



Safe third country
Brief to the Standing Committee on Citizenship and Immigration
16 February 2007

Introduction

In October 2006, the Canadian Council for Refugees (CCR) was invited to present to the Standing Committee on Citizenship and Immigration as part of its study of refugee issues. Given the limitations of time, we were not able to get into details about our concerns relating to the Safe Third Country Agreement. Since the Committee has decided to hear witnesses specifically on the impact of the Agreement, we would like to take the opportunity to provide some written comments on this issue, to ensure that the Committee has before it the key concerns of the CCR.

Under the Safe Third Country Agreement, which came in effect on 29 December 2004, the US and Canada each declared the other country safe for refugees and established the general principle that refugee claimants should make their claim in the first of these countries that they reach. Thus refugees who are in the US are expected to pursue their claim in the US, rather than seeking protection in Canada. Similarly, those in Canada are expected to apply in Canada. However, in practice few asylum seekers move from Canada to the US to make a refugee claim: the Agreement is in fact about preventing people who are in the US, or travelling through the US, from making a refugee claim in Canada.

The Canadian Council for Refugees strenuously opposes the Agreement, because the US is not a safe country for all refugees. The CCR also denounces the purpose and effect of reducing the number of refugees who can seek Canada's protection.

The United States is not safe for all refugees

The Canadian Council for Refugees believes that the Canadian government is wrong to designate the United States a safe third country, in view of the fact that the US is not a safe place for all refugees.

Before the entry into force of the safe third country designation, the CCR raised concerns about a number of aspects of US law and practice with respect to refugees. These concerns included:

- the risk of detention. Thousands of asylum seekers, including children, are held in detention in the US, for months and even years, often in jails alongside convicted criminals. Those who are detained have reduced chances of getting refugee protection, because it is difficult for detainees just to make a phone call, let alone get the help they need to present their refugee claim adequately. There have been widely publicized abuses of detainees in US immigration jails.

- the refugee determination process. The US does not always give protection to refugees who need it. Numerous claimants have been recognized as refugees in Canada after having been refused in the US, because of more restrictive rules and interpretation of the refugee definition. Eligibility rules in the US mean that claimants who apply after having been in the US for over a year are denied a hearing. Unlike Canada, the US law does not offer protection to people who face a risk to their life or of cruel and unusual treatment or punishment.

Furthermore, in the US the law with respect to gender-based claims is unclear, leading to some women being denied the protection they need.

- discriminatory practices. US policies and practices discriminate against some refugees and immigrants on the basis of their nationality, ethnicity or religion. For example, the US detains Haitian claimants based on nationality. People from mainly Muslim countries are also particularly at risk of detention.

Since its designation as a safe third country, the situation in the US has grown significantly worse.

Canadian law requires that the federal Cabinet ensure the continuing review of the status of the US as a safe third country, taking into consideration a series of factors. It does not appear that the Cabinet has conducted any such review to date.

In November 2006, the CCR made a submission to Cabinet presenting evidence that, since the US was designated as a safe third country, there have been a series of developments that mean that the US fails to meet the safe third country test, according to the definition and the factors established in the *Immigration and Refugee Protection Act*. Among the evidence reviewed, the submission highlighted:

- The *Real ID Act*. Signed into law in May 2005, the *Real ID Act* significantly exacerbated systemic problems with respect to access to refugee protection in the US. In particular, the Act excludes persons from refugee protection based on an extremely broad definition of providing “material support” to a terrorist organization, in a manner incompatible with the Refugee Convention.
- The *Report of the US Commission on International Religious Freedom*. The February 2005 report of this US government commission contained stinging criticism of the US refugee determination system. (Since the CCR’s submission, the Commission has marked the two-year anniversary of the report by making public its concern over the fact that its recommendations have not been followed. According to the Chair, Felice Gaer, “we see no significant difference between the situations of then and now-with the exception that Expedited Removal was expanded in spite of our explicit recommendation to hold off on that.”¹)

¹ U.S. Commission on International Religious Freedom, Media release, 8 February 2007, *USCIRF Finds Disappointing Response from Departments of Justice and Homeland Security to its Recommendations on Expedited Removal Process*, <http://www.uscirf.gov/mediaroom/press/2007/february/20070208ERS.html>. See also *Expedited Removal Study Report Card: 2 Years Later*, http://www.uscirf.gov/reports/ScoreCards/02062007_ScoreCard_long.html

- US practices of removal to torture in violation of article 3 of the Convention against Torture. In September 2006, in his report for the Canadian Commission of Inquiry's Report of the Events relating to Maher Arar, Justice O'Connor concluded that the United States removed Mr. Arar to torture in Syria. Significant evidence from human rights groups, the UN and the Council of Europe points to the use of unreliable "diplomatic assurances", instances of return to torture from Guantánamo and practices of "extraordinary rendition" to torture.

According to the *Immigration and Refugee Protection Act*, a safe third country is one that complies with its non-refoulement obligations, i.e. the obligations not to return refugees to persecution or anyone to torture (Article 33 of the Refugee Convention and Article 3 of the Convention against Torture). The evidence points to the fact that the US does not comply with its obligation under Article 33 of the Refugee Convention to provide protection from refoulement for all refugees. There is also extensive evidence that the US has, through its practices of "rendition", systematically violated its obligation under the Convention against Torture not to remove anyone to torture. On this basis alone, the US cannot properly continue to be designated a safe third country.

The CCR's submission, *Less safe than ever, Challenging the designation of the US as a safe third country for refugees*, is attached as Appendix 1.²

The CCR notes that the Standing Committee on Citizenship and Immigration, in its report of December 2002, raised a number of concerns about the impacts of the Safe Third Country Agreement, including with respect to women fleeing gender-based violence.

RECOMMENDATION 1: The CCR urges the Standing Committee to call on the Cabinet to withdraw the designation of the US as a safe third country in view of the fact that it does not comply with the statutory requirements for a safe third country.

Impact of the Safe Third Country Agreement on Refugees

In December 2005 the CCR released a report, *Closing the Front Door on Refugees: Report on the First Year of the Safe Third Country Agreement*, showing that many of the worst fears are being realized. With the Canadian land border closed to most refugees, far fewer refugees are able to find protection in Canada. Instead, some are detained and deported from the US; some are forced to live without status in the US, in fear of arrest; some turn to smugglers to help them find a way to safety. The number of people claiming refuge in Canada was lower in 2005 than at any time since the mid-1980s. The drop in claims made at the land border was especially dramatic, with only 51% as many claims as the previous year. Colombians have been particularly affected.

The CCR report is attached as Appendix 2.³

We underline our concern that the Canadian government has made no attempt to research and analyze the impact of the Agreement on refugees. Under the terms of the Agreement, the Canadian government participated with the US government and the UNHCR in a tripartite

² It is also available at <http://www.ccrweb.ca/Lesssafe.pdf>.

³ It is also available at <http://www.ccrweb.ca/closingdoordec05.pdf>.

monitoring process of the first year of implementation. The long overdue report on this process was finally made public in November 2006. This report failed to address the fundamental question of the impact of the Agreement on refugees. It reviewed how the Agreement was being implemented and not what happened to refugees who were turned back at the border or who learned that the Canadian border was closed to them. The report also failed to analyze developments in the US policies and practices and whether these mean that the US can no longer be properly considered a safe third country.

We note that in December 2002 this Committee adopted a report outlining a number of concerns with Safe Third Country. Among the many recommendations made, the last reads “The Committee recommends that when the department performs a full review of the Agreement one year after its implementation, it should report its findings to this Committee. The department’s report to the Committee should include the following information” – and there follows a long list of information requested, including reference to indications that the Safe Third Country Agreement has led to an increase in trafficking and dangerous border crossings. This information has not been provided by the government.

RECOMMENDATION 2: If, for any reason, the Standing Committee is not prepared to move forward immediately with above Recommendation 1, the CCR urges the Standing Committee to call on the government to commission a comprehensive analysis of the impact on refugees of the Safe Third Country Agreement.