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Canada Country Brief on Irregular Migration Policy Context

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THE MIRREM PROJECT

MIRREM examines estimates and statistical indicators on the irregular migrant population in Europe as well as related policies, including the regularisation of migrants in irregular situations.

MIRREM analyses policies defining migrant irregularity, stakeholders' data needs and usage, and assesses existing estimates and statistical indicators on irregular migration in the countries under study and at the EU level. Using several coordinated pilots, the project develops new and innovative methods for measuring irregular migration and explores if and how these instruments can be applied in other socio-economic or institutional contexts. Based on a broad mapping of regularisation practices in the EU as well as detailed case studies, MIRREM will develop 'regularisation scenarios' to better understand conditions under which regularisation should be considered as a policy option. Together with expert groups that will be set up on irregular migration data and regularisation, respectively, the project will synthesise findings into a Handbook on data on irregular migration and a Handbook on pathways out of irregularity. The project's research covers 20 countries, including 12 EU countries and the United Kingdom. This Deliverable of 15 country briefs is developed as part of Work Package 3 Politics: Understanding Legal and Policy Contexts.

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Irregular migration; policy measures; pathways into and out of irregularity; Canada

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Canada

This Brief provides an abridged overview of the national policy landscape on irregular migration in the country, based on a more extensive policy analysis. It also provides an overview of the main types of migrant irregularity that emerge and the pathways into and out of irregularity, including regularisations as relevant. Annexed to this Deliverable is also an overview of the mapped legal and policy frameworks.

1.1 POLICY PRIORITIES

Canada's overall policy position on migrant irregularity has been largely reactive. The federal government has primarily focused on the implementation of targeted programmes to regularise persons without status in response to labour market demands, political and activist pressures, and in anticipation of new immigration policies or law (Bou-Zeid, 2007). Migrant irregularity in Canada has been considered in an ad hoc manner.

The topmost relevant policy priorities for Canada in addressing migrant irregularity at the moment are:

- **Responding to labour shortages**

Attention has been placed on filling labour gaps in industries identified as “high-demand” sectors. The last two *Temporary Public Policies* focused on regularizing the status of: 1) out-of-status construction workers in the Greater Toronto Area (2019-2024) and, 2) pending and refused refugee claimants working in the health care sector during the COVID-19 pandemic (2020-2021).

The Minister of Immigration, Refugees and Citizenship has indicated that the Ministry is creating a “broad and comprehensive [regularization] program” beginning with construction workers. A proposal will be made to Cabinet in Spring 2024. This is in keeping with the Prime Minister's 2021 mandate to the Minister to explore regularization pathways for undocumented workers (Trudeau, 2021).

- **Controlling irregular arrivals at the US-Canada border**

Exploitation of a “loophole” in the Canada-US Safe Third Country Agreement (STCA), where refugee claimants are required to request protection in the first safe country in which they arrive (at official ports of entry), led to a significant number of asylum

claimants making unauthorized crossings into Canada through unofficial points along the border, most notably at Roxham Road, Quebec (Côté-Boucher et al., 2023). Re-negotiations in 2023 extended the ambit of the Agreement, to now include the entire extent of the land border. The number of irregular entries into Canada has since decreased.

1.2 OVERVIEW OF THE CANADIAN POLICY FRAMEWORK

See Annex 1 for an overview of the legal and policy frameworks mapped for this country.

1.2.1 Policy implementation measures

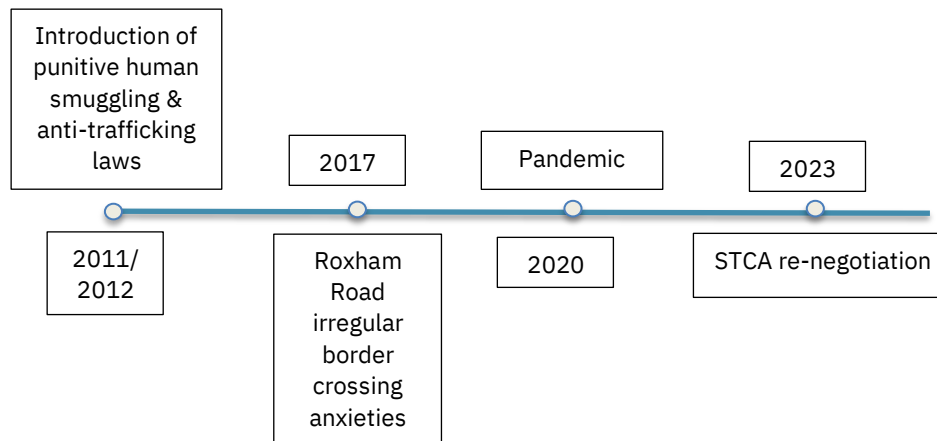
- **Regularisation of migrant communities and targeted sectors**

Canada has previously implemented one-time, specific regularisation programmes, targeting small niche migrant populations in relation to specific industries with labour shortages. Each programme had its own eligibility criteria and application process, executed through different policy instruments. These ‘fit for purpose’ regularization programmes have targeted both out of status persons and refused refugee claimants. In certain programmes, primary applicants’ immediate family members were also allowed to regularize their status.

- **Humanitarian and Compassionate Considerations**

This ongoing mechanism operates as an “exceptional measure” in Canadian law when all other pathways to acquire permanent residence have been exhausted (Delisle and Nakache, 2022). Applicants must prove that their personal circumstances warrant exemption from the rules of the Immigration Act (Neufeld, 2009). This is a highly discretionary process, where immigration officials assess the applicants’ credibility and deservingness (Goldring and Landolt, 2022). Applicants must demonstrate that they are not a financial burden on the state; are good candidates for settlement because they have family in Canada but not in the country of origin; and, that deportation will result in undue hardship for themselves or their family in Canada (Dauvergne, 2005).

1.2.2 Policy evolution: Main turning points



1.2.3 Policy impact

- Regularization Programs enhance economic and community well-being**
 Status regularization programs have resulted in positive impacts and economic and social benefits to the population at large (Alboim et al., 2023). Regularized status removes restrictions and fears and enables the full participation of persons in Canadian society. In addition to filling labour shortages, it brings the opportunity to maximize the economic potential of persons who can now contribute to the broader economy of the country in a formal way. With access to rights, protections and services, the risk of worker exploitation and correlated factors such as insecure housing can be mitigated. People with regularized status can also participate in and contribute to their communities without the constant fear of detention and deportation because of their immigration status.
- Revised Safe Third Country Agreement Shifts Sites of Asylum Claims**
 The site of the majority of asylum claims have very recently shifted from land ports to airports. Between 2022 and 2023, the number of asylum claims being made at land ports of entry decreased by 36%, while the number of airport-based asylum claims increased over two and a half times within one year (from 17160 claims in 2022 to 41355 in 2023) (Government of Canada, 2024). Mapping this increase on to policy shifts, points to the STCA amendments which stymied the flow of migrants at the land border. During the same period asylum applications at Canada's main international airports increased significantly but it is unclear whether the two types of flows are connected.

1.2.4 Policy Challenges in Addressing Migrant Irregularity

- **Irregular migration data and estimates**

The government is unable to specify either the size or distribution of the irregular population in Canada. Without baseline data related to the population's size and spread, it is a challenge to maximize the effectiveness of geography specific and capped regularization programmes. In the absence of these data, regularization programmes are formulated based on conjecture.

- **Barriers to programme uptake**

Bureaucratic problems, which arise from the complexity of application processes, create barriers which can result in programmes' slow and limited uptake. Citing the "undersubscription" of a permanent residence pathway for temporary workers in 2021, Macklin (2022) notes that multiple factors added to the programme's inaccessibility: applicants' lack of digital literacy and language fluency (the application was completely online), "onerous" document requirements, the expenses of language testing, and legal assistance in completing the application. Additionally, obtaining certain documentation for applications can be problematic (Alboim et al, 2023). For example, there have been reports from temporary foreign workers attached to closed, employer specific permits who have faced situations where their employers purposely withhold documentation such as Labour Market Impact Assessments required for applications (Tulli et al., 2022; Smith and Kim, 2022).

- **Economic impact of deterrence vs. regularisation**

There is an economic argument that supports a re-prioritization of federal investment from deterrence and controls to the formulation of a more encompassing and sustainable regularization policy. The Migrant Rights Network (2023) citing the Auditor General's 2020 report, states that the Canada Border Services Agency (CBSA) receives at least \$46 million per year to carry out deportations, which averages to a cost of \$4,750 to deport one person, while "it costs about \$3,900 to provide settlement and integration services for a permanent resident." Given this basis, it would be economically wise to invest in sustainable regularization policies and programmes that will serve to integrate people who have lived and worked in the country and fell out of status, giving them rights and protections, and the responsibility to contribute to the Canadian economy in a formal way.

Table 1: Relevant Canadian institutions

Sr. No.	Institution/ Department	Responsibilities	Web link
1.	Immigration, Refugees and Citizenship Canada (IRCC)	IRCC is the lead government department responsible for the development of immigration policy and the administration of the Immigration Act. IRCC, in collaboration	Link (EN)

		with its partners, conducts the screening of potential permanent and temporary residents. It is also responsible for the issuance and control of Canadian passports and other travel documents that facilitate the travel of Canadian citizens, Permanent Residents and Protected Persons.	
2.	Immigration and Refugee Board of Canada (IRB)	The IRB is an independent, administrative tribunal established by Parliament on January 1, 1989, to resolve immigration and refugee cases. The IRB assesses and determines refugee claims.	Link (EN)
3.	Canada Border Services Agency (CBSA)	The CBSA facilitates the flow of legitimate travellers and trade across Canada's borders and at its ports of entry. It is also the enforcement arm of the Immigration Act.	Link (EN)
4.	Ministère de l'Immigration, de la Francisation et de l'Intégration (MIFI)	Specific to the province of Quebec, MIFI is responsible for assessing applicants intending to reside in Quebec, then informing IRCC of its decision.	Link (EN)

1.3 THE SPECTRUM OF MIGRANT IRREGULARITY IN CANADA: CATEGORIES AND PATHWAYS INTO/OUT OF IRREGULARITY

Table 2: Categories of migrant irregularity in Canada

Most relevant categories of migrants in an irregular situation	Description (who does this category apply to, what conditions may lead to this category, and what are the implications of being in such a situation)
Migration at borders: migrants crossing borders, not authorised for entry.	<p>a. Migrants crossing borders, not at official ports of entry, not authorised for entry, not registered by authorities.</p> <p>b. Migrants crossing borders, not authorised for entry and requesting international protection (asylum seekers/ refugee claimants).</p> <p>c. Migrants crossing borders, not authorised for entry, registered by authorities (administrative entry), and not eligible for asylum procedure:</p> <p>i. Apprehended and “pushed-back”: irregular migrants who are apprehended at or near borders and returned to</p>

	<p>previous country (Safe Third Country Agreement or detained and deported). Exceptions include: if the migrant has a family member in Canada; unaccompanied children under 18 years; migrants at risk of the death penalty; if the migrant has a valid Canadian visa</p> <p>ii. Apprehended, kept for administrative processing within Canada and subsequently ordered to leave the country, but abscond and remain without legal status.</p>
Refused or non-status asylum seeker.	<p>a. Refused asylum applicants at the Immigration and Refugee Board of Canada (IRB) who have not applied for appeal.</p> <p>b. Asylum applicants refused at appeal level who have not applied for subsequent judicial review, Humanitarian & Compassionate (H&C) consideration or Pre-Removal Risk Assessment (PRRA).</p> <p>c. Asylum applicants refused at judicial review, H&C or PRRA</p> <p>d. Asylum applicants who withdraw or abandon their claims (applicants who “disappear” during the asylum procedure). These may include people who left the country or who stayed without status.</p>
Migrants who lose status after regular entry as temporary entrants. Such persons can attempt different pathways to remain delaying orders of removal; or remain in the country without status	<p>a. Migrants whose temporary permits have been withdrawn, for example, because of a criminal offence or engaging in paid employment while on a visitor permit.</p> <p>b. Migrants with expired temporary residence permits who were not able to convert to permanent residence status or to secure permit extensions or other temporary status permits:</p> <ol style="list-style-type: none"> 1. International students 2. Temporary foreign workers and their spouses/family members.
Non-national born in another country without any regular authorisation to live in Canada	Enters Canada legally as a visitor, but remains beyond valid visitor status.

Most relevant categories of migrants with “precarious” status in Canada	Conditions (e.g. who does this category apply to, under what conditions, who is exempted, implications)
Asylum applicants	Those applicants waiting for a decision (pending cases – backlogs).
Temporary migrants (with a valid permit) facing difficulties qualifying for permanent residence	Migrants employed in specific programmes, for example: a. Migrants hired under the Seasonal Agricultural Worker Program (maximum of 8 months) and cannot meet the work experience criteria for permanent residence pathways. b. Migrants hired under the Home Child Care Provider Pilot and Home Support Worker Pilot (set to expire) and who have challenges meeting qualifying criteria for permanent residence
Unaccompanied minors who made unauthorised entry.	Children arriving without their parents are referred to as ‘unaccompanied children’ or ‘unaccompanied minors’ and may submit their own applications. The STCA requires the child to prove to the satisfaction of Canadian border authorities that they are under the age of 18 and have no parent or legal guardian in either country. This may be challenging, especially if the child lacks the requisite documents or does not speak the language.

1.3.1 Pathways into and out of irregularity

Inflows and outflows of irregular migrants contribute to the number of irregular residents in Canada.

- Unauthorized in-flow across the US-Canada border by persons not eligible to claim asylum – this in fact codified in Canadian law as “irregular arrivals.”
- Visa over-stayers: persons who enter with a tourist or other temporary visa and overstay the allowed period, offending their visa stipulations, for example, by engaging in paid employment while on a visitor tourist visa.
- Asylum claimants whose applications have been definitively refused, or people whose permanent or temporary permits have been withdrawn because of a criminal offence.
- The temporal dimension of permit processing or asylum decisions creates and exacerbates precarities. According to the Auditor General’s (2023) report, at the end of 2022, processing times for refugee and humanitarian applications were on average three years. The report confirming the IRB’s (2021) projection of 24 months for refugee claims and 12 months for refugee appeals. Wait times for applications made

by temporary residents are variable. Protracted wait times for application outcomes increase the risk of falling out of status.

There are “safety valves” built-in to Canada’s immigration laws which can temporarily or indefinitely stay removals (Ahouga, 2024), providing the chance for status transition:

- Refused asylum claimants can apply for protection to the Immigration Minister, who conducts a [Pre-Removal Risk Assessment \(PRRA\)](#) to determine whether the applicant is a Convention refugee or a person in need of protection. This also allows for the presentation of new evidence that arose after the rejection or was not reasonably available at the time of the decision (Parliament of Canada, 2023, s. 113).
- Inadmissible foreign nationals and refused refugee protection claimants can request [Temporary Resident Permits](#) for protection reasons (Parliament of Canada, 2023, s. 2). However, refused refugee protection claimants cannot request a temporary resident permit until 12 months have passed since the decision and appeals.
- [The Humanitarian and Compassionate \(H&C\)](#) avenue allows for an application to permanent residence based on evidence of hardship, establishment in Canada, or where applicable, the best interests of the child, and other humanitarian considerations. Refused refugee applicants must wait for 12 months after the last decision of the IRB’s Refugee Appeal Division to make an application.

1.3.2 Selected Regularisation Programmes

- [Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic 2020-2021](#)
Two programmes, one in Quebec and one for the rest of Canada, aimed at providing permanent residence to both refused and pending refugee claimants specifically working in the healthcare sector. Spouses and common-law partners in Canada were also granted permanent residence.
- [Temporary Public Policy for Out-of-Status Construction Workers in the Greater Toronto Area \(GTA\) 2019-2024](#)
Developed to recognise the economic contribution of long-term out of status resident construction workers and has sought to regularise individuals who have been contributing to the Canadian economy by filling a regional labour market need.

Table 3: Regularisation programmes enacted in Canada, 1960-2024

1960-1972	Chinese Adjustment Statement program (approx. 12,000 regularised)
1986-1973	Amendment to the Immigration Appeal Board Act (approx. 13,000 regularised)
1973	Adjustment of Status Program (approx. 39,000 regularised)
1981	Special Regularisation Program for Haitians Residing in Quebec (approx. 4,000 regularised)
1983-1985	Minister's Review Committee (approx. 1,000 regularised)
1994-1998	Deferred Removal Order Class (approx. 3,000 regularised)
2002	Special Regularisation Procedure for Algerians Residing in Quebec (approx. 900 regularized)
2004-ongoing	Humanitarian and Compassionate Considerations (2020-2023 applications ranged between 8,000 to 25,000 per year, with an average approval rate of 60.25%)
2019-2024	Temporary public policy for out-of-status construction workers in the Greater Toronto Area (approx. 452 workers and family members regularised in 2019-2023; extended until July 2024, with total target of up to 1,000)
2020-2021	Temporary public policy for pending and failed asylum seekers working in direct patient health care during COVID (Quebec and the rest of Canada) (of 3,115 approved in principle [met minimum requirements], only 380 received Permanent Resident status as of May 2021)

Source: Adapted from Alboim et al, 2023

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ANNEX 1: Policy and Legal Frameworks

Laws and policies on migrant irregularity

Sr. No.	Title of policy/law	Year	Description	Weblink to source
1	Division 4- Inadmissibility	2001	Immigration and Refugee Protection Act (S.C. 2001, c. 27)speaks to the cessation of protection due to non-compliance with the Act in terms of security, human and international rights violations, criminality, health grounds, financial reasons, misrepresentation.	Link (EN)
2	Part 13 Removal- Division 1 – Removal Orders	2001 with several amendments	As part of the Immigration and Refugee Protection Regulations (SOR/2002-227), there exists different types of removal orders: including a departure order, an exclusion order, and a deportation order.	Link (EN)
3	Humanitarian and compassionate considerations – request of foreign national	2004	25 (1) Subject to subsection (1.2) The Minister may evaluate the application if all other avenues are exhausted. Primarily the applicant must prove that they will face ‘undue hardship’ if they are returned to their home country.	Link (EN)
4	Designated Foreign National Regime – to protect against human smuggling or other irregular arrivals of groups of individuals	2012	The Minister of Public Safety and Emergency Preparedness, through the <i>Protecting Canada's Immigration System Act (2012)</i> or Bill C-31 amended the Immigration and Refugee Protection act to designate a person as a foreign national.	Link (EN)

5	Temporary Public Policy for Out-of-Status Construction Workers in the Greater Toronto Area (GTA)	2019-2024	Developed to recognize the economic contribution of long-term resident construction workers without status and has sought to regularize individuals who have been contributing to the Canadian economy by filling a regional labour market need.	Link (EN)
6	Temporary public policy to facilitate the granting of permanent residence for certain refugee claimants working in the health care sector during the COVID-19 pandemic	2020-2021	Initially focused in Quebec, and then implemented by the federal government across the country, and attended to “both failed and pending refugee claimants” specifically working in the healthcare sector. Spouses and common-law partners in Canada, were also granted permanent residence.	Link (EN)

Laws and policies indirectly impacting migrant irregularity

Sr. No.	Title of policy/law	Year	Description: How it relates to migrant irregularity	Weblink to source
1	Section 117 Enforcement Human Smuggling and Trafficking	2001 amended 2012	The Immigration and Refugee Protection Act (Section 117) prohibits knowingly organizing, inducing, aiding or abetting the coming into Canada of one or more persons in contravention of the Act if the offence was for profit or to benefit from or at the direction or in association with a criminal organization or terrorist group. The Act also prohibits knowingly organizing the coming into Canada of one or more persons by means of abduction, fraud, deception, or use or threat of force or coercion.	Link (EN)

2	Safe Third Country Agreement under Regulation 102 Immigration and Refugee Protection Act (S.C. 2001, c. 27)	2002 amended 2023	Designed to facilitate responsibility sharing for the consideration of refugee claims, and to deter “irregular arrivals” as defined above.	Link (EN)
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