023SCC-CSC17_1_eng.pdf)) [STCA Revision].

Claim (BOC) form, Narrative, and supplemented by the online application summary. Data is limited to all claimant intakes from 1 January 2023 to 12 June 2024 which comprises the 1st to the 206th claimant.

The report is broken down into three parts. The first paints a profile of the claimants who applied for refugee status through HMF in Winnipeg. The second part examines the nexus between the STCA and irregular border crossings at Manitoba's international border. Irregular entry is a rational response by asylum-seekers to avoid deportation to the US because inland claims trigger Canada's international human rights obligation regarding refugees. Exercising their right to claim asylum in Canada comes at the cost of support or services for at least 14 days. Part three examines how the 14-day service vacuum left by the STCA is filled by local nonprofits that act as the first point of contact. These are often cultural organizations that reflect the racialized nature of claimants, making them an accessible and inclusive first point of contact for asylum-seekers. Funding is essential for cultural organizations to continue supporting a class of people with no other support. Currently, funding for refugee support services is allocated to settlement organizations with no consideration for the services provided by organizations acting as refugees' first point of contact. First point of contact organizations like HMF are a necessary step in the claims process because they capture intake data, connect claimants to the law, and refer claimants to settlement organizations.

## PURPOSE

To improve services for asylum seekers in Manitoba, this research project conducted data collection and analysis on all 206 claims processed by Healthy Muslim Families from January 2023 to June 2024. By identifying the characteristics of clients, support can be tailored to better fit the needs of claimants; translation services are bolstered when most clients are

accommodated, intake becomes more accessible if staff are representative of most clients, and access to justice is increased for newcomers from a community that historically avoided engaging the legal system.

To increase support and promote funding for the first point of contact organizations like HMF that cope with the struggles of supporting a class of people prevented from accessing government services. While settlement organizations deserve support and funding, the first point of contact organizations should not be overlooked as they are also essential for resettlement efforts because they initiate intake and the claims process for asylum-seekers, and then connect them to settlement services.

## DEFINITIONS

### ASYLUM-SEEKER:

For the purposes of this paper, a person seeking asylum, whether they claimed refugee status or not.

### CLAIMANT:

A person claiming refugee status. For this paper, claimant is interchangeable with asylum-seeker but denotes a claim was initiated.

### REFUGEE:

Based on international law, the 1951 Refugee Convention defines a refugee as someone who, "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country."<sup>12</sup>

#### CONVENTION REFUGEE:

Under Canadian law, a convention refugee is anyone who fits the refugee definition under the 1951 Convention. A Convention refugee is defined in the Immigration and Refugee Protection Act (IRPA) as anyone who, "... because of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries;

or,

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country."<sup>13</sup>

#### PERSON IN NEED OF PROTECTION:

Defined in the IRPA as, "...a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

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<sup>12</sup> *United Nations Convention Relating to the Status of Refugees*, 28 July 1951, Can TS No 6, art 1(A)(2). [Refugee Convention]

<sup>13</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27, s 96. [IRPA]



(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
- (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
- (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
- (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.”<sup>14</sup>

#### POINT OF ENTRY (POE) CLAIM:

Point of entry (POE) claims are claims made at the border upon arrival, whether by land, air, or sea. POE claims are registered by the Canadian Border Services Agency. Asylum-seekers who are detected as they cross the border, or within 14 days of crossing the border, are taken to the nearest POE to initiate a POE claim.

#### INLAND CLAIMS:

Claims made at an IRCC immigration office after arrival to Canada. Inland claims are registered by the IRCC.

#### SAFE THIRD COUNTRY AGREEMENT (STCA):

The Safe Third Country Agreement between Canada and the US requires claimants to request refugee protection in the first “safe country” they arrive in.<sup>15</sup> Only the US is

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<sup>14</sup> *Ibid*, s 97(1).

<sup>15</sup> *STCA Revision*, *supra* note 11 at paras 1–3.

designated as a safe third country under the IRPA.<sup>16</sup> Under the STCA, Claimants entering Canada from the US at a land or marine point of entry are ineligible to request refugee protection and will be immediately returned to request protection with the US because of its designation as a safe third country.<sup>17</sup> Asylum-seekers entering Canada between official points of entry that request protection or are caught within fourteen days of arrival are also ineligible and must request refugee protection from the US.<sup>18</sup> The STCA does not apply to Inland claims made after 14 days of arrival to Canada.<sup>19</sup>

Exceptions to the STCA may make an asylum-seeker eligible to claim in Canada if the asylum-seeker has family residing in Canada, is a minor without a parent or guardian in Canada or the US, has a valid Canadian visa, is a national whose passport requires a visa to enter the US but not Canada, or is at risk of the death penalty.<sup>20</sup>

### **PART ONE: REFUGEE CLAIMANT PROFILE**

Healthy Muslim Families (HMF) began collecting data for the refugee claimants' legal clinic starting January of 2023. The program processed one claim that month. By June of 2024, the program submitted 32 claims, its single-month record. The program became more efficient following its inception. The claims process started with an intake meeting where coordinators assessed the language spoken, the services required, and scheduled three more meetings to complete and submit claims. The subsequent meetings took claimants through the claims process one step at a time. HMF was the first point of contact for most claimants, while other

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<sup>16</sup> *Immigration and Refugee Protection Regulations*, SOR/2002-227, s 159.3 (2002, last amended 19 June 2024) [IRPR].

<sup>17</sup> *STCA Revision*, *supra* note 11 at paras 1–3.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *STCA*, *supra* note 5, art 4.

organizations initiated some claims which were then submitted by HMF. Claimants who approached HMF for assistance after their claim was submitted elsewhere were excluded from the data.

For claimants, the process started with an intake meeting. Claimants were matched with coordinators who could communicate in the same language. If a claimant indicated a preference for submissions in French, they were matched with a French-speaking coordinator. Claimants were then scheduled for three subsequent meetings which would walk claimants through the basis of claim form, narrative, and legal aid referral. Coordinators also assisted in obtaining social services. During the process, claimants were informed of HMF's in-house services and workshops. Claimants participated in various workshops including English Classes for Refugees, Walk-in Employment Consultations, Employment and Skills Development Workshop, Money Management Training, Mental Health Wellbeing for Refugee Claimants, free legal clinics, and various legal info sessions.

The program was a success, but services were reactive. Between January 1, 2023, and July 12, 2024, HMF served 206 asylum-seekers with their claims. 128 of those were submitted to Immigration, Refugees and Citizenship Canada for refugee status determination. The program saw its average number of monthly intakes increase between 2023 and 2024. Intakes increased from 4.8 clients per month in 2023, to 22.2 by July of 2024. The program received 148 intakes from the start of 2024 to July 12, 2024; a drastic increase from the 58 total intakes in 2023. Compared to 2023, 2024 brought 2.6 times more clients in approximately half the time. If the current intake rate continues, HMF could see a total of 266 intakes in 2024 alone which would be 4.6 times the intakes from 2023.

As such, beginning Summer of 2024, HMF conducted research and data analysis on all claims received since the inception of its Refugee Claims Clinic. The goal was to understand who our clients were to better deliver future services.

#### DATA COLLECTION METHOD

Files were created for every client during intake. Over the course of meetings, new documents were added, and old ones were revised. Data collection was limited to files created between January 1, 2023, and July 12, 2024. Files created after July 12 were not far enough along the claims process to be included in the data sample. Such files were excluded because incomplete cases run the risk of skewing data.

The primary source of the data was the basis of claim form and the narrative. A summary of the IRCC online portal submission supplemented data if it was available. The collected data provided valuable insights but was not without issues. Firstly, the validity of the data depended entirely on a claimant's voluntary submissions. What was included in the data is what claimants submitted. There was no way to assess the objectivity of any claims. Second, incomplete data limited the accuracy of some research questions. Those questions were excluded from this paper. For example, clients' ethnic characteristics, including their race, ethnicity, tribe, or caste, were excluded because not enough claimants voluntarily submitted this information. Data regarding claimants' well-founded fear of persecution that specifies the grounds for a refugee claim was also excluded. Claimants often did not specify what the grounds were. Even when a ground was specified, the harm claimants narrated could constitute a separate ground not explicitly mentioned in their basis of claim or narrative. Nevertheless, the raw data included all relevant information available in each file. Once data was processed, each data point was scrutinized to

determine if it was sufficiently representative. The remaining data points were either answered in all or enough files to qualify the data point with a response rate.

Close to all claimants indicated their nationality (190) and gender (192), a response rate of 92.2% and 93.2% respectively. Two claimants reported dual nationality, which was excluded from the data for consistency. This answered the top five countries of origin and the proportion of male-to-female clients. All files included dates of birth which indicated how many claimants were children under 18 years of age. A French-speaking facilitator tracked the number of French claims submitted by HMF. The remaining questions included in this paper were not answered in all files. The data produced by these questions was qualified in proportion to the number of files without an answer, or in other words, with a response rate. These questions included: (1) the proportion of languages spoken; (2) the proportion of those that needed translation services; (3) the proportion of religious affiliation; and (4) the method of arrival. The method of arrival significantly impacted claimants' determination of eligibility for refugee status. It answered the proportion of claimants that arrived in Canada by air or land. The method of arrival was further qualified by separating air arrivals by their destination airports and land arrivals by their destination province. At the Manitoba-North Dakota border, land arrivals were either via the Emerson official border POE or between POEs.

## FINDINGS

### NATIONALITY:

The top five claimant countries of origin, in order, were Chad (52), Sudan (46), Ethiopia (15), Mauritania (15), and Kenya (14). These countries constituted 74.7% of all reported countries of origin. The remaining countries of origin, in alphabetical order, were Afghanistan, Algeria, Bangladesh, Colombia, Cuba, Democratic Republic of Congo, Ecuador, Egypt, Eritrea,

Ghana, Iraq, Morocco, Nigeria, Palestine, Somalia, South Sudan, Syria, Western Sahara, and Yemen. The number of claims from these origin countries was excluded from this paper because the tally was not significant enough to be representative of a greater trend.

#### LANGUAGE:

The languages claimants spoke the most, in order, were Arabic (100), English (38), Somali (*Soomaali*) (17), French (17), Amharic (14), Spanish (11), and Swahili (*Kiswahili*) (10). Other languages, in alphabetical order, were Bengali (*Bangla*), Bini (*Edo*), Dari, Dazaga, German (Deutsch), Ibibio, Igbo, Kurdish, Kurmanji, Mararit, Pashto, Tigrinya, and Zaghawa. The number of claimants who spoke these languages was excluded from this paper because the tally was not significant enough to be representative of a greater trend.

#### TRANSLATION:

114 claimants reported needing translation services while 20 reported not needing it. 72 did not answer the question. The response rate was 65.0%.

#### RELIGION:

61 files did not report religion. The response rate was 70.4%. Only a handful of claimants specified belonging to a branch of religion, so data concerning religious branch affiliation was excluded. Only 3 major religious affiliations were reported by claimants, the third did not have a significant enough tally to be representative of a greater trend and so was excluded from the data. 118 claimants reported Islam as their religion and 26 reported Christianity.

#### SEX:

Males greatly outnumbered females. 162 males and 30 females initiated their claim with HMF. Additionally, 17 claims were for minors under the age of 18. Data regarding families was excluded to maintain their confidentiality because there were only a few families in total.

## METHOD OF ARRIVAL:

68 claimants did not report their method of arrival to Canada. The response rate was 67.0%. Claimants entered Canada by air or by land. 39 claimants reported arriving at an airport. 99 reported crossing a land border. Claimants crossed land borders either through official points of entry or between points of entry. Crossing an official point of entry means a claimant used a normal border crossing manned by the CBSA. Crossing between points of entry is also referred to as irregular entry, meaning a claimant ‘hopped’ over the wall-less Canada-US border.

Of the 39 that landed at a Canadian airport, 24 arrived at Toronto Pearson International Airport and 9 arrived at Montréal-Pierre Elliott Trudeau International Airport. Others landed, in alphabetical order, at Québec City Jean Lesage International Airport, Winnipeg James Armstrong Richardson International Airport, and YYC Calgary International Airport. Data concerning the latter three airports was excluded because the tally was not sufficiently significant or representative.

## DISCUSSION

Of the top five countries of origin, Chad and Sudan accounted for a combined 51.6% of all claims HMF received. This provided the first valuable insight; claimants from Sudan primarily requested services in Arabic and submissions in English, while claimants from Chad either requested services in Arabic or French and often specified submissions in French. Mauritanian claimants also requested services in Arabic. Therefore, since one facilitator spoke French and another spoke Arabic, HMF language capabilities were sufficient to interpret and translate 59.5% of all claims.

However, the data showed a contrasting correlation between facilitators' and claimants' language. Instead of claimants' language determining which language facilitators should speak, it

was the facilitators' language that influenced which claimants approached HMF. Only one facilitator was employed between January and October of 2023. The facilitator was Ethiopian and spoke English and Amharic. HMF received fourteen of the fifteen Ethiopian claims in that period. The remaining Ethiopian claimant approached HMF expecting an Ethiopian facilitator, who had left HMF by then. All fifteen Ethiopian claimants spoke English and Amharic. From October 2023 to July 12, 2024, HMF employed three facilitators. Combined, they spoke Arabic, English, Soomaali, French, and Kiswahili. At that time, only six claimants did not have a common language with at least one facilitator. Those claimants were processed by a casual worker who spoke the language. Therefore, there was a strong correlation between the facilitators' language and the asylum-seekers' language in choosing to start their claim with HMF.

At HMF, translation was only half of the process. The other half was interpretation. For translation, documents were converted from a claimant's language to English or French before submission. For example, a claimant who specified services in Arabic was matched with an Arabic-speaking coordinator. BOC forms and narratives were first written in Arabic and then translated into English or French. Claimants specified whether they wanted their claim submitted in English or French in their BOCs. Before they translated documents, facilitators interpreted claimants in their language. Thus, although 134 out of 206 claimants reported needing translation services, staff experiences dictated that more than 134 claimants needed some form of translation services, and almost all clients received interpretation services as part of HMF's claims process.

At HMF, 81.4% of claimants were Muslim. Just as claimants approached HMF because a facilitator spoke a common language, Muslim claimants may have been more inclined to initiate



their claim with Healthy Muslim Families. However, if one visited a shelter, one would likely find that a significant proportion of asylum-seekers are Muslim to begin with.

Females accounted for 30 claimants. Most claimants were single males. To be an asylum-seeker in Canada, one must reach the border. In truth, for every claimant that reached their desired destination, there was no way to know how many died along the way, or never made it the whole way.<sup>21</sup>

The most reported journey started in Africa, flew to either Colombia or Ecuador and then commenced the long land-based journey north. Columbia and Ecuador were common initial destinations due to ease or lack of transit visa requirements. Narratives reported significant hurdles along the way, most notably in Ecuador, Panama, and the USA. Themes of getting robbed in Ecuador were common, as were the tales of the harrowing journey through Panama's Darien gap, a remote and dense forest reputed as one of the most inhospitable areas in the world.<sup>22</sup> Claimants reported bad faith dealings with human traffickers which resulted in getting scammed or abandoned somewhere remote. In some sense, there was a feeling that women might be 'disappearing' along the journey, though there is no data to qualify this statement.<sup>23</sup> In the US, male and female claimants reported being detained, their documents confiscated, and unable to enter Canada due to ineligibility to claim refugee status as per the STCA.<sup>24</sup>

In this context, single males had an easier time navigating the physically demanding task of crossing the Americas to reach Canada. Females, families, and unaccompanied children did not. Females also had a harder time starting the journey, often facing familial, social, and cultural

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<sup>21</sup> *Migration Data Portal*, "Migrant deaths and disappearances" (last updated 2 April 2024), online: <<https://www.migrationdataportal.org/themes/migrant-deaths-and-disappearances>> [*Deaths*].

<sup>22</sup> Rachel Schmidtke, "Life on the Edge of the Darien Gap", *Refugees International* (16 June 2022), online: <[https://www.refugeesinternational.org/perspectives-and-commentaries/life-on-the-edge-of-the-darien-gap/?gad\\_source=1](https://www.refugeesinternational.org/perspectives-and-commentaries/life-on-the-edge-of-the-darien-gap/?gad_source=1)>

<sup>23</sup> *Deaths supra* note 21.

<sup>24</sup> *STCA, supra* note 5, art 4.

barriers. Females who successfully initiated their claims process were more likely than males to have arrived by air with a visitor visa. Data concerning the intersection between sex and method of arrival was excluded from this paper to maintain the anonymity of female claimants due to the small sample size.

## **PART TWO: IMPACT OF THE SAFE THIRD COUNTRY AGREEMENT (STCA)**

Anyone whose life is in danger in their home country has the right to claim asylum in another country for protection.<sup>25</sup> In International law, the rights of refugees were codified in the United Nations' 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Convention).<sup>26</sup> Thus, claiming asylum is a human right that is legal across the globe. The Convention clarifies the rights of refugees, notably the principle of non-refoulement, and the right not to be punished for irregular entry.<sup>27</sup> Non-refoulement prohibits states from removing claimants when doing so would risk irreparable harm to them upon return.<sup>28</sup>

The Convention was incorporated into Canadian federal law under the Immigration and Refugee Protection Act (IRPA).<sup>29</sup> The IRPA commits Canada to ensure safe and fair access for asylum-seekers.<sup>30</sup> The objectives of the IRPA are, firstly, to recognize that Canada's refugee system is about saving lives and protecting the displaced and persecuted.<sup>31</sup> Other objectives paint a picture of what Canada's refugee system was supposed to look like. Asylum-seekers should be given fair consideration and granted asylum in cases with a well-founded fear of persecution

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<sup>25</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71, Article 14. [*UDHR*]

<sup>26</sup> *Refugee Convention*, *supra* note 13.

<sup>27</sup> *Ibid*, art 31, 33.

<sup>28</sup> *Ibid*, art 33.

<sup>29</sup> *IRPA*, *supra* note 13, s 2.

<sup>30</sup> *Ibid*, s 2(c).

<sup>31</sup> *Ibid*, s 2(a).

based on race, religion, nationality, political opinion, membership in a social group, and those at risk of torture or cruel punishment if denied protection.<sup>32</sup> To do so, the refugee system must have fair and efficient procedures to maintain its integrity.<sup>33</sup> The IRPA's objectives for refugees state that claims must be fairly considered as a "fundamental expression of Canada's humanitarian ideals," and the system's integrity must be maintained "while upholding Canada's respect for the human rights and fundamental freedoms of all human beings."<sup>34</sup> In other words, Canada must process asylum-seekers who reach it, accept those who meet the criteria, and do so fairly and efficiently. This is how Canada's immigration system was supposed to work, and how it does for the most part, as long as the journey to Canada avoids transiting via the US.

KEY POINTS:

- (1) The STCA contradicts key principles of the UN Convention. The STCA contravenes the principle of non-refoulement when asylum-seekers at Canada's border are turned back to the US based on not meeting one of the exceptions to the STCA, and as a result, deported by the US owing to its tough-on-immigration policy.<sup>35</sup>
- (2) The STCA contravenes the obligation under international law to hear refugee claims when they reach their country of destination.<sup>36</sup> Screening claims for one of the exceptions under the STCA is not based on technical grounds rather than a valid "...risk of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion or at risk of torture or cruel and unusual treatment or punishment."<sup>37</sup>

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<sup>32</sup> *Ibid*, s 2(d).

<sup>33</sup> *Ibid*, s 2(e).

<sup>34</sup> *Ibid*, s 2 (c), (e).

<sup>35</sup> *Refugee Convention*, *supra* note 13, art 33; *STCA*, *supra* note 5, art 4.

<sup>36</sup> *UDHR*, *supra* note 25.

<sup>37</sup> *IRPA*, *supra* note 13, s 115(1).

- (3) The STCA contravenes the obligation under international law to not punish asylum-seekers exercising their right to claim asylum.<sup>38</sup> Claimants are detained for a significant amount of time in the US after being turned back by Canada until such time that their claim can be assessed for falling under one of the STCA's exceptions.<sup>39</sup>
- (4) In 2007, the Federal Court of Canada declared that the US was not a safe third country.<sup>40</sup> The decision was overturned by the Federal Court of Appeals on technical grounds.<sup>41</sup>
- (5) The STCA encourages embarking on increasingly dangerous journeys to exercise the right to claim asylum. If asylum-seekers can remain undetected for 14 days, skirting official points of entry, they can file an inland claim which is not subject to the STCA.<sup>42</sup> While staying undetected, asylum-seekers have no access to government services or social support except for homeless shelters.<sup>43</sup>

## EXPANSION

*The Agreement between the Government of Canada and the Government of the United States of America: For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries*, commonly referred to as the Safe Third Country Agreement (STCA) is a treaty between Canada and the US.<sup>44</sup> The general rule at the STCA's inception was that asylum-seekers must make their claim in the first of the two countries they reached.<sup>45</sup> Barring certain exceptions, claimants arriving from safe third countries at land points of entry like Manitoba's Emerson

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<sup>38</sup> *Refugee Convention*, *supra* note 13, art 31; *UDHR*.

<sup>39</sup> *STCA*, *supra* note 5, art 4.

<sup>40</sup> *Canadian Council for Refugees v Can* (2007), 317 FTR. 246 (FC).

<sup>41</sup> *Canada v Canada (Council for refugees)*, 2008 FCA 229.

<sup>42</sup> *STCA Revision*, *supra* note 11 at para 1.

<sup>43</sup> *CBC News*, "Salvation Army opens temporary pop-up shelter in Winnipeg as influx of asylum seekers continues" (17 April 2024), online: <<https://www.cbc.ca/news/canada/manitoba/salvation-army-asylum-seekers-more-beds-1.7177123>>.

<sup>44</sup> *STCA*, *supra* note 5, arts 3–4.

<sup>45</sup> *IRPA*, *supra* note 13, s 101(1)(e); *IRPR*, *supra* note 16, s 159.3.)

crossing are ineligible to claim protection in Canada.<sup>46</sup> As of now, only the US is considered a safe third country under the Act<sup>47</sup>.

In 2023, the STCA was revised to limit asylum-seekers from entering Canadian territory irregularly.<sup>48</sup> Irregular entry entails avoiding official border crossings, instead choosing to cross the border between points of entry.<sup>49</sup> Before 2023, asylum-seekers caught crossing between points of entry were arrested and taken to a CBSA office and screened to assess eligibility to apply for refugee status, since the 2023 revision, asylum-seekers caught crossing the border irregularly are detained, deported to the US, and forfeit the right to file future claims in Canada.<sup>50</sup>

Before the STCA's expansion, its application was limited to official border crossings, since 2023, the STCA applies to regular as well as irregular crossings between official points of entry.<sup>51</sup> The expansion sought to discourage irregular crossings because asylum-seekers took advantage of a loophole; crossing irregularly because crossing an official point of entry would guarantee being turned back.<sup>52</sup> Because the pre-revision STCA did not apply to irregular crossings, claimants who were caught crossing irregularly were processed for eligibility to file a claim, whereas those at official points of entry were not even assessed, let alone able to file a claim.<sup>53</sup> Now, asylum-seekers caught crossing irregularly are turned back to the US.<sup>54</sup>

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<sup>46</sup> *Ibid.*

<sup>47</sup> *IRPR*, *supra* note 16 s 159.3.

<sup>48</sup> *STCA Revision*, *supra* note 11.

<sup>49</sup> *Ibid.*

<sup>50</sup> *IRPR*, *supra* note 16, s 159.4 (1.1).

<sup>51</sup> *Ibid.*; *STCA Revision*, *supra* note 11 at para 1.

<sup>52</sup> *STCA*, *supra* note 5, arts 4–5;

<sup>53</sup> *IRPR*, *supra* note 15, s 159.4 (1.1).

<sup>54</sup> *Ibid.*; *STCA*, *supra* note 5, art 5.

The principle of non-refoulement prohibits states from returning asylum-seekers to countries where they may be persecuted.<sup>55</sup> The STCA purports to comply with this non-return obligation by only turning claimants away to either Canada or the US.<sup>56</sup> However, non-refoulement was contravened on numerous occasions. Before 2023, when an asylum-seeker was caught crossing irregularly, they were turned back to the US and scheduled for an appointment to assess their eligibility to enter Canada; while waiting for the scheduled interview date, asylum-seekers were often detained in the US, contravening refugees' right not to be punished for irregular entry.<sup>57</sup> In some cases, they were deported from the US to the country they fled.<sup>58</sup> This contravened the non-refoulement principle as asylum-seekers were returned to countries where they might face persecution. Furthermore, those deported by the US were forced to return before their scheduled eligibility assessment interview.<sup>59</sup> In essence, they were returned to where they risked persecution, their claim was not processed by Canada in line with international obligations and they were bounced around by an inefficient system that placed them between a rock and a hard place. Canada was complicit in contravening the non-refoulement obligation because the STCA is a treaty between it and the US, and Canada was obliged to regularly review the US' status as a safe third country as per the IRPA.<sup>60</sup> Therefore, the pre-expansion STCA was not compliant with the non-refoulement obligation under the Refugee Convention. This was affirmed by the Federal

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<sup>55</sup> *Refugee Convention*, *supra* note 13, art 33.

<sup>56</sup> *STCA*, *supra* note 5, art 5.

<sup>57</sup> *Refugee Convention*, *supra* note 13, art 31.

<sup>58</sup> *Refugee Convention*, *supra* note 13, art 33.

<sup>59</sup> (*CIMM, Evidence, 22 November 2022, 1635 (Frantz André, Spokesperson and Coordinator, Comité d'action des personnes sans statut* cited in House of Commons, *ASYLUM-SEEKERS AT CANADA'S BORDER: Report of the Standing Committee on Citizenship and Immigration* (May 2023) (Chair: Salma Zahid) at 75 [*HOC*]).

<sup>60</sup> *IRPA*, *supra* note 13, s 101(3).

Court in 2007 when it declared that the US was not a safe third country because it contravened the principle of non-refoulement and had a poor removal and detention record.<sup>61</sup>

The STCA's expansion attempted to make the treaty more compliant with international law. Asylum-seekers could no longer be turned back to the US if they met one of a few exceptions. These exceptions include if one has a family member in Canada, if one is a minor, if there is a public interest exception (subject to the death penalty), or if one entered Canada legally with a visa.<sup>62</sup> On the surface, this complies with the international obligation to process claims when they are received. However, these exceptions are not related to the validity of a refugee claim itself. Asylum-seekers who can prove they risk persecution in their country of origin are still turned away to the US if adjudication of the claim merely determines that the asylum-seeker is an adult, does not have family in Canada, is not subject to the death penalty, and does not have a valid visa.

#### THE US AS A SAFE THIRD COUNTRY

The 2007 Federal Court decision declared the STCA of no force or effect and hence invalid.<sup>63</sup> The Court declared that the US was unsafe, which meant that asylum-seekers could not be returned there because s.102 of the IRPA only gives the STCA force if the US is deemed safe based on adherence to international law, the Refugee Convention, and the Convention against Torture.<sup>64</sup> Since the US was deemed non-compliant with international law and both Conventions, it was no longer designated as safe, and as the only country considered by the STCA, the STCA

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<sup>61</sup> *Supra* note 40.

<sup>62</sup> *STCA*, *supra* note 5, art 4.

<sup>63</sup> *Supra* note 40.

<sup>64</sup> *IRPA*, *supra* note 13, s 102.

was no longer applicable. The Federal Court's ruling was overturned in 2008 on technical grounds by the Federal Court of Appeals.<sup>65</sup>

However, the Court of Appeals did not address the issue of US noncompliance with the principle of non-refoulement or justify that the US is factually a safe country for refugees. In short, the Court of Appeal iterated that compliance with international law was not the overriding consideration of designating a country as safe.<sup>66</sup> This is contrary to the IRPA's refugee objectives. Removing compliance with international obligations in determining if the US is safe is inconsistent with the IRPA's first objective, "to recognize that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted."<sup>67</sup> Therefore, while the US was legally designated as a safe third country under the IRPA, it was not safe for claimants because they risked being refouled to where they may have faced persecution and were detained while waiting to be deported. However, both countries are more coordinated to ensure that claimants are not deported from the US before their scheduled eligibility interview date.<sup>68</sup>

*"The Safe Third Country agreement was predicated upon the notion that Canada and the United States have comparable policies and 'that the United States was a reliable partner for sharing responsibilities regarding refugees...But we know now that the problems associated with it [STCA] outweigh any benefits.' For many migrants, the United States simply does not provide safe refuge."*<sup>69</sup>

#### THE FOURTEEN-DAY LOOPHOLE

The goal of the STCA was to mitigate the number of asylum-seekers entering via unofficial points of entry.<sup>70</sup> It did so, but only at known unofficial points of entry like Quebec's

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<sup>65</sup> *Supra* note 41.

<sup>66</sup> *Ibid.*.

<sup>67</sup> *IRPA*, *supra* note 13, s 2(a).

<sup>68</sup> *STCA Revision*, *supra* note 11 at para 3(c).

<sup>69</sup> CIMM, Evidence, 22 November 2022, 1715 (Maureen Silcoff), cited in *HOC*, *supra* note 59 at 75.

<sup>70</sup> *STCA Revision*, *supra* note 11.



Roxham Road.<sup>71</sup> The extension did not reduce the overall number of claims in Quebec.<sup>72</sup>

Another goal of the expansion was to mitigate the dangers of crossing irregularly by motivating asylum-seekers to enter through official points of entry.<sup>73</sup> The STCA had the opposite effect. Now, asylum-seekers embark on even more dangerous routes to avoid detection by the CBSA and RCMP, forgoing established unofficial points of entry. Asylum-seekers must now forgo claiming at the border altogether, instead hoping to make an inland claim by exploiting the 14-day loophole.<sup>74</sup>

The 14-day loophole was created in 2023 when the STCA was expanded to include irregular entries.<sup>75</sup> Asylum-seekers caught crossing irregularly are processed as point-of-entry claims by authorities. This is the case for any asylum-seeker caught within fourteen days of arrival. At processing, claimants are assessed for eligibility to file a claim.<sup>76</sup> If they do not fall under one of the exceptions, they are ineligible to apply for refugee status in Canada and turned back to the US.<sup>77</sup> The fourteen-day rule influences asylum-seekers' method of entry. If one can avoid detection for fourteen days, one can avoid the STCA's jurisdiction altogether because claims made fourteen days after arrival are processed as inland claims.<sup>78</sup> The STCA does not apply to inland claims.<sup>79</sup>

Now, asylum-seekers embark on even more dangerous journeys to avoid the risk of being turned back to the US, thereby risking persecution if the US returns them to their country of

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<sup>71</sup> *HOC*, *supra* note 59 at 26.

<sup>72</sup> Isabelle Steiner, "Safe Third Country Agreement Expansion Causes Asylum Seekers to Explore New Routes", *Wilson Center* (14 September 2023), online; <<https://www.wilsoncenter.org/blog-post/safe-third-country-agreement-expansion-causes-asylum-seekers-explore-new-routes>> [*New Routes*]

<sup>73</sup> *Ibid.*

<sup>74</sup> *STCA Revision*, *supra* note 11 at para 1.

<sup>75</sup> *STCA Revision*, *supra* note 11.

<sup>76</sup> *IRPA*, *supra* note 13, s 100(1).

<sup>77</sup> *STCA*, *supra* note 5, art 4.

<sup>78</sup> *STCA Revision*, *supra* note 11 at paras 1–3.

<sup>79</sup> *IRPR*, *supra* note 16, 159.4(1)(a).

origin. Thus, the expansion did not fulfill its goal of mitigating asylum-seekers' harm when crossing at known unofficial points of entry because asylum-seekers not only have to embark on more dangerous journeys but must remain undetected for 14 days to be able to claim protection in Canada.

Asylum-seekers are particularly vulnerable when hiding for fourteen days. No government support or service is available until their claim is initiated. The process of requesting a work permit is incorporated into the Basis of Claim (BOC) form. Until a BOC is submitted, claimants are not legally entitled to work. This is a tall order for asylum-seekers hiding for the first fourteen days after arrival to a new country following the long journey up the Americas which takes a toll on their body and health. Health benefits are not available until their BOC is assessed;

*“The Refugee Protection Claimant Document, or the "Brown Paper," is an essential document issued by the government to asylum seekers and refugee claimants upon their arrival, which affords them eligibility to access federal healthcare, obtain a work or study permit and access housing options.”*<sup>80</sup>

Until the claim is submitted, asylum-seekers are ghosts who do not exist because there is no record of them and cannot truly exist because they have no support. By creating conditions that motivate asylum-seekers to stay out of sight at the border and then in the city, the government remains one step behind the flow of refugees as there is no way to determine how many asylum-seekers are in Canada, waiting to submit their claim.<sup>81</sup>

The issues surrounding the influx of refugee claims and irregular entries cannot be adequately addressed, for the government or asylum-seekers, if the government cannot

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<sup>80</sup> HOC, *supra* note 69 at 79.

<sup>81</sup> CIMM, Evidence, 22 November 2022, 1700 (Vincent Desbiens) cited in HOC, *supra* note 69 at 33.

sufficiently keep track of how many asylum-seekers crossed the border and when they did so. The lack of information due to the 14-day loophole means the government cannot tailor appropriate services. The need to remain undetected for fourteen days places in the absence of other services means asylum-seekers end up at homeless shelters.<sup>82</sup> Further, the lack of support, including mental health support, exposes asylum-seekers to a significant risk of developing a drug addiction, all before the government knows they entered Canada. The influx of refugees at Winnipeg's homeless shelters caused bed capacity shortages, as there are not enough beds to go around between the city's local and newcomer homeless population.<sup>83</sup>

### **PART THREE: THE ROLE OF NONPROFITS**

Though the apparent goal of the STCA was to hinder claimants from moving to their choice of country, the 2023 STCA revision did not reduce the number of refugees entering Canada as expected. Official figures indicate that the overall number of migrants seeking protection has remained relatively the same.<sup>84</sup> Winnipeg's non-profit sector does not feel the number of refugees will decrease or remain stable but will continue to rise as it has since 2023, as indicated by the data. More needs to be done to address the issue. The House of Commons' "Report of the Standing Committee on Citizenship and Immigration" had many recommendations concerning the future of the STCA, and conditions faced by refugees, but it did not adequately address the role of nonprofits in filling gaps in services for refugees.<sup>85</sup> There is no government support for irregular entry asylum-seekers in the first fourteen days of arrival

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<sup>82</sup> *Supra*, note 43.

<sup>83</sup> *Ibid.*

<sup>84</sup> *New Routes*, *supra* note 72.

<sup>85</sup> *HOC*, *supra* note 59.

to Canada. Local organizations fill this gap because other services are not open to asylum-seekers. Often, they do so without government funding.

In vying for government funding, organizations like HMF are overlooked in favour of settlement organizations. When government policy exacerbates the vulnerability of an already vulnerable group, it is simply not fair to ignore organizations that step in where the government is absent. Settlement organizations are necessary for lifting vulnerable newcomers and deserve the funding they receive. Organizations like HMF do not want a piece of that pie because social organizations should not be pigeonholed to compete from the same limited set of funding. Instead, funders should consider cultural organizations who are currently denied funding. However, cultural organizations are the perfect recipients for refugees to acclimate to the multicultural melting pot that is Canada. Refugees have specific needs. They flee persecution which exists in a specific cultural context of their homeland. Cultural organizations deliver effective services by being of the culture. Cultural organizations should be supported for the work they do which cannot be done by other organizations. Cultural organizations like HMF are the first point of contact for refugees' claims process. In the first fourteen days of arrival, other than homeless shelters, the only thing available for refugees is to start the claims process. Even if claimants are unaware that submitting a claim within fourteen days of arrival would trap them in the purview of the STCA, HMF encourages clients to finish their claim within the fourteen-day period so it can be submitted as soon as they are eligible as an inland claim. As Most asylum-seekers are unaware that they can at least complete the required documentation, they wait fourteen days to start their claims process, which takes another two to three weeks to complete.

The claims process can become much more efficient if cultural organizations are supported in their work to make it so. The strain on homeless shelters is eased when claimants

can look for employment and access social services. In some sense, the STCA funnels asylum-seekers into homelessness and conditions of poverty. In short, the faster claims are submitted, the faster claimants receive social services and employment, and the faster beds at shelters are emptied.

Furthermore, while completing their claim, claimants depend on cultural organizations to acclimate to Canada and connect with their community. As products of a specific culture, claimants need cultural support to ground themselves in their new reality in Canada. Cultural organizations fill this gap through projects and programs aimed at claimants' needs and by connecting claimants to their community network. HMF offers claimants free mental health support, employment consultations, skills development workshops, English classes, legal clinics, newcomer info sessions, and health services through doctors in the community.

Cultural organizations like HMF play vital role in connecting claimants to their community which gives them access to the food they ate before they were forced to flee, practice their faith, receive financial support through donations, and get connected to other resources. Thus, cultural information is passed on by the community which cannot be found on the Government of Canada website.

### **CONCLUSION**

The findings and insights of this report underscore the critical role that first point of contact organizations, such as Healthy Muslim Families (HMF), play in completing Claim forms, and in the resettlement process for asylum-seekers in Manitoba. The Safe Third Country Agreement (STCA) compels many to cross the border irregularly and endure a 14-day service vacuum; these organizations provide essential support, guiding claimants through their refugee claims. However, the lack of specific funding jeopardizes our ability to continue this crucial

work. To ensure that asylum-seekers receive the comprehensive support they need, it is essential that funding include and prioritize the first point of contact organizations. Doing so will not only enhance the efficiency of the refugee claims process in Manitoba but also reinforce Canada's commitment to upholding the rights and dignity of those seeking asylum.

## ADDENDUM

